

COMMUNIQUE

FOR THE ATTENTION OF ENTITIES USING RATING AGENCIES

- REMINDER OF CERTAIN PROVISIONS OF REGULATION (EC) NO 1060/2009 OF 16 SEPTEMBER 2009 ON CREDIT RATING AGENCIES AS AMENDED BY REGULATION (EU) NO 462/2013 OF 21 MAY 2013;
- PUBLICATION OF COMMISSION DELEGATED REGULATION (EU) 2015/3 OF 30 SEPTEMBER 2014 SUPPLEMENTING REGULATION (EC) NO 1060/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL WITH REGARD TO REGULATORY TECHNICAL STANDARDS ON DISCLOSURE REQUIREMENTS FOR STRUCTURED FINANCE INSTRUMENTS.

The CSSF would like to draw the attention of the relevant parties to certain provisions of Regulation (EC) No 1060/2009 of 16 September 2009 ("CRA") as amended and supplemented by Regulation (EU) No 462/2013 of 21 May 2013 ("CRA 3"), as well as Commission Delegated Regulation (EU) 2015/3 of 30 September 2014, which was published on 6 January 2015 in the OJEU.

The CSSF reminds that these provisions are directly applicable to the relevant persons, because they are referred to in a European regulation. In accordance with Article 2-1 of the law of 23 December 1998, the CSSF is the competent authority in Luxembourg for the purposes of implementing the CRA Regulation and verifying compliance with the obligations arising from this regulation with the entities subject to its supervision.

Article 5a of the CRA Regulation as amended by the CRA 3 Regulation falls within the context of the efforts made internationally in order to **reduce over-reliance of the financial institutions on credit rating**. Thus, Article 5a (1) provides that credit institutions, investment firms, insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision, management companies, investment companies, alternative investment fund managers and central counterparties as defined in the CRA Regulation shall make their own credit risk assessment and shall not solely or mechanically rely on credit ratings for assessing the creditworthiness of an entity or financial instrument. Article 5a(2) specifies that competent sectoral authorities (i.e. in Luxembourg, the CSSF for the entities subject to its supervision) shall monitor the adequacy of their credit risk assessment processes of the aforementioned entities, assess their use of contractual references to credit ratings and, where appropriate, encourage them to mitigate the impact of such references, with a view to reducing sole and mechanistic reliance on credit ratings.

Article 8b of the CRA Regulation as amended by the CRA 3 Regulation concerns **information on structured finance instruments** ("ISF"). It provides that the issuer, the originator and the sponsor of a structured finance instrument established in the European Union shall, on the website set up by ESMA, jointly publish information on the credit quality and performance of the underlying assets of the structured finance instrument, the structure of the securitisation transaction, the cash flows and any collateral supporting a securitisation exposure as well as any information that is necessary to conduct comprehensive and well-informed stress tests on the cash flows and collateral values supporting the underlying exposures. Thus, in accordance with Article 8b, the investors should receive sufficient information on the creditworthiness and performance of their underlying assets with a view to enabling them to perform an informed assessment of the creditworthiness of ISF.

This information would also reduce investors' dependence on credit ratings and should facilitate the issuance of unsolicited credit ratings.

Commission Delegated Regulation (EU) 2015/3 supplements the provisions of Article 8b. It includes standard **communication models** for a certain number of asset categories.

The issuer, originator and sponsor may designate an entity responsible for reporting the information to the website to be set up by ESMA in accordance with Article 8b. Outsourcing the reporting obligation to another entity, for example a servicer, should also be possible. This should be without prejudice to the responsibility of the issuer, originator and sponsor under the Commission Delegated Regulation (EU) 2015/3.

Article 8c of the CRA Regulation as amended by the CRA 3 Regulation concerns **information on double credit rating of structured finance instruments**. Consequently, where an issuer or a related third party intends to solicit a credit rating of a structured finance instrument, it shall appoint at least two credit rating agencies to provide credit ratings independently of each other and shall ensure that the appointed credit rating agencies comply with specific criteria.

Article 8d concerns the use of **multiple credit rating agencies**. Where an issuer or a related third party intends to appoint at least two credit rating agencies for the credit rating of the same issuance or entity, the issuer or a related third party shall consider appointing at least one credit rating agency with no more than 10 % of the total market share, which can be evaluated by the issuer or a related third party as capable of rating the relevant issuance or entity, provided that, based on ESMA's list, there is a credit rating agency available for rating the specific issuance or entity. Where the issuer or a related third party does not appoint at least one credit rating agency with no more than 10 % of the total market share, this shall be documented.

Luxembourg, 26 January 2015

