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18 March 2019

Submitted by email

Dear Sirs

Response to ESMA Consultation Paper – Guidelines on Disclosure Requirements applicable to Credit Ratings

The International Capital Market Association (ICMA) is providing feedback on the consultation (the “Consultation”) on the [Guidelines on Disclosure Requirements Applicable to Credit Ratings](#).

ICMA is a membership association, headquartered in Switzerland, committed to serving the needs of its wide range of members. These include private and public sector issuers, financial intermediaries, asset managers and other investors, capital market infrastructure providers, central banks, law firms and others worldwide. ICMA currently has 540 members located in over 60 countries. See: www.icmagroup.org. ICMA’s transparency register number is 0223480577-59.

This feedback is given on behalf of the [ICMA Corporate Issuer Forum](#), which gathers senior representatives of a number of major corporate issuers in the euro markets. This feedback is restricted to 3 questions set out in the Consultation: question (2) (relating to Disclosure Requirements for Credit Rating Press Releases) and questions (4) and (5) (relating to Environmental, Social and Governance Factors under the CRA Regulation).

(1) Disclosure Requirements for Credit Rating Press Releases

Question 2:

Do you agree that a standardised scheme indicating the rated entities’ level of participation would be beneficial? Do you have any comments on the proposed standardised scheme?

1. We welcome efforts to improve the quality and consistency of information disclosed alongside the issuance of a credit rating in a publicly available press release, and to collate a set of good practices in a single document covering the disclosure requirements that are applicable to credit rating agencies (CRAs) press releases. Given that CRAs operate on a global basis, and the need to ensure consistency of practices, it would be helpful to have some guidance from ESMA as to the intended scope of jurisdictional application of the guidelines, which we would assume to be on a global, rather than European, basis.

2. As for elements of the CRA Regulation which should apply to the announcement of a credit rating, of particular significance to corporate issuers is the case of unsolicited ratings. This response is therefore limited to the application of the guidelines to disclosure requirements for unsolicited ratings.
3. Given that the guidelines relate solely to disclosure requirements on CRA press releases, we make no comment on the relative merits or demerits of the practice of issuing unsolicited ratings as a whole, or on the commercial outcome or competitive tensions for rating agencies of issuing unsolicited ratings. We do however set out the impact of the practice on issuers with a view to ensuring that when the practice does occur, sufficient visibility is given in the associated press release to the fact that the rating is unsolicited.
4. Currently, the CRA Regulation provides that a prominent statement is required (i) that the rating is unsolicited using clearly distinguishable colour code and (ii) as to whether the unsolicited credit rating agency had access to the accounts, management or other relevant documents for the entity.
5. Knowledge of whether a particular rating is solicited or not is important information for the user in providing context to the issuer's level of participation in the rating process, and to allow the user to understand the solicitation status of a rating without recourse to the CRA's website. However, we understand that the CRA Regulation itself may exercise a degree of flexibility when it comes to ensuring compliance with the CRA Regulation requirements, and further that CRAs may take different approaches as to how these requirements are met.
6. An unintended consequence of release of an unsolicited rating is that it may be in direct contradiction to the existing, solicited ratings, which may result in confusion for the user. It can also be harmful to the reputation of the issuer, and can have an impact on which of the indices an issuer's bonds can be included. This is particularly the case if the consequence of the unsolicited rating is that the issuer's bonds are included in a lower-rated index; any differential between the issuer's solicited rating and the appearance of its bonds in a lower rated index could mislead the user, particularly if unexplained.
7. It is of utmost importance to understand the basis upon which the unsolicited rating is released; often, it will be based on publicly available information, with the senior level discussion between the issuer and the CRA being reserved for a solicited ratings process. While the rating agency *may* share drafts of its report with an issuer once the unsolicited rating has been assigned but before it has been published, it is not compelled to do so. In any event, any such communication with an issuer may only extend to a discussion of the publicly available information and correcting factual errors, and is likely not to be extensive enough to influence the outcome of the unsolicited rating process and the quality of the ensuing rating.

This is particularly the case if there is not an existing relationship between the issuer and the CRA (or even the individual analyst) upon which a more informed judgment-based view can be formed by the CRA, rather than short-term knee-jerk reaction based on publicly available information. This can result in an ill- and/or under-informed assessment of the issuer, leading to a poor quality rating.

8. The proposed schematic currently requires an indication of participation of the issuer or related third party, and an indication of whether access to accounts was granted, but it is critical to qualify and quantify the level of the issuer's participation beyond simply box-ticking in a schematic. For instance, having the issuer review the ratings report for factual accuracy may be considered by

some to constitute participation of the issuer, but clearly that is not qualitative participation, and a different level of participation might result in a different (higher) rating. The schematic therefore needs to extend to be much more descriptive of the levels of participation, including whether access was granted to non-public information by the issuer.

9. It is important to understand the difference between accounts, which are typically publicly available on the issuer's website, and other documents, such as budgets and financial projections, which are not (it being more unusual for the CRA to have access to such documents for unsolicited ratings). This nuance could inform how a user treats the unsolicited rating, or the importance it attaches to it. Therefore, "access to accounts" in the schematic should be expanded to include the details - and the provenance - of the information used.
10. Often, unsolicited reports are published without the issuer's knowledge, which renders the process completely outside of the control of the issuer. But given current practice of issuing unsolicited ratings, at the very least the rating agencies should be required to specify unambiguously, clearly and visibly at the top of every page of the press release (and associated report, if any) the fact that the ratings were unsolicited.

Although this Consultation relates to press releases only, a similar specification should also be required for communication of unsolicited ratings by CRAs to other platforms. Ideally, a similar requirement would apply to other data providers who are replicating the rating without signalling whether it is solicited or not; but more and better visibility on a rating's status in a press release might encourage other users to identify the same. It should be noted that colour coding may not be picked up by other platforms, so might not be enough of an indicator.

11. The schematic should also include (this is a non-exhaustive list): the rationale for carrying out the unsolicited ratings exercise, the source of the information relied upon for the unsolicited rating, any efforts made to substantiate the information relied upon, and a link to the particular CRA's policy on unsolicited ratings.

(2) Environmental, Social and Governance Factors under the CRA Regulation

Questions (4) and (5):

Do you have any comments on the proposed Guidelines under this section?

Are there any additional actions that CRAs could take to improve the disclosure of the consideration of ESG factors?

1. We welcome efforts to improve the quality and consistency of ESG-related disclosures in credit ratings and outlooks, which could give users greater clarity and information on whether and how ESG criteria have been considered as part of a credit rating or outlook.
2. The Guidelines use as a point of reference the EC's Action Plan for Sustainable Finance (the 'Action Plan'), yet draw no distinction between what falls under the CRA's remit of ESG and that of sustainability. As we understand that climate change mitigation and adaptation are priorities under the Action Plan, we would question whether the focus of the Guidelines should be on sustainability, rather than ESG, which may divert the focus in a more appropriate direction, in line with the Action Plan.
3. We agree with the proposed requirement to include a reference and link to the relevant section of the CRA's website where the ESG material can be found, or a document explaining how ESG factors are considered within the credit rating methodologies. Of course, such materials are not

necessarily standardised as between CRAs, so users would still need to understand the various methodologies and application of ESG factors; for this reason, CRAs should endeavour to make their various resources as tangible and understandable as possible. Further, internal methodologies may be still at the development stage and may change, so it is incumbent on the CRAs to keep this information updated. CRAs need to ensure that any ESG metrics are accurately and commensurately measured as against the issuer itself and other credit rating factors, and that ESG factors do not fall prey to corporate 'window-dressing'.

4. We agree with the merits of positive identification where ESG factors are a key element behind a credit rating. However, depending on the nature of the issuer's business, our concerns are that it could be challenging to be able to isolate in all cases where a particular ESG element is, or importantly, is NOT a key underlying element. Often, environmental and social risk is inextricably weaved into the business and financial risk profile of an issuer, in the country profile of the issuer or in the wider geopolitical environment. To unravel the genesis of the ESG factors and apply them in a way that shows direct correlation to the risk profile of an issuer may not only be a challenge, but also may give a disproportionate view (positive or negative) of the actual effect of the ESG factor on the issuer and/or its rating.
5. Further, it is not necessarily enough to specify the ESG factor which was a key underlying element of a credit rating; the mere presence of an ESG factor is not necessarily an indicator of risk. There is no suggestion in the Guidelines that the CRA should include any commentary regarding how material or otherwise the ESG factor is, or how an issuer is managing the particular ESG issue; in the absence of any such qualitative statement, it could be misleading in that a user might attribute more importance to a particular ESG factor than is merited. It would also be helpful to know how material the ESG factor is considered to be in the context of all other considerations which are taken into account when assigning a rating.
6. A fundamental question is the starting point used when considering whether a factor is E, S or G; i.e. against which criteria does a credit rating agency benchmark factors in terms of risk and in terms of materiality when the risk is not necessarily quantifiable financially, but rather one of judgement. An associated point is that it could be particularly difficult to specify whether a particular element is an environmental, social or governance factor when of course it may be a combination of, and even transcend, all 3.

We would be pleased to discuss this feedback with you at your convenience.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Katie Kelly', with a long horizontal stroke extending to the right.

Katie Kelly
Senior Director
Market Practice & Regulatory Policy