Date: February 20th, 2013

To:
European Securities and Markets Authority (ESMA)
Rue de grenelle
75008 Paris – France
Via: www.esma.europa.eu

Reference: consultation paper 2012/841 on Guidelines and recommendations on the scope of the CRA regulation

Dear Sir,

Reference the publication consultation on the scope of the EU regulation on Credit Rating Agencies launched by your esteemed institution on December 20th, 2012, we hereby submit our contribution. Defining the exact scope of the EU Regulation on Credit Rating Agencies is of crucial importance to consumer, investors, issuers, supervisors and agencies a like. We therefore highly welcome the opportunity to provide our views on the different topics raised . Our comments relate to 1) the obligation to register and specific disclosure best practices, 2) credit ratings and credit scores, and 3) private ratings.

Obligation to register and specific disclosure best practices

Whereas Article 2 (1) of the CRA Regulation in connection with Article 14 (1) requires the registration with your institution to conduct credit rating activities, Article 2 (2) equally provides for several participants not to register (private ratings, credit scores, credit ratings from ECAs, credit ratings from central banks).
Article 4 (1) of the CRA Regulation defines that the following financial market participants MAY use ratings for regulatory purposes [insert players]. Given that ratings from registered agencies may be used throughout the European Union, ratings may provide access to a very large funding base or to a vast number of customers using ratings e.g. for benchmarking purposes, or to know more about their customers or prospects.
The registration status as CRA may therefore be attractive from a commercial perspective, but needs to be weighted against the "number of substantive and procedural requirements" that apply to the registered or certified CRAs. Beyond Article 4 (1), the CRA regulation does not define any other purposes, such as non-regulatory purposes.

Whereas the term "NRSRO" can be used in the US only by agencies registered with the Securities and Exchange Commission, the EU regulation on CRAs does not provide for such a "protected" designation (such as "rating", "credit rating", "credit rating agency" or "CRA") and even restricts in Article 10 (6) the use of the registration status by registered players.

Therefore, we recommend that all players use the term "rating" only for activities within the scope of the CRA regulation. Additionally, all players should provide on their websites a link to the list of registered and certified credit rating agencies maintained by your institution. This will substantially increase transparency in the market and ensure the right use of the different assessments.

Currently, 18 credit rating agencies are registered with your institution. As you know, some of these players are not exclusively providing credit ratings but also credit scores, market signals information and other business activities. We therefore welcome your approach in collaboration with national competent authorities to contact all players on the market to clarify whether the activity falls under the scope of the CRA regulation or not.

We recommend that all players shall state which of their activities fall under the scope of the CRA regulation and which are not connected to this registration.

Credit rating activities and credit scoring

We don't agree with §29 that the fact of issuing creditworthiness assessments "using an established and defined ranking system or rating categories" automatically triggers registration as this short definition could equally be used for credit scores exempted from registration according to Article 2 (2) of the regulation. Whereas some jurisdictions may command the use of specific rating scales (such as Chile), this is not the case in Europe, players been allowed to define their own scales. Whereas most registered players use a very similar scale (AAA, AA,…) their exact meaning of the different categories may differ – additionally a number of agencies use very different symbols.

The CRA III regulation (which was adopted in the European Parliament Plenary in January 2013) introduces a new definition for "credit scores": "credit score" means a measure of creditworthiness derived from summarizing and expressing data based only on a pre-set statistical system or model, without any additional substantial rating-specific analytical input from a rating analyst". (new item (x) in article 3.1).

"Credit Scores" as well as "credit ratings" therefore both relate to "creditworthiness". In order to distinguish the two types of assessments, we propose a comparative table as enclosed to this letter. Ideally, a more detailed set of criteria could be developed based on which creditworthiness assessments providers (whether scoring or rating) would / should be assessed.

In case such a provider complies with all material substantive and procedural requirements of the regulation (including the targeted use of ratings under Article 4.1), a registration with your institution as CRA would become mandatory. We would welcome assisting you in more details in the development of such key criteria in this context.

On the practical examples on page 12 of your consultation:

- we do not necessarily agree with example 2. The CRA regulation does not define any specific rating scales and registered players may use very different scales or within a different context. "A discrete scale encompassing symbols commonly used for credit ratings" cannot be the single element triggering a registration. "a mechanism for stabilizing the outcome of the risk analysis" is equally not a triggering element, as such mechanism may be also automated.
- We do not agree with your conclusion for example 3: the simple "transformation of qualitative information into numeric input (…) by the analyst" cannot trigger registration either. The CRA regulation requires in Art 8 a "thorough" analysis which goes beyond such transformation exercise.
- We agree with the conclusion in example 4 – from a more general perspective, only entities carrying out own assessments should be subject to supervision, other entities

providing summaries or collecting data from CRAs should not be subject to registration.

A clear reference should be done by all players to what does and what does not fall under the scope of the Regulation.

Private ratings

In general, a private rating (not falling under the Regulation) should be a credit assessment which – although may meet the requirement of a credit rating in terms of output – is provided only to the requiring party.

We agree with the practical example on page 13 as it implies that the private rating was ordered by the rated entity itself.

But as an "individual order" may come from further / other sides, we kindly ask you to clarify the following examples:

- a bank request a private rating on one entity as it is working on a club-deal (limited syndication) transaction in order to place it with other banks/investors. The bank requesting the rating has its own assessment but wants to provide other banks with an external, third party opinion (as a benchmark).
- a bank (or any other user as defined under Article 4 (1)) request assements on a number of entities in order to benchmark its own system and to have a second opinion. The bank engages not to disclose the rating to any other third party. The bank would use its own rating assessments for regulatory purposes.
- a supplier requests a private rating on one of its customers or prospects.

In all cases, we would assume that these ratings would be considered as "private", therefore not subject to the CRA regulation.

We kindly ask you to clarify the following case: if a credit assessments provider receives two or more individual orders, from different customers and not a the same time, for a private rating on a same entity delivered individually to each of these customers, it is a private rating, provided that in both case there has been a specific analysis and the provider has not simply delivered the previous assessment to the following customer. The two analyses may still result in a similar output.

In order to ensure the correct use of these private ratings, we support the best practice proposed in §39, namely that agencies should disclose that such ratings are private and therefore not usable for regulatory purposes under Article 4.1, that they are strictly confidential and further distribution is limited or restricted.

Whereas we share the spirit of §42, namely that agencies should retain from issuing a private rating if they can reasonably assume that the rating would become public, we think that agencies cannot be held liable for the further use or misuse of the rating – the more we support the disclosure requirement that "private rating" should be marked and explained.

With reference to §40, we would like to repeat our public comment during the public hearing held on January 22nd that the word "outside" should be replaced by "inside"

Some further comments:

On §25: whereas ratings from 10 countries can currently be endorsed by systemic rating agencies, the certification procedure is currently possible for agencies based in 4 countries only. We therefore call on your institution and on the European Commission to undertake the activities required in order to allow more players outside of the European Union to get certified in Europe – this will broaden the choice for investors and contribute to an enhanced own assessments by these investors.

On §27: given the requirements of the CRA regulation, we agree that only legal persons can apply for registration

CRA III introduces a new requirement regarding “preliminary ratings” (A credit rating agency shall disclose on its website, and notify ESMA on an ongoing basis, information about all entities or debt instruments submitted to it for their initial review or for preliminary rating. Such disclosure shall be made whether or not issuers contract with the credit rating agency for a final rating). While drafting these regulatory standards, we welcome if the term “preliminary rating” would be defined more precisely.

Thomas Missong	Thomas Morgenstern
EACRA President	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 8 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
- **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 Rating (former PSR RATING)**, based in Germany, focuses on solicited corporate ratings and the development of valid rating systems

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

Enclosure A: comparative table between credit scoring and credit rating

	Credit scoring	Credit rating
Definition	"credit score" means a measure of creditworthiness derived from summarizing and expressing data based only on a pre-set statistical system or model, without any additional substantial rating-specific analytical input from a rating analyst. (new item (x) in article 3.1 as adopted in political trialogues on CRA III in December 2012 – entry into force likely Q2 to Q3 2013)	'credit rating' means an opinion regarding the creditworthiness of an entity, a debt or financial obligation, debt security, preferred share or other financial instrument, or of an issuer of such a debt or financial obligation, debt security, preferred share or other financial instrument, issued using an established and defined ranking system of rating categories; Article 3.1.a of CRA Regulation 1060/2009
	"credit scores" as "credit ratings" both relate to creditworthiness. The difference lies in the process and the "substantial rating-specific analytical input from a rating analyst".	
Objects analyzed	Individuals and Corporates	Corporates, Banks, Insurances, Sovereigns, Municipalities, Structured products
Number of appraisal issued	Very high, covers usually a large share of the full population	Low
Time Horizont	Usually up to one year (Short term exposures)	From one up to 5 years (depending on the credit rating agency) – long term exposures
Type of assessment	Exclusively "point-in-time" assessment (PIT) relating to a specific date. Scores may therefore substantially change from year to year.	Most frequently "through-the-cycle" assessment (TTC), smoothening the rating over time and thereby reducing its volatility. Some agencies also apply the PIT concept.
	In order to allow for the correct use of assessments from different sources by investors, we recommend that all providers of creditworthiness assessments state which concept they are applying.	
Scales and outlooks	Usually one single ranking scale, no indication on the likely evolution of the score	Several scales may be used in order to reflect special risk (eg currency and country risk) or time dimension (short term, medium, long term). CRAs may also assign rating outlooks as an indication over the likely development of the rating over time
Process	Mainly based on a automatic system, where scores are assigned automatically: with automatic integration of new data in the database, when available from public or private sources. The process includes the cross-checking and linking of information from different sources.	Mainly based on a human analysis The definition of 'credit rating activities' in Article 3.1(0) (means data and information analysis and the evaluation, approval, issuing and review of credit ratings) excludes the automatic assignment of a rating without human intervention.

	Some scoring process may also integrate a "human" analysis part. The main difference with rating will be how substantial or thorough is this human analysis.	Additionally, Article 8 states that "A credit rating agency shall adopt, implement and enforce adequate measures to ensure that the credit ratings it issues are based on a thorough analysis of all the information that is available to it" A thorough analysis goes beyond the cross-checking of information of different sources as it includes a critical expert review.
Reports	Usually produced automatically	Tailor-made report containing substantial non-standardized texts.
Human contribution	In case of new qualitative information that could not be efficiently taken into account as a simple coded data field and then processed in an algorithm, human contribution may be required if described in the methodology. Considering the number of scores issued and the price to access them, this contribution is usually ~~very~~ limited in scope.	Art 3.1(d) states that an 'rating analyst'(..) performs analytical functions that are necessary for the issuing of a credit rating; Rating analysts may for instance adapt financial statements in order to take into account different accounting standards. The rating may take a forward looking approach which includes the critical, expert based review of financial projections. Rating analyst usually also take into account specific industry related developments and carry out peer group reviews. Other sectors of analysis usually cover the corporate governance structure, the strategy and the financial policy
Assignment of score/rating	Automatically or by an Analyst if required by the methodology.	A proxy structure is formalized.; the process splits responsibility between rating proposal and rating decision.
Publication of score/rating	Not published. Scores are available against the payment of a fee, on subscription or not.	Depending on the business model of the agency, ratings may be publicly available or only against payment of a fee/subscription. These fee's are usually far higher than those associated with credit scores