

ESMASent via email

3 August 2020

Dear Madam, dear Sir,

ESMA Call for evidence on the availability and use of credit rating information & data (ESMA33-5-829)

EFAMA welcomes the opportunity of ESMA's Call for evidence, as published in March 2020, to reiterate the series of underlying concerns European asset management companies continue to encounter as important users of credit rating information and data provided by CRAs and their group affiliates. Such use is not solely internal to the asset management company itself (e.g. from research to initial portfolio construction, from trading to risk management and compliance), but also involves other critical external service partners (e.g. fund custodians/trustees, third-party managers, among others) which use ratings data to service ranges of investment funds managed by the asset management company. Our present submission also wishes to echo our industry's earlier claims, presented to ESMA in our response to the Consultation on Guidelines on the submission of periodic information to ESMA by Credit Rating Agencies (ESMA33-9-252) in 2018.

We appreciate that Questionnaire A of the Call for evidence has been targeted to gather precious information on credit rating information and data usage, including ones intended for non-regulatory purposes. We would let our corporate Members respond to the detailed questions contained therein directly, limiting the present letter to a series of broader considerations that we believe should guide ESMA's follow-up work to its Call for evidence.

Firstly, in relation to the limited usability of the ERP, we note that its take-up has been partly hindered by CRAs, either by prohibiting the collection of rating information from their websites in an automated fashion and/or by limiting its internal/external use, including for regulatory reporting. Consequently, asset management companies are not able to download the bulk data that is required daily to implement investment strategies, risk management and for compliance purposes.

Through this submission, EFAMA wishes to reinforce the case for the ERP as a single access point for credit rating information that is open to all registered CRAs, free of charge, and where users can access vast volumes of the inputs they need on a product-specific/fund-specific basis. Moreover, such data could be accessed through a common interface/data-feed determined by ESMA, thereby removing the present case for multiple access points, each through a separate licence, or through the "bundling" of unnecessary ancillary services attached to a required data feed, as further below.

More specifically, CRA affiliated companies typically require the subscription of a licence granting access to machine-readable credit rating data feeds for issuers and separate issues, as well as to the related credit research notes. Such licence is required in advance even when market data feeds are accessed via third-party data vendors/aggregators (e.g. Bloomberg, Thompson Reuters, etc.). Without such licence, credit

rating data is only available on a “view only” basis, i.e. cannot be integrated into the manager’s proper automated information system for real-time usage. Such licences bear many dimensions and restrictions, whereby licences are divided-up, or “sliced” according to, for instance, business activity, location, data type, update frequency, usage type, asset under management (AuM), client size, delivery mechanism, *inter alia*. For credit research licences, there are comparable restrictions imposed on the licensee, including limitations via number of logins, by volume of downloads, by departments, etc. “Bundling” strategies are instances where a single global licence bearing all market data services is imposed on the end-user, regardless of the latter’s needs or specifications.

Secondly, as the Call for evidence correctly notes, there are ancillary services offered by affiliates of registered CRAs which do not appear to abide by the relevant CRAR provisions - i.e. Annex I Section B(3) thereof - in terms of being non-discriminatory and based on actual costs. Whereas over the shorter term, we advocate that ESMA and NCAs step-up their supervision and enforcement of existing market data cost regulation (including instances where data feeds are accessed via third-party data vendors/aggregators), a longer term solution will only derive from a coherent regulation of financial market data costs, comprehensive of cost transparency rules for all data providers, including affiliates of registered CRAs among others. Key among these changes will be the publication of fee schedules at the start of a service agreement, as well as on an ongoing basis to justify further price increases throughout the life of the commercial relationship. The same recommendation would hold true for non-CRA-affiliated, third party market data vendors/aggregators. The latter should not be able to claim “ownership”, and consequently charge, for simply feeding ratings and other essential market data onto end-users through their systems, often bundled with non-essential add-on services.

Only through such far-reaching changes can users expect that the recurring practices by CRA affiliates, especially those of “bundling” or of dividing-up licences, each for a separate “derived data” usage, will cease, or at least be offered on a more transparent and objective cost basis akin to the price protection safeguards now under the MiFID framework. As a positive knock-on effect from greater transparency around costs, we also expect that CRAs pricing power in service agreement negotiations with users will be diminished, away from the “take-it-or-leave-it” terms currently being imposed on most asset management users, especially smaller firms¹.

As ESMA is aware, the abusive pricing practices combined with the rigidity of the service terms and the dire consequences for users’ non-compliance with such terms (e.g. sudden data cut-offs, arbitrary fines and litigation), are being gradually replicated in the offer of ESG/sustainability ratings or scores. Such phenomenon is certainly broader than CRAs and their affiliates, involving the large global index providers more prominently, as EFAMA has noted in its position paper on financial market data costs, as shared with ESMA in September 2019.

In sum, but also in view of ESMA’s follow-up work to its Call for evidence, EFAMA’s priorities would be three-fold:

- i. Develop the ERP as a single access point for credit rating information that is open to all registered CRAs, free of charge and allows end-users to also share ratings information externally with regulators and clients;
- ii. Use the review of the CRAR to enlarge its scope, requiring that affiliated group entities of the CRAs become subject to its requirements; and

¹ Accompanying the arbitrary pricing of data licensing agreements, one should also consider the ability of CRAs to impose fines on users for inappropriate uses of their licences as a possible outcome of audits carried-out by the contracting CRA. In addition to the increased costs arising from having to purchase several data licensing agreements to fundamentally access the same information (i.e. credit ratings), ESMA should also consider that each licence also carries its own relative management costs, among which, those related to CRA audits.

- iii. That CRA group entities publish their fee schedules and implement the valuable good practices² identified in ESMA's December 2019 follow-up to its earlier Thematic Report on fees charged by credit rating agencies and trade repositories.

We remain at your disposal should you wish to discuss any of the above in further detail.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Tanguy van de Werve', with a long horizontal line extending to the right.

Tanguy van de Werve
Director General

About EFAMA:

EFAMA is the voice of the European investment management industry, representing 28 member associations and 59 corporate members. At end 2019, total net assets of European investment funds reached EUR 17.8 trillion. These assets were managed by close to 34,200 UCITS (Undertakings for Collective Investments in Transferable Securities) and 29,000 AIFs (Alternative Investment Funds).

² These are listed under Section 2.2, paragraph 43, of ESMA's *Follow-up Report to the Thematic Report on fees charges by Credit Rating Agencies and Trade Repositories* (ESMA80-196-3218).