21 April 2011

Licensing of Credit Rating Agencies in Hong Kong and Their Rating Analysts

From 1 June 2011 onwards, all credit rating agencies (CRAs) and their rating analysts, who provide credit rating services in Hong Kong, will be required to be licensed by the Securities and Futures Commission (SFC) for Type 10 regulated activity (providing credit rating services). The purpose of this circular is to clarify certain licensing requirements that will affect CRAs and their rating analysts when they seek to be licensed to conduct Type 10 business.

Who needs to be licensed?

Generally speaking, the new CRA regulatory regime, which was created by amendments to Schedule 5 of the Securities and Futures Ordinance (SFO), requires a person to be licensed where he provides credit ratings for the following purposes:-

- Dissemination to the public, whether in Hong Kong or elsewhere, or with a reasonable expectation that they will be so disseminated to the public; or

- Distribution by subscription, whether in Hong Kong or elsewhere, or with a reasonable expectation that they will be so distributed to its subscribers.

It is important to note that the amended Schedule 5 of the SFO excludes certain types of activities from the definition of "providing credit rating services", including the provision of private ratings and credit data collection.

For details of the scope of the regulatory regime governing the provision of credit rating services in Hong Kong, and in particular those who are required to be licensed and those who are not, reference should be made to the definition of "providing credit rating services" contained in Schedule 5 of the SFO. For further more practical guidance concerning the licensing requirements for CRAs, reference can also be made to a new series of CRA-specific Frequently Asked Questions (FAQs) on the SFC's website.

Highlights of certain regulatory requirements for Type 10 licensees

As the CRA regulatory regime is an extension of the existing regulatory framework under the SFO, the existing licensing and regulatory requirements will also be generally applicable to CRAs and their rating analysts.

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Ability to comply with relevant regulatory requirements

A CRA applicant must satisfy the SFC that it has the ability to comply with all relevant regulatory requirements. For example:-

- A licensed CRA, which does not hold client assets, is required at all times to maintain its liquid capital at not less than the higher of $100,000 or 5% of its adjusted liabilities as defined under the Securities and Futures (Financial Resources) Rules (FRR). The FRR also prescribe the manner in which a licensed corporation's liquid capital is to be computed and relevant reporting and notification requirements.

- A licensed CRA is also required to ensure compliance with the industry specific Code of Conduct, i.e. the *Code of Conduct for Persons Providing Credit Rating Services* (CRA Code), which is today published in the Government Gazette. A requirement of the CRA Code, which is specific to licensed CRAs, is the obligation imposed on CRAs under paragraph 12 to submit an annual review report.

Competence requirements for individual rating analysts

Individual rating analysts applying to become licensed representatives or responsible officers for Type 10 regulated activity are obliged to meet requirements concerning fitness and properness and competence in a similar manner to other licensed individuals. These requirements are contained in the *Fit and Proper Guidelines* and Appendix B to the *Guidelines on Competence*.

A rating analyst who is accredited to a CRA which was established in Hong Kong, and which has continuously been providing credit rating services here, since or prior to 31 May 2009, is entitled to the following licensing concessions, provided his/her licence application is submitted to the SFC contemporaneously with the licence application of the CRA to which he/she is accredited:-

- An individual applicant will be excused from the requirement to pass the Local Regulatory Framework Papers (Papers) – Hong Kong Securities Institute Licensing Examination Paper 1 and/or Paper 4 (the latter being applicable to responsible officers only).

- In lieu of the requirement to pass the Paper(s), an individual applicant will be required, within 6 months after being licensed, to complete a post-licensing refresher course of not less than 5 hours concerning the legal and regulatory framework relating to Type 10 regulated activity, conducted by an approved Continuous Professional Training Provider. In addition, he/she will be required to fulfill the normal Continuous Professional Training requirements.

Individuals who subsequently apply for a Type 10 licence, will be required to pass the Paper(s), details of which will shortly be announced by the Hong Kong Securities Institute.

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Procedures and timetable for applying for a Type 10 licence

Application fees and forms

Corporate and individual applicants seeking Type 10 licences must submit the following application fees and forms to the SFC:

	Application Fees for Type 10 regulated activity	Application Forms to be submitted to the SFC
Licensed corporations	$4,740	Form 1, Supplements 1-9 and 13 where applicable
Responsible Officers	$4,740	Form 3, Supplements 9, 10 and 12 where applicable
Licensed Representatives	$1,790*	Form 3, Supplements 9 and 12 where applicable

* *A Licensed Representative is required to pay an additional fee of $800 if he intends to apply for a provisional licence.*

Application timeline

The SFC will endeavour to license, by 1 June 2011, all CRAs and their rating analysts currently providing credit rating services in Hong Kong, provided their licence applications are submitted to the SFC on or before **12 May 2011**.

Useful links

Licensing Forms:
http://www.sfc.hk/sfc/html/EN/forms/licensing/licapp/licapp.html

Frequently Asked Questions:
http://www.sfc.hk/sfc/doc/EN/faqs/licensing/faq-lic-18.pdf

CRA Code:
http://www.gld.gov.hk/cgi-bin/gld/egazette/gazettefiles.cgi?lang=e&extra=&year=2011&month=04&day=21&vol=15&no=16&gn=2424&header=1&part=0&df=1&nt=gn&acurrentpage=12&agree=1&newfile=1&gaz_type=mg

Securities and Futures Ordinance (Amendment of Schedule 5) Notice 2011:
http://www.gld.gov.hk/cgi-bin/gld/egazette/gazettefiles.cgi?lang=e&year=2011&month=2&day=18&vol=15&no=07&gn=29&header=1&part=0&move=4&df=1&nt=s2&agree=1&acurrentpage=12&gaz_type=ls2

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Securities and Futures (Financial Resources)(Amendment) Rules 2011:
http://www.gld.gov.hk/cgi-bin/gld/egazette/gazettefiles.cgi?lang=e&year=2011&month=2&day=18&vol=15&no=07&gn=28&header=1&part=0&move=3&df=1&nt=s2&agree=1&acurrentpage=12&gaz_type=ls2

Fit and Proper Guidelines:
http://www.sfc.hk/sfcRegulatoryHandbook/EN/displayFileServlet?docno=H434

Guidelines on Competence:
http://www.sfc.hk/sfcRegulatoryHandbook/EN/displayFileServlet?docno=H203

Licensing Department
Securities and Futures Commission

Ends

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