

European Securities and Markets Authority
11 - 13 avenue de Friedland
75008, Paris

31 March 2011

Dear Sirs,

Response submission from the International Capital Market Association (ICMA)

Re: European Securities and Markets Authority Consultation Paper – ESMA Guidelines on the application of the endorsement regime under Article 4 (3) of the Credit Rating Regulation 1060/2009

Introduction:

The ICMA¹ is a pan-European self regulatory organisation and an influential voice for the global capital market. It has a membership of over 400 firms and represents a broad range of capital market interests including global investment banks and smaller regional banks, as well as asset managers, exchanges and other venues, central banks, law firms and other professional advisers. The ICMA's market conventions and standards have been the pillars of the international debt market for over 40 years.

Commentary:

The ICMA notes the consultation paper “ESMA Guidelines on the application of the endorsement regime under Article 4 (3) of the Credit Rating Regulation 1060/2009”, as published by the European Securities and Markets Authority on 18 March. This consultation seeks answers to a single question:

“Please comment on the content of the “Guidelines on the application of the endorsement regime under Article 4.3” attached to this Consultation Paper (Annex I), by considering also the attached Cost-Benefit Analysis (Annex II).”

In response to this question, the ICMA wishes to draw the ESMA's attention to previous comments on this topic that it has submitted to the Committee of European Securities Regulators – in particular in a response paper dated 30 November 2009². These comments made clear that the ICMA considers that it is quite possible for self-imposed requirements to be as stringent as those imposed by legislation or regulators; and that Article 4.3(b) of the Regulation clearly states that that it is the “conduct” of credit rating activity by the CRA that must fulfil requirements that are at least as stringent as those in Articles 6 to 12.

¹ For more information regarding ICMA please go to <https://www.icmagroup.org/home.aspx>


² Please see at <https://www.icmagroup.org/ICMAGroup/files/b1/b1b06942-387b-482e-8018-5ac0bf9612d9.pdf>

The ICMA continue to believe that these comments correctly reflect the wording and intention of the Credit Rating Regulation 1060/2009. The ICMA does not concur with the view proposed by the ESMA that the third country regulation has to contain enforceable rules that are “as stringent as” the one in the EU regulation. The ICMA highlights that the only requirements in Article 4 that relate to the third country regulatory environment itself are Articles 4.3(f), (g), and (h) (which collectively apply from 7 June 2011). These merely require that the CRA in question be subject to third country authorisation or registration, and supervision (4.3(f)); without that third country interfering with the content of credit ratings and methodologies (4.3(g)); and that appropriate cooperation arrangements be in place between the competent authority of the home Member State of the endorsing CRA and the relevant competent authority of the CRA established in a third country (4.3(h)).

Concluding remarks:

The ICMA appreciate the work being carried out by the European Securities and Markets Authority in respect of the important technical question being examined through this consultation paper; and would like to thank the European Securities and Markets Authority for its careful consideration of the views expressed in this response. The ICMA remains at your disposal to discuss any of the above points.

Yours faithfully,

A handwritten signature in dark ink, appearing to be 'D. Hiscock', with a long horizontal stroke extending to the right.

David Hiscock
Senior Director - Market Practice and Regulatory Policy