

ESMA amends enforcement decisions for Nordic banks following appeal

ESMA, in June 2018, fined the five banks €495,000 each and issued five public notices for negligently infringing the Credit Rating Agencies Regulation (CRAR) by issuing credit ratings without being authorised by ESMA to do so.

Four of the five banks appealed against ESMA's decisions in 2018 to the BoA. In February 2019, while upholding all the infringements, the BoA accepted the banks' claim that they had not acted negligently given the very unusual circumstances of the banks' practice and while applying the high standard care required of the banks. Based on this decision, ESMA decided that the only appropriate supervisory measure in the four banks' cases were public notices regarding the banks' infringements and that no fine will be imposed, in accordance with CRAR.

Banks issued shadow ratings lacking registration

Between June 2011 and August 2016, the four banks issued credit research to their clients – and SEB continued to do so until May 2018. This credit research included the issuance of what the banks described as shadow ratings. These reports related to different entities and underlying financial instruments and these reports included opinions, which ESMA found met the definition of a credit rating provided for by the CRAR. However, no bank had acquired the necessary ESMA authorisation to issue ratings and such conduct infringes the CRAR which requires prior authorisation. None of the four banks was registered as a CRA nor had they applied for registration.

Background

Under the CRAR, issuing credit ratings requires authorisation by ESMA to ensure that such ratings are independent, objective and of adequate quality and that Credit Rating Agencies (CRAs) are subject to the same rules and oversight across all EU countries. A firm, in order to be registered as a CRA in the EU, needs to provide proof that it fulfils the necessary organisational requirements and provides adequate safeguards, in particular regarding governance, conflicts of interests, internal controls, rating process and methodologies, business activities and disclosures.

Right of appeal

Any of the four banks mentioned above may appeal against this decision to the Joint Board of Appeal of the European Supervisory Authorities.