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| Response Form to the Consultation Paper |
| Revision to Guidelines and Recommendations on the Scope of the CRA Regulation |

**Responding to this paper**

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions summarised in Annex III. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **11 March 2022.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_PCR\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_ PCR\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_ PCR\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” 🡪 “Consultation Paper on the Revision to the Guidelines and Recommendations on the Scope of the CRA Regulation”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper?**

All interested stakeholders are invited to respond to this consultation. In particular, this paper may be specifically of interest for rated entities, issuers of debt instruments, users of credit ratings, credit rating agencies and entities interested in applying to be a registered CRA, as well as other financial market participants not in the scope of the CRA Regulation.

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | Kroll Bond Rating Agency Europe Limited |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | Europe |

**Introduction**

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_ PCR\_00>

Kroll Bond Rating Agency Europe Limited (“KBRA Europe”) appreciates the opportunity to provide feedback on ESMA’s Consultation Paper on the Revision to the Guidelines and Recommendations on the Scope of the CRA Regulation.

<ESMA\_COMMENT\_ PCR\_00>

**Questions**

1. : Do you agree with ESMA’s interpretation of “produced pursuant to an individual order”? If you do not agree, please explain.

<ESMA\_QUESTION\_ PCR\_01>

KBRA Europe agrees with ESMA’s interpretation of “produced pursuant to an individual order” and the proposed changes to paragraph 14 of the 2013 Guidelines to require the private credit rating to only be produced following an explicit request for the credit rating, formalising this bilateral relationship through a written agreement between the person placing the order and the rating producer.

<ESMA\_QUESTION\_ PCR\_01>

1. : Do you agree with ESMA’s interpretation of “provided exclusively to the person who placed the order”? If you do not agree, please explain.

<ESMA\_QUESTION\_ PCR\_02>

KBRA Europe does not agree with ESMA’s interpretation of “provided exclusively to the person who placed the order”. In the scenario that ESMA describes where two or more persons (without each other’s knowledge) request the same private credit rating, ESMA are proposing that a specific analysis is completed on behalf of the rating producer for each of the orders placed. Should this situation occur, KBRA Europe believes it to be reasonable that each such engagement could be fulfilled in a more efficient and effective manner where some, or all, of the analysis is used and the same credit rating can be provided to different users. Given the regulatory concerns relating to consistency of credit ratings, it seems incongruous to require a CRA to review the same credit twice, even if such review was contracted by two different parties. It would also put an extra burden on analytical employees to fully duplicate the work already performed or being performed by their colleagues. This point in particular would be difficult for smaller CRAs to manage, as they may not have enough personnel to conduct identical reviews.

In addition, when multiple clients approach a CRA for a private credit rating on the same transaction or security, the CRA is typically looking at the exact same transaction or security. The difference is in the client requesting the private credit rating, not in what is being rated. It does not logically follow that separate rating processes should be conducted for the same credit. The private credit rating that is provided to each client is ‘exclusive’ to them and they are prohibited from broadly disseminating the private credit rating, but this exclusivity should not prohibit the ratings producer from being able to provide the same private credit rating on the same instrument or entity to a third party.

<ESMA\_QUESTION\_ PCR\_02>

1. : Do you agree that setting a 150 natural persons limit for sharing the private credit rating with third parties would be adequate? If you do not agree, please explain.

<ESMA\_QUESTION\_ PCR\_03>

KBRA Europe agrees that setting a 150 natural persons limit for sharing the private credit rating with third parties is adequate and has no objection with including this requirement in KBRA Europe’s engagement letter and / or the rating letter.

<ESMA\_QUESTION\_ PCR\_03>

1. : Do you agree with the onus on the rating producer to monitor the distribution of the private credit ratings to third parties? If you do not agree, please explain.

<ESMA\_QUESTION\_ PCR\_04>

KBRA Europe strongly disagrees with ESMA’s proposal to require CRAs to monitor the distribution of the private credit rating to third parties.

KBRA Europe is of the opinion that at the start of an engagement with a client, ratings producers can take reasonable steps to determine that a private credit rating will not become public but cannot take responsibility for monitoring the actions of the client in how it subsequently distributes the credit rating to third parties.

It is unreasonable to expect ratings producers to monitor the actions of their clients on their clients’ own networks. It is also likely impossible for CRAs to conduct this kind of monitoring without the enforcement resources that regulators typically have, including subpoena authority and special technology. KBRA Europe can and does use contractual agreements to protect the confidentiality of private credit ratings.

KBRA Europe currently includes language in its engagement letters setting out terms pursuant to which the client may distribute the private credit rating and the confidential nature of the private credit rating. KBRA Europe expects its clients to adhere to its obligations and the terms of the engagement letter.

If a ratings producer reasonably believes that a client has disseminated a private credit rating outside of the terms of the engagement letter, then KBRA Europe expects that the ratings producer will communicate its concerns to the client and take appropriate actions.

For the reasons outlined in this response, KBRA Europe requests that ESMA’s proposed additional sentence in paragraph 15, “To ensure that this maximum limit is adhered to, appropriate controls should be implemented by the rating producer to allow for the monitoring of the distribution”, not be added to the revised version of the ‘Guidelines and Recommendations on the Scope of the CRA Regulation’.

<ESMA\_QUESTION\_ PCR\_04>

1. : Do you agree that ESMA’s proposed approach is reflective of your interactions with rating producers and that the market would benefit from such a clarification?

<ESMA\_QUESTION\_ PCR\_05>

KBRA Europe’s responses have been provided in Questions 1 – 4.

<ESMA\_QUESTION\_ PCR\_05>

1. : Do you have any comments on the CBA outlined under the preferred option?

<ESMA\_QUESTION\_ PCR\_06>

KBRA Europe has no comment on the CBA outlined under the preferred option.

<ESMA\_QUESTION\_ PCR\_06>