

Technical Advice

In accordance with Article 39(b) 2 of the CRA Regulation regarding the appropriateness of the development of a European creditworthiness assessment for sovereign debt

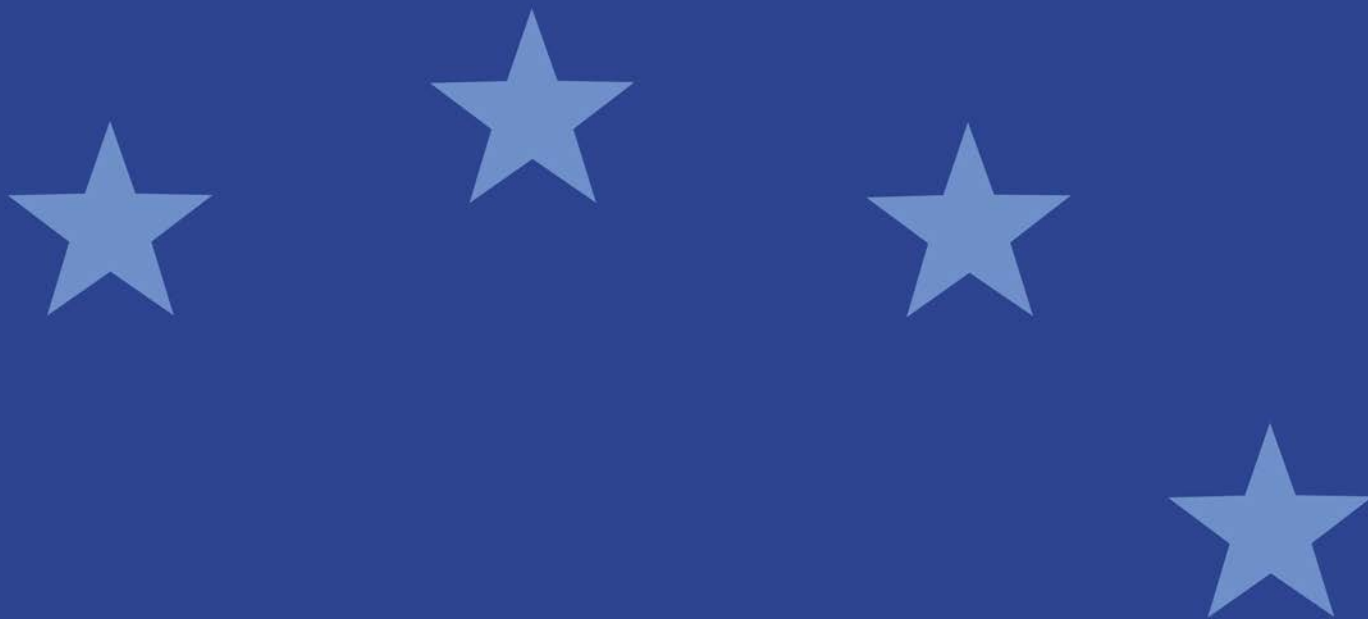


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Annex I: Credit Rating Agencies Sovereign Ratings Investigation, ESMA's assessment of governance, conflicts of interest, resourcing adequacy and confidentiality controls



Acronyms used

ABS	Asset Backed Security
CEREP	Central Repository of rating data reported by CRAs to ESMA according to Commission Delegated Regulation (EU) No 448/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the presentation of the information that credit rating agencies shall make available in a central repository established by the European Securities and Markets Authority
CRA	Credit rating agency
CRA Regulation	Regulation (EC) No 1060/2009 of the European Parliament and of the Council (as last amended by Regulation (EU) No 462/2013, so-called CRA III Regulation)
Commission Delegated Regulation	Commission Delegated Regulation (EU) No 272/2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to credit rating agencies
ESMA	European Securities and Markets Authority
EC	European Commission
FC	Foreign Currency
LC	Local Currency
RTS	Regulatory Technical Standard

I. Executive Summary

Reasons for publication

Article 39b(2) of the CRA Regulation states that the Commission shall adopt a report by end 2014 – after receiving ESMA’s technical advice – on the appropriateness of the development of a European creditworthiness assessment for sovereign debt.

In its request for advice, the Commission asked ESMA to provide input on the issue of sovereign ratings and rating processes including an overview of the market for sovereign ratings, information on operational issues regarding sovereign ratings, information on sovereign rating processes as well as lessons drawn from ESMA’s supervisory experience.

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For the purposes of this advice, ESMA provides its views based on the quantitative information contained in the CEREP public database¹ and on information publicly disclosed by credit rating agencies registered with ESMA.

Additionally, ESMA’s advice has been informed by its first supervisory activities regarding the rating process for sovereign ratings of CRAs which are active in the EU sovereign rating market. In accordance with the CRA Regulation, these supervisory activities did not address the content of the sovereign methodologies themselves but rather were concerned with the independence, transparency and governance of the sovereign rating process.

Sovereign credit ratings play a crucial role from a credit market and financial stability perspective, not least because sovereign governments account for the largest group of borrowers in capital markets in terms of volume. In addition the crucial importance of these sovereign ratings can be amplified by the “cascade” effect sovereign ratings have on other asset classes via their presence as factors in other asset methodologies.

In the EU the sovereign rating market is composed of nine CRAs established in nine different EU member states. These nine CRAs exhibit a high level of variation with respect to the type and number of sovereign ratings they assign.

Sovereign credit ratings themselves can also be differentiated in various ways depending on such factors as local/foreign currency, duration of issuance, whether the rating applies to a specific issuer or issuance and if it is solicited or unsolicited.

In addition ESMA would like to emphasise the following points which it believes to be important when considering the appropriateness of the development of a European creditworthiness assessment of sovereign debt.

1. Independence of the rating process

The rating process should be a fully independent assessment. This requirement should cover the organization as a whole as well as all staff involved in the rating process.

¹ For the purpose of this technical advice, ESMA aggregated the CEREP raw data containing the information related to individual ratings reported by CRAs. The data included in the tables and figures were filtered out to refer only to EU sovereign ratings. This includes ratings issued by credit rating agencies which have both EU and non-EU legal entities as part of their group who also report the ratings issued by their non-EU entities (endorsed or not by the EU registered agency).



2. Review function

The review function responsible for the annual review of methodologies must be independent of the business lines which are responsible for credit rating activities. Processes should be put in place to take into account the results of the back-testing in the rating methodologies.

3. Confidentiality

Confidentiality of all rating sensitive information is critical. In addition, access to pre-rating information should only be available to persons involved in rating activities and all necessary steps should be taken to ensure such information is adequately protected.

4. Sufficiency of resources

It is necessary to have sufficient resources in place for the conduct of both a rigorous rating process, in any circumstance, as well as on-going monitoring.



II. Introduction

1. In providing this Technical Advice to the Commission on the appropriateness of a European creditworthiness assessment for sovereign debt, ESMA first provides an overview of the market within the EU for sovereign ratings.
2. This overview includes a description of the size and importance of the market for sovereign ratings. It also provides a summary of typical factors within sovereign rating methodologies, to highlight the differences in approach that can be taken in assessing the creditworthiness of a sovereign.
3. As part of the overview, this advice provides details of the number of outstanding sovereign ratings within the EU from 1999 up to the end of 2013. This includes details as to the number of CRAs, a breakdown of the number of staff allocated to this activity per CRA and an overview of the number of solicited/unsolicited sovereign ratings currently issued within the EU.
4. Finally, the last part of the technical advice covers specific aspects of the rating process and has been informed by ESMA's first supervisory activities regarding the rating process for sovereign ratings of CRAs which are active in the EU sovereign rating market. In accordance with the CRA Regulation, these supervisory activities did not address the content of the sovereign methodologies themselves but rather were concerned with the independence, transparency and governance of the sovereign rating process.

III. The Market for Sovereign Ratings

5. Sovereign credit ratings play a crucial role from a credit market and financial stability perspective by informing investors about the quality of sovereign debt and the credit risk associated with holding government securities.
6. Sovereign governments account for the largest group of borrowers in the capital market in terms of volume. As of end 2013, EU-28 sovereign securities, including both short-term (with maturity equal to or less than a year) and long-term securities amounted to an aggregate value of EUR 9.2tn outstanding².
7. The crucial importance of sovereign ratings is amplified by the “cascade” effect, which can arise when rating actions regarding sovereigns indirectly influence the terms and extent of borrowing for other rated entities. For example, CRAs can apply maximum rating caps or provide uplifts to rated entities that are not solely related to the credit quality of the underlying collateral or issuing entity, but also to the rating level of the sovereign where the entity is domiciled.
8. The analysis of sovereign debt entails a combination of quantitative and qualitative factors. Sovereign rating methodologies usually refer to numerous criteria that determine the final credit rating such as measurable and public information (mainly economic, financial, fiscal or other position taken from national accounts or information/data drawn from publications and meetings with government officials). In addition, the sovereign assessment can also consider a number of qualitative factors such as stability or effectiveness. These factors can sometimes be approximated in a quantitative manner whereas others are complemented by substantial rating-specific analytical input.
9. Sovereign credit ratings can be differentiated in various ways, for example solicitation status, foreign and local currency rating as well as short term and long term issuance. It is also possible to draw a distinction between ratings that relate solely to an issuer as opposed to an individual issuance.
10. The EU market for sovereign credit ratings covers ratings where the rated entities or the issuer of financial obligations is a state or regional or local authority of a state or public entities, including supranationals.

² http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/2-23042014-AP/EN/2-23042014-AP-EN.PDF

11. Table: 1. Outstanding sovereign ratings in the EU (as of 2H2013) by CRA

CRA	Sovereign Rating				Staff ³	Revenue ⁴
	Sovereign Foreign Currency	Public Entity/Supranational	Sovereign Local Currency	Sub-sovereign		
BCRA Credit Rating Agency AD	0	0	0	5	2 to 3	3%
Capital Intelligence Ltd. Cyprus	4	0	2	0	Not available ⁵	Not available ⁶
DBRS Ratings Limited	33	0	31	0	3	Not available
Economist Intelligence Unit Ltd ⁷	0	0	26	0	Not available	Not available
European Rating Agency	0	0		8	3	100.00%
Feri EuroRating Services AG	0	0	25	0	8	2.50%
Fitch ⁸	57	40	28	270	47	11.60%
Moody's ⁹	35	155	40	74	24	3.69%
Standard & Poor's ¹⁰	56	34	56	105	57	8.23%

Source: CEREP database¹¹ and CRAs' transparency reports

12. As illustrated in Table 1, the market for sovereign ratings in the EU is comprised of nine CRAs established in nine different EU member states: BCRA-Credit Rating Agency (BG), Capital Intelligence (CY), DBRS (UK), EIU (UK), European Rating Agency (SK), Feri (DE), Fitch (DE, ES, FR, IT, PL, UK), Moody's (CY, DE, ES, FR, IT, UK) and S&P (FR, IT, UK).

13. With respect to type of sovereign ratings issued, four agencies, namely EIU, Feri, ERA and BCRA, assign ratings for only one sub-category. In addition, whereas EIU and Feri produce only country ratings in local currency (LC), ERA and BCRA are focused on sub-sovereign ratings. Meanwhile, Capital Intelligence and DBRS produce country ratings both in local and foreign currency (FC).

14. S&P, Moody's and Fitch are active in country ratings (LC & FC), public entity ratings and sub-sovereign ratings. As further evidenced by Table 1, the nine CRAs active in the sovereign rating business in the EU

³ The information on staff counts is retrieved from CRA's transparency reports. The numbers are not comparable across CRAs, as they do not use the same categories on their staff counts breakdown.

⁴ The revenues information is retrieved from CRA's transparency reports. The numbers are not comparable across CRAs, as they do not use the same categories on their revenues breakdown.

⁵ CI's transparency report does not break down the allocation of staff by rating type.

⁶ CI's transparency report does not contain information about the income generated from sovereign rating activity.

⁷ Due to the recent registration EIU's transparency report is not yet available.

⁸ The following Fitch legal entities are currently registered with ESMA: Fitch France S.A.S, Fitch Deutschland GmbH, Fitch Italia S.p.A., Fitch Polska S.A., Fitch Ratings España S.A.U., Fitch Ratings Limited and Fitch Ratings CIS Limited.

⁹ The following Moody's legal entities are currently registered with ESMA: Moody's Investors Service Cyprus Ltd, Moody's France S.A.S., Moody's Deutschland GmbH, Moody's Italia S.r.l., Moody's Investors Service España S.A. and Moody's Investors Service Ltd.

¹⁰ The following Standard & Poor's legal entities are currently registered with ESMA: Standard & Poor's Credit Market Services France S.A.S., Standard & Poor's Credit Market Services Italy S.r.l. and Standard & Poor's Credit Market Services Europe Limited.

¹¹ In CEREP, sovereign ratings are reported by CRAs on a one entry per issuer-basis and time horizon, which creates a potential downward bias for the number of outstanding ratings.

exhibit a high level of variation with respect to the type and number of sovereign ratings they assign as well as the number of staff employed within each referenced CRA.

Table: 2. Solicitation status of EU sovereign ratings (as of 2H2013)

EU Member	Capital Intelligence	DBRS		EIU	Feri	Fitch		Moody's		S&P	
AUSTRIA			U	U	U		U	S		S	
BELGIUM			U	U	U	S		S			U
BULGARIA				U	U		U	S		S	
CROATIA				U	U	S		S		S	
CYPRUS	S		U	U		S		S		S	
CZECH REPUBLIC				U	U	S		S		S	
DENMARK			U	U	U	S		S		S	
ESTONIA				U	U		U	S		S	
FINLAND			U	U	U	S		S		S	
FRANCE		S		U	U		U	S	U		U
GERMANY			U	U	U		U	S	U		U
GREECE		S		U	U	S		S		S	
HUNGARY				U	U	S		S		S	
IRELAND		S		U	U	S		S		S	
ITALY			U	U	U	S			U		U
LATVIA				U	U	S		S		S	
LITHUANIA				U	U	S		S		S	
LUXEMBOURG							U	S		S	
MALTA						S		S		S	
NETHERLANDS			U	U	U		U		U		U
POLAND				U	U	S		S		S	
PORTUGAL			U	U	U		U	S		S	
ROMANIA				U	U	S		S		S	
SLOVAKIA				U	U	S		S		S	
SLOVENIA	S			U	U	S		S		S	
SPAIN			U	U	U		U	S		S	
SWEDEN			U	U	U		U	S		S	
UNITED KINGDOM			U	U	U		U	S	U		U

Source: CEREP database

15. The purpose of Table 2 above is to provide an overview with regards the solicitation status of sovereign ratings of EU member states. Of the 9 CRAs active in the sovereign credit rating market in the EU, only 7 are active at the level of the State¹².
16. The CRA Regulation defines ‘unsolicited credit rating’ and ‘unsolicited sovereign rating’ as a credit rating or a sovereign rating assigned by a credit rating agency other than upon request. Conversely, a solicited sovereign rating is one which has been requested in relation to the individual issuer or an issuance.
17. The presence of sovereign ratings as a factor in the methodologies of other types of ratings such as corporate, bank and SFI is a possible explanation as to why some CRAs provide unsolicited sovereign ratings. In addition, it should be noted that CRAs operating on a subscriber-pays model typically provide unsolicited ratings.
18. With regards to the breakdown of the solicitation status of sovereign ratings, Fitch, DBRS, Moody’s and S&P produce both solicited and unsolicited ratings. Feri and EIU only produce unsolicited credit ratings for the majority of EU member states, while Capital Intelligence assigns solicited ratings only for two countries (Cyprus and Slovenia).
19. Within the category of CRAs that provide both solicited and unsolicited ratings there is a difference in terms of breadth of coverage. Where S&P, MIS and Fitch cover all EU member states, DBRS currently has outstanding ratings for 15 EU member states.

Table: 3. Development of the market for EU sovereign ratings¹³

PERIOD	SECTOR	Capital Intelligence	DBRS	EIU	Feri	Fitch	Moody’s	S&P
2013	FC	4	33			57	35	56
2013	LC	2	31	26	25	28	40	56
2012	FC	4	29			57	35	56
2012	LC	2	27		25	28	40	56
2011	FC	16	10			57	32	56
2011	LC	12	10		25	28	38	56
2010	FC	16	4			57	31	56
2010	LC	12	4		25	28	38	56
2009	FC	16				57	29	56
2009	LC	12			25	28	35	56
2008	FC	18				57	29	56
2008	LC	14			25	28	34	56
2007	FC	18				57	29	56
2007	LC	14			25	28	34	56
2006	FC	18				56	29	56
2006	LC	12			25	28	34	56
2005	FC	20				56	29	56
2005	LC	12			25	28	34	56
2004	FC	20				56	28	56
2004	LC	12			25	28	33	56
2003	FC	22				56	28	56
2003	LC	12			25	28	33	56
2002	FC	22				56	29	56
2002	LC				25	28	31	56
2001	FC	22				54	29	56
2001	LC				25	27	31	56
2000	FC						29	56
2000	LC				25		31	56
1999	LC				25			

Source: CEREP database

¹² The analysis focuses on short-term and long-term credit ratings assigned for sovereign countries (excluding sub-sovereign, public entity and supranational ratings), both in local and foreign currency.

¹³ The CEREP data in Table 3 relate to sovereign rating coverage for EU member states and includes ratings in both local and foreign currency.



20. Table 3 provides an overview of the development of sovereign ratings coverage in relation to EU member states according to data reported into CEREP.
21. As can be seen by the data provided, while the scale of issuance in terms of ratings issued per CRA has fluctuated since 1999, based on the data reported to ESMA via CEREP the market for sovereign ratings within the EU has expanded in terms of number of CRAs participating in this market.

IV. Supervisory Views

22. Since the amendment of the CRA Regulation in 2011¹⁴, ESMA has been exclusively responsible for the registration and supervision of CRAs in the European Union. ESMA is now responsible for the ongoing supervision of 23 registered CRAs and 2 certified CRAs.
23. As part of its supervisory role, ESMA has gathered knowledge and experience of the sovereign ratings process through both targeted actions and ongoing supervision.
24. In March 2012 ESMA published the results of its first examination of certain CRAs¹⁵. The examination focused on the rating process for three specific credit rating classes (sovereign ratings, bank ratings and covered bond ratings).
25. This examination encompassed both desk-based and on-site examinations of areas such as resources dedicated to ratings processes, the interconnections between the relevant methodologies as well as organization and work of the review, compliance and internal audit functions.
26. Additionally, in December 2013 ESMA published its report of the assessment of governance, conflicts of interest, resourcing adequacy and confidentiality controls within certain CRAs¹⁶. This assessment covered, amongst other areas, the role of senior management and non-rating functions in the rating process, actual or potential conflicts of interest and the adequacy and expertise of resources dedicated to sovereign ratings.
27. Finally, ESMA has also informed its views via the analysis of information provided to ESMA through notifications of changes to methodologies, periodic information regarding the review of methodologies and analysis of public disclosures. In accordance with the CRA Regulation, these first supervisory activities in the area of sovereign ratings did not regard the content of the sovereign methodology.
28. Based on the above experience and supervisory work ESMA wishes to highlight the following areas it considers of particular importance in the context of the sovereign rating process and the conduct of sovereign creditworthiness assessments in general.

1. Independence and integrity of rating activities

29. The CRA Regulation specifically requires CRAs to ensure the independence of the individuals involved in assigning credit ratings from the other activities carried out on a commercial basis and that rating activities are not affected by any existing or potential conflicts of interest or business relationship.

¹⁴ Regulation (EU) No 513/2011; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:145:0030:0056:EN:PDF>

¹⁵ ESMA's report on the Supervision of Credit Rating Agencies, <http://www.esma.europa.eu/system/files/2012-207.pdf>

¹⁶ Credit Rating Agencies, Sovereign ratings investigation http://www.esma.europa.eu/system/files/2013-1780_esma_identifies_deficiencies_in_crags_sovereign_ratings_processes.pdf, Attached at Annex I.

30. In addition, ESMA believes that external appeals lodged by a rated entity are an important part of the rating process. As such it is important that CRAs review carefully any such instances in order to assess whether a rating action needs to be reviewed before publication and ensure that whenever new material information is received its impact on the rating decision is adequately taken into account.

2. Review Function

31. The CRA Regulation establishes that the review function responsible for the annual review of methodologies must be independent of the business lines which are responsible for credit rating activities. In addition, CRAs must have processes in place to take into account the results of the back-testing of their rating methodologies.
32. The review function is set up to periodically review and assess the appropriateness of rating methodologies, models and key rating assumptions and should be independent from the day-to-day activities of issuing credit ratings. ESMA requires that the persons involved in rating activities and the persons responsible for the annual review of methodologies be different. This is to ensure the independence of both activities. While stressing the requirement for independence of the review function, ESMA believes it critical that the decision on how and when to incorporate the results from validation and back-testing into a methodology is also made in an independent manner.
33. Since a change to a methodology may have a significant impact on existing credit ratings or may determine the level of new ratings to be issued, it is crucial that the bodies approving methodologies are not influenced by the business interest of a CRA so as to ensure that the changes are approved according to the principles of objectivity and quality.
34. Through its supervisory work, ESMA has identified that the review function might be actively involved in different stages of the decision-making process for sovereign ratings. ESMA believes that these arrangements could compromise the independence of the review function.
35. Although ESMA recognizes the benefits of review staff observing in practice the application of methodologies, it remains concerned that such involvement - especially in the decision making process - may pose a risk to the independence of the staff in charge of periodically reviewing the methodologies. Hence, ESMA considers that independence of the ratings process should not only be considered with regards to the organisational setup and reporting lines, but also with regards to the non-involvement of the review function in rating activities.

3. Confidentiality

36. Following ESMA's first supervisory activities, it appears that non-analytical staff, such as communications, research departments, IT administrator, assistants and the review function may have access to confidential information about future rating actions, either through their participation in rating committees or through discharging their other responsibilities.
37. The confidentiality of information within the rating process is a critical issue which is applicable to anyone involved in the rating process and an essential factor in maintaining the integrity of the rating process. CRAs should take the necessary steps to ensure that such information is adequately protected and that advance information is not disclosed or misused by unauthorized third parties.

4. Sufficiency of Resources

38. ESMA requires that CRAs monitor the adequacy of resources devoted to the analytical business lines on an ongoing basis in terms of number of employees and expertise, within the context of market developments and their impact in the organization¹⁷.
39. In this respect, ESMA believes that the allocation of senior analytical responsibilities to junior members of staff could put the quality of the ratings at risk, especially in periods of intense workload. ESMA is also concerned that the peaks of workload that analysts can face may impair the quality of their analysis. As such ESMA believes that the adequacy of resources should not only ensure the continuity and regularity of rating activities, but also the quality of these, at all times.

¹⁷ ESMA's report on the Supervision of Credit Rating Agencies, 22 March 2012, <http://www.esma.europa.eu/system/files/2012-207.pdf>

V. Conclusion

40. In line with the requirements of the CRA Regulation the Commission seeks to submit a report to the European Parliament and to the Council on the appropriateness of the development of a European creditworthiness assessment for sovereign debt.
 41. ESMA has sought to provide its Technical Advice to the Commission by providing information regarding the market for sovereign ratings as well as conveying lessons drawn from its supervisory experience which might be relevant and helpful.
 42. As outlined in ESMA's previously published reports in the area of CRAs and sovereign ratings ESMA believes that the following criteria are critical in the consideration of the appropriateness of the development of a European creditworthiness assessment:
 - The rating process should be a fully independent assessment. This requirement should cover the organizations as a whole as well as all staff involved in the rating process.
 - The review function responsible for the annual review of methodologies must be independent of the business lines which are responsible for credit rating activities. Processes should be put in place to take into account the results of the back-testing in the rating methodologies.
 - Confidentiality of pre-rating information is a critical issue. Access to rating sensitive information should only be available to persons involved in rating activities and all necessary steps should be taken to ensure such information is adequately protected.
 - It is necessary to have sufficient resources in place for the conduct of both a rigorous rating process, in any circumstance, as well as on-going monitoring.
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Annex I



Credit Rating Agencies

Sovereign ratings investigation

ESMA's assessment of governance, conflicts of interest,



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1.1. Introduction

This report summarises the findings of the European Securities and Markets Authority's (ESMA) general investigation into sovereign credit ratings issued by Fitch Ratings, Moody's Investors Service and Standard & Poor's which took place between February and October 2013, as indicated in its *Credit Rating Agencies (CRAs) 2013 Supervision and Policy Work Plan*.¹

In this report ESMA describes the observed deficiencies and main concerns while also identifying a number of good practices in the following areas:

- the role of senior management and other non-rating functions in the rating process and the actual or potential conflicts of interest which could arise;
- the actual or potential conflicts of interests generated by the involvement of sovereign analysts in research and publication activities;
- confidentiality of sovereign rating information and controls in place prior to publication of ratings (including IT and access controls to confidential information);
- timing of publication of sovereign ratings, including timely disclosure of rating changes;
- monitoring of the adequacy and expertise of resources dedicated to sovereign ratings;
- preparation of rating committees; and
- definitions of roles and responsibilities among different analytical functions.

ESMA's investigation revealed shortcomings in the sovereign ratings process which could pose risks to the quality, independence and integrity of the ratings and of the rating process. As of the date of this document, ESMA has not determined whether any of the observations made in this report constitute serious indications of the possible existence of facts liable to constitute one or more infringements of the CRA Regulation.²

¹ <http://www.esma.europa.eu/system/files/2013-87.pdf>.

² Regulation (EC) No 1060/2009 on Credit Rating Agencies.

1.2. Who should read this report

ESMA uses a wide range of regulatory, supervisory, and enforcement tools, including remedial action plans and public reports of this kind to raise standards in the CRA industry in the pursuit of its regulatory objectives.

This report is addressed to existing and prospective credit rating agencies and a wide audience of ratings users, including institutional and retail investors, investment firms, asset management firms, issuers of any kind of debt, central banks, public authorities, governments and supervisory bodies and other ratings industry stakeholders.

The observations contained in this report are of relevance not only to the CRAs which participated in the investigation, but also to any other CRAs registered with ESMA and subject to its supervision. It is essential that all registered CRAs embed the objectives of the Regulation in their organisation and that they remove any existing practices and procedures which conflict with these.

1.3. Rationale for conducting the investigation

ESMA focused its investigation on the rating process for sovereign ratings, in particular ratings that provide an opinion of the creditworthiness of a State.³

CRAs form their opinion on the creditworthiness of a State based on a combination of both qualitative and quantitative considerations in accordance with proprietary methodologies. These methodologies generally include economic and fiscal factors, default history, assessment of the political situation, and policy developments in the given country.

Sovereign ratings are of crucial importance from a credit market and financial stability perspective. In particular, when a sovereign rating is changed, this invariably has an important cascade impact on other rated entities and products since a sovereign rating is usually a factor used in the determination of other types of ratings (e.g. bank ratings). Moreover, a significant number of sovereign ratings are non-solicited, and hence, CRAs do not charge fees to the issuers concerned. The cascade effect and the unsolicited nature of several sovereign ratings need to be carefully considered in assessing potential conflicts of interests faced by CRAs when issuing sovereign ratings.

Throughout the financial crisis over the past years and when compared to historical trends, sovereign ratings assigned to EU member states have experienced high levels of volatility, i.e. sovereign ratings have been subject to important changes in terms of size (number of notches of upgrades and downgrades) and frequency of rating actions.

From the end of 2011 and the first half of 2012, CRAs carried out a number of so-called “bulk rating actions”, i.e. actions where the ratings of more than one sovereign were changed at the

³ The full definition of sovereign ratings is provided under Article 3(1) v of the CRA Regulation.

same time. As explained before, sovereign ratings combine the assessment of a number of quantitative and qualitative factors, specific to the individual country. As various countries may be simultaneously assessed in a bulk rating action, ESMA considered it necessary to verify that CRAs thoroughly review individual country characteristics in their analyses.

The high volatility of sovereign ratings also raised concerns regarding the capacity of CRAs' sovereign teams to cope with a growing number of rating actions, including ad hoc commentaries, studies and reports. These documents provide the market with the views of the CRAs on the developing trends or possible rating moves under different scenarios.

Finally, in the past two years in some instances sovereign ratings assigned to EU member states have been subject to rumours in the market on upcoming actions. Since, in light of the Regulation, CRAs must keep credit ratings confidential until publication, ESMA considered it necessary to assess the adequacy of the confidentiality measures established by the CRAs and the timeliness of publication of rating actions.

1.4. ESMA's investigation

In light of the considerations in Section 1.3, ESMA decided to focus its investigation into sovereign ratings on the following aspects of the rating process:

- The **governance** and organisation of sovereign rating activities, including the potential or existing **conflicts of interests** affecting these ratings.
- The **adequacy and expertise of the resources** dedicated to them.
- The **disclosure** of rating information **to the public**, including the measures in place to protect the **confidentiality** of rating information, information security systems and access controls, and the **timing of publication**.

The assessment of the sovereign ratings issued by the three registered CRAs was carried out in the context of the regulatory requirements in place in the period under investigation, and therefore before the entry into force of the amendments to the CRA Regulation on 21 June 2013.⁴

ESMA's initial request for information to the CRAs made reference to a sample of rating actions (including bulk rating actions from September 2010 to February 2013 and individual rating actions on two representative EU countries) and to relevant documentation on staff adequacy, training and IT information, including security systems.

⁴ These amendments introduced new provisions on sovereign ratings and rating outlooks, including: i) the application of all the regulatory obligations to rating outlooks; ii) the provision of an individual detailed report simultaneously with the sovereign rating or related rating outlook; iii) the establishment of an annual calendar for the publication of sovereign ratings or rating outlooks (starting from January 2014); and iv) the exclusion of policy recommendations, prescriptions or guidelines from sovereign ratings or rating outlooks.



ESMA's investigation consisted of a desk-based examination of CRAs' internal records and an on-site inspection at the CRAs' premises.

During the on-site inspections ESMA conducted interviews with senior and junior analytical staff involved in the rating decisions and with representatives from non-rating functions (communication department, IT, operations, review and compliance function).

ESMA has communicated its observations to each CRA on a confidential basis. Individual remedial action plans and their timelines have been established.

Finally, ESMA has given the CRAs under investigation the opportunity to comment on possible factual inaccuracies of this report ahead of its publication.

The sections below outline the key findings of ESMA's investigation into sovereign credit ratings.

The issues described are observations that apply to a varying extent to one or more CRAs subject to the investigation.

2.1. Independence and avoidance of conflicts of interests

ESMA has concerns that in a number of areas associated with conflicts of interest and independence of rating activities, the actual failings or risks identified during the investigation may compromise the independence of the rating process and the quality of the credit ratings.

2.1.1. Senior management involvement in sovereign rating activities

In the case of one or more CRAs, ESMA observed that members of the CRA's Board of Directors were involved in the rating process. This involvement was in the form of discussions with senior managers of the sovereign team on the appropriate rating actions to be carried out or in the form of direct participation in the rating process by voting in the rating committees.

In particular, in one or more CRAs, ESMA considers that specific rating actions had been driven by senior management, with limited or late-stage involvement by the lead analysts. In at least one instance, lead analysts received explicit guidance and opinions by senior managers as to the countries and the recommendations to bring to the rating committees.⁵ According to the CRA(s), on some occasions, Board members with analytical responsibility need to provide guidance with respect to the rating process and cross-group rating consistency.

For one or more CRAs, ESMA also observed several instances of participation by Board Members with voting rights in rating committees.

The Regulation sets forth a specific prohibition for independent directors of the CRAs from participating in credit rating activities, which is not laid down for other Board members. At the same time, the Regulation specifically requires CRAs to ensure the independence of the individuals involved in assigning credit ratings from the other activities carried out on a commercial basis and that rating activities are not affected by any existing or potential conflicts of interest or business relationship.

Even where certain Board members are not directly involved in the commercial operations of a CRA, they are nevertheless involved in business and managerial decisions at the highest levels,

⁵ Rating committees are the decision-making forum where rating actions are taken. A rating action is therefore taken by those who participate and vote in the rating committee, normally by majority.

including discussions on the business targets and the revenues of the company. This could affect their independence when voting on the ratings or when providing guidance on rating decisions.

Furthermore, senior management may not have a complete view of all the available information on a given rated entity on which CRAs should base the rating decision.

While ESMA can understand the need for senior management to be involved in ensuring the quality and consistency of the ratings produced by the CRAs, in light of the observations above, it is vital that CRAs clearly define and, where needed, revise the role played by senior management in rating activities so as to make sure that credit ratings are issued in an independent manner.

2.1.2. Review function's participation in sovereign rating activities

The Regulation requires CRAs to set up a review function to periodically review and assess the appropriateness of rating methodologies, models and key rating assumptions. The process of reviewing rating methodologies includes ratings performance reviews, historic validation or back-testing. To preserve the objectivity of its oversight and to meet the objectives of the Regulation, it is crucial that the review of rating methodologies is conducted by a function that is independent from the day-to-day activities of issuing credit ratings. The Regulation expressly requires the review function to be independent from the team responsible for rating activities.

ESMA noted that in one or more CRAs, the review function was involved in rating activities in a way which could call its independence into question.

In particular, ESMA noted situations for one or more CRAs, where the review function is directly involved in rating activities by actively participating in all stages of the decision-making process for sovereign ratings.

In one or more CRAs a member of the review function had been given specific analytical responsibilities for a sovereign rating for over a year, yet the practice had not been picked up by any of the internal control functions.

ESMA believes that these shortcomings could compromise the independence of the review function as required by the Regulation, and accordingly, CRAs should carefully review and revise their practices in this area.

2.1.3 Research and publication activities carried out by CRAs

For one or more CRAs, ESMA observed that sovereign analysts engage in research publications, such as special commentaries, regular and ad hoc reports, or any other regular publications about a single rated entity or at regional or sector level. These are complementary to the regulated rating activities.

ESMA observed that for one or more CRAs research activity represents an important part of the objectives set for individual analysts and for the sovereign team as a whole. Information on user statistics of research products are regularly discussed at team and management meetings, and

regularly reported on at Board level. Research reports may be published in response to requests from investors and other users of ratings for the CRA's views on specific trends.

Research publications are written by rating analysts, in some cases, with the assistance of dedicated research officers. CRAs make them available as part of a fee-based subscription provided by other entities of the CRA's group. In the case of one or more CRAs, the management of the sovereign team receives regular information on the revenues generated by research activities.

ESMA understands that research activity contributes to the on-going monitoring of rated entities. The relevant CRA(s) indicated to ESMA that rating activities are always prioritised over research publication.

However, ESMA has seen limited or even non-existent controls around research activities. ESMA is concerned that, if not adequately controlled, they may impair the quality, independence, and transparency of sovereign ratings. In particular, ESMA sees the potential risk that research activities and the time-consuming work involved in drafting and approving these reports:

- would divert analysts from their core analytical tasks (for example, they might spend more time working and commenting on issuers which are of more interest for market participants and less time on other issuers of relatively less interest to the market); and
- could influence the way information on the rating and future rating actions is disclosed to the public (e.g. relevant information could be flagged only to the research subscribers and not to all the users of ratings via rating actions such as rating outlooks).

ESMA has requested one or more CRAs to introduce adequate control measures in relation to these actual or potential conflicts of interests so as to ensure that the ratings quality is not impaired.

2.1.4 Involvement by other functions in the rating process

In one or more CRAs, ESMA observed instances of participation in the rating process by members of the communication team or research departments within CRAs.

In some cases, members of the communication team or research co-ordinators directly participated in the rating committee, albeit in a non-voting capacity. In other cases, input by the communication team strayed into analytical ground, drafting analytical information on possible future changes of the ratings for the lead analysts.

Such participation may give rise to actual or potential conflicts of interest. For example, communications may wish to influence the timing of a particular rating action – or they may have different objectives from those of the rating teams, such as fulfilling strategic communication objectives or offering external research on a commercial basis.



ESMA has therefore asked one or more CRAs to put controls in place to ensure any potential conflicts of interest are properly managed.

2.1.5 Implementation of the appeal procedure

For one or more CRAs, ESMA has concerns about the way the appeal procedure is implemented. External appeals lodged by a rated entity asking a CRA to reconsider a rating decision before its publication, are an important part of the rating process. In particular, a rated entity may point to factual mistakes or provide a CRA with new information that the CRA may have not taken into account and which may be relevant to the rating decision. Therefore it is important that CRAs review carefully any such instances in order to assess whether the rating action needs to be reviewed before publication.

ESMA observed instances in one or more CRAs where the opportunity not to grant an appeal had been discussed in advance by the rating team. In addition there does not seem to be any adequate guidance to ensure that analysts treat appeals as such. On occasion appeals may be treated as complaints and CRAs would not re-convene a rating committee to assess the new information provided by the rated entity and its impact on the rating decision. This may result in credit ratings that are not based on all available information, as required by the Regulation.

These practices should be revised to ensure that whenever new material information is received, its impact on the rating decision is adequately taken into account.

2.2. Confidentiality of sovereign rating information

In one or more CRAs, ESMA observed material deficiencies and shortcomings in the way confidential rating information is managed. ESMA's observations based on this investigation refer in particular to the access to information on upcoming rating actions on sovereigns, which is clearly of a confidential nature.

The Regulation specifically requires that the CRAs do not disclose any information about credit ratings, possible future credit ratings or rating outlooks, except to the rated entity or a related third party. To this end, CRAs need to ensure that their employees respect the confidentiality of the rating information and that sufficient internal controls are in place to limit the access to confidential rating information on a need-to-know basis.

In one or more CRAs, ESMA observed several instances of disclosure of upcoming rating actions to an unauthorised third party, before publication and, in some cases, before the rating committee had taken place. This occurred primarily before the date of registration of the CRA(s), although the practice continued in some cases after registration.

ESMA is concerned that confidential information has been passed on to third parties who should not be privy to it. Moreover, the internal control functions did not identify these practices. While ESMA was informed that this practice has since stopped, it has requested a number of remedial actions to ensure full confidentiality.

One or more CRAs had, until recently, inadequate controls in place for the circulation of rating committee material and information on upcoming rating actions to functions outside the sovereign group. On some occasions, confidential information was provided before a rating committee, or before a rating action was publicly announced, to other CRA staff beyond a need-to-know basis.

ESMA also observed cases of external communication consultants supporting one or more CRAs in the disclosure of rating actions, with an outsourcing agreement which allows confidential rating information to be shared with the consultants before a rating action is published. ESMA is concerned that these practices may impair the CRAs' ability to directly control confidential information on credit ratings from being: i) disclosed; and ii) used or shared for the purpose of trading in financial instruments, or for any other purpose other than the credit rating activity. CRAs must ensure that any confidentiality agreements adequately protect the confidentiality of ratings information, and that they set up appropriate controls to actively monitor and verify that there is no inappropriate use of the information.

Finally, in respect of one or more CRAs, ESMA is concerned about the adequacy of controls in place in order to secure access to rating information. By rating information, ESMA refers to confidential documents and information on upcoming rating actions before disclosure, which are generated, stored and processed in the CRAs' systems and applications used in the rating process. Specifically, for one or more CRAs, ESMA identified certain inadequacies and inefficiencies in the information systems' authorisation and access controls in place, including cases of privileged authorisation and access levels inappropriately granted to users of the systems without the relevant business need.

The CRA(s) must review their information security controls, and specifically those relating to authorisations and access controls and make sure they are fit for purpose and compliant with the regulatory requirements.

2.3. Timing of publication of rating actions

ESMA has concerns regarding a number of aspects related to the timing of dissemination of credit ratings and the time dedicated to prepare rating committee discussions.

2.3.1. Timely publication of rating decisions

The Regulation clearly sets out that CRAs should disclose any credit rating or rating outlook on a non-selective basis and in a timely manner. The importance of compliance with this requirement is twofold. On the one hand, timely disclosure of rating information should ensure that the ratings and outlooks provided by the CRAs are up-to-date and that users of ratings are informed in good time about any change to the rating. On the other hand, it contributes to protect the confidentiality of information.

In one or more CRAs, ESMA observed significant and frequent delays between the decision taken by the rating committee and the publication of sovereign ratings. In particular, there were

instances of publication of ratings more than five days after the rating decision had been approved by the rating committee and, in at least one case even two weeks after the date of the committee.

The CRA(s) explained that the need to prevent incorrect information being presented to the public may require some extra time, after the rating decision, before the rating action can be published.

Notwithstanding the need to ensure correct information is published, ESMA considers that prolonging the time between the rating decisions and the disclosure of the rating actions to the public creates a serious risk that users of ratings do not receive information about changes in the creditworthiness of a rated entity on a timely basis. Moreover the delay may pose a risk to maintaining the confidentiality of ratings information.

2.3.2. Timing of notification to the rated entity

In addition to the timeliness requirement, the Regulation sets forth a requirement for CRAs to notify rated entities a full working day⁶ ahead of the publication of a rating about the rating action and the reasons for the action. This mechanism is intended to give the issuer an opportunity to flag up to the CRA any factual errors. It is also a mechanism used to provide any new information that may be material for the rating decision. This is an essential step to ensure that ratings are based on a thorough analysis of all available information relevant to the rating.

In one or more CRAs, ESMA observed deficiencies in the implementation of this rule as set forth in the Regulation.

In the case of one or more CRAs, until early 2012, there was a lack of clarity on the part of sovereign analysts, including senior members of the sovereign team, about the exact regulatory requirement. This resulted in an incident in the application of the notification rule whereby a rating was published before the sovereign entity had had sufficient time to review the rating action and its drivers.

Finally, ESMA observed inadequacies in the IT internal controls around the implementation of this rule. ESMA has raised concerns to one or more CRAs on the lack of appropriate controls or on the adequacy and effectiveness of the controls in place to ensure that rating information is not published during the 24-hour period. In particular, in one or more CRAs the controls were manual. At least on two occasions, this has resulted in ratings being published before the notification time period had lapsed.

ESMA has requested remedial actions to address the inadequacies observed.

⁶ Before the entry into force of the amendment to the Regulation on 20 June 2013, and in the period under investigation, CRAs were required to inform the rated entity at least 12 hours before publication of the credit ratings.

2.3.3. Time allocated to rating committee preparation

For one or more CRAs, ESMA noted occasions when rating committee material was circulated to the members at very short notice – in several cases less than 24 hours in advance, and in some, just one or two hours before the start of the committee discussion.

ESMA is concerned that the late circulation of rating committee material may not give attendees adequate time to prepare for the meeting, particularly in times of high rating volatility when analysts spend substantial amounts of time in rating committees. While ESMA understands the need for CRAs to rapidly respond to unexpected events, they must also take measures to ensure that those responsible for taking the rating action have had the necessary time to prepare for the rating decision.

2.4. Resources allocated to sovereign ratings

ESMA's investigation also looked at the organisation of the sovereign teams and the resources dedicated to them, to review whether the analytical teams are adequately staffed and that analysts have sufficient knowledge and experience to do their work effectively. ESMA also looked at the allocation of functions and responsibilities in the sovereign rating teams.

2.4.1. Assessment of resources adequacy

In one or more CRAs, ESMA has concerns about the mechanisms in place to assess the adequacy of resources. Such considerations are left mostly to the judgment of the senior management in the teams. However, in light of the substantial volatility that sovereign ratings have experienced in recent years and the changes in their complexity, risk drivers and risk assumptions, ESMA considers that CRAs should not rely solely on high-level qualitative considerations, but further improve the way they assess resourcing adequacy. It is of utmost importance that CRAs carefully monitor on an on-going basis the adequacy of staff allocated to rating activities, and that this information is regularly reported to senior management and control functions.

2.4.2. Knowledge and experience of resources

In one or more CRAs, ESMA observed that lead analytical responsibilities had been in some instances allocated to junior or recently-recruited members of staff. In these cases, the CRA(s) set forth control measures (such as the support of very senior back-up analysts), to ensure that these resources adequately performed the tasks. Nevertheless, ESMA considers that this practice puts the quality of the ratings at risk. In periods of intense workload the controls put in place by the CRAs may not work effectively. Lead analysts have the primary responsibility for elaborating the ratings assigned.⁷ CRAs must ensure that they employ resources with the appropriate knowledge and experience to perform these tasks.

⁷ Please see also footnote 5.



In one or more CRAs, ESMA also observed the increasing reliance that lead analysts place on very junior support staff. ESMA is concerned that the increasing use of support staff may not be accompanied by an adequate definition of what tasks can be assigned to junior members and how lead analysts should control the adequacy of their work. Ultimately, this could pose a risk to the quality of ratings. Therefore, adequate controls must be put in place to define the scope of supporting staff.

2.4.3. Definition of functions and responsibilities

The Regulation also requires CRAs to implement and maintain decision-making procedures and organisational structures which clearly and in a documented manner specify reporting lines, and allocate functions and responsibilities. This is of particular importance for ensuring the integrity and independence of the rating process, and to prevent errors in the ratings assigned and disclosed to the public.

ESMA found that until recently, one or more CRAs lacked in certain areas a clear definition of functions and responsibilities within the sovereign team and between the sovereign team and other analytical functions, as required by the Regulation. As a result, ESMA considers that there was a significant risk of overlap between the activities of the sovereign group and other groups, in particular for certain types of rating that depend both on a sovereign rating and on another credit rating assigned by the CRA. This led to instances where the lack of clarity as to which analyst was responsible for the rating change generated errors in the ratings released or amendments made at a late stage.

In the course of the investigation, ESMA also observed some good practices.

Adequacy of resources

In one CRA, a detailed tool has been developed for the on-going assessment of the adequacy of resources, which includes forward-looking plans for the expected utilisation of resources, and distinguishes between discretionary and non-discretionary staff. This tool is used by the sovereign team and its management to verify that the team has adequate resources at each level of seniority to perform the tasks allocated to them.

Analytical training programmes

In some cases, advanced training programmes had been developed to enhance the competencies of the analytical staff. The training programmes cover a variety of topics of both an analytical and non-analytical nature. In some cases, they include different level of certification, which are a pre-requisite for staff members to obtain before they can take on certain roles (e.g. the role of lead analyst) or perform certain activities (e.g. interaction with the press).

More challenge in rating committee discussions

CRAs have different internal rules for the functioning of the rating committees. ESMA observed one example where the practices introduced by a CRA aim to enhance the challenging of the recommendation made by the lead analyst and the independent expression of votes by the committee members.

Consistency and continuity in sovereign portfolios

Organisational rules had been introduced in one or more CRAs to ensure continuity and consistency in the analytical activity in case of changes in the lead analysts responsible for a sovereign rating. Specifically, when an analyst takes over a new sovereign portfolio, they are assisted by the previous analyst for up to a year to enhance their understanding of the particular sovereign.

Root cause analysis

After the incident in the application of the 12-hour rule mentioned in Section 2.3.2, an internal investigation took place to ascertain the root causes, which led to a review of internal policies and procedures, and training of sovereign staff to offer clarity on the exact regulatory requirement. In another case, a CRA had reviewed its procedures for the distribution of confidential rating information before publication and made sure that earlier poor practices were eradicated.

ESMA made observations in all the areas assessed during its investigation and has followed up through remedial action plans with the individual CRAs on their respective issues. In some cases CRAs have proposed remedial actions and in a few instances the CRA had already taken remedial steps to address the issues identified.

The findings and conclusions contained in this report are of relevance not only to the CRAs which participated in the investigation, but to any other CRA registered with ESMA and subject to its supervision. They are also likely to be applicable to other types of ratings issued by CRAs.

In particular, confidentiality of rating information is a critical issue and all registered CRAs should take the necessary steps to ensure that such information is adequately protected and that advance information is not disclosed or misused by unauthorised third parties. The implementation of appropriate IT internal controls, including information security controls, is an essential part in the effective delivery of compliance with the Regulation.

CRAs should clearly define the role played by the different parties that may be involved in the rating process, so as to ensure its independence, quality and integrity at all times.

Registered CRAs need to identify and mitigate all the actual or potential conflicts of interests which may affect ratings. In doing so, they need to ensure that they do not only focus on the more obvious areas of conflicts of interests, such as those deriving from existing business or contractual relationships.

Finally, all registered CRAs have established policies and procedures to ensure on-going compliance with the Regulation. It is of crucial importance that CRAs operate with no discrepancies between these formal procedures and the way they are put into practice by their staff. ESMA perceives a risk that these discrepancies impair the integrity of the rating process and the CRAs' compliance with the Regulation.

All CRAs should therefore take careful note of the issues identified in this report in order to properly incorporate the CRA Regulation and its objectives into their working practices and to eradicate any existing practices and procedures which conflict with these.

ESMA will follow up individually with the CRAs subject to this investigation to ensure that the issues identified in this report are adequately remedied. Likewise, ESMA will monitor all other registered CRAs as part of the on-going supervision performed.



As of the date of this document, ESMA has not determined whether any of the findings in this report constitute a breach of the provisions of the Regulation. The report is therefore published without prejudice to the possibility of further investigations which could lead to supervisory or enforcement actions.