

## CREDIT RATING AGENCIES (GUIDANCE) INSTRUMENT 2019

### Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) section 139A (Power of the FCA to give guidance) in the Financial Services and Markets Act 2000 (“the Act”);
  - (2) the powers of direction, guidance and related provisions in or under the following provisions of the Credit Rating Agencies (Amendments etc.) (EU Exit) Regulations 2019 (SI 2019/266):
    - (a) regulation 5 (Guidance);
    - (b) regulation 8 (Statement of policy);
    - (c) regulation 18 (Information gathering and investigations));
    - (d) regulation 19 (Notices); and
  - (3) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018.

### Amendments to the Handbook

- D. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex A to this instrument.

### Amendments to material outside the Handbook

- E. The Enforcement Guide (EG) is amended in accordance with Annex B to this instrument.

### Citation

- F. This instrument may be cited as the Credit Rating Agencies (Guidance) Instrument 2019.

By order of the Board  
28 March 2019

## Annex A

### Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

## 2 Statutory notices and the allocation of decision making

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### 2.5 Provision for certain categories of decision

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2.5.18 G Some of the distinguishing features of notices given under enactments other than the *Act* are as follows:

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(6) *CRA Regulation: Where the FCA is exercising its powers to refuse an application for registration under articles 16 or 17, or to refuse an application made by a credit rating agency to withdraw its registration under article 20(3), it must give a written notice in accordance with article 18(2). In these circumstances the decision to give a written notice under article 18(2) will be taken by FCA staff under executive procedures.*

Where the FCA is exercising its powers to withdraw the registration of a credit rating agency on the FCA's own initiative under article 20(1) or (2), or to give a direction under article 24(1), it must give a written notice in accordance with article 18(2). In these circumstances the decision to give a written notice under article 18(2) will be taken by the RDC.

Upon receipt of a written notice under article 18(2) the credit rating agency may decide to seek a review or to refer the matter directly to the Tribunal under article 18A.

If the credit rating agency decides to seek a review of the decision set out in the article 18(2) notice, they can make representations to the RDC. If the RDC decides to maintain the original decision, the credit rating agency may refer the RDC's decision to do so to the Tribunal.

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2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

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<b>UK Securitisation Regulations</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			
<b><u>CRA (EU Exit) Regulations</u></b>	<b><u>Description</u></b>	<b><u>Handbook reference</u></b>	<b><u>Decision maker</u></b>
<u>Regulation 11(1)(a) and 12(1)(a)</u>	<u>when the FCA is proposing or deciding to impose a penalty under regulation 7</u>		<u>RDC</u>
<u>Regulation 11(1)(b) and 12(1)(b)</u>	<u>when the FCA is proposing or deciding to publish a statement under regulation 10</u>		<u>RDC</u>

## 2 Annex 2G Supervisory notices

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<b>UK Securitisation Regulations</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			
<b><u>CRA Regulation</u></b>	<b><u>Description</u></b>	<b><u>Handbook reference</u></b>	<b><u>Decision maker</u></b>
<u>Article 18(2) and 18(10)</u>	<u>when the FCA is exercising its power under article 16 to refuse an application for registration of a <i>credit rating agency</i></u>		<u>RDC or executive procedures</u> <u>(see DEPP 2.5.18G(6))</u>
<u>Article 18(2) and 18(10)</u>	<u>when the FCA is exercising its power under article 17 to refuse an application for registration of a group of <i>credit rating agencies</i></u>		<u>RDC or executive procedures</u> <u>(see DEPP 2.5.18G(6))</u>
<u>Article 18(2) and 18(10)</u>	<u>when the FCA is exercising its power under article 20(1) and 20(2) to withdraw the registration of a <i>credit rating agency</i> on its own initiative</u>		<u>RDC</u> <u>(see DEPP 2.5.18G(6))</u>

<u>Article 18(2) and 18(10)</u>	<u>when the FCA is exercising its power under article 20(3) to refuse an application made by a credit rating agency to withdraw its registration</u>		<u>RDC or executive procedures</u> <u>(see DEPP 2.5.18G(6))</u>
<u>Article 18(2) and 18(10)</u>	<u>when the FCA is exercising its power under article 24(1) to impose a direction to temporarily prohibit a credit rating agency from issuing credit ratings or to suspend the use of credit ratings issued by a credit rating agency</u>		<u>RDC or executive procedures</u> <u>(see DEPP 2.5.18G(6))</u>

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**Sch 4 Powers Exercised**

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4.2G

The following additional powers and related provisions have been exercised by the FCA to make the statements of policy in DEPP:

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Application of Part 26 of the Act (notices) of the *UK Securitisation Regulations*

Regulation 5 (Guidance) of the CRA (EU Exit) Regulations

Regulation 8 (Statement of policy) of the CRA (EU Exit) Regulations

Regulation 18 (Information gathering and investigations) of the CRA (EU Exit) Regulations

Regulation 19 (Notices) of the CRA (EU Exit) Regulations

## Annex B

### Amendments to the Enforcement Guide (EG)

Insert the following new section after EG 19.38 (UK Securitisation Regulations). The text is not underlined.

#### **19.39 Credit Rating Agencies (CRA) Regulation**

- 19.39.1 The *CRA Regulation* aims to enhance the integrity, responsibility, good governance and independence of credit rating activities, contributing to the quality of credit ratings issued in the *United Kingdom* while achieving high levels of investor protection. The *CRA Regulation* imposes requirements including, among other things, obligations on *credit rating agencies* relating to their independence and avoidance of conflicts of interest, their methodologies and disclosures.
- 19.39.2 Supervisory and enforcement functions under the *CRA Regulation* were transferred from *ESMA* to the *FCA* through the *CRA (EU Exit) Regulations* on *exit day*.
- 19.39.3 The *FCA*'s approach to enforcing under the *CRA Regulation* will mirror our general approach to enforcing the *Act*, as set out in *EG 2*. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the *person* who is the subject of our action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.

#### Conduct of investigations under the CRA Regulation

- 19.39.4 The *CRA (EU Exit) Regulations* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the *CRA Regulation*.
- 19.39.5 The *FCA* will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the *CRA Regulation* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The *FCA* expects to carry out a scoping visit early on in the enforcement process in most cases. The *FCA*'s policy in non-criminal investigations under the *CRA Regulation* is to use powers to compel the provision of information in the same way as we would during an investigation under the *Act*.

#### Decision making under the CRA Regulation

19.39.6 The decision making procedures for those decisions under the *CRA Regulation* requiring the giving of a *warning notice*, *decision notice* or *supervisory notice* are dealt with within *DEPP*.

19.39.7 The *CRA Regulation* requires the *FCA* to give third party rights as set out in section 393 of the *Act* and to give access to certain material as set out in section 394 of the *Act* as applied by the *CRA Regulation*.

#### Imposition of penalties under the CRA (EU Exit) Regulations

19.39.8 When determining whether to take action to impose a penalty or to issue a public censure under the *CRA (EU Exit) Regulations*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP* 6.2 and *DEPP* 6.4. The *FCA*'s policy in relation to determining the level of a financial penalty includes having regard, where relevant, to *DEPP* 6.5, *DEPP* 6.5A, *DEPP* 6.5B and *DEPP* 6.5D.

19.39.9 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving non-criminal breaches of the *CRA Regulation* to assist us to exercise our functions under the *CRA Regulation* in the most efficient and economical way. See *DEPP* 5, *DEPP* 6.7 and *EG* 5 for further information on the settlement process and the *settlement discount scheme*.

19.39.10 The *FCA* will apply the approach to publicity that is outlined in *EG* 6, read in the light of regulation 19 of the *CRA (EU Exit) Regulations*.

#### Statement of policy in section 169(7) interviews (as implemented by the CRA (EU Exit) Regulations 2019)

19.39.11 The *CRA (EU Exit) Regulations* apply section 169 of the *Act* which requires the *FCA* to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the *CRA (EU Exit) Regulations* the *FCA* will follow the procedures described in *DEPP* 7.