

**BOARD NOTICE 228 OF 2013****FINANCIAL SERVICES BOARD****CREDIT RATING SERVICES ACT, 2012****CREDIT RATING AGENCY RULES**

I, Dube Phineas Tshidi, Registrar of Credit Rating Agencies, hereby prescribe under section 24(1) of the Credit Rating Services Act, 2012 (Act No. 24 of 2012), the rules for a credit rating agency as set out in the Schedule.

  
DP TSHIDI

**REGISTRAR OF CREDIT RATING AGENCIES****SCHEDULE**

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## PART I INTRODUCTION

### 1. Definitions

(1) In these Rules, “**the Act**” means the Credit Rating Services Act, 2012 (Act No. 24 of 2012) and any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned to it and, unless the context indicates otherwise—

“**advertisement**” means any written, printed, electronic or oral communication, including a communication by means of a public radio service, television broadcast or any other media or computer accessed communication in the media, which communication is directed to the general public, or any section thereof, and which is intended to call attention to, or to market or promote the services offered by a credit rating agency, and “**advertise**” has a corresponding meaning;

“**analyst**” means a credit rating analyst;

“**board**” means the board of directors of a credit rating agency;

“**computer-accessed communication**” means any communication made by or on behalf of a credit rating agency that is published by or on behalf of such credit rating agency through the use of a computer or related electronic device, including, but not limited to, web sites, weblogs, search engines, electronic mail, banner advertisements, pop-up and pop-under advertisements, chat rooms, list servers, instant messaging, or other internet presences, and any attachments or links related thereto;

“**credit rating agency**” means a registered credit rating agency;

“**rated entity**” means an entity, security, financial instrument or issuer of a security or financial instrument whose creditworthiness is explicitly or implicitly rated in the credit rating, whether or not it has solicited that credit rating and whether or not it has provided information for that credit rating;

“**related third party**” means the originator, arranger, sponsor, servicer or any other party that interacts with a credit rating agency on behalf of a rated entity, including any person directly or indirectly linked to that rated entity by control.

(2) These Rules apply, unless stated otherwise, to all credit rating agencies, credit ratings, endorsed credit ratings or credit rating services generally.

## PART II ORGANISATIONAL REQUIREMENTS

### 2. Structure and duties of the board

(1) The board must adopt corporate governance policies which are consistent with the principles and practices of effective corporate governance as contemplated in the King Code on Corporate Governance Principles.

(2) A credit rating agency must ensure that its corporate governance policies adhere to the following minimum requirements;

- (a) The board must have at least two independent members who are not involved in credit rating services. At least one of these independent directors must be resident in South Africa.
- (b) The independent members of the board may not serve on the board for a term exceeding a period of five years.
- (c) The compensation of the independent members of the board may not be linked to the business performance of the credit rating agency and must be arranged so as to ensure their independence of judgment.
- (d) The majority of members of the board, including its independent members, must have sufficient financial expertise which should include knowledge of the debt capital markets, investment markets and credit and risk analysis. Provided that where a credit rating agency issues credit ratings of structured finance instruments, at least one independent member and one other member of the board must have in-depth knowledge and experience at a senior level of the markets in structured finance instruments.

(3) In addition to the overall responsibility of the board, the independent members must have the specific task of monitoring -

- (a) the development of the credit rating policy and of the methodologies used by the credit rating agency in its credit rating services;
- (b) the effectiveness of the internal quality control system of the credit rating agency in relation to credit rating services;
- (c) the effectiveness of measures and procedures instituted to ensure that any conflicts of interest are identified, eliminated or managed and disclosed; and
- (d) the compliance and governance processes, including the efficiency of the review function.

(4) A report of the opinions of the independent members of the board issued on the matters referred to in sub-paragraph (2), must be presented to the board periodically and must be made available to the registrar on request.

### 3. Internal controls

(1) A credit rating agency must establish, maintain, enforce and document policies and procedures to ensure compliance with its obligations under the Act and these Rules.

(2) A credit rating agency must design its internal control mechanisms to secure compliance with the policies and procedures at all levels of the agency.

(3) A credit rating agency must implement and maintain decision-making procedures and organisational structures which clearly and in a documented manner specify reporting lines and allocate functions and responsibilities.

(4) A credit rating agency must establish a rigorous and formal review function responsible for periodically reviewing its methodologies, models and key rating assumptions, as contemplated in section 9(c) of the Act. Such assumptions include mathematical or correlation assumptions, and any significant changes or modifications thereto as well as the appropriateness of those methodologies, models and key rating assumptions where they are used or intended to be used for the assessment of new securities and financial instruments.

(5) The review function must be independent of the business divisions which are responsible for credit rating services and must report directly to the board.

### 4. Outsourcing arrangements

In instances where operational functions of a credit rating agency are outsourced the credit rating agency remains liable and must ensure that-

- (a) none of the outsourced functions impair the quality of the credit rating agency's internal controls;
- (b) the outsourcing does not impair the ability of the registrar to supervise the credit rating agency's compliance with its obligations under the Act and these Rules; and
- (c) the persons undertaking the outsourced functions of the credit rating agency-
  - (i) take all reasonable measures to protect property and records in possession of the credit rating agency from fraud, theft or misuse taking into account the nature, scale and complexity of their business and the nature and range of their credit rating activities;

- (ii) do not disclose any information about credit ratings or possible future credit ratings of the credit rating agency, except to the rated entity or its related third party;
- (iii) do not share confidential information entrusted to the credit rating agency with analysts and employees of any person directly or indirectly linked to the credit rating agency by control as well as with any other natural persons whose services are placed at the disposal or under the control of any person directly or indirectly linked to the credit rating agency by control and who is not directly involved in the credit rating activities; and
- (iv) do not use or share confidential information for the purpose of trading securities or financial instruments, or for any other purpose except the conduct of the credit rating activities.

### **PART III INDEPENDENCE AND AVOIDANCE OF CONFLICTS OF INTEREST**

#### **5. Conflicts of interest**

(1) A credit rating agency must identify, eliminate or manage and record and disclose, clearly and prominently, any actual or potential conflicts of interest that may influence the analysis and judgments of its analysts, employees, or any other natural person whose services are placed at the disposal or under the control of the credit rating agency, and who are directly involved in the issuing of credit ratings and persons approving credit ratings.

(2) A credit rating agency's disclosures of actual and potential conflicts of interest must be complete, timely, clear, concise, specific and prominent.

(3) Where a credit rating agency receives compensation unrelated to its ratings service from a rated entity, originator, arranger, client or subscriber, it must keep record of the proportion that such non-rating fees constitute against the fees the credit rating agency receives from the entity for rating services.

(4) A credit rating agency must disclose if it receives ten per cent or more of its annual revenue from a single rated entity, originator, arranger, client or subscriber (including any affiliates of that issuer, originator, arranger, client or subscriber).

(5) A credit rating agency may not issue a credit rating in any of the following circumstances, or must, in the case of an existing credit rating, immediately publicly disclose where the credit rating is potentially affected by the following-

- (a) the credit rating agency or persons referred to in sub-paragraph (1), directly or indirectly own securities or financial instruments in the rated

entity or a related third party or have any other direct or indirect ownership interest in that entity or party, other than holdings in collective investment schemes, pension funds or life insurance;

- (b) the rated entity or a related third party is directly or indirectly linked to the credit rating agency by control;
- (c) a person referred to in sub-paragraph (1) is a member of the senior management of the rated entity or a related third party; or
- (d) an analyst who participated in determining a credit rating, or a person who approved a credit rating, has had a relationship with the rated entity or a related third party which may cause a conflict of interest.

(6) A credit rating agency must immediately assess whether there are grounds for re-rating or withdrawing the existing credit rating referred to in sub-paragraph (5).

(7) A credit rating agency must ensure that analysts or persons who approve ratings do not make proposals or recommendations or give advice, either formally or informally, regarding the design of structured finance instruments on which the credit rating agency is expected to issue a credit rating.

(8) A credit rating agency must design its reporting and communication channels so as to ensure the independence of the persons referred to in sub-paragraph (1) from the other activities of the credit rating agency carried out on a commercial basis.

(9) A credit rating agency must not refrain from taking a rating action based on the potential effect (economic, political, or otherwise) of the action of the credit rating agency on a rated entity, an investor, or other market participant.

(10) A credit rating agency and its analysts must use care and professional judgment to maintain both the substance and appearance of independence and objectivity.

(11) The credit rating that a credit rating agency assigns must not be affected by the existence of or potential for a business relationship between the credit rating agency (or its affiliates) and the rated entity (or its affiliates) or any other party, or the non-existence of such a relationship.

(12) A credit rating agency must separate operationally its credit rating business from any other businesses of the credit rating agency, particularly a business that may present a conflict of interest.

(13) A credit rating agency must ensure that ancillary business operations which do not necessarily present a conflict of interest with the credit rating agency's rating business have procedures and mechanisms in place designed to minimise the likelihood that conflicts of interest will arise.

## 6. Analyst and employee independence

(1) An analyst or an employee of a credit rating agency, or the spouse, partner or minor child of an analyst or employee, may not buy or sell or engage in any transaction in any securities, guaranteed, or otherwise supported by a rated entity within the analyst's area of primary analytical responsibility, other than holdings in collective investment schemes, pension funds or life insurance.

(2) A credit rating agency must ensure that an analyst employed by the credit rating agency is not compensated or evaluated on the basis of the amount of revenue that the credit rating agency derives from issuers that the analyst rates or with which the analyst regularly interacts.

(3) A credit rating agency must conduct formal and periodic reviews of its compensation policies and practices for analysts and other employees, who participate in or who might otherwise have an effect on the rating process, to ensure that these policies and practices do not compromise the objectivity of the agency's rating process.

(4) A credit rating agency may not have employees, who are directly involved in the rating process, also involved in discussions regarding fees or payments with any rated entity, or potential rated entity, related third party or any person directly or indirectly linked to the rated entity by control.

(5) A credit rating agency employee may not participate in, or otherwise influence, the determination of the credit rating agency's rating of any particular rated entity, if the employee-

- (a) owns securities or financial instruments of the rated entity, other than holdings in diversified collective investment schemes, pension funds or life insurance;
- (b) owns securities or financial instruments of any entity related to a rated entity, the ownership of which may cause or may be perceived as causing a conflict of interest, other than holdings in diversified collective investment schemes, pension funds or life insurance;
- (c) has had a recent employment or other significant business relationship with the rated entity that may cause or may be perceived as causing a conflict of interest;
- (d) has an immediate relation, such as a spouse, partner, parent, child, or sibling, who currently works for the rated entity where this employment relationship constitutes a conflict of interest; or
- (e) has, or had, any other relationship with the rated entity or any related entity thereof that may cause or may be perceived as causing a conflict of interest.

(6) An analyst who becomes involved in any personal relationship that creates the potential for any real or apparent conflict of interest, including any personal relationship

with an employee of a rated entity or agent of such entity within his or her area of analytic responsibility, must be required to disclose such relationship to the appropriate manager or officer of the credit rating agency, as determined by its compliance policies.

(7) An analyst or employee of the credit rating agency may not take up a key management position with a rated entity which the employee or analyst has rated or its related third party within six months of the issuing or review of the credit rating.

(8) A credit rating agency must establish policies and procedures for reviewing the past work of analysts who leave the employ of the credit rating agency and join a rated entity the analyst has been involved in rating.

(9) A credit rating agency must have policies and procedures in place to ensure that-

- (a) the lead analyst is not involved in credit rating activities related to the same rated entity or its related third parties for a period exceeding five years;
- (b) a person approving a credit rating is not involved in credit rating services related to the same rated entity or its related third parties for a period exceeding seven years.

(10) A person referred to in sub-paragraph (9)(a) or (b) may not be involved in credit rating activities related to the rated entity or related third parties referred to in those paragraphs within two years of the end of the periods set out in those paragraphs.

(11) A credit rating agency must establish, maintain, and enforce policies and procedures to ensure that the ratings issued by an analyst or employee of the credit rating agency are subject to review should it be established that a conflict of interest of the employee influenced the credit rating; and that the credit rating agency may take action to revise the rating if appropriate, in accordance with such policies and procedures.

## **PART IV QUALITY AND INTEGRITY OF CREDIT RATINGS**

### **7. Quality of the rating process**

(1) A credit rating agency must adopt, implement and enforce written procedures to ensure that a credit rating that the agency publishes is based on a thorough analysis of all information known to the agency that is relevant to its analysis according to its published rating methodology.

(2) In assessing an issuer's creditworthiness, an analyst involved in the preparation or review of any rating action must use methodologies established by the credit rating agency. An analyst must apply the methodologies in a consistent manner, as determined by the credit rating agency.



(3) Credit ratings must be assigned by the credit rating agency and not by any individual analyst employed by the agency.

(4) A credit rating agency must use employees who, individually or collectively (particularly where rating committees are used) have appropriate knowledge and experience in developing the type of credit rating being applied.

(5) A credit rating agency and an analyst employed by it must take steps to avoid issuing any credit analysis or report that contains misrepresentations or are otherwise misleading as to the general creditworthiness of a rated entity or obligation.

(6) A credit rating agency must ensure that it has and devotes sufficient resources to carry out high-quality credit analysis of all obligations of the rated entity it rates.

(7) When deciding whether to rate or continue rating an obligation or rated entity, a credit rating agency must assess whether it is able to devote sufficient personnel with sufficient skill sets to make a proper rating assessment and whether its personnel will have access to sufficient information needed in order to make such an assessment and must refrain from rating or continue rating the obligation or rated entity in those circumstances where a proper rating assessment is not possible.

(8) Where a credit rating agency is using an existing credit rating prepared by another credit rating agency with respect to underlying assets or structured finance instruments, it may not refuse to issue a credit rating of an entity or a security or a financial instrument because a portion of the entity or the security or the financial instrument had been previously rated by another credit rating agency.

(9) A credit rating agency must adopt reasonable measures so that the information it uses in assigning a credit rating is of sufficient quality to support a reliable and credible credit rating. If the credit rating involves a type of security or financial instrument presenting limited historical data (such as an innovative financial vehicle or instrument, or special purpose vehicle), the credit rating agency must publish the limitations of the credit rating in a prominent place, form and manner.

(10) A credit rating agency must establish a review function made up of one or more senior managers with appropriate experience to review the feasibility of providing a credit rating for a type of structure that is materially different from the structures the credit rating agency currently rates, and if not feasible refrain from providing a credit rating.

(11) A credit rating agency must include an attestation with any credit rating it issues affirming-

- (a) that no part of the rating was influenced by any other business activities of the credit rating agency;
- (b) that the rating was based solely on the merits of the rated entity, security or financial instrument being rated;

- (c) that such rating was an independent evaluation of the risks and merits of the rated entity, security or financial instrument.

#### **8. Monitoring, surveillance and updating**

(1) A credit rating agency must ensure that adequate personnel and financial resources are allocated to monitoring, surveilling and updating its ratings; except for ratings that clearly indicate they do not entail ongoing monitoring and surveillance.

(2) Once a rating which requires ongoing monitoring and surveillance is published the credit rating agency must monitor and surveil the rating on an ongoing basis and update the rating by-

- (a) regularly reviewing the rated entity's creditworthiness;
- (b) initiating a review of the status of the rating upon becoming aware of any information that might reasonably be expected to result in a rating action, including termination of a rating; and
- (c) updating on a timely basis the rating, as appropriate, based on the results of such review.

(3) A credit rating agency must ensure that subsequent monitoring and surveillance incorporates all cumulative experience obtained. The credit rating agency must apply changes in ratings criteria and assumptions where appropriate to initial ratings, existing ratings and subsequent ratings.

(4) If a credit rating agency uses separate analytical teams for determining initial ratings and for subsequent monitoring and surveillance of structured finance instruments, each team must have the requisite level of expertise and resources to perform their respective functions in a timely manner.

(5) Where a credit rating agency makes its ratings available to the public, the credit rating agency must publicly announce if it discontinues rating a rated entity, security or financial instrument and give reasons for the decision.

(6) Where a credit rating agency's ratings are provided only to its subscribers, the credit rating agency must announce to its subscribers if it discontinues rating a rated entity, security or financial instrument.

(7) In the circumstances referred to in either sub-paragraph (5) or (6), future continuing publications of the discontinued rating must indicate the date the rating was last updated and the fact that the rating is discontinued.

(8) A credit rating agency must establish internal arrangements to monitor the impact of changes in macroeconomic or financial market conditions on credit ratings.

### 9. Integrity of the rating process

(1) A credit rating agency and its employees may not, either implicitly or explicitly, give any assurance or guarantee of a particular rating prior to a rating analysis being undertaken and completed. This does not preclude a credit rating agency from developing prospective assessments used in structured finance instruments and similar transactions.

(2) A credit rating agency must record all instances where in its credit rating process, it departs from existing credit ratings prepared by another credit rating agency with respect to underlying assets or structured finance instruments and must provide a justification for the differing assessment.

(3) When methodologies, models or key rating assumptions used in credit rating activities are changed a credit rating agency must-

- (a) immediately, using the same means of communication as used for the distribution of the affected credit ratings, disclose the likely scope of the credit ratings to be affected;
- (b) review the affected credit ratings as soon as possible but by no later than six months after the change and in the interim, place those ratings under observation; and
- (c) re-rate all affected credit ratings that have been based on those methodologies, models or key rating assumptions.

(4) A credit rating agency must notify a rated entity at least one business day prior to issuing or revising a credit rating, and-

- (a) inform the rated entity of the critical information and principal considerations upon which a rating will be based and afford the rated entity an opportunity to clarify any likely factual misperceptions or errors or other matters that the agency should be made aware of in order to produce an accurate rating; and
- (b) duly evaluate the response from the rated entity.

## PART V PRESENTATION OF CREDIT RATINGS

### 10. Presentation of credit ratings

(1) A credit rating agency must ensure that a credit rating states clearly and prominently the name and job title of the lead analyst in a given credit rating activity and the name and position of the person primarily responsible for approving the credit rating.

(2) In its presentation of a credit rating, a credit rating agency must ensure that-

- (a) all substantially material sources, including the rated entity or issuer or, where appropriate, a related third party, which were used to prepare the credit rating

are indicated together with an indication as to whether the credit rating has been disclosed to that rated entity or its related third party and amended following that disclosure before being issued;

- (b) the principal methodology or version of methodology that was used in determining the rating is clearly indicated, with a reference to its comprehensive description;
  - (c) where the credit rating is based on more than one methodology, or where reference only to the principal methodology might cause investors to overlook other important aspects of the credit rating, including any significant adjustments and deviations, it explains this fact in the credit rating issued and indicates how the different methodologies or these other aspects are taken into account in the credit rating;
  - (d) the meaning of each rating category, the definition of default or recovery and any appropriate risk warning, including a sensitivity analysis of the relevant key rating assumptions, such as mathematical or correlation assumptions used in its credit rating activities as well as any material changes to these, is clearly explained;
  - (e) the date on which the credit rating was first released for distribution and when it was last updated is indicated clearly and prominently; and
  - (f) information is given as to whether the credit rating concerns a newly issued security or financial instrument and whether it is rating the security or financial instrument for the first time.
- (3) A credit rating agency must clearly and prominently state any attributes and limitations of the credit rating when publishing credit ratings.
- (4) A credit rating agency must prominently state when disclosing any credit rating whether it considers the quality of information available on the rated entity satisfactory and to what extent it has verified information provided to it by the rated entity or its related third party.
- (5) If a credit rating involves a type of rated entity or security or financial instrument for which historical data is limited, the credit rating agency must make such limitations of the credit rating clear, in a prominent place.
- (6) In a case where the lack of reliable data or the complexity of the structure of a new type of security or financial instrument or the quality of information available is not satisfactory or raises serious questions as to whether a credit rating agency can provide a credible credit rating, the credit rating agency must refrain from issuing a credit rating or withdraw an existing credit rating.

(7) When announcing a credit rating, a credit rating agency must explain in its press releases or reports and on its website the key elements underlying the credit rating.

(8) A credit rating agency must indicate with each of its published ratings when the rating was last updated.

(9) A credit rating agency may not use the name of any relevant authority in a manner that would indicate or suggest endorsement or approval by that authority of the credit ratings or any credit rating activities of the credit rating agency.

(10) A credit rating agency must ensure that published credit ratings and reports contain details of definitions and a glossary of all terms and acronyms used in the publication.

(11) Except for the requirements of sub-paragraph (10) above; where the information required to be disclosed would be disproportionate in relation to the length of the report distributed, the credit rating agency must make clear and prominent reference in the report itself to the place where such disclosures can be directly and easily accessed, including a direct web link to the disclosure on an appropriate website of the credit rating agency.

## **PART VI ADDITIONAL OBLIGATIONS IN RELATION TO CREDIT RATINGS OF STRUCTURED FINANCE INSTRUMENTS**

### **11. Structured finance instruments**

(1) Where a credit rating agency rates a structured finance instrument, it must provide in the published credit rating report all information about loss and cash-flow analysis it has performed or is relying upon and an indication of any expected change in the credit rating.

(2) (a) A credit rating agency must disclose in the credit rating what level of assessment it has performed concerning the due diligence processes carried out at the level of the underlying security or financial instruments or other assets of structured finance instruments.

(b) A credit rating agency must disclose whether it has undertaken any assessment of such due diligence processes or whether it has relied on a third-party assessment, indicating how the outcome of such assessment impacts on the credit rating.

(c) Where third-party due diligence services are employed by a credit rating agency, such agency must, at the time it produces a credit rating, disclose any certifications from providers of such third-party due diligence services to

the public in a manner that allows the public to determine the adequacy and level of due diligence services provided by the third-party.

(3) (a) Where a credit rating agency issues credit ratings of structured finance instruments, it must accompany the disclosure with details of methodologies, models and key rating assumptions with clear and easily comprehensible guidance which explains assumptions, parameters, limits and uncertainties surrounding the models and rating methodologies used in such credit ratings, including simulations of stress scenarios undertaken by the agency when establishing the ratings.

(b) Where external data or information is used the credit rating agency must identify sources of the key elements of the external data and information underlying its credit rating.

(4) A credit rating agency must disclose, on an ongoing basis, information about all structured finance instruments submitted to it for its initial review or for preliminary rating. Such disclosure must be made quarterly whether or not an entity enlists the services of the credit rating agency for a final rating.

(5) A credit rating agency must assess whether existing methodologies and models for determining credit ratings of structured finance instruments are appropriate when the risk characteristics of the underlying assets of a structured finance instrument change materially.

(6) In cases where the complexity or structure of a new type of structured finance instrument or the lack of robust data about the assets underlying the structured finance instrument raise serious questions as to whether a credit rating agency can determine a credible credit rating for the rated entity, the credit rating agency must refrain from issuing a credit rating.

(7) Where a credit rating agency rates a structured finance instrument, it must provide investors and subscribers with sufficient information on the transaction so that an investor intending to invest in the product can understand the basis for the agency's rating.

(8) A credit rating agency must disclose how sensitive the rating of a structured finance instrument is to changes in the agency's underlying rating assumptions.

## **PART VII DISCLOSURE AND RECORD KEEPING**

### **12. Additional disclosures**

A credit rating agency must annually disclose to the registrar the following information-

- (a) For credit ratings during the reporting period-
  - (i) total number of credit ratings;
  - (ii) total number of new credit ratings;
  - (iii) total number of credit ratings withdrawn;
  - (iv) rating scale used;
  - (v) name of the rated entity;
  - (vi) category of credit rating;
  - (vii) current credit rating;
  - (viii) in the case of a new credit rating, information on whether a previous credit rating was assigned;
  - (ix) if a credit rating has changed during the reporting period, the reason for the change in the credit rating; and
  - (x) if a credit rating has been withdrawn, the reason for withdrawal of the credit rating.
- (b) Any material modification of its systems, resources or procedures.
- (c) A list of the ancillary services it has provided to a rated entity or any related third party.

### 13. Record-keeping

(1) A credit rating agency must arrange for records to be kept of all significant threats to the independence of the credit rating activities, including those pertaining to the rules on analysts, as well as the safeguards applied to mitigate those threats.

(2) A credit rating agency must maintain the internal records and audit trails which support its credit ratings for at least five years. The internal records must be made available to the registrar on request.

(3) A credit rating agency must in accordance with section 14 of the Act, keep at least the following records:

- (a) For each credit rating decision:-
  - (i) the identity of the analysts participating in the determination of the credit rating;
  - (ii) the identity of the persons who have approved the credit rating;

- (iii) information as to whether the credit rating was solicited or unsolicited;  
and
- (iv) the date on which the credit rating action was taken.
- (b) The account records relating to fees received from any rated entity, related third party or any user of ratings.
- (c) The account records for each subscriber to the credit ratings or related services.
- (d) The records documenting the established procedures and methodologies used by the credit rating agency to determine credit ratings.
- (e) The internal records and files, including non-public information and work papers, used to form the basis of any credit rating decision taken.
- (f) Credit analysis reports, credit assessment reports, private credit rating reports and internal records, including non-public information and working papers, used to form the basis of the credit rating expressed in such reports.
- (g) Records of the procedures and measures implemented by the credit rating agency to comply with the Act and these Rules.
- (h) Copies of internal and external communications, including electronic communications received and sent by the credit rating agency and its employees which relate to credit rating activities.
- (i) Details of telephone calls made and received that relate to credit rating activities.

(4) A credit rating agency must retain the agreement to provide credit rating services which sets out the respective rights and obligations of the agency and the rated entity or its related third parties for three years after the termination of the relationship with that rated entity or its related third parties.

(5) Where the registration of a credit rating agency is cancelled, the agency must, with the approval of the registrar, make appropriate arrangements to keep the records for an additional term of at least three years.

## **PART VIII ADVERTISING**

### **14. Advertising**

A credit rating agency must ensure that its advertising material-

- (a) is not misleading;
- (b) includes content where fact is discernable from opinion; and



- (c) includes references to its source and date, if the advertisement contains performance data (including awards and rankings).

## **PART IX GUARANTEE AND INSURANCE COVER**

### **15. Guarantee and insurance cover**

A credit rating agency must maintain appropriate guarantees or professional indemnity or fidelity insurance cover to mitigate the risks inherent in its business.

## **PART X CONTROL AND PROHIBITION OF INCENTIVES**

### **16. Incentives**

A credit rating agency or any person acting on its behalf must have a gift policy in place and take reasonable steps to ensure that its rating analysts do not offer, give, solicit or accept any gift, incentive, remuneration or consideration to or from any person with whom the agency does business, other than remuneration in the ordinary course of business.

## **PART XI RESPONSIBILITIES TO INVESTORS AND THE PUBLIC**

### **17. General duties of credit rating agencies**

(1) A credit rating agency must at all times render credit rating services honestly, fairly, with due skill and diligence and in the interest of the integrity of the credit rating services industry.

(2) A credit rating agency and its employees must deal fairly and honestly with rated entities, investors, other market participants and the public.

(3) A credit rating agency may not request or induce, in any manner, a rated entity or investor to waive any right or benefit conferred on the rated entity or investor by or in terms of the Act and these Rules, or recognise, accept or act on any such waiver by the rated entity or investor, and any such waiver is null and void.

(4) Upon becoming aware that another employee or entity related to the credit rating agency is or has engaged in conduct that is illegal, unethical or contrary to the credit rating agency's code of conduct, the Act or these Rules, a credit rating agency employee must report such information immediately to the compliance officer or an officer of the credit rating agency, as appropriate.

(5) A credit rating agency may not subject an analyst or an employee of the credit rating agency, who in good faith has made a report as contemplated in sub-paragraph (4), to

occupational detriment, including being subjected to any disciplinary action or otherwise being adversely affected in respect of his or her employment, profession or office.

#### **18. Transparency and timeliness of credit rating disclosures**

(1) A credit rating agency must distribute its credit rating decisions in a timely manner.

(2) A credit rating agency must publicly disclose its policies for distributing credit ratings, reports and updates.

(3) A credit rating agency must disclose to the public, on a non-selective basis and free of charge, any credit rating regarding publicly issued securities, or public rated entities, as well as any subsequent decisions to discontinue such a credit rating, if the rating action is based in whole or in part on material non-public information.

(4) A credit rating agency must publish sufficient information about its procedures, methodologies and assumptions (including financial statement adjustments that deviate materially from those contained in the rated entity's published financial statements and a description of the rating committee process, if applicable) so that outside parties can understand how a credit rating was arrived at by the agency. This information must include, but not be limited to, the meaning of each rating category, rating outlook and the definition of default or recovery and the time horizon the agency used when making a rating decision.

(5) A credit rating agency must differentiate credit ratings of structured finance instruments from other ratings, through a different rating symbol and the credit rating agency must disclose how this differentiation functions.

(6) A credit rating agency must clearly define a given rating scale and symbol and apply it in a consistent manner for all types of credit ratings to which that rating scale or symbol is assigned.

(7) Where a credit rating agency discloses the data contemplated in section 13(2) of the Act, and the nature of the rating or other circumstances make a historical default rate inappropriate, statistically invalid, or otherwise likely to mislead the users of the rating, the agency must publicly explain this.

(8) The information contemplated in section 13(2) of the Act that a credit rating agency must disclose, must include-

- (a) verifiable, quantifiable and historical information about the performance of its credit ratings, organised and structured, and, where possible, standardised in such a way to assist investors in drawing performance comparisons between different credit rating agencies;

- (b) an indication whether the default rates of these categories have changed over time; and
- (c) the credit ratings transition frequency.

(9) A credit rating agency must disclose for each credit rating if the issuer participated in the rating process and whether the credit rating agency had access to the accounts, financial records and other relevant internal documents of the rated entity or its related third parties.

(10) A credit rating agency must disclose its policies and procedures regarding unsolicited credit ratings.

(11) When a credit rating agency issues an unsolicited credit rating, it must disclose that fact and indicate whether the rated entity participated in the rating process and whether the agency had access to the accounts, financial records and other relevant internal documents of the rated entity or its related third parties.

(12) Material modifications of a credit rating agency's practices, procedures, processes, methodologies, models and key rating assumptions as contemplated in section 13(1)(a) of the Act must be disclosed prior to their going into effect.

#### **19. Confidential information**

(1) A credit rating agency must adopt procedures and mechanisms to comply with section 7(f)(ii) of the Act to protect the confidential nature of information shared with it by issuers under the terms of a confidentiality agreement or otherwise under a mutual understanding that the information is shared confidentially.

(2) Unless otherwise permitted by the confidentiality agreement and consistent with applicable laws or regulations, a credit rating agency or an employee of the agency may not disclose confidential information-

- (i) in press releases;
- (ii) through research conferences;
- (iii) to future employers; and
- (iv) in conversations with investors, other issuers, or other persons.

(3) A credit rating agency may use confidential information only for purposes related to its rating activities or otherwise in accordance with any confidentiality agreements with the issuer.

(4) A credit rating agency must take all reasonable measures to protect all property and records belonging to or in possession of the credit rating agency from fraud, theft or misuse.

(5) A credit rating agency must prohibit its employees from engaging in transactions in securities or financial instruments when such employees have access to confidential information concerning the issuer of such security or financial instrument.

(6) In preservation of confidential information, a credit rating agency employee must familiarise him or herself with the internal securities and financial instruments trading policies maintained by his or her employer, and the credit rating agency must periodically ensure that its employees certify their compliance as required by its policies.

(7) A credit rating agency employee may not use or share confidential information for the purpose of trading securities, or for any other purpose except for the conduct of the agency's business.

(8) A credit rating agency must ensure that it has adopted policies to mitigate against the risk of an employee-

- (a) selectively disclosing any non-public information about credit ratings or possible future rating actions of the credit rating agency, except to the issuer or its designated agents;
- (b) sharing confidential information entrusted to the credit rating agency with employees of affiliated entities; and
- (c) sharing confidential information within the credit rating agency, except if required for the performance of his or her duties.

## **20. Short title and commencement**

These Rules are called Credit Rating Agency Rules and take effect on the date of publication thereof.