

BVI answers to the ESMA Consultation Paper on CRA Implementation 11 February 2014 ESMA/2014/150

BVI¹ fully supports ESMA's consultation as it helps to provide investors with sufficient information on creditworthiness and reduces reliance on external credit ratings while promoting competition in the credit ratings agency market. By setting information standards which truly cater to investors needs, the duplication of essentially the same disclosure to various regulators, vendors, and investors will be reduced over time, leading to more efficiency and cost savings, especially in the securitisation markets.

More efficiency can be gained if the use of internationally accepted standards, in particular ISO standards for identification (LEI, ISIN) as well as common data elements (date, time, address, etc.) are strictly enforced throughout the Regulatory Technical Standards (RTS) with no exceptions. The market will then start to use the standard also in areas where they may not be commonly used today.

Most of our members manage and administer Alternative Investment Funds (AIFs) within the meaning of the Alternative Investment Fund Managers Directive (AIFMD). The AIFMD L-2 regulation among other things sets out specific requirements for fund managers investing in securitisation positions. The Alternative Investment Fund Manager (AIFM) has to verify the existence of a retained material net economic interest as a precondition to investment (Art 51). Furthermore, the AIFM needs to insure that the sponsor and originator have certain features (Art 52) and the AIFM itself has to comply with a set of qualitative requirements (Art 53).

As a result of the regulation, the AIFM needs full information on the securitization positions of the AIF, including loan level, cash flow and details of the pre-payment of underlying loans. Therefore, we urge ESMA to clearly address in the RTS the need of fund investors to receive the confirmation on an on-going basis that, as also per the Capital Requirements Directive (CRD), originators or sponsors retain 5% of the credit risk and disclosure of the necessary information on the underlying transactions, so that fund managers may fulfill their obligations under AIFMD. Reporting could be substantially facilitated if ESMA would also consider applying ECB technical standards applicable on the up- and download of securitisation position information.

With respect to the European Rating Platform (ERP) we explicitly welcome ESMA's willingness to take into account the information wishes of different categories of users, and that opportunities to download the information as well as the automatic machine-to-machine access to the website are under consideration. We strongly support that ESMA recognizes the need of investors to access the ERP frequently in order to validate ratings in large quantities with the help of list formats. In this context we respectfully suggest to clarify also the rights of ERP users to use the data in all internal applications throughout the value chain of asset management, as well as in client and regulatory reporting.

¹ BVI represents the interests of the German investment fund and asset management industry. Its 80 members currently handle assets of EUR 2.0 trillion in both investment funds and mandates. BVI enforces improvements for fund-investors and promotes equal treatment for all investors in the financial markets. BVI's investor education programmes support students and citizens to improve their financial knowledge. BVI's members directly and indirectly manage the capital of 50 million private clients in 21 million households. (BVI's ID number in the EU register of interest representatives is 96816064173-47). For more information, please visit www.bvi.de.



Furthermore, we encourage ESMA to continue to work on mapping of CRA ratings as it is very important for the user of ratings to be able to map the ratings to a single numerical scale and to get the minimum/maximum and average/median (numerical scale rating equivalents on a specific entity/issue) across the universe of CRAs reporting into the ERP. This could facilitate the automated use of ratings in risk management and client reporting.

We do not see any risk or implications with regard to mappings of rating scales in view of the distinct methodologies employed by CRAs. The institutional user of ratings analyses the different methodologies and ratings at the research/front office level where the investment decisions are taken. Subsequent levels of the asset management value chain in the middle and back office are concerned with access to ratings only from a compliance and reporting approach. The ERP will be successful if these needs of institutional investors are serviced properly in practice.

We have the following specific comments on your questions:

DRAFT RTS on INFORMATION ON STRUCTURED FINANCE INSTRUMENTS

Q1: Do you agree that issuers, originators or sponsors of a structured finance instrument established in the EU shall jointly agree upon and designate the entity responsible for providing the information to ESMA?

We agree that issuers, originators or sponsors of a structured finance instrument established in the EU shall jointly agree upon and designate the entity responsible for providing the information to ESMA. The three actors should also be jointly and severally liable for failure to do so, and for timely delivery of and accuracy of information.

Q2: Do you consider that national laws on protection of personal data could impact the publication of the information contained in this draft Regulation?

Investors in granular securitisations like RMBS do not need personal data in the sense of disclosure of individual names of private persons who take out individual loans which end up in securitisation positions. As a result, there should not be too many issues with the different national regulation of confidentiality/privacy. We do not consider these differences to be insurmountable.

Q3: Do you consider the list of information requested pursuant to Article 4 as appropriate?

We consider the information appropriate and sufficient for investors. However, Art. 4 of the draft RTS should make explicit reference to include any information necessary to fulfill obligations under Articles 51 to 53 AIFMD-L2-Regulation.

The use of internationally accepted standards, in particular ISO standards for identification (LEI, ISIN) as well as common data elements (date, time, address, etc.) should be enforced throughout the RTS with no exceptions. For example, the use of the CUSIP identifier (cf. p.79) should be replaced by US/ISIN which can be used within the EEA without a license. Also all entities like originator, servicer, borrower (in case of entity) should always be identified by LEI. The market will then start to use the standard also in areas where they may not be commonly used today.



Q4: Do you consider the frequency of the information to be reported pursuant to Article 6 as adequate?

We believe that it is sufficient if the cash flow update is reported on a quarterly basis within 14 days after each interest payment, as there are no monthly cash flow payments on most securitisations. The details of the pre-payment of underlying loans should be reported in case of granular positions (e.g. RMBS) on a quarterly basis; while in non-granular securitisations material pre-payments should be updated on an ad hoc basis.

With respect to Article 6 (2) RTS we suggest that the transaction summary, cash flow models, and a draft prospectus are issued before issuance in order to allow investors to make an informed decision. The final prospectus may be filed after issuance only.

DRAFT RTS on THE EUROPEAN RATING PLATFORM

Q1: Do you agree with the chosen frequency of reporting?

We agree that ratings are published on a same day basis in the evening, cf. Article 9 (2) draft RTS. We would welcome guidance on the envisaged time frames for delivery of the information to investors which access the ERP frequently in order to validate ratings in large quantities with the help of automated list formats.

Q2: Do you agree with the choice of including also press releases and sovereign rating reports in the ERP and why?

We agree. However, we suggest including only the website URL, and no PDF, etc. of the particular press release or rating report in the envisaged downloadable rating file and the automatic machine-to-machine access to the website. We strongly support that ESMA recognizes the need of investors to access the ERP frequently in order to validate ratings in large quantities with the help of list formats.

DRAFT RTS on FEES CHARGED BY CRAs TO THEIR CLIENTS

Q1: Do you agree with the proposed approach? If not, and given the existing legal framework, please suggest an alternative or alternatives, giving reasons.

We agree. However, we would like to point out that the draft RTS focuses on the fees paid by rated entities for credit ratings and ancillary services, cf. Article 4 (1) draft RTS. We would welcome if the CRAs would be required to provide ESMA also with the fees paid by their unrated clients for only ancillary services, in particular rating data feeds. Most asset managers are unrated entities.

BVI looks forward to working with ESMA to develop a framework that is appropriate and effective for all stakeholders.