

**STANDARD
& POOR'S**

30/F Edinburgh Tower The Landmark,
15 Queen's Road Central, Hong Kong.
+852-253-335630 Tel
+852-671-03304 Cell
ping_chew@standardandpoors.com

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The Licensing Department
Securities and Futures Commission
8/F Chater House
8 Connaught Road Central
Hong Kong

By email: creditratingagencies@sfc.hk

Re: Consultation Paper Concerning Regulatory Oversight of Credit Rating Agencies ("CRAs")

Standard & Poor's International LLC, Hong Kong Branch ("S&P Hong Kong"), welcomes the opportunity to contribute to the Securities and Futures Commission's ("SFC") Consultation Paper Concerning Regulatory Oversight of Credit Rating Agencies ("Consultation Paper"). As a general matter, S&P Hong Kong welcomes the SFC's proposed approach to regulating CRAs. We do have specific feedback on some of the proposals and provide the following comments to assist the SFC in implementing a regime that is effective and proportionate.

EXECUTIVE SUMMARY

S&P Hong Kong believes that regulation can play an important part in restoring confidence in ratings and we welcome proposals that would, on a globally consistent basis, increase transparency and preserve the analytical independence of CRAs' opinions, methodologies and analytical processes.

In our view, it is essential that any system of oversight recognizes the global nature of our business. Standard & Poor's Ratings Services is a separately identifiable business unit of Standard & Poor's Financial Services LLC, which is itself owned by The McGraw-Hill Companies, Inc. ("McGraw-Hill"), a global business service provider in the fields of financial services, education and business information. Although Standard & Poor's Ratings Services is a singular business unit, its global operations are housed in a number of different legal entities. In some countries Standard & Poor's Ratings Services operates through subsidiaries, whereas in other countries,

such as Hong Kong, its ratings activities are conducted through branch offices. In Hong Kong, Standard & Poor's Ratings Services operates through S&P Hong Kong. Nevertheless, in all cases the operation is a truly global one, in that all ratings are issued under Standard & Poor's Ratings Services' brand pursuant to globally consistent criteria. There is also close collaboration between ratings analysts based in different countries. While our rating committees are generally comprised mainly of locally-based staff, our individual rating committee decisions can reflect input from a variety of analysts based in different countries. We regard this structure as essential in order to ensure that we make the best possible use of our analytical skills and expertise across different sectors and disciplines and to provide consistency across the ratings that we issue, under our single brand, in all the countries in which we operate.

SUMMARY OF DETAILED COMMENTS

Please find our detailed submissions below. To begin, we thought it would be helpful to summarize the critical points that most concern us.

Individual Registration

We are concerned with the proposal to regulate individual credit rating analysts through requiring individual licenses. A focus on individual analysts as decision-makers is at odds with international regulatory practices for CRAs and is not consistent with the way our local ratings team operates. Credit ratings are assigned by rating committees and not by individual analysts. This practice is reflected in the International Organization of Securities Commissions' ("IOSCO") Code of Conduct Fundamentals for Credit Rating Agencies ("IOSCO Code"). We agree it is prudent to confirm that analysts are and remain skilled and competent and, to meet this goal, we have instituted a robust analytical training and certification program. This program is a global initiative as consistency in skills and knowledge is important due to the global nature of our business and the global usage of our ratings. We acknowledge that individual registration is an existing part of the regulatory framework in Hong Kong, however, we are aware of no other jurisdiction that requires individual credit rating analysts to apply for a regulatory license to perform credit rating activities on behalf of a CRA. We are also concerned that requiring individual licensing may lead to unintended consequences such as difficulties in being able to recruit and retain analysts in Hong Kong. S&P Hong Kong is committed to the ongoing education and development of our credit analysts. In addition to our analytical training and certification program, we have processes and policies to oversee the competence of individuals and the quality of the overall ratings process. We believe the better approach for the SFC is to require analytical competency and continuous professional training to be determined by the licensed CRA in accordance with its own scope of business, code of conduct and internal requirements. We explain below (Response to Q2) the details of our analytical training, testing and certification requirements and would be happy to meet with the SFC to discuss this information.

Legal Separation

We also are concerned with any proposal that would require licensed CRAs to operate in legal entities that are separate from all other businesses. We acknowledge the goal

of separation is to avoid conflicts of interest and believe that, consistent with international norms, licensed CRAs should implement and enforce effective firewall policies to address conflicts of interest. We do not believe it is necessary or appropriate to change the structure of our current ratings operations in Hong Kong, that is, conducting Standard & Poor's Ratings Services' ratings business through S&P Hong Kong. Standard & Poor's Ratings Services, including our Hong Kong operations, has implemented a firewall policy so that the ratings and surveillance processes are not compromised by conflicts of interest, abuse of confidential information, or other improper influences. We urge the SFC to 1) implement the licensing framework in a flexible and proportionate manner that permits various corporate structures within the licensing framework and recognizes that legal separation is not necessary to effectively manage potential conflicts of interest, and 2) adopt rules that only impact Hong Kong-based ratings businesses and staff, regardless of whether the local operations are conducted through a legal entity, branch office or other structure. We discuss below (Response to Q8) how our organization and policies meet the goals of the IOSCO Code on issues of avoiding conflicts of interest.

Time frame for implementation

We also are concerned that the proposed implementation time frame is not practicable and will be difficult to meet. In our experience, the implementation of a new regulatory regime takes substantially longer than 4 months. We urge the SFC to provide sufficient time for CRAs to fully assess and implement the licensing framework. We appreciate that the SFC is endeavouring to allow credit ratings prepared by CRAs based in Hong Kong to be used in Europe¹ and, accordingly, the SFC is working within the European time frame. We encourage the SFC to finalise the regulatory regime as soon as practicable after the close of the consultation period and give consideration to a phased-in implementation period² so that CRAs have adequate time to prepare for and implement the new regulatory regime. See also our Response to Q12 below on this topic.

SPECIFIC QUESTIONS:

For completeness, we also provide the following detailed responses to questions asked in the Consultation Paper. We have not reproduced those questions on which we have no comments.

Q1 Is it appropriate for Hong Kong to subject CRAs to a regulatory oversight regime consistent with international developments?

As mentioned above, we believe regulation can play an important part in restoring confidence in ratings, and we welcome proposals that would, on a globally consistent basis, increase transparency and preserve the analytical independence of CRAs' opinions, methodologies and analytical processes. We do believe that caution should be exercised where a new CRA regulatory regime is tailored to meet existing market or other local circumstances. Today, CRAs such as Standard & Poor's Ratings Services face the burden of having to comply with different (and, in some cases,

¹ SFC Consultation Paper Concerning the Regulatory Oversight of Credit Rating Agencies, 19 July 2010, paragraph 9 – 10, page 5-6

² For example, when Australian Financial Services Licensing was introduced for CRAs, a phased-in implementation period was introduced. Licensing commenced on 1 January 2010, however, some licensing conditions did not commence until a later date (e.g. 1 July 2010 or 1 October 2010).

contradictory) regulatory requirements across different jurisdictions. A lack of consistency is potentially disruptive to the global markets.

Furthermore, the nature of the financial markets means that issuers rated by Standard & Poor's Rating Services, including S&P Hong Kong, are based around the world. Many of the instruments rated by Standard & Poor's Ratings Services are traded on exchanges in more than one country and held by investors from around the world. We believe that it is in everyone's interest that any system of regulation be designed to cater to the increasingly global nature of the services that CRAs provide. We believe that global consistency in oversight of CRAs is paramount to their efficient regulation and will contribute to the smooth functioning of global financial markets.

Q2 Should regulatory oversight of CRAs be achieved by extending the existing licensing regime under the SFO to CRAs and those of their staff who perform regulated functions?

S&P Hong Kong welcomes the SFC's approach to extending the existing licensing regime to CRAs and believes this is an appropriate manner to regulate the business of providing credit rating services in Hong Kong. We particularly appreciate the SFC's intention to converge the Hong Kong regulatory regime with other jurisdictions.

As noted above, we are concerned, however, with the proposal to regulate individual credit rating analysts through requiring individual licenses. In addition to the points noted above, we wish to emphasize that credit ratings are assigned by a vote of a rating committee comprising analysts who, individually or collectively, have appropriate knowledge and experience in determining rating opinions for the type of rating in issue. Ratings are not assigned by any individual analyst. This concept is embodied in the IOSCO Code, where clause 1.4 states that "credit ratings should be assigned by the CRA and not by any individual analyst employed by the CRA". The SFC itself has similarly adopted this provision in the proposed Code of Conduct for Persons Providing Credit Rating Services ("CRA Code of Conduct") which provides:

8. A licensed or registered person should ensure that the credit ratings it prepares are assigned by the licensed corporation or registered institution (or its affiliated corporation) and not by any individual representative.

In addition, the IOSCO Code provides that analysts should be held to high standards of integrity and a CRA should not employ individuals with demonstrably compromised integrity³. S&P Hong Kong requires all employees to comply with the Standard & Poor's Ratings Services Code of Conduct and related policies, procedures and guidelines. Employees are required to formally affirm their compliance with the Code and related documents. Failure to comply with company policies, procedures and guidelines may result in disciplinary action, up to and including termination of employment.

S&P Hong Kong is committed to the ongoing education and development of our rating analysts. By teaming with New York University's Stern School of Business and American College Testing, Standard & Poor's Ratings Services has developed a

³ IOSCO Code clause 1.13

rigorous program that complements the training our analysts already receive and supports our focus on continuing education for our rating analysts. Globally, all rating analysts will be required to have a Level I certification in order to perform credit analysis. In order to perform the duties of a primary analyst, or have committee voting rights, analysts will be required to have a Level I and II certification. We have recently completed the roll out of Level I of the global certification and anticipate the Level II will be completed by 30 June 2011. We would be pleased to provide the SFC with further information about our Analyst Certification Program. We consider that S&P Hong Kong's training programs demonstrate the importance that we place on professional development and the competence of our analysts.

We also have numerous internal processes and policies to oversee the competence of individuals and the quality of the overall ratings process. In addition to maintaining an independent compliance function, Standard & Poor's Ratings Services has separated the criteria management and development; quality assurance; and policy governance groups from the analytical teams within the ratings group. In addition, we have established an independent Policy Governance Group ("PGG") with a mandate to develop and approve all new ratings policies and procedures. This group is also responsible for maintaining policies that are clear, measurable, and uphold our quality standards. PGG membership includes representatives from the legal and compliance teams as well as our criteria development group.

We are also concerned that requiring individual analyst licensing may lead to unintended consequences. If such a requirement were to be introduced in Hong Kong, S&P Hong Kong, being a relatively small entity with currently no more than 17 analysts, may encounter serious difficulties in recruiting rating analysts who have the relevant product and sector experience and who are willing to subject themselves to personal oversight by the SFC. Based on the small size of S&P's analytical team in Hong Kong, the desire to ensure local experience is retained in rating committees, the provisions in the IOSCO Code regarding standards for analyst integrity, and the measures that S&P Hong Kong has implemented to recruit and retain employees with high standards of integrity, we do not think it is necessary to require individual licensing. To do so may lead to a weakening of the analytical quality of ratings overall in Hong Kong if suitably skilled analysts are not willing to apply for individual licenses. This would be detrimental to the users of ratings.

We agree with the SFC that persons carrying out regulated activities should be fit and proper, that is, they should be equipped with the necessary technical skills and professional expertise and aware of the relevant ethical standards and regulatory knowledge⁴. We believe the better approach to requiring competence and continuous professional training of individual credit rating analysts should be determined by the licensed CRA in accordance with its own scope of business, code of conduct and internal requirements. We also believe this approach preserves the analytical independence of CRAs by allowing the CRAs to determine the breadth of knowledge, training and skills required of analysts to produce independent opinions, methodologies and analytical processes. Combined with the requirement for CRAs to have responsible officers, we believe that this approach will not obstruct the regulatory objectives of the proposal. The licensed CRA is accountable to the SFC and

⁴ SFC Guidelines on Competence, March 2003, section 1.2, page 1

will be subject to a robust oversight and examination regime. This strength of regulatory oversight is particularly material to an international business such as Standard & Poor's Ratings Services, whose stock in trade is the integrity of its analytical processes, not the efficacy of a tangible product. As such, Standard & Poor's Ratings Services has an especially strong incentive to maintain its reputation and market confidence.

Q3 Do our draft amendments to the SFO effectively distinguish "providing credit rating services" from "advising on securities"?

S&P Hong Kong welcomes the SFC's approach to clearly distinguish issuing credit ratings from Type 4 regulated activities and the intention to clarify that credit ratings fall outside the definition of "advising on securities". We are of the view that the draft amendments do effectively distinguish "providing credit rating services" from "advising on securities". We also note that this approach is consistent⁵ with IOSCO and other regulatory regimes⁶.

S&P Hong Kong does not consider that a credit rating should be characterised as advice or "advising on securities" in any circumstances. A rating expresses S&P Hong Kong's opinion about the ability and willingness of an issuer to meet its financial obligations in full and on time. In particular, a credit rating is not, and should not be regarded as:

- a. a recommendation as to the suitability of financial instruments issued by the rated entity;
- b. a recommendation to buy, sell, or hold financial instruments issued by the rated entity; or
- c. a recommendation or a measure of the value of the rated entity or its financial instruments.

Q7 Are the proposed paid-up share capital and liquid capital requirements for Type 10 regulated activity appropriate?

S&P Hong Kong respectfully disagrees with the SFC's conclusion that imposing financial requirements, as proposed, is broadly consistent with jurisdictions such as the United States and the European Union. As the SFC itself has pointed out, the United States and the European Union do not impose minimum paid-up share capital or liquid capital requirements. While S&P Hong Kong does not object per se to the requirement to hold minimum capital, we are concerned that the proposal introduces a cumbersome and inflexible approach that would require constant monitoring and oversight. To ensure that the requirements are implemented in a proportionate and effective manner, we suggest that the capital requirements not contain a variable component that can be subject to change on a daily basis. Instead, we believe a more flexible approach would be for a CRA to maintain capital that is calculated as

⁵ Page 4 of the May 2008 IOSCO Report "The Role of Credit Rating Agencies in Structured Finance Markets": "While some observers and market participants believe that a CRA rating represents a judgment on the worthiness of an investment..., the opinions of CRAs relate solely to the likelihood that a given debt security will perform according to its terms. As described in previous IOSCO reports, a high credit rating does not necessarily indicate that a security is a good investment, nor does a low credit rating necessarily make the security a poor investment."

⁶ For example, when the U.S. adopted credit rating agency regulation it did not do so through amendment of its investment advisory law (the Investment Advisers Act of 1940), but through the principal federal statute governing securities markets (the Securities Exchange Act of 1934), implicitly recognizing that the nature of a credit rating agency's activities is fundamentally different from those of an investment adviser.

the minimum amount specified (such as the HK\$100,000 specified in the Consultation Paper). The SFC could also require generally that CRAs maintain adequate financial resources and confidentially receive appropriate financial information from each CRA to make this determination on a case-by-case basis. We believe this approach would provide flexibility and reduce burdens on CRAs in monitoring financial resources without diminishing the regulatory objectives of financial requirements.

Q8 Does the CRA Code of Conduct satisfactorily set out the factors that should guide CRAs in the conduct of their business and which should be relied upon by the SFC in considering whether a person is, or remains, fit and proper to be licensed or registered for Type 10 regulated activity?

S&P Hong Kong appreciates the SFC's efforts to adopt a regime that converges with the regulatory regimes of other jurisdictions, particularly through adoption of the provisions of the IOSCO Code, to the extent possible in the Hong Kong context. We believe that the CRA Code of Conduct should be drafted in a way that recognizes the global nature of our business.

Our view is that the "comply or explain" approach adopted by IOSCO ensures that market participants are aware of the extent to which any CRA adopts different policies from those in the IOSCO Code and why any deviations meet the spirit and goals of the Code, while allowing CRAs the flexibility to develop their own procedures in areas where individual circumstances render the general approach inappropriate or unworkable. We view this combination of transparency and flexibility as an example of a productive and effective regulatory approach and support the SFC's intention to retain a "comply or explain" approach in the CRA Code of Conduct.

As a preliminary observation, we note that the proposed CRA Code of Conduct is much more prescriptive than other Codes or Guidelines drafted by the SFC. We suggest that a principles-based approach would be more consistent with the way in which the SFC conducts its regulatory supervision. A principles-based approach would also cater to the changing circumstances in which we operate such as international regulatory developments impacting CRAs and the evolving nature of our business and the markets in which we operate, without the need for potentially frequent future amendments to the CRA Code of Conduct. As currently drafted, we have specific observations in three areas in the proposed CRA Code of Conduct: (1) operational and legal separation; (2) obligations applicable to a "licensed entity"; and (3) prescriptive and detailed additional provisions that go beyond the IOSCO Code.

Operational and Legal Separation

As referenced above and explained in our Code of Conduct, Standard & Poor's Ratings Services operates in multiple global locations, in each case as a wholly-owned direct or indirect subsidiary, through branch offices or as a division or a representative of a division of The McGraw-Hill Companies, Inc. The McGraw-Hill Companies, Inc. provides shared services to all of its segments, units, or divisions, including legal, information technology, human resources, and finance functions. In addition, Standard & Poor's may provide shared services for publishing, modeling, data, sales, and communication and marketing functions. In many cases, shared or support services are performed by personnel dedicated to Standard & Poor's Ratings

Services.⁷ Some of these shared or support services may be provided to S&P Hong Kong from other jurisdictions. To reflect the corporate structure of Standard & Poor's Ratings Services, we currently differ from Section 2.5 of the IOSCO Code which provides that a CRA "should separate, operationally and legally, its credit rating business and CRA analysts from any other businesses of the CRA, including consulting businesses, which may present a conflict of interest." The focus here and in the balance of Section 2.5 is taking steps to avoid conflicts of interest. In accordance with Section 4.1 of the IOSCO Code, we explain that our Code of Conduct achieves the objectives in the IOSCO Code and that this difference does not affect the independence, integrity, credibility and objectivity of our rating and surveillance processes. In particular, we state that Standard & Poor's Ratings Services "has implemented a firewall policy so that the rating and surveillance processes are not compromised by conflicts of interest, abuse of confidential information, or any other improper influence".

We believe our structure, governance, policies and procedures and the changes we have implemented in recent years continue to meet the goal of the IOSCO Code and regulatory expectations for addressing conflicts of interest at an institutional and individual analyst level, without any requirement for legal separation. Legal separation is not required in all regimes. For example, when the Australian Securities and Investments Commission ("ASIC") introduced license conditions which require credit rating agencies to comply with the IOSCO Code on a mandatory basis from 1 July 2010⁸, ASIC stated that compliance with Section 2.5 of the IOSCO Code was optional to the extent it provides that a credit rating agency should separate legally its credit rating business from any other business of the credit rating agency that may present a conflict of interest. Similarly, the U.S. Securities and Exchange Commission ("SEC") permits rating agencies that are separately identifiable business units to register as Nationally Recognized Statistical Ratings Organizations ("NRSROs"). In addition, the SEC's rules on NRSROs contain extensive substantive and disclosure requirements regarding management of conflicts of interest. Any requirement to separate legally the credit rating business currently conducted by S&P Hong Kong is highly likely to create additional costs – both one time and ongoing – and administrative burdens. Due to complex corporate, legal and tax requirements of an organisational restructuring that would be required to achieve legal separation, we are also concerned that the proposed timeframes for implementing the regulatory framework in Hong Kong are not viable and significantly more time would be required for S&P Hong Kong to meet the requirements of the proposed regime.

S&P Hong Kong is committed to meeting the goals of the IOSCO Code by disclosing and managing potential conflicts of interest. In addition to our global firewall policy, we have instituted a number of additional policies and controls to support the objectives of the IOSCO Code. Existing conflict of interest management policies and controls include, but are not limited to: 1) separating criteria management and development; quality assurance; and policy governance groups from the analytical teams within the ratings group; 2) analyst rotation policy; 3) analyst "look back" review policy; 4) gifts and entertainment; 5) securities ownership and trading ; 6)

⁷ Standard & Poor's Ratings Services Code of Conduct, clause 6

⁸ 09-224MR ASIC outlines improvements to regulation of credit rating agencies in Australia, Thursday 12 November 2009, available from: <http://www.asic.gov.au/asic/asic.nsf/byheadline/09-224MR-ASIC-outlines+-improvements-to-regulation-of-credit-rating-agencies-in-Australia?openDocument>

analyst prohibition on commercial activities and making recommendations in connection with ratings; and 7) roles and responsibilities of Ratings' staff. We would be happy to provide the SFC with further information about how S&P Hong Kong manages potential conflicts of interest.

We encourage the SFC to recognize that appropriate segregation of businesses and effective safeguards against conflicts of interest can be achieved without the need for legal separation and through rules that only impact Hong Kong-based ratings businesses and staff.

Obligations applicable to "licensed entity"

As highlighted above, in our view, it is essential that any system of oversight recognizes the global nature of our business. The proposed CRA Code of Conduct applies to persons licensed or registered by the SFC. Many of the existing IOSCO Code requirements have been implemented by Standard & Poor's Ratings Services on a global basis, however, not every function and person responsible for implementation may sit in S&P Hong Kong. The credit rating business operated by S&P Hong Kong benefits from the global expertise and resources of Standard & Poor's Ratings Services. In several instances, the CRA Code of Conduct imposes obligations on the licensed corporation or registered institution (or its affiliated corporation), however in many instances there is no reference to "its affiliated corporation". It would be helpful if the SFC could clarify that it does not intend for functions that operate on a global basis, and all their staffing, to be replicated by S&P Hong Kong. If such clarity is not provided, an increase in our current compliance costs, investment in more systems, processes and people to comply with these requirements locally in Hong Kong could result. We suggest that the SFC give consideration to recognising the global nature of our business and expressly acknowledge that certain functions which meet the requirements of the IOSCO Code may be performed by other parts of a global CRA's network.

Prescriptive and detailed additional provisions that go beyond the IOSCO Code

We further comment on the requirement in Section 71 of the CRA Code of Conduct for a licensed or registered person to have its own code of conduct and disclose it to the public. Standard & Poor's Ratings Services currently has a Code of Conduct which is disclosed to the public. Due to several additional requirements and differences between the IOSCO Code and the CRA Code of Conduct, it would be difficult for Standard & Poor's Ratings Services to continue with its current global Code of Conduct. Whilst other jurisdictions (such as Australia and Japan) have required Standard & Poor's Ratings Services to slightly vary our Code of Conduct to meet requirements in those jurisdictions, these variations have been minor in nature and have been addressed through an appendix to Standard & Poor's Ratings Services Code of Conduct. The approach proposed by the SFC goes well beyond the IOSCO Code and may require S&P Hong Kong to create and implement a wholly new Code of Conduct for its operations in Hong Kong. This approach would not be consistent with the global nature of our business. While we acknowledge that many of the additional requirements are regulatory requirements in other jurisdictions, we do not, as the SFC proposes, describe the mechanics of how we comply with these requirements in our Code of Conduct. Rather, these requirements are implemented through additional internal processes and procedures. We believe it is more appropriate and in keeping

with regulatory expectations for the CRA Code of Conduct to provide the licensed CRA with the ability to publish a Code of Conduct that is principles-based and provides information about how it will meet the objectives of the Code, and that more prescriptive, detailed requirements be implemented through internal processes and policies. This would allow the regulatory objectives of the Hong Kong licensing framework to be achieved whilst allowing a flexible and proportionate approach for CRAs to meet the requirements. We also believe this would be more consistent with the general principles-based approach of the SFC which allows licensees to implement a robust compliance framework which takes into account the nature, scale and complexity of their business.

Q9 Should persons licensed or registered for Type 10 regulated activity be permitted to be licensed or registered for other types of regulated activity?

As discussed above at Q8, we are concerned with any requirement to legally separate the credit rating business from other types of businesses. In addition to points raised above, we do not believe mandatory separation is consistent with the SFC's goals of putting in place a regime that is "efficient in terms of time and resources costs necessary for implementation and ongoing compliance" and we recommend that no such prohibition be placed on licensed CRAs.

While we do not consider it necessary to require individual analyst licensing, we do not object to the concept that individual rating analysts should be prohibited from performing other types of regulated activities. Standard & Poor's Ratings Services has implemented a firewall policy so that the rating and surveillance processes are not compromised by conflicts of interest, abuse of confidential information, or any other improper influence. Under our existing policies and procedures rating analysts do not perform any other types of regulated activities in Hong Kong.

Q10 Should persons licensed or registered for Type 10 regulated activity be subject to a sole business restriction?

We object to the concept of a sole business restriction and believe this could lead to a restriction on S&P Hong Kong's activities that do not raise any conflicts of interest. We are concerned with any proposed approach to specify a "sole business restriction" which results in S&P Hong Kong being able to only provide "credit rating services". Such a restriction could result in S&P Hong Kong not being able to provide other publishing, research and ratings-related activities and ancillary services that pose no risk of conflicts of interest but would be prohibited simply because they are not expressly included in the definition of "providing credit rating services".

For these reasons, we suggest that the SFC not introduce a "sole business restriction" but rely instead on the existing IOSCO Code approach for a CRA to "define what it considers, and does not consider, to be ancillary business and why." (Section 2.5). This approach focuses on disclosure without unnecessarily preventing CRAs from engaging in innovative and useful activities that do not pose conflicts of interest.

Q11 Is the draft list of Recognized Industry Qualifications and Local Regulatory Framework Papers for Type 10 regulated activity appropriate?

As discussed above in our response to Q2, bearing in mind the level of training and experience of S&P Hong Kong's analysts, we do not consider it necessary to require individual licensing and, therefore, in our view it is not necessary to specify Recognized Industry Qualifications and Local Regulatory Framework Papers for Type 10 regulated activity. We believe that in order to preserve the independence of analysts and the analytical process, the better approach is to require that competence and continuous professional training be determined by the licensed CRA in accordance with its own code of conduct and internal requirements. An alternative approach could be for the SFC to provide guidance for CRAs to consider in determining the competence and training requirements for their local analysts. In providing such guidance, the proposed academic qualifications, relevant industry experience and management experience tests outlined in the draft Recognized Industry Qualifications and Local Regulatory Framework Papers are sufficiently broad in scope to provide flexibility to CRAs and analysts in how they demonstrate appropriate qualifications and experience.

Q12 Are the proposed transitional arrangements appropriate?

As discussed above, S&P Hong Kong is concerned that the proposed implementation time frame is not practicable and will be difficult to meet. As noted, in our experience, the implementation of a new regulatory regime takes substantially longer than 4 months. For example, the introduction of licensing in Australia for CRAs was undertaken over a period of approximately 13 months⁹. Similarly, Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (the EU CRA Regulation) came into force on 7 December 2009 requiring applications for existing CRAs to be filed by 7 September 2010. We also note that the SFC has itself indicated that the normal time required to process an application for a licensed corporation is 15 weeks¹⁰. We would strongly urge the SFC to determine a time frame that is suitable taking into account the following factors:

- a. S&P Hong Kong will be required to undertake a review of its current processes and procedures and map them against the requirements contained in the Securities and Futures Ordinance, Cap.571. Any inconsistencies identified will require consideration of new or changed policies and procedures and sufficient implementation time.
- b. It will take time for global organisations such as S&P Hong Kong to prepare and submit a license application for submission to the SFC.
- c. Once submitted, the processing time the SFC will realistically need taking into account the first-time nature of CRA applications.

As you will appreciate, an organisation such as S&P Hong Kong takes its regulatory responsibilities seriously and we will require sufficient time to implement the

⁹ 09-224MR ASIC outlines improvements to regulation of credit rating agencies in Australia, 12 November 2009, available from: <http://www.asic.gov.au/asic/asic.nsf/byheadline/09-224MR-ASIC-outlines+-improvements-to-regulation-of-credit-rating-agencies-in-Australia?openDocument> and MR No.070 Minister Welcomes Roundtable Report On Ratings Users and Accepts Regulator Update on Licensing, 5 June 2009, available from: <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/070.htm&pageID=003&min=njs&Year=&DocType=0>

¹⁰ SFC Licensing Information Book, August 2003, section 7.8, page 34

proposed licensing framework. We would be happy to work with the SFC to identify obligations that may require more than 4 months to implement and which may benefit from a phased-in implementation timeframe.

In relation to the proposed transition arrangements for existing staff members, subject to our comments above on individual analyst licensing, we welcome the "grandfathering" approach proposed by the SFC.

We very much wish to play a full and constructive role in assisting the SFC with finalizing a suitable and appropriate approach to regulating CRAs in Hong Kong. We hope that there will be further meaningful opportunities for consultation before the regulatory framework is finalised so as to arrive at a result that is practicable, proportionate and meets the needs of the SFC, licensed CRAs, the users of ratings and the markets.

We would welcome the opportunity to discuss our comments further with you.