Commission Delegated Regulation (EU) No 272/2012 of 7 February 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to credit rating agencies (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) No 272/2012

of 7 February 2012

supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to 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 Article 19(2) thereof,

Whereas:

(1) Article 62 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)[(2)] provides that the revenues of the European Securities and Markets Authority (ESMA) should also consist of fees paid to ESMA in cases specified in Union legislation alongside contributions from national public authorities and a subsidy from the Union.

(2) To ensure an efficient use of ESMA's budget and, at the same time, alleviate the financial burden for Member States and the Union, it is necessary to ensure that credit rating agencies pay at least all the costs related to their supervision. Any deficit that may occur during 1 financial year should be recovered from credit rating agencies in the following year.

(3) An annual supervisory fee should be charged to credit rating agencies exceeding a certain threshold of turnover in order to provide for budgetary certainty for both ESMA and the credit rating agencies concerned. Annual supervisory fees should not become a burden for new entrants to the credit rating market. Moreover, small credit rating agencies are expected to engender significantly less supervisory costs than larger ones. It would be therefore proportionate to fully exempt small credit rating agencies from paying the annual supervisory fee where the credit rating agency or the group of credit rating agencies to which it belong do not exceed a certain threshold of turnover.

(4) In order to ensure a fair and clear allocation of fees which, at the same time, reflects the actual administrative burden per supervised entity, the supervisory fee should be calculated according to the credit rating agencies' turnover, generated from rating

Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) No 272/2012. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

activities and ancillary services, since the cost of supervision is higher for larger credit rating agencies than for smaller ones. Moreover, the provision of ancillary services requires additional supervisory effort as possible conflicts of interests resulting from the provision of ancillary services need monitoring. Credit rating agencies should not circumvent the fair allocation of fees according to this Regulation by reallocating revenue to other entities within their group in order to reduce their fee contributions. ESMA should monitor and report any critical developments in this respect.

(5) A registration fee should be charged to credit rating agencies established in the Union to reflect ESMA's costs for processing the application for registration. The complexity of an application and costs associated to assessing the application increase where a credit rating agency applies for issuing ratings for structured finance instruments or plans to endorse ratings from third country agencies or has branches. Therefore the registration fee should be calculated according to those factors. The processing costs also depend to a large extent on the size of the applicant credit rating agency. As the future turnover of a new credit rating agency would not be known at the moment of its application for registration, the number of employees should replace turnover as a common basis for calculation of all credit rating agencies.

(6) This Regulation should provide for fees to be charged to third country credit rating agencies that apply for certification in the Union according to Article 5(2) of Regulation (EC) No 1060/2009 in order to cover their certification and annual supervisory costs. In this regard, ESMA's necessary expenditure relates to the certification of such third country credit rating agencies according to Article 5(3) of Regulation (EC) No 1060/2009 which follows a similar procedure as the one applicable to the registration of credit rating agencies established in the Union, as well as ESMA's expenditure necessary for the supervision of certified credit rating agencies.

(7) Credit rating agencies should be reimbursed a percentage of the fee initially charged for their registration or certification when withdrawing their application during the registration or certification process as ESMA's costs for processing the application would be lower in such cases.

(8) In view of possible future developments, it is appropriate for the thresholds for exempting credit rating agencies from paying annual supervisory fees and the amounts of registration and certification fees to be reviewed and updated as necessary. The Commission should assess the correct application of these measures within 4 years from the entry into force of this Regulation and report to the European Parliament and the Council on the possible need to review it.

(9) National competent authorities incur costs when carrying out tasks delegated to them by ESMA in accordance with Article 30 of Regulation (EC) No 1060/2009 and when providing assistance to ESMA in the other cases specified in that Regulation. The fees to be charged by ESMA to credit rating agencies should also cover those costs. In order to avoid that competent authorities incur loss or realise profit from carrying out delegated tasks or from assisting ESMA, ESMA should reimburse the actual costs incurred by that national competent authority.

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(10) This Regulation should form the basis for ESMA's right to charge fees to credit rating agencies. In order to immediately facilitate effective and efficient supervisory and enforcement activity, it should enter into force on the third day following its publication,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down rules regarding the fees that the European Securities and Markets Authority (ESMA) shall charge to credit rating agencies for supervision, registration and certification.

Article 2

Recovery of supervisory costs in full

The fees charged to credit rating agencies shall cover:

(a) all costs relating to the supervision of credit rating agencies by ESMA in accordance with Regulation (EC) No 1060/2009, including costs resulting from the registration and certification of credit rating agencies;

(b) all costs for the reimbursement of competent authorities to which ESMA has delegated tasks in accordance with Article 30 of Regulation (EC) No 1060/2009;

(c) all costs for the reimbursement of competent authorities that have provided assistance to ESMA in accordance to Article 23c(4) and Article 23d(5) of Regulation (EC) No 1060/2009.

Article 3

Applicable turnover

1 For the purposes of calculating the fees referred to in Article 5, Article 7(1) and Article 11(1) and (2), the applicable turnover for a given financial year (n) shall be the revenues of a credit rating agency as published in its audited accounts of the previous year (n-1) generated from rating activities and ancillary services.

2 Where the credit rating agency did not operate during the full year (n-1), the applicable revenue shall be estimated by extrapolating that amount for the whole financial year.

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CHAPTER II

FEES

Article 4

Types of fees and general payment modalities

1 Credit rating agencies established in the Union that apply for registration in accordance with Article 14(1) of Regulation (EC) No 1060/2009 shall be charged the following types of fees

a annual supervisory fees according to Article 5;

b registration fees according to Article 6.

2 Credit rating agencies established in third countries that apply for certification in accordance with Article 5(2) of Regulation (EC) No 1060/2009 shall be charged the following types of fees:

a flat annual supervisory fees according to Article 7;

b certification fees according to Article 8.

3 The fees shall be payable in Euro. They shall be payable as specified in Articles 5(3), 6(6), 7(2) and 8(2).

Any late payments shall incur a daily penalty equal to 0,1 % of the amount due.

Article 5

Annual supervisory fee for registered credit rating agencies

1 A registered credit rating agency shall be charged an annual supervisory fee.

By way of derogation from the first subparagraph, a registered credit rating agency shall be exempted from paying an annual supervisory fee where its total revenues as published in its most recent audited accounts is less than EUR 10 million, or in case it belongs to a group of credit rating agencies, where the group of credit rating agencies has aggregate total revenues of less than EUR 10 million.

2 The annual supervisory fee for a given financial year shall be calculated as follows:

a the basis for the calculation of the annual supervisory fee for a given financial year shall be the estimate of expenditure relating to the supervision of credit rating agencies as included in the ESMA budget for that year, set out and approved in accordance with Article 63 of Regulation (EU) No 1095/2010;

b the relevant amount for the calculation of the annual supervisory fee for a given financial year shall be the estimate of expenditure according to point (a) reduced by any annual supervisory fees to be charged to certified credit rating agencies for a given financial year according to Article 7 and increased by any deficit from the previous financial year;

c a registered credit rating agency as referred to in paragraph 1 shall pay as an annual supervisory fee a part of the relevant amount which corresponds to the ratio of the credit rating agency's applicable turnover to the total applicable turnover of all registered credit rating agencies required to pay an annual supervisory fee in accordance with paragraph 1.

3 The annual supervisory fee for a given financial year shall be paid in two instalments.

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The first instalment shall be due by the end of February of that year and shall amount to two thirds of the estimated annual supervisory fee. If the applicable turnover is not yet available at that time, ESMA shall base the calculation on the turnover included in the most recent audited accounts available.

The second instalment shall be due by the end of August. The amount of the second instalment shall be the annual supervisory fee calculated according to paragraph 2 reduced by the amount of the first instalment.

ESMA shall send the invoices for the instalments to the credit rating agencies at least 30 days before the respective payment date.

Article 6

Registration fee

1 The amount of the registration fee to be paid by individual credit rating agencies applying for registration shall be proportionate to the complexity of the application and the size of the credit rating agency as specified in paragraphs 2 to 5.

2 For the purposes of calculating the amount of the registration fee, the following criteria shall be taken into consideration:

a whether a credit rating agency intends to issue ratings for structured finance instruments;

b whether a credit rating agency has a branch in another Member State or in a third country;

c whether a credit rating agency intends to endorse ratings.

3 Where none of the criteria set out in paragraph 2 apply, the registration fees shall be calculated according to the number of employees, as follows:

a credit rating agencies with fewer than 15 employees shall pay EUR 2 000;

b credit rating agencies with 15 to 49 employees shall pay EUR 15 000;

c credit rating agencies with at least 50 employees shall pay EUR 40 000.

4 Credit rating agencies that only meet one of the criteria set out in paragraph 2 shall pay the following registration fees according to the number of their employees, as follows:

a credit rating agencies with fewer than 15 employees shall pay EUR 10 000;

b credit rating agencies with 15 to 49 employees shall pay EUR 40 000;

c credit rating agencies with at least 50 employees shall pay EUR 100 000.

5 Credit rating agencies that meet at least two of the criteria set out in paragraph 2 shall pay the following registration fees according to the number of their employees, as follows:

a credit rating agencies with fewer than 15 employees shall pay EUR 30 000;

b credit rating agencies with 15 to 49 employees shall pay EUR 85 000;

c credit rating agencies with at least 50 employees shall pay EUR 125 000.

6 The registration fee shall be payable in full at the time the credit rating agency applies for registration.

7 If a credit rating agency withdraws its application for registration before ESMA has notified it that the application is complete in accordance with the second subparagraph of Article 15(4) of Regulation (EC) No 1060/2009, ESMA shall reimburse three quarters of the registration fee paid. If the application is withdrawn after this date, but before ESMA adopts the reasoned