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Commission Delegated Regulation (EU) No 449/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on information for registration and certification of credit rating agencies (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) No 449/2012

of 21 March 2012

supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on information for registration and certification of credit rating agencies

(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 points (a) and (b) of Article 21(4) thereof,

Whereas:

(1) In accordance with the general objectives of Regulation (EC) No 1060/2009, in particular the contribution to the quality of credit ratings issued in the Union, financial stability, consumer and investor protection, this Regulation should ensure that the information to be submitted to the European Securities and Markets Authority (ESMA) during the registration and certification processes, is provided following uniform rules, so that ESMA is able to make an informed decision on the registration or certification of a credit rating agency.

(2) The longer-term benefits of the additional information are expected to outweigh any potential additional short-term costs of registration, in terms of investor protection and financial stability.

(3) This Regulation should set out the information that ESMA is to receive as part of an application for registration by a credit rating agency. Certain information requested in this Regulation might not be applicable to a newly established credit rating agency because it might have applied for an exemption, lack previous experience in the credit rating business, or other reasons. This Regulation should not create a barrier of entry to newly established credit rating agencies willing to enter the market. Nevertheless, an applicant should provide a clear explanation for not submitting any specific information contained in that application.

(4) Any information submitted to ESMA should be provided in a durable medium which enables its storage for future use. In order to facilitate the identification of the

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information submitted by a credit rating agency, all documents should be identified by a reference number.

(5) In order for ESMA to assess if any conflicts of interest arising from the activities and business interests of the owners of a credit rating agency might affect the independence of a credit rating agency, a credit rating agency should be required to give information regarding its owners activities and the ownership of its parent undertaking.

(6) A credit rating agency should provide information on the composition, functioning and independence of its governing bodies in order for ESMA to be able to assess whether the corporate governance structure ensures the independence of the credit rating agency and the avoidance of conflicts of interest.

(7) In order to allow ESMA to assess the good repute as well as the experience and skills of the senior management, a credit rating agency should provide the curriculum vitae, recent criminal record and self-declarations on the good repute of its senior management.

(8) For the purposes of assessing how conflicts of interest are eliminated or managed and disclosed, a credit rating agency should provide ESMA with an up-to-date inventory of existing and potential conflicts of interest covering at least the conflicts arising from the carrying out of ancillary services, the outsourcing of rating activities and the interaction with related third parties. When identifying the conflicts of interest for the inventory, a credit rating agency should consider conflicts of interest which might arise from entities which belong to the global group of undertakings to which it belongs. Therefore, intra-group arrangements concerning allocation of tasks and the provision of ancillary services by different entities within the group of undertakings should be taken into consideration.

(9) Although the branches of a credit rating agency established in the Union are not legal persons, those agencies should provide separate information as regards their branches so as to enable ESMA to clearly identify the position of the branches in the organisational structure, assess the fitness and appropriateness of the senior management of the branches and evaluate whether the control mechanisms, compliance and other functions in place, are considered to be robust enough to identify, evaluate and manage the branches' risks in an appropriate manner.

(10) The information requested regarding possible conflicts of interests with ancillary services should refer to all businesses of the credit rating agency which are not part of the rating activities.

(11) In order to enable ESMA to assess whether a third-country regulatory framework for CRAs may be considered 'as stringent as' the Union regime in place, a credit rating agency intending to endorse ratings issued in that third country should provide ESMA with detailed information on the third-country regulatory framework and how it compares to the Union regime in place. Where such information is already available to ESMA, from other applications for endorsement, and ESMA takes the view that the third-country regulatory framework may be considered to be as stringent as the Union regime in place, the applicant credit rating agencies should be exempted from

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submitting this information. In any case, the applicant credit rating agencies shall demonstrate that the conduct of credit rating activities by the third-country credit rating agency resulting in the issuing of the credit rating to be endorsed fulfils the requirements under the third-country regime and that there are procedures to monitor the conduct of credit rating activities by the third-country credit rating agency.

(12) This Regulation should set out the information that a credit rating agency must provide in its application for certification and for the assessment of its systemic importance to the financial stability or integrity of financial markets referred to in Article 5 of Regulation (EC) No 1060/2009. The systemic importance of the credit rating agency and its rating activities to the stability of one or more Member States should be measured in this Regulation in terms of the size of its rating activities and interconnectedness of the users of its credit ratings in the Union.

(13) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission pursuant to the procedure laid down in Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(2)].

(14) 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 under Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION:

CHAPTER 1

SUBJECT MATTER

Article 1

Subject matter

This Regulation lays down the rules which determine the information to be provided to ESMA by a credit rating agency in its application for:

(a) registration, as set out in Annex II to Regulation (EC) No 1060/2009; or

(b) certification and for the assessment of its systemic importance to the financial stability or integrity of financial markets referred to in Article 5 of Regulation (EC) No 1060/2009.

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CHAPTER 2

REGISTRATION

SECTION 1

General

Article 2

Format of the application

1 An application for registration shall be provided in an instrument which stores information in a way accessible for future reference and which allows the unchanged reproduction of the information stored.

2 A credit rating agency shall give a unique reference number to each document it submits. It shall ensure that the information it submits clearly identifies to which specific requirement of this Regulation it refers and in which document that information is provided. The credit rating agency shall submit the table set out in Annex I as part of its application to clearly identify the document in which information required under this Regulation is provided.

3 If a requirement of this Regulation does not apply to a credit rating agency's application, it shall state this in the table set out in Annex I and provide an explanation.

4 Where a group of credit rating agencies applies for registration, the application shall clearly identify each credit rating agency to which the information applies. When the same information applies to more than one credit rating agency within the group of credit rating agencies, for the purpose of filling in the table of Annex I, the same reference number shall be given for the common information.

Article 3

Attestation of the accuracy and completeness of the application

Any information submitted to ESMA during the registration or certification process shall be accompanied by a letter signed by a member of the credit rating agency's senior management or a representative authorised by the senior management, attesting that the submitted information is accurate and complete to the best of their knowledge, as of the date of that submission.

Article 4

Number of employees

Any information regarding the number of employees shall be provided on a full time equivalent basis calculated as the total hours worked divided by the maximum number of hours subject to compensation within a working year as defined by the relevant national law.

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Article 5

Class of credit ratings

Any information regarding the class of credit ratings shall use the following ratings classes:

(a) sovereign and public finance ratings;

(b) structured finance ratings;

(c) corporate ratings:

(i) financial institution including credit institutions and investment firms;

(ii) insurance undertaking;

(iii) corporate issuer that is not considered a financial institution or an insurance undertaking.

Article 6

Policies and procedures

1 Policies and procedures provided in an application shall contain or be accompanied by:

a an indication of who is responsible for the approval and maintenance of the policies and procedures;

b a description of how compliance with the policies and procedures will be enforced and monitored and who is responsible for this;

c a description of the measures undertaken in the event of a breach of the policies;

d an indication of the procedure for reporting to ESMA a material breach of the policy or procedure which may result in a breach of the conditions for initial registration or certification.

2 A credit rating agency may fulfil the obligation to provide information regarding its policies and procedures under this Regulation by submitting a copy of the relevant policies and procedures.

Article 7

Identification, legal status and class of credit ratings

A credit rating agency shall provide ESMA with:

(a) the information listed in Annex II to this Regulation;

(b) an excerpt from the relevant commercial or court register, or other form of evidence of the place of incorporation and scope of business activity of the credit rating agency, as of the application date.