

22 May 2012

BY EMAIL

Mr T. Mufamadi, MP
FAO: Mr A. Wicomb
Parliament of RSA
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Re: Draft Credit Rating Services Bill [B8-2012] (the “Draft CRA Bill”)

Dear Mr Wicomb,

Fitch thanks you for the opportunity to comment on the Draft CRA Bill. As you may know, last 15 September, we provided extensive comments on a prior draft. We note that certain amendments have been introduced to this prior draft, however, we continue to have some of the same concerns. Set forth below are our high level concerns. We also have not seen redrafts of the CRA Rules, Form CRS 1, the Notice re Determination of Fit and Proper Requirements for CRAs and the Notice re CRA Annual Report, therefore we refer you to our comments from 15 September with respect to these documents.

Exemptions

We welcome the proposed ability for the South African members of international credit rating agency (“CRA”) groups, such as Fitch Southern Africa, (Pty) Ltd. (“Fitch Southern Africa”) to be exempted from the application requirements. Fitch Southern Africa’s parent, Fitch Ratings Ltd (an English company) (“FRL”), is registered under the EU Regulation with respect to CRAs. Moreover, Fitch has implemented global policies and procedures with respect to the issuance and modification of credit ratings, consistent with the EU Regulation, which apply to all international ratings issued by Fitch CRAs, including Fitch Southern Africa. Given that the Draft CRA Bill is based directly on the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies (the “IOSCO Code”) and on the EU Regulation (which itself is based on the IOSCO Code), we would strongly urge that Fitch Southern Africa (and other CRAs in similar situations) be granted permanent exemptions from all requirements under the Draft CRA Bill with respect to its international scale ratings. Indeed, we believe, in the case of such CRAs, that the Draft CRA Bill should explicitly apply only to their South African national scale credit ratings – although we discuss below certain additional exemptions for Fitch Southern Africa that we believe are relevant given the global nature of Fitch’s business.

Global Structures

Fitch operates its credit rating business on a global basis through its various subsidiaries, including Fitch Southern Africa. For example, analysts are organised globally by category of credit rating – that is, structured finance, financial institutions, non-financial corporates and sovereigns. The number of analysts in Fitch Southern Africa is small and their analytical reporting lines flow into FRL; cross border rating committees are typical given this smaller number of analysts (generally involving staff from FRL). Fitch does not maintain a separate corporate governance policy, either at a global or local subsidiary level. Instead, in light of the nature of our business, our corporate governance framework is integrated into our core global policies and procedures that govern how we do our work. Fitch has a global compliance function (with the regional Compliance Officer responsible for EMEA, including Fitch Southern Africa, based in London), a global operations risk management group and a global credit policy group. The methodologies for each area of our business are generally constructed on a global basis, even where the emphasis added to individual criteria or specific qualitative or quantitative thresholds may vary from one jurisdiction to another. The scrutiny of new methodologies and criteria is carried out on an international basis.

We believe this global approach is vital in helping to ensure consistency and uniformity in the analytical groups' processes. Indeed, it is not possible for us to operate as a global business, or to meet the expectations of investors, otherwise. Users of our ratings, understandably, want and expect them to be comparable across countries and meeting these expectations is an important business and reputational objective of Fitch's executive management. In line with these goals, it is also essential that the implementation of Fitch's policies, procedures and methodologies be assessed in the same manner across each of our subsidiaries in order to ensure a fully consistent application.

Given this, we hope that the registrar will take into account Fitch's global structures in applying the Draft CRA Bill to Fitch Southern Africa, by granting the necessary exemptions. For example, Fitch has only one set of independent directors, consistent with the EU Regulation and applicable US law, who sit on both the FRL and Fitch Inc. boards. It would therefore be unnecessary to require independent directors on the board of Fitch Southern Africa, as they would be doing exactly the same work as the independent directors on the parents' boards. Independent directors at any other Fitch company (including Fitch Southern Africa) would not provide any additional benefit in terms of the quality of our work or, therefore, be of any additional benefit to users of our ratings. In a similar vein, because of Fitch's global approach to corporate governance, we think it would be inappropriate to require Fitch Southern Africa to apply the King Code on Corporate Governance Principles.

We note that the Draft CRA Bill now specifies that Fitch Southern Africa may outsource its operational functions to any Fitch group company, and that Fitch Southern Africa's compliance officer need not be based in South Africa. We also note that the National Treasury has accepted that a South African CRA which is part of an international group of CRAs need not have its own Code of Conduct, but can instead rely on a global Code of Conduct. We consider these changes to be hugely helpful, as they reflect the realities of Fitch's global structure.

Endorsement

We appreciate that Section 19 of the Draft CRA Bill is based on the comparable provision in the EU Regulation. However, it is not clear to us why this is necessary for South Africa. We do not know whether, and if so how, regulated entities in South Africa use Fitch credit ratings for regulatory purposes. We assume that if they do so use Fitch credit ratings, these entities are interested only in certain international ratings. As explained above, Fitch's international ratings are produced in accordance with global policies and procedures that are consistent with the EU Regulation. To the extent the Draft CRA Bill is based on the EU Regulation, the extra step of endorsement by Fitch Southern Africa would not change how these credit ratings are produced. On the other hand, to the extent the Draft CRA Bill provides for additional and/or contradictory provisions, it might become too difficult (or impossible) to endorse these international credit ratings.

Users of Credit Ratings

Fitch's ratings are intended for the wholesale, rather than the retail market. That is, users of our ratings are sophisticated financial market participants. We are therefore concerned with any provisions of the Draft CRA Bill that might imply otherwise – see, for example, clause 1(5)(b) and clause 10(1)(b)(ii).

Compliance Officer Notifications

Clause 16(8) provides that the compliance officer must notify the registrar of any irregularities (or suspected irregularities) in the conduct or affairs of, or any breach of the Draft CRA Bill by, the CRA. In the original draft, there was a materiality qualification, which makes sense to us. However, that qualification has been removed. We believe it should be reinstated.

We hope that you will give our comments careful consideration. Please do not hesitate to contact me on +44 20 3530 1150, or david.wharrier@fitchratings.com, should you have any questions.

Sincerely yours,



David Wharrier
Managing Director
Fitch