



Date: October 10th, 2013

To:
European Securities and Markets Authority
103 rue de Grenelle
75007 Paris, France

Submitted via web

Reference: Consultation Paper 2013/891 entitled "Discussion Paper on CRA 3 Implementation" dated July 10th, 2013

Dear Sirs,

With reference to the publication of the above consultation paper, we are pleased to hereby submit the views of our association, which represents 8 of the ESMA registered credit rating agencies (CRAs) and an additional 4 registered or recognized CRAs outside of the European Union. Given that EACRA members are yet not deeply involved in the Structured Finance Market, our response relates mainly to the other two topics, namely the European Rating Platform and the fees charged by CRAs to their clients.

Attached to this letter are answers to the questions posed in the consultation paper but in the first instance, we would like to provide some general feedback on the proposals. Additionally, further to a number of comments raised by EACRA members, we would like to submit a proposed clarification as to the definition of "preliminary rating". Last but not least, we would also be appreciative if ESMA could formulate guidance relating to Article 8d.

On Fees charged by CRAs to their clients

EACRA supports the principle that fees charged by CRAs to their clients should be non-discriminatory and independent of the assigned rating. However, EACRA does not believe that requiring CRAs to adopt a purely cost-based approach to pricing, similar to the approach taken for certain utilities businesses, would be either effective or achievable, due to the differences between the two industries in terms of scope, structure, products and market. Therefore EACRA has fundamental concerns with the proposals outlined in the consultation paper and the potential impact on the competitive positions of smaller CRAs.

Recital 38 of the CRA III Regulation defines the background for the RTS on Fees charged by CRAs to their clients:

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 credit 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.

We draw attention to the first words of the Recital 38, namely "To further mitigate ...". This construction in itself indicates that the regulations envisaged in this paragraph should be secondary or subsidiary to existing regulations and principles targeting potential conflicts of

interest. For example, the initial CRA regulation already requires the strict separation of sales and analytical activities and that the remuneration of rating analysts should be independent of the revenue generated from clients.

Elsewhere in the regulation on CRAs, the principle of 'proportionality' is clearly set forward (eg exemptions under Art. 6.3 or Supervisory Fees on CRAs). In view of the secondary nature of the pricing paragraph, EACRA believes that the principle of 'proportionality' should also be applied with higher regulatory burdens for those agencies with dominant market shares and therefore the opportunity to price aggressively. Exempting the smaller CRAs from these additional reporting requirements on detailed costs per contract would prevent undesired negative consequences on competition. Indeed, the new regulatory requirement, if enforced as envisaged on all CRAs disregarding their market relevance, will increase entry barriers and hamper the growth of competition.

Given the wide variety of business models developed by CRAs and the fact that no single CRA is comparable to another one, we think that a purely cost-based approach will substantially increase the administrative burden on CRAs without generating the expected supervisory benefits. For example, defining what “actual costs”, “direct costs”, “indirect cost” are, is a complex topic and may possibly generate new potential conflict of interest. We would instead propose that fees charged by CRAs should be assessed against the published pricing policy.

We further believe of outmost importance that CRAs should retain flexibility in their pricing as it is also customary in other market segments, particularly competitive markets. Pricing must be flexible enough to take into account for example the size and complexity of the rated entity, as well as the competitive environment (e.g. 18 CRAs are active in the Corporate Market Segment!), the business cycle and the investments decisions required when entering into new market segments or geographies. Last but not least, given that access to finance for SMEs is a key topic and that new initiatives may emerge to facilitate and diversify funding, CRAs must also be able to propose a pricing policy affordable for these new issuers.

Each of these mechanisms is a recognized trading practice in all free and fair markets. Adopting regulations that constrain the ability of CRAs to use normal trading practices in order to enter and operate in an extremely difficult sector would have the consequence of reducing free trade within the market and would serve as a significant barrier to the ability of smaller CRAs to compete with larger agencies. EACRA believes that such a reduction in the ability of small CRAs to compete would be counter to the explicit intent of EU law-makers.

On European Rating Platform

Given the variety of business models, we kindly request that you precisely define the scope of ERP and more precisely the notion in 11a (3):

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

EACRA would highly appreciate if ESMA could enter into a specific dialogue with CRAs on this crucial issue, so that the boundaries of the ERP are clearly defined.

While the merging of reporting requirements under CEREP, SOCRAT and ERP could lead to some synergies to issuer-pays CRAs, given that ERP will cover only a share of all ratings, we propose that CRAs should have the option to opt-in into a single reporting framework. While ERP is meant for the wider public, SOCRAT is meant exclusively for supervisory purposes, it is therefore important that the single reporting clearly differentiates between the intended usages of the information..

With respect the technical specifications for ERP, we propose that you hold workshops with interested parties (users of ratings but also CRAs) to clearly define the extent of information to be available through the ERP and how information should be displayed. While the mapping of ratings can increase transparency and comparability, EACRA would stress that

this needs to be done carefully, taking into account both technical issues and the key goal of promoting market actors to perform their own assessment of credit risk.

In addition, introducing a document management system (eg for press-releases) may be complex and costly to implement. Therefore, we would instead propose that an appropriate outcome would be achieved by simply providing a direct link to the CRA's website with an instruction that additional information can be located from that website.

Finally, the design of ERP should undergo detailed cost-benefit analysis and should be executed within a strict budgetary limit in order to avoid unnecessary additional supervisory fees on CRAs.

On Structured Finance

As you know, EACRA members are not yet active in the Structured Finance Market and we are therefore not in the position to provide to you detailed feed-back on the questions raised. Nevertheless, we would like to address 2 points:

- In order to reduce the reporting requirement to issuers, we recommend that reporting standards to ESMA, the ECB, the BoE etc should be aligned as much as possible. Reporting different type of information in different formats to different entities is each time connected with additional costs.
- Given that CRA III mandates the rotation of CRAs in the re-securitisation segment, this market segment should be easily identifiable.

Preliminary rating

CRA III requires CRAs to disclose on their websites “preliminary ratings” without defining its exact meaning. The lack of a harmonized definition appears to be causing significant difficulties for both CRAs and ESMA and gives rise to a significant risk of inconsistent guidance being provided to different agencies. Therefore EACRA suggests the following tentative definition for your attention and consideration:

A preliminary rating is a rating requested by an issuer produced with the intention of making the rating generally public. A preliminary rating has undergone the full rating process and is subject to change only if financing terms are materially different from the originally envisaged. The publication of the rating needs to be approved by the issuer, its timing may depend on market circumstances

Preliminary ratings are subject to market conditions at the time of the capital market transaction. In case of changes of the financing terms, a preliminary rating may be adapted, usually in a limited range. In case of material adverse circumstances, the issuer would probably take an alternative route. Issuers have therefore the option to decide whether and when the rating shall be published.

In the practice of the capital market and of the Big Rating Agencies, though, preliminary ratings are “expected ratings” usually contingent upon the receipt of final documents conforming to information already received. Therefore, they are “full ratings” in terms of analytical process, rating approval process as well as public purpose of the rating, which is known since the beginning.

We think that the tentative description above contains important elements and allows for the distinction with other types of ratings:

- Private ratings: these are prepared exclusively for the acquirer and their subsequent publication is not foreseeable at the time of the mandate
- Rating indications: some CRAs may provide an indicative rating range to an issuer (for both, an unrated issuer and an issuer requiring a “what if” analysis). These are, in our opinion, equally private ratings as produced solely for the issuer.

Based on our experience, it is very important that corporates (especially the mid corporates, not yet acquainted to the capital market) have the possibility to approach a Rating Agency in a private way in order to understand how a rating process works and its impact on the company. Making this very initial process public would:

- Discourage companies from entering into the rating process
- Introduce competitive distortions among Rating Agencies, by making public an Agency's new customers

The objective of avoiding the practice of “rating shopping” could be reached by requiring the publication of preliminary assessments only in case the company has mandated at least two Rating Agencies.

Guidance on Article 8d

As you know, CRA III has introduced Article 8d regarding the “use of multiple credit rating agencies”. This Article is meant to increase competition in the market, but at present it is neither sufficiently precise nor operational. We therefore kindly ask ESMA works with EBA and EIOPA, to prepare guidance to issuers and related third parties on the application of this article. The guidance should contain recommendations such as:

- How the issuer (and also arrangers / Advisors) should familiarize with CRAs
- What type of information the CRA should disclose so that Issuers can easily find the required information: this may be a specific summary page at the CRAs website.
- How the documentation of the CRA selection by the issuer should be done.

With respect to the list you shall be publishing in accordance with Article 8d (2), please allow for the following recommendation:

- Given that Article 8d targets CRAs with less than 10% of the market share (measured against revenues), we kindly ask you to disclose only the names of the concerned CRAs without stating their respective market share. The same principle should apply for CRAs crossing the 10% market share threshold.

We thank you for the opportunity to provide our feed-back in this early stage and look forward to sound Draft Regulatory Standards. We remain at your full disposal for any clarifications on any of the above.

Sincerely yours

Thomas Missong
EACRA President

Thomas Morgenstern
EACRA Secretary General

About EACRA

The European Association of Credit Rating Agencies (“EACRA”), registered in Paris, was established in November 2009. The Members of the Association currently originate from 10 European countries and include the following companies:

A.M. Best Europe - Rating services Limited (AMBERS) is a subsidiary of A.M. Best Inc who have been providing ratings to the Insurance Sector since 1899. AMBERS' rating coverage includes regional, national and global insurers located throughout Europe, the Middle East and Africa.

Assekurata Assekuranz Rating-Agentur is the first independent German rating agency

that has specialized on the quality evaluation of insurance companies

Axesor: The first Spanish Rating agency registered with ESMA. Specialized in the middle market segment, with ample coverage of the Spanish corporate market.

Capital Intelligence (CI) offers independent rating opinions on financial institutions, corporates and governments in a wide range of countries, especially the emerging markets of Asia, Europe and the Middle East.

Cerved Group: Italian Credit Rating Agency recognized ECAI by Bank of Italy

Coface Services: French leader in business & marketing information and credit management solutions, providing a large range of tools to secure every step of companies' sales cycle and accompany their development

Creditreform Rating: based in Germany, a company of the Creditreform Group that is European market leader in the sector of business information was founded 2000 and is specialised in ratings of companies, bonds, funds and structured finance products across Europe..

CRIF: International Credit Rating Agency based in Italy providing both solicited and unsolicited Corporate ratings.

Fedafin AG : is registered with the Swiss Financial Markets Authority and acts as rating provider to the Swiss stock exchange

Informa D&B is the Marketing, Financial and Business Information leading company in Spain, offering currently more than 3.7 million online ratings on Spanish companies

Informa is the Marketing, Financial and Business Information leading company in Portugal, offering currently more than 820K online ratings on Portuguese companies

JCR Eurasia is an international credit rating institution based in Turkey.

National Rating Agency (NRA) is one of the leading independent rating agencies in Russia. As of today National Rating Agency has assigned ratings to over 750 leading Russian and international companies.

RusRating is a credit rating agency based in Moscow, with sister agencies in Armenia and Kazakhstan. It is accredited with the Ministry of Finance of the Russian Federation.

Scope was founded as an independent rating agency in Berlin, Germany, in 2002. The company is specialized in ratings and analysis of SMEs, bonds, certificates and funds across Europe.

The Members of the Association have very different business models while assigning ratings. All are deeply rooted in their respective markets; enjoy a high market share and a good reputation with local investors

Annex: Detailed Answers to questions Q21 to Q52

On European rating platform

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

We think that the current classification of ratings used under CEREP and SOCRAT should also be used for the European Rating Platform. This unique classification should be extended in case of need, (e.g. when new legal requirements appear such as the recent European Commission proposal on Money Market Funds which includes a reference to ratings but this segment is yet not covered). Such an extension will allow for comparability of ratings in such new segments. Of course, such an extension needs to be done based on a cost/benefit analysis and should not be introduced automatically.

Given that CRA III introduces the rotation requirement for “re-securitisations”, we would recommend that ERP also informs users which instruments fall under this classification.

With respect to the rating components to be reported, you are well aware of the fact that CRAs may use a wide range of rating scales with differing definitions. While additional scales provide additional insight, this additional information is valuable only to professional users of ratings. Indeed the additional information could cause significant confusion for less-knowledgeable users – a balancing act on cost/benefits would probably confirm the current requirements under CEREP/SOCRAT (where not all rating components are reported).

It is also important that ERP differentiates between the “Issuer rating” (the rating of the whole issuer) as opposed to the Issue rating (the rating of the financial instrument, which takes into account the seniority of the instrument, its collateral and cash waterfall procedures). While financial innovation does not set in stone the seniority of different instrument, a user friendly and easy understandable classification may be introduced (e.g. senior tranches, equal tranches to the overall issuer rating, junior tranches).

With respect to the rating action “change in the solicitation status”, please note that this may also trigger whether the rating is being displayed on ERP and when not. Article 11a (3) states that ERP does not apply to credit ratings (...) exclusively produced for and disclosed to investor’s for a fee”. We kindly ask you to clarify the important term of “exclusively” and propose that you discuss with each CRA whose ratings fall under this scope.

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?

Whilst EACRA thinks that supporting information on the assigned ratings (especially rating reports but also research reports) are essential to correctly understand the background for a CRA’s assessment, displaying only the press releases associated (or hyperlinks) with rating actions may not generate the desired effect.

From a technical perspective, the idea of including press releases (or hyperlinks) generates several challenges and is associated with administrative costs:

- Option 1: the CRA would need to upload the press-releases to the ERP, which costs time and requires a document-management system at ERP.
- Option 2: providing hyperlinks to the press releases results in nearly the same burden to upload regularly some information to ERP.

We instead propose that ERP provides a direct link to CRAs website and to the press releases there. Users of ERP will then discover not only the press releases but also all other mandatory disclosures by CRAs (e.g. Transparency report).

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?

While in theory the more information available on ERP the higher the return to the users, such a step may substantially interfere in some business models practices by CRAs (e.g. as CRAs may sell the reports). As long as ERP does not provide for the option to acquire documents/reports/ratings for a fee, ERP will always display a share of all information available. Similar to the terminology relating to ratings scales, there is no standard applied by CRAs for the different documents they provide.

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).

From a user’s perspective, the most important time information relates to the date of the rating action itself. For a user, we would suggest it is less important when this information was provided to ERP.

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?

In order for CRAs to be able to correct erroneous ratings before their publication at ERP, it is important that the concerned CRA is available to make such a change. Therefore in EACRA’s view the ERP must relate to the next working day. Moreover, as you be aware, working days differ between EU Members states, which will again create new challenges.

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.

We think that the most reliable and transparent option is “d”:

1. For users: as ERP would publish information in one set only, users will precisely know when this is taking effect
2. For CRAs: this will allow for the set-up of a precise reporting process and especially for a specific time-frame when to correct any errors.
3. For yourself: detailed reporting time-frames as well as periods for correcting the information can be set. This will ensure that the process as the right safety procedures.

You may consider changing the reporting cycle proposed. For instance, CRAs could report in the evening their rating actions and then immediately validate the data. Ratings would then be published the next day on ERP at say 7am (or one hour before the first EU stock exchange opens).

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)?

The ERP is intended to be simple and user friendly, we therefore think that introductory information should be provided and that users should not be overwhelmed with technical information. We think that the definition of default, the definition of the rating scale and of the

rating categories should be displayed. A link to the key rating methodologies as well as to the respective CRA should also be included.

Regarding the link to the CEREP database and the default rate for each rating product, we think that due care needs to be taken. Should the default rate relate to the specific CRA or to the specific market segment (rating product?) In both cases, given the structure of CEREP, situations may occur where the sample is very low and that one single default would lead to very high default rates. Displaying transition rates may equally not be achievable given the different rating scales used by CRAs.

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

Given the global scope of the LEI initiative, EACRA in-principle support this process. As the LEI is still in its implementation phase, it is important that, until the full-roll out of it, internal identifiers of CRAs are still usable (such as under the current CEREP system). CEREP currently uses the BIC identifier field and so it may therefore be appropriate to streamline this information over time.

With respect to the ISIN code for financial instruments, we think that this code is proprietary and its use may therefore generate costs. In case ESMA mandates the use of this code, associated costs should be borne by ESMA and not by each CRA (as this would again drive up costs).

Technically speaking, it should not represent a major challenge for CRAs to include an additional identifier but this will of course be associated with additional costs.

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?

Ideally, in the course of the implementation of the LEI, existing current identifier could be mapped by LEI. For instance, in the German Insurance market such identifiers exist on a national level already – mapping these to the LEI may be one quick route. We would expect that such unique identifiers are also available in other markets – this may substantially speed-up the roll-out of the LEI.

According to Directive 2012/17 regarding the interconnection of central, commercial and companies registers, a unique identifier (different from the companies' domestic registration n°), intended to be used for communication between registers, should be developed. We think that this initiative should also be linked/mapped with the LEI.

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?

We propose to organise some workshops with potential users of ratings and CRAs to discuss more precisely what type of information should be displayed at ERP and how.

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

We think that a website is the perfect mean to access the ERP as it allows for enough space to display information and enough flexibility. The risk of using smaller, hand-held devices is that information would need to be displayed more selectively which may undermine the comparability of ratings.

Potentially interesting for users of ratings is the option to synchronize via an interface their internal systems with the information available at ERP. Users of ratings would not need to synchronize their system with each specific CRA anymore.

Additionally, each additional way of publishing information is connected with additional costs. Given that ERP will be paid by CRAs through supervisory fees, we would welcome that ESMA keeps a close eye on associated costs.

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?

Some EACRA members operating under the investor-pays model see the potential benefit of merging the individual data feeds to ESMA as it reduces administrative costs. On the other hand, some EACRA members operate under the investor-pays model and are therefore not subject to report their ratings to ERP. Therefore, in order to take into account diversity of business models, we propose that CRAs should have the option to opt-in into an individual data feed at their own discretion. Of course, given that data stream is met to serve for specific purposes, we kindly ask you that information provided by CRAs having opted into the single data feed is treated with due care, such that the information is accessible only to the meant addressee.

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

Historic information on how the rating has evolved over time may be useful to users but taken alone may not be sufficient. As an example we would like to cite the Sovereign rating market: according to the legislation, solicited ratings should be published on Friday's while unsolicited ratings are limited to 3 dates a year. When comparing ratings actions across CRAs over time, users could potentially gain the impression that a CRA operating under the investor-pays model was late in taking a rating action.

Additionally, ERP is meant to publish “up-to-date” ratings and not historic rating information (which can be built for November 2012 easily by yourself). For some CRAs, having access to the rating history is a premium content.

Q35 and Q36: 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? 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?

Given that CRAs use highly differentiated rating scales (while symbols are sometimes similar, the number of rating categories and rating notches may differ), we think that including mapping of ratings to regulatory scales is an important feature to allow comparability of ratings. The mapping of ratings to the credit quality steps under the CRD IV package as well as under the Solvency II Regulation should be available by June 2014 and therefore in advance of the implementation of ERP. Until the publication of ERP, due care should be devoted to explain the meaning of the different mappings. Issues to be addressed are:

- The type of rating: point in time or through-the-cycle
- Underlying time frame (short term or long term)
- Market segments.

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

We think that the ECAI mapping is a very important element as it allows to the “transformation” of CRA ratings into specific credit quality steps which have been familiar to banks for quite some time. We therefore think that this mapping, as well as the mapping to the 7 quality steps under Solvency II for insurance companies, substantially contributes to enhanced transparency.

With respect to additional mappings, the primary question is who is the addressee (as a large share of potential users of ratings are already covered by the ECAI and Solvency II mappings). Depending on the addressee and the standards used by them, a mapping of ratings should be made available in order to allow comparability of ratings.

Of course, the more mappings of ratings to different regulatory scales are done, the more complex the picture gets and the less user-friendly it becomes.

Fees charged by CRAs

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?

EACRA believes that common pricing standards for the provision of certain services by one CRA should be the rule and not the exemption. Small pricing differences between different deals may occur in order to reflect the different commercial assessment of the importance of the deal to the CRA.

Given the diversity of business models in the CRA industry, we think that identifying common practices across CRAs will be largely unachievable. Common practices need foremost to be assessed against the effect on competition in the market – similar pricing behavior may well reflect a dominant position.

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?

While we understand your wish for constant and full reporting by CRAs to execute your supervisory duty, you will of course understand that any reporting activity is associated with administrative costs, which weigh more heavily on smaller CRAs. We therefore propose that CRAs should publish their pricing policy on their websites so that potential clients have a good guidance on the likely associated prices. In addition, a CRA should provide to you a more detailed pricing policy providing a more detailed insight on criteria for discounts and reasons and defining the process for deriving the prices.

We think that CRAs will keep a track-record of the pricing, not least as accounting requirements apply. We propose that CRAs could make available the information relating to fees on your demand.

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

With respect to the general pricing policy, we think that reporting should be event-based, when the CRA adopts a new pricing policy.

As mentioned above, in order to reduce the administrative burden on smaller CRAs, we propose that CRAs should keep record of their pricing and that information should be made available to you upon demand.

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

The CRA I Regulation already required CRAs to introduce several check and balances to ensure that the rating is independent from rating fees:

- Separation of sales and analysis function
- Remuneration of rating analysts to be independent from revenue / rating outcome.
- Numerous restrictions relating to the need to avoid conflicts of interest for rating analysts (e.g. non-acceptance of gifts)Detailed record-keeping in the context of the rating process
- Compliance officer to monitor that legal requirements on CRAs are respected
- Independent board members.

We think that these requirements already substantially contribute to the objective that fee's charged by CRAs are non-discriminatory.

Introducing a written policy regarding the pricing methodologies of CRAs will further underpin this objective while providing more transparency to the market.

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”?

The work performed by a CRA in order to keep its ratings up to date may be independent from the issuer itself. A CRA may for instance observe general economic trends or specific industry developments. While information on one specific issuer may not have changed, the CRA may none-the-less review the corresponding rating in order to reflect changes in the environment /industry perspectives..

In addition, some issuers being less familiar with the activity of CRAs or having complex structure or bigger size may require a far higher engagement by rating analysts in order to ensure that all information required is available in full. Such information gathering exercise may some times consume substantial time and cannot (unfortunately) be assessed upfront to the rating process.

In order to ensure that ratings are up-to-date and reflect the information available, a cost based approach could create substantial negative effects. For example, where an issuer is aware of the fact that the CRAs bills the issuer for the work undertaken (eg reading of latest reports), this could lead to a reluctance to provide key information to CRAs in a timely manner which could severely undermine the integrity and quality of the rating.

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?

While we agree that the fees charged by a CRA should not depend on the level of ancillary services, we don't agree that a ratio of “ancillary services” to “rating fees” is the appropriate risk indicator given that the definition of “rating fees”, “ancillary services” (and “none rating activity fees”) may substantially differ across CRAs. Ratios based on the different types of revenues may therefore generate fundamentally different values.

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?

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?

We fully agree with your analysis that “there is not a single business model or cost structure in the CRA market”. Beyond the pure issuer-pays model and the pure investor-pays model there are several other business models in operation and there is also the potential for further models to be developed:

- Pure issuers-pays model: issuer pays the rating agency for assigning the rating. The rating could be disclosed publicly and research reports (rating reports) are freely available on the website of the CRA.

- Issuer-pays with investor-pays components: the issuer pays the rating agency for assigning the rating. The rating may be publicly available at the issuer’s website, information at the CRAs website requiring a paid access (to read reports and ratings)
- Mixed model: in this case, the CRAs generates approximately the same share of revenues from issuers and users. The CRA usually charges issuers for the rating (but may also do an unsolicited ratings if required to provide users the expected coverage) and charges users for access to ratings/reports.
- Investor-pays model: the CRA generate its revenues exclusively from users of ratings and does not receive fees from rated entities. While public, Ratings are not in the public domain. Users may buy single reports or have a subscription.
- Special model: a CRA may have a framework agreement with an entity representing several issuers to rate all their members.

These business models need to be complemented by the market segment coverage and geographic coverage of CRAs. We therefore think that each CRA is a specific case for itself and should therefore be analyzed individually based on its own profile.

During the public hearing on this discussion paper in Paris, ESMA mentioned that the benchmark regulation in the Electric Utilities and Electronic Communications field are not a good guidance for CRAs. We agree with you that CRAs and Utilities cannot be compared given following key differences:

- Utilities usually have a natural monopoly position on the market they serve given the high initial investments into the asset infrastructure. By contrast, CRAs operate in a competitive market, and need rather to invest into intellectual property in its widest sense (which includes cost of methodologies, HR costs, reputation etc).
- Utilities deal with private customers and consequently consumer protection is of paramount importance. Utility tariffs therefore need to take into account access to service as well as affordability. Ratings are instead intended for the use of professional players (investors or corporations) Given the above differences between CRAs and Utilities, we believe that the benchmark regulation cannot serve as a good guidance to assess the pricing/cost structure of a CRA.

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?

Rather than entering into the micro-management of an agencies cost structure and pricing behavior, we think that a more efficient route is available: the monitoring of prices against the published pricing schedules. Large discrepancies between billed fee’s and the published pricing schedule could easily be identified by ESMA and CRAs should then provide explanations on the reasons for the deviation. Reasons for deviations in both directions could include a.o.:

- Complexity and size of the entity rated: assessing upfront the full analytical work required to assess the credit quality of an issuer is practically speaking impossible. While size could be used as a proxy of complexity, quality and quantity of information available from the issuer cannot.
- Pricing power of client (whether issuer or user of ratings): in all industries, larger clients have a greater pricing power than smaller ones – the CRA industry is clearly not an exemption of this general business rule.
- Strategic importance of the deal to the CRA (e.g. for reputation impact; market entry;..)

- Competition in the market: in some market segments, especially in the Corporates market segments, there are several players in the market.

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?

We don't think that benchmark calculations for average costs component will be achievable or will provide any meaningful information. Cost positions (e.g. HR costs or rents) substantially differ across the European Union. Additionally, accounting standards may provide for different treatments of cost positions (e.g. rating methodology development costs being amortized over time or expensed through the P&L). Furthermore some potential costs positions (eg. Reputation, civil liability and return on capital) may be hard to assess upfront. Last but not least, making the boundary between fixed and variable cost as well as direct and indirect costs may be difficult to achieve.

Identifying costs per asset class will not provide more guidance. CRAs active in several market segments and asset classes may choose to cross-subsidizes some activities for the benefit of other segments – average figures may therefore be distorted.

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

Point 2 of Part II of Section E of Annex I of the EU Regulation (as amended) states that CRAs shall disclose **annually** information on their clients and on their pricing policy. We think that this annual requirement is appropriate and corresponds to general market practice in other industries where prices are revised once a year (eg. to take into account inflation adjustments).

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?

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?

Any reporting obligation to your esteemed institution is connected to an administrative burden to CRAs. This reporting requirement weights substantially on smaller players as these costs cannot be spread across a larger organization. We therefore propose that the reporting requirements should be proportionate to size and number of rating of the CRA and its actual possibility to impact the market functioning: smaller agencies should make available to you the information upon request or maximum on an annual basis where large agencies (with systemic importance) should report more frequently.

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?

We don't think that an event-based approach is an appropriate route to take. What constitutes a triggering event for reporting is subject to the business model of each CRA and possibly to the opinion within a CRA. Regular reporting ensures that you have the regular flow of information in order to execute your supervisory function – given your supervisory powers, you may at any time require additional specific information from an CRA or even undertake site visits.