

Reply form

for the Call for Evidence on restricted subscription and private credit ratings



Responding to this paper

ESMA invites comments on all matters in this call for evidence and in particular on the specific questions. Comments are most helpful if they:

- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- respond to the question stated;

ESMA will consider all comments received by **31 May 2026**.

Instructions

In order to facilitate analysis of responses to the Call for Evidence, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Call for Evidence in the present response form.
2. Use this form and send your responses in Word format (**pdf documents will not be considered except for annexes**);
3. Please do not remove tags of the type <ESMA_QUESTION _RSR_1>. Your response to each question has to be framed by the two tags corresponding to the question.
4. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
5. When you have drafted your response, name your response form according to the following convention: ESMA_RSR_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_RSR_ABCD_RESPONSEFORM.
6. Upload the form containing your responses, **in Word format**, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open Consultations" -> Call for evidence on restricted subscription and private ratings").

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with [ESMA's rules on access to documents](#). We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).

Who should read this paper?

This paper is addressed to all financial market participants and in particular credit rating agencies, issuers, investors and competent authorities involved in the issuance and use of credit ratings for regulatory purposes.

General information about respondent

Name of the company / organisation	Loan Market Association ("LMA") and Private Placement Investors Association ("PPIA")
Activity	Financial markets
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	International

Questions on restricted subscription credit ratings

Q.1 What are the main purposes and market needs that restricted subscription credit ratings are intended to serve? In what circumstances are they preferred over publicly disseminated credit ratings or other credit assessments? Please provide concrete examples where possible.

<ESMA_QUESTION_RSR_1>

Demand for restricted subscription credit ratings is relatively new, and until recently, these ratings were rarely used by market participants. Our understanding is that European banks and financial institutions have become interested in restricted subscription credit ratings as these ratings fall within the purview of the Credit Rating Agencies Regulation ("**CRAR**") and investors can therefore use them for regulatory (including regulatory capital) purposes.

Restricted subscription credit ratings are preferred over public credit ratings in situations where the issuer wants to maintain confidentiality of one or more aspects of the rating report. For example, a corporate issuer may wish to keep key strategic or financial information out of the hands of competitors, customers or suppliers. For a structured security, the structuring party may want to keep certain proprietary structuring techniques confidential so it cannot be easily replicated. In these situations, the issuers may not be comfortable with a public credit rating, but they may still be willing to share relevant information with a credit rating agency ("**CRA**") and with investors on a confidential basis. In such instances, the issuer could consider obtaining a private credit rating, but it would be allowed to be distributed to no more than 150 people, and the investors could not use the rating for regulatory (including regulatory capital) purposes. Alternatively, the investor(s) could procure a restricted subscription credit rating, bringing the rating into the purview of the CRAR, which then would eliminate the 150-person distribution limit and allow reference to the rating for capital purposes.

<ESMA_QUESTION_RSR_1>

Q.2 How are subscribers defined in practice, including with respect to criteria for access, the assessment of "economic interests" and restrictions on onward disclosure?

<ESMA_QUESTION_RSR_2>

As set out above, restricted subscription credit ratings are just starting to be used, and only a minority of CRAs currently offer them as an option. One reason we understand that so few CRAs offer restricted subscription credit ratings is that the regulatory framework surrounding them is not very well defined. Whereas it is clear that private credit ratings are outside the scope of the CRAR, and the rules for public credit ratings are well-defined by the CRAR, the regime for restricted subscription credit ratings is unclear. The CRAR refers to them only four times, two of which are to specify that they are in scope of the CRAR, and two of which make clear that (at least parts of) Article 10 of the CRAR apply to restricted subscription credit ratings. The application of the other provisions of CRAR to restricted subscription credit ratings is not specified and is therefore not always certain.

This creates uncertainty and regulatory risk that serves to disincentivise CRAs from offering what might be a useful product to the market. If more clarity is provided on the way restricted subscription credit ratings are permitted to be structured, we would expect more CRAs might begin to offer them.

As to the definition of "economic interests", the CRAs would be in the best position to share how they currently define those with economic interest; however, in order for a subscription rating to work effectively for capital markets' needs, we believe the definition would need to cover the following recipients (either as direct subscribers, or as parties for whom ratings-sharing would be allowed only on a strictly confidential basis):

- (i) current and prospective investors,
- (ii) any contracted third-party clients of those investors,
- (iii) marketing agents or brokers who are facilitating the purchase and/or trading of such investments,
- (iv) contracted parties who provide critical services, such as legal advice or third-party asset administration and reporting services to the investors, and
- (v) investors' regulators, statutory auditors, and judicial authorities, on request.

<ESMA_QUESTION_RSR_2>

Q.3 What information is provided to subscribers alongside the credit rating (e.g., rationale, key assumptions, sensitivity analysis)? How does this information compare with that accompanying publicly disseminated credit ratings, and how are any differences addressed?

<ESMA_QUESTION_RSR_3>

The feedback we have had from CRAs is that methodologies, analytical models and the information contained in rating reports is the same regardless of whether the report is intended to be public, made available by restricted subscription or private. These include detailed rationales for the rating, key assumptions, and sensitivity analysis (or factors that would move a rating up or down). They also frequently include an issuer profile, comparisons with peers, and an analysis of the issuer's financial and/or legal structure. Based on our discussions with CRAs, the methodologies and standards of review are the same, regardless of whether a rating is public, restricted subscription, or private.

<ESMA_QUESTION_RSR_3>

Q.4 What arrangements apply in practice to ensure that restricted subscription credit ratings are produced in line with the requirements of the CRA Regulation, including those relating to governance, independence, conflicts of interest, internal controls, and application methodologies? How do these arrangements compare with those applicable to publicly disseminated credit ratings?

<ESMA_QUESTION_RSR_4>

The feedback we have received from CRAs is that these requirements of the CRAR are implemented at an institutional level by registered CRAs and apply in the same way,

regardless of whether the rating being produced is a public, restricted subscription or private.

<ESMA_QUESTION_RSR_4>

Q.5 What risks or unintended consequences may arise from the production, distribution and use of restricted subscription credit ratings (e.g., information asymmetry, cherry-picking, market signalling, procyclicality)?

<ESMA_QUESTION_RSR_5>

The risks of restricted subscription credit ratings seem to us to be minimal, provided that all investors and prospective investors are permitted to access the same information on the rating at the same time. For a restricted subscription credit rating that is obtained during the initial marketing stages of a deal, reasonable pricing would be a critical factor to ensure access for all potential investors. Substantial subscription fees for ratings access would potentially preclude smaller investors from subscribing; meanwhile, larger investors could potentially afford those subscription fees, creating information asymmetry concerns.

For a restricted subscription credit rating to be accessible to all, it would need to be priced at a reasonable level. We note, in this respect, that we would expect clarifying the regulatory framework for restricted subscription credit ratings (as set out above) to be helpful with this issue. If the clarified framework leads to more CRAs offering restricted subscription credit ratings, it would follow that additional providers should lead to healthy price competition.

To the extent that CRAs apply consistent standards of review and ratings methodologies across public, restricted subscription, and private credit ratings (which we understand to be the case), a restricted subscription credit rating is no more likely to contribute to procyclicality or systemic risk than any other rating type.

<ESMA_QUESTION_RSR_5>

Q.6 What mitigants are currently applied to address such risks and how effective are they? To what extent are these risks addressed by the existing requirements of the CRA Regulation?

<ESMA_QUESTION_RSR_6>

Please see our answers to questions 3, 4 and 5. We do not believe that restricted subscription credit ratings, as long as they are priced within reason, present any particular risks compared to public or private credit ratings. As set out above, the requirements of the CRAR already apply to mitigate institutional level risks in the same way as they would for a public credit rating.

<ESMA_QUESTION_RSR_6>

Q.7 To what extent do issuers seek restricted subscription credit ratings from more than one credit rating agency for the same exposure? Please describe how common this practice is and the reasons for seeking, or not seeking, multiple restricted subscription credit ratings.

<ESMA_QUESTION_RSR_7>

Due to the nascency of the restricted subscription credit ratings product, which is currently offered by only a small number of CRAs, we believe it is unlikely that an investor would purchase two or more restricted subscription credit ratings. However, were the market to develop, perhaps more CRAs would offer the product, increasing the likelihood of multiple ratings. To some degree, the regulatory framework may also determine whether multiple ratings are purchased (i.e., rules around whether a single rating can be referenced for regulatory purposes, as opposed to multiple ratings, would determine how many restricted subscription credit ratings are obtained).

<ESMA_QUESTION_RSR_7>

Q.8 Are there any additional considerations or evidence related to restricted subscription credit ratings that stakeholders consider relevant for the purposes of this Call for Evidence, but which have not been addressed in the questions above?

<ESMA_QUESTION_RSR_8>

The current framework of the CRAR may limit access for European issuers trying to access capital via the private markets. As clearly acknowledged by the European Commission as part of its Savings and Investments Union communication, there is currently a significant overreliance on European banks for funding. If the European Union is to broaden and deepen its capital markets, it is critical that unnecessary barriers created by the CRAR be eliminated. In this respect, there is a clear market need for a rating product that can be kept confidential but nonetheless distributed to more than 150 people. There is also a market need for an issuer-paid confidential rating that can be distributed to investors at no (or nominal) cost and used for regulatory purposes. These could be the same product or they could be different products, but without products that meet both of these needs, it will be difficult for European issuers to maximise their access to capital markets.

Issuers who seek private credit ratings usually fall into one of two categories.

- (i) Corporate or infrastructure/project finance issuers, who are often family-owned or sponsor-owned and are protective of their financial and strategic information. While these issuers are aware of (and comfortable with) the need to provide detailed information to investors, they have a legitimate commercial interest in ensuring that the information they share with investors and with CRAs does not fall into the hands of competitors, customers or suppliers.
- (ii) Fund or rated note structures, or certain types of structured securities, using structuring techniques that the fund manager or structuring agent consider proprietary and do not want to see replicated by competitors.

In either category, the desire to limit broad sharing of confidential information is not compatible with listing the debt on a regulated market or with obtaining a public credit rating, but it is both common and appropriate in private markets for information to be shared on a confidential basis with those who need access to it.

One solution that would allow European issuers to reduce their overreliance on bank funding (by gaining broader access to capital markets funding) might include adapting the regulatory framework for restricted subscription credit ratings. That adaptation would

create a model where the issuer or lead investor would seek and pay for the rating, and allow the rating report to be distributed to an unlimited number of recipients determined by the issuer or lead investor, on confidentiality terms that it determines. These ratings would be within the regulatory perimeter of the CRAR, facilitating ESMA's ability to maintain surveillance of the use of this tool and make or recommend any appropriate adjustments in due course as the market develops. It would also alleviate the 150-person distribution limit for private credit ratings. As we describe in our answers to Questions 9-13, the 150-person distribution limit has proven challenging for investors, as it does not align well with investors' normal workflow, reporting and risk management processes.

<ESMA_QUESTION_RSR_8>

Questions on private credit ratings

Q.9 What are the main purposes and market needs that private credit ratings are intended to serve? In what circumstances are they used instead of, or alongside, publicly disseminated ratings or other forms of credit assessment? Please provide concrete examples where possible.

<ESMA_QUESTION_PR_9>

As set out above, private credit ratings are used when issuers have a strong preference for confidentiality. Issuers do not want to see their key strategic, financial and/or structuring information fall into the hands of customers, suppliers, and especially competitors. However, they are comfortable sharing that information with their investors, and their investors can obtain benefits from seeing a CRA's ratings analysis. Investors often appreciate the benefit of an independent, reputable third-party assessing the credit. They can use the private credit rating report as a benchmark by which to validate their own due diligence and underwriting work. The private credit rating report can provide comfort to investors about the completeness and correctness of their own internal analysis. At times a private credit rating report could point out important factors investors might not have considered, or provide context of which the investor was previously unaware. Even where the investor learns no new objective information from the private credit rating report, the analysis provided in the report is nonetheless useful, because it allows the investor to test its own analysis against a good external benchmark. Even where the investor disagrees with the private credit rating report, it is useful for investors to understand the reasons for any disagreement and helps investors to better understand their (prospective) investment.

Private credit ratings can also be used by some non-EU investors for regulatory purposes. The ability of non-EU investors to use private credit ratings for their own (non-EU) regulatory purposes is critical to facilitating the flow of capital available to European businesses, projects and infrastructure undertakings. For example, many U.S. insurers are required to share private credit rating reports with the Securities Valuation Office ("SVO") of the National Association of Insurance Commissioners ("NAIC") shortly after purchase, and annually thereafter as part of their year-end portfolio reporting process. This sharing is necessary for a U.S. regulatory process to take place, whereby the SVO reviews the private credit rating and maps it to an NAIC-equivalent designation used in both regulatory capital calculations and statutory accounting financial statements.

We would emphasise that the use of private credit ratings for U.S. regulatory purposes does not create systemic risk. Ratings are subject to rigorous assessment by the SVO which is always evolving and continues to improve in response to market growth. For example, in May 2026, the NAIC released publicly a proposed comprehensive framework for evaluating CRAs and their credit rating methodologies. The proposal is intended to help the NAIC evaluate which CRAs' methodologies and credit ratings are robust, with the ability to reject or adjust specific CRAs' credit ratings at the asset class level, or reject a CRA altogether, if the NAIC determines that its ratings are not fit for regulatory use. Likewise, at a single-security level, the NAIC's SVO staff can challenge any credit rating where their internal risk assessment differs by more than 2 credit rating notches (a ratings differential threshold deemed to be more than just a difference of professional opinion).

The ability of U.S. investors to make such regulatory use of European private credit ratings is critical in facilitating what PPIA estimates at between \$10 billion and \$13 billion (~€9-€11 billion) annually of traditional, investment grade funding provided to European corporate, infrastructure, and project finance issuers. This is the estimated volume of debt issued into the investment grade U.S. private placement market only. Additional capital is provided by U.S. investors to the European middle markets private credit market. PPIA investors note that there is ample capacity to grow this investment in private debt markets, helping the EU source capital for the approximate €1.2 trillion¹ in annual investment needed to facilitate the green transition, digitalisation, and upgrade of defence capabilities. However, in order for private debt investment to be capital-efficient for U.S. insurers, credit ratings are needed, and investors must be able to share those ratings with their regulators and support normal workflow (both internally and externally).

Regulatory use depends on transmission of a rating to third parties – and sometimes many third parties. For example, an asset manager may have acquired the privately rated debt on behalf of insurance company clients. It will often be the case that those third-party clients must share a copy of the credit rating report with their state regulator or internal risk managers. Likewise, lawyers, auditors and other parties that the investor or investment manager has under contract will need to have sight of the credit rating report.

In our experience, it is unusual for an issuer to carry both a public and a private credit rating. Typically, when issuers have public debt securities outstanding, they purchase public credit ratings. Those who do not issue in the public market would typically obtain a private credit rating, if they choose to purchase a rating at all. A rare exception might be a borrower that originally starts by issuing in the private debt market, and then as that borrower's business grows over time, they may choose to migrate to issuing debt in the public market. There may be a brief period in the interim where the issuer carries a private credit rating on the private debt and a public credit rating on the public debt, but eventually the private credit rating would be dropped.

<ESMA_QUESTION_PR_9>

¹ <https://www.ecb.europa.eu/press/blog/date/2025/html/ecb.blog20250725~f26b4ef0f3.en.html>

Q.10 To what extent do private credit ratings support investment decisions, credit risk assessments, risk management or internal capital allocation by market participants? In particular, how do they contribute to credit risk assessment and price discovery, including in private markets? Please provide examples where possible

<ESMA_QUESTION_PR_10>

Based on our discussions with CRAs, private credit ratings are prepared in a consistent manner as compared to public credit ratings and investors use private credit ratings in much the same way as well (with the exception that EU investors cannot and do not use private credit ratings for regulatory purposes). In addition to the uses mentioned in response to question 9 above, private credit ratings can also be used in both internal and external reporting processes and can be used by investors to set eligibility criteria for external investment managers.

As with public credit ratings, private credit ratings are not a substitute for internal underwriting and risk assessment. Investors and lenders conduct their own credit analysis, with private credit ratings serving as a complementary input that can inform investor views on credit quality, structuring, and downside risk. As such, issuers and the agent banks who assist them in finding investors, often provide private credit rating access to prospective investors as part of a limited-distribution marketing process. However, the 150-person limit as implemented by the CRAs makes this marketing process awkward and often unfeasible, because multiple individuals need to see the private credit rating report just to facilitate a single institutional investor's purchase of the debt. Persons with need to access a private credit rating report can include external asset managers, lawyers, investment analysts, credit committee members and internal accountants. Once the investment has been made, internal reporting personnel (or external agents charged with reporting), operational personnel, external auditors, supervisors and many other individuals may have a legitimate business need to see the private credit rating report.

<ESMA_QUESTION_PR_10>

Q.11 What risks, if any, may arise from the use of and reliance on private credit ratings, including potential market-level risks (e.g. information asymmetries or financial stability concerns) as well as risks related to rating quality or governance?

<ESMA_QUESTION_PR_11>

We are of the view that the risks, if any, arising from the use and reliance on private credit ratings are limited. While the ratings themselves are outside the scope of the CRAR, the feedback we have received from CRAs is that most of the structural safeguards required by the CRAR are implemented at an institutional level by registered CRAs and apply in the same way regardless of whether the credit rating produced is public, restricted subscription or private. Likewise, private credit rating reports have a similar level of detail regarding the rating rationale, key assumptions and ratings sensitivities as found in public credit rating reports. For this reason, we do not believe that private credit ratings present any rating quality or governance risks beyond risks inherent in public credit ratings.

In any case, EU-established institutions are not allowed to use private credit ratings for regulatory purposes, which means that systemically significant institutions such as banks

and insurers are not permitted to calculate key prudential metrics, such as capital and liquidity buffers, using the private credit ratings.

If greater transparency for ESMA would be helpful in allowing it to gather the necessary information to come to its own conclusions on these matters, LMA and PPIA expect that their members would have no objection to sharing private credit rating reports with ESMA on a confidential basis to provide extra reassurance.

On the issue of information asymmetries, we do not believe this is a concern. The feedback we have had from members suggests that when private credit ratings are obtained, they are shared with all relevant investors or prospective investors except where prevented from doing so by the 150-person limit (see our answer to question 16 below). The issuer is incentivised to share with all prospective investors to achieve a low cost of borrowing. Some investors cannot purchase debt without a rating from a reputable CRA. Therefore, presence of a credit rating —whether public, restricted subscription, or private — potentially brings a broader prospective investor base and a more competitive marketing process. Likewise, since debt investors will generally demand a higher yield to compensate for having less information, the presence of a credit rating from a reputable CRA can translate to a modest pricing advantage.

In any case, a lower level of market transparency is an expected feature of private markets. Unlike public markets, the private debt market is dominated by institutional investors who are expected to be in a better position than a retail investor to perform their own thorough due diligence prior to investing. A private credit rating can enhance – but not substitute for – other due diligence processes, such as review of investor presentations and offering documents, financial statement analysis, scenario modelling, legal document review, discussions with management teams, and on-site visits. If ESMA would like additional information about private credit ratings, we believe that issuers and investors alike would be willing to share private credit rating reports with ESMA in a confidential manner, as a similar submission is already being made to the NAIC/SVO in the U.S.

<ESMA_QUESTION_PR_11>

Q.12 To what extent, if any, do private credit ratings differ from publicly disseminated regulated ratings in terms of governance, independence, conflicts of interest, internal controls, and application methodologies; and what risks, if any, arise from such differences? Please provide examples where possible.

<ESMA_QUESTION_PR_12>

The feedback we have received from CRAs is that the way these issues are dealt with is virtually entirely governed by CRAR and the relevant systems are implemented at an institutional level by registered CRAs. Accordingly, much the same approach is taken for public, restricted subscription or private credit ratings issued by a given CRA. Some CRAs will allow minor procedural differences on private credit ratings that would not be permitted on public credit ratings, such as reducing the comment period for the issuer on the rating report below the minimum time required by the CRAR, but the rating methodologies applied remain identical.

<ESMA_QUESTION_PR_12>

Q.13 To what extent do current disclosure practices and market practices around private credit ratings adequately support market transparency and investor protection? If relevant, please indicate areas where improvements may be warranted.

<ESMA_QUESTION_PR_13>

As described above, private credit ratings are used as just one part of investor due diligence in private markets. Furthermore, private credit ratings are (where permitted under the 150-person limit) generally made available to every investor and prospective investor to whom the report would be relevant.

Indeed, the overwhelming feedback we have received from our members is that greater freedom to disclose private credit ratings (within appropriate guidelines intended to address both confidentiality and regulatory concerns) would be desirable in order to ensure that investors can have a reputable external benchmark against which to test their own conclusions without making rating reports generally available to competitors, suppliers or customers of the issuer. The ability to disclose ratings to anyone an investor (or prospective investor) has under contract without breaching private credit ratings disclosure limits would be helpful in promoting better underwriting and an increased ability of investors to protect themselves when making private placement investments.

<ESMA_QUESTION_PR_13>

Q.14 What are the main benefits associated with the use of private credit ratings by market participants? In which areas do they provide added value, and in which contexts are they considered a desirable product (e.g. private markets)? Please explain and provide examples where possible.

<ESMA_QUESTION_PR_14>

Private credit ratings provided by EU-registered CRAs are a critical tool in enabling wider access to private markets for investors and greater access to non-bank funding for EU issuers. They provide a key benchmark generated by a reputable, expert, independent and regulated third party, against which investors and prospective investors can test their own internal analysis, and identify risks, or understand risk mitigants. All of this supports not only greater access to private market investments for investors and greater access to funding for issuers, but it also supports more efficient price discovery by providing additional sources of information and analysis on which investors can base their investment decisions.

<ESMA_QUESTION_PR_14>

Q.15 In your view, does the current regulatory framework adequately support the market need for external credit risk assessments in private markets? If not, please indicate in which areas improvements may be warranted.

<ESMA_QUESTION_PR_15>

No. The current regulatory framework creates significant operational constraints to meeting the need for external credit risk assessments in private markets. There are currently three options in Europe: public credit ratings, restricted subscription credit ratings, and private credit ratings.

As we mentioned previously, private market issuers rarely seek public credit ratings. They value the ability to keep key strategic and competitive information confidential and are reluctant to disclose such information, absent a requirement to do so.

Restricted subscription credit ratings are somewhat helpful, but the regulatory framework surrounding these ratings is somewhat unclear, leading to a level of compliance uncertainty that discourages some market participants (CRAs, issuers and investors) from using them. As things currently stand, restricted subscription credit ratings are generally treated as a category for ratings solicited by investors and generally for that investor's sole benefit. For sole-investor transactions or small "club deal" transactions or where the general partner of a fund wants a rating, this can be workable, but it is not a scalable, cost-effective solution. Restricted subscription credit ratings that are paid for by investors are poorly suited to situations where there are more than a small number of investors or where secondary market liquidity is required. This includes agented transactions where investment banks act as marketing intermediaries to market an issuer's debt to multiple possible investors.

Private credit ratings are more commonly used, but their usefulness is constrained by the current implementation of the 150-person limit. Some of the challenges posed are as follows:

- (i) Most CRAs have implemented the 150-person limit by restricting access to only one or two natural persons within any organisation.² Restricting the number of natural persons to this degree does not permit investors to implement well-established and robust due diligence practices as they normally would. Within any investment organisation contemplating a private debt investment, multiple natural persons would have a legitimate business need to see the private credit rating and supporting materials. Persons who would need sight of the private credit rating report could include: senior analysts, junior analysts and attorneys who work collaboratively on the deal underwriting team, credit committee members who review the deal team's underwriting process and transaction terms, accounting/statutory reporting personnel who use the rating for reporting purposes, and operational personnel who are responsible for sharing the private credit rating with regulators and external auditors, as required.
- (ii) As with restricted subscription credit ratings, private credit ratings are most challenging when used on agented transactions. In agented transactions, there can be as many as 50 or more institutions who are allowed to see the transaction and place bids for the debt. Here, interpreting the 150-person limit to apply to both legal and natural persons is highly constraining, especially considering that some of the investors have active third-party asset management businesses and some CRAs interpret disclosure to one individual at one institution as disclosure to two people for purposes of the 150-person limit. Such third-party investors may also have need to see a copy of a private credit rating for their own regulatory, audit, risk, or operational purposes.
- (iii) Other persons, beyond potential debt investors, may need to see a private credit rating report. For example, some investors outsource their investment reporting and administration functions to a third-party administrative service. Another example

² Indeed, some CRAs interpret the disclosure of a private rating to even a single individual at a single institution as disclosing to two people for purposes of the 150-person limit: the individual and the organisation.

would be secondary trading. While private debt is less liquid than public debt, there is an established secondary market that is managed by a handful of brokers on a “trade-by-appointment” basis. Those brokers, and the potential secondary buyer, would want to see any private credit rating report as part of negotiating the secondary purchase. Inability to share the private credit rating report on a confidential basis would likely depress both the liquidity and the achievable pricing for privately traded debt.

Accordingly, and in order to balance ESMA's legitimate regulatory interests with the needs of private markets for external credit assessments, we would recommend clarifying the current 150-person limit such that it clearly applies to investing institutions only and not to natural persons. More particularly, we would recommend that each investing institution should be able to share the private credit rating report with the following as part of its institutional access (counting as one person toward the 150-person limit):

- (i) Institutions or brokers who own, or are contemplating the purchase of, or are facilitating the purchase of, loans or securities that carry a private credit rating; and
- (ii) Institutional clients and parties under contract (including, but not limited to, lawyers, auditors, external reporting agents, and other service providers who facilitate the purchase, holding or compliance requirements associated with the purchase or holding of the debt) with such institutions or brokers.

We believe this clarification of the 150-person limit, paired with the existing controls on private credit ratings (distribution only under strict confidentiality conditions, record-keeping requirements by CRAs to ensure limits are complied with, governance, independence and conflicts of interests rules applicable to CRAs, etc.) would represent a better balance. Private credit ratings would still remain distinct from public ratings, with a limited distribution, as opposed to being in general circulation. However, broadening the distribution to 150 institutions, as opposed to 150 legal and natural persons, would facilitate investors' efficient access to private markets and facilitate the flow of non-bank funding into European businesses and infrastructure projects, while accommodating issuers' need to protect their proprietary information from competitors, customers and suppliers.

<ESMA_QUESTION_PR_15>

Q.16 Are there any additional considerations or evidence related to private ratings that stakeholders consider relevant for the purposes of this Call for Evidence, but which have not been addressed in the questions above?

<ESMA_QUESTION_PR_16>

If private credit ratings can be shared with all investors (whether existing or prospective) on a confidential basis, then there is minimal risk of information asymmetry in the private market. All investors would enjoy access to the same ratings information. However, as the private debt market grows, there is risk of prospective investors being denied access to ratings reports, as issuers approach the 150-person distribution limit.

This is not merely a theoretical issue. Our members have reported receiving communications from a CRA, on behalf of an issuer, informing them that the issuer

could not share the private credit rating report with any further individuals or institutions. The explanation given was that the 150-person limit had been reached and that further disclosure would cause the rating to become public. The issuer communicated that it was seeking to remove users from the list who no longer required access, but that a year must elapse before any freed-up slots could be reused. This created a serious issue both for the issuer (whose access to capital was thus impaired) and for investors, whose ability to dispose of their positions was also impaired. We would expect the number of situations where issuers are approaching the 150-person limit to increase over time, if only because staffing turnover at institutions will result in a need for additional natural persons to access private ratings.

The LMA and PPIA view both restricted subscription credit ratings and private credit ratings as valuable tools within the credit ratings universe. Each product serves distinct needs and can help facilitate the flow of private capital investment into EU issuers. However, restricted subscription credit ratings are unlikely to work as a replacement product for private credit ratings in all circumstances. A restricted subscription credit rating could, however, substitute for a private credit rating in some circumstances if an issuer-paid restricted subscription credit rating option is developed under the regulatory framework. In any case, for private credit ratings to effectively serve the market's needs, more flexibility is needed on the 150-person distribution limit for private credit ratings to align with investors' natural workflows and due diligence processes, while still preventing broad dissemination of private credit ratings into the public domain.

<ESMA_QUESTION_PR_16>

ANNEX

LOAN MARKET ASSOCIATION ("LMA") AND PRIVATE PLACEMENT INVESTORS ASSOCIATION ("PPIA") REPLY

CALL FOR EVIDENCE ON RESTRICTED SUBSCRIPTION AND PRIVATE CREDIT RATINGS

As context for the LMA and PPIA joint reply to ESMA's Call for Evidence, the LMA and PPIA would like to emphasise that public, restricted subscription, and private credit ratings are, in general, three separate products with three separate functions in the financial markets. While they all serve the purpose of providing an independent, external opinion about the credit quality of an issuer, each has distinct features that make it more or less appropriate for different situations. We have summarised these below. More detail is provided in the main body of our reply to the Call for Evidence.

	Public	Restricted Subscription	Private
Content	Detailed rating rationale, key assumptions, sensitivity analysis. Frequently include issuer profile, comparisons with peers, analysis of financial and legal structure.		
Safeguards	Subject to safeguards relating to governance, independence, conflicts of interest, internal controls and consistent methodologies		
Confidentiality and distribution limitations	Publicly available – not confidential	Confidential. Available by subscription to persons with an economic interest in the issuer.	Confidential. Available to the issuer. Can be distributed confidentially to up to 150 natural and legal persons.
Useable for regulatory purposes (including regulatory capital)?	Yes	Yes	Not in the EU. Useable for regulatory purposes outside the EU, subject to local regulatory frameworks.
Typically paid for by	Issuer ³	Each subscribing investor	Issuer

³ In small segments of the market, investors will sometimes pay for a public rating. Based on feedback we've received from members, this phenomenon is restricted to specialist markets, is normally driven by a European investor wanting to use the rating for regulatory purposes and the rating is typically a public rating of the specific investor's participation, rather than the issuer as a whole or even the facility as a whole.

	Public	Restricted Subscription	Private
Typically used for	Situations where the issuer prioritises access to a large pool of capital over confidentiality. Often used for debt listed on a regulated market or similar venue where public disclosure of detailed company information will be required in any case.	Situations where the issuer requires confidentiality of key strategic or financial information, or fund structuring techniques. Especially important where there is a need to keep this information out of the hands of competitors, customers or suppliers. Often used where one or a handful of investors make investments large enough that paying for the rating isn't an obstacle and/or want to use the rating for regulatory purposes.	Situations where the issuer requires confidentiality of key strategic or financial information, or fund structuring techniques. Especially important where there is a need to keep this information out of the hands of competitors, customers or suppliers. Often used where multiple investors purchase smaller positions and would face an obstacle to pay for the rating themselves. Particular examples are agented transactions and where secondary market liquidity is desired
Significant market issues	None relevant to the Call for Evidence	Unclear regulatory framework contributes to both limited offering and limited demand for this product. Issues with cost for investors, which can lead to information asymmetry issues if not all investors with an interest can afford to pay for the rating.	150-person limitation as currently applied can limit access to capital for European issuers and create operational and regulatory issues for investors.

The LMA and PPIA view both restricted subscription credit ratings and private credit ratings as valuable tools within the ratings universe. Each product serves distinct needs and can help facilitate the flow of private capital investment into EU issuers. However, restricted subscription credit ratings are unlikely to work as a replacement product for private credit ratings in all circumstances. A restricted subscription credit rating could, however, substitute for a private rating in some circumstances if an issuer-paid restricted subscription credit rating option is developed under the regulatory framework. In any case, for private credit ratings to effectively serve the market's needs, more flexibility is needed on the 150-person distribution limit for private credit ratings to align with investors' natural workflows and due diligence processes, while still preventing broad dissemination of private credit ratings into the public domain.