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Commission Delegated Regulation (EU) 2015/1 of 30 September 2014 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the periodic reporting on fees charged by credit rating agencies for the purpose of ongoing supervision by the European Securities and Markets Authority (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2015/1

of 30 September 2014

supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the periodic reporting on fees charged by credit rating agencies for the purpose of ongoing supervision by the European Securities and Markets Authority

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies[(1)], and in particular the third subparagraph of Article 21(4a) thereof,

Whereas:

(1) Article 11(3) and point 2 of Part II of Section E of Annex I to Regulation (EC) No 1060/2009 require a credit rating agency to annually disclose to ESMA the list of fees charged to each client for individual credit ratings and any ancillary services, as well as its pricing policy, including the fees structure and pricing criteria in relation to credit ratings for different asset classes. It is essential to provide for the technical details regarding the content to be reported and the format to be used by credit rating agencies in order to comply with their obligations and to allow ESMA to exercise its ongoing supervisory powers.

(2) In order to mitigate conflicts of interest and facilitate fair competition in the credit rating market, ESMA should ensure that pricing policies, procedures and ultimately fees charged by credit rating agencies to clients are not discriminatory. Differences in fees charged for the same type of service should be justifiable by a difference in the actual costs in providing the 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.

(3) The fee information to be submitted by registered credit rating agencies should allow ESMA to identify credit ratings that would require more in-depth scrutiny and possible further supervisory follow-up actions. Similar fees should be charged for credit ratings and ancillary services with similar features, differences in fee levels being justified on the basis of cost differences. The information collected should allow ESMA to identify,

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for each registered credit rating agency, comparable services and their respective fees and therefore to detect any significant deviations in fees charged. ESMA can thereafter undertake investigations to verify that any such fees are set according to lawful pricing policies and procedures and differences in fee levels based on cost differences are consistent with the principles of fair competition, are not due to conflicts of interest and do not depend on the results or outcome of the work performed.

(4) Pricing policies and procedures should be reported for each rating type. For reporting purposes and in order to clearly distinguish each pricing policy and procedure and their respective updates, each version of the pricing policies with its respective fee schedules, fee programmes and procedures should have an identification number. For all other purposes, the pricing policies should include the fee structures or fee schedules as well as the pricing criteria that can be applied by the person or persons negotiating the fees to be charged for an individual credit rating. The pricing policies should also include any frequency or other fee programmes from which the rated entity or subscriber may benefit in terms of different fees charged for an individual rating or a set of credit ratings. Credit rating agencies should record all instances of where the pricing policies, fee schedules, fee programmes and procedures have not been applied and all instances of deviations from the pricing policy as applied to an individual credit rating, with a clear identification of the credit rating involved.

(5) Registered credit rating agencies that are part of a group should be able to either report their ratings data separately to ESMA or mandate one of the other credit rating agencies within the group to submit the data on behalf of all group members that are subject to the reporting requirements.

(6) For the purpose of this Regulation, the 'structuring of a debt issue' and 'debt issue' should include financial instruments or other assets resulting from a securitisation transaction or scheme referred to in Article 4(61) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[(2)].

(7) In order to enable registered credit rating agencies to develop adequate systems and procedures following the technical specifications provided by ESMA and to ensure complete and correct reporting on fees data, registered credit rating agencies should initially report on individual fees data nine months after the entry into force of this Regulation. The initial report should be made in respect of fee data as from the entry into force of this Regulation. Such obligation should not be construed as a discharge from the obligation on registered credit rating agencies to submit periodic information on fees in accordance with Article 11(3) of Regulation (EU) No 1060/2009 in the interim period.

(8) Pricing policies and procedures should be provided on an ongoing basis so that any material changes are reported without undue delay after their adoption and at the latest 30 days after their implementation. The information to be reported should be compiled in a standard format to allow ESMA to receive and process the records automatically in its internal systems. Due to technical difficulties and technical progress over time, a number of technical reporting instructions concerning the transmission or the format of the files to be submitted by registered credit rating agencies might have to be updated and communicated by ESMA through specific communications or guidelines.

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(9) Where a credit rating agency does not comply with its reporting requirements, ESMA should be empowered to request the information by means of a decision issued under Article 23b(3) of Regulation (EC) No 1060/2009, or take other investigatory measures.

(10) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission, in accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(3)].

(11) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

Article 1

General principles

1 Registered credit rating agencies shall submit the following types of reports to ESMA:

a pricing policies and procedures as set out in Article 2;

b fee data for credit ratings activities provided under the issuer-pays model as set out in Article 3(1);

c fee data for credit rating activities provided under the subscriber- or investor-pays model as set out in Article 3(2).

2 Registered credit rating agencies shall ensure the accuracy and completeness of the information and data reported to ESMA.

3 For groups of credit rating agencies, the members of each group may mandate one member to submit reports required under this Regulation on their behalf. Each credit rating agency on whose behalf such a report is submitted shall be identified in the data submitted to ESMA.

Article 2

Pricing policies and procedures

1 Registered credit rating agencies shall provide to ESMA their pricing policies, fee structure or fee schedules and pricing criteria in relation to those rated entities or financial instruments on which they are issuing credit ratings and, where applicable, pricing policies regarding ancillary services.

2 Registered credit rating agencies shall ensure that for each type of credit rating offered the pricing policies contain or are accompanied by the following items:

a the names of the persons responsible for the approval and maintenance of the pricing policies, fee schedules and/or fee programmes, including those responsible for setting fees, the internal identifier, the function and internal department to which the persons belong;

b any internal guidelines for application of the pricing criteria in the pricing policies, fee schedules and/or fee programmes relating to the setting of individual fees;

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c a detailed description of the fee range or fee schedule and criteria applicable to the different types of fees, including those provided for in the fee schedules;

d a detailed description of any fee programme, including a relationship programme, frequency of use programme, loyalty programme or other programme, and including the criteria of application and fee range, from which individual credit ratings or set of ratings may benefit in fee terms;

e where applicable, the pricing principles and rules to be employed whenever there is a relationship or link between the fees charged for credit rating services and ancillary services or any other services provided to the client, within the meaning of the second subparagraph of point 2 of Part II of Section E of Annex I to Regulation (EC) No 1060/2009 (client), by the credit rating agency and/or any of the entities belonging to the credit rating agency's group within the meaning of Articles 1 and 2 of Council Directive 83/349/EEC[(4)], as well as any entity linked to the credit rating agency or other company of the credit rating agency's group by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;

f the geographical scope of application of the pricing policy, fee schedule or fee programme in terms of the location of the clients and the credit rating agency or agencies applying the pricing policy, fee schedule or fee programme;

g the names of the persons authorised to set fees and other charges under the respective pricing policy, fee schedule or fee programme, including those responsible for setting fees, the internal identifier, the function and internal department to which the persons belong.

3 Registered credit rating agencies shall ensure that the pricing procedures contain or are accompanied by the following items:

a the names of the persons responsible for the approval and maintenance of the procedures implementing the pricing policies, including those responsible for setting fees, the internal identifier, the function and internal department to which the persons belong;

b a detailed description of the procedures and controls in place to ensure and monitor strict compliance with the pricing policies;

c a detailed description of the procedures in place for the lowering fees or for otherwise departing from the fee schedule or fee programmes;

d the names of the persons directly responsible for monitoring the application of the pricing policies to individual fees, including the internal identifier, the function and internal department to which the persons belong;

e the names of the persons directly responsible for ensuring compliance of individual fees with pricing policies, including the internal identifier, the function and internal department to which the persons belongs;

f a detailed description of the measures to be adopted in the event of a breach of pricing policies, fee schedules, fee programmes and procedures;

g a detailed description of the procedure for reporting to ESMA any material breach of pricing policies or procedures which may result in a breach of point 3c of Section B of Annex I to Regulation (EC) No 1060/2009.

Article 3

List of fees charged to each client

1 Registered credit rating agencies providing credit ratings on an issuer-pays model shall provide to ESMA the fees charged to each client for individual credit ratings and any ancillary services per legal entity as well as aggregated by group of companies.

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2 Registered credit rating agencies providing credit ratings on a subscriber- or investor-pays model shall provide to ESMA, on a per client basis, the total fees charged for such services as well as for the ancillary services provided.

3 All deviations from pricing policies or pricing procedures, or the non-application of a pricing policy, fee schedule or fee programme, or pricing procedure to a rating shall be recorded by the registered credit rating agencies, with a clear identification of the main explanations for the deviation and the individual rating involved in the format set out in Table 1 of Annex II. This record shall be made promptly available to ESMA upon request.

Article 4

Credit rating types

Registered credit rating agencies shall classify the ratings to be reported in accordance with the types defined in Article 3 of Commission Delegated Regulation (EU) 2015/2[(5)].

Article 5

Data to be provided

1 Registered credit rating agencies shall provide to ESMA the items set out in Article 2(2) and (3), and the data set out in Tables 1 to 4 of Annex I, as well as the pricing policies, fee schedules, fee programmes and procedures in separate files.

2 Registered credit rating agencies shall provide to ESMA the data set out in Tables 1 and 2 of Annex II for fees data on each individual credit rating issued and the fees charged for credit ratings and any ancillary services per client in accordance with Article 3(1).

3 Registered credit rating agencies that have provided credit ratings on a subscriber or investor-pays model shall provide to ESMA the data set out in Table 1 of Annex III for each client of the credit ratings services provided, in accordance with Article 3(2).

4 The data specified in Tables 1 to 4 of Annex I, Tables 1 and 2 of Annex II, and Table 1 of Annex III shall be submitted to ESMA in separate files.

Article 6

Initial reporting

1 Each registered credit rating agency shall provide data to ESMA by filling in Tables 1 to 4 of Annex I and separate files for pricing policies, fee schedules, fee programmes and procedures it is applying for each credit rating type in which it is active, in accordance with Article 5(1), within 30 days after the date of entry into force of this Regulation.

2 Initial reporting on fees referred to in Article 5(2) and (3) shall be submitted to ESMA nine months after the date of entry into force of this Regulation and shall include the data accumulated from the date of entry into force of this Regulation until 30 June 2015.

3 The second report on fees referred to in Article 5(2) and (3) shall be submitted to ESMA by 31 March 2016 and shall include the data accumulated from 1 July 2015 until 31 December 2015.