
Status: Point in time view as at 01/07/2011.

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STATUTORY INSTRUMENTS

2010 No. 906

FINANCIAL SERVICES AND MARKETS

The Credit Rating Agencies Regulations 2010

<i>Made</i>	- - - -	<i>22nd March 2010</i>
<i>Laid before Parliament</i>		<i>23rd March 2010</i>
<i>Coming into force</i>	- -	<i>7th June 2010</i>

The Treasury are a government department designated for the purposes of section 2(2) of the European Communities Act 1972 ^{M1} in relation to—

- (a) credit ratings and credit rating agencies ^{M2};
- (b) credit and financial institutions and the taking of deposits or other repayable funds from the public ^{M3}; and
- (c) measures relating to investment firms and to the provision of investment services ^{M4}.

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 349(1)(b) of the Financial Services and Markets Act 2000 ^{M5}, make the following Regulations:

Marginal Citations

- M1** 1972 c.68; section 2(2) was amended by section 27(1)(a) of the [Legislative and Regulatory Reform Act 2006 \(c.51\)](#) and by the Schedule to the [European Union \(Amendment\) Act 2008 \(c.7\)](#).
- M2** S.I. 2009/3214.
- M3** S.I. 2001/3495.
- M4** S.I. 1993/2661.
- M5** 2000 c. 8.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Credit Rating Agencies Regulations 2010 and shall come into force on 7th June 2010.

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Interpretation

2.—(1) In these Regulations—

“the Act” means the Financial Services and Markets Act 2000;

“the Authority” means the Financial Services Authority;

“the EC Regulation” means Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies ^{M6}[^{F1}, as amended by Regulation (EU) No. 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No. 1060/2009 on credit rating agencies];

[^{F2}“ESMA” means the European Securities and Markets Authority established by 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.]

“overseas competent authority” means an authority designated by a Member State other than the United Kingdom in accordance with Article 22(1) of the EC Regulation (competent authorities);

“protected item” has the same meaning as in section 413 of the Act (protected items).

(2) Expressions used in these Regulations which are listed in Article 3 of the EC Regulation (definitions) have the meaning given in that Article.

Textual Amendments

- F1** Words in reg. 2(1) inserted (1.7.2011) by [The Credit Rating Agencies \(Amendment\) Regulations 2011 \(S.I. 2011/1435\)](#), regs. 1, **4(a)(i)**
- F2** Words in reg. 2(1) inserted (1.7.2011) by [The Credit Rating Agencies \(Amendment\) Regulations 2011 \(S.I. 2011/1435\)](#), regs. 1, **4(a)(ii)**

Marginal Citations

- M6** OJ L 302, 17.11.2009, p. 1.

PART 2

The Authority

Designation of competent authority

3. The Authority is the competent authority for the purposes of the EC Regulation.

Fees

^{F3}4.

Textual Amendments

- F3** Reg. 4 omitted (1.7.2011) by virtue of [The Credit Rating Agencies \(Amendment\) Regulations 2011 \(S.I. 2011/1435\)](#), regs. 1, **4(b)** (with reg. 5)

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Disclosure of confidential information

5. Section 348(1) of the Act (restrictions on disclosure of confidential information by Authority etc) does not prevent the Authority from disclosing confidential information where the disclosure is permitted by the EC Regulation.

Guidance

6.—^{F4}(1) The Authority may give guidance consisting of such information and advice as it considers appropriate with respect to any matter relating to the functions of the Authority under the EC Regulation.]

(2) The Authority may—

- (a) publish its guidance;
- (b) offer copies of its published guidance for sale at a reasonable price;
- (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

Textual Amendments

F4 Reg. 6(1) substituted (1.7.2011) by [The Credit Rating Agencies \(Amendment\) Regulations 2011 \(S.I. 2011/1435\)](#), regs. 1, **4(c)**

Miscellaneous

7. The functions of the Authority under the EC Regulation are to be treated for the purposes of Part 1 (general) and paragraphs 13 (status) and 19 (exemption from liability in damages) of Schedule 1 ^{M7} to the Act as functions conferred on the Authority under the Act.

Marginal Citations

M7 Paragraph 10 was amended by article 3(1) of, and paragraph 213 of Part 2 of Schedule 1 to, the [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#); there are other amendments to Part 1 which are not relevant to these Regulations.

^{F5}PART 3

Applications for certification and registration

Textual Amendments

F5 Pts. 3-8 omitted (1.7.2011) by virtue of [The Credit Rating Agencies \(Amendment\) Regulations 2011 \(S.I. 2011/1435\)](#), regs. 1, **4(d)**

Language for applications

8.

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^{F5}**PART 6**

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^{F5}**PART 7**

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Appeals

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^{F5} PART 8

Notices

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PART 9

Capital Requirements Regulations 2006

Amendments to the Capital Requirements Regulations 2006

31.—(1) The Capital Requirements Regulations 2006 ^{M8} are amended as follows.

(2) In regulation 21 (interpretation), after the definition of “assessment methodology” insert—
““EC Regulation” means Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies;”.

(3) In regulation 22 (recognition for exposure risk-weighting purposes), for paragraph (1) substitute—

“(1) The Authority must recognise an ECAI as eligible for exposure risk-weighting purposes only if the Authority is satisfied—

- (a) where the requirements of Article 2(3) of the EC Regulation apply to the ECAI, that the ECAI has complied with those requirements; and
- (b) taking into account the requirements set out in Schedule 1, that—
 - (i) the ECAI's assessment methodology complies with the requirements of objectivity, independence, ongoing review and transparency; and
 - (ii) the ECAI's credit assessments meet the requirements of credibility and transparency.”.

(4) In regulation 23 (recognition for securitisation risk-weighting purposes), in paragraph (1), before sub-paragraph (a) insert “ (za) where the requirements of Article 2(3) of the EC Regulation apply to the ECAI, that the ECAI has complied with those requirements; ”.

Marginal Citations

M8 S.I. 2006/3221.

[^{F6} PART 10

ESMA: investigatory powers

Textual Amendments

F6 Pt. 10 inserted (1.7.2011) by The Credit Rating Agencies (Amendment) Regulations 2011 (S.I. 2011/1435), regs. 1, 4(e)

Records of telephone and data traffic: Article 23c(1)(e) of the EC Regulation

32.—(1) ESMA must obtain authorisation from the High Court before any official of, or person authorised by, ESMA requests any records of telephone or data traffic under Article 23c(1)(e) of the EC Regulation from a person domiciled or established in the United Kingdom.

(2) The Authority must obtain authorisation from the High Court before requesting on behalf of ESMA any records of telephone or data traffic under Article 23c(1)(e) of the EC Regulation.

(3) The High Court may grant authorisation under paragraph (1) or (2) if satisfied, on an application made to the High Court in accordance with rules of court by ESMA or the Authority, that—

- (a) ESMA has ordered an investigation under Article 23c(1) of the EC Regulation; and
- (b) requiring the records of telephone or data traffic would be neither arbitrary nor excessive having regard to the subject matter of the investigation.

(4) The High Court must conduct the assessment referred to in paragraph (3) in accordance with Article 23c(6) of the EC Regulation, and may exercise the powers conferred by that paragraph for the purposes of making its assessment.

(5) In the application of this regulation to Scotland, references to the High Court are to be read as references to the Court of Session.

Inspections: Article 23d of the EC Regulation

33.—(1) ESMA must obtain authorisation from the High Court before any official of, or person authorised by, ESMA carries out an Article 23d inspection.

(2) Where ESMA requires the Authority to carry out an Article 23d inspection on its behalf, the Authority must obtain authorisation from the High Court before carrying out that inspection.

(3) The High Court may grant authorisation for the purposes of paragraph (1) or (2) if satisfied, on an application made to the High Court in accordance with rules of court by ESMA or the Authority, that—

- (a) ESMA has ordered an Article 23d inspection; and
- (b) the Article 23d inspection is neither arbitrary nor excessive having regard to the subject matter of the inspection.

(4) The High Court must conduct the assessment referred to in paragraph (3) in accordance with Article 23d(9) of the EC Regulation, and may exercise the powers conferred by that paragraph for the purposes of making its assessment.

(5) The High Court may issue a warrant if satisfied on information on oath given by or on behalf of ESMA or the Authority that there are reasonable grounds for believing that—

- (a) the premises specified in the warrant are the business premises of any legal person referred to in Article 23b(1) of the EC Regulation; and
- (b) the person referred to in sub-paragraph (a) has failed to comply with an Article 23d inspection, or would fail to comply with such an inspection if a warrant were not issued under this paragraph.

(6) A warrant issued under paragraph (5) shall authorise a constable, together with a named official of ESMA or the Authority and any other official or person authorised by ESMA or the Authority to accompany that official—

- (a) to enter any premises specified in the warrant using such force as is reasonably necessary for the purpose;
- (b) to search for such records, data, procedures and other material as may be examined under Article 23c(1) of the EC Regulation, or such records of telephone or data traffic as ESMA

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or the Authority has been authorised to request under regulation 32(3), using such force as is reasonably necessary for the purpose;

- (c) to take or obtain certified copies of or extracts from such records, data, procedures and other material; and
- (d) to seal any business premises and books or records in accordance with Article 23d(2) of the EC Regulation.

(7) In England and Wales, sections 15(5) to (8) and 16 of the Police and Criminal Evidence Act 1984 **No commentary item could be found for this reference c20888691** (execution of search warrants and safeguards) apply to warrants issued under paragraph (5).

(8) In Northern Ireland, Articles 17(5) to (8) and 18 of the Police and Criminal Evidence (Northern Ireland) Order 1989 **No commentary item could be found for this reference c20888701** apply to warrants issued under paragraph (5).

(9) In the application of this regulation to Scotland—

- (a) references to the High Court are to be read as references to the Court of Session;
- (b) references to information on oath are to be read as references to evidence on oath.

(10) In this regulation, an “Article 23d inspection” means an inspection ordered by decision of ESMA under Article 23d of the EC Regulation.

Offences: Article 23d inspections

34. Any person who intentionally obstructs the exercise of any rights conferred by a warrant under regulation 33(5) is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.]

Bob Blizzard

Dave Watts

Two of the Lords Commissioners of Her Majesty's Treasury

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (“the EC Regulation”) (OJ L 302, 17.11.2009, p. 1).

The EC Regulation establishes a registration system for credit rating agencies, and requires registered agencies to comply with various provisions relating to independence, conflicts of interest, employees and analysts, methodologies and models, outsourcing, and disclosure and presentation of information. Specified financial institutions may only use credit ratings for regulatory purposes if they have been issued or endorsed by a registered credit rating agency, or issued by an overseas agency that has been certified in accordance with the EC Regulation.

Part 2 of the Regulations designates the Financial Services Authority (“the Authority”) as the competent authority in the United Kingdom for the purposes of the EC Regulation.

Part 3 makes provision relating to applications for certification and registration.

Part 4 makes provision for the investigatory powers of the Authority.

Part 5 provides powers for the Authority to take action where a credit rating agency breaches obligations arising from the EC Regulation.

Part 6 creates penalties and offences which may apply if a person breaches a requirement of the EC Regulation or these Regulations.

Part 7 makes provision for appeals and Part 8 provides for notices.

Part 9 amends the Capital Requirements Regulations 2006 (S.I. 2006/3221) to implement Article 2(3) of the EC Regulation in relation to external credit assessment institutions.

An Impact Assessment of the effect of these Regulations is available on HM Treasury's website (www.hm-treasury.gov.uk) and is annexed to the Explanatory Memorandum which is available alongside these Regulations on the OPSI website (www.opsi.gov.uk).

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