

HKIFA members' feedback on SFC consultation paper concerning the regulatory oversight of credit rating agencies ("CRAs")

We believe that the consultation paper generally points to the right direction and we support the proposed licensing requirement on providing credit rating services, which is in line with the global trend.

A. Comments to the questions listed in the consultation paper:

Q. 1 Is it appropriate for Hong Kong to subject CRAs to a regulatory oversight regime consistent with international developments?

Comments: Yes, it is.

Q. 2 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?

Comments: All staff of CRAs that are involved in the marketing of services and analyzing/recommending credit rating shall be subject to regulatory oversight.

Q. 3 Do our draft amendments to the SFO effectively distinguish "providing credit rating services" from "advising on securities"?

Comments: Yes, they do.

Q. 4 Should the proposed new licensing requirement apply to the rating of sukuk?

Comments: Yes, it should.

Q. 5 Should the following activities be excluded from the proposed new licensing requirement:

- (a) preparing credit ratings for an organization's internal purposes;*
- (b) preparing private credit ratings; and*
- (c) sharing or analyzing consumer or commercial credit data (such as through consumer or commercial credit reference agencies)?*

Comments: It is reasonable to exclude the above. However, if the credit rating is provided for the organization to acquire certain securities which will effectively influence the credit worthiness/liquidity of say an insurance company or banks, the activities shall be subject to the licensing requirement.

Q. 6 Further to question 5, do our draft amendments to the SFO effectively exclude these activities from the proposed new licensing requirement?

Comments: Please refer to the comments in Q. 5.

Q. 7 Are the proposed paid-up share capital and liquid capital requirements for Type 10 regulated activity appropriate?

Comments: Yes, they are reasonable and consistent with the current regulatory framework.

Q. 8 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?

Comments: Paragraph 25 on page 9 of the consultation paper says that SFC will be guided by the CRA Code of Conduct when considering whether a licensed or registered person satisfies the requirement that it is fit and proper. Members believe that the person shall still be subject to the fit and proper rule of the SFC. The CRA Code of Conduct merely sets out the rating process and communication with the public etc. It does not set out the academic and professional experience requirements for a person to be qualified. There are also no requirements on financial situations etc.

Q. 9 Should persons licensed or registered for Type 10 regulated activity be permitted to be licensed or registered for other types of regulated activity?

Comments: To maintain independence of views, licensees for Type 10 regulated activity shall not be permitted to be licensed for other types of regulated activity.

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

Comments: If they carry on other type of activities that do not cause or be perceived as having potential conflict of interest and there is an effective Chinese wall, that shall be permissible.

Q. 12 Are the proposed transitional arrangements appropriate?

Comments: Yes, it is appropriate.

B. Proposals raised by members

- Some members indicate that they undertake internal rating activities for certain bonds which do not have official ratings from either S&P, Fitch or Moody's. The internal ratings will be reflected in their marketing materials (e.g. fund factsheets & manager fund reports) of the SFC authorized funds which will be distributed to the HK retail public. According to the last sentence of paragraph 23 on page 8 of the consultation paper, "it is not SFC's intention that authorized financial institutions must be registered for Type 10 regulated activity in order to undertake the internal rating activities that they typically undertake already". However, by referring to the definition of "providing credit rating services" on page 1 of Appendix A of the consultation paper, it seems that the scope cover any credit rating information to be distributed to the HK retail public. As such, although it does not appear to fall within the policy intent to require authorized financial institutions to obtain Type 10 license for providing internal rating

activities, it is apparent that this kind of activities is not carved out from the definition of “providing credit rating services”. It would be helpful if the SFC can specify that the aforesaid internal rating activities will not trigger the Type 10 licensing requirement so as to fully reflect SFC’s policy intent.

(End)