

August 20, 2010

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

Ladies and Gentlemen:

Thank you for inviting _____ to comment on the Securities and Futures Commission's ("SFC") Consultation Paper Concerning the Regulatory Oversight of Credit Rating Agencies, which was published on July 19, 2010 (the "Consultation Paper").

_____ understands and accepts the desire by the SFC to put in place a framework with respect to the registration and supervision of credit rating agencies ("CRAs"). Such action is consistent with the actions of other regulatory bodies throughout the world, and _____ has worked diligently to ensure that its business operations, policies and procedures meet the regulatory requirements that have been promulgated to date in various jurisdictions. With regards to the proposals set forth in the Consultation Paper, _____ has the following comments and questions. For the convenience of the SFC, we have provided our feedback using the question numbering employed within the Consultation Paper. We have only provided comments to those questions to which we have specific remarks.

Question 2 and Question 11: Licensing at the level of the individual analysts.

_____ believes that the extension of the existing licensing regime under the Securities and Futures Ordinance (the "SFO") to CRAs is reasonable and, as noted above, consistent with regulatory developments in many other jurisdictions. However, we have a number of questions and concerns with respect to the proposal that this licensing at the level of the CRA be supplemented with additional licensing at the level of each individual analyst. We note that this proposal is unique. Indeed, all other major market regulators, including the US, EU, Japan and Australia, have required the CRA itself to be registered, but not its individual staff members. Generally regulators have required that a CRA's staff have the appropriate knowledge and experience to perform the duties to which they are assigned, but have not imposed blanket licensing requirements on each individual member of the analytical staff. We have a number of questions over how such a regime would work for a global organisation such as _____

While we appreciate that current analysts would be grandfathered from the proposed testing requirements, we note that as currently proposed, it appears, if our understanding is correct,

that newly hired analysts would need to pass 7 PDFM modules, as well as 2 Local Regulatory Framework Papers, in addition to the additional CRA specific exams that are currently being developed by the SFC and the Hong Kong Securities Institute (the "HKSI"), requirements which strike us as overly onerous. This testing requirement is a significant departure from that required in other jurisdictions, and does not take into consideration the in-house training that [redacted] already undertakes to provide specific credit related training for its analysts. It is also unclear how much time a new analyst would have to pass these testing requirements once they were hired, or if the expectation is that they would already have passed these requirements before they could be hired.

Moreover, in reviewing the syllabi for the various exams, it would appear to us that a fair amount of the content is not relevant to the work of a credit analyst. For example, Licensing Exam Paper 1 appears to be aimed at those working in brokerage firms (since it includes topics such as "Dealing in securities", "Traded Options on the SEHK", "Insurance cover for intermediaries", "Leveraged Foreign Exchange Trading", "Unsolicited Calls", "Price Rigging" and, so forth). This information, while of general interest to those working in the financial sector, is not particularly relevant to the work of a CRA analyst, which is primarily focused on credit research, with no involvement in the dealing or trading of specific securities or other financial intermediary function. In addition, much of this information is fundamental securities information that would typically be encountered by an analyst during their undergraduate or graduate finance or economics studies, or covered by those who have completed their Chartered Financial Analyst ("CFA") studies.

Another complicating factor with regards to the individual licensing requirements lies in the nature of the way [redacted] operates. [redacted] operates its rating business on a global basis.

[redacted] the ultimate rating company, has subsidiaries and affiliates worldwide for operational, fiscal and other reasons, but all employees of [redacted] ratings entities worldwide adhere to the same policies and procedures and all are part of one global structure. In Hong Kong, [redacted] employs analysts and a management team to assist in [redacted] research on Hong Kong entities and securities. However, our Hong Kong-based analysts are regarded as interchangeable with analytical resources elsewhere in the [redacted] network. On occasion, either the lead or the support analyst for a Hong Kong entity rated by [redacted] will be based in another [redacted] office, and, as with all ratings, voting members for rating committees on Hong Kong entities and securities are drawn from the pool of available analysts across the globe, based on the analysts' expertise.

Since it is our understanding that the SFC does not intend its regulations to be extra-territorial, or to impede the global structures employed by the credit rating agencies currently operating in Hong Kong, the SFC's licensing requirements would lead to an anomalous consequence for our Hong Kong-based analysts, who would be subjected to the testing requirements, while those not based in Hong Kong, who may in fact be lead analysts for Hong Kong entities and who participate in rating committees for Hong Kong based entities or transactions, would not be subject to the testing requirements. We also do not understand how the licensing requirements would be applied in the context of [redacted] analysts who are visiting the Hong Kong office for short periods of time. Would they receive an exemption from the testing requirements?

Lastly, the imposition of these testing requirements could lead to a significant reluctance on the part of analysts based elsewhere to relocate to the Hong Kong office. It is generally a customary part of business that senior staff are rotated through various offices globally, so that they can bring relevant expertise to a specific local market. Doing so also affords such senior management the opportunity to gain greater insight into local markets around the world. We have significant concerns that senior staff members could be reluctant to relocate to Hong Kong if doing so would require them to sit for a number of exams, presumably requiring a fair bit of preparation and study, in order to do the same work that they could perform elsewhere without the testing requirements. Such reluctance could result in a significant loss of seasoned, experienced credit rating analysts that are available to work in the Hong Kong office. For the foregoing reasons, therefore, we would suggest that the SFC eliminate the licensing and testing requirements for individual CRA analysts provided that a registered CRA can demonstrate that it has systems in place to ensure professional development of its analytical staff.

If the SFC decides that individual licensing is indeed necessary, we would suggest that it consider incorporating the specific elements of the existing modules that are relevant to CRA analysts into the new CRA course that is being developed, and require analysts to pass that module only. In addition, we would suggest that the SFC consider granting explicit exemptions from these testing requirements to analysts who have already covered similar material in other ways, such as through university degrees in finance or economics, the completion of the CFA exams and so forth.

Question 3: Distinguishing between “providing credit rating services” and “advising on securities”.

believes that the draft amendments to the SFO effectively distinguish “providing credit rating services” from “advising on securities”. We very much welcome the FSC’s focus on this matter. It is critically important to that ratings are not described in a way that is misleading. Any suggestion that ratings are a form of advice could encourage investors to rely on ratings rather than conducting their own investigations and due diligence as to the appropriateness of a security to meet their investment objectives. This would run contrary to the approach being taken or considered by other national regulators and global regulatory forums, such as the Financial Stability Forum, which has been to try to reduce the reliance placed on ratings by investors. This position has been adopted partly in recognition of the fact that ratings cover only one factor that an investor should take into account in forming an investment decision: the default risk of an instrument. Indeed, ratings do not speak to various other risks, such as market volatility, risks associated with interest rate and currency changes, liquidity differences related to different segments or sub-sectors of the market, liquidity issues related to a given geography or maturity, and a multitude of other relative value judgements. We therefore very much support the position taken by the SFC on this important issue.

Questions 7, 8, and 9: Financial requirements, the proposed CRA Code of Conduct and the ability of persons licensed or registered for Type 10 activities to be licensed or registered for any other form of activity.

We understand that HK\$100,000 is the minimum capital requirement in Hong Kong for companies such as brokers, financial advisors etc., but that there is otherwise no minimum capital requirement for ordinary companies required by Hong Kong corporate laws. Since CRAs do not process transactions or hold client funds for any period, we would suggest that CRAs not be subject to any minimum capital requirements as well.

believes that the proposed CRA Code of Conduct satisfactorily set out the factors that should guide CRAs in the conduct of their business. We are further of the view that persons licensed or registered for Type 10 regulated activity should be permitted to maintain licenses for, or remain registered for, other types of regulated activity if they are already in possession of such qualifications or licenses. With respect to the latter point, while does have policies prohibiting its staff from holding other employment positions outside of encourages its staff to maintain any professional designations they already possess.

I hope you find our comments constructive, and that you will give them due consideration. I look forward to the opportunity to discuss our comments with you in more detail.