



To **European Securities and Markets Authority**

Submitted via website.

October 18<sup>th</sup>, 2024

Reference: Consultation Paper on Supervisory expectations for the management body (ESMA84-2037069784-2168)

Dear ESMA,

With reference to the above consultation paper dated July 8<sup>th</sup>, 2024<sup>1</sup>, we are pleased to hereby submit the views of our association representing European Credit Rating Agencies registered with your institution.

**Q1: Do you agree with the proposed scope of application of these supervisory expectations? If not, please explain.**

As our association represents European Credit Rating Agencies, our response focuses only on these supervised entities. We cannot comment on the other entities under ESMA's direct supervision.

We welcome the explicit clarification in § 2 stating that “where there is a case of conflict, requirements stipulated in primary or secondary legislation will prevail over any supervisory expectation set out in this document.”

**Q2: Do you agree with the proposed approach to proportional application?**

We welcome ESMA's effort in outlining its expectations towards the management body and the clarification with regards to the supervisory and management functions. We specifically welcome the reference to national laws as these may set different requirements depending on the legal form of the entity and therefore some flexibility and room for interpretation is a necessity. We would like to recall that the CRA Regulation regularly uses the term “administrative or supervisory board” when referring to specific tasks, requirements or obligations, which mirrors this need for flexibility.

According to Article 3 (1) (n) of the CRA Regulation, the ‘senior management’ means the person or persons who effectively direct the business of the credit rating agency and the member or members of its administrative or supervisory board. A similar definition can be found in Article 3 (12) of the newly adopted regulation on ESG rating providers. However, this ESG Rating Providers Regulation includes

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<sup>1</sup> Available at [https://www.esma.europa.eu/sites/default/files/2024-07/ESMA84-2037069784-2168\\_Consultation\\_Paper\\_Supervisory\\_Expectations\\_for\\_the\\_Management\\_Body.pdf](https://www.esma.europa.eu/sites/default/files/2024-07/ESMA84-2037069784-2168_Consultation_Paper_Supervisory_Expectations_for_the_Management_Body.pdf)

an additional definition in Article 3 (11) with regard to the ‘management body’<sup>2</sup>, which is in line with the definition in the proposed guideline.

Reference § 13 page 7 of the consultation paper, we note that ESMA defines the composition of a management body as “the non-executive directors of a firm and its most senior executive managers”. We believe that the later part relating to the “most senior executive managers” is very broad and could include a high number of persons depending on the organisational chart of the supervised entity. We instead propose to refer to the body who takes decisions on behalf of the company in accordance with national laws.

With regards to the proposed approach to proportionality, we appreciate that “ESMA will calibrate its expectations according to the nature, scale, complexity and overall risk profile of an entity and based on how these characteristics may affect investor protection, orderly functioning of markets and financial stability”. We believe that this set of criteria is rather general and subjective and would therefore appreciate more precise guidance in order to enable supervised entities to assess the overall risk profile themselves. This is especially important as the proposed guidance states that “for entities of smaller sizes and with lower levels of complexity, it will be appropriate to adhere to ESMA’s expectations by designing processes which are applied with lower frequency and/or intensity”. As a potential solution, ESMA’s classification into the different reporting schedules (A or B) could be used.

**Q6: Do you agree with the expectations regarding the role of the chair? If not, please explain.**

At the outset, it should be noted that the concept of a Board “Chair” is not foreseen or required within certain EU jurisdictions. In accordance with ESMA’s statement regarding the priority provided to primary / secondary legislation, the assumption of our association is that these requirements will not apply where a Chair is not required by local legislation.

We are of the view that the proposed guideline regarding the role of the Chair assigns a lot of responsibility to the Chair, especially if the role is a non-executive function. We believe that some of these tasks should be assigned to the Board as a whole.

ESMA considers that the Chair should be appointed for a standard term. We would appreciate additional guidance on the expected length and whether the Chair could be re-appointed. We would like to recall that the CRA Regulation sets only specific requirements on the terms of the INEDs and that the CRA Regulation does not include any specific requirements on a Chair.

**Q7: Do you expect that adherence to the expectations set out in this section would be overly burdensome or otherwise difficult for your entity? If so, please explain.**

We hereby provide our views with regard the section on “committees and pre-board meetings”. Depending on the size and complexity of a CRA, a rating agency may potentially set-up committees charged with specific tasks, but the overall responsibility remains with the management body. Such committees can discuss and handle certain tasks in greater detail, thereby facilitating management’s

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<sup>2</sup> ‘management body’ means an ESG rating provider’s body or bodies, which are appointed in accordance with national law, which are empowered to set the ESG rating provider’s strategy, objectives and overall direction, and which oversee and monitor management decision-making, and include the persons who effectively direct the business of the ESG rating provider



final decisions. We therefore agree that for such (standing) committees a certain level of documentation may be required in order to fully track decisions taken.

However, we feel that the requirement to document all “pre-board meetings” is highly burdensome and would add little value. Pre-board meetings assist Board members in gaining a better understanding and insight into specific issues that in turn enable the Board to take informed decisions within the Board meeting itself. Given the ultimate decisions can only be taken in the Board meeting, requiring tracking and documenting of all pre-Board meetings is in our view far too demanding and disproportionate, especially for smaller and medium sized CRAs who lack the extensive governance resources of major CRAs listed on major international stock markets. We would respectfully request that ESMA reconsiders its proposals in this respect.

We would like to thank you for your attention. We stand ready to provide any additional information you may require.

### **About EACRA**

The European Association of Credit Rating Agencies (EACRA), set up in November 2009 and registered in Paris, was established to act as a platform for cooperation for EU-based Credit Rating Agencies (CRAs). Our mission is to support and facilitate the compliance of CRAs with regulatory requirements through effective communication, cross-border know how, and the promotion of best practices. In addition, EACRA seeks to promote Credit Ratings and the interests of CRAs across Europe, as well as enhance the financial community and general public’s understanding of Credit Ratings.