



BoA 2013-14

## **DECISION**

given by

**THE BOARD OF APPEAL**  
**OF THE EUROPEAN SUPERVISORY AUTHORITIES**

under Article 60.4 Regulation (EU) No 1095/2010 in an

**Appeal by**

Global Private Rating Company “Standard Rating” Ltd

against a decision of

The European Securities and Markets Authority

### **Board of Appeal**

William Blair (President)  
Juan Fernández-Armesto (Vice-President and Rapporteur)  
Noel Guibert  
Arthur Docters van Leeuwen  
Katalin Mero  
Beata Mrozowska

Place of this decision: Frankfurt/Main

Date: 10 January 2014

As corrected by Order of Rectification given by the Board of Appeal on 27 January 2014 pursuant to Article 23 of the Rules of Procedure

**Index**

	<b>Page</b>
<b>I Procedural Background</b>	<b>3</b>
<b>II Facts</b>	<b>5</b>
<b>III Law</b>	<b>6</b>
<b>IV The Parties' contentions on the Appeal</b>	<b>7</b>
<b>V The Board's conclusions</b>	<b>26</b>
<b>VI Decision</b>	<b>28</b>

## **I. Procedural background**

1. This is an appeal by Global Private Rating Company “Standard Rating” Ltd (the appellant), which is an English company, against decision ESMA/2013/744 of the Board of Supervisors of the European Securities and Markets Authority (the respondent) dated 17 June 2013 refusing to register the appellant as a credit rating agency (the refusal decision).
2. The appellant’s representative is Anna Starykovska, the appellant’s compliance officer. The respondent’s representative is Stephan Karas of the respondent’s Legal, Cooperation and Convergence Unit.
3. The appeal is brought under Article 60 of Regulation No 1095/2010 (“the ESMA Regulation”). The ESMA Regulation establishes the European Securities and Markets Authority (ESMA) and the Board of Appeal.
4. Article 6(5) of the ESMA Regulation provides for the Board of Appeal to exercise the tasks set out in Article 60. Article 60(1) gives a right of appeal as follows:

“Any natural or legal person, including competent authorities, may appeal against a decision of the Authority referred to in Articles 17, 18 and 19 and any other decision taken by the Authority in accordance with the Union acts referred to in Article 1(2) which is addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to that person.”
5. It is not in contention that a right of appeal lies against the refusal decision under Article 60 of the ESMA Regulation, and the appellant was informed of this in the decision.
6. The Notice of Appeal is dated 14 August 2013. It has six annexes, and includes a copy of the documents submitted with its application for registration as a rating agency.
7. There have been two earlier decisions given by the Board of Appeal in this appeal deciding preliminary objections made by each party.
8. On 10 September 2013, the appellant objected to the composition of the Board in the appeal.
9. That was followed by the respondent’s objection that the appeal was inadmissible because the Notice of Appeal had not been filed in time. This was made in an application for directions on 13 September 2013.
10. Article 60(4) of the ESMA Regulation provides that if the appeal is admissible, the Board of Appeal shall examine whether it is well-founded. The respondent submitted that admissibility should be determined as a preliminary matter before submissions on the merits of the appeal.

11. Having considered representations by the parties, on 19 September 2013 directions were given by the President that the appellant's objection as to the composition of the Board would be decided first, followed by a decision on the respondent's objection as to admissibility. In the event that the Board decided against the respondent on the issue of non-admissibility, the President would give further directions as to the determination of the appeal.
12. On 30 September 2013, the Board of Appeal gave its decision rejecting the appellant's objection as to the Board's composition.
13. On 14 October 2013, the Board of Appeal gave its decision rejecting the respondent's objection as to admissibility, concluding that the filing of the appeal by the appellant complied with Article 60(2) of the ESMA Regulation.
14. Article 60(4) of the ESMA Regulation provides that parties to the appeal proceedings shall be entitled to make oral representations.
15. On 21 October 2013, the respondent indicated that it was content that the appeal be decided on the papers.
16. Having considered representations by the parties, on 23 October 2013 the President gave directions for the determination of the appeal.
17. The respondent's Response dealing with the merits of the appeal is dated 4 November 2013.
18. The appellant's Reply to the respondent's Response is dated 18 November 2013.
19. The appellant's Reply stated that the appellant did not wish to make oral representations.
20. On 6 December 2013, the President notified the parties that the Board of Appeal did not have any questions for the parties. Pursuant to Article 20 of the Rules of Procedure, he notified the parties that he considered that the evidence was complete on 18 November 2013, and that the appeal had been lodged for the purposes of Article 60.2 of Regulation (EU) No 1095/2010.
21. The Board of Appeal has considered the appeal on the papers. The Board of Appeal consisted of William Blair (President), Juan Fernández-Armesto (Vice-President and Rapporteur), Arthur Docters van Leeuwen, Noel Guibert, Beata Mrozowska and Katalin Mero. The name of the responsible Secretariat member is Kai Kosik of EIOPA.

## II. Facts

22. According to the documents, the rating agency “Standard-Rating” (Ukraine) Ltd has the status of an authorised rating agency in Ukraine. The appellant is a company which was registered in the United Kingdom on 23 September 2010 with a registered office in London. A letter of 26 June 2012 says that it is affiliated to the Ukrainian rating agency which began business in November 2010.
23. On 23 May 2012 the UK Financial Services Authority informed the respondent of concerns that the appellant appeared to be issuing sovereign credit ratings on its webpage. The Board has not seen that letter, but has seen a letter from the respondent to the appellant dated 13 June 2012 to the effect that it had concluded that the appellant may be undertaking credit rating activities without being registered. It required the appellant to explain why it had not applied for registration.
24. On 26 June 2012, the appellant replied to the effect that it had not planned to carry out the function of a rating agency. It stated that as at that time the appellant did not do rating business in the European Union. It asked various questions about the registration process.
25. Following further correspondence, on 25 October 2012 the respondent wrote to the appellant stating that it appeared that the appellant was undertaking credit rating activities, and was requested to apply for registration under Regulation (EC) No 1060/2009 on credit rating agencies (CRAR) by 30 November 2012.
26. On 11 December 2012 the appellant submitted an application to the respondent to become a registered credit rating agency. The accompanying letter also stated that the appellant had not been operating a rating agency.
27. On 18 January 2013, the respondent notified the applicant that its application was incomplete. A spreadsheet was attached giving details of the areas where information was missing.
28. On 15 March 2013, the respondent notified the appellant that it had reviewed the documentation and the additional information and concluded that the appellant’s registration fulfilled the requirements for completeness in Article 15(4) of CRAR. The appellant was notified that the respondent would now proceed to the compliance stage of the process.
29. There were some further exchanges between the parties in the sixty day period following this notification within which the respondent had to decide on compliance.
30. By a decision in writing dated 17 June 2013 of the Board of Supervisors of the respondent (ESMA/2013/744) the appellant’s application was refused. The decision states that it is to take effect on the fifth working day following its adoption which was 24 June 2013 (Article 16(4) of CRAR).

31. As described in the Board of Appeal's decision of 14 October 2013, the respondent sent a scanned copy of the refusal decision to the appellant by email on 18 June 2013. On 19 June 2013, the appellant emailed the respondent to the effect that it could not accept the decision, and would submit an appeal. The refusal decision was sent to the appellant in hard copy by post from Paris on 20 June 2013.
32. On Friday, 16 August 2013 the appellant sent an email to the respondent attaching the Notice of Appeal and annexes. The hard copy package was delivered to the respondent's office in Paris on 20 August 2013.

### **III. Law**

33. Credit rating agencies largely fell outside the scope of financial regulation until recently. However, the financial crisis raised considerable concern as to the operation of such agencies, and the accuracy of their ratings.
34. As stated in recital (10) of Regulation (EC) No 1060/2009 on credit rating agencies: "Credit rating agencies are considered to have failed, first, to reflect early enough in their credit ratings the worsening market conditions, and second, to adjust their credit ratings in time following the deepening market crisis. The most appropriate manner in which to correct those failures is by measures relating to conflicts of interest, the quality of the credit ratings, the transparency and internal governance of the credit rating agencies, and the surveillance of the activities of the credit rating agencies."
35. CRAR provided for the first time for credit rating agencies to register with their respective national financial supervisory authorities.
36. CRAR was amended by Regulation (EU) No 513/2011 of 11 May 2011 which conferred the responsibility for the registration and supervision of credit rating agencies on ESMA (i.e. the respondent). ESMA assumed these powers on 1 July 2011. Regulation (EU) No 462/2013 of 21 May 2013 further amending CRAR entered into force on 20 June 2013 shortly after the date of the refusal decision.
37. The relevant requirements as regards registration are set out in CRAR as amended and regulatory technical standards (RTS) issued by the respondent. Though there are "Guidelines and Recommendations on the scope of the CRA Regulation", the appellant points out that these were issued on 17 June 2013, which is the day of the decision, and they cannot therefore be taken into account on this appeal.
38. Article 18(1) of CRAR as amended provides:  
  
"Within five working days of the adoption of a decision ... ESMA shall notify its decision to the credit rating agency concerned. Where ESMA refuses to register the

credit rating agency or withdraws the registration of the credit rating agency, it shall provide full reasons in its decision”.

39. A refusal of registration does not prevent a party making a further application for registration, and the Board understands that the appellant has done so in this case. However, this is not relevant to any of the questions which the Board has to decide.
40. Article 60 of the ESMA Regulation provides for appeals against such decisions. Article 60(1) gives a right of appeal against a decision taken by the respondent in accordance with the Union acts referred to in Article 1(2) which is addressed to that person. CRAR is among the Union acts referred to in Article 1(2).
41. Article 60.2 provides that:

“The appeal, together with a statement of grounds, shall be filed in writing at the Authority within 2 months of the date of notification of the decision to the person concerned, or, in the absence of a notification, of the day on which the Authority published its decision.”
42. In its decision of 14 October 2013, the Board of Appeal decided that the appellant had complied with Article 60.2.
43. As regards the substantive appeal, neither party has addressed the Board on the approach to be taken on an appeal against the refusal to register a credit rating agency under CRAR.
44. The Board notes that under Article 18(1) of CRAR, where the respondent refuses to register the credit rating agency, it shall provide full reasons for its decision. Having regard to European jurisprudence, the Board considers the approach on the appeal should be as follows. With respect to the grounds raised by the appellant, the Board has to consider whether the respondent correctly applied the applicable Regulations and other applicable instruments, whether the respondent was entitled to reach the refusal decision, or was wrong to refuse registration, and whether the decision was vitiated by procedural irregularity or unfairness.

#### **IV. The parties' contentions on the appeal**

45. The appellant's contentions are contained in its Notice of Appeal dated 14 August 2013 and annexes, and its Reply and annex dated 18 November 2013. The respondent's contentions are contained in its Response and annex dated 4 November 2013. There are also documents in which the parties set out their case on the preliminary issues which are referred to in the relevant decisions, an application by the respondent as regards the time for filing its response dated 21 October 2013 and letters from the appellant dated 21 and 22 October 2013.

46. The appellant's contentions raise a considerable number of points. All have been taken into account by the Board of Appeal in reaching its decision, whether or not specifically mentioned.
47. Taking the classification from the Notice of Appeal, these can be divided into two categories. Category A relates to violation of the registration procedure, and category B challenges the reasons given in the refusal decision. These challenges are set out in Annex 6 of the Notice of Appeal, which is stated to contain "information which proves that there are untruthful, unreliable and erroneous conclusions" in the refusal decision. Annex 6 contains twelve separate grounds, which correspond with the concomitant grounds in the refusal decision.
48. A general point is as follows. The appellant has raised in a number of contexts what it says is the respondent's failure to ask for further information. It says that this was unfair, because if it had been asked, it could have provided documents which would have satisfied the concerns identified in the refusal decision. It also says that there was a lack of clarity as regards aspects of what the respondent required.
49. The Board notes the following. CRAR provides for a twofold process for registration. First, the respondent has to decide whether the application is complete. If not, it has to set a deadline for the provision of additional information (Article 15(4) of CRAR).
50. The respondent says (in the Board's view correctly) that completeness means that all the requirements in CRAR and the regulatory technical standard (RTS) on registration information have been addressed by the applicant.
51. If the application is not complete, the applicant is notified of the deadline by which it has to provide additional information. This includes a template which identifies the missing information. (As appears below, in the present case the appellant raises a point about the spreadsheet that was sent to it.)
52. Once it considers that the information is complete, the respondent notifies the applicant in accordance with Article 15(4) of CRAR. Article 16 provides that it must then examine the application for compliance, and has 45 working days (subject to certain permitted extensions) in which to do so.
53. As regards information that may be provided by the applicant *after* the notification of completeness, the respondent says that it does not take into account additional information other than that which it considers is necessary for it properly to understand the information already provided, or for the correction of errors.
54. Where such clarification is required, the respondent says that it may arrange conference calls and conduct on-site interviews with the applicant. It states in its Response that:



“45. It is clear that the need to interrogate the adequacy of the information is inherent in the second stage examination of the application and is not carried out in the course of the first stage assessment of completeness. The assessment of completeness is therefore without prejudice to the subsequent assessment of the quality of the information provided, which may, in some circumstances, give rise to questions in relation to the information provided by an applicant. If the respondent would not be permitted to request clarifications from an applicant in order to address those questions, it would not be able to provide a fully reasoned registration decision in respect of those questions.”

55. The Board considers that the respondent’s understanding of its duties is correct, but it will have to consider whether the process was applied properly in the case of the appellant.
56. In that regard, the Board notes that both parties agree that it is not the role of the respondent to provide advice to an applicant for registration as a credit rating agency.
57. The Board will deal with the parties’ contentions in relation to each of the appellant’s grounds, and state its conclusion in relation to the ground in question. For these purposes, the Board will adopt the appellant’s headings. It will then state its overall conclusion on the appeal.

#### **A. Violation of registration procedure**

##### ***1. Direct violation of the terms designated for registration that resulted in serious consequences for GPRC “StandardRating”***

58. The principal issue raised under this heading is as to the period allowed for the decision on the application. The appellant contends that the decision was out of time, whereas the respondent contends that it was within time.
59. The legislative scheme is as follows. Under CRAR (as amended in 2011) the respondent must examine the application for registration within 45 working days of notifying the applicant that the application is complete (Article 16(1)). Within that period, the respondent has to adopt a fully reasoned decision to register or refuse registration (Article 16(3)). Because the appellant requested a particular exemption, the period of examination was extended by 15 working days (Article 16(2)(c)), making a period of 60 working days in all.
60. The issue between the parties is as to when this period started. In that regard, Regulation (EEC) No 1182/71 (the Time Regulation) applies. Under Article 3(1) of the Time Regulation where a period expressed in days is to be calculated from the moment at which an action takes place, the day during which that action takes place is not considered as falling within the period in question.
61. In this case, the letter from the respondent’s Executive Director notifying the appellant of the completeness of the application for registration is dated 13 March 2013. The appellant says that time runs from this date.

62. However, the letter was sent by email from the respondent to the appellant on Friday, 15 March 2013. Applying article 3(1) of the Time Regulation, the respondent contends that the time period for the compliance phase started on 18 March 2013.
63. The Board prefers the respondent's contentions in this respect. The reason is that under Article 16 of CRAR, the period is defined by reference to the "notification" of the completeness of the application. In the Board's view, "notification" took place when the appellant was informed of the decision of the decision by email, and not the date of the letter signed by the Executive Director.
64. The procedure by which the refusal decision was notified to the appellant is described in the Board's Decision on Admissibility dated 14 October 2013.
65. The Board notes the appellant's point that Regulation (EU) No 462/2013 of 21 May 2013 (CRAR III) entered into force on 20 June 2013 and imposed further obligations on an applicant seeking registration as a credit rating agency. However, the fact that registration may now be a more onerous process does not, in the Board's view, affect the legal analysis in relation to the appeal.

## ***2. Low transparency of all stages of registration for applicant***

66. The appellant contends that during the whole period of registration it faced a lack of information and an almost complete absence of clarification on relevant questions.
67. Two specific matters are raised in the Notice of Appeal. The first relates to an Excel file which was sent to the appellant on 18 January 2013 at the time it was notified that the respondent regarded its registration application as incomplete. The appellant says that using non-standard software it was enabled to discover a "hidden column" which contained various comments on its application from the CRA Unit of the respondent.
68. The respondent says that the column contained its registration team's internal working notes, and was hidden using a standard function in Microsoft Excel spreadsheets. It says that the content of the notes is routine and unexceptionable.
69. The appellant contends that this demonstrates the low transparency of the process, also citing further questions it raised afterwards to which answers were not provided.
70. The appellant also refers to a message received from the CRA Unit on 18 March 2013 to the effect that once the "clock" started running on the 60 day period for a decision following notification that the application was complete, it was not possible for the respondent to request additional information.
71. The respondent accepts that the email sent on 18 March 2013 was "not entirely accurate". It agrees that during the compliance stage, ESMA receives

information which it considers necessary for it properly to understand the information already provided, or information which corrects an error.

72. However the Board's view is that the appellant has not demonstrated that the inaccuracy in the email of 18 March 2013 had any practical consequences. It did in fact provide further information after this time, which was received by the respondent, and there is no evidence to support its submission that the email was deliberately intended as an obstacle to registration.
73. In its Response, the respondent has itemised a considerable number of communications between the parties to disprove the suggestion that it did not cooperate with the appellant. As to this, the Reply says that this proves "... that the communication was intense, but absolutely not productive".
74. In the Board's view, in order to found a ground of appeal under this "transparency" heading, the appellant would have to show that the respondent dealt with its application unfairly, in other words, that the refusal decision was vitiated by procedural unfairness in the application process.
75. The Board does not consider that this is demonstrated by the "hidden column", since working notes in spreadsheet of this kind are not unusual. Also, because it was in fact able to retrieve the notes, the appellant had the opportunity to deal with the comments made.
76. Further, the Board considers that the onus is on the applicant to make sure that the information in the application is compliant, and that the respondent is not obliged to raise questions at the compliance stage on the information provided.
77. The Board accepts the appellant's observation that the registration process was new at this time, and that the "Guidelines and Recommendations on the scope of the CRA Regulation", were published too late to be of assistance on its application. However, it considers that the terms of CRAR together with the RTS on registration information gave sufficient guidance to enable registration to be made in a way that was complete and compliant.

### ***3. Violation of Regulation (EC) No 1049/2001 ("Access Regulation")***

78. The Treaty right of access to documents of the institutions, bodies, offices and agencies of the Union is implemented in Regulation (EC) No 1049/2001 (the "Access Regulation").
79. Under the Access Regulation, there is a "two-stage" administrative procedure (recital (13)). Article 7 applies to the processing of initial applications, and Article 8 applies to the processing of confirmatory applications. It is in respect of Article 8 decisions that the possibility of legal proceedings arises (Article 8(3)).
80. In the case of ESMA, there is a right of appeal in respect of such decisions to the Board of Appeal under Article 72(3) of the ESMA Regulation which provides that:

“Decisions taken by the Authority pursuant to Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or of proceedings before the Court of Justice of the European Union, following an appeal to the Board of Appeal, as appropriate, in accordance with the conditions laid down in Articles 228 and 263 TFEU respectively.”

81. In the present case, on 16 July 2013 the appellant sent an information request asking for copies of the minutes of the meeting of the Board of Supervisors from 17 June 2013, minutes of the meeting of the CRA Unit recommending refusal, and all other documents relating to the registration process that were available under the Access Regulation.
82. By letter of 6 August 2013, the respondent sent a considerable volume of documents to the appellant. The appellant’s appeal under this heading is based on the fact that the minutes of the meeting of the Board of Supervisors were not sent.
83. The Board considers that the application of 16 July 2013 was an application under Article 7. However, the appellant did not make a confirmatory application. What followed was the Notice of Appeal dated 14 August 2013\* including this ground of appeal. In the absence of a confirmatory application under article 8 of the Access Regulation, the Board considers that it has no jurisdiction to entertain this ground.
84. In any case, the Board notes the respondent’s assertion that there are no minutes, because the refusal decision was approved by the written procedure contained in Article 4 of the respondent’s Rules of Procedure dated 27 May 2013. On that basis, the position is that there are no minutes to be disclosed, and it does not consider that the appellant’s contention is correct.
85. The respondent says that the decision was approved by simple majority as required by Article 44(1) of the ESMA Regulation. The Board does not consider that a person is entitled to further information under the Access Regulation in this regard.

***4. Actual violation of legislation requirements related to the adoption of decision on registration of rating agencies on the collegiate basis of Board of Supervisors of ESMA.***

86. The information provided by the respondent on 6 August 2013 shows that on 6 June 2013 the Board of Supervisors was sent the draft decision and a descriptive cover note (which was disclosed to the appellant under the Access Regulation).
87. The appellant submits that the decision of the Board of Supervisors was a formality, and in fact the decision is taken by the CRA Unit. Nobody other than the CRA Unit read its package of documents, it says, and there was no discussion within the Board of Supervisors.

---

\* The date has been corrected by Order of Rectification given by the Board of Appeal on 27 January 2014 pursuant to Article 23 of the Rules of Procedure.

88. The respondent denies that the registration decision was taken at staff level and asserts that it was properly taken by the Board of Supervisors. It cites case law to the effect that division of labour is unavoidable in a collegiate body.
89. The Board decides this issue in accordance with the decision of the Court of Justice in Case 44/69 (*Buchler & Co v Commission*). It was contended in that case that the procedure in relation to a fine was vitiated by the fact that Members of the Commission imposing it did not take sufficient part in the administrative procedure. The Court rejected a complaint based on the fact that the file of the case was not sent in its entirety to each Member of the Commission, saying at paragraph 22 that "... the Members of the Commission received complete and detailed information regarding the essential points of the case and had access to the entire file".
90. The respondent states that Members of the Board of Supervisors were able to ask for clarifications, make comments and have access to the relevant documents, and could have amended, modified or rejected the draft decision. This factual premise is sufficient in the Board's view to satisfy the test in the *Buchler* case, and this ground of appeal is rejected.

**B. Inappropriate content of fully reasoned refusal decision of the registration of Global Private Rating Company "Standard Rating" Ltd as a credit rating agency**

91. As noted above, part B of the Notice of Appeal challenges the content of the refusal decision as contained in the annex. This is dealt with in Annex 6 of the Notice of Appeal which the appellant states "contains information which proves that there are untruthful, unreliable and erroneous conclusions" in the refusal decision. The matters relied on refuting the reasons given in the refusal decision are as follows.

***1. GPRC "STANDARD RATING" LTD is fully compliant with the requirements of Article 6(1) of CRAR, Point 2 of Section A of Annex I of CRAR. The information in paragraphs 1, 2, 3, 4, 5 of the refusal decision does not represent the facts and grows out of erroneous interpretation of the information received by the Regulator from the Applicant.***

92. This part of the Notice of Appeal addresses the first reason given by the respondent in the Annex to the refusal decision, namely as to, "Independence and accuracy of credit ratings".
93. Of the two legal provisions cited, the Board notes that Article 6(1) of CRAR is to do with conflicts of interest. It provides that, "A credit rating agency shall take all necessary steps to ensure that the issuing of a credit rating is not affected by any existing or potential conflict of interest or business relationship involving the credit rating agency issuing the credit rating, its managers, rating analysts, employees, any other natural person whose services are placed at the disposal or under the control of the credit rating agency, or any person directly or indirectly linked to it by control."

94. Section A of Annex I of CRAR which is the other legal provision cited is to do with organisational requirements. Paragraph 2 begins by saying that, “A credit rating agency shall be organised in a way that ensures that its business interest does not impair the independence or accuracy of the credit rating activities. ...”.
95. The Notice of Appeal addresses three main points under this heading.
96. The first addresses the assertion in the refusal decision that the appellant's business strategy consists of focusing on the issuance of credit ratings in the range of AAA to BB, without envisaging a "default" category. This, the respondent considered, meant that its business model was not structured to guarantee the quality and accuracy of its credit ratings, but instead motivated the avoidance of defaults. This could happen by a client withdrawing just prior to a default occurring.
97. The appellant contends that the respondent was wrong to believe that its methods only supported ratings from BB to AAA. It did “possess the complete text of methods which account for ratings from D to AAA”. It contends that it did not receive a request for “more complete texts”. No request having been made, “... instead a false conclusion was drawn, stating that the Agency works with ratings from BB to AAA, though the text of methods itself, included in the submitted package of documents, ANNEX C page 4, contains a direct statement - 'GPRC' Standard Rating declares a full scale of credit ratings from AAA to D”.
98. The respondent contends that its reason was a valid one, because of the risk that credit ratings are maintained at an inflated level. It says that emails were sent asking for additional clarification, but that in any case the appellant “... was suitably acquainted with the different steps of the registration procedure and should have been aware of the information required under the relevant provisions”.
99. In reply, the appellant's response is that “there is nothing wrong that the agency at the beginning of its activity establishes a filter for selecting clients”.
100. In this regard, the Board notes what was said by the appellant in its application, Annex C, page 4:
- “GPRC 'Standard Rating' declares a full scale of credit ratings from AAA to D, but in practice the ideology of work with clients results in the fact that the agency is working with ratings only in the range from AAA to B. In the methodology provided to the regulator there is a partition of indicators from AAA to B, if the client is gaining fewer points than it is necessary for assessment BB, he gets B. The reason for the work of GPRC 'Standard Rating' in the range from AAA to BB is that the Agency doesn't want to have garbage companies. We try to minimise the quantity of defaults in the agency's portfolio and, accordingly, the participation of the agency in large scandals. We want achieve a situation when in the client portfolio of the agency there will be zero defaults in 4 - 5 years.”
101. In the Board's view, this shows that the appellant did focus on the issuance of credit ratings in the range of AAA to BB, as the respondent asserted. It considers that this focus was a material consideration for a regulator in the

context of the accreditation of a rating agency. It considers that the respondent was entitled to take the view that the consequence was that the appellant's business model was not structured in a satisfactory way, and tended to motivate the avoidance of defaults.

102. It also considers that the respondent was not required to request further methodology from the appellant, which could have been provided with the application.
103. The second point relates to the participation of the head of the rating committee\* in the strategic development group. The respondent's objection is that this gives rise to a conflict of interest, because the independent judgement required in respect of credit ratings may be impaired if the head of the relevant committee has to take into account the business relationship with the entity in question.
104. The appellant's answer is that the person had already exited from the strategic group on 3 June 2013, but that it did not notify the respondent, because it was not a substantial issue.
105. However, the Board considers that this was a material change, and that the appellant should have notified the respondent of it. In the absence of such notification, the Board considers that the respondent was entitled to proceed on the basis that the person's dual role potentially compromised the independence of the rating process.
106. The third point relates to a statement in Annex C to the application that, "In practice if there is a situation when it is necessary to lower the rating below B to the client, we recommend the client to give up the rating services and the contract provides for the right of the agency to suspend such rating".
107. In its Notice of Appeal however, the appellant contends that it "cannot force a client to refuse from being rated".
108. Although in its Reply the appellant explains that the difference in these statements is due to translation difficulties, the respondent had to deal with the application as put to it. In the Board's view, the respondent was entitled to treat the statement in Annex C as incentivising the avoidance of defaults.

***2. All the members of GPRC "StandardRating" senior management do fully meet the requirements of Point 2 Section A of Annex I of the CRAR for "Senior management responsibilities and sound management".***

109. This part of the Notice of Appeal addresses the second reason given by the respondent in the Annex to the refusal decision, namely as to whether a particular person had sufficient experience to ensure the independent assessment of the effectiveness of internal compliance and review functions.

---

\*Names are anonymised.

The person is one of those identified in the letter of 15 February 2013 from the appellant to the respondent as being a member of the appellant's Administrative Committee. The respondent considered that the person did not satisfy the requirement in Section A of Annex I to CRAR that the senior management of a credit rating agency should be "sufficiently skilled and experienced".

110. The appellant submits that the person has great experience in the field of regulatory compliance, internal audit and risk management, as well as in the field of corporate governance. It says that it is ready to provide a further reference from the Ukrainian Society of Financial Analysts to this effect. It says that, "We warn that further unsubstantiated claims about low qualification of [the person] in the documents that the respondent provides to third parties will be stopped by civil and possibly criminal trials".
111. The Board does not agree with this approach. The requirements as to senior management are clearly important. It considers that the respondent has to be free to make a judgment about the qualification of senior management in this respect. A supporting reference could have been provided with the application.
112. It does however take the view that concerns about the experience of particular individuals may be matters that can usefully be raised with applicants in advance of the decision if such concerns are going to materially affect the decision.
113. Nevertheless, the onus remains on applicants to satisfy the respondent that the requirements as regards senior management are met. Given the extent of the responsibility that would accrue to the person, the Board's opinion is that the respondent was entitled on the information before it to reach the conclusion it did.

***3. All policies and procedures of GPRC "StandardRating" are adequate and do fully meet the requirements of Article 6 (1) of CRAR, Point 3 and 4 of Section A of Annex I of CRAR; Point 1 and 7 of Section B of Annex I of CRAR; Point 4 of Section D, Part I of Annex I of CRAR.***

114. This part of the Notice of Appeal addresses the third reason given by the respondent in the Annex to the refusal decision, namely as to the alleged failure to comply with the requirement that a credit rating agency has to have adequate policies and procedures, and clear and documented decision-making procedures and organisational structure.
115. Among the provisions of CRAR identified in the refusal decision, are points 3 and 4 of Section A of Annex I, which among other things require adequate policies and procedures to ensure compliance with the Regulation (i.e. CRAR), points 1 and 7 of Section B of Annex I, which have to do with (among other things) record keeping, and point 4 of Section D of Annex I which provides that ratings must be withdrawn where there is a lack of reliable data.



116. The Board notes that this part of the refusal decision contains a lengthy list in paragraphs 11 to 21 of respects in which these requirements were said not to have been satisfied.
117. The appellant contends that it is not correct that the necessary policies and procedures are not in place. It relies on the fact that the respondent notified the appellant of the completeness of its application on 15 March 2013. In its Notice of Appeal, it expresses "readiness to submit a separate record keeping regulation". It indicates that the appellant is prepared to provide further information, and does in fact have policies and procedures in place, which "can be submitted at first request of the regulator". It says that there are significant inaccuracies in this part of the refusal decision, including the fact that responsibility for credit rating monitoring is borne by the lead analysts, not the rating committee.
118. In its reply, the appellant emphasises that it was unaware that its systems were inadequate, and says that, "In the package of registration documents we provided a short description of these systems. If there were questions ... they should have been asked to the applicant. The law doesn't prohibit ESMA to ask questions to the applicant, but hiding from the applicant the important information about how the regulator interprets our documents in the light of requirements of Regulation 1060/2009 indicates the violation of the anti-corruption law of the EU".
119. The Board appreciates that these are potentially onerous requirements, but considers that the existence of adequate policies and procedures are important to provide assurance that the necessary standards of governance will be followed by the rating agency. In any case, they are requirements of the Regulation.
120. The Board notes that Article 6(2) of the RTS on registration information provides that, "A credit rating agency may fulfil the obligation to provide information regarding its policies and procedures under this Regulation by submitting a copy of the relevant policies and procedures."
121. In this regard, the respondent's Response states as follows:
  33. The Respondent observes that some applicants choose to send a copy of their policies and procedures while others prefer to provide a description of them. If applicants do not provide copies of their relevant policies and procedures, the Respondent may still consider the application to be complete.
  34. Accordingly, a statement describing an applicant's processes would be sufficient for the completeness stage, and may be capable of satisfying the compliance phase.
  35. If the application is not complete as a result of one or more of the required information items not having been provided, the Respondent notifies the applicant that its application is incomplete and sets a deadline by which the applicant is to provide additional information in accordance with Article 14(4) of CRAR ("Additional Information Deadline")."

122. The Board considers that Article 6(2) of the RTS on registration information sufficiently drew the appellant's attention to the possibility of providing copies of its policies and procedures. It could have provided them with its application. The Board does not think that the respondent was obliged to ask for them.
123. The respondent accepts however that a statement describing an applicant's processes may be capable of satisfying the compliance phase, and the appellant maintains it provided such a statement.
124. In its Response, the respondent says only that it "... refers to and relies on paragraphs 11 to 21 of the Annex ..." without explaining the individual points made in these paragraphs or amplifying them. The Board appreciates that there are questions of proportionality in this regard given the potential detail. Nevertheless, this response is not sufficient to enable the Board to reach a conclusion as to whether or not the respondent was correct on this ground of appeal. Accordingly, it finds that the respondent's case on the appeal has not been made out on this ground.

***4. Internal control mechanisms fully comply with Point 10 of Section A of Annex I of CRAR; Paragraphs a) to d) of point 4 of Section A of Annex I of CRAR.***

125. This part of the Notice of Appeal addresses the fourth reason given by the respondent in the Annex to the refusal decision, namely as to the requirements in CRAR as to internal control mechanisms.
126. Point 10 of Section A of Annex I of CRAR provides that, "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".
127. Point 4 of Section A of Annex I of CRAR provides that, "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". (The Board does not understand the reference to paragraphs a) to d) of Point 4 in the respondent's refusal decision.)
128. The appellant asserts that its internal control mechanisms are summarised in its policies and procedures which the respondent did not request. It says that the respondent should have made "... a request for submission of additional documents ... this is to confirm that the Company has internal control mechanisms; they are documented as policies and procedures".
129. The respondent accepts that some internal control mechanisms were described in the appellant's application package. However, it did not describe any of the control mechanisms that are typically used such as the "4-eyes principle", IT

controls, tick-box templates or tables, mandatory periodic reports or similar mechanisms for certain processes.

130. These are annual review of methodology, the identification of conflicts of interest, compliance with credit rating disclosure requirements, compliance with record-keeping requirements, and quality controls over the information used in the rating process.
131. The appellant responds that there is no mention of the “4-eyes principle” in CRAR, and that there are no ESMA handbooks making clear what is required.
132. Whilst it accepts that there may be a lack of specificity in some respects as to what was required, internal control mechanisms are a necessary part of good governance. The Board’s view is that overall significant inadequacies were identified by the respondent in the appellant’s internal control mechanisms. It considers that the Notice of Appeal asserts compliance without answering the specific points made in the refusal decision, and that this ground of appeal is not made out.

***5. Independence of review function does completely comply with point 9 of section A of Annex I of CRAR.***

133. This part of the Notice of Appeal addresses the fifth reason given by the respondent in the Annex to the refusal decision, namely as to the independence of the review function.
134. Point 9 of section A of Annex I of CRAR provides that “A credit rating agency shall establish a review function responsible for periodically reviewing its methodologies, models and key rating assumptions, such as mathematical or correlation assumptions, and any significant changes or modifications thereto as well as the appropriateness of those methodologies, models and key rating assumptions where they are used or intended to be used for the assessment of new financial instruments. That review function shall be independent of the business lines which are responsible for credit rating activities and report to the members of the administrative or supervisory board referred to in point 2 of this Section”.
135. The appellant contends that before February 2013, it did not have a review function expert. After that expert was appointed, his functions were described in updated documents, but not all the functions of the Chairman of the Rating Committee were updated. It says: “we identified this error in May, 2013 but there came no question from the Regulator in this regard, and therefore we did not attract his attention to this small error of clerks. This is to confirm that the functions of review expert are separated and the Chairman of the Rating Committee no more has neither right for/nor functions connected with review of rating methods. All rights and functions of Review Expert have been submitted by the Applicant within the updated package of documents in February, 2013 ...”.

136. In its response, the respondent refers to a statement in Annex IV of the appellant's letter of 15 February 2013 which identifies the expert and says she "... obeys to both the administrative board and the head of the rating committee". It also refers to a statement by the appellant suggesting that changes of methodology are jointly made by the review function and the members of the rating committee.
137. Although the position is less than clear, the Board prefers the appellant's contention in this regard. It considers that the word "obeys" may be attributable to an imperfect translation into English. It accepts that the respondent was not presented with a clear picture in this respect, and this appears to be acknowledged by the appellant in its Notice of Appeal. Nevertheless, the Board accepts that the appellant did provide for the independence of the expert who was carrying out the review function.

***6. Appropriate system and resources and confidentiality safeguards fully comply with the requirements of Point 8 of Section A of Annex I of CRAR, Point 3 of Section C of Annex I of CRAR.***

138. This part of the Notice of Appeal addresses the sixth reason given by the respondent in the Annex to the refusal decision, namely as to the adequacy of the appellant's IT systems.
139. Point 8 of Section A of Annex I of CRAR provides that, "A credit rating agency shall employ appropriate systems, resources and procedures to ensure continuity and regularity in the performance of its credit rating activities".
140. Point 3 of Section C of Annex I of CRAR provides (among other things) that credit rating agencies shall ensure that their rating analysts and employees do not disclose any information about credit ratings except to the rated entity, and do not use or share confidential information entrusted to it for any other purpose except the conduct of the credit rating activities.
141. In the refusal decision, the respondent asserted that (in effect) the appellant's IT systems were still being finalised, that no business continuity measures had been described in its application, and that there were no policies or procedures describing firewalls and confidentiality measures.
142. In its Notice of Appeal, the appellant contends that its IT system is constantly being improved, and the fact that it is evolving does not show that it does not meet the CRAR requirements. The appellant asserts that it offered access to the IT systems to the employees of the CRA Unit, but they refused to inspect. Continuity measures were described in a separate document which was not requested by the regulator.
143. The respondent takes issue with all these points.
144. In its reply, the appellant contends that there is no specific guidance provided by the respondent on IT systems, and that the respondent did not provide it with specific instructions.

145. The Board's conclusions are as follows. First, it agrees with the respondent that the business continuity plans described by the appellant in Annex X to its letter of 15 February 2013 are inadequate. If, as the appellant says, these were contained in a separate document, that should have been provided.
146. The Board further considers that the respondent was entitled to decline the offer made on 30 May 2013 that the respondent should have access to the appellant's emails. Whilst the Board accepts that this was done by the appellant in the interest of transparency, the respondent was entitled to take the view that this was not a proper course for its staff.
147. The Board takes the view that appropriate firewalls in relation to confidential information are required by Point 3 of Section c of Annex I of CRAR. The appellant does not appear to have addressed the assertion by the respondent in paragraph 36 of the Annex to the refusal decision to the effect that, "No policy or procedure provided by GPRC describes the firewalls and confidentiality measures put in place ...".
148. The Board accepts that IT systems are subject to evolution, and that considerable attention was paid to this issue by the appellant. However, the question was as to the adequacy of such systems. Whilst it accepts the appellant's contention that the requirements were not spelled out by the respondent, it considers that the deficiencies identified were substantial and meant that the respondent was entitled to reach the conclusion it did as to the appellant's systems.

***7. Sufficient quality data and thorough analysis fully comply with the requirements of Article 8(2) of CRAR.***

149. This part of the Notice of Appeal addresses the seventh reason given by the respondent in the Annex to the refusal decision, namely as to data and analysis.
150. Article 8(2) of CRAR provides that, "A credit rating agency shall adopt, implement and enforce adequate measures to ensure that the credit ratings it issues are based on a thorough analysis of all the information that is available to it and that is relevant to its analysis according to its rating methodologies. It shall adopt all necessary measures so that the information it uses in assigning a credit rating is of sufficient quality and from reliable sources".
151. The refusal decision asserted that the appellant had not issued any guidance to analysts or established other controls to ensure that the data used in its rating process was reliable, and not implemented adequate measures to ensure that credit ratings were based on a thorough analysis of the available information.
152. The appellant contends that the documents it submitted provide a general understanding of the system of benchmarks for analysts and the control over them. A more detailed description of policies and procedures is contained in an individual document of the company, where all the policies and procedures

of the company are summarised. It contends that respondent did not make clear what detail was required, or ask to study the documents in more detail.

153. The Board accepts that the appellant's point that the requirements in the Regulation are quite non-specific. They are however important, because they have to do with the reliability of the ratings.
154. In fact, the respondent's decision on this point is based partly on a particular objection, namely that the appellant had not provided guidance to analysts, as well as on a more general assertion as to the lack of other controls sufficient to ensure that the data in the rating process is reliable/of sufficient quality. The Board considers that the respondent was entitled to reach the conclusion it did on this ground.

***8. Robust and systematic methodologies and back-testing fully comply with the requirements of Article 8(3) of CRAR.***

155. This part of the Notice of Appeal addresses the eighth reason given by the respondent in the Annex to the refusal decision, namely as the adequacy of the appellant's rating methodology.
156. By Article 8(3) of CRAR, "A credit rating agency shall use rating methodologies that are rigorous, systematic, continuous and subject to validation based on historical experience, including back-testing".
157. Also relevant in this regard is Delegated Regulation (EU) No 447/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies by laying down regulatory technical standards for the assessment of compliance of credit rating methodologies. This is the RTS on methodology, and it amplifies what is required in compliance with Article 8(3), which is a provision of central importance.
158. The appellant's methodology was set out in particular in Annex C of its letter of 15 February 2013. The respondent's refusal decision is in respect of four reasons.
  - a. The methodologies lack of weighting/aggregation factors: the statement required by Article 4(3) of the RTS on methodology is not included.
  - b. The methodologies do not include a description of (1) each qualitative factor including the scope of qualitative judgment for that factor, nor (2) each quantitative factor including key variables, data sources, key assumptions, modelling and quantitative techniques as required by Article 4(2) of the RTS on methodology.
  - c. The discretion granted to rating analysts in the selection of rating factors means that the methodologies are not compliant with the

requirement the criteria are applied systematically under Article 5(1) of the RTS on methodology.

- d. No policy or procedure has been produced satisfying the requirement of conducting back testing and validation required by article 8(3) of CRAR.

159. The appellant's ground of appeal is as follows: "The full version of all the types of methodologies GPRC "StandardRating" is based on the back-testing and contains estimates from D to AAA. Moreover, there are policies and procedures that are designed for analysts, who make decisions about the choice of benchmarks. During the on-site visit employees of GPRC "StandardRating" explained to the representatives of CRA Unit that the requirements of CRAR to the presence of back-testing in the region of Central and Eastern Europe are difficult to comply with, but GPRC "StandardRating" has such an opportunity. However, CRA Unit remained indifferent to this information and did not express the slightest remarks to the public versions of methods that were provided with a set of documents of the applicant. GPRC "StandardRating" is ready to provide the texts of methods in order to make sure that they fully comply with Article 8(3) of CRAR".

160. The Board notes that robust and systematic methodologies are central to effective credit rating. It does not consider that the appellant has adequately answered the reasons set out in the refusal decision under this heading in its Notice of Appeal or Reply. This is not alleviated by the fact that further texts may be available.

161. The Board does not agree with the appellant that the respondent's case "... is the regulator's opinion, which remained to be a secret for us" (paragraph 21 of the Reply).

162. In the Board's view, each of the matters identified by the respondent was important. It considers that the respondent was entitled to rely on the inadequacies in compliance with the RTS on methodology and Article 8(3) of CRAR asserted in the refusal decision.

***9. Monitoring of credit ratings fully complies with the requirements of Article 8(5) of CRAR***

163. This part of the Notice of Appeal addresses the ninth reason given by the respondent in the Annex to the refusal decision, which has to do with on-going monitoring of credit ratings.

164. Article 8(5) of CRAR provides that, "A credit rating agency shall monitor credit ratings and review its credit ratings and methodologies on an ongoing basis and at least annually, in particular where material changes occur that could have an impact on a credit rating. A credit rating agency shall establish internal arrangements to monitor the impact of changes in macroeconomic or financial market conditions on credit ratings".

165. The refusal decision says that the appellant intends to review its ratings quarterly. However, it says that no procedures have been established to show how this is done, and the sample contract for the Head of the Rating Committee does not provide for any remuneration for monitoring activities.
166. The appellant asserts that the procedures and policies for monitoring credit ratings are contained in a separate document of the company. It says that the contract with the Head of the Rating Committee was subject to correction, and that separate compensation is not required for this kind of work.
167. The Board does not accept the appellant's case in this regard. It considers that monitoring the ratings is an important function of a credit rating agency, and that the appellant should have been in a position to satisfy the respondent as to the requirements of Article 8(5) by reference to the documents submitted with the application.

***10. Disclosure of credit rating fully complies with Article 10(1) of CRAR, Article 6(2) of CRAR and Point 1 of section B of Annex I of CRAR***

168. This part of the Notice of Appeal addresses the tenth reason given by the respondent in the Annex to the refusal decision, namely as to publication of credit ratings, and in particular non-selective disclosure.
169. The main provision that is relevant under this heading is Article 10(1) of CRAR, which provides that, "A credit rating agency shall disclose any credit rating, as well as any decision to discontinue a credit rating, on a non-selective basis and in a timely manner. In the event of a decision to discontinue a credit rating, the information disclosed shall include full reasons for the decision".
170. The points identified in the refusal decision are twofold. First, it is said that where in the case of an appeal from a Rating Committee's decision no agreement is reached, Article 10(1) of CRAR is infringed because the appellant terminates the contract with the client and does not publish the credit rating.
171. The Board considers that this is a difficult issue. It accepts that the appellant has put forward reasoned submissions that this procedure solely concerns a preliminary rating which is under discussion, but not yet published. However, it notes that in Annex VII of the appellant's letter dated 15 February 2012 under the heading "The following procedure applies for credit ratings", it is stated that, "Similar procedure applies for all credit ratings, both at assignment, and at quarterly updating". The Board considers that this supports the respondent's contention that it did not incorrectly interpret the submitted information.
172. The second point identified in the reasons given in the refusal decision raises another important issue, namely potential conflicts of interest generated by "rating shopping". This is an important issue, and the respondent's point does not appear to be addressed (or adequately addressed) in the appellant's submissions on the appeal.



**11. Presentation of credit ratings of GPRC “StandardRating” fully complies with the requirements: point 3 of section A of Annex I of CRAR, point 1 of Section D, part I of Section D of Annex I of CRAR; paragraph a) to e) of Point 2, Part I of Annex I of CRAR, points 4, Part I of Section D of Annex I of CRAR and Article 10(5) of CRAR.**

173. This part of the Notice of Appeal addresses the eleventh reason given by the respondent in the Annex to the refusal decision, namely as to whether the presentation of ratings disclosed the information required by CRAR.
174. The appellant does not dispute that the sample credit ratings did not comply with CRAR. Its case is that because it does not have any current ratings, the samples were submitted “... by its subsidiary rating agency in Ukraine, which is not required to perform standards of CRAR”. The Board does not accept this contention. It accepts the respondent’s contention that it could have provided but did not provide illustrative examples of rating reports and releases that it would issue. Accordingly, the appellant did not show that it was able to comply with the disclosure requirements of CRAR.

**12. The agency completely rejects any remarks, which contains section 12 and paragraph 52.**

175. This part of the Notice of Appeal addresses the twelfth reason given by the respondent in the Annex to the refusal decision, which has to do with disclosures.
176. The relevant points in the refusal decision are contained in paragraph 52 of the Annex. It is asserted that the appellant is not compliant with a number of disclosure requirements.
177. The appellant’s case is that further disclosure information is contained in a “generalised document on policies and procedures” which was not requested by the respondent. It says that since a decision on completeness had been made, it was the respondent’s duty to request clarification.
178. The respondent’s answer is that the appellant adequately described in its application how it addressed the disclosure requirements. Though it does not state this expressly in this part of its Response, the inference is that whilst complete for the purposes of the application, disclosure was not in fact compliant.
179. Neither party has addressed the specific non-disclosures asserted in paragraph 52 of the refusal decision. The Board consequently leaves the assertions contained in paragraph 52 out of account when reaching its decision on the appeal, on the basis that it has insufficient material to conclude whether or not the alleged non-compliance is established.

## **V. The Board's conclusions**

180. The appellant's Notice of Appeal seeks a number of remedies, including cancellation of the respondent's refusal decision, requiring reconsideration of its application, alternatively monetary compensation. The respondent asks the Board to confirm the decision.
181. The Board's powers on an appeal are contained in Article 60(5) of the ESMA Regulation as follows: "The Board of Appeal may confirm the decision taken by the competent body of the Authority, or remit the case to the competent body of the Authority. That body shall be bound by the decision of the Board of Appeal and that body shall adopt an amended decision regarding the case concerned."
182. Accordingly, on this appeal the Board may confirm the refusal decision, or remit the case to the competent body of the Authority, which in the present case is the Board of Supervisors of ESMA as the body responsible for the refusal decision. It is implicit in Article 60(5) that where a decision is remitted, it is remitted for reconsideration by the competent body in the light of the decision of the Board of Appeal, which is binding on the Authority.
183. The Board does not however have power to order the payment of monetary compensation to an appellant.
184. Those being its powers, the Board concludes as follows.
185. In its Reply dated 18 November 2013, the appellant says that it has serious concerns as to the motives of the respondent in refusing registration, saying that the matter has been referred to the European Ombudsman and to OLAF (the European Anti-Fraud Office).
186. The Board cannot comment on such references. However, in so far as it is necessary to decide the appeal, the Board has no reason to question the motives of the respondent in refusing registration. It considers that the respondent refused to register the appellant as a credit rating agency for the reasons given in the refusal decision, namely that it did not comply with relevant requirements to the extent stated in the Annex.
187. That being so, in the Board's view the question on the appeal is whether the appellant has made out its grounds challenging those reasons and the procedure by which the decision was reached.
188. In that regard, the Board accepts the appellant's point that the registration of a credit rating agency by the respondent is a new process, and recognises that the procedures will to an extent take time fully to work out. Nevertheless, because of the responsibilities placed on credit rating agencies and their importance in the financial system generally, it considers that the onus must be on an applicant to satisfy ESMA that the relevant requirements are met. The

application and its contents must be very clear, and it is not ESMA's responsibility as regulator to remedy deficiencies.

189. In Part A of the Notice of Appeal, the appellant asserts that there have been violations of the registration procedure by the respondent. For reasons set out in detail in paragraphs 58 to 90 above, the Board does not accept the appellant's case in this regard. It finds that there has been no violation of the registration procedure by the respondent.
190. In Part B, the appellant challenges the respondent's reasons as contained in the Annex to the refusal decision, asserting that the appellant complied with all applicable requirements for registration. The appellant does not accept that any of the respondent's grounds for non-registration were valid.
191. As regards Part B of the Notice of Appeal, the Board refers to paragraphs 91 to 179 above where its reasons are set out in detail. There are twelve grounds of appeal, which correspond to the twelve concomitant grounds in the refusal decision.
192. As stated, the Board has accepted the appellant's contentions in respect of ground 5 (paragraph 137 above). In respect of grounds 3 and 12, it does not consider that it has sufficient material to conclude whether there was compliance or not (paragraphs 124 and 179 above).
193. However, the Board has accepted the respondent's contentions as regards the other nine grounds. It considers that the respondent was entitled to find that the appellant's application was non-compliant in those respects. Taken together, these raised significant matters, and this amounted in the Board's view to substantial non-compliance with the requirements of CRAR. In those circumstances, it considers that the respondent was entitled to refuse to register the appellant as a credit rating agency. It further considers that the refusal decision was a fully reasoned one as required by Articles 16(3) and 18(1) of CRAR.
194. It follows that the Board of Appeal concludes that the appeal should be dismissed, and that the respondent's decision of 17 June 2013 should be confirmed.

## **VI. Decision**

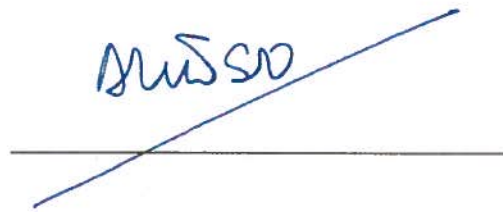
195. For the reasons expressed above, the Board of Appeal unanimously decides that the appeal should be dismissed, and confirms the respondent's decision of 17 June 2013 refusing the appellant's registration as a credit rating agency.
196. The Secretariat is instructed to forthwith send a certified copy of this Decision to the parties, informing them of the right of appeal under Article 61 of the ESMA Regulation, and to file the original in the Secretariat's records.
197. The original of this decision is signed by the Members of the Board in electronic format, and countersigned by hand by the Secretariat.

**William Blair (President)**

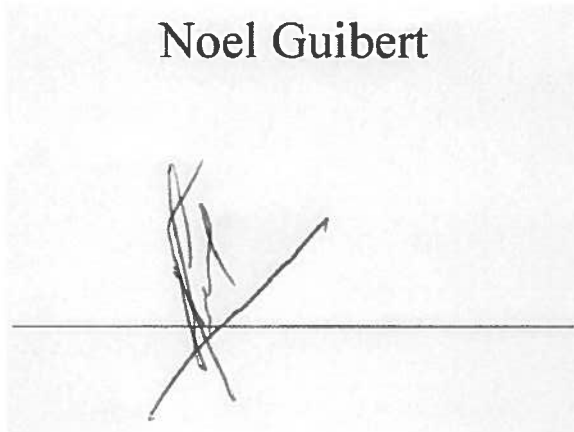
*William Blair*

---

Juan Fernández-Armesto (Vice-President and  
Rapporteur)

Handwritten signature "Jua" in blue ink, with a blue diagonal line crossing a horizontal line.

Noel Guibert



Arthur Docters van Leeuwen

A handwritten signature in black ink, appearing to read 'A. Doct.' followed by a stylized flourish. Below the signature is a solid horizontal line.



Katalin Mero

Katalin Mero

Beata Mrozowska

*B Mrozowska*

---

On behalf of the Secretariat  
Kai Kosik

Kai Kosik