

## **Chapter 4**

# **Commission Delegated Regulation (EU) No 449/2012**

Preamble

THE EUROPEAN COMMISSION,  
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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, and in particular points (a) and (b) of Article 21(4) thereof,

01/01/2021

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 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 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.

(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: