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May 3, 2012

Roy Havemann
National Treasury
The Government of South Africa

Dear Mr. Havemann

COMMENTS: CREDIT RATINGS SERVICES BILL – 2ND PROPOSAL TABLED

We refer to the second proposal tabled for the Credit Ratings Services Bill ("the Bill") and the call for Investors to comment herein. We refer also to our letter dated 16 September 2011 (attached for your reference) and we advise that our comments contained therein remain.

We have contributed to, and support the ASISA submission but would like to take this opportunity to offer some additional points and suggestions for your deliberations.

Following our review of the second proposal, we would like to bring the following issues, with reference to the related paragraph to the Bill where necessary, to your attention:

Application for Registration – Chapter 2
Para 5(1)(d) – The fit and proper compliance requirement should include confirmation or disclosure that the directors are independent from Issuers and users of ratings and that there are no conflict of interest with Issuers.

Para 5(3) - The Registrar may exempt an applicant who, or whose holding company, or a related company in the same group, is registered, authorised or approved by a foreign regulatory authority as a credit rating agency from providing some or all of the information required under certain provisos. Our understanding is that effectively this may allow for three major rating agencies namely, Moody's, Standard & Poors and Fitch, to be exempt if the Registrar so approves.

Given the intention of the Bill (principles of accountability, transparency, governance, etc), we would like the assurance that this exemption will not apply to the aforementioned rating agencies at the outset and implementation of the Bill.

Para 5(4) – The Registrar must give notice of the receipt of an application for registration on the FSB official website, which notice must state: (a) the name of the applicant; and (b) the period within which objections to the application may be lodged with the registrar.

Private Bag X6
Newlands
7725 South Africa

3rd Floor, Great Westerford
240 Main Road Rondebosch
7700 South Africa

Tel: +27 21 659 5300
Fax: +27 21 659 5400
www.futuregrowth.co.za

Our view is that simply providing the name of the applicant without sufficient supporting information does not provide Investors with the means to object. In order for the public to apply their minds and be in a position object or not, the public should have access to the same information that the Registrar has been provided with in terms of para 5(1). As a minimum, the public should have access to i) the ownership structure ii) organisational structure and corporate governance, (iii) subsidiaries, if any; (iv) resources and expertise to perform credit rating service programme of operations, including indications of where the main business activities are expected to be carried out, branches to be established, and the type of business that will be undertaken.

Suspension and cancellation of ratings

Para 6(5)(a) - Credit ratings issued by a credit rating agency whose registration has been suspended or cancelled may continue to be used for regulatory purposes subject to certain provisos.

Our view is that the prescribed time frame of three months under Para 5(a)(ii) for which the ratings remain valid is very restrictive for Investors. This is based on our experience that there is generally a protracted process before an alternate credit rating agency is appointed, for the alternate credit rating agency to then perform their review and ultimately publish ratings, especially on complicated structured transactions or for Issuers that the alternate credit rating agency does not cover.

There could be serious repercussions in terms of mandate requirements if an instrument becomes an unrated instrument. Furthermore, should there be any doubt cast over a credit rating agency, Investors would then need to apply their minds as to whether they may rely on any ratings published by a specific credit rating agency as a whole.

It is therefore suggested that unless there has been misconduct, negligence and/or fraudulent behaviour committed by the credit rating agency, its directors and/or the Issuer in the determination of the rating, that the ratings as published will remain in force and effect until the sooner of the annual review date of the rating in question or the date on which an alternate rating is published – but in either case subject to a maximum time frame of 12 months which should be adequate time to allow for an alternate rating to be issued.

While we understand that the Registrar may extend the period referred to in paragraph 6(5)(a)(ii), in order to mitigate any potential market disruption or to ensure financial stability, Investors are not involved in this process. Therefore, if there are logistical, administrative or legal conditions for the Registrar to approve and implement an extension, it may have an impact on Investor mandates and the intention is to avoid this scenario.

Duties of credit rating agencies

Para 7(1)(j) – the credit rating agency must establish a unit within its organisation whose function is to communicate with Investors, potential Investors and the public about any questions, concerns or complaints that it may receive.

While we appreciate the need for a central communication i.e. an "Investor relations" department, we need to ensure that Investors will continue to have direct access to the credit

rating analyst(s) and that Investors may communicate directly with a credit rating analyst post the advent of an "Investor relations" department.

We also hold the view that the ratings agencies need Key Individual accountability – similar to that required for other fiduciaries like asset managers. We believe that the existing requirements for Key Individuals that is applicable to Asset Managers should apply to rating agencies Key Individuals (including at a minimum the MD/CEO and the relevant analyst).

Credit ratings

Para 10(1)(a) - credit rating agency must publish any credit rating or any decision to discontinue a credit rating impartially and timeously.

The definition and determination of "timeously" would vary between credit rating agencies and we feel, given our business needs, that this requirement is too vague and allows a credit rating agency unwarranted discretion. A more prescriptive time frame to discontinue a rating is recommended and we suggest that a credit rating agency provide 7 days notice to Investors that it will be discontinuing a credit rating.

Para 10(1)(c) - a credit rating agency must monitor credit ratings and regularly review its credit ratings.

We suggest that the "regularly review" should be changed to "*continuously* review" given the dynamic market conditions in which markets operate. As a minimum this change could be implemented for new market events, so that credit ratings are continuously assessed for current market trends and events.

Para 10(4)- A credit rating agency must refrain from issuing a credit rating if the lack of reliable data, the complexity of a new type of financial instrument or the quality of information available may result in a non-credible credit rating.

We feel that this should also extend to a credit rating agency being obliged to withdraw an existing rating for the above mentioned reasons. We therefore suggest that the wording be amended to include the underlined reference "from issuing a credit rating *or must withdraw an existing or preliminary rating* if the lack of reliable data, the complexity of a new type of financial instrument or the quality of information available may result in a non-credible credit rating".

Code of conduct

Para 11 - A credit rating agency must adopt, publish and adhere to a code of conduct. We suggest that this be extended to include para 11(c) that the credit rating agency must describe how they will adhere to this Act.

We also recommend that a minimum standard for a code of conduct is included in the legislation, and each rating agency should, as part of the disclosures in para 13(1), detail instances where the minimum standards were not adhered to, the reasons and corrective action taken. Furthermore, we would support the establishment of a hotline or email address where the Investors and/or other interested parties can send the Registrar details of any matters that require the Registrar's attention and/or possible action.

Outsourcing and other services
Para 12(1) - It is recommended that a credit rating agency is required to inform Investors if they have outsourced a credit rating, to which party they have outsourced this credit rating and if this party is a regulated entity.

Disclosures
Para 13(1) - A credit rating agency must disclose to the public and its subscribers certain information.

It is recommended that this be extended to include disclosures on directors, management, shareholders, ownership structure and any changes herein.

Para 13(2) - A credit rating agency must, every 12 months, disclose to the public and its subscribers data about the historical default rates of its rating categories.

We note that the time period has increased from 6 months to 12 months from the original proposal. Given current market conditions and the need for updated relevant information, it is suggested that this time period revert to the original proposal of 6 months given the current market conditions.

Para 13(4)(a) – A credit rating agency must annually disclose to the registrar a list of its 20 largest clients, and the percentage of revenue that each of those 20 clients, individually or together with affiliates, contribute to the total annual revenue of the credit rating agency.

The requirement to disclose the "20 largest clients" needs to be clarified to rather read the "20 largest clients by revenue".

Powers and functions of the Registrar
Para 23 – it is suggested that this should be amended to also include a para 23(j) the duty on the Registrar to impose fines for non-compliance with this Act and a para 23(k) that the Registrar must receive and act on information received from Investors.

In the latter instance we see this as being applicable, for example if an Issuer comes to the debt market on the back of a credit rating but within a short period thereafter the Issuer is subsequently downgraded. This to our mind constitutes misrepresentation by both the Issuer and the credit rating agency as a) the Issuer would be aware of any rating action pending but does not inform Investors and b) the rating agency should be aware that the Issuer is coming to market and should be proactive and advise Investors of possible rating action pending.

Offences and penalties
Para 32 – we note that the amount of the fine has been removed (previously capped at R100,000). It is recommended that a minimum fine amount be prescribed with the Registrar having the discretion to recommend a higher fine be imposed depending on the circumstances and information the Registrar has on hand.

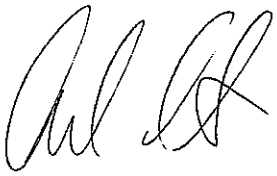
General comments:

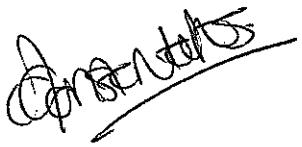
We would also like to reiterate our previous comments on Accountability, which we view as a very necessary component of this Bill. We would like to see the equivalent of "Key Individuals" being implemented for credit rating agencies as it leads to personal accountability by natural persons.

We would also like to see Investors having the power to replace the assigned credit ratings agency, by a majority vote of the debt holders of an issuing entity. Further, Issuers should not be able to replace credit rating agencies without lender approval, which would be subject to a vote, or by a board decision. We would hope to see something similar to that which applies to a company's auditors, management's ability to replace them, the auditors' duty to advise the replacement auditor if there are any material irregularities and the auditors' duty to advise the board of directors that there are no material reasons why they should not be replaced.

Thank you once again for allowing us the opportunity to comment on this Bill and trust that you find our feedback constructive and relevant in taking this process forward. We would also be happy to engage with you to discuss any of our comments above if you so wish.

Sincerely,





Andrew Canter
Chief Investment Officer

Olga Constantatos
Credit Process Manager