

SECURITIES AND EXCHANGE COMMISSION

DRAFT GUIDELINES FOR REGISTRATION/LICENSING AND OPERATION OF CREDIT RATING AGENCIES IN THE GHANAIAN SECURITIES MARKET

1.0. Introduction

The Securities and Exchange Commission (Commission) is mandated by the Securities Industry Act, to formulate principles for the guidance of the securities industry. Pursuant to this, the Commission hereby publishes these Guidelines on Credit Rating Agencies (CRAs) in Ghana in accordance with section 209 of the Act.

2.0. Purpose

An important reason for regulating CRAs is to enhance governance, protect investors against conflicts of interest by CRAs and increase transparency to improve the quality of credit ratings and increase credit rating agency accountability.

3.0. General

- a) A person shall not operate a CRA in Ghana unless that person is licensed by the Commission.
- b) A CRA shall be a body - corporate under the Companies Act, 1963 (Act 179) with the core objective of providing credit rating and related services in Ghana.

- c) In respect of an external company, documentation from the home country's supervisory Authority showing that the applicant is subject to supervision by that Authority.

4.0. Licence to operate a CRA

- a) A person who intends to operate a CRA in Ghana shall apply to the Commission for a licence to conduct or assign credit ratings.
- b) Application for a licence to provide the services of a CRA shall be made in a form prescribed by the Commission.
- c) A Chief Executive of a CRA shall have experience and knowledge in credit rating and analysis.

5.0. Criteria for Licensing:

The following particulars among others shall be submitted during application-

- i. Completed application form.
- ii. Certified true copy of certificate of incorporation and a certificate to commence business from the Registrar-General's Department.
- iii. Certified copy of current Regulations of the Company.
- iv. Organisational structure.
- v. List of Directors and their respective holdings in the company. This shall be included in the "directors' personal notes" and curriculum vitae.
- vi. The minimum qualifications of Directors and Executive Officers of CRAs shall meet the requirements as stipulated in Regulations 3 of the Securities and Exchange Commission Regulations 2003 (L.I. 1728).
- vii. Except in the case of external companies, at least majority of the directors (or board members) must be ordinarily resident in Ghana with a proven local address.

- viii. In the case of an external company, the local manager(s) must have authority to act on behalf of the company.
- ix. Directors of external companies must be of good standing or be fit and proper persons. They shall provide an attestation from the regulator in whose jurisdiction they reside or perform their duties as directors.
- x. Names and particulars of its Executive Officers.
- xi. The Directors shall be fit and proper persons with adequate qualification(s), professional experience and knowledge in credit rating and analysis.
- xii. The application shall be accompanied by a non – refundable application fee to be determined by the Commission.
- xiii. Evidence of the minimum paid up capital to be determined by the Commission.

6.0. Application for a Credit Rating Licence

An application for the grant or renewal of a credit rating licence shall be made to the Commission in the form and contain the particulars specified in schedule 1.

7.0. LICENSING REQUIREMENTS FOR RATING ANALYST

- i. An executive director, officer or employee whose primary job function is to determine and vote on ratings , including but not limited to rating team and rating Committee members shall hold a valid licence issued by the Commission.
- ii. Persons to be licensed as a rating analyst shall pass or attend a course approved by the Commission.

- iii. The Commission may grant a waiver of the course requirement where a director or an officer shows evidence of appropriate and suitable alternative qualifications and experience.

8.0. CORPORATE GOVERNANCE & CONFLICTS OF INTEREST COMPLIANCE REQUIREMENTS -

A CRA shall adhere to the following governance requirements-

- i. A CRA shall have a Board with two- third of its members as independent directors. The Board shall hold meetings at least three times in a year and shall maintain and keep detailed minutes of its meetings.
- ii. A CRA shall put in place adequate procedures and measures to ensure that its ancillary businesses (if any) do not lead to conflict of interest situation with its rating activities.
- iii. A CRA shall separate its operations, that is, its credit rating business and analysis from any other businesses, including consulting or advisory businesses that may present a conflict of interest.
- iv. A CRA shall establish an independent rating committee to be solely responsible for assigning and deciding on credit ratings. All rating decisions, including decisions regarding changes in rating, shall be taken to the rating committee.
- v. All members of the Rating Committee shall be experts who are competent and qualified to carry out rating assignments and monitoring, or have adequate qualification, knowledge and experience in key industries, sectors, geographic regions, particular asset classes and other specialty areas of the financial market in relation to credit rating.
- vi. In order to ensure objectivity and effectiveness of the rating committee, the chairman of the rating committee shall be an independent member. In addition, one-third of the membership of the rating committee shall be independent.

- vii. A CRA shall ensure that its rating teams are insulated from any undue intervention or influence from its clients, shareholders, management or its Board of Directors.
- viii. Analysts and/or members of the rating committee of a CRA shall not take part in business development/ marketing function of the agency. It shall constitute an offence for an Analyst and/or Member of the rating committee of a CRA to solicit for a rating or any other business for his/her agency.
- ix. Employees involved in rating process together with dependents shall disclose their interest or shares owned in an issuer and /or in its issued instrument(s) of which have been rated by the CRA where the employee works.
- x. Where an analyst or a member of the 'Rating Committee' or any of his/her family member, has an interest in any debt instrument, the analyst or the member of the 'Rating Committee' shall not be involved in the rating and monitoring process nor be involved in deciding on ratings of the particular securities in question.
- xi. Analysts and Members of the Rating Committee of a CRA shall make a public disclosure of all conflicts of interest, including those of their family in its rating reports for all securities and issuers of securities. If there is none to disclose, the CRA shall still make a sworn statement to the effect that the "analysts involved in the rating and Members of the Rating Committee have not to the best knowledge of the CRA encountered any conflict of interest in relation to the issue of that particular securities".
- xii. A CRA shall establish its internal policies and procedures governing investments in and trading of securities by its employees.
- xiii. A CRA shall establish its internal procedures and systems to ensure that it does not buy /sell/hold securities of its clients during and after two (2) years of the rating period.
- xiv. A CRA shall not rate securities issued by companies it is related to, associate companies or affiliates or related parties or any other companies that have interest in its securities.

- xv. **A CRA shall maintain an arm's length relationship between its credit rating business or activity and any other activity.**
- xvi. To ensure proper corporate governance standards, a CRA shall ensure that all its dealings and transactions between its rating division or business unit with other subsidiary or affiliate or associate or business unit of the CRA, whether commercial in nature or otherwise, are reviewed periodically by its independent directors, who shall ensure that such dealings and transactions are undertaken in a fair and justifiable manner.

9.0. RATING PROCESS COMPLIANCE REQUIREMENTS

A CRA shall be responsible for its own rating policies, processes, methodologies and models and shall comply with the following:

- a)
 - i. establish and implement an annual review of its rating methodologies and models;
 - ii. use rating methodologies that are rigorous, systematic, verifiable, to enable results in ratings to be subjected to objective validation by independent and interested parties;
 - iii. Publish the fee structure at least one month in advance in the applicable year;
 - iv. clearly define its rating symbols and categories and rationale for each;
 - v. enter into written agreements with each client for rating, which shall have provisions among others for rights and liabilities of the parties, fees charged, periodicity of rating review, extent and nature of co-operation by client in the rating process and terms of disclosure of rating to client through regular method of information dissemination;
 - vi. structure its rating teams and processes on an appropriate rotational basis for each client to avoid over familiarity;

- vii.** disclose openly their policies in their rating methodologies and procedures;
- viii.** apply a given or adopted methodology or model in a consistent manner ;
- ix.** develop rating criteria and methodologies for each type of debt instrument, industry, region or country or defined sectors and shall be published before any rating is assigned to an instrument, issuers from particular industries, region or country or a defined sector;
- x.** disclose In respect of structured products, the track record of the originator or the promoter of the product and details which must include viability and liquidity of the underlying asset(s);
- xi.** disclose the extent of participation by the issuer in the rating process – (i.e., the issuers’ management, directors, bankers, auditors etc.);
- xii.** rate securities already on the market if the issuer of those securities decides to have a second opinion on its ratings;
- xiii.** ensure timely disclosure of all rating opinions and adequately publish all material information to support its rating opinions which must include but not be limited to fundamental assumptions and rationale for its opinion. In addition, the CRA shall ensure that its rating reports for initial ratings are published as soon as the ratings have been finalized or prior to the issuance of those particular debt instruments to the public;
- xiv.** ensure that rating reports contain all relevant information with sufficient analysis to support conclusions. The report shall include qualitative and quantitative information on current and critical information on the rated securities in question as well as critical rating factors taken into consideration. The rating reports shall include :
 - disclosures of any benchmark(s) used;
 - comparative analysis with other industries, firm or region or sector;
 - sensitivity analyses performed; and

- their results as well as availability of any credit enhancements or other incidental obligations pertaining to rated securities and /or issuers.
- xv.** monitor continuously the rating of clients and promptly disseminate any changes in the rating throughout the life-time of the debt instrument;
- xvi.** conduct timely and regular rating reviews of outstanding debt securities of which the CRA is in charge of its rating, and shall publish its rating reviews and reports on a timely basis, which in this case shall not be later than 15 months after the last annual rating review; and
- xvii.** monitor its ratings such that any significant change in the situation or condition of the rated issuer and /or securities is promptly and effectively reflected in the assigned rating. This implies that a CRA shall initiate immediate review of rating status of all securities and or issuers under its ambit upon becoming aware of any information that may reasonably be expected to result in a rating action.

b) The following must also be Complied with:

- i.** In view of a CRA's continuous rating obligation, a CRA shall continuously and timeously engage the issuers of bonds or debt securities and respective trustees, where applicable to ensure that it always has the most current information on the bonds/ debt securities and on the issuer;
- ii.** In addition to the above rating watch procedure in (i) above, a CRA shall implement a rating outlook and rating watch monitoring framework. It shall have an indicative timeframe within which rating actions and rating reports shall be finalized. Once a debt securities is affected, it is put on a rating watch list ;
- iii.** A CRA's continuous rating obligation is discharged in the event of bankruptcy or winding up of the CRA or merger or amalgamation or acquisition of the issuer company;

- iv.** If a rating agency makes a material change to a methodology or material assumption in its rating process, it shall immediately, disclose any class of ratings likely to be affected and shall within six (6) months, review any affected ratings;
- v.** A rating agency shall keep records that support the credit rating and credit rating reviews. The records shall include but not be limited to minutes or summary of discussions during the rating process, minutes of the decision of Rating Committees and the rating model used. The records shall be kept for seven (7) years after the maturity of the rated instruments;
- vi.** All rating reports shall have a disclaimer to the effect that the rating is an expression of opinion by the CRA and that, it does not constitute a recommendation to buy, hold or sell those securities or to hold, invest or disinvest in those particular asset classes;
- vii.** Credit Rating Agencies shall develop for inspection by the Commission, in addition to any other policy requirements as stipulated in these guidelines, standing policies which shall be reviewed periodically in respect of the following;
 - a) Rating withdrawal and suspension
 - b) Unsolicited rating
 - c) Rating fees
 - d) Rating appeal process
 - e) Rating announcement
 - f) Treatment of confidential information
 - g) Personal investment and proprietary trading of the CRA

10.0. OPERATIONAL COMPLIANCE REQUIREMENTS:

A CRA shall ensure adoption of robust and time - tested operating systems as well as effective, efficient and high ethical standards in their daily operations and shall in addition, comply with the following operational requirements:

- i.** operate from a conducive environment or premises with adequate infrastructure and information systems to provide reliable rating services and maintain its rating operations and facilities on an on-going basis;
- ii.** ensure that every person who is engaged as a Director or in an Executive or Management position or a Member of the Rating Committee in the CRA shall be a fit and proper person as determined by the Commission;
- iii.** duly inform the Commission with explanation within fourteen (14) working days, of any change (such as resignation, dismissal, retirement etc.) with respect to the position of any Director or a person in an Executive or Management position or a Member of the Rating Committee;
- iv.** ensure that it recruits well qualified and trained human resource to undertake the function of credit rating. It shall also adopt policies and procedures designed to ensure that its personnel undergo or receive continuous professional development, training and support to facilitate excellent ethical standards and the generation of high quality, independent, objective and credible rating opinions;
- v.** have in place, adequate security system (s) or capacity and contingency arrangements which shall include disaster recovery and business continuity plans;
- vi.** keep records in line with all applicable laws in force. Accounting records and other books and records shall be kept intact for a period not less than seven (7) calendar years;
- vii.** maintain an active website and/or other platforms on which all ratings and other relevant and /or material information shall be disclosed.;

- viii.** immediately communicate its rating actions to stakeholders of its rating services – issuers, investors, analysts, fund- managers, securities traders/ dealers etc. The CRA may determine the periodicity of such communications as it deems necessary;
- ix.** keep clients information confidential except otherwise provided by law and/or the disclosure is required by the Commission;
- x.** establish, maintain and implement written policies, procedures, and control mechanisms to prevent the misuse of non-public information. In addition, the Credit Rating Agency shall take steps to monitor the compliance of these procedures and policies by members of its staff;
- xi.** appoint a Compliance Officer within 60 days after receiving its license to operate as a CRA;
- xii.** ensure that the Compliance Officer is independent of management, with sufficient working experience in the relevant field. The appointment and duties of the Compliance Officer shall be in conformity with Regulations 25 of L.I 1728. The Compliance Officer shall continuously monitor for violations and is required to prepare and submit reports thereon to the Board of the CRA and the Commission; and
- xiii.** ensure that the following conditions are met to enable the compliance officer to discharge his/her duties properly and independently:
 - a) That the compliance officer has the necessary authority, resources, expertise and access to all members of staff and all relevant information and records as requested by him/her;
 - b) That the compliance officer shall not be placed in any compromising position to create conflicts of interest between his/her compliance responsibilities and any other responsibilities with the CRA; and
 - c) That the compliance officer shall have a direct line of communication and reporting to the CRAs Board and the Commission (in addition to his/her regular reporting obligation to senior management which may be integral to his/her duties.

11.0. UNSOLICITED RATING

- i.** A CRA may provide “unsolicited” rating on rated securities and/ or issuers already on the market and shall comply with guidelines related to “unsolicited” rating as provided under 11.0.(**ii –v**) of these **Guidelines.**
- ii.** A CRA shall keep records of “unsolicited” rating of securities for at least seven (7) years after cessation of rating or maturity or retirement of payment obligations of those particular securities.
- iii.** A CRA shall publish the name of the securities in question and shall be followed by the word “**UNSOLICITED RATING**” in bold font size
- iv.** All ‘unsolicited’ ratings once started shall continue during the life of the securities by the CRA.
- v.** A CRA shall disclose information used and their sources for all unsolicited ratings and the extent of participation by the issuer, its management, bankers and auditors in the credit rating process.

12.0. REPORTING OBLIGATIONS/ REQUIREMENTS:

A CRA shall submit to the Commission:

12.1 Periodic Reporting Requirements:

- i.** quarterly returns containing information specified by the Commission which shall reach the Commission not later than 21 days after the end of the quarter;
- ii.** An annual report containing the audited annual financial statements and other information to be specified by the Commission not later than 90 days after the end of the financial year to which the report relates;

- iii. The annual report shall also contain the following information:
 - A list of all ancillary services including those provided to rated clients in the preceding year. This shall include the names of clients, income received and nature of services provided;
 - List of securities and/ or issuers rated in the preceding year and changes in rating during the year;
 - A list or register of Directors, Principal Officers, Members of the rating committee and other staff members of the CRA and their respective holdings or interest in securities as at the end of the preceding year. This register shall be in the form as provided under Regulation 20 of Securities And Exchange Commission Regulations, 2003, (L.I. 1728);
 - Detailed report on corporate trading and holdings or interests in securities, and in other related companies at the close of the preceding year;
 - Report on subsidiary trading.
- iv. A semi-annual report on list of all issuers on rating watch and subsequent rating actions taken;
- v. A semi- annual report on all rating reviews during the period.
- vi. An annual report on all unsolicited ratings carried out in the last three financial years; and
- vii. Names of issuers, out of those mentioned in (vi) above, which were given solicited rating in the last financial year.

12.2 Other Reporting Obligations:

A CRA shall also comply with the following requirements:

- i.** Report to the Commission within fourteen (14) days with reasons and /or explanations, any changes in its rating categories and symbols or policies or processes or analyses or methodologies or models and how those changes affects existing rating(s);
- ii.** notify the Commission of any change in particulars as specified under Regulation 18 of Securities And Exchange Commission Regulations, 2003.(L.I 1728);
- iii.** notify the Commission on the appointment, removal and resignation of its auditor within fourteen (14) days of such an appointment, removal or resignation; and
- iv.** report within fourteen (14) working days with written explanation to the Commission, including any remedial actions taken on the occurrence of the following events:
 - a) Significant downgrades which results in a credit rating of an issuer being lowered in a single rating action;
 - b) Any rating action within six months after an initial rating has been assigned;
 - c) Frequent rating action where credit rating for a particular issue or issuer is changed more than once within a period of six months; and
 - d) Any other explanation or information or an event as may be required by the Commission.

The Commission may from time to time specify other reports to be submitted by the CRAs.

13.0. SANCTIONS FOR NON-COMPLIANCE:

- i. In the event of a breach of any requirement stipulated in these Guidelines by a Credit Rating Agency, the Commission may take action(s) specified in this section in addition to sanctions specified under section 209 of the Securities Industry Act 2016.
- ii. The Commission reserves the right to remove any Principal Officer or a member of the rating committee of the CRA who is responsible for the breach.
- iii. The Commission may also take any other actions as it deems necessary to maintain integrity in the credit rating process.
- iv. Prior to any action or sanction to be imposed by the Commission, the affected CRA and/or its officer(s) shall be given a fair hearing and in accordance with due process of law.

Definitions

Credit Rating: Credit rating under these guidelines shall not be equated or construed to mean credit referencing nor the activities of a credit reference bureau, but shall be an expression of an opinion regarding the creditworthiness of a debt or financial obligation, debt securities, or other debt or financial instrument, or of an issuer of such a debt or financial obligation or other financial instrument issued, using established and defined ranking system or rating parameters, for the benefit of users in the capital market.

A Credit Rating Agency: shall be a body - corporate under the Companies Act, 1963 (Act 179) with the core objective of providing credit rating and related services in Ghana. In the case of an external company, it shall have a branch office as the established place of business.

Rating Committee: means the committee that determines a Credit Rating.

Related Parties: any person who is related to a CRA, its rating holding company or its shareholders. The term related means such person who falls within any one of the following categories:

- (i) Spouse;
- (ii) Parent;
- (iii) Child including an adopted child and step-child;
- (iv) Brother or sister; and
- (v) Spouse of the person referred to in subparagraphs (iii) and (IV) above;

Independent Directors: (Culled from IFC)

"Independent Director" means a Director who has no direct or indirect material relationship with the Company other than membership on the Board and who:

- a. is not, and has not been in the past five (5) years, employed by the Company or its Affiliates;
- b. does not have, and has not had in the past five (5) years, a business relationship with the Company or its Affiliates (either directly or as a partner, shareholder (other than to the extent to which shares are held by such Director pursuant to a requirement of Applicable Law in the Country relating to directors generally), and is not a director, officer or senior employee of a Person that has or had such a relationship);
- c. is not affiliated with any non-profit organization that receives significant funding from the Company or its Affiliates;
- d. does not receive and has not received in the past five (5) years, any additional remuneration from the Company or its Affiliates other than his or her director's fee and such director's fee does not constitute a significant portion of his or her annual income;
- e. does not participate in any share option [scheme]/[plan] or pension [scheme]/[plan] of the Company or any of its Affiliates;

- f. is not employed as an executive officer of another company where any of the Company's executives serve on that company's board of directors;
- g. is not, nor has been at any time during the past five (5) years, affiliated with or employed by a present or former auditor of the Company or any of its Affiliates; (h) does not hold a material interest in the Company or its Affiliates (either directly or as a partner, shareholder, director, officer or senior employee of a Person that holds such an interest);
- h. is not a member of the immediate family (and is not the executor, administrator or personal representative of any such Person who is deceased or legally incompetent) of any individual who would not meet any of the tests set out in (a) to (h) (were he or she a director of the Company);
- i. is identified in the annual report of the Company distributed to the shareholders of the Company as an independent director; and
- j. has not served on the Board for more than seven (7) years.

For purposes of this definition, "material interest" shall mean a direct or indirect ownership of voting shares representing at least two percent (2%) of the outstanding voting power or equity of the Company or any of its Affiliates;

Rating Action: means any initial rating, any change, withdrawal, or suspension of an existing rating, any credit watch action, and any other rating indicators including, but not limited to, a rating outlook.

Unsolicited Rating: Credit ratings not arising out of an agreement between a CRA and an issuer.

Schedule 1

Application for a credit rating licence

The following information shall also be provided -

- i. Information pertaining to the operations of the credit rating business of the company if in operation.
- ii. operational manual of the credit rating business – This shall contain the CRA’s internal functions, processes, fee policy, internal control policies as well as brief summary of rating policies and methodologies to be used.
- iii. list of ancillary services provided or to be provided by the company (if applicable).
- iv. the composition, names and particulars of members of its Rating Committee. This shall include their addresses, qualifications, experience and other relevant information.
- v. particulars of all other key personnel employed or to be employed.
- vi. statements on its corporate governance policy, structure and systems.
- vii. a Code of Conduct of the CRA in line with IOSCO Principles regarding activities of rating agencies shall be provided. Detailed explanations shall be provided where any deviations exists from that of IOSCO.
- viii. where the CRA is an external company, an attestation from the Regulator in whose jurisdiction the company operates or is registered shall be provided.

Additional Information for licensing:

- i. The Commission may require the applicant to furnish any further information or clarification as it considers necessary for the purpose of considering the application.

- ii. The Commission may at any time after due process and consultation impose any additional terms and conditions deemed appropriate for continuous licensing of the CRA.

ISSUED BY THE SECURITIES & EXCHANGE COMMISSION