

DECISION OF THE BOARD OF SUPERVISORS

Decision to adopt a supervisory measure taking the form of a public notice in accordance with Articles 23e(5) and 24 of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies

The Board of Supervisors (“Board”),

Having regard to the Treaty on the Functioning of the European Union (“Treaty”)

Having regard to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (“ESMA Regulation”), and in particular Article 43(2) and Article 44(1) thereof

Having regard to Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (“CRA Regulation”), in particular Articles 6(2), 23e, 24, 25 thereof

Having regard to Commission Delegated Regulation (EU) No 946/2012 of 12 July 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to rules of procedure on fines imposed to credit rating agencies by the European Securities and Markets Authority, including rules on the right of defence and temporal provisions (“Procedural Regulation”), in particular Article 3(4) thereof

Whereas:

- (1) On the basis of the file containing the investigating officer’s findings and after examination of the submissions of Standard & Poor’s Credit Market Services France SAS and Standard & Poor’s Credit Market Services Europe Limited the Board finds that the registered credit rating agencies Standard & Poor’s Credit Market Services France SAS and Standard & Poor’s Credit Market Services Europe Limited have committed the infringements listed in paragraphs 12 and 18 of Annex III.I of the CRA Regulation.



- (2) The Board considers that the evidence before it does not allow it to establish that Standard & Poor's Credit Market Services France SAS and Standard & Poor's Credit Market Services Europe Limited acted intentionally or negligently as required by Article 36a(1) of the CRA Regulation in order for the Board to impose a fine.
- (3) The Board thus decides to adopt a supervisory measure taking the form of a public notice in accordance with Article 24 of the CRA Regulation.

Has adopted this decision:

Article 1

The Board of Supervisors finds that the registered credit rating agencies Standard & Poor's Credit Market Services France SAS and Standard & Poor's Credit Market Services Europe Limited have committed the infringements listed in paragraphs 12 and 18 of Annex III.I of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies.

Article 2

The Board of Supervisors takes the decision to adopt a supervisory measure taking the form of the following public notice, in accordance with Articles 23e(5) and 24 of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies:

**Public notice regarding a release by S&P erroneously suggesting a
downgrade of the Republic of France**

I) Background

- (1) Standard & Poor's Credit Market Services Europe Limited ("S&P Europe") and Standard & Poor's Credit Market Services France SAS ("S&P France") are part of the group of credit rating agencies, registered under Regulation (EC) No 1060/2009 on credit rating agencies (the "CRA Regulation"), which operate as the European Union arm of S&P Ratings Services. S&P Ratings Services is comprised of the credit rating businesses of certain wholly-owned subsidiaries of The McGraw-Hill Companies, Inc., today McGraw Hill Financial Inc. ("McGraw-Hill").
- (2) On 16th November 2011, ESMA opened an investigation concerning S&P Europe and S&P France (hereinafter also referred to collectively as "S&P") in respect of an email alert which, on 10th November 2011 (at 15:57 CET), had been erroneously released to some 468 subscribers to what is referred to as S&P's web-based Global Credit Portal (the "Incident").



Whilst S&P's credit rating of France had not changed, the email alert stated in its header as follows: "France (Republic of) (Unsolicited Ratings): DOWNGRADE".

- (3) Based on the findings of an independent investigation officer appointed to that effect by ESMA, ESMA's Board of Supervisors (the "ESMA Board") found on 20 May 2014 that an examination of the facts showed that the Incident was the result of a failure by S&P Europe and S&P France to meet certain of the organisational requirements set out in the CRA Regulation.

II) S&P Europe and S&P France committed an infringement of the CRA Regulation by failing to meet the organisational requirements set out in Annex I, Section A, points 4 and 10, of the CRA Regulation

1) Relevant provisions of the CRA Regulation

Annex I, Section A, point 4, provides:

"A credit rating agency shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems.

Those internal control mechanisms shall be designed to secure compliance with decisions and procedures at all levels of the credit rating agency.

A credit rating agency shall implement and maintain decision-making procedures and organisational structures which clearly and in a documented manner specify reporting lines and allocate functions and responsibilities."

Annex I, Section A, point 10, provides:

"A credit rating agency shall monitor and evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this Regulation and take appropriate measures to address any deficiencies."

Annex III.I, paragraph 12, provides:

"The credit rating agency infringes Article 6(2), in conjunction with point 4 of Section A of Annex I, by not having sound administrative or accounting procedures, internal control mechanisms, effective procedures for risk assessment, or effective control or safeguard arrangements for information processing systems; or by not implementing or

maintaining decision-making procedures or organisational structures as required by that point.”

Annex III.I paragraph 18, provides:

“The credit rating agency infringes Article 6(2), in conjunction with point 10 of Section A of Annex I, by not monitoring or evaluating the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this Regulation or by not taking appropriate measures to address any deficiencies.”

2) Factual Background

- (4) Besides credit ratings, S&P also produces what it calls Banking Industry Country Risk Assessments (“BICRAs”). According to S&P, BICRAs are not credit ratings as they are not opinions regarding the creditworthiness of a financial instrument or the issuer of a financial instrument, but assessments of the banking systems in particular countries.
- (5) S&P has published BICRAs since 2006 and in 2008 decided that it was desirable to maintain BICRAs in the same centralised internal database that contains S&P’s credit ratings and to display them on S&P’s subscription-based Global Credit Portal (GCP). GCP is one of the methods used by S&P to disseminate its credit ratings and other financial information products and, among other services, provides for an email alert function that a subscriber can customize in order to receive an alert when certain information changes on GCP, e.g. in case S&P decides to change a credit rating on a particular issuer (e.g. a downgrade).
- (6) The relevant technical specifications, in connection with the project to maintain BICRAs in the same centralised internal database that contains S&P’s credit ratings, treated BICRAs as ratings. No effective action was taken to address the implications this could have. This eventually led to the Incident when the attempt to change an incorrect display of the BICRA for France on GCP triggered an email alert stating in its header that the rating of France had been downgraded.

3) Infringements committed by S&P Europe and S&P France

Failure to meet the organisational requirements set out in Annex I, Section A, point 4

- (7) Based on the evidence put before it, the ESMA Board considered that the Incident was the result of control failures within S&P’s organisation. The ESMA Board based itself on the following findings.

- (8) The investigation carried out showed that S&P did not maintain a centralised file with test records to establish the testing that may have been undertaken and that no adequate testing of GCP was performed for BICRAs until after the change went live.
- (9) The relevant processes and procedures described in the documents and explanations provided during the investigation had not all been revisited to take account of the requirements resulting from the CRA Regulation and, in any event, were in part inconsistent with one another, and did not individually set out the steps that one might expect to see in the internal controls of a large established organisation required by the CRA Regulation.
- (10) Although the introduction of BICRAs into the centralised internal database in view of displaying them on GCP was an extension of this database into a new area, no additional or unique controls were deployed and the ESMA Board was not presented with evidence that such an action was considered, or that there was active consideration of whether existing processes were adequate. In any event the findings of the investigating officer showed that the existing processes, notably with regard to testing, were not effectively followed.
- (11) The information at the disposal of the ESMA Board showed a lack of clear responsibility for this project within S&P. It is unclear who the decision-makers were in two key decisions, the decision to initiate the project of introducing BICRAs into the centralised internal database in view of displaying them on GCP and the decision to actually upload a first set of data (the BICRA for France) to be displayed on GCP.
- (12) The relevant S&P staff appeared inadequately informed and did not demonstrate sufficient or necessary understanding of what was taking place. The investigation revealed a lack of effective oversight and responsibility. The person in charge of the project did not know whether the BICRA for France had been uploaded as a test example and assumed there was a difference between “test” and “going live”. The person that had previously approved the upload of the France BICRA data had completely forgotten that this information had been uploaded and was not aware that the BICRA was shown on GCP together with the sovereign rating of France.
- (13) There was a significant delay (more than three weeks) in identifying the fact that, following a change of the BICRA for France, the wrong BICRA was maintained in the central data base and displayed on GCP. When this issue was identified, there was clear confusion among S&P Staff over the required corrective action. There was no clear procedure for a rapid and effective action once the issue was discovered. That led to a decision to take an action which was not effective to achieve what was intended, namely to remove the BICRA for France

from the central database and the display on GCP, and which ultimately triggered the Incident.

- (14) Based on these findings the ESMA Board considered that the Incident was not an isolated and inadvertent technological error but the result of a series of shortcomings evidencing an absence of sound internal control mechanisms, effective control and safeguard arrangements for information processing systems and of decision-making procedures and organisational structures, which clearly and in a documented manner specify reporting lines and allocate functions and responsibilities, as required by Annex I, Section A, point 4, of the CRA Regulation.
- (15) As a result, the ESMA Board found that both S&P Europe and S&P France had committed an infringement under Annex III.I, paragraph 12, of the CRA Regulation.

Failure to meet the organisational requirements set out in Annex I, Section A, point 10

- (16) The ESMA Board considered that point 10 of Section A of Annex I of the CRA Regulation requires credit rating agencies registered under the CRA Regulation to take measures that enable them to monitor and evaluate the adequacy and effectiveness of its systems and internal control mechanisms (notably as regards control and safeguard arrangements for information processing systems, decision-making procedures and organisational structures) in such a way as to identify shortcomings such as those set out above before they come to light through events such as the Incident.
- (17) The ESMA Board considered that there had been sufficient indications that would have made a credit rating agency meeting the requirements of point 10 of Section A of Annex I of the CRA Regulation identify such shortcomings before they could give rise to the Incident. Although it was identified that alerts could be triggered, no effective action was taken to address the possible implications.
- (18) The processes and procedures resulting from the documents and explanations provided during the investigation, which were in part inconsistent and did not give a clear understanding of the precise steps to be followed when enacting modifications to IT systems such as those in the case at hand, had not been modified in order to remedy these deficiencies, suggesting that any review of such processes and procedures that may have been undertaken was necessarily inadequate.
- (19) As regards more specifically the introduction of BICRAs into the central internal database, there is no evidence that S&P considered actively whether existing processes were adequate or whether they were effectively followed. While the information at the disposal of the ESMA

Board shows that there was a lack of clear responsibility for the BICRA Enhancement and that staff was inadequately informed, S&P undoubtedly failed to identify this problem before it could give rise to the Incident.

- (20) The evidence put before the ESMA Board shows that at the time of the Incident S&P did not have an internal IT Audit Department and in 2010 and 2011 there had been no IT audit covering the specific S&P systems that relate to the Incident.
- (21) In any case, the ESMA Board considered that the fact that the Incident occurred showed that the existing internal safeguards were not sufficient to allow S&P to identify the shortcomings. Consequently, the ESMA Board held that S&P did not monitor and evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements nor take the appropriate measures to address any deficiencies in a way which may be deemed to meet the requirements set out in point 10 of Section A of Annex I of the CRA Regulation.
- (22) The ESMA Board thus found, based on the above analysis, that the evaluation by S&P of the adequacy and effectiveness of its systems, internal control mechanisms and arrangements did not comply with Annex I, Section A, point 10, of the CRA Regulation and that S&P did not take appropriate measures to address any deficiencies that should have been identified.
- (23) As a result, the ESMA Board decided that S&P Europe and S&P France had each committed an infringement under Annex III.I, paragraph 18, of the CRA Regulation.

III) Supervisory measure: public notice

- (24) Pursuant to Article 36a of the CRA Regulation an infringement can only give rise to a fine if the ESMA Board is satisfied that the infringement was committed with intention or negligence. The ESMA Board considered that the evidence before it did not allow it to conclude that S&P had committed the relevant infringements intentionally or negligently as required by the CRA Regulation and thus decided not to impose a fine on S&P.
- (25) Based on the provisions of Article 24 of the CRA Regulation, the ESMA Board decided that the relevant infringements warranted a supervisory measure in the form of the publication of a public notice. The ESMA Board considered that this was the proportionate supervisory action available to it, taking into account the voluntary measures taken by S&P to bring the infringement to an end and communicated to ESMA during the investigation.



Article 3

This decision is addressed to:

1) Standard & Poor's Credit Market Services France SAS, 40 rue de Courcelles, 75008 Paris, France;

and

2) Standard & Poor's Credit Market Services Europe Limited, 20 Canada Square, London, E14 5LH, United Kingdom.

Article 4

This decision takes effect upon its notification to the addressees.

The addressees may appeal against this decision to the Board of Appeal of the European Supervisory Authorities in accordance with Article 60 of the ESMA Regulation. The appeal, together with a statement of grounds, shall be filed in writing within 2 months of the date of notification of this decision. The appeal shall not have suspensive effect but the Board of Appeal may, if it considers that circumstances so require, suspend the application of this decision.

Done at Athens on 20 May 2014

A handwritten signature in blue ink, appearing to be 'S/M' with a flourish.

Steven Maijor

Chair

For the Board of Supervisors