

ESMA clarifies endorsement regime for third-country credit ratings

The Final Report details a number of changes and clarifications to the existing Guidelines focusing on the obligations of the endorsing CRA, the conduct of the third-country CRA, and the third-country legal and supervisory framework. It also clarifies ESMA's supervisory powers over endorsed credit ratings and the notion of objective reasons.

Endorsement is a regime under the CRA Regulation, which allows credit ratings issued by a third-country CRA, and endorsed by an EU CRA, to be used for regulatory purposes in the EU. Endorsement is currently used by the largest CRAs in the EU. Today, more than two thirds of the credit ratings that can be used for regulatory purposes in the EU are introduced through the endorsement regime. Nearly all endorsed credit ratings relate to non-EU issuers and financial instruments.

Steven Maijoor, Chair, said:

"In light of the importance of credit ratings produced in third countries and used in the EU, it is necessary that third-country regulatory and supervisory frameworks meet high standards, and that we also have assurances that third-country CRAs meet these standards in practice and on an ongoing basis.

"The updated Guidelines make clear that ESMA can, and will, exercise its powers to request information from EU CRAs about endorsed credit ratings. Ensuring that endorsed credit ratings fulfil the same high standards as credit ratings issued in the EU is fundamental to investor protection and promoting stable and orderly financial markets."

The main changes introduced by the updated Guidelines refer to:

- **Obligations of the endorsing CRA** – when an EU CRA endorses a credit rating it must be able to demonstrate that the conduct of the third-country CRA that elaborated the credit rating fulfils requirements that are at least *as stringent as* the EU requirements. ESMA will no longer consider this condition to be automatically met when a third-country CRA is based in a jurisdiction whose legal and supervisory framework has been positively assessed by ESMA;
- **ESMA's supervisory powers** – ESMA clarifies that it has the power to request periodical information directly from the endorsing EU CRA about an endorsed credit rating and the conduct of the third-country CRA; and
- **Objective Reasons** – when a credit rating is endorsed there must be an objective reason for elaborating the rating outside the EU. ESMA provides transparency on how it assesses this requirement.

The Guidelines will take effect on 1 January 2019, in order to give CRAs sufficient time to adapt policies and procedures to take into account ESMA's additional guidance on the requirements which are *as stringent as* EU

requirements – these will be developed by ESMA in 2018.

Eligibility of third-country jurisdictions for endorsement and equivalence

ESMA has also published its [Final Report](#) on *Technical advice on CRA regulatory equivalence – CRA 3 update*. CRA 3 will enter into force on 1 June 2018 for the purposes of endorsement and equivalence. The Technical Advice (TA) to the European Commission assesses the legal and supervisory framework of the nine jurisdictions (Argentina, Australia, Brazil, Canada, Hong Kong, Japan, Mexico, Singapore and United States), which until now have been eligible for equivalence and endorsement. The advice covers:

ESMA deems that the countries under assessment continue to meet the requirements for endorsement taking into account the new CRA 3 requirements. These countries will continue to benefit from the endorsement regime after 1 June 2018. ESMA's decision on endorsement is final and not subject to approval by the European Commission.

Equivalence allows a non-systemic CRA without any physical presence in the EU to be certified by ESMA. Currently four certified CRAs located in three non-EU jurisdictions rely on this regime. ESMA has concluded that the local legal and supervisory frameworks of these three jurisdictions, as well as of Canada and Hong Kong, meet the objectives of the additional CRA 3 requirements for the purposes of equivalence.

The countries whose legal and supervisory frameworks were assessed as not fully meeting the requirements are Argentina, Australia, Brazil and Singapore. However, the CRAs established in these jurisdictions currently rely only on the endorsement regime – not on equivalence.

As these jurisdictions' legal frameworks are equivalent to CRA 1 and 2 and parts of CRA 3, ESMA has invited the European Commission to explore the possibility to consider granting a transitional period to allow the relevant authorities to further develop their regulatory regimes. The final determination of equivalence is the exclusive prerogative of the European Commission.