

Chapter 1

Commission Delegated Regulation (EU) 2015/1

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 the third subparagraph of Article 21(4a) thereof,

01/01/2021

Whereas:

(1) Article 11(3) and point 2 of Part II of Section E of Annex I to Regulation (EC) No 1060/2009 require a credit rating agency to annually disclose to ESMA the list of fees charged to each client for individual credit ratings and any ancillary services, as well as its pricing policy, including the fees structure and pricing criteria in relation to credit ratings for different asset classes. It is essential to provide for the technical details regarding the content to be reported and the format to be used by credit rating agencies in order to comply with their obligations and to allow ESMA to exercise its ongoing supervisory powers.

(2) In order to mitigate conflicts of interest and facilitate fair competition in the credit rating market, ESMA should ensure that pricing policies, procedures and ultimately fees charged by credit rating agencies to clients are not discriminatory. Differences in fees charged for the same type of service should be justifiable by a difference in the actual costs in providing the service to different clients. Moreover, the fees charged for credit rating services to a given issuer should not depend on the results or outcome of the work performed.

(3) The fee information to be submitted by registered credit rating agencies should allow ESMA to identify credit ratings that would require more in-depth scrutiny and possible further supervisory follow-up actions. Similar fees should be charged for credit ratings and ancillary services with similar features, differences in fee levels being justified on the basis of cost differences. The information collected should allow ESMA to identify, for each registered credit rating agency, comparable services and their respective fees and therefore to detect any significant deviations in fees charged. ESMA can thereafter undertake investigations to verify that any such fees are set according to lawful pricing policies and procedures and differences in fee levels based on cost differences are consistent with the principles of fair competition, are not due to conflicts of interest and do not depend on the results or outcome of the work performed.

(4) Pricing policies and procedures should be reported for each rating type. For reporting purposes and in order to clearly distinguish each pricing policy and procedure and their respective updates, each version of the pricing policies with its respective fee schedules, fee programmes and procedures should have an identification number. For all other purposes, the pricing policies should include the fee structures or fee schedules as well as the pricing criteria that can be applied by the person or persons negotiating the fees to be charged for an individual credit rating. The pricing policies should also include any frequency or other fee programmes from which the rated entity or subscriber may benefit in terms of different fees charged for an individual rating or a set of credit ratings. Credit rating agencies should record all instances of where the pricing policies, fee schedules, fee programmes and procedures have not been applied and all instances of deviations from the pricing policy as applied to an individual credit rating, with a clear identification of the credit rating involved.

(5) Registered credit rating agencies that are part of a group should be able to either report their ratings data separately to ESMA or mandate one of the other credit rating agencies within the group to submit the data on behalf of all group members that are subject to the reporting requirements.

(6) For the purpose of this Regulation, the "structuring of a debt issue" and "debt issue" should include financial instruments or other assets resulting from a securitisation transaction or scheme referred to in Article 4(61) of Regulation (EU) No 575/2013 of the European Parliament and of the Council.

(7) In order to enable registered credit rating agencies to develop adequate systems and procedures following the technical specifications provided by ESMA and to ensure complete and correct reporting on fees data, registered credit rating agencies should initially report on individual fees data nine months after the entry into force of this Regulation. The initial report should be made in respect of fee data as from the entry into force of this Regulation. Such obligation should not be construed as a discharge from the obligation on registered credit rating agencies to submit periodic information on fees in accordance with Article 11(3) of Regulation (EU) No 1060/2009 in the interim period.

(8) Pricing policies and procedures should be provided on an ongoing basis so that any material changes are reported without undue delay after their adoption and at the latest 30 days after their implementation. The information to be reported should be compiled in a standard format to allow ESMA to receive and process the records automatically in its internal systems. Due to technical difficulties and technical progress over time, a number of technical reporting instructions concerning the transmission or the format of the files to be submitted by registered credit rating agencies might have to be updated and communicated by ESMA through specific communications or guidelines.

(9) Where a credit rating agency does not comply with its reporting requirements, ESMA should be empowered to request the information by means of a decision issued under Article 23b(3) of Regulation (EC) No 1060/2009, or take other investigatory measures.

(10) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission, in accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.

(11) 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 in accordance with Article 37 of Regulation (EU) No 1095/2010,

HAS ADOPTED THIS REGULATION: