



European Securities and
Markets Authority

Discussion Paper

on CRA3 Implementation



Responding to this paper

The European Securities and Markets Authority (ESMA) invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

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

ESMA will consider all comments received by 10 October 2013.

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input - Consultations’.

Publication of responses

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

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading ‘Legal Notice’.

Who should read this paper

Users of credit ratings and anybody who is involved in the issuance of structured finance instruments (issuers, originators and sponsors) or interested in the up-to-date individual rating data or in competition in the credit market should read this paper. This includes institutional and retail investors, investment firms, asset management firms, issuers of any kind of debt, central banks, supervisory bodies but also academics any stakeholder engage in SFI activities. Since the credit rating agencies will report the data to ESMA and the European Rating Platform, they are as well addressed by this Discussion Paper.

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Acronyms used

CRA Regulation	Regulation (EC) No 1060/2009 of the European Parliament and of the Council
CRA3 Regulation	Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies.
CRAs	C redit R ating A gencies
BIC	B usiness I dentifier C ode. An 11-character alpha-numerical code that uniquely identifies a financial or non-financial institution. It is defined by ISO code 9362.
CEREP	C entral R epository for historical performance data of credit rating agencies.
CRD II	Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management.
EBA	E uropean B anking A uthority
EIOPA	E uropean I nsurance and O ccupational P ensions A uthority
ERP	E uropean R ating P latform
ISIN	I nternational S ecurities I dentification N umber: A 12-character alpha-numerical code that uniquely identifies a security. It is defined by ISO code 6166.
LEI	L egal E ntity I dentifier
MiFID	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on market in financial instruments
PD	“Prospectus Directive” 2010/73/UE of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.
RTS	R egulatory T echnical S tandard
US SEC	the U nited S tates S ecurities E xchange C ommission
SFIs	S tructured F inance I nstruments
SOCRAT	S upervision o f C redit R ating A gencies T ool, an internal supervisory tool for ESMA to which CRAs report periodically data on individual rating actions
SPV	S pecial P urpose V ehicle
TD	“ T ransparency D irective” of the European Parliament and of the Council of 15 December



2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

I. Executive Summary

Reasons for publication

On 21 May 2013 the European Parliament and the Council adopted the Regulation (EU) No 462/2013¹ (CRA 3 Regulation) amending the Regulation (EC) No 1060/2009 on credit rating agencies. The Regulation was published into the Official Journal on 31 May and entered into force 20 days after its publication.

This Regulation complements the current regulatory framework for credit rating agencies. ESMA is required to draft Regulatory Technical Standards on information on structured finance instruments, on the new European Rating Platform and on the periodic reporting on fees charged by credit rating agencies.

The current discussion paper is published to gather evidence and market participants' views for drafting the three above-mentioned Regulatory Technical Standards (RTS).

The draft **RTS on information on structured finance instruments (SFIs)** aims at improving investors' ability to make informed assessments on the creditworthiness of SFIs by way of sufficient information on those instruments and the assets backing those SFIs. Such a disclosure regime will also enable investors to reduce their reliance on external credit ratings. Besides, disclosing relevant information on SFIs allows reinforcing the competition between CRAs and facilitating the assignment of unsolicited credit ratings.

To this end, Article 8(b) requires ESMA to develop draft regulatory technical standards to specify:

- a) the information that issuers, originators and sponsors of structured finance instruments established in the Union must publish;
- b) the frequency with which the information is to be updated;
- c) the presentation of the information by means of a standardised disclosure template.

The draft **RTS on the European Rating Platform** aims at helping investors in their decision making, contributing to increase investors' protection and improving the visibility of smaller CRAs. ESMA needs to provide investors, issuers and other interested parties easy access to up-to-date information on ratings and outlooks issued by registered and certified CRAs together with data and information on the historical performance of CRAs' ratings. Thus, ESMA will set up a central website called the European Rating Platform (ERP) on which all that information will be displayed. The ERP will allow investors to easily compare all credit ratings that exist with regard to a specific rated entity (issuer/instrument).

To this end, Article 21(4) requires ESMA to develop draft regulatory technical standards to specify:

- a) the content and format of ratings data period reporting to be requested from registered and certified credit rating agencies for the purpose of on-going supervision [Art.21(4)(e)];
- b) the content and the presentation of the information, including the structure, format, method and

¹ Full text of Regulation (EU) No 462/2013: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2013:146:SOM:EN:HTML>



timing of reporting that credit rating agencies are to disclose to ESMA in accordance with Article 11a(1) [Art.21(4a)(a)].

The draft **RTS on the fees charged by CRAs to their clients** aims at mitigating conflicts of interest and facilitating fair competition in the credit rating market. Consequently, fees charged by CRAs should be not discriminatory and based on actual cost. Fees charged for rating services to a given issuer should neither depend on the level of the credit rating issued by the CRA or on any other result or outcome of the work performed nor depend on the provision of ancillary services.

To this end, Article 21(4a)(b) requires ESMA to develop draft regulatory technical standards to specify the content and the format of periodic reporting on fees charged by credit rating agencies for the purpose of on-going supervision by ESMA.

ESMA shall submit those draft RTS to the European Commission by **21 June 2014**. However, the entry into force of the ERP reporting requirements will not be until **21 June 2015**.

Contents

In order to enable ESMA to develop the draft **RTS on information on structured finance instruments**, it is necessary to identify the categories of asset classes covered by Article 8(b) as well as the content, level of standardisation and frequency of the information to be provided by the issuer, sponsor and originator on a website to be set up by ESMA.

In light of the scope of the draft RTS on information on SFIs, ESMA seeks evidence and feedback on the following main features:

- categorisation of SFIs subject to disclosure requirements;
- location of the issuer, originator and sponsor;
- content of the information;
- frequency and standardisation of the information to be disclosed to a centralised website.

For developing the draft **RTS on the European Rating Platform**, it is necessary to identify the needs of users of ratings and the technical details of the credit rating agencies' reporting requirements.

In light of the scope of the European Rating Platform, ESMA has identified the main key features for the ERP to be built on. For each key feature presented, ESMA seeks evidence and feedback by users of ratings on the elements that would permit a frequent and valuable use of the platform, and by CRAs on the feasibility of the proposed reporting. The key features are as follows:

- the ERP should contain complete information on ratings and outlooks and related rating actions;
- the ERP should display up-to-date rating information;
- the ERP should allow the possibility to compare all ratings available for a given issuer / instrument;

- the ERP should provide an easy access to information to all users;
- integrate all the CRAs data provided to ESMA in one data feed;
- historical data;
- assessment on the possibility of creating one or more mapping of credit ratings.

For developing the draft **RTS on the fees charged by CRAs to their clients**, it is necessary to acquire a better understanding on the CRAs' fees and cost structure as well as their pricing policy. Such knowledge will contribute to identify possible criteria or indicators to determine whether fees are cost-based, non-discriminatory and non-dependent on any result or outcome of the work performed or on the provision of ancillary services.

In light of the scope of this RTS, ESMA submits to public consultation the main features as follows:

- CRAs' fees are not discriminatory;
- fees are not dependent on the level of the credit rating issued by the CRA or on any other result or outcome of the work performed and not dependent on the provision of ancillary services;
- CRAs' fees are cost-based;
- on-going supervision on CRAs' fees by ESMA.

For the purpose of this Discussion Paper, each key feature is presented in a different section followed by a set of questions.

Next steps

The current Discussion Paper will be open for comments until **x October 2013**.

The evidence gathered from the replies to the Discussion Paper will be used for the drafting of the Regulatory Technical Standards coming from CRA3 Regulation. At the beginning of 2014, ESMA will issue a public Consultation Paper containing a summary of the consultation responses to the Discussion Paper and a first draft of the draft RTS.

As the CRA3 Regulation requires, the final draft Technical Standards need to be adopted by ESMA by **21 June 2014**.

II. DRAFT RTS on INFORMATION ON STRUCTURED FINANCE INSTRUMENTS

II.I. Objectives of the disclosure requirements

1. Article 8(b) paragraph 1 of CRA3 states that, *“The issuer, the originator and the sponsor of a structured finance instrument established in the Union shall, on the website set up by ESMA pursuant to paragraph 4, jointly publish information on the credit quality and performance of the underlying assets of the structured finance instrument, the structure of the securitisation transaction, the cash flows and any collateral supporting a securitisation exposure as well as any information that is necessary to conduct comprehensive and well-informed stress tests on the cash flows and collateral values supporting the underlying exposures”*.
2. The aim is to improve investors’ ability to make informed assessment of the creditworthiness of SFIs through sufficient information on those instruments and on the underlying assets to which they depend to a large extent. Such a disclosure regime will also enable investors to reduce their reliance on external credit ratings. In addition, disclosing relevant information on SFIs will reinforce the competition between CRAs in part through the assignment of unsolicited credit ratings.

a) Categorisation of SFIs subject to the disclosure requirements

3. This section considers a relevant categorisation of the type of SFIs that should be covered by the relevant disclosure requirements.
4. The definition of SFIs is provided by Article 3 (1) (l) of the CRA Regulation which in turn refers to Article 4(36) of Directive 2006/48/EC. According to this Article, “securitisation means a transaction or scheme, whereby the credit risk associated with an exposure or pool of exposures is tranced, having the following characteristics:
 - payments in the transaction or scheme are dependent upon the performance of the exposure or pool of exposures, and
 - the subordination of tranches determines the distribution of losses during the on-going life of the transaction or scheme”.
5. According to the disclosure requirements laid down in the CRA Regulation, CRAs are requested to provide credit rating data on SFIs to ESMA’s Central Repository (CEREP) ² on the basis of the following categories:
 - Asset-backed securities (ABS): sub- asset classes including auto/boat/airplane loans, student loans, consumer loans, health care loans, manufactured housing loans, film loans, utility loans, equipment leases, credit card receivables, tax liens, non-performing loans, credit-linked notes, recreational vehicle loans, and trade receivables;

² 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.

- Residential mortgage-backed securities (RMBS): sub-asset classes including prime residential mortgage-backed securities and non-prime residential mortgage-backed securities and home equity loans;
 - Commercial mortgage-backed securities (CMBS): sub-asset classes including retail or office property loans, hospital loans, care residences, storage facilities, hotel loans, nursing facilities, industrial loans, and multifamily properties;
 - Collateralized debt obligations (CDO): sub-asset classes including collateralised loan obligations (CLOs), collateralised bond obligations (CBOs), collateralised synthetic and hybrid CDOs, single-tranche collateralised debt obligations (CDOs), collateralised fund obligations, collateralised debt obligations of asset-backed securities, and collateralised debt obligations of collateralised debt obligations (CDOs);
 - Asset-backed commercial papers (ABCP).
6. The ECB is currently implementing measures to require specific loan-level information for ABS accepted as collateral in the Eurosystem credit operations. The ECB intends to help investors with their due diligence providing to market participants more transparency on ABS instruments and so, restore confidence in the securitisation market. This is achieved through standardised templates which provide detailed information on the SFIs posted as collateral at the ECB. The Bank of England³ is using a similar approach when drawing up the criteria for SFIs.
7. According to the loan-level data templates published by the ECB⁴, SFIs include the following asset classes:
- RMBS: sub-asset including prime and non-conforming RMBS;
 - CMBS: sub-asset applicable to all CMBS transactions and covering both stand-alone and revolving structures;
 - SME: sub-asset that applies to all SME transactions including stand-alone and revolving structures with the exception of those where the underlying assets are constituted by leasing contracts;
 - Consumer Finance ABS: sub-asset which contains all types of consumer loans except credit cards receivables;
 - Leasing ABS: sub-asset which contains all European Leasing ABS transactions;
 - Auto-loan ABS: sub asset which contains all European Auto loan ABS transactions.

³ The Bank of England has also been adjusting templates in relation to RMBS (standalone and Master trust) and Covered Bonds backed by residential mortgages, CMBS, SMEs CLOs, Leasing ABS, Auto Loan ABS, Consumer Loan ABS, Leasing ABS, ABCP. The market notice regarding information transparency is accessible at: <http://www.bankofengland.co.uk/markets/Pages/money/eligiblecollateral.aspx>.

⁴ ECB Guideline published on 26 November 2012 available at: http://www.ecb.int/ecb/legal/pdf/en_ecb_2012_25_f_sign.pdf.

8. The Eurosystem assesses the eligibility of ABS against specific criteria including:

- “true sale” criterion: cash flow generating assets backing the ABS shall not be considered as eligible if any of the assets were originated directly by the SPV issuing the notes⁵.
- non-inclusion of synthetic securitisation: ABS must not consist, in whole or in part, actually or potentially of tranches of other ABS nor to credit-linked notes, swaps or other derivatives instruments or synthetic securities⁶.
- homogeneity criterion: to be eligible, the cash flow generating assets backing an ABS must consist of only one type of assets⁷. ABS are not eligible if the pool of assets underlying them is comprised of heterogeneous assets, because they cannot be reported using a single template for the specific asset class.

9. In addition, as reported by the SEC last December 2012⁸, in April 2010, the SEC proposed a review to the existing rules applicable to certain SFIs. The proposals require issuers of SFIs (including RMBS and other ABS) to disclose additional information about the assets underlying the SFIs. As part of those requirements, the issuer would be required to file with the SEC tagged, computer-readable, standardized information about the specific assets, or loans, in the pool. These proposals are intended to provide investors with timely and sufficient information that they can access and review independently and thereby reduce the likelihood of undue reliance on credit ratings⁹.

10. Finally, the SEC has adopted a requirement - codified in Rule 17g5 – whereby CRAs recognized by the SEC (NRSROs) may obtain from arrangers the information necessary to issue unsolicited credit ratings on SFIs.

b) Location of the issuer, originator and sponsor

11. Article 8b, paragraph 1, of CRA 3 states that “(...) the issuer, the originator and the sponsor of a SFI established in the Union shall (...) jointly publish information on the credit quality and performance of the underlying assets of the SFI (...)”.

12. In this regard, Article 2(1) (h) of Directive 2003/71/EC and Article 4 of Directive 2006/48/EC provide

⁵ Id.

⁶ This restriction does not include swaps used in ABS transactions strictly for hedging purposes.

⁷ See ECB Guideline (2012).

⁸ Report to Congress on assigned credit ratings, SEC, December 2012.

⁹ The Dodd-Frank Act also imposes several requirements on SFIs:

1) it requires the SEC to implement regulations requiring an issuer of an ABS to disclose, for each tranche or class of security, certain loan-level information regarding the assets backing the security (Section 942(b) of the Dodd-Frank Act). SEC staff expects to make recommendations to the SEC on these proposals in the coming months (page 22 of the December 2012 SEC report).

2) (In January 2011), the SEC adopted final rules implementing section 943 that require securitisers to file with the SEC, in tabular format, information about the history of repurchase requests they received and repurchases they made relating to their outstanding ABS. The final rules also require NRSROs to provide a description of the representations, warranties and enforcement mechanisms available to investors in an ABS offering.

3) As laid down in the DFA, the SEC adopted in January 2011 final rules implementing section 945 that requires issuers to disclose:

- information about how the loans in the pool differ from the loan underwriting criteria disclosed in the prospectus;
- information about loans that did not meet the disclosed underwriting criteria but were nonetheless included in the pool; and
- information about the entity that made the determination that such loans should be included in the pool, despite not having met the disclosed underwriting standards.

that:

- 'issuer' means a legal entity which issues or proposes to issue securities;
- 'originator' means either of the following:
 - o an entity which, either itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposure being securitised; or
 - o an entity which purchases a third party's exposures onto its balance sheet and then securitises them;
- 'sponsor' means a credit institution other than an originator credit institution that establishes and manages an asset backed commercial paper programme or other securitization scheme that purchases exposures from third party entities.

13. Art. 8b applies not only jointly to issuers, originators and sponsors established in the EU, but also to issuers, originators and sponsors whose SFIs are traded in the EU, the relevant element being where the SFIs are traded and not where the financial engineering is done.

Questions

- Q1: Which categorisation of SFI asset classes should ESMA apply while developing the disclosure requirements?**
- Q2: In light of paragraph 13, do you consider that the scope of Article 8(b) should be limited to those SFIs which are covered by the Prospectus Directive and Transparency Directive, or that its scope should not be limited to those Directives and should cover all SFIs traded in the EU?**
- Q3: Do you consider that assets underlying SFIs composed of mixed pools should be disclosed as part of a specific category? If so, please elaborate.**
- Q4: To which tranching mechanisms should the disclosure requirements be applied? (e.g. single-tranche transactions?)**
- Q5: Do you have any other comments on the categorisation of SFIs?**

II.II. Content of the information

14. This section discusses the content of the information to be provided to ESMA under the new disclosure requirements.
15. As specified in Article 8b paragraph 1, of CRA 3, the information to be jointly published by the issuer, the originator and the sponsor of a SFI relates to the credit quality and performance of the underlying assets of the SFI, the structure of the securitisation transaction, the cash flows and any collateral supporting a securitisation exposure as well as any information that is necessary to conduct

comprehensive and well-informed stress tests on the cash flows and collateral values supporting the underlying exposures.

16. The provided information should allow for a comprehensive assessment of the SFI by any investor and CRA either solicited or unsolicited. In particular, the information should ensure that investors are able to do their own due diligence, thereby allowing for reducing their reliance on external credit ratings. The information could also be used by investors to evaluate the CRAs' credit risk assessment of a particular SFI.

Questions

- Q6: In your view, which information is required to ensure a meaningful description of the SFI?**
- Q7: What kind of indicators/ratio do you think would be necessary to better monitor and modelling the performance of the underlying assets? Please indicate the relevant indicators for each of the assets categories?**
- Q8: For which category of SFIs should the disclosure requirements be adapted (e.g. where the underlying assets backing the SFIs are poorly granular)?**
- Q9: Do you have any other comments on the content of information to be disclosed?**

II.III. Frequency and standardization of the information

a) Frequency of the disclosure to a centralized website operated by ESMA

17. As specified in Article 8b paragraph 3 (b) and (c), ESMA must develop a draft RTS to specify the frequency with which information on SFIs has to be updated and the presentation of the information through standardised disclosure templates.
18. As regards the frequency of the disclosure to ESMA, at least three approaches are possible:
- an “event-based” approach, focused on “material change”. This approach would have the advantage of focusing on key events that may have an effect of the performance of the SFI. In terms of frequency, the information should enable investors to monitor the evolution of the performance of the underlying assets backing the SFIs and to facilitate their own assessment especially when CRAs or/and issuers are issuing “investors reports”. On the contrary, in the absence of an event, the information disclosed will be very low.
 - a periodic disclosure approach. This approach would be similar to the approach developed by the ECB and the Bank of England. The periodicity should allow for timely updates on the performance of the SFI.
 - a combination of the two approaches. This approach would ensure a timely and continuous flow of information.
19. Finally, as part of the above mentioned approaches, it needs to be considered whether the disclosure



requirements should apply to SFIs that are “live” at the date of the RTS coming into force or only to SFIs issued after that date.

Questions

- Q10: Do you have any comments on the alternative approaches outlined above (i.e. “event based” vs. periodic disclosure or a mix of both) regarding the frequency of the reporting?**
- Q11: In case of “event-based” approach, what (material) events should trigger a reporting update? In particular, please provide your views on SFI-specific events (e.g. performance of tranches and/or underlying assets)?**
- Q12: Should certain market events and thresholds (e.g. volatility, price movements, etc.) be identified ex ante that would trigger a reporting update? If so, please specify.**
- Q13: Please provide your views on whether the disclosure requirements should apply to SFIs that are “live” at the date of the RTS coming into force or only to SFIs issued after that date?**
- Q14: If the reporting obligation were to apply to “live” SFIs, what do you think would be an appropriate phase-in period or schedule?**
- Q15: Do you have any other comments on the frequency of the reporting? Do you think any other approach should be considered?**

b) Standardisation of the information to be disclosed to a centralized website operated by ESMA

20. With regard to the presentation of the information through standardised templates, the existing templates established by the ECB or the Bank of England constitute a useful format for consideration.
21. The loan-by-loan information obligations require transmitting information on the assets underlying the SFIs both in terms of composition and on-going performance and at a loan-level basis. In order to allow for the processing, verification and transmission of loan-level data, the ECB has promoted the creation of a European Data Warehouse (EDW). The establishment of the EDW was supported by the ECB with the intention of facilitating transparency in the structured finance markets by ensuring investor access to comprehensive and standardised information across the European ABS market.
22. From January 2013, the Eurosystem contains loan level information requirements for RMBS to be gradually extended to other asset classes such as CMBS and SMEs and then for consumer finance, leasing and auto loans transactions. The requirement is for information to be provided on a quarterly basis on interest payment dates or within one month of that date. The data include:
- Borrower information;
 - Loan characteristics;
 - Interest rate info;

- Property/additional collateral; and
- Performance information.

23. The ECB's templates are used to inform investors on assets retained as collateral at the ECB. However, the CRA 3 disclosure requirements apply to all SFIs once they fall with the scope of application of Article 8b.

24. Furthermore, taking into account that Article 8b paragraph 1 refers to *“the structure of the securitization transaction, the cash flows and any collateral supporting a securitisation exposure as well as any information that is necessary to any information that is necessary to conduct comprehensive and well-informed stress tests on the cash flows and collateral values supporting the underlying exposures”*, ESMA is also considering how to ensure the standardisation of both qualitative and quantitative information. Possible examples could be found in prospectus or in the closing transaction documents including:

- the asset sale agreement (and any relevant declaration of trust), servicing, administration and cash management agreements, trust deed, security deed, agency agreement, incorporated terms or master trust framework or master definitions agreement, swap documentation and liquidity facility agreements, as applicable, as well as any other relevant underlying documentation. Transaction documentation updates.
- a transaction summary for any new issuance including information on: asset performance; a detailed cash flow allocation; a list of all triggers and their status; a list of all counterparties involved in a transaction, their role and their credit ratings; details of cash injected into the transaction by the originator/sponsor or any other support provided to the transaction including any drawings under or utilisation of any liquidity or credit support and support provided by a third party; amounts standing to the credit of guaranteed investment contract and other bank accounts; details of any swaps (e.g. rates, payments and notionals) and other hedging arrangements to the transaction, including any related collateral postings; and definitions of key terms (such as delinquencies, defaults and pre-payments).
- monthly investor reports including a cash flow model by or on behalf of the originator/issuer.

Questions

Q16: Are different templates needed for each of the asset classes subject to the disclosure requirements?

Q17: Do you consider that the scope and content of the ECB templates set to report loan-level data are appropriate for addressing CRA 3's disclosure requirements?

Q18: Do you consider that the data collected through the ECB templates would allow other investors to conduct comprehensive and well-informed stress tests for their own specific requirements on the cash flows and collateral values supporting the underlying exposures? If not, explain what further information should be reported (e.g. prospectus, transaction summary, pool performance data, credit support information, investor reports, due diligence reports) and, if applicable, please consider other relevant reporting requirements.



- Q19: Apart from the national or Union law governing the protection of confidentiality of information, should the context of local securitisation framework for specific asset classes be also considered?**
- Q20: Do you have any other comments on the provision of Article 8b (3) (c) concerning the standardisation of the information to be used?**

III. DRAFT RTS on THE EUROPEAN RATING PLATFORM

III.I. Containing complete information on ratings and outlooks and related rating actions

25. According to Article 11(a) of CRA3, CRAs should “when issuing a credit rating or a rating outlook, submit to ESMA rating information” including “all available credit ratings per instrument”. In order to define common technical standards for the submission of rating information to the ERP, ESMA needs to define the specific content of the rating information that the platform should display. To conduct this exercise, ESMA considers that it is important to define the specific categories of credit ratings and types of credit ratings that CRAs issue and that should be displayed by the ERP.

26. Furthermore, ESMA considers it important to identify what type of actions performed by CRAs could cause a change to an existing rating, which should then be reported to the ERP in order to allow the system to display up-to-date information on a given rating.

27. In this respect, we are describing below the relevant rating information that is currently reported by CRAs to ESMA. Currently, ESMA is retrieving data from CRAs through two platforms:

- CEREP: Central Repository for publishing the rating activity statistics and rating performance statistics of credit rating agencies. All registered and certified CRAs are requested¹⁰ to provide to ESMA their rating activity data on a 6-month basis, according to a pre-established format¹¹. The data collected in CEREP is made public on the ESMA website¹² under an aggregated format and offers information on CRAs’ rating activity, default rates and transition matrices.
- SOCRAT: it is a database that is used by ESMA for its on-going supervision purposes. All registered¹³ and the certified¹⁴ CRAs are required to submit information about their issued ratings and their outlooks on a monthly/bi-monthly basis and following a pre-established format¹⁵. The data remains confidential and is solely used by ESMA for supervisory purposes.

a) Classification of rating information

28. Currently, in the management of ESMA’s databases CEREP and SOCRAT, ESMA uses the following classification for ratings and rating actions collected.

29. Rating types: ESMA currently classifies ratings data collected in the following four types of ratings; sub-types, displayed in brackets, are further defined for each rating type:

- corporate ratings (including: financial institutions including banks, brokers and dealers; insurances; corporate issuers that are not considered to be a financial institution or

¹⁰ CRA Regulation (EU) no 1060/2009, Art 11(2)

¹¹ CEREP RTS: Commission Delegated Regulation (EU) no 448/2012

¹² <http://cerrep.esma.europa.eu/cerep-web/statistics/ratingActivity.xhtml>

¹³ CRA Regulation (EU) no 1060/2009, Art4(3)(d)

¹⁴ The CRA3 Regulation (EU) no 462/2013 requires that also the certified CRAs should submit the information requested by ESMA on its on-going supervision. In this context, ESMA shall submit draft regulatory standard to the Commission by 21 June 2012.

¹⁵ SOCRAT RTS: Commission Delegated Regulation (EU) no 446/2012

insurance);

- sovereign and public finance ratings (including: sovereigns; supranational organisations; sub-sovereign and municipalities; public entities);
- structured finance ratings (including: asset-backed securities (ABS); residential mortgage-backed securities (RMBS); commercial mortgage-backed securities (CMBS); CDOs; asset-backed commercial papers (ABCP); other structured finance consists of structured finance securities which cannot be categorized into the five majors sectors above including structured covered bonds, structured investment vehicles (SIV), insurance-linked securities and derivative product companies);
- covered bonds ratings that are not part of the structured finance category.

30. Rating categories: depending on CRAs' proprietary criteria and methodologies, credit ratings could measure different aspects of the creditworthiness of a given rated entity or instrument. For example, CRAs may assign ratings to the senior debt of an issuer, to its subordinated debt, or to measure the default probability of an issuer as a whole. Currently, for CEREP purposes, ESMA captures the following rating categories: for corporate, and sovereign and public finance ratings, only the issuer rating. Only if issuer ratings are not available, does CEREP capture one representative senior unsecured issue rating for the given issuer. For structured finance and covered bonds, ratings assigned to all tranches of a given issuance are collected.

31. Rating actions: ESMA identifies the following actions that are to be reported in CEREP and SOCRAT in order to update the rating information:

- issuance of new ratings;
- upgrades;
- downgrades;
- assignment or removal of an outlook¹⁶;
- rating affirmations;
- defaults;
- withdrawals;
- change in the solicitation status.

32. In addition to the information already collected by ESMA in CEREP and SOCRAT, CRA3 requires that the ERP should include credit ratings on all the rated financial instruments, not just issuer ratings as in CEREP. Moreover, CRA3 also requires CRAs to disclose on their website all preliminary ratings on entities or debt instruments submitted to them, and to notify ESMA on an on-going basis.. Such disclosure shall be made whether or not issuers contract with the credit rating agency for a final rating.¹⁷

33. For the purpose of providing a comprehensive and useful platform for users of ratings, ESMA needs to define whether the ERP should also provide additional information that is not currently captured under

¹⁶ Art.3(w) introduced by the CRA3 Regulation defines outlooks as covering both short and long-term trends. Therefore, the definition also covers watches.

¹⁷ CRA3 Regulation, Annex I 4(g).

the classifications presented above.

Questions

Q21: Particularly for users of ratings: Taking into consideration the rating classification described above, could you suggest (including a detailed reason):

- a. other rating types not captured in the above categorisation;**
- b. which rating categories or rating components should ERP cover;**
- c. other actions or events affecting the ratings, that should be published on the ERP.**

b) Supporting rating information

34. To fulfil the legislative mandate, ESMA considers necessary to include in the ERP also the press releases or the report containing the key elements underlying the credit rating together with the adopted rating/outlook information¹⁸. In this respect, ESMA has identified two alternative options:

- ESMA would publish on its website the press release documents provided by the CRA. The press release documents will be reported by the CRAs with the rating actions reporting.
- ESMA would not publish the press release documents but only its hyperlink. Each time a press release is available, the CRA shall provide a hyperlink to the press release website. However, as time goes by some hyperlinks become obsolete or broken because they do not lead to valid pages anymore because of changes in the CRAs' websites. The CRA would be responsible for maintaining the hyperlinks up to date.

Questions

Q22: For displaying the press release information, which of the two options do you prefer and why? Particularly for CRAs: Can you provide evidence on costs that you would incur under the two proposed options? Could you suggest other ways of retrieving, storing and make available on the ERP the press release information?

Q23: Shall the ERP provide supporting rating information in addition to the press releases/report? If so, what kind of information on the rating / rating action would be beneficial?

III.II. Display up-to-date rating information

¹⁸ The publication of such information on the ERP does not cancel the requirement for CRAs to disclose any credit rating information according to Article 10(1) of the CRA Regulation.

35. One of the key features that the ERP should have, in accordance with the CRA3 Regulation, is to display “up-to-date information” on ratings and outlooks¹⁹.
36. In order to apply this regulatory requirement, ESMA needs to identify which should be the standard **timeframe** between:
- the moment the rating / outlook information is made public by the CRA: adoption time;
 - the moment the CRA provides the relevant information to ESMA’s platform: submission time;
 - the moment when the information is made available on the ERP: ERP publication time.
37. The data submission process has to take into consideration the time necessary for validating the data after the submission time and before the publication on the ERP to ensure the correctness and consistency of the data displayed. The validations can be divided into two types: automatic technical validation of data and qualitative data content validation.
38. The automatic technical validation of data will be made at the submission time by the ERP and could cover: checking the format (numeric, text, date, etc) of the specific fields; check that the values are matching the defined coded values and no other values are accepted; all the required information is reported; the data complies with all the cross validation rules between different fields²⁰; the data complies with the qualitative checks that can be implemented without restricting the reporting (eg: the adoption date cannot be a date in the future) and other validations.
39. If the data does fail in one of the automated validation, the data is rejected and validation messages explaining the errors encountered are sent to CRAs. CRAs will have to correct the data so as to conform to the submission standard and resubmit it to the ERP. The information will not be accepted and made available on the ERP, until the data passes all the automatic technical validations.
40. Even if the data passes all the automatic technical validation, it could still contain erroneous content information. For example a CRA might erroneously report to the ERP a “CCC” rating (which is technically an acceptable value and therefore would pass the automatic validation step) which in reality should have been “CC”. In order to minimise such errors, the ERP could include an extra step, namely the approval by the CRA of submitted data before the final publication on the ERP. The addition of this double validation of the data would however increase the time between the adoption of the rating and the publishing on the ERP site.
41. Taking into consideration the aspects identified above, four possible scenarios :
- a. “Real-time” publishing on the ERP
- Under this option the rating information would be sent by CRAs immediately (in maxim 10²¹ min since adoption time) after the release of the rating action. As soon as the information is received and if it passes all the automatic validations of the system (but not the content data validation), it would be made available on the ERP. Under this option, adoption time,

¹⁹ Recital 31 of the CRA3 Regulation

²⁰ Example of cross validation rule: if the information reported refers to a structured finance rating than the asset class and sub-asset class should be report and the industry or sector, which refer to other rating types, should not be reported.

²¹ The time frame is given as a rough estimation and does not represent an anticipation of ESMA’s final proposal

submission time and ERP publication time would follow each other within a very limited time lag²².

Pros:

- this option would allow the ERP to display the updates shortly after their occurrence, minimising the time mismatches between the information available on CRAs' website and the one provided by the central platform.

Cons:

- in case of content faults of the data submitted to ESMA (that would pass the automatic technical validation) the faulty information would immediately become available on the ERP, giving no time for the CRA to review the sent data and approve the data or make the corrections and resubmit the data (if needed) before the publication. On the other hand, the information can be updated after publication;
- in case the submitted file is rejected by the ERP because it does not pass the automatic validations, the data would not be available on the ERP right after the adoption. The CRA would need time to identify the errors and to resubmit the data which might create a longer time lag between the adoption time and ERP publication time than the pre-established one (e.g.: 10 min).

b. Data published in a "x"-hour timeframe

Under this option CRAs would be required to send the rating information to the ERP as soon as possible following the adoption of the rating action (in maximum 10 min²³) and ESMA would publish the rating data on the ERP in maximum 2-hour time frame²⁴. Under this option, adoption time would correspond to submission time and ERP publication time would lag 2 hours after the adoption and submission time.

Pros:

- the pre-established delay would allow the CRAs to correct the information and resubmit it in case of technical errors and also to review the submitted data on ERP before it is published for eventual content errors.

Cons:

- the downside would be 2 hours discrepancy in the rating information displayed by the ERP, as compared to those released by the CRA.

c. Data published during the following day/ working day

Under this option CRAs would be required to report the data as soon as the rating action is adopted. All the daily data reported until midnight would be displayed on the ERP, in one

²² The time technically needed for the running of the automatic validation rules, the generation of the eventual messages to the CRAs and the publication process.

²³ See footnote: 21

shot, the next day at 11:00AM CET²⁵. Adoption time would then correspond to submission time and ERP publication time would take place every day at 11:00AM CET.

Pros:

- The time lag between the adoption time and the publication time would allow enough time to CRAs to fix all the eventual technical or content errors and resubmit the data;
- the users of ratings will know that every day after 11:00 AM they can check on the ERP all the updates of the previous day.

Cons:

- at the same time this option would create (maximum) one-day delay in the data displayed by the platform;

d. Daily fixed submission of data and publishing times

Under this option the rating data of a day would be submitted the next day until 9:00AM²⁶, in a single batch of data. Therefore, the rating data would not be submitted as soon as it is adopted, as in the three previous options (multiple submissions by day) but just in one reporting per day. The ERP publication time would take place once per day at 11:00AM²⁷ (the delay covers the time needed to fix possible errors in the files submitted just at the end of reporting period).

Pros:

- the pre-established delay of 2 hours would allow the CRAs to correct the information and resubmit it in case of technical errors and also to review the data submitted to the ERP before it is published for eventual content errors;
- the users of ratings would know that every day after 11:00 AM they can check on the ERP all the updates of the previous day;
- technically, the submission of data in a daily batch might be easier to implement and maintain than the real-time submission;

Cons:

- there will be a maximum of 24-h delay on the update of rating information of the ERP website.

42. In all the cases mentioned above, the adoption time and the publication on ERP time would be displayed. Therefore, the user of rating is informed of the time lag between the rating adoption time and the ERP publication time. Also, if the information is updated by the CRA after the publication on the ERP, there would be a reference to the time when the updating took place.

²⁵ See note: 21

²⁶ See note: 21

²⁷ See note: 21

43. From the ESMA's IT point of view, there are no significant cost differences between the implementation of any of the four options mentioned above.
44. ESMA acknowledges that the capacity of the ERP to display "up-to-date" data depends also on the availability of data and IT systems from the CRAs. CRA3 Regulation provides one year between the adoption of the RTS and the go-live of the ERP system to prepare their system in order to deliver to the ERP the data in the requested format and frequency.

Questions

- Q24: Particularly for users of ratings: Which option do you consider as the best option for displaying the data on the new ERP? Please specify the specific time frames (if different from the proposed ones).**
- Q25: Particularly for users of ratings: As regards options (c) and (d), in case of the ratings reported on a Friday or before a bank holiday, when the rating information has to be made available on the ERP: on the next calendar day or the next working day?**
- Q26: Particularly for CRAs: which of the two possible ways of sending the new rating/outlook information to the ERP is more suitable to be integrated in your IT system: the real-time automatic data-feeds or one daily batch? Please provide a detailed motivation for your choice and include in your answer also reference to the actual costs that you would incur under the different submission options.**
- Q27: Can you suggest any other options for reporting the rating information to ESMA and for the publishing of the received rating information on the ERP?**

III.III. Allow the possibility to compare all ratings available for a given issuer / instrument

45. In Recital (31) of the CRA3 Regulation it is mentioned that the new ERP "should allow investors to easily compare all credit ratings that exist with regard to a specific rated entity" or rated instrument (from issuer-pays CRAs).
46. The possibility to compare ratings and outlooks assigned by different CRAs on a specific issuer / instrument presents two aspects, one of business and the other of technical nature.

a) Business issue: Comparing across different rating definitions and methodologies

47. While different CRAs may assign a credit rating to the same entity or instrument, ESMA notes that the meaning of the rating assigned may differ, from one CRA to another, depending on the proprietary definition and methodology used.
48. In particular, while all credit ratings are intended to measure the creditworthiness of an entity or instrument, the definitions assigned by CRAs to the meaning of their ratings differ significantly. For example, certain ratings aim to measure the probability of default attached to a given entity, while

others assess the expected loss that could be suffered by an investor.

49. ESMA considers that the ERP should allow for maximum transparency and comparability across different rating sources, while at the same time not creating misunderstanding from its users.
50. An option to allow for maximum transparency on the different ratings assigned by CRAs - while allowing an adequate understanding of ratings and CRAs' methodologies - would be to display all ratings assigned to a given entity / instrument on the same screen and allow to compare them even if different definitions are attached to them. At the same time, and in order to avoid confusion when comparing across ratings with different meanings, the ERP would display each rating under the respective CRA's definition (i.e. without employing standardised definitions attributed by the system), and would provide, for each ratings, links to the detailed definition and explanation, rating scale and methodology attached to each specific rating type. In addition, the ERP would include links to the CEREP database for historic default rates for each rating product in order to allow users of ratings to observe also the historical behaviour of the specific rating type.

Questions

Q28: Particularly for users of ratings: Which information should be added to the rating information to facilitate the comparison across ratings from different CRAs on the same entity while avoiding misunderstanding on the meaning of each rating? Under which form should this information be displayed (full reports, aggregated information, direct links, reference to the CRAs website, etc)?

b) Technical issue: attributing common identifiers to any rated entity or instrument

51. On the technical side, in order to allow for comparability of different CRAs' ratings of the same entity²⁸, the ERP needs to receive the rating information from CRAs on common identifiers for the same issue / issuer. This will allow the system to attribute to the same entity or instrument the credit ratings assigned by different CRAs.
52. All the financial instruments issued globally are given a common identifier, the ISIN which is widely used by financial institutions as well by CRAs in identifying the rated instruments. However, for the rated entities, such common globally used identifier does not currently exist. The absence of common issuer identifiers established on the market for different types of entities could render it technically difficult to ensure comparability of ratings assigned to the issuers. Currently, CRAs use internal proprietary identifiers which are different among CRAs.
53. ESMA considers that one option to overcome this difficulty could be provided by the recourse to the Global Legal Entity Identifier (LEI) for issuer ratings, while reporting the instruments ratings under the ISIN code.
54. The Global Legal Entity Identifier has started as an initiative of the Financial Stability Board to develop

²⁸ As well as cross-links between issue ratings and the relevant issuer rating, or between Structured Finance ratings and the relevant originator's rating.

a unique identification system for parties to financial transactions²⁹ which was endorsed by the G20 during the Los Cabos Summit (June 18-19 2012). Substantial progress has been made by the global regulatory community on the development of a Legal Entity Identifier (LEI). An inaugural meeting of the Global LEI Regulatory Oversight Committee (ROC) took place in January 2013, with work now proceeding to establish the global LEI foundation in order to launch the global system³⁰.

55. LEI is already required in the SWAPS reporting rules put in place by the CFTC under Dodd-Frank Title VII. For the EU countries, the technical standards for similar trade reporting for OTC derivatives under the EU EMIR legislation will also require a LEI. Other markets which are putting in place derivatives reporting will also require LEIs over time. By mid-2015, when the new ERP should go live, it is expected that all issuers of financial transactions will have a LEI.
56. Under this option, the ERP would require CRAs to report issuer ratings through the LEI identifier, so as to allow for comparability across ratings assigned by different CRAs to the same entity.

Questions

- Q29: Particularly for CRAs: Do CRAs envisage any difficulties on mapping your current internal identifiers with the new LEI for the rated entities?**
- Q30: Particularly for CRAs: Are there other common issuer identifiers that the ERP could use in order to allow for a mapping of rated entities?**

III.IV. Provide an easy access to information to all users

57. It is important that the ERP, and information stored therein, is accessible in an easy manner by all potential users, in order to render it a useful tool in accordance with its investor protection and transparency purposes.
58. ESMA has been publishing data on historical performance of CRAs since mid-2012 on the CEREP³¹ platform. Since then, ESMA has gained important experience, in establishing user-friendly interfaces adapt to any kind of users, available free of charge and through simple internet connection.
59. ESMA considers that in order to provide users with an ERP access that meets their needs, it is important to correctly identify the type of information and the accessibility features that would best meet the use that investors and interested parties wish to do of the ERP.
60. In order to achieve this objective ESMA seeks to gather open feedback on how potential users of the ERP could best access the information collected therein.
61. First of all, ESMA seeks feedback on the way the information shall be visually presented on the ERP in order to allow users for an easy access to the rating information of interest and enhance comparability

²⁹ "A Global Legal Entity Identifier for Financial Markets", FSB, 8 June 2012, http://www.financialstabilityboard.org/publications/r_120608.pdf

³⁰ Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier (LEI) System, page 1, available at: http://www.financialstabilityboard.org/publications/r_121105c.pdf.

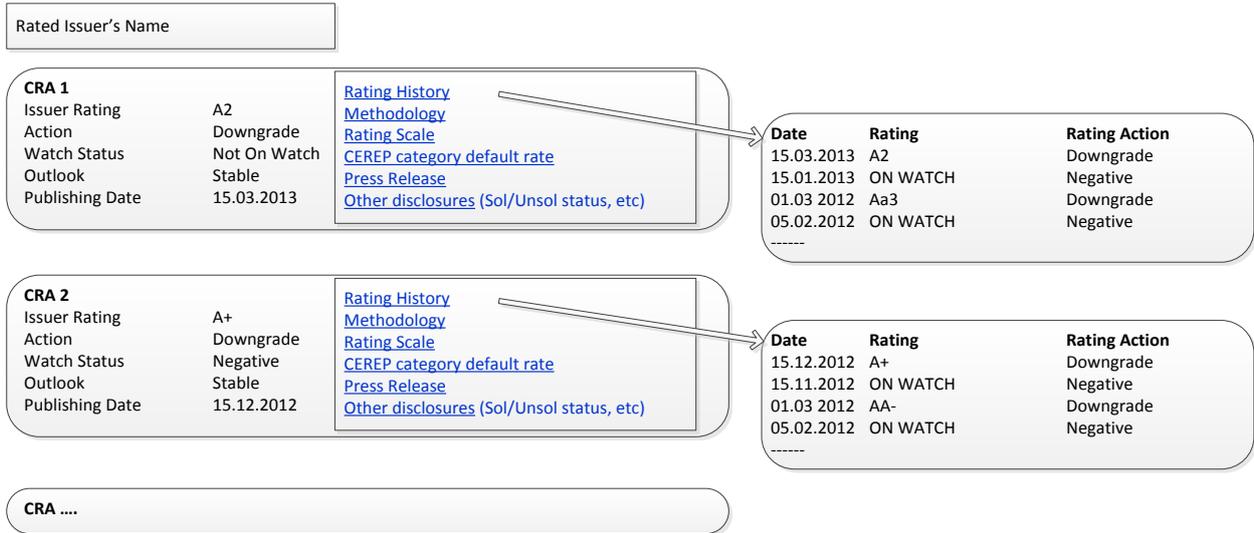
³¹ Central Repository for publishing the rating activity statistics and rating per-formance statistics of credit rating agencies

of ratings.

62. Figure 1 below provides a visual example of how ratings could be displayed under the proposed option.

Figure

1



Note: This figure represents only an example and is not necessarily a pre-visualisation of the ERP screens

63. Furthermore, ESMA needs to identify the presentation of the rating information (e.g. tables, cross links, query interface, downloading features, etc.) relevant for users of the ERP.

64. In addition, ESMA needs to identify the means for accessing the ERP, in order to facilitate regular consultation of the platform: types of browsers, access from mobile phones, tablets. ESMA will consider the implementation of such alternatives taking into consideration a thorough cost-benefit analysis.

Questions

Q31: Particularly for users of ratings: Could you provide suggestions on how ERP could present the rating information so as to allow an easy access and understanding of the rating data? If possible please provide a clear description and/or a visual representation like the one given above.

Q32: Particularly for users of ratings: Besides the access via a web page, which other means of accessing the ERP do you consider relevant?

III.V. One data feed: incorporate CEREP/Socrat into the ERP

65. In this section, views are requested on the possibility of having just one data feed to ESMA. This would cover all the regulatory requirements with regards to providing individual rating data to ESMA and would reduce the regulatory burden of CRAs referring to data disclosure to ESMA.
66. CRAs are currently required to report regularly to ESMA ratings data to two databases, CEREP and SOCRAT, in order to comply with specific regulatory requirements. See paragraph 11 for a short description and scope of the two systems.
67. In the context of the new CRA3 regulation, the reporting of individual ratings and rating actions as they occur implies a new data flow to be prepared and sent by CRAs to ESMA. As the information contained in all three data requests (the two existing ones and the new ERP) have as source the same range of data, ESMA considers that for efficiency reasons the three data requests could be merged into one which would be used to cover the three purposes:
- CRAs performance statistics (CEREP);
 - CRAs' supervision by ESMA (SOCRAT);
 - European Rating Platform (ERP).
68. For CRAs the integration of the three data sets should ease their maintenance process (1 flow instead of 3) but would also require an adjustment to the current reporting to comply with the new ERP requirements.
69. The merging of the datasets would also mean that both public (CEREP and ERP) and confidential information (the extra information required for EMSA supervision purposes only) will be submitted at the same time. ESMA will develop the IT solution so as to ensure the clear distinction between the public and confidential information by using secure data storage and usage principles.
70. The implications on the current reporting of data would be:
- a. For CEREP requirements: CRAs will not have to report anymore this dataset, as the CEREP statistics will be calculated based on the new ERP individual rating data.³² However, the CRAs will still need to make updates, if necessary, to the CEREP data reported before the entry into force of the ERP in July 2015.
 - b. For SOCRAT requirements: CRAs will deliver together with their ERP data also the information requested for supervision. Therefore, when submitting the data for the purpose of ERP, for each rating event submitted CRAs will also submit the specific extra information for SOCRAT purposes.³³ The supervision information will be used solely by ESMA for its supervision purposes and it will not be disclosed on the ERP platform.

Questions

³² As regards the CRAs working according to the investor-pays model – which are not subject to the ERP data feed under CRA3 - ESMA would use the data feed provided under SOCRAT to calculate CEREP statistics.

³³ CRAs working under the investor-pays model are exempted in CRA3 from ERP reporting and will therefore continue to provide data feed for SOCRAT purposes to ESMA on a monthly or bi-monthly basis.

Q33: Particularly for CRAs: Would you agree with having just one individual data feed to ESMA in order to report to the ERP, CEREP and SOCRAT?

III.VI. Historical data

71. ESMA considers that users of rating, when accessing the ERP, should be provided with sufficient rating information to understand the rating data and compare across different CRAs.
72. In order to allow for such an understanding, it is important that the system provides information on the evolution of the rating in historical terms and performance indications for the given rating type.
73. As required by the CRA3 Regulation, the ERP will include links to the CEREP pages where performance statistics for a given rating type are displayed. Statistics are displayed by the CEREP in an aggregated manner, for all ratings assigned by a CRA and belonging to a given rating type and covers (to date) at least 11 years of rating data.
74. In addition, it is considered important to display historical individual rating information in order to allow users of ratings to better understand the evolution of a credit rating of a certain issuer or instrument. This could allow for comparability of credit ratings over time and across different CRAs and would allow users of ratings to access comprehensive information through the ERP, thereby supporting its objectives of transparency and investor protection.
75. In order to allow the ERP to display rating information also on a historical basis, ESMA has identified one option: CRAs would make available data on the ERP from November 2012. This is the date from which CRAs started to report individual rating data for the supervision purpose to SOCRAT. As SOCRAT already contains individual data which would cover most of the ERP scope, then the adaptation of this data set (already reported to ESMA) to the new ERP would require limited effort from the CRAs.

Questions

Q34: Particularly for users of ratings: do you agree with the proposed option? (please state the reasons for your preference).

III.VII. Mapping of credit ratings

76. The CRA3 Regulation requires³⁴ ESMA to report by 21 June 2015 on the possibility of establishing one or more mappings of ratings within the ERP. The following issues have to be assessed:
- a. “the possibility, cost, and benefit of establishing one or more mappings”
 - b. “how one or more mappings can be created without misrepresenting credit ratings in light

³⁴ New Art 4b: “ESMA shall report on the possibility of establishing one or more mappings of credit ratings submitted in accordance with Article 11a(1) and submit that report to the Commission by 21 June 2015. “

of different rating methodologies”

- c. “any effects mappings could have on the regulatory technical standards developed to date in relation to Art 21 (4a)(a) and (b)”³⁵

77. Such a mapping or mappings could enhance the understanding by users of ratings of the different rating scales available by facilitating their comparability. The mapping should not interfere with the methodologies employed by the CRAs. A clear need should emerge for such new mapping or mappings in terms of information not currently available through the existing mappings.

78. The ERP might be technically developed in such way as to permit in the future the creation and usage of such mapping.

79. As required by the CRA₃ Regulation, ESMA will provide its final report on this subject to the Commission on 21 June 2015.

80. In general, mappings are based on a comparison of internal rating criteria to an external benchmark and are required by the different rating scales adopted by the various CRAs.

81. Under the Basel capital framework, the recourse to external credit assessments to calculate capital requirements assumes that, in practice, external credit assessments provided by eligible CRAs should correspond to the credit quality steps to which the risk weights are linked. In the EU, the new Basel III capital framework is being introduced through the so-called CRD IV legislative package.³⁶ The Commission proposal for the CRD IV Regulation provides (Art. 131) that the European Banking Authority shall develop draft implementing standards to specify with which of the relevant credit quality steps provided by the Directive the relevant credit assessments of the eligible CRAs correspond.

82. Another source of credit ratings’ mapping is represented by the Eurosystem credit assessment framework (ECAAF) which defines the procedures, rules and techniques which ensure that the Eurosystem requirement of high credit standards for all eligible assets is met. Within this framework, eligible CRAs must fulfil operational criteria and provide relevant coverage so as to ensure the efficient implementation of the ECAAF. In particular, the use of their credit assessments is subject to the availability to the Eurosystem of information on these assessments, as well as information for the comparison and the assignment (mapping) of the assessments with the ECAAF credit quality steps and the credit quality threshold and for the implementation of performance monitoring.³⁷

Questions

Q35: Particularly for rating users: Do you consider it of use that the ERP would provide for a mapping of rating scales to improve the comparability of ratings of different CRAs?

Q36: Are there any risks or implications with regard to mappings of rating scales in view of the distinct methodologies employed by CRAs? How should such risks be mitigated?

³⁵ The article refers to the technical standards introduced by the CRA₃ Regulation – the RTS on the European Rating Platform and the RTS on fees charged by CRAs.

³⁶ See http://ec.europa.eu/internal_market/bank/regcapital/new_proposals_en.htm

³⁷ See <https://www.ecb.int/ecb/legal/pdf/0201100014-20130103-en.pdf>



Q37: What features should a mapping of credit ratings have? Which methodology should be followed?

IV. DRAFT RTS on FEES CHARGED BY CRAS TO THEIR CLIENTS

IV.I. Fees charged by CRAs are required to be non-discriminatory

a) Assessment of non-discriminatory fees

83. The CRA3 Regulation provides that CRAs should ensure that fees charged to their clients are not discriminatory in order to mitigate conflicts of interest and facilitate fair competition in the credit rating market. Similar requirements can be found in Directive 2009/72/EC concerning common rules for the internal market in electricity³⁸ and in the regulatory framework for electronic communications³⁹.

84. Fees can be understood as non-discriminatory when they are fair and not biased in favour of the paying customer or the rating issued. This would also avoid potential conflict of interests between CRAs and their clients.

85. According to the CRA3 Regulation, CRAs have to disclose their pricing policies including the fees structure and pricing criteria in relation to credit ratings for different asset classes. Getting a good understanding on CRAs' pricing policies, fee structures and how fees are charged to individual customers for different asset classes will help to identify "common practices" (within a specific CRA and across CRAs). Some of those practices could be assessed as general non-discriminatory practices. In return, deviations from such common practices could also be an indication of possible discriminatory practices.

86. The information received from the registered CRAs will help ESMA in its on-going supervision to assess whether there was an equal treatment of all customers while providing them with the same type of services and whether, in case of deviation from the common practices, such deviations are justified. ESMA does not intend to define or fix the structure of CRAs' fees or set up maximum prices that CRAs would be allowed to charge.

87. The draft RTS might include among others the following periodic reporting requirements:

- whether CRAs have adopted a pricing policy for rating services;
- whether rating and follow-up processes are budgeted in written form and dated;
- whether fees for rating services have been established or finalised before or after the beginning of the rating or the follow-up process;
- whether deviations from the pricing policy are justified in written form;

³⁸ Directive 2009/72/EC concerning common rules for the internal market in electricity. In particular, Recital (32) states "further measures should be taken in order to ensure transparent and non-discriminatory tariffs for access to networks. Those tariffs should be applicable to all system users on a non-discriminatory basis" and recital 36 states "In carrying out those tasks, national regulatory authorities should ensure transmission and distribution tariffs are non-discriminatory and cost-reflective...".

³⁹ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services ("Framework Directive")

- whether fees are established by a person (or more than one person) not involved in the rating process;
- whether a “Chinese wall”⁴⁰ has been set within the CRAs which strictly separates the rating services from the departments in direct contact with the issuer (such as the sales department, fees policy, etc.).

Questions

Q38: Do you consider that identification of “common practices” (within a CRA and across the CRA market) can help to identify discriminatory and non-discriminatory practices?

Q39: Do you agree on the proposed periodic reporting illustrated above to be submitted by CRAs to ESMA on the application of their pricing policies and calculating their fees? Do you think there are other relevant criteria that should be included to allow ESMA to monitor the non-discrimination requirement?

Q40: What is the frequency with which such reporting should be provided to ESMA?

Q41: Particularly to CRAs: what are the criteria you are applying or plan to apply to ensure fees are non-discriminatory?

b) Fees are not dependent on the level of the credit rating issued by the CRA or on any other result or outcome of the work performed or on the provision of ancillary services.

88. The CRA3 Regulation requires that fees charged for credit rating services to a given issuer should not be dependent on the level of the credit rating issued by the credit rating agency or on any other result or outcome of the work performed. In addition, the CRA3 Regulation states that fees charged for credit rating services to a given issuer should not be dependent on the provision of ancillary services.

89. Non-dependence on the level of the credit rating issued or the result or outcome of the work performed could be monitored through the consistent application of pricing policies as described in section II.I. Additionally, an analysis of the CRA’s contracts can also reveal possible contractual clauses which might lead to discriminatory practices.

90. Non-dependence on the provision of ancillary services could be monitored through the analysis of the total amount of fees charged for ancillary services to a given client or the proportion of fees from credit rating activities and ancillary services. In this regard, the amount of ancillary services provided by the CRA to a certain issuer should be considered not only to review the fee charged for the rating but also its potential influence on the determination of the level of rating assigned. The CRA3 regulation requires CRAs to periodically disclose the list of fees charged to each client for individual credit ratings and any ancillary services.

⁴⁰ As this requirement is already in the CRA Regulation, the periodic reporting information would focus on a description of the procedure and identification of the person responsible for billing each client for individual credit ratings.

91. While analyzing the possible contingency nature of CRAs' fees based on the provision of ancillary services, a general risk indicator might be the proportion between ancillary services fees and rating and follow-up fees from a rated issuer or any related party⁴¹. For example, when fees for the provision of ancillary services represent more than 5, 10 or 20% (to be determined) of the rating and follow-up fees paid by the rated issuer or any related party, this could be understood as a risk indication for potential conflict of interests as the CRA could be more lenient towards the rated issuer. ESMA could take into account this risk indicator when assessing possible discriminatory or contingency practices. Should the indicator represent a "significant" proportion, the CRA should immediately inform ESMA.

Questions

Q42: Do you agree on the approach to assess whether fees are dependent on the level of the credit rating issued by the credit rating agency or on any other result or outcome of the work performed? Do you consider that other approaches or criteria should be applied? What cases do you think should be comprised in the concept "any other result or outcome of the work performed"?

Q43: Do you agree on the approach to assess whether fees are dependent on the provision of ancillary services? Do you consider other approaches or criteria should be applied too? Do you consider that a risk indicator (percentage) between ancillary services fees and the rating and follow-up fees from a rated issuer or any related party can help to identify possible discriminatory practices? If so, what percentage do you consider appropriate? What would you consider a "significant" percentage?

Q44: Particularly to CRAs: what are the criteria or practices you are applying or plan to apply to ensure fees are not dependent on the level of the rating issued by your agency or on any other result or outcome of the work performed? What are the criteria or practices you are applying or plan to apply to secure fees are not dependent on the provision of ancillary services?

Q45: Particularly to CRAs: do you have cost synergies between rating services and non-rating services other than ancillary services? In that case, please specify what these synergies are and how costs for non-rating and non-ancillary services are allocated to your rating services?

IV.II. Fees charged by CRAs are required to be cost-based

92. The CRA₃ Regulation states that a credit rating agency shall ensure that fees charged to its clients for the provision of credit rating and ancillary services are based on actual cost. Recital 38 of CRA₃ Regulation states that any differences in fees charged for the same type of service can only be justified by a difference in the actual costs when providing the service to different clients. Additionally, CRA₃ requires that CRAs have to disclose their pricing policy, including the fees structure and pricing criteria

⁴¹ An example of this practice can be found in the European Commission's proposal for a regulation on the quality of audits of public-interest entities (November 2011). The Commission proposes that fees for the provision of related financial audit services to the audited entity should be limited to 10 % of the audit fees paid by the audited entity. Additionally, where the total fees, audit and related financial audit services, received by an auditor from a PIE reach a significant percentage (20% annually or, for two consecutive years, more than 15%) of the total annual fees, appropriate safeguards should be put in place.

in relation to credit ratings for different asset classes.

93. ESMA acknowledges that there is not a single business model or cost structure in the CRA market and does not intend to fix or set up maximum prices. Different CRAs may have different business models (issuer-pays or investor-pays), justifying different pricing policies or a mixture between a pricing policy for issuers and a pricing policy for investors. Ahead of the adoption of its draft RTS on fees, it is important for ESMA to understand the different practices in the CRA market.
94. For CRAs working under the investor-pays model, there can be a fixed price-per-rating report or per subscriptions but also discounts based on the quantity of reports or subscriptions.
95. For CRAs working under the issuer-pays business model, some CRAs might decide to charge only a fixed price which could mean a fixed amount per rating (for instance, based on the size or complexity of the issuer). Other CRAs might decide to charge a price established at the beginning of the rating process according to the importance of analysis required (for instance, the cost based on the number of expected hours needed to conduct the analysis according to a standard price per hour). However, CRAs might also take into account other circumstances when fixing the price such as higher prices to cover investments in new methodologies or the entrance in a new segment or a new geographical market, or to adapt to a non-permanent market situation like a crisis that is affecting the demand for ratings, or to the dimension and complexity of the work.
96. Some CRAs might decide to add to the fixed price a variable component based on the volume rated. Other CRAs might decide to add a variable component on the basis that they are incurring a higher civil responsibility or reputational risk. This variable fee might represent the cost that should be covered explicitly through insurance, or implicitly through reserves created by accumulated retained profits, in either case inevitably depending on the amount rated.
97. Some CRAs might also decide to offer discounts to their clients (for example due to economies of scale based on the number of ratings a customer request). In such cases, the source of the economies of scale should be explicitly identified by the CRA (technological, cost of capital, research etc.) and explained in detail in order to justify the lower fee.
98. A good understanding of the CRAs' cost structure is crucial to understand how the different CRAs' business models determine their fixed or variable fees and whether those fixed or variable fees are cost-based and non-discriminatory. There is not a single concept of cost but instead different elements or components to take into account when defining the concept of total cost of a service. The cost and non-cost components used should have a direct or indirect causality with the services provided by the CRA.
99. To this end, CRAs should periodically report to ESMA the relevant information to allow for the identification of the cost components of rating and ancillary services fees. In particular:
 - CRAs' fixed costs in a year (and monthly prorated), such as property buildings, IT systems or investment in technical progress. This section would also include capital costs and in particular, depreciation which represents the annual reduction in nominal asset value and the cost of fixed capital;
 - CRAs' operational costs such as the cost of specialised personnel involved in the rating or ancillary services (number of hours at management level, senior staff and junior staff with an indication of price per hour per different staff group), acquisition of external information or

methodologies and their updates;

- CRAs' remaining variable costs such as energy usage or employees not involved in the rating or ancillary services;
- Information on how the above-mentioned costs have been allocated to the service provided (rating or ancillary service), to the type of financial instrument or asset class and on what basis (time devoted, technical difficulty, number and grade of employees involved in the rating calculation...);

100. Additionally, even if they are not strictly speaking cost components, other components should also be taken into account when determining the fee structure and calculating the final fee charged to clients. In particular:

- information on margins and how they are calculated/applied per financial instrument or asset class;
- information on discounts, how they are calculated and on what basis (assumptions and methodology used to calculate such discounts).

101. The above approach would allow ESMA to identify average costs per component such as price per hour for different classes of staff members and the unitary average total cost per service and asset class.

102. CRAs should also be able to provide information with regard to the rating issued to each customer and financial instrument, and the fees charged. In case fees significantly differ from one customer to another or from one instrument to another, an explanation on these differences should be provided including a detailed description of how fees were calculated.

Questions

Q46: What are your views towards the approach that different business models and fee structures should be taken into account when assessing whether fees are cost-based?

Q47: What are your views on the above approach to CRAs' cost-structure? Do you consider other approach or criteria should be applied? If you agree with the above approach, what cost and non-cost components do you consider should be taken into account and periodically reported to ESMA to identify CRAs' fee structure?

Q48: Do you agree on identifying average costs per component, average cost per service and average costs per asset class in order to assess whether fees are cost-based?

Q49: What is the frequency with which such reporting should be provided to ESMA?

Q50: Particularly to CRAs: what is your current cost and fee structure? What are the relevant costs when issuing a rating? What are the criteria you are applying or plan to apply to demonstrate that fees are based on costs?

IV.III. On-going supervision on CRAs' fees by ESMA

103. The CRA3 Regulation already requires that CRAs disclose the list of fees charged to each client for individual credit ratings agencies and ancillary services as well as its pricing policy, including the fee structure and pricing criteria in relation to credit ratings for different asset classes. ESMA will use all that information for an effective supervision of the above-mentioned rules (ensure that CRAs do not charge discriminatory fees, fees do not depend on the level of the credit rating issued by the CRA or on any other result or outcome of the work performed and do not dependent on the provision of ancillary services and fees are cost-based).

104. In line with this objective and this discussion paper, from the entry into force of the final RTS on fees CRAs would also be required to:

- periodically submit to ESMA information on their cost and non-cost components part of their fee structures and how they are allocated.
- periodically submit to ESMA information on changes in their pricing policies, establishment of fees according to them, and deviations from their pricing policy.
- periodically submit to ESMA information regarding the risk indicator percentage between ancillary services fees and the rating and follow-up fees.
- inform ESMA when relevant deviation from their established pricing policy occurs;
- inform ESMA when there is a “significant” risk indicator percentage between ancillary services fees and the rating and follow-up fees.

Questions

Q51: Do you agree CRAs should periodically report to ESMA on the above list of information? Which frequency do you think it is more appropriate? Do you think any other information should be reported to ESMA?

Q52: Do you agree that CRAs should report on an “event-based” basis to ESMA when relevant deviations from their pricing policies occur? Do you agree that CRAs should report on an “event-based” basis to ESMA when ancillary services fees exceed a pre-defined percentage with respect to ratings and follow-up fees?

Annex I – SUMMARY OF QUESTIONS

II. DRAFT RTS on INFORMATION ON STRUCTURED FINANCE INSTRUMENTS

II.I. Objectives of the disclosure requirements

- Q1: Which categorisation of SFI asset classes should ESMA apply while developing the disclosure requirements?
- Q2: In light of paragraph 13, do you consider that the scope of Article 8(b) should be limited to those SFIs which are covered by the Prospectus Directive and Transparency Directive, or that its scope should not be limited to those Directives and should cover all SFIs traded in the EU?
- Q3: Do you consider that assets underlying SFIs composed of mixed pools should be disclosed as part of a specific category? If so, please elaborate.
- Q4: To which tranching mechanisms should the disclosure requirements be applied? (e.g. single-tranche transactions?)
- Q5: Do you have any other comments on the categorisation of SFIs?

II.II. Content of the information

- Q6: In your view, which information is required to ensure a meaningful description of the SFI?
- Q7: What kind of indicators/ratio do you think would be necessary to better monitor and modelling the performance of the underlying assets? Please indicate the relevant indicators for each of the assets categories?
- Q8: For which category of SFIs should the disclosure requirements be adapted (e.g. where the underlying assets backing the SFIs are poorly granular)?
- Q9: Do you have any other comments on the content of information to be disclosed?

II.III. Frequency and standardization of the information

- Q10: Do you have any comments on the alternative approaches outlined above (i.e. “event based” vs. periodic disclosure or a mix of both) regarding the frequency of the reporting?
- Q11: In case of “event-based” approach, what (material) events should trigger a reporting update? In particular, please provide your views on SFI-specific events (e.g. performance of tranches and/or underlying assets)?
- Q12: Should certain market events and thresholds (e.g. volatility, price movements, etc.) be identified ex ante that would trigger a reporting update? If so, please specify.
- Q13: Please provide your views on whether the disclosure requirements should apply to SFIs that are “live” at the date of the RTS coming into force or only to SFIs issued after that date?
- Q14: If the reporting obligation were to apply to “live” SFIs, what do you think would be an appropriate phase-in period or schedule?
- Q15: Do you have any other comments on the frequency of the reporting? Do you think any other approach should be considered?
- Q16: Are different templates needed for each of the asset classes subject to the disclosure requirements?

- Q17: Do you consider that the scope and content of the ECB templates set to report loan-level data are appropriate for addressing CRA 3's disclosure requirements?
- Q18: Do you consider that the data collected through the ECB templates would allow other investors to conduct comprehensive and well-informed stress tests for their own specific requirements on the cash flows and collateral values supporting the underlying exposures? If not, explain what further information should be reported (e.g. prospectus, transaction summary, pool performance data, credit support information, investor reports, due diligence reports) and, if applicable, please consider other relevant reporting requirements.
- Q19: Apart from the national or Union law governing the protection of confidentiality of information, should the context of local securitisation framework for specific asset classes be also considered?
- Q20: Do you have any other comments on the provision of Article 8b (3) (c) concerning the standardisation of the information to be used?

III. DRAFT RTS on THE EUROPEAN RATING PLATFORM

III.I. Containing complete information on ratings and outlooks and related rating actions

- Q21: Particularly for users of ratings: Taking into consideration the rating classification described above, could you suggest (including a detailed reason):
- Q22: For displaying the press release information, which of the two options do you prefer and why? Particularly for CRAs: Can you provide evidence on costs that you would incur under the two proposed options? Could you suggest other ways of retrieving, storing and make available on the ERP the press release information?
- Q23: Shall the ERP provide supporting rating information in addition to the press releases/report? If so, what kind of information on the rating / rating action would be beneficial?

III.II. Display up-to-date rating information

- Q24: Particularly for users of ratings: Which option do you consider as the best option for displaying the data on the new ERP? Please specify the specific time frames (if different from the proposed ones).
- Q25: Particularly for users of ratings: As regards options (c) and (d), in case of the ratings reported on a Friday or before a bank holiday, when the rating information has to be made available on the ERP: on the next calendar day or the next working day?
- Q26: Particularly for CRAs: which of the two possible ways of sending the new rating/outlook information to the ERP is more suitable to be integrated in your IT system: the real-time automatic data-feeds or one daily batch? Please provide a detailed motivation for your choice and include in your answer also reference to the actual costs that you would incur under the different submission options.
- Q27: Can you suggest any other options for reporting the rating information to ESMA and for the publishing of the received rating information on the ERP?

III.III. Allow the possibility to compare all ratings available for a given issuer / instrument

- Q28: Particularly for users of ratings: Which information should be added to the rating information to facilitate the comparison across ratings from different CRAs on the same entity while avoiding misunderstanding on the meaning of each rating? Under

which form should this information be displayed (full reports, aggregated information, direct links, reference to the CRAs website, etc)?

Q29: Particularly for CRAs: Do CRAs envisage any difficulties on mapping your current internal identifiers with the new LEI for the rated entities?

Q30: Particularly for CRAs: Are there other common issuer identifiers that the ERP could use in order to allow for a mapping of rated entities?

III.IV. Provide an easy access to information to all users

Q31: Particularly for users of ratings: Could you provide suggestions on how ERP could present the rating information so as to allow an easy access and understanding of the rating data? If possible please provide a clear description and/or a visual representation like the one given above.

Q32: Particularly for users of ratings: Besides the access via a web page, which other means of accessing the ERP do you consider relevant?

III.V. One data feed: incorporate CEREP/Socrat into the ERP

Q33: Particularly for CRAs: Would you agree with having just one individual data feed to ESMA in order to report to the ERP, CEREP and SOCRAT?

III.VI. Historical data

Q34: Particularly for users of ratings: do you agree with the proposed option? (please state the reasons for your preference).

III.VII. Mapping of credit ratings

Q35: Particularly for rating users: Do you consider it of use that the ERP would provide for a mapping of rating scales to improve the comparability of ratings of different CRAs?

Q36: Are there any risks or implications with regard to mappings of rating scales in view of the distinct methodologies employed by CRAs? How should such risks be mitigated?

Q37: What features should a mapping of credit ratings have? Which methodology should be followed?

IV. DRAFT RTS on FEES CHARGED BY CRAS TO THEIR CLIENTS

IV.I. Fees charged by CRAs are required to be non-discriminatory

Q38: Do you consider that identification of “common practices” (within a CRA and across the CRA market) can help to identify discriminatory and non-discriminatory practices?

Q39: Do you agree on the proposed periodic reporting illustrated above to be submitted by CRAs to ESMA on the application of their pricing policies and calculating their fees? Do you think there are other relevant criteria that should be included to allow ESMA to monitor the non-discrimination requirement?

Q40: What is the frequency with which such reporting should be provided to ESMA?

Q41: Particularly to CRAs: what are the criteria you are applying or plan to apply to ensure fees are non-discriminatory?

Q42: Do you agree on the approach to assess whether fees are dependent on the level of the credit rating issued by the credit rating agency or on any other result or outcome of the work performed? Do you consider that other approaches or criteria should be applied? What cases do you think should be comprised in the concept “any other result or outcome of the work performed”?

- Q43: Do you agree on the approach to assess whether fees are dependent on the provision of ancillary services? Do you consider other approaches or criteria should be applied too? Do you consider that a risk indicator (percentage) between ancillary services fees and the rating and follow-up fees from a rated issuer or any related party can help to identify possible discriminatory practices? If so, what percentage do you consider appropriate? What would you consider a “significant” percentage?
- Q44: Particularly to CRAs: what are the criteria or practices you are applying or plan to apply to ensure fees are not dependent on the level of the rating issued by your agency or on any other result or outcome of the work performed? What are the criteria or practices you are applying or plan to apply to secure fees are not dependent on the provision of ancillary services?
- Q45: Particularly to CRAs: do you have cost synergies between rating services and non-rating services other than ancillary services? In that case, please specify what these synergies are and how costs for non-rating and non-ancillary services are allocated to your rating services?

IV.II. Fees charged by CRAs are required to be cost-based

- Q46: What are your views towards the approach that different business models and fee structures should be taken into account when assessing whether fees are cost-based?
- Q47: What are your views on the above approach to CRAs’ cost-structure? Do you consider other approach or criteria should be applied? If you agree with the above approach, what cost and non-cost components do you consider should be taken into account and periodically reported to ESMA to identify CRAs’ fee structure?
- Q48: Do you agree on identifying average costs per component, average cost per service and average costs per asset class in order to assess whether fees are cost-based?
- Q49: What is the frequency with which such reporting should be provided to ESMA?
- Q50: Particularly to CRAs: what is your current cost and fee structure? What are the relevant costs when issuing a rating? What are the criteria you are applying or plan to apply to demonstrate that fees are based on costs?

IV.III. On-going supervision on CRAs’ fees by ESMA

- Q51: Do you agree CRAs should periodically report to ESMA on the above list of information? Which frequency do you think it is more appropriate? Do you think any other information should be reported to ESMA?
- Q52: Do you agree that CRAs should report on an “event-based” basis to ESMA when relevant deviations from their pricing policies occur? Do you agree that CRAs should report on an “event-based” basis to ESMA when ancillary services fees exceed a pre-defined percentage with respect to ratings and follow-up fees?

Annex II - LEGISLATIVE MANDATE TO DEVELOP TECHNICAL STANDARDS

I. DRAFT RTS on STRUCTURED FINANCE INSTRUMENTS

The legislative mandate for the draft Regulatory Technical Standards to be developed subsequent to this Discussion Paper is to be found in Article 8b (3) of Regulation (EC) No 1060/2009 on credit rating agencies, as amended by the Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013.

Mandate to develop technical standards:

Article 8b

“2. The obligation under paragraph 1 to publish information shall not extend to where such publication would breach national or Union law governing the protection of confidentiality of information sources or the processing of personal data.

3. ESMA shall develop draft regulatory technical standards to specify:

- (a) the information that the persons referred to in paragraph 1 must publish in order to comply with the obligation resulting from paragraph 1 in accordance with paragraph 2;
- (b) the frequency with which the information referred to in point (a) is to be updated;
- (c) the presentation of the information referred to in point (a) by means of a standardised disclosure template.

ESMA shall submit those draft regulatory technical standards to the Commission by 21 June 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.”

Other relevant articles:

Information on Structured Finance Instruments (SFIs)

Article 8b (1)

“The issuer, the originator and the sponsor of a structured finance instrument established in the Union shall, on the website set up by ESMA pursuant to paragraph 4, jointly publish information on the credit quality and performance of the underlying assets of the structured finance instrument, the structure of the securitisation transaction, the cash flows and any collateral supporting a securitisation exposure as well as any information that is necessary to conduct comprehensive and well-informed stress tests on the cash flows and collateral values supporting the underlying exposures”.

Relevant recitals:

Recital 30 (of the Regulation (EU) No 462/2013, amending the Regulation (EC) No 1060/2009 on credit rating agencies):

“Furthermore, the ability of investors to make an informed assessment of the creditworthiness of structured finance instruments would be improved if investors were provided with sufficient information on those instruments. For example, as the risk on structured finance instruments to a large extent depends on the quality and performance of the underlying assets, investors should be provided with more information on the underlying assets. This would reduce investors’ dependence on credit ratings. Moreover, disclosing relevant information on structured finance instruments is likely to reinforce the competition between credit rating agencies, because it could lead to an increase in the number of unsolicited credit ratings. The Commission should, by January 2016, review and report on the appropriateness of extending the scope of that disclosure requirement to other financial products. For example, there are other financial products, such as covered bonds and other secured debt, where the risk to a large extent depends on the characteristics of any underlying collateral and where it could be relevant to provide investors with more information about the collateral”.

II. DRAFT RTS on THE EUROPEAN RATING PLATFORM

The legislative mandate for the draft Regulatory Technical Standards to be developed subsequent to this Discussion Paper is to be found in Article 21(4a) (a) of Regulation (EC) No 1060/2009 on credit rating agencies, as amended by the Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013.

Mandate to develop technical standards:

Article 21

“4. ESMA shall develop draft regulatory technical standards to specify:

(e) the content and format of ratings data periodic reporting to be requested from registered and certified credit rating agencies for the purpose of ongoing supervision by ESMA.”;

“4a. ESMA shall develop draft regulatory technical standards to specify:

(a) the content and the presentation of the information, including structure, format, method and timing of reporting that credit rating agencies are to disclose to ESMA in accordance with Article 11a(1);”

ESMA shall submit those draft regulatory technical standards to the Commission by 21 June 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.”



Other relevant articles:

Implementation of the central platform for credit ratings' information

Article 11a:

“European rating platform

1. A registered or certified credit rating agency shall, when issuing a credit rating or a rating outlook, submit to ESMA rating information, including the credit rating and rating outlook of the rated instrument, information on the type of credit rating, the type of rating action, and date and hour of publication.
2. ESMA shall publish the individual credit ratings submitted to it pursuant to paragraph 1 on a website (“European rating platform”).

The central repository referred to in Article 11(2) shall be incorporated in the European rating platform.

3. This Article shall not apply to credit ratings or rating outlooks which are exclusively produced for and disclosed to investors for a fee.’;”

Assessment of the possibility of creating one or more mappings of credit rating scales

Article 21:

“4b. ESMA shall report on the possibility of establishing one or more mappings of credit ratings submitted in accordance with Article 11a(1) and submit that report to the Commission by 21 June 2015. The report shall, in particular, assess:

- (a) the possibility, cost, and benefit of establishing one or more mappings;
- (b) how one or more mappings can be created without misrepresenting credit ratings in light of different rating methodologies;
- (c) any effects mappings could have on the regulatory technical standards developed to date in relation to Article 21(4a)(a) and (b).

ESMA shall consult EBA and EIOPA in regard to points (a) and (b) of the first subparagraph.’;”

Relevant recitals:

Implementation of the central platform for credit ratings' information

Recital 31 (of the Regulation (EU) No 462/2013, amending the Regulation (EC) No 1060/2009 on credit rating agencies):

“(31) Investors, issuers and other interested parties should have access to up-to-date rating information on a central website. A European rating platform should be established by ESMA and should allow investors to easily compare all credit ratings that exist with regard to a specific rated

entity. It is important that the European rating platform website shows all available credit ratings per instrument in order to allow investors to consider the whole variety of opinions before taking their own investment decision. However, in order not to undermine the ability of credit rating agencies to operate under the investor-pays model, such credit ratings should not be included in the European rating platform. The European rating platform should help smaller and new credit rating agencies to gain visibility. The European rating platform should incorporate ESMA's central repository with a view to creating a single platform for all available credit ratings per instrument and for information on historical performance data, published on the central repository. The European Parliament supported the establishment of such publication of credit ratings in its resolution on credit rating agencies of 8 June 2011."

III. DRAFT RTS on FEES CHARGED BY CRAs

The legislative mandate for the draft Regulatory Technical Standards to be developed subsequent to this Discussion Paper is to be found in Article 21(4a) (b) of Regulation (EC) No 1060/2009 on credit rating agencies, as amended by the Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013.

Mandate to develop technical standards:

Article 21

"4a. ESMA shall develop draft regulatory technical standards to specify:

(b) the content and format of periodic reporting on fees charged by credit rating agencies for the purpose of ongoing supervision by ESMA.'

ESMA shall submit those draft regulatory technical standards to the Commission by 21 June 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010."

Other relevant articles:

Annex I to Regulation 1060/2009, Section B "Operational requirements" is amended inserting a new point in 3:

3c. "A credit rating agency shall ensure that fees charged to its clients for the provision of credit rating and ancillary services are not discriminatory and are based on actual costs. Fees charged for credit rating services shall not depend on the level of the credit rating issued by the credit rating agency or on any other result or outcome of the work performed.";

First subparagraph of point 2 of Part II "periodic disclosures" of Section E "Disclosures" point (a) is replaced by the following:

"(a) list of fees charged to each client for individual credit ratings and any ancillary services;

(aa) its pricing policy, including the fees structure and pricing criteria in relation to credit ratings for different asset classes;"

Part III "Transparency report" of Section E is also amended replacing point 7 by the following:

"Financial information on the revenue of the credit rating agency, including total turnover, divided into fees from credit rating and ancillary services with a comprehensive description of each, including the revenues generated from ancillary services provided to clients of rating services and the allocation of fees to credit ratings of different asset classes. Information on total turnover shall also include a geographical allocation of that turnover to revenues generated in the Union and revenues worldwide;"

Relevant recitals:

Recital 38 (of the Regulation (EU) No 462/2013, amending the Regulation (EC) No 1060/2009 on credit rating agencies):

"(38) In order to further mitigate conflicts of interest and facilitate fair competition in the credit rating market, it is important to ensure that the fees charged by credit rating agencies to clients are not discriminatory. Differences in fees charged for the same type of service should only be justifiable by a difference in the actual costs in providing this service to different clients. Moreover, the fees charged for rating services to a given issuer should not depend on the results or outcome of the work performed or on the provision of related (ancillary) services. Furthermore, in order to allow for the effective supervision of those rules, credit rating agencies should disclose to ESMA the fees received from each of their clients and their general pricing policy."