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## PRESS RELEASE

### **ESMA extends transitional period for use of non-EU credit ratings, Australian CRA regime endorsed**

#### *First binding standards on CRAs sent to European Commission*

ESMA has decided to extend until 30 April 2012 the initial transitional period of three months for credit ratings issued outside the European Union (EU). This decision allows the use in the EU of credit ratings issued in third countries while the convergence process with the EU requirements and the endorsement process of third countries continue. At the same time, following a careful assessment of its regulatory framework, ESMA has decided to endorse Australia's regulatory regime on credit ratings (according to Art 4 (3) of the EU Regulation on Credit Rating Agencies, or CRAs<sup>1</sup>).

#### **Steven Maijoor, ESMA Chair, said:**

*"ESMA is working actively to assess the regulatory framework for credit rating agencies of several non-EU countries. The extension of the transitional period until 30 April 2012 will allow us to complete the assessment of the countries from which the overwhelming majority of third-country ratings are issued. The assessment requires that the regulatory framework in the third country is 'as stringent as' the European CRA Regulation. Today, we have also added Australia to the list of countries which are already assessed as endorsable."*

#### **Supervisory framework with Australia established, others to be further assessed**

As part of the endorsement decision, ESMA and the Australian Securities and Investments Commission (ASIC) concluded on 20 December 2011 the exchange of letters (EOL) establishing the co-operation arrangement between the EU and Australia for the supervision of cross-border CRAs.

Having assessed as endorsable Japan<sup>2</sup> and now Australia, ESMA is in an advanced state of its assessment for several other non-EU countries, namely Argentina, Canada, Hong Kong, Singapore, and the US. ESMA is also currently examining the regulatory frameworks of Brazil and Mexico.

ESMA will disclose its decision on new endorsable non-EU countries upon adoption of the relevant decision. ESMA is conscious that there could be significant market impact if ahead of the end of April 2012 deadline there will be no clarity about the likely endorsability status of these countries and is therefore actively working to, where possible, finalise the assessments and conclude relevant cooperation agree-

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<sup>1</sup> Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L302 of 17.11.2009), amended by Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 (OJ L145 of 31.5.2011).

<sup>2</sup> The EC endorsement Decision for Japan is available at: [http://ec.europa.eu/internal\\_market/securities/docs/agencies/japan\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/agencies/japan_en.pdf). The press release on the co-operation framework between ESMA and the Japanese FSA is available at: [http://www.esma.europa.eu/system/files/2011\\_170.pdf](http://www.esma.europa.eu/system/files/2011_170.pdf). As specified below in the notes for editors section of this press release, the equivalence decision and the co-operation framework fulfil the requirements set in Art. 4(3) of the CRA Regulation for the endorsability of third-country credit ratings.



ments in the first quarter of 2012. However, although ESMA expects to be able to adopt its endorsement decision for the majority of such countries – which will allow for the permanent endorsement of the overwhelming majority of the third-country credit ratings currently used in the EU – ESMA cannot guarantee that it will be able to endorse all such countries by 30 April 2012.

As regards all the other countries for which CRAs applied for endorsement,<sup>3</sup> it is clear that market participants should take precautionary measures before 30 April 2012 as it is likely that credit ratings issued in these countries will not be endorsed after that date.

### **First regulatory technical standards on CRAs adopted**

On 20 December 2011, ESMA adopted its first four draft Regulatory Technical Standards (RTS) on Credit Rating Agencies (CRAs). In accordance with the CRA Regulation<sup>4</sup>, these four RTS were sent for endorsement to the European Commission. They will be directly applicable in all Member States upon the date of endorsement. The four RTS contribute to the establishment of harmonised standards in financial services, to ensure a level playing field and adequate protection for investors and consumers across the European Union.

The new draft standards complement the CRA Regulation by introducing detailed specifications for CRAs for the information they have to provide to ESMA at the moment of registration, certification, and during their periodic data reporting. Such information will be used by ESMA for its on-going supervision. In addition, the RTS detail the information that will be used for the disclosure on the past performance of credit rating, provided to the public through ESMA's central repository (CEREP) which will be made publically available in January 2012. Finally, the RTS provide detailed specifications on the compliance of credit rating methodologies with the CRA Regulation.

### **Standards detail requirements for registration, data reporting, and rating methodologies**

The four RTSs provide standards of technical nature and cover the following areas:

1. the **information** to be provided by a credit rating agency in its **application for registration**, for certification, and for the assessment of its systemic importance to the financial stability or integrity of financial markets;<sup>5</sup>
2. the presentation of the **information**, including structure, format, method and period **of reporting**, that credit rating agencies shall disclose in accordance with Article 11(2) and point 1 of Part II of Section E of Annex I;
3. the assessment of compliance of **credit rating methodologies** with the requirements set out in Article 8(3);
4. the content and format of **periodic reporting** to be requested from the credit rating agencies for the purpose of on-going supervision by ESMA.

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<sup>3</sup> Chile, China, Costa Rica, Dubai, India, Indonesia, Israel, Panama, Russia, South Africa, Sri Lanka, Taiwan, Thailand, Tunisia, Turkey, and Venezuela.

<sup>4</sup> Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L302 of 17.11.2009), amended by Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 (OJ L145 of 31.5.2011).

<sup>5</sup> This RTS covers points (a) and (b) of Article 21 (4) of the CRA Regulation.



## Notes for editors

1. Article 4 of the CRA Regulation allows ESMA to directly adopt an endorsement decision as soon as it verifies that the regulatory framework of the non-EU country is “as stringent as” the CRA Regulation and as soon as a cooperation arrangement between ESMA and the relevant non-EU competent authority is concluded.
2. Article 4(3) of the CRA Regulation (Regulation (EU) 1060/2009 as amended by Regulation (EU) No 513/2011) provides that, in order for a CRA to endorse a credit rating issued in a third country, the regulatory framework of the third country should set requirements “as stringent as” those provided by Art 6-12 of the CRA Regulation.
3. On 18 May 2011 ESMA issued its Guidelines on endorsement (ESMA/2011/139) to clarify the contents of the “as stringent as” test for credit ratings produced outside the European Union, in what are named “third countries”. According to the Guidelines, the wording of the provisions will not need to be identical to those set out in the CRA Regulation. A global and holistic view should be applied in assessing to what extent the third country legal framework achieves similar adequate regulatory effects and meets the same objectives as the EU Regulation. Moreover, where the European Commission has recognised that the regulatory regime of a third country is equivalent to the EU Regulation, it is possible to refer to this decision in respect of the “as stringent as” test set out in Article 4(3).
4. ESMA’s Board of Supervisors has been able to extend the possibility to use those non-endorsable ratings for regulatory purposes in the Community for three additional months, until 30 April 2012, according to the third subparagraph of Article 24(2) of the Regulation. In particular, Art. 24(2) states that the extension of the use of non-endorsable credit ratings for regulatory purposes in the European Union for three additional months is possible provided that exceptional circumstances occur that may imply potential market disruption or financial instability. Also in this case, the provisional endorsement regime will also apply to credit ratings issued during the second three-month period.
5. Equivalence is assessed by the European Commission according to Art. 5 of the CRA Regulation. It is aimed at allowing the use in the EU of credit ratings from CRAs that do not have a physical presence in the EU. In 2009, the European Commission requested CESR, and now ESMA, to provide its technical advice on the equivalence between the legal and supervisory framework of the US (and also Japan, Australia and Canada) with the EU regulatory regime for credit rating agencies.
6. Equivalence is not a necessary precondition for the endorsement of ratings from non-EU countries. Article 4 of the CRA Regulation allows ESMA to directly adopt an endorsement decision as soon as it verifies that the regulatory framework of the non-EU country is “as stringent as” the CRA Regulation and as soon as a cooperation arrangement between ESMA and the relevant non-EU competent authority is concluded.
7. On the other hand, the endorsement decision may be based on an equivalence decision already adopted by the Commission. However, the equivalence process is much too long to allow for endorsement before 30 April 2012. Considering the time pressure, ESMA will provide the requested technical advice to the European Commission on the equivalence of the US regulatory framework after the expiration of the second grace period, in order to allow for the timely endorsement of the US and of as many as possible non-EU countries.

8. Art. 10 of Regulation EC No 1095/2010 provides that where the European Parliament and the Council delegate power to the Commission to adopt regulatory technical standards by means of delegated acts under Article 290 TFEU, ESMA may adopt draft regulatory technical standards. ESMA shall then submit its draft standards to the Commission for endorsement.
9. Article 21(4) of the Regulation (EU) No 1060/2009 on credit rating agencies (CRA Regulation), as amended by Regulation (EU) No 513/2011, mandates ESMA to “(...) submit draft regulatory technical standards (RSTs) [by 2 January 2012] for endorsement by the Commission in accordance with Article 10 of Regulation (EU) No 1095/2010 on:
  - a. the information to be provided by a credit rating agency in its application for registration as set out in Annex II;
  - b. information that the credit rating agency must provide for the application for certification and for the assessment of its systemic importance to the financial stability or integrity of financial markets referred to in Article 5”
  - c. the presentation of the information, including structure, format, method and period of reporting, that credit rating agencies shall disclose in accordance with Article 11(2) and point 1 of Part II of Section E of Annex I;
  - d. the assessment of compliance of credit rating methodologies with the requirements set out in Article 8(3);
  - e. the content and format of ratings data periodic reporting to be requested from the credit rating agencies for the purpose of ongoing supervision by ESMA.”
10. The objective pursued through the RTSs is to provide standards that shall be technical and not imply strategic decisions or policy choices. Similarly, their content shall be within the limits set by the legislative acts on which they are based.
11. For the purpose of discharging its mandate, ESMA consulted market participants on the proposed four draft RTSs. The Securities and Markets Stakeholder Group (SMSG) established under the ESMA Regulation, the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA) have also been consulted.
12. ESMA is an independent EU Authority that was established on 1 January 2011 according to EU Regulation No. 1095/2010 as published on December 15, 2010, in the Official Journal of the European Union (L 331/84). The Authority contributes to safeguarding the stability of the European Union’s financial system by ensuring the integrity, transparency, efficiency and orderly functioning of securities markets, as well as enhancing investor protection. In particular, ESMA fosters supervisory convergence both amongst securities regulators, and across financial sectors by working closely with the other European Supervisory Authorities competent in the field of banking (EBA), and insurance and occupational pensions (EIOPA).
13. ESMA’s work on securities legislation contributes to the development of a single rule book in Europe. This serves two purposes; firstly, it ensures the consistent treatment of investors across the European Union, enabling an adequate level of protection of investors through effective regulation and supervision. Secondly, it promotes equal conditions of competition for financial service providers, as well as ensuring the effectiveness and cost efficiency of supervision for supervised entities. As part of its role in standard setting and reducing the scope of regulatory arbitrage, ESMA strengthens international supervisory co-operation. Where requested in European law, ESMA undertakes the supervision of certain entities with pan European reach.



14. ESMA also contributes to the financial stability of the European Union, in the short, medium and long-term, through its contribution to the work of the European Systemic Risk Board, which identifies potential risks to the financial system and provides advice to diminish possible threats to the financial stability of the European Union. ESMA is also responsible for coordinating actions of securities supervisors or adopting emergency measures when a crisis situation arises.

For further information, contact:

**Reemt Seibel**  
Communications Officer

T: +33 158 36 42 72

M: +33 6 42 48 55 29

Email: [reemt.seibel@esma.europa.eu](mailto:reemt.seibel@esma.europa.eu)