



Date: April 27th, 2011

To
European Securities and Market Authority
11-13 Avenue de Friedland
75008 Paris

Via www.esma.europa.eu

Reference: Consultation Paper ESMA/2011/114 regarding ESMA's technical Advice to the Commission on Fees for CRA Supervision

Dear Sir,

With reference to your public consultation on Fees for CRA Supervision launched on April 15th, 2011, kindly find attached the response of our association.

Q1: Do you agree with ESMA's preferred option to raise a periodic supervisory fee? Do you agree with the proposed fee calculation method to ensure that the fee is proportionate to the turnover of the CRA?

We fully agree that, in principle, periodic fees would be simpler to calculate and implement than activity specific fees, as stated in the consultation document.

However, we should highlight that the proposed calculation method for periodic fees in fact would prevent individual CRAs from proper planning and budgeting supervisory costs. Indeed according to the proposed fee calculation method the amount of fees due cannot be estimated by any CRA in advance with respect to the calculation period because two of the three variables it depends on (i.e. ESMA's budget for CRA supervision and total turnover of registered CRAs) shall be considered as fully independent variables with respect to individual CRAs. Proper planning of periodic fees, in our opinion, would require a review of the calculation method and disclosure on determinants of the budget for ESMA CRA supervision. Unless, the proposed calculation method for periodic fees is amended to allow proper planning of periodic fees and, at the same time, to avoid charging unfair or disproportionate financial and administrative burden on some CRAs and distorting competition, activity specific fees may be a better solution.

Indeed, even activity specific fees would require adequate disclosure of the relevant supervisory activities, as well as of the criteria and parameters used for determining fees to be charged for each activity.

As for the method for calculating periodic fees, the proposed method do not take into account that a registered CRA turnover might be generated by activities other than credit rating activities and periodic fees seem to be based on a CRA total turnover. If this is the case, the proposed approach would penalize small and medium sized CRAs which are developing their credit rating business besides their traditional non credit rating business, and discourage new players from entering the credit rating market in Europe. On the other hand global groups could have the possibility to exploit cross-border activities and accounting policies to channel their turnover, thus minimising their supervisory costs (a risk acknowledged in the consultation document).

We therefore suggest to base periodic fees calculation on the turnover from credit rating business only; this approach would distribute the supervisory burden on registered CRAs reflecting their relative role and weight in the EU credit rating market; at the same time this approach would promote competition and allow new players entering the EU credit rating market. In addition, we propose to include the turnover of endorsed and certified ratings as this will circumvent any regulatory arbitrage and ensure a level-playing field for all ratings used for regulatory purposes in Europe.

Moreover, since turnover is at least an imperfect proxy of complexity of a CRA, the proposed approach may lead to unfair financial burden being charged on small and medium sized local CRAs which may generate their turnover from a relatively simple business model (e.g. not issuing ratings for structured finance instruments, with no branches nor plans to endorse ratings), with respect to global players. We therefore, suggest to set bands also for periodic fees, in line with the proposed approach for registration fees, taking into account indicators of complexity (e.g. exemption under Article 6.3 of the Regulation; type of credit ratings issued; number of branches; endorsement of credit ratings) besides pure dimension criteria (e.g. turnover, number of employees) which are heavily affected by the business model each individual CRA implement but do not necessarily imply more complexity or higher supervisory costs.

Setting bands could contribute to create a more levelled playing field and promote competition in the EU credit rating market. These bands may be associated with a common minimum fee and a maximum fee differentiated according to well defined criteria representing CRAs complexity.

Q2: Do you agree that the minimum supervisory fee is charged regardless of the annual turnover of the CRA? Do you agree that this fee amounts at least around 2,000 - 5,000 euros?

In general terms, if periodic fees are charged, we agree with setting minimum fee regardless of the annual turnover of individual CRAs since supervisory costs could not be considered perfectly proportional to the size of the supervised entity.

On the other hand, we propose that accordingly a maximum fee is also set, as a percentage of the turnover of each individual CRA, in order to facilitate proper cost planning by registered CRAs.

Q3: In case that audited revenues are not available, what should be the basis for calculation of the supervisory fees?

If periodic fees are charged, we agree to using fully audited accounts for turnover calculation. However, since most registered CRAs are expected not to be listed companies, generally they would not produce interim audited accounts. Thus, the calculation method proposed in Option 2 would discriminate CRAs on the basis of the date of closure of their financial year and impose significant additional financial and administrative burden on those CRAs closing their financial year at 31st December. At the same time the proposed method does not provide harmonisation in the calculation of the turnover of all CRAs because the relevant audited accounts seems to be referred to any time in the second half of the calendar year.

In order to avoid charging unfair or disproportionate financial and administrative burden on registered CRAs, the amount of periodic fees may be calculated on an accrual basis: at the beginning of each calendar year an advance would be payable using the last available audited accounts to calculate a CRA turnover, and balance could be determined at the end of June using the audited accounts published in the meantime.

Q4: Do you agree that a flat fee for certification applications is established? Do you agree that the fee amounts around 2,000-15,000 euros?

No, if periodic fees are charged. Since ratings issued by certified CRAs can be used for regulatory purposes in the EU, the turnover of certified CRAs should be included in the basis for the calculation of periodic fees.

Q5: Do you agree that an annual flat supervisory fee for certified CRAs is established? If the CRA is certified during the course of the year, do you agree to charge this supervisory fee on a pro-rata basis? Do you agree that the fee is set at a level close to the amount of the minimum supervisory fee?

No. We reject the flat annual supervisory fee for certified CRAs as it distorts competition in the EU credit rating market.

On the other hand, if periodic fees are charged, we agree that supervisory fees should be calculated on a pro-rata basis for any CRA registered during the course of the calendar year.

Q6: Do you agree with the criteria ESMA is considering for establishing the fee bands (i.e. type of credit ratings (structured finance instruments), existence of branches and use of endorsement)? Do you agree with the criteria ESMA is considering to establish the exact fee amounts within the bands (i.e. number of employees)?

We support the differentiated approach for defining the registration fee bands as it reflects the higher assessment need depending on the type of application. Next to the criteria of number of branches, the use of endorsement and the rating of structured finance, we propose that the systemic importance of an agency could be considered.

Given that the supervisory fee bands proposed are rather large, we would expect more clarification on these bands as well as the exact fee calculation criteria.

Q7: Do you agree that the registration fee is partly reimbursed in case of withdrawal of the application? Do you agree with the reimbursement proportions which ESMA is considering for its advice?

Yes, we do agree with the principle that registration fee should be reimbursed in case of withdrawal of the application and agree with the shares stated.

Q8: Would you be in favour that the supervisory fees are paid in one single payment per year (option 1) or in two payments per year (option 2)? Would you agree with the proposed dates?

We suggest using two payments during the year. In order to avoid charging unfair or disproportionate financial and administrative burden on registered CRAs, the amount of periodic fees may be calculated on an accrual basis: at the beginning of each calendar year an advance of about a half of the total amount calculated for the year would be payable using the last available audited accounts to calculate a CRA turnover, and balance could be determined at the end of June recalculating the fees in order to take into account any change in the number of registered, certified and endorsed CRAs, as well as publication of updated



audited financial accounts published in the meantime. The second payment would be due in September

Comment on 2011 Fee

ESMA is considering levying a Supervisory fee already for the year 2011. With reference to the EU Commission impact assessment accompanying the amendment of the EU Regulation on CRAs, supervisory fee's for 2011 were meant to be financed out of the Community budget. Given the high restructuring and administrative expenses on CRAs already, we highly recommend introducing the fee's on CRAs only by 2012.

Comment on 2012 Fee

Whereas the EU Commission impact assessment accompanying the amendment of the EU Regulation on CRAs dated June 2nd, 2010 assumed a budget of EUR 2.5 million per year for supervisory activities, you are currently envisaging a budget of EUR 3 million. We therefore call on your esteemed institution to keep budget expenses under strict control and commensurate to the tasks assigned.

Sincerely yours

Thomas Missong
EACRA President

Thomas Morgenstern
EACRA Secretary General

About EACRA

The European Association of Credit Rating Agencies ("EACRA"), registered in Paris under the laws of France, has been formally established. The Members of the Association currently originate from 7 European countries and include the following companies:

- Assekurata Assekuranz Rating-Agentur is the first independent German rating agency that has specialized on the quality evaluation of insurance companies
- Axesor: Specialized on Spanish SME unsolicited ratings/scorings.
- Cerved Group: Italian Credit Rating Agency recognized ECAI by Bank of Italy
- Credit Rating: covers corporate, financial institutions and municipalities in Ukraine
- CRIF: global company that, in addition to the traditional services of information and scoring, started last year a professional activity aimed to issue unsolicited ratings to Italian companies
- JCR Eurasia: is Japan Credit Rating affiliated company in Turkey and covers all market segments.
- 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. In addition EACRA is in close contact with nearly all rating agencies in Europe.