

# THE CREDIT RATING AGENCIES GUIDE (CRAG)

## Introduction

- 1.1 On 7 December 2009 *Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on Credit Rating Agencies* (the EU Regulation) came into force. The EU Regulation has direct application in the UK in particular to credit rating agencies falling within its scope, certain types of regulated entity and relevant competent authorities.
- 1.2 The EU Regulation can be found at:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0001:0031:EN:PDF>
- 1.3 The material in this guide does not form part of the FSA Handbook and is not guidance as defined in sections 157 and 158 of the Financial Services and Markets Act 2000 (the Act). It is made under regulation 6 of the *Credit Rating Agencies Regulations 2010* (SI 2010/906) (the Credit Rating Regulations). Its purpose is to point to some of the key components of the EU Regulation and the implementing UK legislation. It is not intended to provide an exhaustive description of their contents. If you have any doubt about a legal or other provision referred to in this Guide, or your responsibilities under the provisions referred to, you should seek appropriate legal advice from your legal adviser. This Guide is effective from 7 June 2010.

## EU Regulation

### *Application*

- 2.1 The EU Regulation, as set out in article 2, applies to credit ratings issued by credit rating agencies registered in the Community and which are disclosed publicly or distributed by subscription. Article 2 also describes the ratings and other activities which are outside the scope of the EU Regulation. Article 40 sets out the time by which existing credit rating agencies within scope must submit their application for registration (7 September 2010).

### *Registration and ongoing requirements*

- 2.2 Articles 14 to 20 set out the registration procedure and articles 6 to 13 set out ongoing requirements for registered credit rating agencies including provisions relating to conflicts of interest, employees and analysts, methodologies and models, outsourcing, and disclosure and presentation of information.

### *Use of credit ratings for regulatory purposes*

- 2.3 The EU Regulation also applies directly to certain regulated entities which use credit ratings for regulatory purposes. Article 4.1, which comes into force on 7 December 2010, sets out the types of regulated entity that may only use credit ratings for regulatory purposes if they are issued by credit rating agencies established in the

Community and registered in accordance with the EU Regulation (EU CRA). Article 40 states that existing credit rating agencies may continue issuing credit ratings which may be used for regulatory purposes by the financial institutions referred to in article 4.1 unless registration is refused. Article 4.1 also sets out obligations in relation to the publishing of prospectuses under Directive 2003/71/EC and Regulation (EC) No 809/2004.

#### *Endorsement and equivalence*

- 2.4 The remainder of Article 4 makes provision for an EU CRA to endorse a credit rating issued in a third country, subject to certain conditions, and provides that, when endorsed, that credit rating shall be treated as issued by that EU CRA.
- 2.5 Article 5 permits the use for regulatory purposes of credit ratings which are related to entities established, or financial instruments issued, in third countries and issued by a credit rating agency established in a third country and for which a positive certification decision has been made. The certification is based on the criteria set out in points (a) to (d) of article 5.1, which includes the adoption by the EU Commission of an equivalence decision on the legal and supervisory framework of that third country as being equivalent to the requirements of the EU Regulation.

#### *Supervision, fees and co-operation*

- 2.6 Articles 21 to 25 contain provisions relating to competent authorities and ongoing supervision. Article 19 of the EU Regulation gives the home competent authority of a credit rating agency the power to charge registration and/or supervisory fees directly. Articles 26 to 35 deal with co-operation amongst relevant authorities, professional secrecy, and disclosure of information.

#### *CESR guidance on the EU Regulation*

- 2.7 Article 21 of the EU Regulation requires the Committee of European Securities Regulators (CESR) to publish guidance on the EU Regulation. This guidance, as well as additional information of relevance, can be found at:

<http://www.cesr-eu.org/index.php?page=groups&mac=0&id=43>

### **UK implementing regulations**

- 3.1 Even though the EU Regulation is directly applicable in the UK, elements of it require implementing into UK law and so the Treasury made the Credit Rating Regulations which came into force on 7 June 2010 and which can be found at:

[http://www.opsi.gov.uk/si/si2010/uksi\\_20100906\\_en\\_1](http://www.opsi.gov.uk/si/si2010/uksi_20100906_en_1)

#### *Competent authority in the UK*

- 3.2 Part 2 of the Credit Rating Regulations designates the FSA as the competent authority in the United Kingdom for the purposes of the EU Regulation.

## *General*

- 3.3 The Credit Rating Regulations provide the FSA with the power to give guidance on the operation of the EU Regulation and the Credit Rating Regulations, any matter relating to the FSA's functions under each of these or any other related matter about which it appears to the FSA to be desirable to give information or advice (Part 2). They also make provisions relating to applications for certification and registration (Part 3), provide investigatory powers to the FSA (Part 4), provide enforcement powers for the FSA to take action where a credit rating agency breaches obligations arising from the EU Regulation (Part 5), create penalties and offences which may apply if a person breaches a requirement of the EU Regulation or the Credit Rating Regulations (Part 6), make provisions for appeals (Part 7), provide for notices (Part 8) and make consequential changes to the Capital Requirements Regulations 2006 (Part 9).

### *Statement of policy on penalties*

- 3.4 In Part 6 of the Credit Rating Regulations, regulation 22(1) and (2) apply sections 69, 70, 210 and 211 of the Act to the imposition of penalties under regulation 21(1) and (2) of the Credit Rating Regulations thereby requiring a statement of policy to be issued in respect of the imposition and amount of such penalties. But regulation 22 also provides that until such time as such a statement of policy has been issued, any statement issued in relation to penalties under section 66 and Part XIV of the Act shall also apply for the purposes of sections 69 and 210 as applied by regulation 22(1) and (2) of the Credit Rating Regulations.
- 3.5 Certain parts of the FSA's Decision Procedure and Penalties manual (DEPP) satisfy the requirements of sections 69 and 210 for the purposes of the Act. These include DEPP 6.2 (Deciding whether to take action) and DEPP 6.4 (Financial penalty or public censure). The FSA's statement of policy in relation to the amount of a financial penalty is set out in DEPP 6.5 to DEPP 6.5D.

### *Statement of procedure for issuing notices*

- 3.6 In Part 8 of the Credit Rating Regulations, regulation 30 applies Part 26 of the Act with certain modifications. Section 395 of the Act as applied by regulation 30 requires the FSA to issue a statement of procedure which it proposes to follow in relation to the giving of warning notices and decision notices for the purposes of the Credit Rating Regulations. But regulation 30 also provides that until such time as such a statement of procedure has been issued, the statement issued under section 395 for the purposes of the Act shall apply.
- 3.7 Certain parts of DEPP satisfy the requirements of section 395 for the purposes of the Act. In particular, DEPP 2 Annex 1 sets out the relevant decision maker when the FSA is proposing or deciding to impose a penalty under the Act. DEPP 2 Annex 1 also sets out the relevant decision maker when the FSA is proposing or deciding to give a direction to a person to take specified steps for the purpose of securing its compliance with any requirement under the *Regulated Covered Bonds Regulations 2008* (SI 2008/346).