

SECURITIES AND EXCHANGE BOARD OF INDIA

Amendment to Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999

1. Objective:

1.1. This memorandum seeks the approval of the Board to make amendments to Regulation 14 of Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 (“CRA Regulations”) in respect of provisions in the rating agreement between the Credit Rating Agency (“CRA”) and its client/ issuer and proposes the draft Securities and Exchange Board of India (Credit Rating Agencies) (Amendment) Regulations, 2019 for consideration and approval of the Board.

2. Background:

2.1. Regulation 14 of CRA Regulations (**Annexure A**) provides that every CRA shall enter into a written agreement with each client whose securities it proposes to rate and mentions certain provisions that every such agreement shall include.

2.2. As per CRA Regulations, CRAs are required to continuously monitor the rating of securities during the lifetime of such securities. It is understood that defaults/ delays in meeting bank obligations are often early indicators of default on other borrowing obligations of the issuer. However, banks are not forthcoming in sharing such information with the CRAs citing client confidentiality as a reason.

2.3. In order to address the above issue, CRAs may be mandated to incorporate an enabling provision in their rating agreement with the issuer/ client by way of insertion of Regulation 14(h) in the CRA Regulations as under:

“The client shall agree to provide explicit consent to the credit rating agency to obtain the details related to their existing and/ or future borrowing of any nature, its repayment and delay or default, if any, of any nature, in servicing of the borrowing, either from the lender or any other statutory/ non-statutory organization maintaining any such information to enable the credit rating agency to have timely information on the same and to consider the impact of such information on the rating assigned by the credit rating agency.”

2.4. In this regard, a letter was also sent to the Governor of Reserve Bank of India (“RBI”) by Chairman placed as **Annexure B (This has been excised for reasons of confidentiality)**.

3. Proposal:

3.1. In view of the above, it is proposed that Regulation 14 of Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 may be amended by inserting Clause (h), as mentioned at Para 2.3. above.

3.2. The Board is requested to approve the proposed Securities and Exchange Board of India (Credit Rating Agencies) (Amendment) Regulations, 2019 (**Annexure C**) and authorize the Chairman to make necessary consequential or incidental changes to the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 and take consequent steps, as may be deemed appropriate, to give effect to the decision.

(Annexure-A)

12 ³⁶[****]

CHAPTER III

GENERAL OBLIGATIONS OF CREDIT RATING AGENCIES

Code of Conduct

13. Every credit rating agency shall abide by the Code of Conduct contained in the Third Schedule.

Agreement with the client

14. Every credit rating agency shall enter into a written agreement with each client whose securities it proposes to rate, and every such agreement shall include the following provisions, namely: -

³⁶ Omitted by the Securities and Exchange Board of India (Change In Conditions Of Registration Of Certain Intermediaries) (Amendment) Regulations, 2016 w.e.f. 08-12-2016. Prior to omission regulation 12 read as under:

"Effect of refusal to grant certificate

12. (1) ³⁶[A credit rating agency whose application for grant of a certificate of permanent registration has been refused by the Board, on and from the date of the receipt of the communication, shall cease to undertake any credit rating activity.] ³⁶[(2) The decision of the Board, not to grant certificate of registration under sub-regulation (1) shall be communicated by the Board to the applicant within a period of thirty days of such decision, stating the grounds of the decision.]

(3) If the Board is satisfied that it is in the interest of the investors, it may permit the credit rating agency referred to under sub-regulation (1) or (2) to complete the rating assignments already entered into by it, during the pendency of the application or period of validity of the certificate.

(4) The Board may, in order to protect the interests of investors, issue directions with regard to the transfer of records, documents or reports relating to the activities of a credit rating agency, whose application for the grant ³⁶[of a certificate of permanent registration] has been rejected.

(5) The Board may, in order to protect the interests of investors, appoint any person to take charge of the records, documents or reports relating to the rating activities of a credit rating agency referred to in sub-regulation (4) and for this purpose also determine the terms and conditions of such appointment."

Also, prior to omission as the above, sub-regulation (1) was substituted by the SEBI (Credit Rating Agencies) (Amendment) Regulations, 2011 w.e.f. 05.07.2011. Prior to its substitution, sub-regulation (1) read as under:

"An applicant referred to in sub-regulation (1) of regulation 11 whose application for the grant of a certificate has been rejected under regulation 11, shall not undertake any rating activity."

And, sub-regulation (2) was substituted by the Securities and Exchange Board of India (Change In Conditions Of Registration Of Certain Intermediaries) (Amendment) Regulations, 2016 w.e.f. 08-12-2016. Prior to substitution it read as under:

"(2) An applicant referred to in sub-regulation (2) of regulation 3, whose application for the grant of a certificate has been rejected by the Board under regulation 11, shall, on and from the date of the receipt of the communication under sub-regulation (2) of regulation 11, cease to carry on any rating activity."

- (a) the rights and liabilities of each party in respect of the rating of securities shall be defined;
- (b) the fee to be charged by the credit rating agency shall be specified;
- (c) the client shall agree to a periodic review of the rating by the credit rating agency during the tenure of the rated instrument;
- (d) the client shall agree to co-operate with the credit rating agency in order to enable the latter to arrive at, and maintain, a true and accurate rating of the client's securities and shall in particular provide to the latter, true, adequate and timely information for the purpose.
- (e) the credit rating agency shall disclose to the client the rating assigned to the securities of the latter through regular methods of dissemination, irrespective of whether the rating is or is not accepted by the client;
- (f) The client shall agree to disclose, in the offer document; -
 - (i) the rating assigned to the client's listed securities by any credit rating agency during the last three years and
 - (ii) any rating given in respect of the client's securities by any other credit rating agency, which has not been accepted by the client.
- ³⁷[(g) the client shall agree to obtain a rating for any issue of debt securities in accordance with the relevant regulations.]

Monitoring of ratings

15. ³⁷[(1) Every credit rating agency shall, during the lifetime of securities rated by it continuously monitor the rating of such securities, unless the rating is withdrawn, subject to the provisions of regulation 16(3).]

(2) Every credit rating agency shall disseminate information regarding newly assigned ratings, and changes in earlier rating promptly through press releases and websites, and, in the case of securities issued by listed companies, such

³⁷ Substituted by the SEBI (Credit Rating Agencies) (Second Amendment) Regulations, 2011, w.e.f 27.12.2011. Prior to its substitution the clause read as under:

"(g) the client shall agree to obtain a rating from at least two different rating agencies for any issue of debt securities whose size is equal to or exceeds, rupees one hundred crores."

(Annexure-C)

(Draft)

**SECURITIES AND EXCHANGE BOARD OF INDIA
(CREDIT RATING AGENCIES) (AMENDMENT) REGULATIONS, 2019**

1. In the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999, –

(i) in regulation 14, after clause (g), the following shall be inserted, namely-

“(h) The client shall agree to provide explicit consent to the credit rating agency to obtain the details related to their existing and/or future borrowing of any nature, its repayment and delay or default, if any, of any nature, in servicing of the borrowing, either from the lender or any other statutory/non-statutory organization maintaining any such information to enable the credit rating agency to have timely information on the same and to consider the impact of such information on the rating assigned by the credit rating agency.”