

ESMA fines five banks €2.48 million for issuing credit ratings without authorisation

Between June 2011 and August 2016, the five banks issued credit research to their clients – and SEB continued to do so until May 2018. This credit research included the issuance of what the banks described as *shadow ratings*. These reports related to different entities and underlying financial instruments and these reports included opinions, which ESMA found met the definition of a credit rating provided for by the CRAR. However, no bank had acquired the necessary ESMA authorisation to issue ratings and such conduct infringes the CRAR which requires prior authorisation.

The individual fine amounts take into account the aggravating factor that the banks had committed the infringement for more than six months but also consider the mitigating factor that each bank has voluntarily taken measures to ensure that similar infringements could not be committed in the future.

Unauthorised credit ratings

Under the CRAR, issuing credit ratings requires authorisation by ESMA to ensure that such ratings are independent, objective and of adequate quality and that Credit Rating Agencies (CRAs) are subject to the same rules and oversight across all EU countries. A firm, in order to be registered as a CRA in the EU, needs to provide proof that it fulfils the necessary organisational requirements and provides adequate safeguards, in particular regarding governance, conflicts of interests, internal controls, rating process and methodologies, business activities and disclosures. A failure by a firm to apply for registration prior to issuing ratings is an infringement of the CRAR.

None of the five banks was, or is, registered as a CRA nor had they applied for registration. Currently, there are 27 CRAs authorised by ESMA to issue credit ratings within the EU.

Right of appeal

The five banks mentioned above may appeal against this decision to the Board of Appeal of the European Supervisory Authorities. Such an appeal does not suspend the fine, although it is possible for the Board of Appeal to suspend the application of the decision in accordance with the CRAR.