MFA

29 May 2026

Via online reply form

ESMA
201-203 rue de Bercy
CS 80910
75589 Paris Cedex 12
France

Re: ESMA Call for Evidence on Restricted Subscription and Private Credit Ratings (ESMA00-666616337-488)

Dear Sir / Madam

MFA[1] appreciates the opportunity to respond to the European Securities and Markets Authority's Call for Evidence on restricted subscription and private credit ratings ("**Call for Evidence**").[2] MFA represents alternative investment fund managers globally, including managers and investors active in private credit markets. Our members rely on a range of credit assessment tools, including private credit ratings, as part of robust internal underwriting, risk management, and investment processes.

MFA members are increasingly active in EU private credit markets, which the European Commission's Savings and Investments Union ("**SIU**") strategy and the Draghi Report have identified as essential to mobilising the financing needed by the EU economy. Robust, independent credit assessment tools — including private credit ratings — are an enabling feature of those markets.

Executive Summary

Private ratings serve a narrow but important market need: they allow sophisticated market participants to obtain an independent, third-party credit risk assessment for private transactions while preserving the confidentiality of commercially sensitive information. In response to this Call for Evidence, MFA highlights five core points in the attached Annex:

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[1] Managed Funds Association ("**MFA**"), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

[2] ESMA, Call for Evidence on the Restricted Subscription and Private Credit Ratings, ESMA00-666616337-488 (Apr. 16, 2026), avail. at https://www.esma.europa.eu/sites/default/files/2026-04/ESMA00-666616337-488_Call_for_Evidence_on_the_restricted_subscription_and_private_credit_ratings.pdf

1. **Confidentiality is the principal differentiator**. Private credit ratings are generally selected when issuers, originators, or lenders prefer targeted distribution and confidentiality over broad marketing and public dissemination.[3]
2. **Private ratings complement, rather than substitute for, internal analysis**. Market participants typically treat private credit ratings as an additional input to underwriting, credit risk assessment, and governance, consistent with longstanding supervisory expectations to avoid mechanistic reliance on ratings.[4]
3. **Governance and methodological rigour are comparable to those for public ratings**. Where established, regulated credit rating agencies produce private ratings, the same core methodologies, controls, and surveillance practices can apply; what changes is how the ratings are distributed.[5]
4. **Regulatory and supervisory transparency can be achieved without public dissemination**. Experience in other contexts demonstrates that supervisory access to rating rationales and supporting analysis can coexist with confidentiality-based distribution models. The CRA Regulation and the 2022 ESMA Guidelines on the Scope of the CRA Regulation already establish a confidentiality-based framework; targeted clarifications to align that framework with ordinary institutional governance practices would enhance, rather than dilute, supervisory oversight.

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3 *Id.*

4 Financial Stability Board., *Principles for Reducing Reliance on CRA Ratings* 1–2 (Oct. 27, 2010), https://www.fsb.org/uploads/r_101027.pdf; European Sec. & Mkts. Auth., *UCITS* art. 51(1) (stating that a management or investment company "shall not solely or mechanistically rely on credit ratings issued by credit rating agencies … for assessing the creditworthiness of the UCITS' assets"), https://www.esma.europa.eu/publications-and-data/interactive-single-rulebook/ucits/article-51

5 *See supra* note 2

MFA appreciates the opportunity to comment on this important topic. Should ESMA Staff have questions or require additional information, please contact either the undersigned (jflores@mfaalts.org) or Rob Hailey (rhailey@mfaalts.org).

Yours faithfully,

/s/ Jillien Flores

Jillien Flores
Executive Director
Chief Advocacy Officer
MFA

ANNEX

Q.9 What are the main purposes and market needs that private credit ratings are intended to serve? In what circumstances are they used instead of, or alongside, publicly disseminated ratings or other forms of credit assessment? Please provide concrete examples where possible.

Private credit ratings primarily serve the market need for an independent, third-party assessment of credit risk in circumstances where issuers, sponsors, or lenders prioritise confidentiality over broad market dissemination. The choice between a public rating and a private credit rating is largely driven by issuer or originator preferences regarding marketing scope, disclosure, and commercial sensitivity.

Private credit ratings are commonly used alongside internal credit underwriting by investors and lenders rather than as a substitute for such analysis.[6] They are particularly prevalent where transactions are tailored, bespoke, or privately negotiated, such as when debt is issued at an operating company level rather than a holding company level, or where deal-specific covenants, pricing terms, or structures materially differ from public comparables.

In the EU specifically, the role of private credit ratings has grown alongside the structural rebalancing of European corporate financing away from predominant bank intermediation. Non-bank credit provision to euro-area non-financial corporations is now a meaningful and increasing share of total external debt financing[7]. Private credit ratings provide market participants in this segment with an independent, methodologically rigorous benchmark, particularly for bespoke, privately negotiated transactions for which observable public-market comparables are limited.

The U.S. Securities and Exchange Commission ("**SEC**") Staff reached similar conclusions in its most recent annual report on credit rating agencies.[8] The staff noted that ratings and credit assessments that are not publicly disseminated are generally used for internal risk management, investor due diligence, or bespoke analytical purposes, rather than as broad market signals.[9] The report did not identify material deficiencies requiring changes to the existing statutory or rule framework with respect to non-public ratings activity, and did not recommend new disclosure, filing or registration requirements specific to private ratings.[10]

It should also be noted that not all credit ratings agencies rate all underwritings. Offerings of securitisation vehicles or collateralised loan vehicles, for example, are often unrated by larger credit ratings agencies. The result is that other, often smaller, credit rating agencies have stepped in to fill this void left by the larger credit rating agencies. Insurance companies are key users of private ratings. In the U.S., they use private ratings to determine risk-based capital charges

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6 *See supra* note 4, at 1–2 (Oct. 27, 2010), https://www.fsb.org/uploads/r_101027.pdf; ESMA, *UCITS* art. 51(1) (stating that a management or investment company "shall not solely or mechanistically rely on credit ratings issued by credit rating agencies … for assessing the creditworthiness of the UCITS' assets")

7 As documented by the ESRB in its EU Non-Bank Financial Intermediation Risk Monitor 2025; European Systemic Risk Board, *EU Non-Bank Financial Intermediation Risk Monitor 2025*, No. 10 (September 2025), avail. at https://www.esrb.europa.eu/pub/nbfi/html/esrb.nbfi202509.en.html

8 Sec. & Exch. Comm'n, Office of Credit Ratings, Staff Report on Nationally Recognized Statistical Rating Organizations (Apr. 24, 2026), avail. at https://www.sec.gov/files/2025-ocr-staff-report-compliant-4-24-26.pdf

9 *Id.* at 29-34

10 *Id.* at 13-14

for eligible investments.[11] Other investment vehicles, such as funds, may have investment guidelines that specify minimum ratings criteria.

In other cases, issuers may use private credit ratings when they seek to engage with a limited number of sophisticated or strategic investors, reducing the need for public dissemination. Certain issuers, including partnership structures or entities with legal or tax constraints, may find broad marketing impractical or undesirable. Originators may similarly prefer private ratings to preserve confidentiality around proprietary sourcing or structuring strategies that provide competitive advantages.

For asset managers and institutional investors – particularly those active in private credit and private placement markets – private ratings support informed investment decision-making where public ratings may be unavailable, infrequent, or insufficiently tailored to bespoke instruments or structures. This differentiated role should remain a central consideration as ESMA evaluates the appropriate regulatory treatment of such products.

Q.10 To what extent do private credit ratings support investment decisions, credit risk assessments, risk management or internal capital allocation by market participants? In particular, how do they contribute to credit risk assessment and price discovery, including in private markets? Please provide examples where possible

Private credit ratings support investment decision-making and risk management as a complementary analytical input rather than a determinative signal. Market participants consistently conduct their own fundamental credit analysis, portfolio-level risk assessments, and stress analyses. As noted above, in the U.S., insurance companies are key users of private credit ratings. Private credit ratings provide an additional, independent perspective on credit quality, downside risk, and transaction structure that can inform investment committee discussions and capital allocation decisions. U.S. insurance regulators are considering additional steps to reduce or eliminate the ability of insurance companies to rely on credit ratings without appropriate processes to assess the reasonableness of such ratings.[12]

In the EU, the relevance of private credit ratings for institutional investors is reinforced by Article 4(1) of the Solvency II Delegated Regulation, which permits insurance and reinsurance undertakings to use external credit assessments for the calculation of Solvency Capital Requirements only where the rating has been issued or endorsed by an ECAI registered or certified under the CRA Regulation. Article 44(4a) of Solvency II, consistent with the Financial Stability Board's principles, simultaneously requires undertakings to assess the appropriateness of external assessments and avoid mechanistic reliance. Private credit ratings produced by EU-registered CRAs therefore operate as a regulated, supervised input that supports — but does not displace — the prudent-person framework and the Own Risk and Solvency Assessment (ORSA).

As with publicly disseminated ratings, private credit ratings can provide a third-party benchmark that supports valuation judgments and price discovery, especially in private markets where observable price data may be limited. By applying established methodologies to bespoke assets or transactions, private ratings help investors contextualise relative credit risk without displacing internal diligence or portfolio oversight.

[11] *Id.* at 7

[12] *See id*

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Q.11 What risks, if any, may arise from the use of and reliance on private credit ratings, including potential market-level risks (*e.g.* information asymmetries or financial stability concerns)?

The incremental risks arising from private credit ratings, as compared to public ratings, are negligible and mitigated by the way these ratings are used in practice. Private credit ratings present risks broadly comparable to those associated with public ratings if misused or relied upon mechanistically.[13] MFA also would note that rating agencies – including those offering both public and private ratings – may rate issues differently from one another. The result is that different rating agencies may assign different ratings to the same issue, with the user of the rating – such as an insurance company or an asset manager – obligated to develop and disclose its practices for selecting ratings when multiple ratings agencies rate the same investment.

As with public ratings, there is a risk that the opinions of the credit ratings agency may prove inaccurate or market dynamics may cause unforeseen stress on the issuer. For this reason, it is critical that regulatory authorities exercise reasonable diligence regarding the registration and oversight of regulated credit ratings agencies. In this context, MFA notes that international bodies, including the FSB and the ESRB, have at times referenced the 'opacity' of private ratings in their broader discussions of NBFI vulnerabilities. However, private credit ratings produced by EU-registered or endorsed CRAs are produced under the same legal framework, methodologies, governance and conflicts-management requirements as public ratings under the CRA Regulation; what differs is the distribution model, not the analytical or supervisory architecture. Concerns about disorderly information flows are therefore best addressed by reinforcing the existing perimeter, not by constraining a confidentiality-based product that is, by design, not a market-wide signal.

Potential risks include information asymmetries if a broad class of prospective investors or the public access limited distribution ratings without adequate context or if users fail to conduct independent analysis. However, in practice, private credit ratings are generally distributed to sophisticated parties conducting their own due diligence and are not relied upon in isolation. Because private credit ratings are not intended for broad public distribution and generally do not operate as system-wide public reference points, they function as one input among many in private market investment and risk frameworks rather than as a sole benchmark.[14]

Q.12 To what extent, if any, do private credit ratings differ from publicly disseminated regulated ratings in terms of governance, independence, conflicts of interest, internal controls, and application methodologies; and what risks, if any, arise from such differences? Please provide examples where possible.

In substance, private credit ratings can be supported by the same analytical rigour as publicly disseminated ratings, including comparable monitoring and surveillance practices.[15] Where the rating provider applies the same core methodologies, governance frameworks, independence standards, and internal controls, the principal distinction between private and public ratings relates to confidentiality and the distribution model.[16] In short, a security rated by a regulated credit rating agency carries the same weight whether it is a public rating or a private one.

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13 *See supra* note 4

14 *See supra* note 2

15 *Id.*

16 *Id.*

Ratings agencies typically make available private rating documentation via secure portals with access granted on a named individual basis, reflecting the need to control onward dissemination. Private ratings do not inherently provide a cost or speed advantage; they are selected instead primarily to preserve confidentiality around commercially sensitive information.

Q.13 To what extent do current disclosure practices and market practices around private credit ratings adequately support market transparency and investor protection? If relevant, please indicate areas where improvements may be warranted.

Current market practices can provide appropriate transparency and investor protection given the intended audience and use of private credit ratings. Private credit ratings are not confidential as between issuers and investors assessing an investment; they are routinely shared with prospective and existing investors under controlled access arrangements that facilitate informed due diligence while preserving commercial confidentiality.

MFA suggests that regulators can achieve appropriate visibility and oversight without requiring public dissemination of credit ratings. For example, regulators have considered and implemented frameworks that: (i) require the filing of private rating letter rationale reports within defined time windows following rating actions, and (ii) emphasise that rationale reports should contain sufficient analytical substance to allow an independent party to understand the basis for the assessment.[17]

Separately, U.S. regulators are also developing due-diligence frameworks for investors using credit ratings so that the rating providers support more consistent supervisory evaluation of ratings used for regulatory purposes.[18] These approaches illustrate that investor protection and supervisory transparency can coexist with confidentiality-based rating models.

Q.14 What are the main benefits associated with the use of private credit ratings by market participants? In which areas do they provide added value, and in which contexts are they considered a desirable product (*e.g.* private markets)? Please explain and provide examples where possible.

Private credit ratings provide substantial benefits in private market contexts by protecting commercially sensitive information, including deal structures, pricing, covenants, and proprietary financing arrangements. Public disclosure of such information could disadvantage issuers or lenders or undermine competitive positioning.

Private credit ratings also enable parties to obtain an independent third-party credit assessment while accommodating targeted distribution to sophisticated investors and internal stakeholders involved in governance and risk oversight. They can be especially useful where legal, tax, or structural constraints make wide dissemination impractical or undesirable.

[17] Nat'l Ass'n of Ins. Comm'rs, Valuation of Sec. (E) Task Force, *Materials* (June 4, 2025) (agenda items proposing amendments to the Purposes and Procedures Manual relating to private rating letter rationale reports, including a 90-day filing window and analytical substance expectations), avail. at https://content.naic.org/sites/default/files/call_materials/VOSTF%20Materials%202025-06-04%20v2.pdf

[18] Nat'l Ass'n of Ins. Comm'rs, Credit Rating Provider (E) Working Group, *Materials* (May 4, 2026) (exposing a draft "NAIC Credit Rating Provider (CRP) Due Diligence Framework" whitepaper), avail. at https://content.naic.org/sites/default/files/call_materials/2026May04_CRPWG_Materialsv2.pdf

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Q.15 In your view, does the current regulatory framework adequately support the market need for external credit risk assessments in private markets? If not, please indicate in which areas improvements may be warranted.

The EU framework recognises that private credit ratings are excluded from the scope of the CRA Regulation when they are produced pursuant to an individual order, provided exclusively to the person who placed the order, and are not intended for public disclosure or distribution by subscription.[19] ESMA guidance further clarifies that limited onward sharing may be permissible within a confidentiality-based model, subject to restrictions designed to avoid public distribution.[20]

In practice, however, the operational utility of private credit ratings can be undermined where distribution constraints are applied in a manner that does not reflect ordinary internal governance and diligence workflows at institutional firms. As part of standard diligence activities, multiple functions within a firm (*e.g.*, portfolio management, investment committee members, risk, compliance, and operational staff) will typically review a private credit rating. A framework that treats such ordinary internal review as "distribution" can cause firms to avoid using EU-supervised private ratings even when the underlying confidentiality rationale remains valid.

More specifically, Article 2(2)(a) of the CRA Regulation excludes from scope credit ratings produced pursuant to an individual order, provided exclusively to the person who placed the order, and not intended for public disclosure or distribution by subscription. The 2022 ESMA Guidelines on the Scope of the CRA Regulation, applicable since 1 May 2024, further clarify that the receiving party may share the private credit rating on a confidential basis with a limited number of natural or legal persons, capped at a total of 150.

In practice, however, the operational utility of EU-supervised private credit ratings has been materially constrained by the way the 150-persons threshold is counted. Under the Guidelines as applied, both legal entities and the individuals within them count separately toward the cap: for example, where two employees of a single recipient firm access a private credit rating, this counts as three persons (the firm and the two individuals) rather than one. Ordinary institutional diligence at an EU AIFM or insurance undertaking will routinely involve portfolio management, investment-committee members, independent risk, compliance, valuation, operations, internal audit and legal staff — and, where relevant, depositaries, third-party valuation agents and counsel. The 150 persons threshold can be exhausted by the internal governance of a single mid-sized institutional investor, before the rating is shared with any external counterparty.

The consequence is that EU institutional investors increasingly find it difficult to use EU-supervised private credit ratings in the same way they would use ratings produced under other regulatory regimes, even though the underlying confidentiality rationale – the protection of commercially sensitive structural, pricing and covenant information – remains fully intact. This outcome is in tension with the SIU objective to reduce regulatory frictions that fragment EU capital markets and disadvantage EU-supervised products relative to third-country alternatives.

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19 Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 Sept. 2009 on Credit Rating Agencies, 2009 O.J. (L 302) 1, art. 2(2)(a), https://eur-lex.europa.eu/eli/reg/2009/1060/oj/eng

20 ESMA, *Final Report -- Revision to Guidelines and Recommendations on the Scope of the CRA Regulation*, ESMA80-196-6345, ¶¶ 14–15 (July 15, 2022), https://www.esma.europa.eu/sites/default/files/library/esma80-196-6345_final_report_on_guidelines_on_scope_of_the_cra_regulation.pdf; European Sec. & Mkts. Auth., *Guidelines on the Scope of the CRA Regulation*, ESMA80-196-6345 (Oct. 28, 2022), https://www.esma.europa.eu/sites/default/files/library/esma80-196-6345_guidelines_on_the_scope_of_the_cra_regulation.pdf

Targeted adjustments or clarifications that better align the regulatory framework with market practice – while preserving meaningful confidentiality controls – would improve the framework's effectiveness without undermining investor protection.[21] In particular, due consideration should be given to the following:

(i) clarifying that natural persons performing ordinary internal governance, risk, compliance, valuation, operational, audit or legal review functions within a recipient legal person are counted as part of the recipient legal person rather than as separate persons toward the 150 persons threshold;

(ii) confirming that affiliates of a recipient acting in a service-provider or control function (e.g. parent company risk oversight, intra-group delegation arrangements within an AIFM group) are not separately counted; and

(iii) clarifying that statutorily required disclosures to supervisory authorities, statutory auditors, depositaries and equivalent regulated intermediaries fall outside the cap, consistent with the existing footnote 1 to the Guidelines on dissemination for legal, statutory or judicial reasons.

Q.16 Are there any additional considerations or evidence related to private credit ratings that stakeholders consider relevant for the purposes of this Call for Evidence, but which have not been addressed in the questions above?

The role of specialised credit rating agencies and the structure of competition in certain rated product segments warrants consideration. SEC Staff reporting on registered rating agencies has documented the competitive dynamics and market-share patterns in structured finance segments, including that medium-sized agencies can attain material shares in certain issuance categories.[22] For example, SEC staff analysis has noted instances where two midsize rating agencies rated substantial portions of issuance amounts in specific structured-finance segments from 2021 to the first half of 2023, and discussed how market practices (including investment guidelines and index eligibility criteria) can affect competition among rating providers.[23]

For the EU private credit market, these competitive dynamics matter because specialist agencies may be the prudent choice for certain products and structures. A regulatory approach that inadvertently narrows the range of usable private credit ratings – through overly rigid distribution constraints – could reduce choice among qualified providers, increase costs, and diminish the availability of tailored, independent credit risk assessments in private markets.[24]

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[21] *Id.*

[22] U.S. Sec. & Exch. Comm'n, Office of Credit Ratings, *Staff Report on Nationally Recognized Statistical Rating Organizations* 34–39, 41–43 (Feb. 2024), https://www.sec.gov/files/feb-2024-ocr-staff-report.pdf

[23] *Id.*

[24] *See supra* note 2