

PUBLIC NOTICE

Skandinaviska Enskilda Banken AB ('SEB') is a credit institution established in Sweden that is authorised by the Swedish Financial Supervisory Authority (Finansinspektionen) to carry out banking activities.

Regulation (EC) No 1060/2009 on credit rating agencies ('the CRA Regulation') lays down obligations for a credit rating agency ('CRA') in the conduct of its activities. In conjunction with its role as supervisor of CRAs under the CRA Regulation, the European Securities and Markets Authority ('ESMA') has functions and powers to take enforcement action in relation to infringements of the CRA Regulation by CRAs. A firm that is a CRA must apply to be registered to issue credit ratings publicly or by subscription. SEB is not a registered CRA and has not applied to be registered.

In December 2016, the supervisors of CRAs within ESMA formed the view that there were serious indications of possible infringements of the CRA Regulation by SEB. It appeared that SEB was issuing credit ratings although it had not applied to be registered.

The matter was then referred to an independent investigating officer ('IIO') who, having conducted an investigation, submitted her findings to ESMA's Board of Supervisors ('the Board').

Having considered in particular the evidence and the decision of 27 February 2019 of the Board of Appeal of the European Supervisory Authorities, the Board has found that SEB committed without intent or negligence an infringement of the CRA Regulation as follows.

Infringement

A) Relevant legislation

Article 14(1) of the CRA Regulation obliges a CRA, in given circumstances, to apply for registration.

A failure by a CRA to apply for registration where required to do so is an infringement of the CRA Regulation – as provided by point 54 of Section I of Annex III of the CRA Regulation ('the Infringement').

A credit rating is defined by Article 3(1)(a) of the CRA Regulation.

Article 3(1)(b) of the CRA Regulation defines a CRA as firm whose occupation includes the issuing of credit ratings on a professional basis.

In considering whether SEB had committed an infringement of the CRA Regulation, ESMA reviewed SEB's conduct in appearing to issue credit ratings. In particular ESMA considered whether SEB was issuing credit ratings as they are defined by the CRA Regulation. ESMA also considered the application of Article 3(2) of the CRA Regulation to SEB's case.

B) Factual findings and analysis of the Board

Between 1 June 2011 and 23 November 2016, SEB issued credit research reports as part of its credit research activities. These reports related to either issuers of bonds or debt instruments or those instruments themselves. A number of these reports included opinions that were variously described as a "Corporate rating", a "Stand-alone rating" or a "Credit rating" ('the Ratings'). Approximately 2,345 of the Ratings were issued by SEB during this period. SEB continued to issue similar opinions after this period until May 2018.

The Board found that the Ratings met the definition of a credit rating provided by the CRA Regulation.

C) Finding of infringement

The Board therefore found that SEB had committed the Infringement as a consequence of issuing the Ratings.

However, the Board did not find intent or negligence to be established. In accordance with the relevant provisions of the CRA Regulation, no fine is imposed for the Infringement.

Supervisory measure

Public notice

Pursuant to Article 24 of the CRA Regulation, the Board decided that the Infringement warranted a supervisory measure in the form of the publication of this public notice.