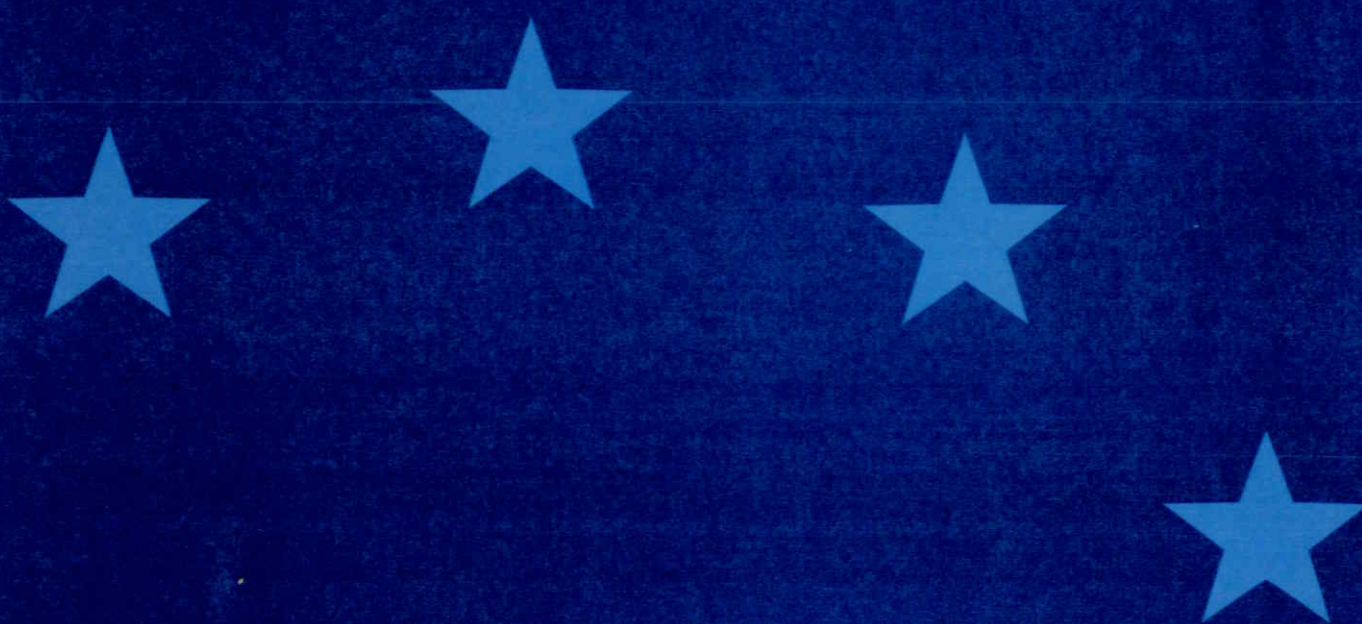


## **Memorandum of Understanding on the cooperation of competent authorities for the supervision of the CRAs**





European Securities and  
Markets Authority

Date: 20 December 2011  
ESMA/2011/BS/238 Annex 3





The Australian Securities & Investments Commission (ASIC) and the European Securities and Markets Authority (ESMA), who are responsible for supervising Credit Rating Agencies (“CRAs”) in their respective jurisdictions recognise, in light of the cross-border activities of certain CRAs and the global nature of ratings generally, the importance of ongoing supervisory and enforcement-related cooperation in this area and considering in particular:

- that CRAs play an important role in global financial markets, as their credit ratings are used by investors, borrowers, issuers and governments as part of making informed investment and financing decisions;
- that many jurisdictions have determined that CRAs shall be regulated and have therefore introduced regulatory regimes to that end; and
- that the EU Regulation on Credit Rating Agencies (“EU Regulation”) has introduced “endorsement” and “certification” mechanisms for the benefit of CRAs established outside the European Community. Both mechanisms require that cooperation arrangements are in place between ASIC and ESMA.

have reached the following legally not binding understanding:

#### **Article 1 – Definitions**

For purposes of this MoU, the following definitions apply:

1. “Authority” means any regulator responsible for supervising CRAs that is a party to this MoU.
2. “Assistance” means any activity conducted by a Requested Authority for the purpose of supporting a Requesting Authority in discharging its legal and regulatory duties and responsibilities in respect of CRAs and their ratings.
3. “Cooperation” means all kinds of
  - (a) Co-ordination,
  - (b) Ongoing Assistance, and
  - (c) Assistance.
4. “Credit Rating Agency” or “CRA” means a legal person or a group of legal persons (group of CRAs) registered and regulated in any jurisdiction whose occupation includes the issue of opinions regarding creditworthiness on a professional basis.
5. “Co-ordination” means consultation amongst Authorities on CRAs whether on an ad-hoc or periodic basis for the purpose of exchanging relevant supervisory information and agreeing if possible on common approaches to supervisory activity and enforcement action with regard to CRAs.
6. “Cross Border CRA” means a CRA or a CRA belonging to same group that under Article 4 is identified for the purposes of this MOU and which is listed in Appendix. B.



7. “Laws and Regulations“ means all legally binding national, European, and international rules concerning the regulation and supervision of CRAs and groups of CRAs, applicable in the jurisdictions of the Authorities, that fall within the competence of the Authorities.
8. “Ongoing Assistance” means all assistance including the provision of information provided by one Authority to another Authority with or without a specific request.
9. “Requesting Authority” means the Authority making a request for assistance under this MoU.
10. “Requested Authority” means the Authority to whom a request for assistance is made under this MoU.

## **Article 2 – General Principles**

1. This MoU sets forth the Authorities’ intent to cooperate with each other in executing the Laws and Regulations applicable in the respective Authorities’ jurisdictions in relation to the discharge of their responsibilities in relation to CRAs to the fullest extent legally permissible. The Authorities recognize the importance and desirability of cooperation for the purpose of effectively supervising CRAs and enforcing, and securing compliance with, the relevant Laws and Regulations.
2. The provisions of this MoU do not create legally binding obligations or supersede legally binding national, European, or international rules.
3. This MoU does not authorize or prohibit an Authority from taking measures other than those identified herein to obtain information necessary to ensure enforcement of, or compliance with, the relevant Laws and Regulations.
4. This MoU does not confer upon any person that is not an Authority, the right or ability, directly or indirectly to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this MoU.
5. As the provisions of this MoU are not legally binding on the Authorities, they do not give rise to any legal claim on behalf of an Authority or a third party.
6. The Authorities represent that they do not have power or intent to interfere with the content of credit ratings and credit rating methodologies.
7. Nothing in this MoU restricts the Authorities from taking enforcement action for a breach of laws in force in their jurisdiction.
8. Where a request for assistance is denied or not available under domestic law, the Requested Authority will provide the reasons for not granting the cooperation and will consult pursuant to Article 9.

## **Article 3 – Scope**



1. The Authorities will, within the framework of this MoU provide each other with the fullest cooperation permissible to supervise Cross border CRAs and enforce compliance with the relevant Laws and Regulations. Cooperation may be denied:
  - (a) where the cooperation would require an Authority to act in a manner that would violate domestic law;
  - (b) where a request for assistance is not made in accordance with Articles 7 and 8;
  - (c) on grounds of public interest or essential national interest; or
  - (d) where the information to be disclosed is not subject to the operation of confidentiality obligations imposed on the Requesting Authority by the laws, regulations and other relevant legal provisions in force in the Requesting Authority's jurisdiction.
2. The Authorities recognise and agree that the need to cooperate with each other under the terms of this MoU in discharging their legal responsibilities in respect of CRAs may be triggered by a number of many different events, including requests for assistance, and may arise at any time.
3. Although it is not possible to set out an exhaustive list of what the events that may trigger the need for cooperation may be or when the need to cooperate may arise, it is anticipated that the need for intense cooperation will at least arise in the following circumstances:
  - (a) the initial application for recognition, authorization or registration by a CRA also operating in another Authority's jurisdiction (Article 4);
  - (b) the ongoing supervision of Cross Border CRAs (Article 5);
  - (c) the assessment of the need to take, and the subsequent taking of, supervisory or enforcement action against Cross Border CRAs (Article 6); and
  - (d) when an Authority requests Assistance (Articles 7 and 8).

#### **Article 4 – Application of CRAs for Recognition, Authorisation, or Registration**

1. When a CRA applies for recognition, authorization, or registration with an Authority, and the Authority considers that the CRA could be a Cross Border CRA, the Authority will notify the other Authority about the status of the CRA's recognition, authorization, or registration and will provide it with the information regarding the CRA's cross border operations.
2. Following the initial sharing of information, the Authorities will consult with each other regarding whether or not they consider this CRA to be a Cross Border CRA and if it is regarded as such, add it to the list of Cross Border CRAs in Appendix B.
3. The Authorities will cooperate with each other in order to enable a full assessment of the Cross Border CRA's application for recognition, authorisation or registration. Such cooperation may take a number of different forms, but will in any event (without an additional separate request being necessary) include the provision of the information listed in paragraph 4.

4. The Authorities receiving a notice in accordance with paragraph 1 will provide where required to the notifying Authority upon receipt of the notice the following:
  - (a) information and documents held on file regarding the following:
    - i. all documents about the CRA and their credit rating processes provided to the notified Authority by the Cross Border CRA in question, in their latest available version.
    - ii. relevant documents provided to the notified Authority by the Cross Border CRA evidencing the CRA's eligibility for recognition under the notified Authority's CRA legal and regulatory regime.
    - iii. the views from the notified Authority regarding the Cross Border CRA's systems and controls, senior management and governance structures, management of conflicts of interest procedures and the rating process in general.
  - (b) a statement regarding whether or not the Cross Border CRA has been recognized, authorized or registered to conduct credit rating activities and is subject to supervision by the Authority and a meaningful description of the nature of such recognition, authorization or registration and of such supervision;
  - (c) information regarding the nature of any supervisory or enforcement action that may have been taken regarding the Cross Border CRA's compliance or lack of compliance with the relevant Laws and Regulations; and
  - (d) a reference to the Laws and Regulations on which the recognition, authorization or registration was based and on which the supervision is based and, if they are not in English, a translation of the relevant Laws and Regulations into English.
5. The Authorities will cooperate in the recognition, authorization, or registration process also in any other manner not specified above in order to facilitate a full assessment of the CRA's application for registration, authorisation or recognition.

#### **Article 5 – Ongoing Supervision of Cross Border Credit Rating Agencies**

1. The Authorities agree that they will cooperate with each other in discharging their ongoing supervisory responsibilities in respect of Cross Border CRAs.
2. Such cooperation may take a number of different forms and includes:
  - (a) exchange of, and consultation regarding, the supervisory plans or programs if such plans or programs exist at least on an annual basis;
  - (b) notification of any material deviations from the established supervisory plan or program if it was exchanged;
  - (c) where appropriate annual meetings;
  - (d) provision of any information that may have a significant impact on the ongoing supervision of Cross Border CRAs;
  - (e) assistance on the basis of requests for assistance;



- (f) sharing the outcome of any assessment by an Authority of a Cross Border CRA's compliance with their ongoing obligations;
  - (g) sharing information about approaches to the supervision of Cross Border CRAs and notification of changes to the Authority's approach to its supervision of the Cross Border CRA;
  - (h) immediate notification by the Authorities in respect of any action that may be taken against a Cross Border CRA that may have a direct impact on the CRA in question's eligibility for continued recognition, registration or authorisation or its ability to continue to meet its ongoing obligations in the other Authorities jurisdiction, including those actions set out in Article 6(2);
  - (i) notification of any exemption granted by any Authority to a Cross Border CRA from any provision of the Laws and Regulations.
3. The Authorities may agree on a bilateral basis to add to those areas not covered by Article 5(2) circumstances that trigger cooperation without an additional separate request between the Authorities being necessary.

#### **Article 6 – Supervisory or Enforcement Actions against Cross Border Credit Rating Agencies**

1. The Authorities will inform each other immediately when an enforcement or supervisory action has been taken against a Cross Border CRA together with a statement on whether this enforcement action is open to appeal.
2. In respect of the following, the Authorities will notify each other of :
- (a) the initiation of proceedings by the Authority with regard to the revocation of the Cross Border CRA's registration, recognition or authorisation;
  - (b) the initiation of proceedings regarding the imposition of a temporary or permanent prohibition on the Cross Border CRA's issuing of credit ratings that are used in the other Authorities' jurisdiction for regulatory purposes;
  - (c) the initiation of proceedings regarding the suspension of the use, for regulatory purposes, of the credit ratings issued by the CRA;
  - (d) the initiation of proceedings regarding measures to ensure that the Cross Border CRA in question continues to comply with its legal requirements;
  - (e) the initiation of proceedings by the Authority regarding the issuing of a public notice of a Cross Border CRA's breach of its ongoing obligations.
3. The Authorities will inform each other immediately when the following supervisory or enforcement actions have been taken with regard to a Cross Border CRA:
- (a) suspension of authorisation to issue credit ratings,
  - (b) referrals of matters for criminal prosecution,
  - (c) securing a conviction in respect of a criminal prosecution,
  - (d) imposition of financial penalties,

- (e) suspension of an individual who sits on the CRA's management or supervisory board,
  - (f) full or partial withdrawal of the CRA's registration, recognition or authorisation;
  - (g) temporary prohibition on the CRA's issuing of credit ratings that are used for regulatory purposes in the other Authorities' jurisdiction;
  - (h) suspension of the use for regulatory purposes of the credit ratings issued by the CRA;
  - (i) issuing by the Authority of a public notice of a Cross Border CRA's breach of its ongoing obligations.
4. The Authorities will inform each other within a reasonable time period when the following supervisory or enforcement actions have been taken with regard to the Cross Border CRA:
- (a) on-site inspection and its core findings;
  - (b) recommendations to make improvements to the CRA's systems and controls ;
  - (c) changes in the composition of the CRA's administrative or supervisory board;
  - (d) any other enforcement or supervisory actions taken by the Authority to ensure that the Cross Border CRA in question continues to comply with its legal requirements.
5. The Authorities of Cross Border CRAs considering the circumstance of the case will inform each other in advance about any action and/or measure set out in paragraphs 1, 2 and 3 before the action and/or measure is taken.

#### **Article 7 – Assistance**

1. The assistance available under this MoU includes, but is not limited to:
- (a) providing information and documents held by the Requested Authority regarding the matters set forth in the request for assistance,
  - (b) obtaining information and documents regarding the matters set out in the request for assistance,
  - (c) taking or compelling a person's statement or testimony under oath, regarding the matters set out in the request for assistance,
  - (d) conducting on-site inspections to gather information set out in the request for assistance, and
  - (e) attending meetings.
2. Each authority may upon request conduct on-site inspections of a Cross Border CRA's offices located within the territory of the other authority's jurisdiction to the extent permitted by the laws, regulations and other relevant legal provisions in that jurisdiction. If such inspections are permitted in that jurisdiction, the Requesting Authority shall appropriately inform the Requested Authority prior to conducting an on-site inspection. Where applicable,



the authorities may agree to conduct joint inspections in which case these will be carried out under the control of the Authority in whose territory the inspection takes place.

3. In cases where the information requested may be maintained by, or is available to, another authority within the country of the Requested Authority, the Authorities will to the extent legally possible endeavour to provide full assistance in obtaining the information requested. If necessary, the Requested Authority shall provide the Requesting Authority with sufficient information so as to establish direct contact between the Requesting Authority and the other authority.

### **Article 8 – Requests for Assistance**

1. Requests for assistance shall be made in writing, may be transmitted by telephone, email, or facsimile, and shall be addressed to the contact person of the Requested Authority listed in Appendix A. Requests for assistance shall specify the following information:
  - (a) reference to the MoU,
  - (b) description of the facts underlying the request including the CRA, the individuals involved and the chronology of relevant events,
  - (c) any information (including the sources of such information, known to, or in the possession of, the Requesting Authority) that might assist the Requested Authority in identifying either the persons believed to possess the information or documents sought or the places where such information may be obtained,
  - (d) an indication of the sensitivity of the information contained in the request and whether the Requesting Authority is content for the fact that it has made the request to be disclosed to persons whom the Requested Authority may need to approach for the information,
  - (e) a description of the specific information needed or assistance sought including the time period in respect of which documents and other information should be gathered,
  - (f) a description of how the specific information requested will assist the Requesting Authority,
  - (g) reference to any Laws and Regulations that may have been breached and that may relate to the subject matter of the request,
  - (h) description of uses for which the assistance is sought,
  - (i) whether the Requesting Authority is or has been in contact with any other authority or law enforcement agency in the country of the Requested Authority in relation to the subject matter of the request,
  - (j) any other Authority of whom the Requesting Authority is aware that it has an active interest in the subject matter of the request, and
  - (k) an indication of the urgency of the request, or a preferred deadline for the response.

2. In cases of emergency, requests for assistance may be transmitted orally, provided that these requests are confirmed in the manner required by this Article (unless the Requested Authority agrees to waive such requirements).

### **Article 9 – Consultation**

The Authorities will consult on an ongoing basis with each other regarding this MoU about matters of common concern, with a view to improving its operation and resolving any issues that may arise, as well as enhancing the cross border supervision and enforcement of CRAs. In particular, the Authorities will consult in the event of:

- (a) a significant change in market or business conditions or in legislation where such change is relevant to the operation of this MoU;
- (b) a demonstrated change in the willingness or ability of an Authority to meet the provisions of this MoU; and
- (c) any other circumstance that makes it necessary or appropriate to consult with each other on whether to amend or extend this Memorandum of Understanding in order to achieve its purposes.

### **Article 10 – Confidentiality and Permissible Uses of Information**

1. Each Authority will keep all cooperation under this MoU, the contents of requests for cooperation, information exchanged under Articles 4, 5 & 6 and the non public information received and exchanged under this MoU as well as all consultations between Authorities confidential.
2. Any disclosure of confidential information by an Authority as permitted by laws, regulations and other relevant legal provisions in that jurisdiction, or to ESMA or competent authorities that is permissible under the EU Regulation and necessary for the discharge of the duties of an Authority under the EU Regulation shall not be a breach of the confidentiality requirement in Article 10(1).
3. The Authorities will not disclose non-public documents and information received under this MoU, except as contemplated in paragraph 5 or in response to a legally enforceable demand. In the event of a legally enforceable demand, the Authority in question will notify the Authority that has transmitted the information prior to complying with the demand, and will assert such appropriate legal exemptions or privileges with respect to such information as may be available. The Requesting Authority will use its best efforts to protect the confidentiality of non-public documents and non-public information received under this MoU.
4. In the event of the termination of an Authority's participation in this MoU, the information obtained under this MoU will continue to be treated confidentially in accordance with this Article.
5. Any Authority may use non-public information and non-public documents furnished under this MoU solely:



- (a) for the purposes set forth in the request for assistance,
  - (b) for securing compliance with or enforcement of Laws and Regulations,
  - (c) for the purposes of discharging any legal responsibility in respect of CRA's; or
  - (d) for a purpose within the general framework of the use stated in the request for assistance, including conducting a civil or administrative enforcement proceeding, assisting in a criminal prosecution, or conducting any investigation for any general charge applicable to the breach of the provision specified in the request where such general charge pertains to a breach of the Laws and Regulations administered by the Requesting Authority. This use may include enforcement proceedings that are public.
6. If a Requesting Authority intends to use information furnished under this MoU for any purpose other than one or more of those stated in Paragraph 5, it must obtain the consent of the Requested Authority.

#### **Article 11 – Amendments**

1. The Authorities may by common written understanding make amendments to this MOU and add further Appendices to it.
2. Factual changes to the information in Appendices A and B can be made by each Authority by giving written notice to the other.



### Article 12 – Entry into Effect and Termination

1. This MoU shall be effective as regards the undersigned as at the date set out below.
2. This MoU can be terminated by either of the Authorities at any time by giving at least thirty days prior written notice to each other Authority.

Signatures

20 DECEMBER 2011

Date



## Appendix A

### List of Contact Persons

Country	Name of the Authority	Address	Name of Contact Person	Telephone Number	E-Mail	Fax
Australia	ASIC	Level 24, 120 Collins Street, Melbourne VIC 3000	Kim Holmes	+ 61 (0)3 9280 3332	Kim. Holmes@ asic.gov.a u	+ 61 (0)3 9280 3339
EU	European Securities and Markets Authority	103 Rue de Grenelle, 75007 Paris, France	Verena Ross (ESMA Executive Director)	+ 33 1 5836 4344	<a href="mailto:Verena.ross@esma.europa.eu">Verena.ross@esma.europa.eu</a>	+ 33 1 5836 4330



**Appendix B**  
**Cross Border CRAs**

Standard & Poor's
Moody's Investors Service
Fitch Ratings
A.M. Best