INCLUDES COMMENT LETTERS

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice and Request for Comment Relating to Designated Rating Organizations

Proposed Amendments to National Instrument 25-101 *Designated Rating Organizations*, National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, National Instrument 33-109 *Registration Information*, National Instrument 41-101 *General Prospectus Requirements*, National Instrument 44-101 *Short Form Prospectus Distributions*, National Instrument 44-102 *Shelf Distributions*, National Instrument 45-106 *Prospectus Exemptions*, National Instrument 51-102 *Continuous Disclosure Obligations*, National Instrument 81-102 *Investment Funds* and National Instrument 81-106 *Investment Fund Continuous Disclosure*

and

Proposed Changes to Companion Policy 21-101CP *Marketplace Operation* and Companion Policy 81-102CP *Investment Funds*

July 6, 2017

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period proposed amendments (the **Proposed Amendments**) to:

- National Instrument 25-101 *Designated Rating Organizations* (**NI 25-101**),
- National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**),
- National Instrument 33-109 *Registration Information* (**NI 33-109**),
- National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**),
- National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**),
- National Instrument 44-102 *Shelf Distributions* (**NI 44-102**),
- National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**),

- National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**),
- National Instrument 81-102 *Investment Funds* (**NI 81-102**), and
- National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**).

We are also publishing for a 90-day comment period proposed changes (the **Proposed Changes**) to:

- Companion Policy 21-101CP *Marketplace Operation* (**21-101CP**), and
- Companion Policy 81-102CP *Investment Funds* (**81-102CP**).

The Proposed Amendments and the Proposed Changes relate to designated rating organizations (**DROs**) and credit ratings of DROs.

The text of the Proposed Amendments and the Proposed Changes is contained in Annexes C to N of this notice and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
nssc.novascotia.ca
www.fcnb.ca
www.osc.gov.on.ca
www.sfsc.gov.sk.ca
www.msc.gov.mb.ca

Substance and Purpose

The Proposed Amendments and the Proposed Changes consist of the following:

1. Proposed Amendments relating to EU equivalency and IOSCO Code revision

We propose to amend NI 25-101 to reflect new requirements for credit rating organizations in the European Union (**EU**) that must be included in NI 25-101 by June 1, 2018 in order for:

- the EU to continue to recognize the Canadian regulatory regime as "equivalent" for regulatory purposes in the EU (**EU equivalency**), and
- credit ratings of a Canadian office of a DRO to continue to be used for regulatory purposes in the EU.

We also propose to amend NI 25-101 to reflect new provisions in the March 2015 version of the IOSCO *Code of Conduct Fundamentals for Credit Rating Agencies* (the **IOSCO Code**) of the International Organization of Securities Commissions (**IOSCO**). Since NI 25-101 is based on the previous version of the IOSCO Code, we want to continue to be able to represent that NI 25-101 reflects the IOSCO Code.

2. Proposed Amendments and Proposed Changes relating to Kroll application for designation as a DRO and Other Matters

As discussed in greater detail in the "Background" section of this notice, Kroll Bond Rating Agency, Inc. (**Kroll**) has filed an application for designation as a DRO.

We propose to amend NI 44-101 and NI 44-102 to recognize credit ratings of Kroll, but only for the purposes of the alternative eligibility criteria in section 2.6 of NI 44-101 and section 2.6 of NI 44-102 for issuers of asset-backed securities (**ABS**) to file a short form prospectus or shelf prospectus, respectively (the **ABS Short Form Eligibility Criteria**).

The Proposed Amendments and Proposed Changes also address the following matters (the **Other Matters**):

- To ensure that Kroll credit ratings are only recognized for purposes of the ABS Short Form Eligibility Criteria, we propose to include clarifying language in provisions of NI 31-103, NI 33-109, NI 41-101, NI 45-106, NI 81-102, NI 81-106 and 21-101CP that refer to DROs or credit ratings of DROs.
- We have included certain "housekeeping" revisions in the Proposed Amendments and the Proposed Changes.

Background

1. Proposed Amendments relating to EU equivalency and IOSCO Code revision

EU equivalency

We propose to amend NI 25-101 to reflect new EU requirements that must be included in NI 25-101 by June 1, 2018 in order to maintain EU equivalency.

The EU regulation on credit rating agencies (the **EU CRA Regulation**) allows credit ratings issued outside the EU to be used for regulatory purposes in the EU when they are issued by certified credit rating agencies or endorsed by credit rating agencies established in the EU. As the legal and supervisory framework for DROs in NI 25-101 has been deemed as stringent as the EU framework by the European Securities and Markets Authority (**ESMA**) and equivalent by the European Commission (**EC**) pursuant to an EC implementing decision of October 5, 2012, both mechanisms are currently operational in respect of credit ratings of a Canadian office of a DRO.

In 2013, the EU CRA Regulation was amended to include a range of new requirements. While some of these new requirements are explicitly excluded from the assessment of EU equivalency, ESMA and the EC are required to ensure that the remaining provisions are taken into account for their past EU equivalency decisions. The entry into force of these new requirements for the purposes of EU equivalency is June 1, 2018.

IOSCO Code revision

We also propose to amend NI 25-101 to reflect new provisions in the IOSCO Code.

The IOSCO Code offers a set of robust measures as a framework for credit rating organizations to protect the integrity of the rating process, ensure that investors and issuers are treated fairly, and safeguard confidential material information provided to credit rating organizations by issuers. In March 2015, the IOSCO Code was revised to include new provisions.

Since NI 25-101 is based on the previous version of the IOSCO Code, we want to continue to be able to represent that NI 25-101 reflects the IOSCO Code.

2. Proposed Amendments and Proposed Changes relating to Kroll application for designation as a DRO and Other Matters

Kroll application

Currently, there are four DROs in Canada: S&P Global Ratings Canada (**S&P**), Moody's Canada Inc. (**Moody's**), Fitch Ratings, Inc. (**Fitch**) and DBRS Limited (**DBRS**).

Kroll has filed an application for designation as a DRO. The Ontario Securities Commission (**OSC**) is the principal regulator for the Kroll application.

Kroll's application is significant and novel since it is the first designation application from a credit rating organization whose credit ratings have:

- not previously been referred to in CSA rules and policies, and
- not generally been used in the Canadian marketplace.

Kroll mainly operates in the United States, where it is registered as a "nationally recognized statistical rating organization" with the United States Securities and Exchange Commission.

Regulatory approach to Kroll application

Under applicable securities legislation, the OSC can only make a designation for the purpose of allowing an applicant credit rating organization (a **DRO Applicant**) to satisfy:

- a requirement in securities law that a credit rating be given by a DRO, or
- a condition for an exemption under securities law that a credit rating be given by a DRO,

(collectively, **Credit Rating Provisions**).

The Credit Rating Provisions serve a "minimum standards" function by establishing minimum levels of credit quality of securities for certain regulatory purposes (e.g., the availability of an exemption or an alternative process in a rule). The Credit Rating Provisions currently refer to specific credit ratings of the four existing DROs. It is therefore appropriate for the principal regulator to consider whether a DRO Applicant's credit ratings can satisfy this minimum standards function for specific Credit Rating Provisions.

This requires the principal regulator to consider the following as part of its designation decision:

- whether the Applicant DRO has sufficient experience and expertise in rating the particular types of securities and issuers covered by specific Credit Rating Provisions; and
- the appropriate credit rating level for the specific Credit Rating Provisions.

As a result, the principal regulator should only make its final designation order in conjunction with appropriate rule and policy amendments being made to the relevant Credit Rating Provisions.

Analysis of Kroll application

Based on the information provided by Kroll, it appears that Kroll has sufficient expertise and experience in rating ABS for purposes of the ABS Short Form Eligibility Criteria. Consequently,

subject to confirmation and completion of certain matters, staff anticipate recommending that Kroll be designated as a DRO, but only:

- for the purposes of the ABS Short Form Eligibility Criteria, and
- if the Proposed Rule Amendments and Policy Changes are enacted as final rule amendments and policy changes and those amendments and changes come into effect following Ministerial approval of the rule amendments.

At this time, staff do not anticipate recommending that Kroll be designated as a DRO for purposes of other Credit Rating Provisions.

Appropriate rating categories of Kroll for ABS Short Form Eligibility Criteria

Based on the information provided by Kroll, it appears that a Kroll long term credit rating of "BBB" and a Kroll short term credit rating of "K3" are the appropriate rating categories for purposes of the ABS Short Form Eligibility Criteria.

- Under the ABS Short Form Eligibility Criteria, an ABS issuer must have a "designated rating" from a DRO, which would include a long term credit rating at or above "BBB" (for DBRS, Fitch and S&P) or "Baa" (for Moody's).
- As part of its work in determining the appropriate rating categories of Kroll, staff compared a large number of credit ratings of Kroll for numerous ABS issuers in the United States against those of DBRS, Fitch, S&P and Moody's for the same issuers. This work allowed staff to consider whether Kroll regularly gave higher or lower credit ratings than its competitors.
- Staff considered the experience of Kroll in rating ABS issuers in the United States to be relevant in determining the appropriate rating categories of Kroll for purposes of the ABS Short Form Eligibility Criteria.

Summary of the Proposed Amendments and Proposed Changes

1. Proposed Amendments relating to EU equivalency and IOSCO Code revision

Annex A sets out a summary of the Proposed Amendments relating to EU equivalency and the IOSCO Code revision.

2. Proposed Amendments and Proposed Changes relating to Kroll application for designation as a DRO and Other Matters

Annex B sets out a summary of the Proposed Amendments and Proposed Changes relating to the Kroll application for designation as a DRO and the Other Matters.

Impact on Investors

1. Proposed Amendments relating to EU equivalency and IOSCO Code revision

If the Proposed Amendments relating to EU equivalency and the IOSCO Code revision are enacted, investors may benefit from the additional safeguards in NI 25-101 that DROs will be required to follow. In particular, the Proposed Amendments will provide additional safeguards for protecting the integrity of the rating process, ensuring that investors and issuers are treated fairly, and safeguarding confidential material information provided to DROs by issuers.

2. Proposed Amendments and Proposed Changes relating to Kroll application for designation as a DRO and Other Matters

If the Proposed Amendments and Proposed Changes relating to the Kroll application for designation as a DRO are enacted and Kroll is designated as a DRO for purposes of the ABS Short Form Eligibility Criteria, Kroll may increase its presence in the Canadian marketplace and more investors in Canada may use Kroll's credit ratings.

The Proposed Amendments and Proposed Changes do not detract from (or contradict) past CSA efforts to help ensure that investors are cautioned about undue mechanistic reliance on credit ratings and the limits of credit ratings. In particular, under existing prospectus and continuous disclosure rules, reporting issuers are required to provide disclosure (including cautionary statements) about the attributes and limitations of their credit ratings.

Anticipated Costs and Benefits

1. Proposed Amendments relating to EU equivalency and IOSCO Code revision

The benefits of the Proposed Amendments relating to EU equivalency and the IOSCO Code revision include the following:

- Issuers and investors may benefit from the additional safeguards in NI 25-101 that DROs will be required to follow. In particular, the Proposed Amendments will provide additional safeguards for protecting the integrity of the rating process, ensuring that investors and issuers are treated fairly, and safeguarding confidential material information provided to DROs by issuers.
- DROs, issuers and investment dealers will benefit if EU equivalency is maintained so that credit ratings of a Canadian office of a DRO can continue to be used for regulatory purposes in the EU. Continued EU equivalency is important for Canadian issuers that pay for such a credit rating and sell their rated securities to EU investors, investment dealers that structure cross-border transactions involving rated securities of Canadian issuers on the basis of EU equivalency, and institutional investors that use such a credit rating for regulatory purposes in the EU.

DROs will incur costs associated with understanding and complying with the new requirements. One-time start-up costs include:

- a DRO revising its code of conduct to comply with the new requirements in Appendix A of NI 25-101;
- a DRO revising its existing policies and procedures, or developing new policies and procedures, to comply with the new requirements.

However, we understand that:

- certain DROs have already revised their codes of conduct, revised existing policies and procedures and developed new policies and procedures to comply with new provisions in the March 2015 version of the IOSCO Code; and
- certain DROs, or their DRO affiliates that operate in the EU, have policies and procedures that comply with the new EU requirements.

2. Proposed Amendments and Proposed Changes relating to Kroll application for designation as a DRO and Other Matters

In terms of potential benefits to Kroll and other market participants, if the Proposed Amendments and Proposed Changes relating to the Kroll application for designation as a DRO come into effect and Kroll is designated as a DRO for purposes of the ABS Short Form Eligibility Criteria:

- More ABS issuers may retain Kroll to rate their ABS.
- Issuers, investment dealers and institutional investors may have an increased choice of DROs and competition among DROs may increase.

Market participants will need to understand and comply with the new provisions.

"Rating shopping" may occur if an issuer seeks to retain those credit rating organizations that are more likely to provide the most favourable credit ratings of the issuer and its securities. There may be an increased potential for rating shopping by ABS issuers from the Proposed Amendments.

Local Matters

Where applicable, Annex P provides additional information required by the local securities legislation.

Request for Comments

We welcome your comments on the Proposed Amendments and the Proposed Changes. In addition to any general comments you may have, we also invite comments on the following specific questions:

1. Do you agree that a Kroll long term credit rating of "BBB" and a Kroll short term credit rating of "K3" would be the appropriate rating categories for purposes of the ABS Short Form Eligibility Criteria?

2. We have considered the experience of Kroll in rating ABS issuers in the United States in determining the appropriate rating categories of Kroll for purposes of the ABS Short Form Eligibility Criteria. Do you agree that this U.S. experience is relevant to the Canadian marketplace?

3. Do you think there is an increased potential for rating shopping by ABS issuers if the Proposed Amendments are implemented? If so, why or why is that a concern?

4. What would be the implications to Canadian market participants if the EU did not continue to recognize the Canadian regulatory regime in NI 25-101 as "equivalent" for regulatory purposes in the EU? We are interested in details of how you would be impacted.

How to Provide Comments

Please submit your comments in writing on or before **October 4, 2017**. If you are not sending your comments by email, an electronic file containing the submissions should also be provided (in Microsoft Word format).

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other participating CSA.

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comment@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Contents of Annexes

This notice includes the following annexes:

- Annex A sets out a summary of the Proposed Amendments relating to EU equivalency and the IOSCO Code revision,
- Annex B sets out a summary of the Proposed Amendments and Proposed Changes relating to the Kroll application for designation as a DRO and the Other Matters,
- Annex C sets out the Proposed Amendments to NI 25-101,
- Annex D sets out the Proposed Amendments to NI 31-103,
- Annex E sets out the Proposed Amendments to NI 33-109,
- Annex F sets out the Proposed Amendments to NI 41-101,
- Annex G sets out the Proposed Amendments to NI 44-101,
- Annex H sets out the Proposed Amendments to NI 44-102,
- Annex I sets out the Proposed Amendments to NI 45-106,
- Annex J sets out the Proposed Amendments to NI 51-102,
- Annex K sets out the Proposed Amendments to NI 81-102,
- Annex L sets out the Proposed Amendments to NI 81-106,
- Annex M sets out the Proposed Change to 21-101CP, and
- Annex N sets out the Proposed Change to 81-102CP.

Certain jurisdictions may set out, in Annex O, a full text version of NI 25-101 that includes the Proposed Amendments, blacklined to show the changes from the current version of NI 25-101.

Where applicable, Annex P provides additional information relevant for local jurisdictions.

Questions

Please refer your questions to any of the following:

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Annex A

Summary of Proposed Amendments
Relating to EU Equivalency and IOSCO Code Revision

This Annex summarizes the Proposed Amendments to NI 25-101, including the Proposed Amendments to:

- Appendix A *Provisions Required to be Included in a Designated Rating Organization's Code of Conduct* (**Appendix A to NI 25-101**), and
- Form 25-101F1 *Designated Rating Organization Application and Annual Filing* (**Form 25-101F1**).

1. EU equivalency

The Proposed Amendments to NI 25-101 relating to EU equivalency are summarized as follows:

Credit ratings and rating outlooks
We added a definition of "rating outlook" in section 1 of NI 25-101 and included references to "rating outlooks" in appropriate provisions in NI 25-101 and Appendix A to NI 25-101.

We also included requirements providing that:

- A DRO must provide additional disclosure in respect of credit ratings or rating outlooks (sections 4.13.1 and 4.13.2 of Appendix A to NI 25-101).
- A DRO must inform an issuer of a credit rating or rating outlook during the business hours of the issuer (section 4.12 of Appendix A to NI 25-101).

Initial reviews and preliminary ratings
We revised the disclosure requirement in section 4.7 of Appendix A to NI 25-101 so that it also applies to initial reviews and preliminary ratings for debt securities.

Rating categories
We included additional requirements regarding rating categories (section 4.14 of Appendix A to NI 25-101).

Rating methodologies
We included requirements providing that:

- A DRO must take certain actions where it becomes aware of errors in a rating methodology or its application, if those errors could have an impact on its credit ratings (section 2.12.1 of Appendix A to NI 25-101).
- A DRO must make any changes to credit ratings in accordance with the DRO's published rating methodologies (section 2.13.1 of Appendix A to NI 25-101).
- A DRO must include certain guidance when disclosing methodologies, models and key rating assumptions (section 4.8.1 of Appendix A to NI 25-101).
- A DRO must publish, for comment, proposed changes to its rating methodologies (sections 4.15.1 and 4.15.2 of Appendix A to NI 25-101).

Significant security holders
We added a definition of "significant security holder" in section 1 of NI 25-101 and included requirements regarding a significant security holder of a DRO or an affiliate that is a parent of a DRO (paragraph 2.20(d) and section 3.6.1 of Appendix A to NI 25-101).

Treatment of confidential information
We added requirements regarding the treatment of confidential information (section 4.16.1 of Appendix A to NI 25-101). We revised section 4.19 of Appendix A to NI 25-101 so that it also applies to transactions by a DRO.

Internal control mechanisms
We added a requirement regarding internal control mechanisms (section 2.26 of Appendix A to NI 25-101).

Policies and procedures
We added requirements for a DRO to have additional policies and procedures to prevent and mitigate conflicts of interest and to ensure the independence of credit ratings, rating outlooks and DRO employees (section 3.11.1 of Appendix A to NI 25-101).

Fees
We added requirements regarding fees charged to rated entities (section 3.9.1 of Appendix A to NI 25-101).

Form 25-101F1
We revised:

- Item 11 of Form 25-101F1 to require disclosure of the number of ratings employees, and the number of ratings employees supervisors, allocated to credit rating activities for different asset classes.
- Item 13 of Form 25-101F1 to require additional disclosure on revenues.

We added Item 14A to Form 25-101F1, which requires a DRO or a DRO applicant to disclose its pricing policy for credit rating services and any ancillary services. Since we expect that a DRO or a DRO applicant may apply for confidentiality in respect of its pricing policy, we revised Instruction (4) to Form 25-101F1 to clarify the circumstances in which confidentiality may be granted.

2. IOSCO Code revision

The Proposed Amendments to NI 25-101 relating to the IOSCO Code revision are summarized as follows:

Credit ratings
We replaced certain references to "credible rating" with "high-quality credit rating" (section 2.7 and 2.9 of Appendix A to NI 25-101).

Novel structures
We revised section 2.8 of Appendix A to NI 25-101 so that it also applies to novel instruments, securities and entities.

We added a requirement that a DRO will not issue or maintain a credit rating for entities or securities for which it does not have appropriate information, knowledge or expertise (section 2.9 of Appendix A to NI 25-101).

Rating methodologies
We revised the requirements regarding rating methodologies in section 2.2 of Appendix A to NI 25-101.

Discontinued credit ratings
We revised section 2.15 of Appendix A to NI 25-101 to clarify when a DRO must disclose that it has discontinued a credit rating.

Prospective assessments
We revised section 2.19 of Appendix A to NI 25-101 to clarify when a DRO may develop prospective assessments.

Books and records
We added a requirement that a DRO must keep books and records and other documents that are sufficiently detailed to reconstruct the credit rating process for any credit rating action (subsection 13(1.1) of NI 25-101).

Integrity of the rating process
We revised section 2.18 of Appendix A to NI 25-101 to include a reference to ethical behaviour.

We added a requirement that a DRO and its employees must not make promises or threats to influence rated entities or other market participants to pay for credit ratings or other services (section 2.19.1 of Appendix A to NI 25-101).

Independence and conflicts of interest
We revised:

- Section 3.1 of Appendix A to NI 25-101 to add the phrase “or unnecessarily delay”.
- Section 3.5 of Appendix A to NI 25-101 to add the phrase “and, if practicable, physically”.
- Section 3.11 of Appendix A to NI 25-101 to add the phrase “or to develop or modify methodologies that apply to that entity”.
- Section 3.14 of Appendix A to NI 25-101 to clarify and enhance certain requirements.

We added requirements that:

- A DRO must disclose why it believes that its ancillary services do not present a conflict of interest with its credit rating activities (section 3.5 of Appendix A to NI 25-101).
- If an actual or potential conflict of interest is unique or specific to a credit rating action with respect to a particular rated entity or related entity, the conflict of interest must be

disclosed in the same form and through the same means as the relevant credit rating action (section 3.8 of Appendix A to NI 25-101).

Transparency and timeliness of ratings disclosure and other disclosure

We revised section 4.10 of Appendix A to NI 25-101 so that:

- A DRO must disclose the risks of relying on a credit rating to make investment or other financial decisions.
- A DRO must prepare the disclosure required by this section using plain language.
- A DRO must not
    - state or imply that a regulator or securities regulatory authority endorses its credit ratings, or
    - use its designation status to promote the quality of its credit ratings.

We revised:

- Section 4.11 of Appendix A to NI 25-101 to also require disclosure of financial statement adjustments that deviate materially from those contained in the issuer's published financial statements.
- Section 4.13 of Appendix A to NI 25-101 to clarify and enhance certain requirements.
- Section 4.15 of Appendix A to NI 25-101 to require that any disclosure of material modifications to a DRO's methodologies, models and key rating assumptions be made in a non-selective manner.

We added requirements that:

- If a DRO discloses to the public or its subscribers, any decision on a credit rating or rating outlook regarding a rated entity or the securities of a rated entity, as well as any subsequent decisions to discontinue the rating, it must do so on a non-selective basis (section 4.3.1 of Appendix A to NI 25-101).
- In each of its ratings reports in respect of a credit rating or rating outlook for a structured finance product, a DRO must disclose whether the issuer of the structured finance product has informed the DRO that it is publicly disclosing all relevant information about the product being rated or if the information remains non-public (paragraph 4.5(c) of Appendix A to NI 25-101).
- When issuing a credit rating or rating outlook, the DRO must clearly indicate the extent to which the DRO verifies information provided to it by the rated entity (section 4.10.1 of Appendix A to NI 25-101).
- If a credit rating involves a type of entity or obligation for which there is limited historical data, the DRO must disclose this fact and how it may limit the credit rating (section 4.10.1 of Appendix A to NI 25-101).
- For any credit rating or rating outlook, a DRO must be transparent with the rated entity and investors about how the rated entity or its securities are rated (section 4.10.2 of Appendix A to NI 25-101).
- A DRO's disclosures must be must be complete, fair, accurate, timely, and understandable to reasonable investors and other expected users of credit ratings (section 4.15.3 of Appendix A to NI 25-101).
- A DRO must publicly and prominently disclose, free of charge, certain information on its primary website (section 4.15.4 of Appendix A to NI 25-101).

Treatment of confidential information
We revised:

- Section 4.16 of Appendix A to NI 25-101 to require that a DRO and its DRO employees must take all reasonable measures to protect non-public information about a credit rating action, including information about a credit rating action before the credit rating or rating outlook is publicly disclosed or disseminated to subscribers.
- Section 4.18 of Appendix A to NI 25-101 to include a reference to inadvertent disclosure.

Compliance officer
We added requirements relating to a DRO's compliance officer:

- The compliance officer must be designated as an officer of the DRO, or a DRO affiliate that is a parent of the DRO, under a by-law or similar authority of the DRO or the DRO affiliate. This requirement will help ensure that the compliance officer is a senior level employee (subsection 12(1.1) of NI 25-101).
- The compliance officer must have the education, training and experience that a reasonable person would consider necessary to competently perform the activities of the compliance officer required under NI 25-101 and the DRO's code of conduct (subsection 12(1.2) of NI 25-101).
- The compliance officer must monitor and evaluate the adequacy and effectiveness of the DRO's policies, procedures and controls designed to ensure compliance with the DRO's code of conduct and securities legislation (section 2.28.2 of Appendix A to NI 25-101).

Board monitoring of compliance
We added a requirement that the board of directors of a DRO or a DRO affiliate that is a parent of the DRO must monitor the compliance by the DRO and its DRO employees with the DRO's code of conduct and with securities legislation (paragraph 2.25(e) of Appendix A to NI 25-101).

Risk management
We added requirements for a DRO to establish and maintain a risk management committee (section 2.29 of Appendix A to NI 25-101).

Treatment of complaints
We added requirements for a DRO to establish and maintain a committee charged with receiving, retaining, and handling complaints from market participants and the public (section 4.25 of Appendix A to NI 25-101).

Policies, procedures and controls
We added requirements for a DRO to have additional policies, procedures and controls, including requirements for:

- Policies, procedures and controls reasonably designed to avoid issuing a credit rating, action or report that is false or misleading as to the general creditworthiness of a rated entity or rated securities (section 2.6.1 of Appendix A to NI 25-101).
- Policies, procedures and controls to ensure that a DRO does not use the services of a DRO employee which a reasonable person would consider to be lacking in or have compromised integrity (section 2.18.1 of Appendix A to NI 25-101).

- Policies, procedures and controls reasonably designed to ensure that the DRO and its DRO employees comply with the DRO's code of conduct and securities legislation (section 2.28.1 of Appendix A to NI 25-101).
- Policies and procedures requiring DRO employees to undergo ongoing training (section 2.30 of Appendix A to NI 25-101).
- Policies, procedures and controls to identify and eliminate, or manage and disclose, as appropriate, any actual or potential conflicts of interest that may influence the credit rating methodologies, credit rating actions, or analyses by the DRO or the judgment, opinions or analysis by ratings employees (section 3.7.1 of Appendix A to NI 25-101).
- Policies, procedures and controls for distributing credit ratings, actions, updates, rating outlooks and related reports and for when a credit rating will be withdrawn or discontinued (section 4.1.1 of Appendix A to NI 25-101). Section 4.2 of Appendix A to NI 25-101 requires that a DRO must publicly disclose the policies and procedures.
- Policies, procedures and controls governing the treatment of confidential information and record-keeping (section 4.24 of Appendix A to NI 25-101).

3. Other

We also made a few "housekeeping" revisions to NI 25-101, including correcting a typographical error in the definition of "DRO affiliate" in section 1.

Annex B

Summary of Proposed Amendments and Proposed Changes Relating to Kroll Application for Designation as a DRO and Other Matters

Overview

As described earlier in this notice,

- We propose to amend NI 44-101 and NI 44-102 to recognize credit ratings of Kroll, but only for the purposes of the ABS Short Form Eligibility Criteria.
- The Proposed Amendments and Proposed Changes also address the Other Matters:
    - To ensure that Kroll credit ratings are only recognized for purposes of the ABS Short Form Eligibility Criteria, we propose to include clarifying language in provisions of NI 31-103, NI 33-109, NI 41-101, NI 45-106, NI 81-102, NI 81-106 and 21-101CP that refer to DROs or credit ratings of DROs.
    - We have included certain "housekeeping" revisions in the Proposed Amendments and the Proposed Changes.

Drafting approach

The Proposed Amendments and Proposed Changes relating to the Kroll application for designation as a DRO and the Other Matters reflect the following drafting approach:

1. We sought to primarily amend existing definitions, rather than introduce interpretative provisions.

2. In order to reduce the number of future rule amendments when we have another DRO Applicant similar to Kroll, we sought (where appropriate) to have the definitions of "designated rating" and "designated rating organization" in various rules refer to the amended definitions in NI 44-101. This approach may result in us only having to amend the definitions in NI 44-101 when we have another DRO applicant like Kroll.

3. As a housekeeping matter, we replaced references to:
    - "Fitch, Inc." with "Fitch Ratings, Inc.", and
    - "Standard & Poor's Ratings Services (Canada)" with "S&P Global Ratings Canada".

Proposed Amendments

The Proposed Amendments relating to the Kroll application for designation as a DRO and the Other Matters may be further detailed as follows:

NI 31-103[1]

We revised:

- The definition of "designated rating" to provide that it has the same meaning as in paragraph (b) of the definition of "designated rating" in NI 81-102.

[1] On July 7, 2016, the CSA published for comment proposed amendments to NI 31-103, including proposed amendments to subparagraph (a)(i) of Schedule 1 of Form 31-103F1. It is expected that these amendments will be finalized before the Proposed Amendments.

- The definition of "designated rating organization" to provide that it has the same meaning as in NI 44-101.
- Subparagraph (a)(i) of Schedule 1 of Form 31-101F1 to:
    - Include the applicable long term and short term credit ratings of DBRS and Fitch.
    - Include the applicable short term credit ratings of S&P and Moody's.

NI 33-109[2]

We revised subparagraph (a)(i) of Schedule 1 of Schedule C of Form 33-109F6 to:

- Include the applicable long term and short term credit ratings of DBRS and Fitch.
- Include the applicable short term credit ratings of S&P and Moody's.

NI 41-101

We revised:

- The definition of "designated rating" to provide that it has the same meaning as in NI 44-101.
- Section 7.2 so that the relevant provision only applies to Kroll credit ratings for a distribution of ABS.

NI 44-101

We revised the definition of "designated rating".

- Paragraph (a) of the definition applies for the ABS Short Form Eligibility Criteria and includes the applicable credit ratings of Kroll and the existing four DROs.
- Paragraph (b) of the definition applies for a security referred to in any other provision of NI 44-101 and only includes the applicable credit ratings of the existing four DROs.
- As a housekeeping matter, we replaced the reference to the applicable credit rating of Moody's for preferred shares.

We revised the definition of "designated rating organization". Paragraph (a) of the definition includes Kroll and the existing four DROs.

NI 44-102

We revised the definition of "designated rating".

- Paragraph (a) of the definition applies for the ABS Short Form Eligibility Criteria and provides that it has the same meaning as in paragraph (a) of the definition of "designated rating" in NI 44-101.
- Paragraph (b) of the definition applies for a security referred to in any other provision of NI 44-102 and provides that it has the same meaning as in paragraph (b) of the definition of "designated rating" in NI 44-101.

[2] On July 7, 2016, the CSA published for comment proposed amendments to NI 33-109, including proposed amendments to subparagraph (a)(i) of Schedule 1 of Schedule C of Form 33-109F6. It is expected that these amendments will be finalized before the Proposed Amendments.

NI 45-106
We revised:

- The definition of "designated rating" to provide that it has the same meaning as in paragraph (b) of the definition of "designated rating" in NI 81-102.
- The definition of "designated rating organization" to provide that it has the same meaning as in NI 44-101.
- Subsection 2.35(1) and section 2.35.2 to address the Other Matters.

NI 51-102
We deleted the definitions of "designated rating organization" and "DRO affiliate" since NI 51-102 no longer refers to "designated ratings" or "designated rating organizations".

NI 81-102
We revised the definition of "designated rating".

- Paragraph (a) of the definition applies for a security referred to in paragraph 4.1(4)(b) of NI 81-102 and provides that it has the same meaning as in paragraph (b) of the definition of "designated rating" in NI 44-101.
- Paragraph (b) of the definition applies for a security referred to in any other provision of NI 81-102 and only includes the applicable credit ratings of the existing four DROs.

We revised the definition of "designated rating organization" so that it only applies to the existing four DROs.

We deleted subsection 4.1(4.1) since the subject matter of that provision is covered by paragraph (a) of the definition of "designated rating" in NI 81-102.

NI 81-106
We added a definition of "designated rating" which provides that it has the same meaning as in paragraph (b) of the definition of "designated rating" in NI 81-102.

We revised subsection 1.3(2) to add the phrase "if not defined in section 1.1".

Proposed Changes
The Proposed Changes are summarized as follows:

21-101CP
We revised subsection 10.1(6) of 21-101CP to address the Other Matters. We also included definitions of "designated rating organization" and "DRO affiliate" for purposes of that subsection.

81-102CP
We deleted section 3.1 of 81-102CP. We believe that this guidance is no longer necessary since filers can apply for relief from any provision in NI 81-102.

Annex C

Proposed Amendments to
National Instrument 25-101 *Designated Rating Organizations*

1. National Instrument 25-101 Designated Rating Organizations is amended by this Instrument.

2. Section 1 is amended

(a) in the definition of "DRO affiliate", by replacing "organizations'***" with "***organization's***",***

(b) in the definition of "DRO employee", by adding "or rating outlook***" after "***credit rating***",***

(c) in the definition of "ratings employee", by adding "or rating outlook***" after "***credit rating***", and***

(d) by adding the following definitions:

"rating outlook" means an assessment regarding the likely direction of a credit rating over the short term, the medium term or both;

"significant security holder" means a person or company that has beneficial ownership of, or control or direction over, whether direct or indirect, or a combination of beneficial ownership of, and control or direction over, whether direct or indirect, securities of an issuer carrying more than 10 per cent of the voting rights attached to all of the issuer's outstanding voting securities;**.**

3. Subsection 6(4) is amended by replacing "agency***" with "***organization***".***

4. Section 12 is amended by adding the following after subsection (1):

(1.1) The compliance officer must be designated as an officer of the designated rating organization, or a DRO affiliate that is a parent of the designated rating organization, under a by-law or similar authority of the designated rating organization or the DRO affiliate.

(1.2) The compliance officer must have the education, training and experience that a reasonable person would consider necessary to competently perform the activities of the compliance officer required under this Instrument and the designated rating organization's code of conduct**..**

5. Section 13 is amended by adding the following after subsection (1):

(1.1) A designated rating organization must keep such books and records and other documents that are sufficiently detailed to reconstruct the credit rating process for any credit rating action**..**

6. Subsection 15(3) is amended by adding "*Alberta and****" before "****Ontario****".***

7. Section 2.1 of Appendix A is amended

(a) by adding "and rating outlooks***" after "***credit ratings***", and***

(b) by replacing "its rating***" with "***the applicable rating***".***

8. Section 2.2 of Appendix A is replaced with the following:

2.2 A designated rating organization must include a provision in its code of conduct that it will use only rating methodologies that are rigorous, systematic, continuous, capable of being applied consistently and subject to some means of objective validation based on historical experience, including back-testing**..**

9. Appendix A is amended by adding the following after section 2.6:

2.6.1 The designated rating organization must adopt, implement and enforce policies, procedures and controls reasonably designed to avoid issuing a credit rating, action or report that is false or misleading as to the general creditworthiness of a rated entity or rated securities**..**

10. Section 2.7 of Appendix A is replaced with the following:

2.7 The designated rating organization must ensure that it has and devotes sufficient resources to carry out and maintain high-quality credit ratings for all rated entities and rated securities. When deciding whether to rate or continue rating an entity or securities, the organization must assess whether it is able to devote sufficient personnel with sufficient skill sets to provide a high-quality credit rating, and whether its personnel are likely to have access to sufficient information needed in order to provide such a rating. A designated rating organization must adopt all necessary measures so that the information it uses in assigning a credit rating or a rating outlook is of sufficient quality to support what a reasonable person would conclude is a high-quality credit rating and is obtained from a source that a reasonable person would consider to be reliable**..**

11. Section 2.8 of Appendix A is amended

(a) by adding ", instrument, security or entity***" after "***structure***", and***

(b) by adding ", instruments, securities or entities that***" after "***structures***".***

12. Section 2.9 of Appendix A is replaced with the following:

2.9 The designated rating organization must not issue or maintain a credit rating for structures, instruments, securities or entities for which it does not have appropriate information, knowledge or expertise. The designated rating organization must assess whether the methodologies and models used for determining credit ratings of a structured finance product are appropriate when the risk characteristics of the assets underlying the structured finance product change significantly. If the quality of the available information is not satisfactory or if the complexity of a type of structure, instrument, security or entity should reasonably raise concerns about whether the designated rating organization can provide a high-quality credit rating, the designated rating organization must not issue or maintain a credit rating**..**

13. Section 2.12 of Appendix A is amended by replacing "will do each***" with "***must do all***".***

14. Appendix A is amended by adding the following after section 2.12:

2.12.1 If a designated rating organization becomes aware of errors in a rating methodology or its application, the designated rating organization must do all of the following if the errors could have an impact on its ratings:

(a) promptly notify the regulator or securities regulatory authority and all affected rated entities of the errors and explain the impact or potential impact of the errors on its ratings, including the need to review existing ratings;

(b) promptly publish a notice of the errors on its website, where the errors have an impact on its ratings;

(c) promptly correct the errors in the rating methodology or the application;

(d) apply the measures set out in paragraphs 2.12 (a) to (d) as if the correction of the error were a change contemplated by that section**..**

15. Appendix A is amended by adding the following after section 2.13:

2.13.1 A change in ratings must be made in accordance with the designated rating organization's published rating methodologies**..**

16. Section 2.15 of Appendix A is amended by replacing "will disclose***" wherever it occurs with "***must, as soon as practicable, disclose***".***

17. Section 2.18 of Appendix A is amended by adding "and ethical behaviour***" after "***high standard of integrity***".***

18. Appendix A is amended by adding the following after section 2.18:

2.18.1 A designated rating organization must adopt, implement and enforce policies, procedures and controls to ensure that it does not use of the services of a DRO employee which a reasonable person would consider to be lacking in or have compromised integrity**..**

19. The second sentence of section 2.19 of Appendix A is amended by replacing "The designated rating organization***" with "***Subject to section 2.20 and paragraph 3.7.1(d), the designated rating organization***".***

20. Appendix A is amended by adding the following after section 2.19:

2.19.1 A designated rating organization or a DRO employee must not make promises or threats to influence rated entities, related entities, other issuers, subscribers, users of the designated rating organization's credit ratings or other market participants to pay for credit ratings or other services**..**

21. Section 2.20 of Appendix A is amended

(a) in paragraph (c), by replacing "above.***" with "***above;***", and***

(b) by adding the following after paragraph (c):

(d) a significant security holder of the designated rating organization or of an affiliate that is a parent of the designated rating organization**..**

22. Section 2.22 of Appendix A is amended by adding "or a rating outlook***" after "***credit rating***" wherever it occurs.***

23. Section 2.23 of Appendix A is amended

(a) by adding "or rating outlook***" after "***credit rating***",***

(b) by replacing "specific rating***" with "***specific credit rating or rating outlook***", and***

(c) by replacing "outcome of the rating***" with "***outcome of the credit rating or rating outlook***".***

24. Section 2.25 of Appendix A is amended

(a) by adding "all of***" after "***monitor***",***

(b) in paragraph (d), by replacing "section 2.11.***" with "***section 2.11;***", and***

(c) by adding the following after paragraph (d):

(e) the compliance by the designated rating organization and its DRO employees with the organization's code of conduct and with securities legislation**..**

25. Section 2.26 of Appendix A is amended by adding ", including internal control mechanisms in relation to the policies and procedures described in section 3.11.1***" after "***mechanisms***".***

26. Appendix A is amended by adding the following after section 2.28:

2.28.1 A designated rating organization must adopt, implement and enforce policies, procedures and controls reasonably designed to ensure that the organization and its DRO employees comply with the organization's code of conduct and securities legislation.

2.28.2 The designated rating organization's compliance officer must monitor and evaluate the adequacy and effectiveness of the designated rating organization's policies, procedures and controls referred to in section 2.28.1.

E. Risk management

2.29 A designated rating organization must establish and maintain a risk management committee made up of one or more senior managers or DRO employees with the appropriate level of experience responsible for identifying, assessing, monitoring, and reporting the risks arising from its activities, including legal risk, reputational risk, operational risk, and strategic risk. The committee must be independent of any internal audit system and make periodic reports to the board of directors of the designated rating organization, or of a DRO affiliate that is a parent of the designated rating organization, and senior management to assist the board and senior management in assessing the adequacy of the policies and procedures the designated rating organization adopted, and how well the organization implemented and enforces the policies and procedures to manage risk, including the policies and procedures specified in the organization's code of conduct.

F. Training

2.30 A designated rating organization must adopt, implement and enforce policies and procedures ensuring DRO employees undergo appropriate formal ongoing training at reasonably regular time intervals. For greater certainty, the policies and procedures must

(a) include measures reasonably designed to verify that DRO employees undergo the training,

(b) be designed to ensure the subject matter covered by the training be relevant to the DRO employee's responsibilities and cover, as applicable, the following:

(i) the designated rating organization's code of conduct;

(ii) the designated rating organization's credit rating methodologies;

(iii) the laws governing the designated rating organization's credit rating activities;

(iv) the designated rating organization's policies and procedures for managing conflicts of interest and governing the holding and transacting in securities;

(v) the designated rating organization's policies and procedures for handling confidential or material non-public information**..**

27. Section 3.1 of Appendix A is amended by adding ", or unnecessarily delay,***" after "***from***".***

28. Section 3.3 of Appendix A is amended by adding "or rating outlook***" after "***credit rating***".***

29. Section 3.4 of Appendix A is amended by adding "or rating outlook***" after "***credit rating***".***

30. Section 3.5 of Appendix A is amended

(a) by replacing "operationally and legally***" with "***operationally, legally and, if practicable, physically***", and***

(b) by adding the following after the second sentence:

The designated rating organization must publicly disclose why it believes that those ancillary services do not present a conflict of interest with its credit rating activities**..**

31. Sections 3.6 to 3.8 of Appendix A are replaced with the following:

3.6 The designated rating organization must not rate, or assign a rating outlook to, a person or company that is an affiliate or associate of the organization or a ratings employee. The designated rating organization must not assign a credit rating or rating outlook to a person or company if a ratings employee is an officer or director of the person or company, its affiliates or related entities.

3.6.1 A designated rating organization must not rate, or assign a rating outlook to, a person or company in any of the following circumstances:

(a) a significant security holder of the designated rating organization, or of an affiliate that is a parent of the designated rating organization, is a significant security holder of the person or company, its affiliates or related entities;

(b) an officer or director of a significant security holder of the designated rating organization, or of an affiliate that is a parent of the designated rating organization, is an officer or director of the person or company, its affiliates or related entities.

B. Procedures and policies

3.7 The designated rating organization must identify and eliminate or manage and publicly disclose any actual or potential conflicts of interest that may influence the opinions and analyses of ratings employees, including opinions and analyses in respect of a credit rating or rating outlook.

3.7.1 A designated rating organization must adopt, implement and enforce policies, procedures and controls to identify and eliminate, or manage and disclose, as appropriate, any actual or potential conflicts of interest that may influence the credit rating methodologies, credit rating actions, or analyses by the designated rating organization or the judgment, opinions or analyses by ratings employees. Without limiting the generality of the foregoing, the policies, procedures and controls must address all of the following conflicts and ensure that no conflict influences the designated rating organization's credit rating methodologies or credit rating actions:

(a) the designated rating organization is paid to issue a credit rating by the rated entity or a related entity;

(b) the designated rating organization is paid by subscribers with a financial interest that could be affected by a credit rating action of the designated rating organization;

(c) the designated rating organization is paid by rated entities, related entities or subscribers for services other than issuing credit ratings or providing access to the designated rating organization's credit ratings;

(d) the designated rating organization provides a preliminary indication or similar indication of credit quality to a rated entity or related entity prior to being retained to determine the final credit rating for the rated entity or related entity;

(e) the designated rating organization has a direct or indirect ownership interest in a rated entity or related entity;

(f) a rated entity or related entity has a direct or indirect ownership interest in the designated rating organization.

3.8 The designated rating organization must disclose the actual or potential conflicts of interest it identifies under the policies, procedures and controls referred to in section 3.7.1 in a complete, timely, clear, concise, specific and prominent manner. If the actual or potential conflict of interest is unique or specific to a credit rating action with respect to a particular rated entity or related entity, the conflict of interest must be disclosed in the same form and through the same means as the relevant credit rating action**..**

32. Appendix A is amended by adding the following after section 3.9:

3.9.1 A designated rating organization must ensure both of the following:

(a) fees charged to rated entities for the provision of credit ratings and ancillary services, as referred to in section 3.5, do not discriminate among rated entities in an unfair manner and have a reasonable relation to actual costs;

(b) fees charged to rated entities for the provision of credit ratings must not depend on the category of credit rating or any other result or outcome of the work performed**..**

33. Section 3.10 of Appendix A is amended by adding "or rating outlook***" after "***credit rating***".***

34. Section 3.11 of Appendix A is replaced with the following:

3.11 If a designated rating organization is subject to the oversight of a rated entity, or an affiliate or related entity of the rated entity, the designated rating organization must use different DRO employees to conduct the rating actions in respect of that entity, or to develop or modify methodologies that apply to that entity, than those that are subject to the oversight.

3.11.1 A designated rating organization must adopt, implement and enforce policies and procedures to prevent and mitigate conflicts of interest and to ensure the independence of credit ratings, rating outlooks and DRO employees, including policies and procedures in relation to the matters described in section 3.4. The designated rating organization must periodically monitor and review these policies and procedures in order to evaluate their effectiveness and assess whether they should be updated**..**

35. Section 3.12 of Appendix A is amended by adding "or assigns rating outlooks to,***" after "***rates***".***

36. Section 3.14 of Appendix A is replaced with the following:

3.14 The designated rating organization must not permit a ratings employee to participate in or otherwise influence the determination of a credit rating or rating outlook if any of the following apply:

(a) the ratings employee or an associate of the ratings employee has beneficial ownership of, or control or direction over, whether direct or indirect, securities, derivatives or exchange contracts of, or in respect of, the rated entity, other than holdings through an investment fund;

(b) the ratings employee or an associate of the ratings employee has beneficial ownership of, or control or direction over, whether direct or indirect, derivatives or exchange contracts of, or in respect of, a rated entity, its affiliates or its related entities, the ownership of which, or control or direction over, causes or may reasonably be perceived as causing a conflict of interest;

(c) the ratings employee or an associate of the ratings employee has, or has recently had, an employment, business or other relationship with, or interest in, the rated entity, its affiliates or related entities that causes or may reasonably be perceived as causing a conflict of interest;

(d) an associate of the ratings employee is a director of, the rated entity, its affiliates or related entities**..**

37. Section 3.17 of Appendix A is replaced with the following:

3.17 If a DRO employee of a designated rating organization becomes involved in any relationship that creates any actual or potential conflict of interest, the DRO employee must disclose the relationship to the designated rating organization's compliance officer. The designated rating organization must not issue a credit rating or rating outlook if a DRO employee has an actual or potential conflict of interest with a rated entity. If such a credit rating or rating outlook has been issued, the designated rating organization must promptly publicly disclose that the credit rating or rating outlook might be affected**..**

38. Section 3.18 of Appendix A is amended

(a) by adding "one or both of the following apply:***" after "***if***", and***

(b) in paragraph (a), by replacing "entity, or***" with "***entity or assigning it a rating outlook;***".***

39. Sections 4.1 to 4.5 of Appendix A are replaced with the following:

4.1 The designated rating organization must distribute in a timely manner its decisions on credit ratings and rating outlooks regarding the entities and securities it rates.

4.1.1 A designated rating organization must adopt, implement and enforce policies, procedures and controls for distributing credit ratings, actions, updates, rating outlooks and related reports and for when a credit rating will be withdrawn or discontinued.

4.2 A designated rating organization must publicly disclose its policies and procedures for distributing credit ratings, actions, updates, rating outlooks and related reports and for when a credit rating will be withdrawn or discontinued.

4.3 Except for a credit rating or a rating outlook it discloses only to the rated entity, a designated rating organization must disclose to the public, on a non-selective basis and free of charge, any decision on a credit rating or rating outlook regarding a rated entity that is a reporting issuer or regarding the securities of such an issuer, as well as any subsequent decision to discontinue such a rating, if the decision is based in whole or in part on material non-public information.

4.3.1 If a designated rating organization discloses to the public or its subscribers any decision on a credit rating or rating outlook regarding a rated entity or the securities of a rated entity, as well as any subsequent decisions to discontinue the rating, it must do so on a non-selective basis.

4.4 In each of its ratings reports in respect of a credit rating or rating outlook, a designated rating organization must disclose all of the following:

(a) when the credit rating was first released and when it was last updated, reviewed or assigned a rating outlook;

(b) the principal methodology or methodology version that was used in determining the credit rating and where a description of that methodology can be found. If the credit rating is based on more than one methodology, or if a review of only the principal methodology might cause investors to overlook other important aspects of the credit rating, the designated rating organization must explain this fact in the ratings report, and include a discussion of how the different methodologies and other important aspects factored into the rating decision;

(c) the meaning of each rating category and the definition of default or recovery, and the time horizon the designated rating organization used when making a rating decision;

(d) any attributes and limitations of the credit rating or rating outlook. If the rating or rating outlook involves a type of financial product presenting limited historical data, such as an innovative financial vehicle, the designated rating organization must disclose, in a prominent place, the limitations of the credit rating or rating outlook;

(e) all significant sources, including the rated entity, its affiliates and related entities, that were used to prepare the credit rating or rating outlook and whether the credit rating or rating outlook has been disclosed to the rated entity or its related entities and amended following that disclosure before being issued.

4.5 In each of its ratings reports in respect of a credit rating or rating outlook for a structured finance product, a designated rating organization must disclose all of the following:

(a) 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 or rating outlook. The designated rating organization must also disclose the degree to which it analyzes how sensitive a credit rating of a structured finance product is to changes in the designated rating organization's underlying rating assumptions;

(b) the level of assessment the designated rating organization has performed concerning the due diligence processes carried out at the level of underlying financial instruments or other assets of structured finance products. The designated rating organization must also disclose whether it has undertaken any assessment of such due diligence processes or whether it has relied on a third-party assessment and how the outcome of such assessment impacts the credit rating;

(c) whether the issuer of the structured finance product has informed the designated rating organization that it is publicly disclosing all relevant information about the product being rated or whether the information remains non-public**.**

40. Section 4.7 of Appendix A is replaced with the following:

4.7 A designated rating organization must disclose on an ongoing basis information about all debt securities and structured finance products submitted to it for its initial review or for a preliminary rating, including whether the issuer requested the designated rating organization to provide a final rating**.**

41. Appendix A is amended by adding the following after section 4.8:

4.8.1 When disclosing the methodologies, models and key rating assumptions referred to in section 4.8, the designated rating organization must include guidance that explains

assumptions, parameters, limits and uncertainties surrounding the methodologies and models it uses in its credit rating activities, including simulations of stress scenarios undertaken by the designated rating organization when determining credit ratings, information on cash-flow analysis it has performed or is relying upon and, where applicable, an indication of any expected change in the credit rating. The designated rating organization must prepare the guidance required by this section using plain language**.**

42. Section 4.10 of Appendix A is amended by replacing the second sentence with the following:

The designated rating organization must indicate the attributes and limitations of each credit rating and the risks of relying on the credit rating to make investment or other financial decisions. When issuing a credit rating or a rating outlook, the designated rating organization must disclose that the credit rating or rating outlook is the designated rating organization's assessment and should only be relied on to a limited degree. A designated rating organization must prepare the disclosure required by this section using plain language. A designated rating organization must not state or imply that a regulator or securities regulatory authority endorses its credit ratings or use its designation status to promote the quality of its credit ratings**.**

43. Appendix A is amended by adding the following after section 4.10:

4.10.1 When issuing a credit rating or rating outlook, the designated rating organization must clearly indicate the extent to which the designated rating organization verifies information provided to it by the rated entity. If the credit rating involves a type of entity or obligation for which there is limited historical data, the designated rating organization must disclose this fact and how it may limit the credit rating.

4.10.2 For any credit rating or rating outlook, a designated rating organization must be transparent with the rated entity and investors about how the rated entity or its securities are rated**.**

44. Sections 4.11 to 4.16 of Appendix A are replaced with the following:

4.11 When issuing or revising a credit rating or a rating outlook, the designated rating organization must provide in its press releases and public reports an explanation of the key elements underlying the rating opinion or rating outlook, including financial statement adjustments that deviate materially from those contained in the issuer's published financial statements.

4.12 Before issuing or revising a credit rating or a rating outlook, the designated rating organization must inform the issuer of the critical information and principal considerations upon which a credit rating or rating outlook will be based and afford the issuer a reasonable opportunity to clarify any likely factual misperceptions or other matters that the designated rating organization would want to be made aware of in order to produce an accurate credit rating or rating outlook. The designated rating organization must inform the issuer during

the business hours of the issuer. The designated rating organization must duly evaluate the response.

4.13 Every year, the designated rating organization must publicly disclose data about the historical transition and default rates of its rating categories with respect to the classes of issuers and securities it rates and whether the transition and default rates of these categories have changed over time. If the nature of the rating or other circumstances make a historical transition or default rate inappropriate, statistically invalid, or otherwise likely to mislead the users of the rating, the designated rating organization must explain this. This information must include verifiable, quantifiable historical information about the performance of its rating opinions, organized over a period of time, and, where possible, standardized in such a way so as to assist investors in drawing performance comparisons between different designated rating organizations.

4.13.1 When disclosing a credit rating or rating outlook, the designated rating organization must include a reference to where the data referred to in section 4.13 can be accessed on its website and a brief explanation of the meaning of that data.

4.13.2 When disclosing a rating outlook, the designated rating organization must indicate the time period during which a change in the credit rating may occur.

4.14 For each credit rating, the designated rating organization must disclose whether the rated entity and its related entities participated in the rating process and whether the designated rating organization had access to the accounts, management and other relevant internal documents of the rated entity or its related entities. Each credit rating without that access must be identified as such using a clearly distinguishable colour code for the rating category. Each credit rating not initiated at the request of the rated entity must be identified as such. The designated rating organization must also publicly disclose its policies and procedures regarding unsolicited ratings.

4.15 The designated rating organization must publicly disclose, in a timely fashion, any material modification to its methodologies, models, key ratings assumptions and significant systems, resources or procedures. Where a reasonable person would consider it feasible and appropriate, disclosure of such material modifications must be made before they go into effect. Any disclosure of such material modifications must be made in a non-selective manner. The designated rating organization must carefully consider the various uses of credit ratings before modifying its methodologies, models, key ratings assumptions and significant systems, resources or procedures.

4.15.1 If the designated rating organization intends to make a significant change to an existing rating methodology, model or key rating assumption or use a new rating methodology that could have an impact on a credit rating, the designated rating organization must do both of the following:

(a) publish the proposed significant change or proposed new rating methodology on its website together with a detailed explanation of the

reasons for, and the implications of, the proposed significant change or proposed new rating methodology;

(b) invite interested persons to submit written comments with respect to the proposed significant change or proposed new rating methodology within a period of at least 30 days after the publication.

4.15.2 If following the publication referred to in section 4.15.1, the designated rating organization makes a significant change to an existing rating methodology, model or key rating assumption or issues a new rating methodology that could have an impact on a credit rating, the designated rating organization must promptly publish on its website all of the following:

(a) the revised or new rating methodology, model or key rating assumption,

(b) a detailed explanation of the revised or new methodology, model or key rating assumption, its date of application and the results of the consultation referred to in section 4.15.1;

(c) copies of the written comments referred to in paragraph 4.15.1(b), except in the case where confidentiality is requested by the person who submitted the comment.

4.15.3 A designated rating organization's disclosures, including those specified in the organization's code of conduct, must be complete, fair, accurate, timely, and understandable to reasonable investors and other expected users of credit ratings.

4.15.4 A designated rating organization must publicly and prominently disclose, free of charge, all of the following information on its primary website:

(a) the designated rating organization's code of conduct;

(b) a description of the designated rating organization's credit rating methodologies;

(c) information about the designated rating organization's historical performance data;

(d) any other disclosures specified in the provisions of the designated rating organization's code of conduct and securities legislation.

B. The treatment of confidential information

4.16 The designated rating organization and its DRO employees must take all reasonable measures to protect both of the following:

(a) non-public information about a credit rating action, including information about a credit rating action before the credit rating or rating outlook is publicly disclosed or disseminated to subscribers;

(b) the confidential nature of information shared with them by rated entities under the terms of a confidentiality agreement or otherwise under a mutual understanding that the information is shared confidentially.

Unless otherwise permitted by a written agreement or required by applicable laws, regulations or court orders, the designated rating organization and its DRO employees must not disclose confidential information, including information about a credit rating action before the credit rating or rating outlook is publicly disclosed or disseminated to subscribers.

4.16.1 A designated rating organization must consider applicable securities legislation governing insider trading or tipping when dealing with non-public information that it receives from an issuer. A designated rating organization must maintain a list of all persons who have access to non-public information about a credit rating action, including information about a credit rating action before the credit rating or rating outlook is publicly disclosed or disseminated to subscribers. For any credit rating action, the list must include applicable DRO employees and any person identified by the rated entity for purposes of the list..

45. Sections 4.18 and 4.19 of Appendix A are replaced with the following:

4.18 The designated rating organization and its DRO employees must take all reasonable measures to protect all property and records relating to credit rating activities and belonging to or in possession of the designated rating organization from fraud, theft, misuse or inadvertent disclosure.

4.19 The designated rating organization must ensure that the organization and its DRO employees do not engage in transactions in securities, derivatives or exchange contracts when they possess confidential information concerning the issuer of such security or to which the derivative or exchange contract relates, including information about a credit rating action before the credit rating or rating outlook is publicly disclosed or disseminated to subscribers..

46. Section 4.21 of Appendix A is replaced with the following:

4.21 The designated rating organization and its DRO employees must not selectively disclose any non-public information about credit ratings, rating outlooks or possible future

rating actions of the designated rating organization, except to the issuer or its designated agents**..**

47. Appendix A is amended by adding the following after section 4.23:

4.24 A designated rating organization must adopt, implement and enforce policies, procedures and controls to ensure all of the following:

(a) compliance with applicable laws governing the treatment and use of confidential or material non-public information;

(b) DRO employees take all reasonable steps to protect confidential or material non-public information from fraud, theft, misuse, or inadvertent disclosure;

(c) compliance with sections 4.16, 4.16.1, 4.19, 4.21 and 4.23;

(d) compliance with the designated rating organization's internal record maintenance, retention and disposition policies, procedures and controls and with laws governing the maintenance, retention and disposition of the designated rating organization's records.

C. The treatment of complaints

4.25 A designated rating organization must establish and maintain a committee charged with receiving, retaining, and handling complaints from market participants and the public. The designated rating organization must adopt implement and enforce policies, procedures and controls for receiving, retaining, and handling complaints, including those that are provided on a confidential basis. The policies and procedures must specify the circumstances under which a complaint must be reported to one or both of the following:

(a) senior management of the designated rating organization;

(b) the board of directors of the designated rating organization or of a DRO affiliate that is a parent of the designated rating organization**..**

48. Instruction (4) of Form 25-101F1 Designated Rating Organization Application and Annual Filing is replaced with the following:

*(4) Applicants may apply to the securities regulatory authority or regulator to hold in confidence portions of this form which disclose sensitive financial, personal or other information. The securities regulatory authority or regulator will consider the application and may determine to accord confidential treatment to those portions to the extent permitted by law***..**

49. Item 5 of Form 25-101F1 is amended by replacing, in the 5th bullet, "agencies***" with "***organizations***".***

50. Item 11 of Form 25-101F1 is amended

(a) by adding the following after "The total number of ratings employees,***":***

- The number of ratings employees allocated to credit rating activities for different asset classes***,, and***

(b) by adding the following after "The total number of ratings employees supervisors,***":***

- The number of ratings employees supervisors allocated to credit rating activities for different asset classes**,.**

51. The second paragraph of Item 13 of Form 25-101F1 is replaced with the following:

Include financial information about the revenue of the applicant separated into fees from credit rating services and non-credit rating services, including a comprehensive description of each. In providing this information, disclose the following:

- Revenue from non-credit rating services provided to persons that also obtained credit rating services,
- Revenue from credit rating services for different asset classes, and
- Revenue from credit rating services and non-credit rating services provided to persons located in Canada**..**

52. Form 25-101F1 is amended by adding the following after Item 14:

Item 14A. Pricing Policy
Disclose the applicant's pricing policy for credit rating services and any ancillary services, including the fee structure and pricing criteria in relation to credit ratings for different asset classes**..**

53. This Instrument comes into force on •.

Annex D

Proposed Amendments to
National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

1. National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by this Instrument.

2 Section 1.1 is amended by replacing the definition of "designated rating" with the following:

"designated rating" has the same meaning as in paragraph (b) of the definition of "designated rating" in National Instrument 81-102 *Investment Funds*;**.**

3. Section 1.1 is amended by replacing the definition of "designated rating organization" with the following:

"designated rating organization" has the same meaning as in National Instrument 44-101 *Short Form Prospectus Distributions*;**.**

4. Schedule 1 of Form 31-103F1 Calculation of Excess Working Capital is amended by replacing subparagraph (a)(i) with the following:

(i) Bonds, debentures, treasury bills and other securities of or guaranteed by the Government of Canada, of the United Kingdom, of the United States of America and of any other national foreign government (provided those foreign government securities have a current credit rating described in subparagraph (i.1)) maturing (or called for redemption):

within 1 year:	1% of fair value multiplied by the fraction determined by dividing the number of days to maturing by 365
over 1 year to 3 years:	1% of fair value
over 3 years to 7 years:	2% of fair value
over 7 years to 11 years:	4% of fair value
over 11 years	4% of fair value

(i.1) A credit rating from a designated rating organization listed below, or any of its DRO affiliates, that is at one of the following corresponding rating categories or that is at a category that replaces one of the following corresponding rating categories:

Designated Rating Organization	**Long Term Debt**	**Short Term Debt**
DBRS Limited	AAA	R-1(high)
Fitch Ratings, Inc.	AAA	F1+
Moody's Canada Inc.	Aaa	Prime-1
S&P Global Ratings Canada	AAA	A-1+

5. This Instrument comes into force on •

Annex E

Proposed Amendments to
National Instrument 33-109 *Registration Information*

1. National Instrument 33-109 Registration Information is amended by this Instrument.

2. Schedule 1 of Schedule C – Form 31-103F1 Calculation of Excess Working Capital of Form 33-109F6 Firm Registration is amended by replacing subparagraph (a)(i) with the following:

(i) Bonds, debentures, treasury bills and other securities of or guaranteed by the Government of Canada, of the United Kingdom, of the United States of America and of any other national foreign government (provided those foreign government securities have a current credit rating described in subparagraph (i.1)) maturing (or called for redemption):

within 1 year:	1% of fair value multiplied by the fraction determined by dividing the number of days to maturing by 365
over 1 year to 3 years:	1% of fair value
over 3 years to 7 years:	2% of fair value
over 7 years to 11 years:	4% of fair value
over 11 years	4% of fair value

(i.1) A credit rating from a designated rating organization listed below, or any of its DRO affiliates, that is at one of the following corresponding rating categories or that is at a category that replaces one of the following corresponding rating categories:

Designated Rating Organization	**Long Term Debt**	**Short Term Debt**
DBRS Limited	AAA	R-1(high)
Fitch Ratings, Inc.	AAA	F1+
Moody's Canada Inc.	Aaa	Prime-1
S&P Global Ratings Canada	AAA	A-1+

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3. This Instrument comes into force on •.

Annex F

Proposed Amendments to
National Instrument 41-101 *General Prospectus Requirements*

1. National Instrument 41-101 General Prospectus Requirements is amended by this Instrument.

2. Section 1.1 is amended by replacing the definition of "designated rating organization" with the following:

"designated rating organization" has the same meaning as in National Instrument 44-101 *Short Form Prospectus Distributions*;**.**

3. Section 7.2 is amended

(a) in subsection (2), by adding "and subject to subsection (2.1),***" after "***Despite subsection (1),***",***

(b) in subsection (2), by replacing "received a rating***" with "***received a credit rating***", and***

(c) by adding the following subsection after subsection (2):

(2.1) If the only credit ratings of the securities referred to in subsection (2) were issued by Kroll Bond Rating Agency, Inc. or any of its DRO affiliates, subsection (2) does not apply except in the case of a distribution of asset-backed securities**..**

4. Subsection 19.1(3) is amended by adding "*Alberta and****" before "****Ontario****".***

5. This Instrument comes into force on •.

Annex G

Proposed Amendments to
National Instrument 44-101 *Short Form Prospectus Distributions*

1. National Instrument 44-101 Short Form Prospectus Distributions is amended by this Instrument.

2. Section 1.1 is amended by replacing the definition of "designated rating" with the following:

"designated rating" means the following:

(a) for a security referred to in paragraph 2.6(1)(c), a credit rating issued by a designated rating organization listed in this paragraph, or any of its DRO affiliates, that is at or above one of the following corresponding rating categories or that is at or above a category that replaces one of the following corresponding rating categories:

Designated Rating Organization	**Long Term Debt**	**Short Term Debt**	**Preferred Shares**
DBRS Limited	BBB	R-2	Pfd-3
Fitch Ratings, Inc.	BBB	F3	BBB
Kroll Bond Rating Agency, Inc.	BBB	K3	BBB
Moody's Canada Inc.	Baa	Prime-3	Baa
S&P Global Ratings Canada	BBB	A-3	P-3

(b) for a security referred to in any other provision of this Instrument, a credit rating issued by a designated rating organization listed in this paragraph, or any of its DRO affiliates, that is at or above one of the following corresponding rating categories or that is at or above a category that replaces one of the following corresponding rating categories:

Designated Rating Organization	**Long Term Debt**	**Short Term Debt**	**Preferred Shares**
DBRS Limited	BBB	R-2	Pfd-3
Fitch Ratings, Inc.	BBB	F3	BBB
Moody's Canada Inc.	Baa	Prime-3	Baa
S&P Global Ratings Canada	BBB	A-3	P-3

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3. Section 1.1 is amended by replacing the definition of "designated rating organization" with the following:

"designated rating organization" means

(a) if designated under securities legislation, any of DBRS Limited, Fitch Ratings, Inc., Kroll Bond Rating Agency, Inc., Moody's Canada Inc., S&P Global Ratings Canada; or

(b) any other credit rating organization designated under securities legislation;**.**

4. Subsection 8.1(4) is amended by adding "*Alberta and****" before "****Ontario****".***

5. This Instrument comes into force on •.

Annex H

Proposed Amendments to
National Instrument 44-102 *Shelf Distributions*

1. National Instrument 44-102 Shelf Prospectus Distributions is amended by this Instrument.

2. Subsection 1.1(1) is amended by adding the following definition:

"designated rating" has

(a) for a security referred to in section 2.6, the meaning ascribed to that term in paragraph (a) of the definition of "designated rating" in NI 44-101, and

(b) for a security referred to in any other provision of this Instrument, the meaning ascribed to that term in paragraph (b) of the definition of "designated rating" in NI 44-101;**.**

3. Subsection 11.1(2.1) is amended by adding "*Alberta and****" before "****Ontario****".***

4. This Instrument comes into force on •.

Annex I

Proposed Amendments to
National Instrument 45-106 *Prospectus Exemptions*

1. National Instrument 45-106 Prospectus Exemptions is amended by this Instrument.

2. Section 1.1 is amended by replacing the definition of "designated rating" with the following:

"designated rating" has the same meaning as in paragraph (b) of the definition of "designated rating" in National Instrument 81-102 *Investment Funds*;**.**

3. Section 1.1 is amended by replacing the definition of "designated rating organization" with the following:

"designated rating organization" has the same meaning as in National Instrument 44-101 *Short Form Prospectus Distributions*;**.**

4. Subsection 2.35(1) is amended by replacing paragraphs (b) and (c) with the following:

(b) the note or commercial paper has a credit rating from a designated rating organization listed below, or any of its DRO affiliates, that is at or above one of the following corresponding rating categories or that is at or above a category that replaces one of the following corresponding rating categories:

(i) R-1(low) if issued by DBRS Limited;

(ii) F1 if issued by Fitch Ratings, Inc.;

(iii) P-1 if issued by Moody's Canada Inc.;

(iv) A-1(Low) (Canada national scale) if issued by S&P Global Ratings Canada;

(c) the note or commercial paper has no credit rating from a designated rating organization listed below, or any of its DRO affiliates, that is below one of the following corresponding rating categories or that is below a category that replaces one of the following corresponding rating categories:

(i) R-1(low) if issued by DBRS Limited;

(ii) F2 if issued by Fitch Ratings, Inc.;

(iii) P-2 if issued by Moody's Canada Inc.;

(iv) A-1(Low) (Canada national scale) or A-2 (global scale) if issued by S&P Global Ratings Canada..

5. Section 2.35.2 is amended by replacing subparagraphs (a)(i) and (a)(ii) with the following:

(i) it has a credit rating from not less than two designated rating organizations listed below, or any of their respective DRO affiliates, and at least one of the credit ratings is at or above one of the following corresponding rating categories or is at or above a category that replaces one of the following corresponding rating categories:

(A) R-1(high)(sf) if issued by DBRS Limited;

(B) F1+sf if issued by Fitch Ratings, Inc.;

(C) P-1(sf) if issued by Moody's Canada Inc.;

(D) A-1(High)(sf) (Canada national scale) or A-1+(sf) (global scale) if issued by S&P Global Ratings Canada;

(ii) it has no credit rating from a designated rating organization listed below, or any of its DRO affiliates, that is below one of the following corresponding rating categories or that is below a category that replaces one of the following corresponding rating categories:

(A) R-1(low)(sf) if issued by DBRS Limited;

(B) F2sf if issued by Fitch Ratings, Inc.;

(C) P-2(sf) if issued by Moody's Canada Inc.;

(D) A-1(Low)(sf) (Canada national scale) or A-2(sf) (global scale) if issued by S&P Global Ratings Canada;.

6. Section 2.35.2 is amended by replacing clause (a)(iv)(C) with the following:

(C) the liquidity provider has a credit rating from each of the designated rating organizations, or any of their respective DRO affiliates, providing a credit rating on the short-term securitized product referred to in subparagraph 2.35.2(a)(i), for its senior, unsecured short-term debt, none of which is dependent upon a guarantee by a third party, and each credit rating from those designated rating organizations, or any of their respective DRO affiliates, is at or above the following corresponding rating categories or is at or above a category that replaces one of the following corresponding rating categories:

1. R-1(low) if issued by DBRS Limited;

2. F2 if issued by Fitch Ratings, Inc.;

3. P-2 if issued by Moody's Canada Inc.;

4. A-1(Low) (Canada national scale) or A-2 (global scale) if issued by S&P Global Ratings Canada;**.**

7. This Instrument comes into force on •.

Annex J

Proposed Amendments to
National Instrument 51-102 *Continuous Disclosure Obligations*

1. National Instrument 51-102 Continuous Disclosure Obligations is amended by this Instrument.

2. Section 1.1 is amended by deleting the definitions of "designated rating organization" and "DRO affiliate".

3. Subsection 13.1(3) is amended by adding "*Alberta and****" before "****Ontario****".***

4. This Instrument comes into force on •.

Annex K

Proposed Amendments to
National Instrument 81-102 *Investment Funds*

1. National Instrument 81-102 Investment Funds is amended by this Instrument.

2. Section 1.1 is amended by replacing the definition of "designated rating" with the following:

"designated rating" means

(a) for a security referred to in paragraph 4.1(4)(b), a designated rating under paragraph (b) of the definition of "designated rating" in National Instrument 44-101 *Short Form Prospectus Distributions*, or

(b) for a security or instrument referred to in any other provision of this Instrument, a credit rating issued by a designated rating organization listed below, or any of its DRO affiliates, that is at or above one of the following corresponding rating categories, or that is at or above a category that replaces one of the following corresponding rating categories, if

(i) there has been no announcement by the designated rating organization or any of its DRO affiliates of which the investment fund or its manager is or reasonably should be aware that the credit rating of the security or instrument to which the designated rating was given may be down-graded to a rating category that would not be a designated rating, and

(ii) no designated rating organization listed below or any of its DRO affiliates has rated the security or instrument in a rating category that is not a designated rating:

Designated Rating Organization	**Commercial Paper/Short Term Debt**	**Long Term Debt**
DBRS Limited	R-1 (low)	A
Fitch Ratings, Inc.	F1	A
Moody's Canada Inc.	P-1	A2
S&P Global Ratings Canada	A-1 (Low)	A

.

3. Section 1.1 is amended by replacing the definition of "designated rating organization" with the following:

"designated rating organization" means, if designated under securities legislation, any of DBRS Limited, Fitch Ratings, Inc., Moody's Canada Inc., and S&P Global Ratings Canada;.

4. Subsection 4.1(4.1) is repealed.

5. This Instrument comes into force on •.

Annex L

Proposed Amendments to
National Instrument 81-106 *Investment Fund Continuous Disclosure*

1. National Instrument 81-106 Investment Fund Continuous Disclosure is amended by this Instrument.

2. Section 1.1 is amended by adding the following definition:

"designated rating" has the same meaning as in paragraph (b) of the definition of "designated rating" in National Instrument 81-102 *Investment Funds*;**.**

3. Subsection 1.3(2) is amended by adding "if not defined in section 1.1***" after "***that Instrument***".**

4. This Instrument comes into force on •.

Annex M

Proposed Change to
Companion Policy 21-101CP *Marketplace Operation*

1. Companion Policy 21-101CP Marketplace Operation is changed by this Document.

2. Subsection 10.1(6) is replaced with the following:

(6) An "investment grade corporate debt security" is a corporate debt security that has a credit rating from a designated rating organization listed below, or any of its DRO affiliates, that is at or above one of the following corresponding rating categories or that is at or above a category that replaces one of the following corresponding rating categories:

Designated Rating Organization	Long Term Debt	Short Term Debt
DBRS Limited	BBB	R-2
Fitch Ratings, Inc.	BBB	F3
Moody's Canada Inc.	Baa	Prime-3
S&P Global Ratings Canada	BBB	A-3

In this subsection,

"designated rating organization" has the same meaning as in National Instrument 44-101 *Short Form Prospectus Distributions*; and

"DRO affiliate" has the same meaning as in National Instrument 25-101 *Designated Rating Organizations*.**.**

3. This change becomes effective on •.

Annex N

Proposed Change to
Companion Policy 81-102CP *Investment Funds*

1. Companion Policy 81-102CP Investment Funds is changed by this Document.

2. Section 3.1 is deleted.

3. This change becomes effective on •.

Annex O

Full text version of NI 25-101 that includes Proposed Amendments, blacklined to show changes from current version of NI 25-101

NATIONAL INSTRUMENT 25-101
DESIGNATED RATING ORGANIZATIONS

PART 1— DEFINITIONS AND INTERPRETATION

Definitions

1. In this Instrument

"board of directors" means, in the case of a designated rating organization that does not have a board of directors, a group that acts in a capacity similar to a board of directors;

"code of conduct" means the code of conduct referred to in Part 4 of this Instrument and may include, for greater certainty, one or more codes;

"compliance officer" means the compliance officer referred to in section 12;

"designated rating organization" means a credit rating organization that has been designated under securities legislation;

"DRO affiliate" means an affiliate of a designated rating organization that issues credit ratings in a foreign jurisdiction and that has been designated as a DRO affiliate under the terms of the designated rating ~~organizations'~~organization's designation;

"DRO employee" means an individual, other than an employee or agent of a DRO affiliate, who is

(a) employed by a designated rating organization, or

(b) an agent who provides services directly to the designated rating organization and who is involved in determining, approving or monitoring a credit rating or rating outlook issued by the designated rating organization;

"Form NRSRO" means the annual certification on Form NRSRO, including exhibits, required to be filed by an NRSRO under the 1934 Act;

"NRSRO" means a nationally recognized statistical rating organization, as defined in the 1934 Act;

"rated entity" means a person or company that is issuing, or that has issued, securities that are the subject of a credit rating issued by a designated rating organization and includes a person or company that made a submission to a designated rating organization for the designated rating organization's initial review or for a preliminary rating but did not request a final rating;

"rated securities" means the securities issued by a rated entity that are the subject of a credit rating issued by a designated rating organization;

"rating outlook" means an assessment regarding the likely direction of a credit rating over the short term, the medium term or both;

"ratings employee" means any DRO employee who participates in determining, approving or monitoring a credit rating or rating outlook issued by the designated rating organization;

"related entity" means in relation to an issuer of a structured finance product, an originator, arranger, underwriter, servicer or sponsor of the structured finance product or any person or company performing similar functions;

"significant security holder" means a person or company that has beneficial ownership of, or control or direction over, whether direct or indirect, or a combination of beneficial ownership of, and control or direction over, whether direct or indirect, securities of an issuer carrying more than 10 per cent of the voting rights attached to all of the issuer's outstanding voting securities;

"structured finance product" means any of the following:

(a) a security that entitles the security holder to receive payments that primarily depend on the cash flow from self-liquidating financial assets collateralizing the security, such as loans, leases, mortgages, and secured or unsecured receivables, including:

(i) an asset-backed security;

(ii) a collateralized mortgage obligation;

(iii) a collateralized debt obligation;

(iv) a collateralized bond obligation;

(v) a collateralized debt obligation of asset-backed securities;

(vi) a collateralized debt obligation of collateralized debt obligations;

(b) a security that entitles the security holder to receive payments that substantially reference or replicate the payments made on one or more

securities of the type described in paragraph (a) but that do not primarily depend on the cash flow from self-liquidating financial assets that collateralize the security, including:

(i) a synthetic asset-backed security;

(ii) a synthetic collateralized mortgage obligation;

(iii) a synthetic collateralized debt obligation;

(iv) a synthetic collateralized bond obligation;

(v) a synthetic collateralized debt obligation of asset-backed securities;

(vi) a synthetic collateralized debt obligation of collateralized debt obligations.

Interpretation

2. Nothing in this Instrument is to be interpreted as regulating the content of a credit rating or the methodology a credit rating organization uses to determine a credit rating.

Affiliate

3. (1) In this Instrument, a person or company is an affiliate of another person or company if either of the following apply:

(a) one of them is the subsidiary of the other;

(b) each of them is controlled by the same person or company.

(2) For the purposes of paragraph (1)(b), a person or company (first person) is considered to control another person or company (second person) if any of the following apply:

(a) the first person beneficially owns, or controls or directs, directly or indirectly, securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation;

(b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership;

(c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

Credit rating

4. In British Columbia, credit rating means an assessment that is publicly disclosed or distributed by subscription concerning the creditworthiness of an issuer,

(a) as an entity, or

(b) with respect to specific securities or a specific pool of securities or assets.

Market participant in Ontario

5. In Ontario, a DRO affiliate is deemed to be a market participant.

PART 2 — DESIGNATION OF RATING ORGANIZATIONS

Application for designation

6. (1) A credit rating organization that applies to be a designated rating organization must file a completed Form 25-101F1.

(2) Despite subsection (1), a credit rating organization that is an NRSRO may file its most recent Form NRSRO.

(3) A credit rating organization that applies to be a designated rating organization that is incorporated or organized under the laws of a foreign jurisdiction and does not have an office in Canada must file a completed Form 25-101F2.

(4) Any person or company that will be a DRO affiliate upon the designation of a credit rating ~~agency~~organization that does not have an office in Canada must file a completed Form 25-101F2.

PART 3 — BOARD OF DIRECTORS

Board of directors

7. A designated rating organization must not issue a credit rating unless it, or a DRO affiliate that is a parent of the designated rating organization, has a board of directors.

Composition

8. (1) For the purposes of section 7, a board of directors of a designated rating organization, or the board of directors of the DRO affiliate that is a parent of the designated rating organization, as the case may be, must be composed of a minimum of three members.

(2) At least one-half, but not fewer than two, of the members of the board of directors must be independent of the organization and any DRO affiliate.

(3) For the purposes of subsection (2), a member of the board of directors is not considered independent if the director

(a) other than in his or her capacity as a member of the board of directors or a board committee, accepts any consulting, advisory or other compensatory fee from the designated rating organization or a DRO affiliate;

(b) is a DRO employee or an employee or agent of a DRO affiliate;

(c) has a relationship with the designated rating organization that could, in the opinion of the board of directors, be reasonably expected to interfere with the exercise of a director's independent judgment; or

(d) has served on the board of directors for more than five years in total.

(4) For the purposes of paragraph 3(c), in forming its opinion, the board of directors is not required to conclude that a member is not independent solely on the basis that the member is, or was, a user of the designated rating organization's rating services.

PART 4 — CODE OF CONDUCT

Code of conduct

9. (1) A designated rating organization must establish, maintain and comply with a code of conduct.

(2) A designated rating organization's code of conduct must incorporate each of the provisions set out in Appendix A.

Filing and publication

10. (1) A designated rating organization must file a copy of its code of conduct and post a copy of it prominently on its website promptly upon designation.

(2) Each time an amendment is made to a code of conduct by a designated rating organization, the amended code of conduct must be filed, and prominently posted

on the organization's website, within five business days of the amendment coming into effect.

Waivers

11. A designated rating organization's code of conduct must specify that a designated rating organization must not waive provisions of its code of conduct.

PART 5 — COMPLIANCE OFFICER

Compliance officer

12. (1) A designated rating organization must not issue a credit rating unless it, or a DRO affiliate that is a parent of the designated rating organization, has a compliance officer that monitors and assesses compliance by the designated rating organization and its DRO employees with the organization's code of conduct and with securities legislation.

(1.1) The compliance officer must be designated as an officer of the designated rating organization, or a DRO affiliate that is a parent of the designated rating organization, under a by-law or similar authority of the designated rating organization or the DRO affiliate.

(1.2) The compliance officer must have the education, training and experience that a reasonable person would consider necessary to competently perform the activities of the compliance officer required under this Instrument and the designated rating organization's code of conduct.

(2) The compliance officer must regularly report on his or her activities directly to the board of directors.

(3) The compliance officer must report to the board of directors as soon as reasonably possible if the compliance officer becomes aware of any circumstances indicating that the designated rating organization or its DRO employees may be in non-compliance with the organization's code of conduct or securities legislation and any of the following apply:

(a) the non-compliance would reasonably be expected to create a significant risk of harm to a rated entity or the rated entity's investors;

(b) the non-compliance would reasonably be expected to create a significant risk of harm to the capital markets;

(c) the non-compliance is part of a pattern of non-compliance.

(4) The compliance officer must not, while serving in such capacity, participate in any of the following:

(a) the development of credit ratings, methodologies or models;

(b) the establishment of compensation levels, other than for DRO employees reporting directly to the compliance officer.

(5) The compensation of the compliance officer and of any DRO employee that reports directly to the compliance officer must not be linked to the financial performance of the designated rating organization or its DRO affiliates and must be determined in a manner that preserves the independence of the compliance officer's judgment.

PART 6 — BOOKS AND RECORDS

Books and records

13. (1) A designated rating organization must keep such books and records and other documents as are necessary to account for the conduct of its credit rating activities, its business transactions and financial affairs and must keep such other books, records and documents as may otherwise be required under securities legislation.

(1.1) A designated rating organization must keep such books and records and other documents that are sufficiently detailed to reconstruct the credit rating process for any credit rating action.

(2) A designated rating organization must retain the books and records maintained under this section

(a) for a period of seven years from the date the record was made or received, whichever is later;

(b) in a safe location and a durable form; and

(c) in a manner that permits it to be provided promptly to the securities regulatory authority upon request.

Part 7 — FILING REQUIREMENTS

Filing requirements

14. (1) No later than 90 days after the end of its most recently completed financial year, each designated rating organization must file a completed Form 25-101F1.

(2) Upon any of the information in a Form 25-101F1 filed by a designated rating organization becoming materially inaccurate, the designated rating organization

must promptly file an amendment to, or an amended and restated version of, its Form 25-101F1.

(3) Until six years after it has ceased to be a designated rating organization in any jurisdiction of Canada, a designated rating organization must file a completed amended Form 25-101F2 at least 30 days before

(a) the termination date of Form 25-101F2, or

(b) the effective date of any changes to Form 25-101F2.

(4) Until six years after it has ceased to be a DRO affiliate in any jurisdiction of Canada, a DRO affiliate must file a completed amended Form 25-101F2 at least 30 days before

(a) the termination date of Form 25-101F2, or

(b) the effective date of any changes to Form 25-101F2.

PART 8 — EXEMPTIONS AND EFFECTIVE DATE

Exemptions

15. (1) The regulator or the securities regulatory authority may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

Effective date

16. This Instrument comes into force on April 20, 2012.

APPENDIX A TO NATIONAL INSTRUMENT 25-101
DESIGNATED RATING ORGANIZATIONS – PROVISIONS REQUIRED TO BE INCLUDED IN A DESIGNATED RATING ORGANIZATION'S CODE OF CONDUCT

1. INTERPRETATION

1.1 A term used in this code of conduct has the same meaning as in National Instrument 25-101 *Designated Rating Organizations* if used in that Instrument.

2. QUALITY AND INTEGRITY OF THE RATING PROCESS

A. Quality of the rating process

I – General requirements

2.1 A designated rating organization must adopt, implement and enforce procedures in its code of conduct to ensure that the credit ratings and rating outlooks it issues are based on a thorough analysis of all information known to the designated rating organization that is relevant to its analysis according to ~~its~~the applicable rating methodologies.

2.2 A designated rating organization must include a provision in its code of conduct that it will use only rating methodologies that are rigorous, systematic, continuous, capable of being applied consistently and subject to some means of objective validation based on historical experience, including back-testing.

II – Specific provisions

2.3 Each ratings employee involved in the preparation, review or issuance of a credit rating, action or report must use methodologies established by the designated rating organization. Each ratings employee must apply a given methodology in a consistent manner, as determined by the designated rating organization.

2.4 A credit rating must be assigned by the designated rating organization and not by an employee or agent of the designated rating organization.

2.5 A credit rating must reflect all information known, and believed to be relevant, to the designated rating organization, consistent with its published methodology. The designated rating organization will ensure that its ratings employees and agents have appropriate knowledge and experience for the duties assigned.

2.6 The designated rating organization, its ratings employees and its agents must take all reasonable steps to avoid issuing a credit rating, action or report that is false or misleading as to the general creditworthiness of a rated entity or rated securities.

2.6.1 The designated rating organization must adopt, implement and enforce policies, procedures and controls reasonably designed to avoid issuing a credit rating, action or report that is false or misleading as to the general creditworthiness of a rated entity or rated securities.

2.7 The designated rating organization ~~will~~must ensure that it has and devotes sufficient resources to carry out and maintain high-quality credit ~~assessments of~~ratings for all rated entities and rated securities. When deciding whether to rate or continue rating an entity or securities, the organization ~~will~~must assess whether it is able to devote sufficient personnel with sufficient skill sets to ~~make a credible~~provide a high-quality credit rating ~~assessment~~, and whether its personnel are likely to have access to sufficient information needed in order ~~make~~to provide such ~~an assessment~~a rating. A designated rating organization ~~will~~must adopt all necessary measures so that the information it uses in assigning a credit rating or a rating outlook is of sufficient quality to support ~~a credible~~what a reasonable person would conclude is a high-quality credit rating and is obtained from a source that a reasonable person would consider to be reliable.

2.8 The designated rating organization will appoint a senior manager, or establish a committee made up of one or more senior managers, with appropriate experience to review the feasibility of providing a credit rating for a structure, instrument, security or entity that is significantly different from the structures, instruments, securities or entities that the designated rating organization currently rates.

2.9 The designated rating organization ~~will~~must not issue or maintain a credit rating for structures, instruments, securities or entities for which it does not have appropriate information, knowledge or expertise. The designated rating organization must assess whether the methodologies and models used for determining credit ratings of a structured finance product are appropriate when the risk characteristics of the assets underlying the structured finance product change significantly. If the quality of the available information is not satisfactory or if the complexity of a ~~new~~ type of structure, instrument or security should reasonably raise concerns about whether the designated rating organization can provide a ~~credible~~high-quality credit rating, the designated rating organization ~~will~~must not issue or maintain a credit rating.

2.10 The designated rating organization will ensure continuity and regularity, and avoid conflicts of interest, in the rating process.

B. Monitoring and updating

2.11 The designated rating organization will establish a committee to be responsible for implementing a rigorous and formal process for reviewing, on at least an annual basis, and making changes to the methodologies, models and key ratings assumptions it uses. This review will include consideration of the appropriateness of the designated rating organization's methodologies, models and key ratings assumptions if they are used or intended to be applied to new types of structures, instruments or securities. This process will be conducted independently of the business lines that are responsible for credit rating activities. The committee will report to its board of directors or the board of directors of a DRO affiliate that is a parent of the designated rating organization.

2.12 If a methodology, model or key ratings assumption used in a credit rating activity is changed, the designated rating organization ~~will~~must do ~~each~~all of the following:

(a) promptly identify each credit rating likely to be affected if the credit rating were to be re-rated using the new methodology, model or key ratings assumption and, using the same means of communication the organization generally uses for the credit ratings, disclose the scope of credit ratings likely to be affected by the change in methodology, model or key ratings assumption;

(b) promptly place each credit rating identified under subsection (a) under surveillance;

(c) within six months of the change, review each credit rating identified under subsection (a) with respect to its accuracy;

(d) re-rate a credit rating if, following the review required in subsection (c), the change, alone or combined with all other changes, affects the accuracy of the credit rating.

2.12.1 If a designated rating organization becomes aware of errors in a rating methodology or its application, the designated rating organization must do all of the following if the errors could have an impact on its ratings:

(a) promptly notify the regulator or securities regulatory authority and all affected rated entities of the errors and explain the impact or potential impact of the errors on its ratings, including the need to review existing ratings;

(b) promptly publish a notice of the errors on its website, where the errors have an impact on its ratings;

(c) promptly correct the errors in the rating methodology or the application;

(d) apply the measures set out in paragraphs 2.12 (a) to (d) as if the correction of the error were a change contemplated by that section.

2.13 The designated rating organization will ensure that adequate personnel and financial resources are allocated to monitoring and updating its credit ratings. Except for ratings that clearly indicate they do not entail ongoing monitoring, once a rating is published the designated rating organization will monitor the rated entity's creditworthiness on an ongoing basis and, at least annually, update the rating. In addition, the designated rating organization must initiate a review of the accuracy of a rating upon becoming aware of any information that might reasonably be expected to result in a rating action (including termination of a rating), consistent with the applicable rating methodology and must promptly update the rating, as appropriate, based on the results of such review.

Subsequent monitoring will incorporate all cumulative experience obtained.

2.13.1 A change in ratings must be made in accordance with the designated rating organization's published rating methodologies.

2.14 If the designated rating organization uses separate analytical teams for determining initial ratings and for subsequent monitoring, the organization will ensure each team has the requisite level of expertise and resources to perform their respective functions competently and in a timely manner.

2.15 If the designated rating organization discloses a credit rating to the public and subsequently discontinues the rating, the designated rating organization ~~will~~must, as soon as practicable, disclose that the rating has been discontinued using the same means of communication as was used for the disclosure of the rating. If the designated rating organization discloses a rating only to its subscribers, if it discontinues the rating, the designated rating organization ~~will~~must, as soon as practicable, disclose to each subscriber of that rating that the rating has been discontinued. In both cases, a subsequent publication by the designated rating organization of the discontinued rating will indicate the date the rating was last updated and disclose that the rating is no longer being updated and the reasons for the decision to discontinue the rating.

C. Integrity of the rating process

2.16 The designated rating organization, its ratings employees and agents will comply with all applicable laws and regulations governing its activities.

2.17 The designated rating organization, its ratings employees and agents must deal fairly, honestly and in good faith with rated entities, investors, other market participants, and the public.

2.18 The designated rating organization will hold its ratings employees and agents to a high standard of integrity and ethical behaviour, and the designated rating organization will not employ an individual which a reasonable person would consider to be lacking in or have compromised integrity.

2.18.1. A designated rating organization must adopt, implement and enforce policies, procedures and controls to ensure that it does not use the services of a DRO employee which a reasonable person would consider to be lacking in or have compromised integrity.

2.19 The designated rating organization and its ratings employees and agents will not, either implicitly or explicitly, give any assurance or guarantee of a particular rating prior to a rating assessment. ~~The~~Subject to section 2.20 and paragraph 3.7.1(d), the designated rating organization may develop prospective assessments if the assessment is to be used in a structured finance product or similar transaction.

2.19.1 A designated rating organization or a DRO employee must not make promises or threats to influence rated entities, related entities, other issuers, subscribers, users of the designated rating organization's credit ratings or other market participants to pay for credit ratings or other services.

2.20 A person or company listed below must not make a recommendation to a rated entity about the corporate or legal structure, assets, liabilities, or activities of the rated entity:

(a) a designated rating organization;

(b) an affiliate or related entity of the designated rating organization;

(c) the ratings employees of any of the above;

(d) a significant security holder of the designated rating organization or of an affiliate that is a parent of the designated rating organization.

2.21 The designated rating organization will instruct its employees and agents that, upon becoming aware that the organization, another employee or an affiliate, or an employee of an affiliate of the designated rating organization, is or has engaged in conduct that is illegal, unethical or contrary to the designated rating organization's code of conduct, the employee or agent must report that information immediately to the compliance officer. Upon receiving the information, the compliance officer will take appropriate action, as determined by the laws and regulations of the jurisdiction and the rules and guidelines set forth by the designated rating organization. The designated rating organization will not take or allow retaliation against the employee or agent by employees, agents, the designated rating organization itself or its affiliates.

D. Governance requirements

2.22 The designated rating organization will not issue a credit rating or a rating outlook unless a majority of its board of directors, or the board of directors of a DRO affiliate that is a parent of the designated rating organization, including its independent directors, have, what a reasonable person would consider, sufficient expertise in financial services to fully understand and properly oversee the business activities of the designated rating organization. If the designated rating organization issues a credit rating or a rating outlook for a structured finance product, at least one independent member and one other member must have, what a reasonable person would consider to be, in-depth knowledge and experience at a senior level, regarding the structured finance product.

2.23 The designated rating organization will not issue a credit rating or rating outlook if a member of its board of directors, or the board of directors of a DRO affiliate that is a parent of the designated rating organization, participated in any deliberation involving a specific credit rating or rating outlook in which the member has a financial interest in the outcome of the credit rating or rating outlook.

2.24 The designated rating organization will not compensate an independent member of its board of directors, or the board of directors of a DRO affiliate that is a parent of the designated rating organization, in a manner or in an amount that a reasonable person could conclude that the compensation is linked to the business performance of the designated rating organization or its affiliates. The organization will only compensate directors in a manner that preserves the independence of the director.

2.25 The board of directors of a designated rating organization or a DRO affiliate that is a parent of the designated rating organization must monitor all of the following:

(a) the development of the credit rating policy and of the methodologies used by the designated rating organization in its credit rating activities;

(b) the effectiveness of any internal quality control system of the designated rating organization in relation to credit rating activities;

(c) the effectiveness of measures and procedures instituted to ensure that any conflicts of interest are identified and either eliminated or managed and disclosed, as appropriate;

(d) the compliance and governance processes, including the performance of the committee identified in section ~~2.11.~~2.11;

(e) the compliance by the designated rating organization and its DRO employees with the organization's code of conduct and with securities legislation.

2.26 The designated rating organization will design reasonable administrative and accounting procedures, internal control mechanisms, including internal control mechanisms in relation to the policies and procedures described in section 3.11.1, procedures for risk assessment, and control and safeguard arrangements for information processing systems. The designated rating organization will implement and maintain decision-making procedures and organizational structures that clearly, and in a documented manner, specify reporting lines and allocate functions and responsibilities.

2.27 The designated rating organization will monitor and evaluate the adequacy and effectiveness of its administrative and accounting procedures, internal control mechanisms, procedures for risk assessment, and control and safeguard arrangements for information processing systems, established in accordance with securities legislation and the designated rating organization's code of conduct, and take any measures necessary to address any deficiencies.

2.28 The designated rating organization will not outsource activities if doing so impairs materially the effectiveness of the designated rating organization's internal controls or the ability of the securities regulatory authority to conduct compliance reviews of the designated rating organization's compliance with securities legislation or its code of conduct. The designated rating organization will not outsource the functions or duties of the designated rating organization's compliance officer.

2.28.1 A designated rating organization must adopt, implement and enforce policies, procedures and controls reasonably designed to ensure that the organization and its DRO employees comply with the organization's code of conduct and securities legislation.

2.28.2 The designated rating organization's compliance officer must monitor and evaluate the adequacy and effectiveness of the designated rating organization's policies, procedures and controls referred to in section 2.28.1.

E. Risk management

2.29 A designated rating organization must establish and maintain a risk management committee made up of one or more senior managers or DRO employees with the appropriate level of experience responsible for identifying, assessing, monitoring, and reporting the risks arising from its activities, including legal risk, reputational risk, operational risk, and strategic risk. The committee must be independent of any internal audit system and make periodic reports to the board of directors of the designated rating organization, or of a DRO affiliate that is a parent of the designated rating organization, and senior management to assist the board and senior management in assessing the adequacy of the policies and procedures the designated rating organization adopted, and how well the organization implemented and enforces the policies and procedures to manage risk, including the policies and procedures specified in the organization's code of conduct.

F. Training

2.30 A designated rating organization must adopt, implement and enforce policies and procedures ensuring DRO employees undergo appropriate formal ongoing training at reasonably regular time intervals. For greater certainty, the policies and procedures must

(a) include measures reasonably designed to verify that DRO employees undergo the training,

(b) be designed to ensure the subject matter covered by the training be relevant to the DRO employee's responsibilities and cover, as applicable, the following:

(i) the designated rating organization's code of conduct;

(ii) the designated rating organization's credit rating methodologies;

(iii) the laws governing the designated rating organization's credit rating activities;

(iv) the designated rating organization's policies and procedures for managing conflicts of interest and governing the holding and transacting in securities;

(v) the designated rating organization's policies and procedures for handling confidential or material non-public information.

3. INDEPENDENCE AND CONFLICTS OF INTEREST

A. General

3.1 The designated rating organization will not refrain from, or unnecessarily delay, taking a rating action based in whole or in part on the potential effect (economic or otherwise) of the action on the designated rating organization, a rated entity, an investor, or other market participant.

3.2 The designated rating organization and its employees will use care and professional judgment to remain independent and maintain the appearance of independence and objectivity.

3.3 The determination of a credit rating or rating outlook will be influenced only by factors relevant to the credit assessment.

3.4 The designated rating organization will not allow its decision to assign a credit rating or rating outlook to a rated entity or rated securities to be affected by the existence of, or potential for, a business relationship between the designated rating organization or its affiliates and any other person or company including, for greater certainty, the rated entity, its affiliates or related entities.

3.5 The designated rating organization and its affiliates will keep separate, operationally ~~and~~, legally and, if practicable, physically, their credit rating business and their rating employees from any ancillary services (including the provision of consultancy or advisory services) that may present conflicts of interest with their credit rating activities and will ensure that the provision of such services does not present conflicts of interest with their credit rating activities. The designated rating organization will define and publicly disclose what it considers, and does not consider, to be an ancillary service and identify those that are ancillary services. The designated rating organization must disclose why it believes that those ancillary services do not present a conflict of interest with its credit rating activities. The designated rating organization will disclose in each ratings report any ancillary services provided to a rated entity, its affiliates or related entities.

3.6 The designated rating organization ~~will~~must not rate, or assign a rating outlook to, a person or company that is an affiliate or associate of the organization or a ratings employee. The designated rating organization must not assign a credit rating or rating outlook to a person or company if a ratings employee is an officer or director of the person or company, its affiliates or related entities.

3.6.1 A designated rating organization must not rate, or assign a rating outlook to, a person or company in any of the following circumstances:

(a) a significant security holder of the designated rating organization, or of an affiliate that is a parent of the designated rating organization, is a significant security holder of the person or company, its affiliates or related entities;

(b) an officer or director of a significant security holder of the designated rating organization, or of an affiliate that is a parent of the designated rating organization, is an officer or director of the person or company, its affiliates or related entities.

B. Procedures and policies

3.7 The designated rating organization ~~will~~must identify and eliminate or manage and publicly disclose any actual or potential conflicts of interest that may influence the opinions and analyses of ratings employees, including opinions and analyses in respect of a credit rating or rating outlook.

3.7.1 A designated rating organization must adopt, implement and enforce policies, procedures and controls to identify and eliminate, or manage and disclose, as appropriate, any actual or potential conflicts of interest that may influence the credit rating methodologies, credit rating actions, or analyses by the designated rating organization or the judgment, opinions or analyses by ratings employees. Without limiting the generality of the foregoing, the policies, procedures and controls must address all of the following conflicts and ensure that no conflict influences the designated rating organization's credit rating methodologies or credit rating actions:

(a) the designated rating organization is paid to issue a credit rating by the rated entity or a related entity;

(b) the designated rating organization is paid by subscribers with a financial interest that could be affected by a credit rating action of the designated rating organization;

(c) the designated rating organization is paid by rated entities, related entities or subscribers for services other than issuing credit ratings or providing access to the designated rating organization's credit ratings;

(d) the designated rating organization provides a preliminary indication or similar indication of credit quality to a rated entity or related entity prior to being retained to determine the final credit rating for the rated entity or related entity;

(e) the designated rating organization has a direct or indirect ownership interest in a rated entity or related entity;

(f) a rated entity or related entity has a direct or indirect ownership interest in the designated rating organization.

3.8 The designated rating organization ~~will~~must disclose the actual or potential conflicts of interest it identifies under the policies, procedures and controls referred to in section ~~3.7~~3.7.1 in a complete, timely, clear, concise, specific and prominent manner. If the actual or potential conflict of interest is unique or specific to a credit rating action with respect to a particular rated entity or related entity, the conflict of interest must be disclosed in the same form and through the same means as the relevant credit rating action.

3.9 The designated rating organization will disclose the general nature of its compensation arrangements with rated entities.

(1) If the designated rating organization or an affiliate receives from a rated entity, an affiliate or a related entity compensation unrelated to its ratings service, such as

compensation for ancillary services (as referred to in section 3.5), the designated rating organization will disclose the percentage that non-rating fees represent out of the total amount of fees received by the designated rating organization or its affiliate, as the case may be, from the rated entity, the affiliate or the related entity.

(2) If the designated rating organization or its affiliates receives directly or indirectly 10 percent or more of its annual revenue from a particular rated entity or subscriber, including revenue received from an affiliate or related entity of the rated entity or subscriber, the organization will disclose that fact and identify the particular rated entity or subscriber.

3.9.1 A designated rating organization must ensure both of the following:

(a) fees charged to rated entities for the provision of credit ratings and ancillary services, as referred to in section 3.5, do not discriminate among rated entities in an unfair manner and have a reasonable relation to actual costs;

(b) fees charged to rated entities for the provision of credit ratings must not depend on the category of credit rating or any other result or outcome of the work performed.

3.10 A designated rating organization and its DRO employees and their associates must not trade a security, derivative or exchange contract if the organization's employee's or associate's interests in the trade conflict with their interests relating to a credit rating or rating outlook.

3.11 If a designated rating organization is subject to the oversight of a rated entity, or an affiliate or related entity of the rated entity, the designated rating organization ~~will~~must use different DRO employees to conduct the rating actions in respect of that entity, or to develop or modify methodologies that apply to that entity, than those ~~involved in~~that are subject to the oversight.

3.11.1 A designated rating organization must adopt, implement and enforce policies and procedures to prevent and mitigate conflicts of interest and to ensure the independence of credit ratings, rating outlooks and DRO employees, including policies and procedures in relation to the matters described in section 3.4. The designated rating organization must periodically monitor and review these policies and procedures in order to evaluate their effectiveness and assess whether they should be updated.

C. Employee independence

3.12 Reporting lines for a ratings employee or DRO employees and their compensation arrangements will be structured to eliminate or manage actual and potential conflicts of interest.

(1) The designated rating organization will not compensate or evaluate a ratings employee on the basis of the amount of revenue that the designated rating organization or its affiliates derives from rated entities that the ratings employee rates or assigns rating outlooks to, or with which the ratings employee regularly interacts.

(2) The designated rating organization will conduct reviews of compensation policies and practices for its DRO employees within reasonable regular time periods to ensure that these policies and practices do not compromise the objectivity of the designated rating organization's rating process.

3.13 The designated rating organization will take reasonable steps to ensure that its ratings employees, and any agent who has responsibility for developing or approving procedures or methodologies used for determining credit ratings, do not initiate, or participate in, discussions or negotiations regarding fees or payments with any rated entity or its affiliates or related entities.

3.14 The designated rating organization ~~will~~must not permit a ratings employee to participate in or otherwise influence the determination of a credit rating or rating outlook if any of the ~~ratings employee~~following apply:

(a) ~~owns directly or indirectly~~the ratings employee or an associate of the ratings employee has beneficial ownership of, or control or direction over, whether direct or indirect, securities, derivatives or exchange contracts of, or in respect of, the rated entity, other than holdings through an investment fund;

(b) ~~owns directly or indirectly securities~~the ratings employee or an associate of the ratings employee has beneficial ownership of, or control or direction over, whether direct or indirect, derivatives or exchange contracts of, or in respect of, a rated entity, its affiliates or its related entities, the ownership of which, or control or direction over, causes or may reasonably be perceived as causing a conflict of interest;

(c) ~~has~~the ratings employee or an associate of the ratings employee has, or has recently had ~~a recent~~, an employment, business or other relationship with, or interest in, the rated entity, its affiliates or related entities that causes or may reasonably be perceived as causing a conflict of interest; ~~or~~

(d) ~~has~~ an associate ~~who currently works for~~of the ratings employee is a director of, the rated entity, its affiliates or related entities.

3.15 The designated rating organization will not permit a ratings employee or an associate of such ratings employee to buy or sell or engage in any transaction involving a security, a derivative or an exchange contract based on a security issued, guaranteed, or otherwise supported by any person or company within such ratings employee's area of primary analytical responsibility, other than holdings through an investment fund.

3.16 The designated rating organization will not permit a ratings employee or an associate of such ratings employee to accept gifts, including entertainment, from anyone with whom the designated rating organization does business, other than items provided in the normal course of business if the aggregate value of all gifts received is nominal.

3.17 If a DRO employee of a designated rating organization becomes involved in any ~~personal~~ relationship that creates any actual or potential conflict of interest, the DRO employee must disclose the relationship to the designated rating organization's compliance officer. The designated rating organization ~~will~~must not issue a credit rating or rating outlook if a DRO employee has an actual or potential conflict of interest with a rated entity. If ~~the~~such a credit rating or rating outlook has been issued, the designated rating organization ~~will~~must promptly publicly disclose ~~in a timely manner~~ that the credit rating ~~may~~or rating outlook might be affected.

3.18 The designated rating organization will review the past work of any ratings employee that leaves the organization and joins a rated entity (or an affiliate or related entity of the rated entity) if one or both of the following apply:

(a) the ratings employee has, within the last year, been involved in rating the rated entity~~,~~ or assigning it a related rating outlook;

(b) the rated entity is a financial firm with which the ratings employee had, within the last year, significant dealings as part of his or her duties at the designated rating organization.

4. RESPONSIBILITIES TO THE INVESTING PUBLIC AND ISSUERS

A. Transparency and timeliness of ratings disclosure

4.1 The designated rating organization ~~will~~must distribute in a timely manner its ~~ratings~~ decisions on credit ratings and rating outlooks regarding the entities and securities it rates.

4.1.1 A designated rating organization must adopt, implement and enforce policies, procedures and controls for distributing credit ratings, actions, updates, rating outlooks and related reports and for when a credit rating will be withdrawn or discontinued.

4.2 ~~The~~A designated rating organization ~~will~~must publicly disclose its policies and procedures for distributing credit ratings, ~~ratings~~actions, updates, rating outlooks and related reports and ~~updates~~for when a credit rating will be withdrawn or discontinued.

4.3 Except for a credit rating or a rating outlook it discloses only to the rated entity, a designated rating organization ~~will~~must disclose to the public, on a non-selective basis and free of charge, any ~~ratings~~ decision on a credit rating or rating outlook regarding a rated ~~entities~~entity that ~~are~~is a reporting ~~issuers~~issuer or regarding the securities of such ~~issuers~~an issuer, as well as any subsequent ~~decisions~~decision to discontinue such a rating, if the ~~rating~~ decision is based in whole or in part on material non-public information.

4.3.1 If a designated rating organization discloses to the public or its subscribers any decision on a credit rating or rating outlook regarding a rated entity or the securities of a rated entity, as well as any subsequent decisions to discontinue the rating, it must do so on a non-selective basis.

4.4 In each of its ratings reports in respect of a credit rating or rating outlook, a designated rating organization ~~will~~must disclose all of the following:

(a) when the credit rating was first released and when it was last updated, reviewed or assigned a rating outlook;

(b) the principal methodology or methodology version that was used in determining the credit rating and where a description of that methodology can be found. If the credit rating is based on more than one methodology, or if a review of only the principal methodology might cause investors to overlook other important aspects of the credit rating, the designated rating organization must explain this fact in the ratings report, and include a discussion of how the different methodologies and other important aspects factored into the rating decision;

(c) the meaning of each rating category and the definition of default or recovery, and the time horizon the designated rating organization used when making a rating decision;

(d) any attributes and limitations of the credit rating or rating outlook. If the rating or rating outlook involves a type of financial product presenting limited historical data, ~~(~~such as an innovative financial vehicle~~)~~, the designated rating organization ~~will~~must disclose, in a prominent place, the limitations of the credit rating or rating outlook;

(e) all ~~material~~significant sources, including the rated entity, its affiliates and related entities, that were used to prepare the credit rating or rating outlook and whether the credit rating or rating outlook has been disclosed to the rated entity or its related entities and amended following that disclosure before being issued.

4.5 In each of its ratings reports in respect of a credit rating or rating outlook for a structured finance product, a designated rating organization ~~will~~must disclose all of the following:

(a) 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 or rating outlook. The designated rating organization ~~will~~must also disclose the degree to which it analyzes how sensitive a credit rating of a structured finance product is to changes in the designated rating organization's underlying rating assumptions;

(b) the level of assessment the designated rating organization has performed concerning the due diligence processes carried out at the level of underlying financial instruments or other assets of structured finance products. The designated rating organization ~~will~~must also disclose whether it has undertaken any assessment of such due diligence processes or whether it has relied on a third-party assessment and how the outcome of such assessment impacts the credit rating;

(c) whether the issuer of the structured finance product has informed the designated rating organization that it is publicly disclosing all relevant information about the product being rated or whether the information remains non-public.

4.6 If, to a reasonable person, the information required to be included in a ratings report under sections 4.4 and 4.5 would be disproportionate to the length of the ratings report, the designated rating organization will include a prominent reference to where such information can be easily accessed.

4.7 A designated rating organization ~~will~~must disclose on an ongoing basis information about all debt securities and structured finance products submitted to it for its initial review or for a preliminary rating, including whether the issuer requested the designated rating organization to provide a final rating.

4.8 The designated rating organization will publicly disclose the methodologies, models and key rating assumptions (such as mathematical or correlation assumptions) it uses in its credit rating activities and any material modifications to such methodologies, models and key rating assumptions. This disclosure will include sufficient information about the designated rating organization's procedures, methodologies and assumptions (including financial statement adjustments that deviate materially from those contained in the issuer's published financial statements and a description of the rating committee process, if applicable) so that outside parties can understand how a rating was arrived at by the designated rating organization.

4.8.1 When disclosing the methodologies, models and key rating assumptions referred to in section 4.8, the designated rating organization must include guidance that explains assumptions, parameters, limits and uncertainties surrounding the methodologies and models it uses in its credit rating activities, including simulations of stress scenarios undertaken by the designated rating organization when determining credit ratings, information on cash-flow analysis it has performed or is relying upon and, where applicable, an indication of any expected change in the credit rating. The designated rating organization must prepare the guidance required by this section using plain language.

4.9 The designated rating organization will differentiate ratings of structured finance products from traditional corporate bond ratings through a different rating symbology. The designated rating organization will also disclose how this differentiation functions. The designated rating organization will clearly define a given rating symbol and apply it in a consistent manner for all types of securities to which that symbol is assigned.

4.10 The designated rating organization will assist investors in developing a greater understanding of what a credit rating is, and the limits to which credit ratings can be put to use in relation to a particular type of financial product that the designated rating organization rates. The designated rating organization ~~will clearly~~must indicate the attributes and limitations of each credit rating and the risks of relying on the credit rating to make investment or other financial decisions. When issuing a credit rating or a rating outlook, the designated rating organization must disclose that the credit rating or rating outlook is the designated rating organization's assessment and should only be relied on to a limited degree. A designated rating organization must prepare the disclosure

required by this section using plain language. A designated rating organization must not state or imply that a regulator or securities regulatory authority endorses its credit ratings or use its designation status to promote the quality of its credit ratings.

4.10.1 When issuing a credit rating or rating outlook, the designated rating organization must clearly indicate the extent to which the designated rating organization verifies information provided to it by the rated entity. If the credit rating involves a type of entity or obligation for which there is limited historical data, the designated rating organization must disclose this fact and how it may limit the credit rating.

4.10.2 For any credit rating or rating outlook, a designated rating organization must be transparent with the rated entity and investors about how the rated entity or its securities are rated.

4.11 When issuing or revising a credit rating or a rating outlook, the designated rating organization ~~will~~must provide in its press releases and public reports an explanation of the key elements underlying the rating opinion or rating outlook, including financial statement adjustments that deviate materially from those contained in the issuer's published financial statements.

4.12 Before issuing or revising a credit rating or a rating outlook, the designated rating organization ~~will~~must inform the issuer of the critical information and principal considerations upon which a credit rating or rating outlook will be based and afford the issuer ~~an~~a reasonable opportunity to clarify any likely factual misperceptions or other matters that the designated rating organization would ~~wish~~want to be made aware of in order to produce an accurate credit rating or rating outlook. The designated rating organization ~~will~~must inform the issuer during the business hours of the issuer. The designated rating organization must duly evaluate the response.

4.13 Every year, the designated rating organization ~~will~~must publicly disclose data about the historical transition and default rates of its rating categories with respect to the classes of issuers and securities it rates and whether the transition and default rates of these categories have changed over time. If the nature of the rating or other circumstances make a historical transition or default rate inappropriate, statistically invalid, or otherwise likely to mislead the users of the rating, the designated rating organization ~~will~~must explain this. This information ~~will~~must include verifiable, quantifiable historical information about the performance of its rating opinions, organized ~~and structured~~over a period of time, and, where possible, standardized in such a way so as to assist investors in drawing performance comparisons between different designated rating organizations.

4.13.1 When disclosing a credit rating or rating outlook, the designated rating organization must include a reference to where the data referred to in section 4.13 can be accessed on its website and a brief explanation of the meaning of that data.

4.13.2 When disclosing a rating outlook, the designated rating organization must indicate the time period during which a change in the credit rating may occur.

4.14 For each credit rating, the designated rating organization ~~will~~must disclose whether the rated entity and its related entities participated in the rating process and whether the designated rating

organization had access to the accounts, management and other relevant internal documents of the rated entity or its related entities. Each credit rating without that access must be identified as such using a clearly distinguishable colour code for the rating category. Each credit rating not initiated at the request of the rated entity ~~will~~must be identified as such. The designated rating organization ~~will~~must also publicly disclose its policies and procedures regarding unsolicited ratings.

4.15 The designated rating organization ~~will fully and~~must publicly disclose, in a timely fashion, any material modification to its methodologies, models, key ratings assumptions and significant systems, resources or procedures. Where a reasonable person would consider it feasible and appropriate, disclosure of such material modifications ~~will~~must be made before they go into effect. Any disclosure of such material modifications must be made in a non-selective manner. The designated rating organization ~~will~~must carefully consider the various uses of credit ratings before modifying its methodologies, models, key ratings assumptions and significant systems, resources or procedures.

4.15.1 If the designated rating organization intends to make a significant change to an existing rating methodology, model or key rating assumption or use a new rating methodology that could have an impact on a credit rating, the designated rating organization must do both of the following:

(a) publish the proposed significant change or proposed new rating methodology on its website together with a detailed explanation of the reasons for, and the implications of, the proposed significant change or proposed new rating methodology;

(b) invite interested persons to submit written comments with respect to the proposed significant change or proposed new rating methodology within a period of at least 30 days after the publication.

4.15.2 If following the publication referred to in section 4.15.1, the designated rating organization makes a significant change to an existing rating methodology, model or key rating assumption or issues a new rating methodology that could have an impact on a credit rating, the designated rating organization must promptly publish on its website all of the following:

(a) the revised or new rating methodology, model or key rating assumption,

(b) a detailed explanation of the revised or new methodology, model or key rating assumption, its date of application and the results of the consultation referred to in section 4.15.1;

(c) copies of the written comments referred to in paragraph 4.15.1(b), except in the case where confidentiality is requested by the person who submitted the comment.

4.15.3 A designated rating organization's disclosures, including those specified in the organization's code of conduct, must be complete, fair, accurate, timely, and understandable to reasonable investors and other expected users of credit ratings.

4.15.4 A designated rating organization must publicly and prominently disclose, free of charge, all of the following information on its primary website:

(a) the designated rating organization's code of conduct;

(b) a description of the designated rating organization's credit rating methodologies;

(c) information about the designated rating organization's historic performance data;

(d) any other disclosures specified in the provisions of the designated rating organization's code of conduct and securities legislation.

B. The treatment of confidential information

4.16 The designated rating organization and its DRO employees ~~will~~must take all reasonable measures to protect both of the following:

(a) non-public information about a credit rating action, including information about a credit rating action before the credit rating or rating outlook is publicly disclosed or disseminated to subscribers;

(b) the confidential nature of information shared with them by rated entities under the terms of a confidentiality agreement or otherwise under a mutual understanding that the information is shared confidentially.

Unless otherwise permitted by ~~the confidentiality~~a written agreement or required by applicable laws, regulations or court orders, the designated rating organization and its DRO employees ~~will~~must not disclose confidential information, including information about a credit rating action before the credit rating or rating outlook is publicly disclosed or disseminated to subscribers.

4.16.1 A designated rating organization must consider applicable securities legislation governing insider trading or tipping when dealing with non-public information that it receives from an issuer. A designated rating organization must maintain a list of all persons who have access to non-public information about a credit rating action, including information about a credit rating action before the credit rating or rating outlook is publicly disclosed or disseminated to subscribers. For any credit rating action, the list must include applicable DRO employees and any person identified by the rated entity for purposes of the list.

4.17 The designated rating organization and its DRO employees will not use confidential information for any purpose except for their rating activities or in accordance with applicable legislation or a confidentiality agreement with the rated entity to which the information relates.

4.18 The designated rating organization and its DRO employees ~~will~~must take all reasonable measures to protect all property and records relating to credit rating activities and belonging to or in possession of the designated rating organization from fraud, theft ~~or~~, misuse or inadvertent disclosure.

4.19 ~~A~~ The designated rating organization ~~will~~must ensure that the organization and its DRO employees do not engage in transactions in securities, derivatives or exchange contracts when they possess confidential information concerning the issuer of such security or to which the derivative or the exchange contract relates, including information about a credit rating action before the credit rating or rating outlook is publicly disclosed or disseminated to subscribers.

4.20 A designated rating organization will cause its DRO employees to familiarize themselves with the internal securities trading policies maintained by the designated rating organization and certify their compliance with such policies within reasonable regular time periods.

4.21 The designated rating organization and its DRO employees ~~will~~must not selectively disclose any non-public information about credit ratings, rating outlooks or possible future rating actions of the designated rating organization, except to the issuer or its designated agents.

4.22 The designated rating organization and its DRO employees will not share confidential information entrusted to the designated rating organization with employees of any affiliate that is not a designated rating organization or a DRO affiliate. The designated rating organization and its DRO employees will not share confidential information within the designated rating organization, except as necessary in connection with the designated rating organization's credit rating functions.

4.23 A designated rating organization will ensure that its DRO employees do not use or share confidential information for the purpose of buying or selling or engaging in any transaction in any security, derivative or exchange contract based on a security issued, guaranteed, or otherwise supported by any person or company, or for any other purpose except the conduct of the designated rating organization's business.

4.24 A designated rating organization must adopt, implement and enforce policies, procedures and controls to ensure all of the following:

(a) compliance with applicable laws governing the treatment and use of confidential or material non-public information;

(b) DRO employees take all reasonable steps to protect confidential or material non-public information from fraud, theft, misuse, or inadvertent disclosure;

(c) compliance with sections 4.16, 4.16.1, 4.19, 4.21 and 4.23;

(d) compliance with the designated rating organization's internal record maintenance, retention and disposition policies, procedures and controls and with laws governing the maintenance, retention and disposition of the designated rating organization's records.

C. The treatment of complaints

4.25 A designated rating organization must establish and maintain a committee charged with receiving, retaining, and handling complaints from market participants and the public. The

designated rating organization must adopt implement and enforce policies, procedures and controls for receiving, retaining, and handling complaints, including those that are provided on a confidential basis. The policies and procedures must specify the circumstances under which a complaint must be reported to one or both of the following:

(a) senior management of the designated rating organization;

(b) the board of directors of the designated rating organization or of a DRO affiliate that is a parent of the designated rating organization.

FORM 25-101F1
Designated Rating Organization Application and Annual Filing

Instructions

(1) Terms used in this form but not defined in this form have the meaning given to them in the Instrument.

(2) Unless otherwise specified, the information in this form must be presented as at the last day of the applicant's most recently completed financial year. If necessary, the applicant must update the information provided so it is not misleading when it is filed. For information presented as at any date other than the last day of the applicant's most recently completed financial year, specify the relevant date in the form.

(3) Applicants are reminded that it is an offence under securities legislation to give false or misleading information on this form.

(4) Applicants may apply to the securities regulatory authority or regulator to hold in confidence portions of this form which disclose ~~intimate~~sensitive financial, personal or other information. ~~Securities~~The securities regulatory ~~authorities~~authority or regulator will consider the application and may determine to accord confidential treatment to those portions to the extent permitted by law.

(5) When this form is used for an annual filing, the term "applicant" means the designated rating organization.

Item 1. Name of Applicant
State the name of the applicant.

Item 2. Organization and Structure of Applicant
Describe the organizational structure of the applicant, including, as applicable, an organizational chart that identifies the ultimate and intermediate parent companies, subsidiaries, and material affiliates of the applicant (if any); an organizational chart showing the divisions, departments, and business units of the applicant; and an organizational chart showing the managerial structure of the applicant, including the compliance officer referred to in section 12 of the Instrument. Provide detailed information regarding the applicant's legal structure and ownership.

Item 3. DRO Affiliates
Provide the name, address and governing jurisdiction of each affiliate that is (or, in the case of an applicant, proposes to be) a DRO affiliate.

Item 4. Rating Distribution Model
Briefly describe how the applicant makes its credit ratings readily accessible for free or for a fee. If a person must pay a fee to obtain a credit rating made readily accessible by the applicant, provide a fee schedule or describe the price(s) charged.

Item 5. Procedures and Methodologies
Briefly describe the procedures and methodologies used by the applicant to determine credit ratings, including unsolicited credit ratings. The description must be sufficiently detailed to provide an understanding of the processes employed by the applicant in determining credit ratings, including, as applicable:

- policies for determining whether to initiate a credit rating;
- the public and non-public sources of information used in determining credit ratings, including information and analysis provided by third-party vendors;
- whether and, if so, how information about verification performed on assets underlying or referenced by a security issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction is relied on in determining credit ratings;
- the quantitative and qualitative models and metrics used to determine credit ratings, including whether and, if so, how assessments of the quality of originators of assets underlying or referenced by a security issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction factor into the determination of credit ratings;
- the methodologies by which credit ratings of other credit rating ~~agencies~~organizations are treated to determine credit ratings for securities issued by an asset pool or as part of any asset-backed or mortgaged-backed securities transaction;
- the procedures for interacting with the management of a rated obligor or issuer of rated securities;
- the structure and voting process of committees that review or approve credit ratings;
- procedures for informing rated obligors or issuers of rated securities about credit rating decisions and for appeals of final or pending credit rating decisions; and
- procedures for monitoring, reviewing, and updating credit ratings, including how frequently credit ratings are reviewed, whether different models or criteria are used for ratings surveillance than for determining initial ratings, whether changes made to models and criteria for determining initial ratings are applied retroactively to existing ratings, and whether changes made to models and criteria for performing

ratings surveillance are incorporated into the models and criteria for determining initial ratings; and procedures to withdraw, or suspend the maintenance of, a credit rating.

An applicant may provide the location on its website where additional information about the procedures and methodologies is located.

Item 6. Code of Conduct
Unless previously provided, attach a copy of the applicant's code of conduct.

Item 7. Policies and Procedures re Non-public Information
Unless previously provided, attach a copy of the most recent written policies and procedures established, maintained, and enforced by the applicant to prevent the misuse of material non-public information.

Item 8. Policies and Procedures re Conflicts of Interest
Unless previously provided, attach a copy of the most recent written policies and procedures established with respect to conflicts of interest.

Item 9. Policies and Procedures re Internal Controls
Describe the applicant's internal control mechanisms designed to ensure the quality of its credit rating activities.

Item 10. Policies and Procedures re Books and Records
Describe the applicant's policies and procedures regarding record-keeping.

Item 11. Ratings Employees
Disclose the following information about the applicant's ratings employees and the persons who supervise the ratings employees:

- The total number of ratings employees,
- The number of ratings employees allocated to credit rating activities for different asset classes,
- The total number of ratings employees supervisors,
- The number of ratings employees supervisors allocated to credit rating activities for different asset classes,
- A general description of the minimum qualifications required of the ratings employees, including education level and work experience (if applicable, distinguish between junior, mid, and senior level ratings employees), and
- A general description of the minimum qualifications required of the ratings employees supervisors, including education level and work experience.

Item 12. Compliance Officer
Disclose the following information about the compliance officer of the applicant:

- Name,
- Employment history,
- Post secondary education, and
- Whether employed by the applicant full-time or part-time.

Item 13. Specified Revenue
Disclose information, as applicable, regarding the applicant's aggregate revenue for the most recently completed financial year:

- Revenue from determining and maintaining credit ratings,
- Revenue from subscribers,
- Revenue from granting licenses or rights to publish credit ratings, and
- Revenue from all other services and products offered by the credit rating organization (include descriptions of any major sources of revenue).

Include financial information ~~on~~about the revenue of the applicant ~~divided~~separated into fees from credit rating services and non-credit rating ~~activities~~services, including a comprehensive description of each. In providing this information, disclose the following:

- Revenue from non-credit rating services provided to persons that also obtained credit rating services,
- Revenue from credit rating services for different asset classes, and
- Revenue from credit rating services and non-credit rating services provided to persons located in Canada.

This information is not required to be audited.

Item 14. Credit Rating Users
(a) Disclose a list of the largest users of credit rating services of the applicant by the amount of net revenue earned by the applicant attributable to the user during the most recently completed financial year. First, determine and list the 20 largest issuers and subscribers in terms of net revenue. Next, add to the list any obligor or underwriter that, in terms of net revenue during the financial year, equalled or exceeded the 20th largest issuer or subscriber. In making the list, rank the users in

terms of net revenue from largest to smallest and include the net revenue amount for each person. For purposes of this Item:

- **"credit rating services"** means any of the following: rating an issuer's securities (regardless of whether the issuer, underwriter, or any other person or company paid for the credit rating) and providing credit ratings, credit ratings data, or credit ratings analysis to a subscriber; and

- **"net revenue"** means revenue earned by the applicant for any type of service or product provided to the person or company, regardless of whether related to credit rating services, and net of any rebates and allowances the applicant paid or owes to the person or company.

(b) Disclose a list of users of credit rating services whose contribution to the growth rate in the generation of revenue of the applicant in the previous fiscal year exceeded the growth rate in the applicant's total revenue in that year by a factor of more than 1.5 times. A user must be disclosed only if, in that year, the user accounted for more than 0.25% of the applicant's worldwide total revenue.

Item 14A. Pricing Policy

Disclose the applicant's pricing policy for credit rating services and any ancillary services, including the fee structure and pricing criteria in relation to credit ratings for different asset classes.

Item 15. Financial Statements

Attach a copy of the audited financial statements of the applicant, which must include a statement of financial position, a statement of comprehensive income, and a statement of changes in equity, for each of the three most recently completed financial years. If the applicant is a division, unit, or subsidiary of a parent company, the applicant may provide audited consolidated financial statements of its parent company.

Item 16. Verification Certificate

Include a certificate of the applicant in the following form:

> The undersigned has executed this Form 25-101F1 on behalf of, and on the authority of, [the Applicant]. The undersigned, on behalf of the [Applicant], represents that the information and statements contained in this Form, including appendices and attachments, all of which are part of this Form, are true and correct.

_____ _____

(Date) (Name of the Applicant/Designated Rating Organization)

By: _____

(Print Name and Title)

_____

(Signature)

FORM 25-101F2
Submission to Jurisdiction and Appointment of Agent for Service of Process

1. Name of credit rating organization (the **CRO**):

2. Jurisdiction of incorporation, or equivalent, of CRO:

3. Address of principal place of business of CRO:

4. Name of agent for service of process (the **Agent**):

5. Address for service of process of Agent in Canada (the address may be anywhere in Canada):

6. The CRO designates and appoints the Agent at the address of the Agent stated in Item 5 as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the **Proceeding**) arising out of, relating to or concerning the issuance and maintenance of credit ratings or the obligations of the CRO as a designated rating organization, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.

7. The CRO irrevocably and unconditionally submits to the non-exclusive jurisdiction of

   (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces and territories of Canada in which it is a designated rating organization; and

   (b) any administrative proceeding in any such province or territory,

   in any Proceeding arising out of or related to or concerning the issuance or maintenance of credit ratings or the obligations of the CRO as a designated rating organization.

8. This submission to jurisdiction and appointment of agent for service of process is governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

_____ _____

Signature of Credit Rating Organization Date

_____

Print name and title of signing officer
of Credit Rating Organization

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of CRO] under the terms and conditions of the appointment of agent for service of process set out in this document.

_____ _____

Signature of Agent Date

_____

Print name of person signing and, if Agent
is not an individual, the title of the person

Annex P

Local Matters

There are no local matters for Alberta to consider at this time.

October 4, 2017

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

BY EMAIL

The Secretary
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comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment Relating to Designated Rating Organizations (the "Proposed Amendments")

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the **CAC**) appreciates the opportunity to provide the following comments on the Proposed Amendments, specifically as it relates to the application by Kroll Bond Rating Agency, Inc. ("Kroll") for designation as a DRO, and the CSA's proposal to recognize the credit ratings of Kroll only with respect to the alternative eligibility criteria for issuers of asset-backed securities (ABS) to file a short form prospectus or shelf prospectus.

[1] The CAC represents more than 15,000 Canadian members of the CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at http://www.cfasociety.org/cac. Our Code of Ethics and Standards of Professional Conduct can be found at http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx.

[2] CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 149,603 members in 163 countries, including 143,386 CFA charterholders and 148 member societies. For more information, visit www.cfainstitute.org.

We wish to respond to the following specific questions posed with respect to the Proposed Amendments.

1. *Do you agree that a Kroll long term credit rating of "BBB" and a Kroll short term credit rating of "K3" would be the appropriate rating categories for purposes of the ABS Short Form Eligibility Criteria?*

The ratings grid relating to the proposed amendments to the definition of "designated rating" in section 1.2 of NI 44-101 *Short Form Prospectus Distributions* seems to imply that a credit rating from one of the Designated Rating Organizations is equivalent to the same credit rating from Kroll. Nonetheless, we do not have sufficient information with respect to the assumptions used by Kroll and the DROs in their rating methodologies for ABS securities to comment as to whether a Kroll long term rating of "BBB" and a Kroll short term rating of "K3" is equivalent to the credit ratings from the existing DROs. However, based on its certifications, standards, experience with ABS securities and its transparency requirements (for example, it makes available on its web site the methodologies and framework used for rating ABS securities), Kroll would appear to be an appropriate choice to rate ABS securities in Canada.

2. We have considered the experience of Kroll in rating ABS issuers in the United States in determining the appropriate rating categories of Kroll for purposes of the ABS Short Form Eligibility Criteria. Do you agree that this U.S. experience is relevant to the Canadian marketplace?

Yes, we are of the view that Kroll's experience in the U.S. is relevant in the Canadian marketplace, especially since the market for ABS securities in the U.S. (particularly residential mortgage backed securities and commercial mortgage backed securities) experienced a more severe turmoil in the financial crisis than its Canadian counterpart (save for the asset-backed commercial paper sub-market).

3. Do you think there is an increased potential for rating shopping by ABS issuers if the Proposed Amendments are implemented? If so, why or why is that a concern?

We do not think there is an increased potential for rating shopping by ABS issuers. On the contrary, if Kroll is certified as a DRO, it will offer Canadian investors an additional and alternative credit perspective on ABS securities.

We note that in the United States, SEC Rule 17g-5 requires nationally recognized statistical rating organizations and certain "arrangers", including issuers of structured finance products, to disclose to other rating organizations that the arranger is in the process of determining an initial credit rating, and each arranger must make the same information provided to the credit rating organization it hired available to the other rating organizations. The rule is intended in part to deal with the issue of rate shopping. More prescriptive disclosure with respect to methodologies and ratings under consideration, similar to what is specifically mandated by the SEC Rule, could assist with additional transparency to the marketplace.

The CFA Institute released a survey of its members in the Americas region with a primary investment practice of fixed income in June 2014[3], which indicated that 24% of its members believe that removing the regulatory and statutory requirement for financial firms to rely on ratings altogether would have the biggest positive impact on the reliability of credit ratings. In addition, 11% of its members believed that new entrants in the market had the biggest positive impact on the reliability of credit ratings. Approximately 60% of participants in the survey indicated that all rating agency models have conflicts of interest (resulting in part from the issuer-pay model), and that increased transparency and competition would be the best solution.

4. What would be the implications to Canadian market participants if the EU did not continue to recognize the Canadian regulatory regime in NI 25-101 as "equivalent" for regulatory purposes in the EU? We are interested in details of how you would be impacted.

If the EU did not recognize the Canadian regulatory regime as equivalent, securities issues could be ineligible to certain investors pursuant to their investment policy statements, rating related investment restrictions, and regulatory requirements, unless those statements were updated to include the new permissible ratings.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *The Canadian Advocacy Council for*
Canadian CFA Institute Societies

The Canadian Advocacy Council for
Canadian CFA Institute Societies

[3] CFA Institute. "Credit Rating Agency Survey Results". Survey, June 2014.

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EMAIL info@dbrs.com

Insight beyond the rating.

October 4, 2017

SENT BY ELECTRONIC MAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

c/o
The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
comment@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
consultation-en-cours@lautorite.qu.ca

Dear Sirs/Mesdames:

Proposed Amendments to National Instrument 25-101 *Designated Rating Organizations* (NI 25-101) and Certain Other Related Instruments and Policies (the Proposed Amendments)

DBRS is writing in response to the publication of the CSA Notice and Request for Comment relating to Designated Rating Organizations published on July 2, 2017 and found at (2017) 40 OSCB 5815.

DBRS was formed in 1976 and is independently owned and operated. DBRS is Canada's leading credit rating agency (**CRA**), with offices in Toronto, New York, Chicago, London and Mexico City.[1] DBRS's role in Canada is of particular significance, with comprehensive ratings coverage for all provinces, virtually all corporate entities, major banks and

[1] The DBRS group of companies consists of DBRS, Inc. (U.S.)(NRSRO, DRO affiliate); DBRS Limited (Ontario, Canada)(DRO, NRSRO affiliate); DBRS Ratings Limited (England and Wales)(CRA, NRSRO affiliate, DRO affiliate); and DBRS Ratings México, Institución Calificadora de Valores, S.A. de C.V. (Mexico)(CRA, NRSRO affiliate, DRO affiliate).

Douglas E. Turnbull
Vice Chairman - Country Head, Canada

DBRS
Insight beyond the rating.

insurance companies, and asset-backed securities. DBRS is the primary CRA in Canada for term securities, commercial paper, and preferred shares, and is the only CRA that focuses on emerging Canadian companies. As the only Canadian-based CRA, DBRS believes it plays a unique and critical role in the Canadian marketplace. However, despite its significance in Canada, DBRS nevertheless remains a small CRA when compared to the "big three" credit rating agencies that predominate the global credit ratings marketplace.[2]

DBRS very much appreciates the opportunity to provide the CSA with its comments on the Proposed Amendments.

A. General comments

While the CSA observes that the rules contained in the proposed amendments provide additional safeguards that may also benefit investors, DBRS understands that the drivers for the amendments are to satisfy the EU Commission that Canada's regulatory regime is "equivalent" for regulatory purposes and to incorporate updates that IOSCO suggested in its 2015 update to its *Code of Conduct Fundamentals for Credit Rating Agencies* (the **2015 IOSCO Code**).

DBRS supports the CSA's objective to maintain EU equivalency. However, DBRS believes that the proposed amendments go beyond both what is necessary to maintain equivalency and, in certain cases, IOSCO's suggestions, and that such amendments, if adopted, will cause designated rated organizations (**DROs**) to incur costs beyond those incurred to revise their codes of conduct and policies and procedures. Furthermore, while these costs can more easily be absorbed by the Big Three CRAs, regulatory cost presents a disproportionate burden for smaller CRAs such as DBRS. As such, DBRS respectfully requests that the CSA reconsider either the adoption or the form of many of the amendments it has proposed, including those that DBRS specifically addresses herein.

EU Equivalency

Although each of the Big Three CRAs and DBRS operate on a global basis, the evolution of regulatory requirements over the last decade has fundamentally occurred on either a national or regional basis. Our experience has been that while all jurisdictions are attempting to achieve the same objectives of investor protection and financial stability – objectives DBRS shares – EU regulations approach these objectives in a manner that can be more costly and prescriptive in comparison to the other regulatory regimes to which DBRS is subject. These burdens can be detrimental to a competitive landscape within the marketplace that is currently dominated by the Big Three CRAs.[3]

DBRS understands the CSA's objective is to ensure that the Canadian regulatory regime continues to be regarded as "equivalent" by the EU, which in turn will help allow DROs to have their ratings endorsed by their EU affiliate for use

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2 The three biggest credit rating agencies globally (the **Big Three CRAs**) are Moody's Investment Service Inc., S&P Global Ratings and Fitch Ratings, Inc. each of which is significantly larger, on a global basis, than DBRS.

3 As an example, ESMA reported that for the Big Three CRAs, cost of compliance (excluding supervisory fees) represent less than 1% of their total annual revenues while some smaller CRAs have estimated that their compliance costs may account for up to 10% of their total annual revenues. See ESMA's Technical Advice 30 September 2015. Meanwhile, the aggregate market share of the Big Three CRAs in Europe continues to increase, from 90% in 2014, to 92% in 2015, to 92.85% in 2016. See ESMA's December 2016 market share report.

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in the EU. However, DBRS asks that this is achieved in a way that is sensitive to the burdens that may be imposed on smaller credit rating agencies, including DBRS. As the CSA is aware, ESMA does not require third country regimes to have identical requirements in order to find equivalency, so long as the objectives of the EU rules are met – objectives that DBRS submits are largely met by the well-crafted Canadian regulations already in place. DBRS therefore strongly urges that any amendment to NI 25-101 is in a manner that maintains Canada's principles-based approach to CRA regulation and is sensitive to the regulatory burdens that may be imposed upon CRAs, particularly smaller CRAs.

2015 IOSCO Code

DBRS understands that the initial development of NI 25-101 was influenced by the May 2008 IOSCO *Code of Conduct Fundamentals for Credit Rating Agencies*, which was subsequently updated in 2015. DBRS has updated its own *Business Code of Conduct* to conform to the 2015 IOSCO Code.

However, DBRS notes that, as with its predecessor, the provisions of the 2015 IOSCO Code were developed in the context of a voluntary "comply or explain" regime, and DBRS submits that in some circumstances, elements of this flexibility must be preserved if they are to be incorporated into Canadian securities law. Such flexibility would permit DROs to achieve the objectives of the 2015 IOSCO Code and NI 25-101 without the burden of overly proscriptive, "one size fits all" solutions that would be mandated by legislation. Such flexibility is essential to promote desirable competition within the CRA industry.

B. Comments on Specific Amendments

DBRS has the following comments on specific elements of the Proposed Amendments.

1. Significant Security Holders (Section 1 of NI 25-101 and section 3.6.1(b) of Appendix A)

The Proposed Amendments introduce the concept of a DRO having a "significant security holder" (**Significant Security Holder**), and would add section 3.6.1 to Appendix A that would prohibit a DRO from rating any entity

(a) in which a Significant Security Holder had a significant equity interest, or

(b) in which a director or officer of the Significant Security Holder was also a director or officer.

DBRS has concerns with respect to the scope of the proposed definition of Significant Security Holder, as well as the application of the prohibition in proposed section 3.6.1(b) of Appendix A.

<u>Definition of Significant Security Holder</u>

DBRS acknowledges that rating an entity in which a Significant Security Holder has significant equity interest can potentially give rise to either a perceived or actual conflict of interest. However, DBRS questions whether that is necessarily the case just because the shareholder owns 10% of the DRO and the rated entity, particularly if no other indicia of control are present or if there are countervailing considerations, such as the existence of a third party controlling shareholder in one or both entities. As a result, DBRS believes the Proposed Amendments may operate

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to prevent a DRO from rating an entity where there is insufficient basis for presuming that the rating would be influenced by a conflict of interest.

DBRS recognizes greater risk of conflict in more traditional organizational structures wherein the CRA is an operating subsidiary of a larger organization engaged in a variety of businesses through closely held affiliates and with unified interests and strong influence from individuals in entities up the chain, or where a security holder is otherwise actively involved in or influences the operations – and particularly the credit rating operations – of the CRA. However, security ownership and influence can take different forms that do not necessarily present the same risk of conflict. DBRS's ownership structure presents such an example. DBRS's Significant Security Holders (as defined in the Proposed Amendments) are private equity ventures. They own interests in multiple entities across a wide spectrum of industries that have no or very little interaction with DBRS. DBRS's Significant Security Holders each have only minority representation on the board of DBRS's parent company, do not sit on DBRS's supervisory boards and do not participate in or seek to influence DBRS's ratings operations. In fact, because of DBRS's ownership and voting structure, neither Significant Security Holder can unilaterally cause DBRS to take any action.

Further, to the extent that an analyst becomes aware of the relationship and believes such a relationship to be problematic, the existing conflict of interest provisions found in Part 3 of Appendix A to NI 25-101 are sufficient to address the concern.

Therefore, DBRS submits that the conflict of interest objective the proposed amendments seek to address can be better achieved by focusing on specific types of undesirable influence or control and seeking to mitigate or prevent it, rather than adopting a purely formulaic prohibition that does not account for variations in organizational form and influence such as described above. DBRS notes that under US federal securities law, while a CRA is prohibited from rating an entity if a common parent "controls" both it and the entity it seeks to rate, the term "control" is left flexible to cover a variety of circumstances where undue influence may be present and is not defined by reference to an arbitrary percentage ownership threshold.[4]

Application of Section 3.6.1(b) of Appendix A

DBRS further questions the need for the outright prohibition in section 3.6.1(b), which would prohibit a DRO from rating any entity in which a director or officer of a Significant Security Holder was also a director or officer. DBRS submits that this provision goes beyond that imposed in other jurisdictions, and is unnecessary in light of a DRO's other obligations to manage conflicts of interest.

For example, DBRS notes that US federal securities law limits the prohibited conflicts of interest with a CRA's shareholders and their other investees to situations where the nationally recognized statistical rating organization (or **NRSRO**) issues or maintains a credit rating with respect to a person associated with the NRSRO, with "association" defined by reference to "control." [5] In addition, US federal securities law prohibits an NRSRO from issuing or

[4] Securities Exchange Act of 1934, Section 3(63) and Rule 17g-5(c)(3).

[5] Id.

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maintaining a credit rating where a *credit analyst* who participated in determining the credit rating, or a person responsible for approving the credit rating, is an officer or director of the person that is subject to the credit rating.[6]

The US regulatory approach is similar in this regard to the approach taken in the 2015 IOSCO Code.[7]

DBRS submits that section 3.6.1(b) also goes beyond that required by the EU, in that the comparable EU restriction applies only to restrict the issuance of a credit rating or a rating outlook where:

> *a shareholder … holding 10 % or more of either the capital or the voting rights of that credit rating agency or being otherwise in a position to exercise significant influence on the business activities of the credit rating agency, is a member of the administrative or supervisory board of the rated entity or a related third party.*[8]

On its face, the EU prohibition applies only to a shareholder of a CRA, and does not extend to a shareholder's officers and directors. Since a non-individual cannot sit on a board, the provision presumably only applies to individual shareholders. The provision would not be applicable where a director or officer of a CRA shareholder acted as a director or officer of the rated entity (a situation which would be captured by proposed section 3.6.1(b)), unless the director or officer is, themselves, a shareholder holding 10% or more of the capital or voting rights of the CRA.

DBRS also submits that the adoption of section 3.6.1(b) is not required for the purposes of EU equivalency, as the methodological framework for assessing third-party regimes need only "provide sufficient protection against the risk that the interest of a significant shareholder impacts on the independence of the CRA, its analysts and/or its credit ratings/rating outlooks".[9] DBRS submits that the regime, absent the language in section 3.6.1(b) and with a "Significant Security Holder" definition that focuses on influence or control versus an arbitrary ownership percentage, would meet this standard.

DBRS notes that a single director or officer may have a very limited ability to control either the Significant Security Holder of the CRA or the rated entity, especially in the absence of a significant equity interest. As a result, DBRS submits that the potential for conflict of interest is minimal. DBRS believes that for the relationship described in section 3.6.1(b) to result in a conflict of interest that would improperly influence a DRO analyst, the existence of the relationship must first, at a minimum, be known to the analyst. In such circumstances, where an analyst becomes aware of the relationship and believes such a relationship to be problematic, the existing conflict of interest provisions found in Part 3 of Appendix A to NI 25-101 are sufficient to address the concern.

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6 See Rule 17g-5(c)(4) (emphasis added).

7 See sections 26.(e) and 2.14(e) of the 2015 IOSCO Code.

8 Annex 1, Section B(3)(ca) of Regulation (EC) 1060/2009, as amended (the **EU Regulation**).

9 See Annex III of the ESMA Consultation Paper, which contains the updated methodological framework following the changes to EU regulatory as a result of CRA 3 (the **ESMA Methodological Framework**).

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Preserving the language in 3.6.1(b) would also impose a significant compliance burden on DBRS and similarly situated smaller CRAs. Compliance with section 3.6.1(b) would require the CRA and its Significant Security Holders to determine and track the officer and director activities of all of the shareholders' directors or officers, regardless of their interaction with the CRA, and prohibit their activities with respect to those entities DBRS rates, and consider prohibiting their activities with other entities to preserve DBRS's business opportunity, even where there is little to no risk of actual conflict at all. [10]

In light of the foregoing, DBRS therefore strongly urges the CSA to not adopt section 3.6.1(b).

2. Insider Lists (Section 4.16.1 of Appendix A)

DBRS is strongly committed to meeting its contractual and statutory obligations with respect to the treatment of confidential information. However, DBRS questions the necessity for the requirement in proposed section 4.16.1 of Appendix A that would oblige a DRO to maintain a list of all persons who have access to non-public information about a credit rating action, including information about a credit rating action before the credit rating or rating outlook is publicly disclosed or disseminated to subscribers.

DBRS believes this requirement is both onerous and unnecessary. DBRS acknowledges that the EU market abuse regulation contains such a requirement. However our experience with this requirement in the EU suggests that the obligation to maintain a list of individuals with access to confidential information is excessively time consuming for analytical staff, requires technology investment to effectively manage, and serves as an unnecessary distraction from an analyst's primary role of objectively analyzing credits. Furthermore, while the CRA is burdened with having to maintain this list for every public rating, DBRS's experience in the EU is that in the last five years, such a list has been specifically requested on only two separate occasions.

In the view of DBRS, this requirement does nothing to forestall the potential misuse of confidential information by DBRS or its personnel, or to guard against the possibility of tipping or insider trading. DBRS personnel are trained on and aware of their obligations with respect to confidential information, and do not require the daily burden of maintaining such a list to remind them of their responsibilities. At best, this requirement serves only to ensure that a current list is immediately available upon request by a regulator who may wish to investigate suspicious trading activity that has already occurred in the marketplace. However, requiring the maintenance of a list, and the technological investment to maintain the list, is not necessary to achieve this objective. DBRS notes that Canadian securities regulators already have extensive authority to demand and obtain such information from a market participant (including a DRO) on a timely basis, and the information can simply be prepared by a DRO on an "as requested" basis.

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[10] DBRS also notes that a DRO may not be in a legal position to demand such cooperation from its shareholders, with the result that a refusal of a significant shareholder to cooperate could result in a DRO breaching Canadian securities laws. DBRS acknowledges, however, that such a scenario would likely only arise in the circumstance of a publicly owned and widely-held DRO.

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DBRS also questions why a requirement to maintain an insider list would apply to DROs only, and would not apply to all market participants in Canada.

DBRS further submits that the introduction of an insider list requirement is not necessary for Canada to satisfy the requirements of the EU Methodological Framework. Canada has strong and robust insider trading legislation to which DROs are subject, and Canadian regulators have extensive existing powers to both obtain necessary information from DROs, and to enforce insider trading regulations. DBRS agrees with ESMA that the requirements set out in section 4.4.3 of the EU Methodological Framework are very important, but DBRS strongly believes that the objectives of these requirements are already met under Canada's existing regime. As a result, DBRS strongly urges the CSA to abandon the proposed insider list requirement in section 4.16.1 of Appendix A.

3. Public Disclosure of All Relevant Information by Issuer (Clause 4.5(c) of Appendix A)

The Proposed Amendments would require a DRO to disclose whether the issuer of a structured finance product has informed the DRO that it is publicly disclosing all relevant information about the product being rated, or whether the information remains non-public. DBRS understands this amendment is proposed to bring NI 25-101 in line with the 2015 IOSCO Code.

Although contained in the 2015 IOSCO Code, DBRS has not previously adopted this provision as it is the obligation of the issuer (and not that of the CRA) to provide such information. As a result, DBRS suggests this provision not be adopted as proposed.

However, in the event that the amendment is not removed, DBRS submits that the CSA should provide additional guidance respecting the application of this provision. In particular, DBRS requests clarification that clause 4.5(c) does not impose a positive obligation on a DRO to request that an issuer confirm that all relevant information has been publicly disclosed. If such an obligation is intended, DBRS requests guidance regarding the nature of any disclosure that should be made if an issuer refuses to provide such a confirmation. Finally, DBRS believes guidance should also be provided to issuers regarding what may constitute "all relevant information" regarding a rated product.

4. Risk Management (Section 2.29 of Appendix A)

Under the Proposed Amendments, DBRS would be required to establish a risk management committee that is independent of any internal audit system. DBRS notes that a similar provision was included in the 2015 IOSCO Code. However, unlike the proposed amendment to NI 25-101, the 2015 IOSCO Code provides flexibility to smaller credit rating agencies by not mandating such independence if not practicable given the CRA's size.

DBRS is committed to developing and maintaining strong corporate governance measures within its organization. However, DBRS submits that the flexibility provided in the 2015 IOSCO Code should be preserved for smaller designated rating organizations. The Proposed Amendments would make Canada the only jurisdiction in which DBRS operates that mandates the establishment of an enterprise risk function at all, much less the further incremental requirement of one separate from any internal audit function. As such, this costly change goes beyond either articulated driver for the Proposed Amendments.

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Given DBRS's size, the risk management function is not completely independent of its internal audit function, and the consolidation of these functions under one individual is not only fiscally reasonable and efficient, it provides tangible benefits to DBRS, by allowing for a more seamless flow of information that helps to ensure risk management is informed of risks discovered by audit and vice-versa. The head of internal audit and risk management reports directly to each DBRS Board, permitting each DBRS Board to evaluate the effectiveness of each function. In addition, a DBRS Board has the option to periodically engage independent third parties to review and provide assurance with respect to the effectiveness of each of the internal audit and risk management function.

Accordingly, DBRS urges that the CSA not mandate that DROs maintain an enterprise risk function. If it is required, DBRS urges that the CSA allow each DRO to determine the appropriate organizational structure that enables an effective risk management function within the firm given its own size and complexity.

5. Issuer Review of Advance Copy of a Press Release (Section 4.12 of Appendix A)

Currently, NI 25-101 provides that before issuing or revising a rating, a DRO will inform the rated entity of the critical information and principal considerations upon which the rating will be based and afford the entity an opportunity to clarify any likely factual misperceptions or other matters that the DRO would wish to be made aware of in order to produce an accurate rating.[11] Under the Proposed Amendments, a DRO will further be required to provide the rated entity a "reasonable" opportunity to review the advance copy of a press release. Furthermore, the Proposed Amendments would also require a DRO to provide the release to the rated entity during "the business hours" of the entity.

DBRS notes that by ensuring that the review opportunity must be "reasonable", it is not necessary to specifically require that an advance copy of the press release be provided during the "business hours" of the issuer, which can, at a minimum, present logistical challenges when interacting with issuers in different time zones, and further can frustrate the policy objective of providing timely information to the market. DBRS also submits that it should be permissible for a DRO to provide an advanced copy of a press release outside of normal business hours, provided that the issuer is otherwise provided a reasonable time to review the document. The fact that the document was initially delivered outside of business hours should not be determinative, provided a reasonable time is provided for the issuer to review the release and revert back to the DRO. In our view, the introduction of the concept of "business hours" needlessly complicates the requirement in section 4.12 of Appendix A.

DBRS acknowledges that a similar concept exists in the EU Regulation, which has required technological solutions to effectively manage, but also notes that ESMA has provided additional guidance which clarifies that initially delivering the advance copy of the press release outside of regular business hours is acceptable.[12] DBRS also notes that ESMA's

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11 Section 4.12 of Appendix A to NI 25-101.

12 See Question 11, *ESMA's Questions and Answers: Implementation of the Regulation (EU) No 462/2013 on Credit Rating Agencies* dated March 30, 2017

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Methodological Framework only requires that a CRA provide the rated entity with the opportunity to draw attention to possible factual errors.[13]

DBRS is of the view that the addition of the "business hours" requirement is unnecessary to achieve the desired policy objectives and urges the CSA to reconsider this amendment. However, if the concept of "business hours" is retained, DBRS strongly urges the CSA to provide additional guidance similar to that previously provided by ESMA.

6. Preliminary Ratings and Initial Review (Section 4.7 of Appendix A)

Currently, DBRS is required to disclose on an ongoing basis information about all structured finance products submitted to it for its initial review or for a preliminary rating, including whether the issuer requested DBRS to provide a final rating. DBRS satisfies this obligation by posting this information on a quarterly basis.

Under the Proposed Amendments, this section would be amended to apply to all debt securities submitted to DBRS for initial review or a preliminary rating. DBRS submits that such an extension of this disclosure requirement would provide an additional significant burden on DROs for very little additional benefit, and strongly recommends that the CSA does not proceed with this proposal.

DBRS understands that the current disclosure requirement in section 4.7 of Appendix A is designed to address concerns regarding potential "rating shopping" by a rated entity. Fundamentally, DBRS notes that this concern is with respect to the rated entity, and not the rating agency that is appropriately providing the service requested. However, DBRS also understands that, in the structured finance space, many of the issuers may not be reporting issuers and that securities are frequently distributed on an exempt basis, with the result that such issuers are not obliged to disclose any initial reviews or preliminary ratings that they may have obtained. In this limited respect, therefore, securities regulators have required each DRO to publish such information, as the only effective manner in which such information could be distributed to the marketplace.

However, DBRS believes that the expansion of the requirement in section 4.7 to all debt securities is unjustified. DBRS notes that with respect to corporate securities, issuers are much more likely to be public companies.[14] DBRS also notes that pursuant to section 7.3 of Form 51-102F2, reporting issuers are required to make disclosure regarding any approaches or requests for ratings from a CRA. Given that the behaviour in question is that of the issuer and not the rating agency, DBRS believes that section 7.3 of Form 51-102F2 appropriately positions the disclosure obligation on the issuer. DBRS also notes that the burden of providing this disclosure for an individual issuer would be significantly less than it would be if the obligation was imposed on a DRO, as the DRO would be required to develop and enforce a monitoring system to ensure that information was collected across its entire organization. As a result, DBRS urges the CSA to reconsider the extension of the section 4.7 obligation to all debt securities.

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13 Consultation Paper, Annex III at 36.

14 DBRS does not track the extent to which the credits it opines on are issued by reporting issuers. Nevertheless, anecdotally, we believe that up to approximately three-quarters of our corporate issuers may be public companies in Canada or other jurisdictions.

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In the alternative, if the CSA determines to proceed with this amendment to section 4.7 of Appendix A, DBRS urges the CSA to exclude private ratings from the scope of the requirement. DBRS submits that such public identification of companies that seek private ratings could have a seriously detrimental effect on the private rating market. In addition, DBRS notes that early disclosure by corporate issuers of rating discussions could inadvertently "tip" the marketplace to a potential debt issuance. Finally, DBRS notes that the proposed amendment would go significantly beyond that required by ESMA, as the corresponding EU requirement does not apply to private ratings.[15]

7. Changes to Existing Methodologies (Section 4.15.1 and 4.15.2 of Appendix A)

The proposed new sections 4.15.1 and 4.15.2 of Appendix A provide specific detailed disclosure requirements in connection with certain changes to existing methodologies. As drafted, such disclosures are triggered by a "significant change" to an existing rating methodology, model or key rating assumption. This would appear to represent a departure from the existing regulatory obligation to disclose "material" changes to methodologies, models or key assumption.[16]

It remains unclear why it is necessary to alter the disclosure standard from "material" to "significant", and DBRS submits that the standard should not be changed in the absence of a compelling reason to do so. DBRS notes that the "materiality standard" is a well understood concept that is used throughout Canadian securities legislation. It remains unclear as to how a "significance" standard should be applied, or what it might entail. Finally, although the addition of section 4.15.1 and 4.15.2 appear designed to address EU equivalency concerns, DBRS notes that EU regulation also requires disclosure for "material changes" to a methodology, model or key assumption.[17] As a result, DBRS urges the CSA to maintain the "materiality" standard for changes to methodologies, models and key assumptions in sections 4.15.1 and 4.15.2.

8. Compliance Officer (Section 12(1.1) of NI 25-101)

Under the Proposed Amendments, DROs would be required to designate the Compliance Officer as an officer of the DRO or DRO affiliate under by-law or similar authority. The CSA does not articulate why such a unique appointment is deemed necessary and this requirement is not suggested by the IOSCO Code nor required for the purposes of EU equivalency. The requirement, therefore, goes beyond either articulated objective of the proposed amendments. DBRS notes that a DRO's Compliance Officer already occupies a position of elevated stature within a DRO, and is currently subject to various controls that effectively ensure the independence of the Compliance Officer's judgment, and already faces potential liabilities for failing to satisfy his or her statutory obligations. DBRS submits that the current regulatory construct already effectively ensures the Compliance Officer performs the role in accordance with the spirit and the letter of the regulation and, particularly in the absence of any articulated perceived weakness the

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15 The requirement is contained in Annex 1, Section D(6) of the EU Regulation. However, Article 2(2) of the EU Regulation specifically note that "this Regulation does not apply to…. (a) private credit ratings…"

16 DBRS also notes that the language in section 4.15 would appear to continue to refer to a "material" change following the adoption of the Proposed Amendments.

17 See Article 14(3) and Article 8(6) of the EU Regulation.

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CSA seeks to address by the proposed amendment, DBRS urges the CSA to reconsider the addition of subsection 12(1.1).

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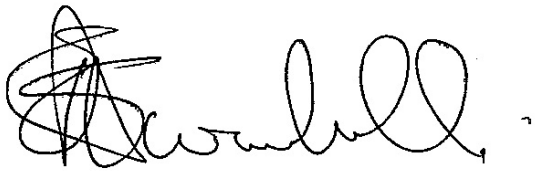
DBRS appreciates the opportunity to comment, and would be happy to discuss our comments with you.

Yours very truly,



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4 October 2017

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Financial and Consumer Services Commission (New Brunswick)
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MOODY'S CANADA INC. COMMENTS ON THE CANADIAN SECURITIES ADMINISTRATORS' NOTICE AND REQUEST FOR COMMENT RELATING TO DESIGNATED RATING ORGANIZATIONS (NI 25-101)

Moody's Canada Inc. ("**Moody's Canada**") wishes to thank the Canadian Securities Administrators (the "**CSA**") for the opportunity to comment on proposed amendments to National Instrument 25-101 *Designated Rating Organizations* (**NI 25-101**) (the "**Proposed**

Amendments").[1] In an effort to be as constructive as possible, we have divided our comments into two categories based on the two stated objectives of the proposal. In Annex I, we provide our comments on: (i) the Proposed Amendments intended to reflect new European Union (**EU**) requirements in order to maintain EU-equivalency under the EU CRA Regulation[2]; and (ii) the Proposed Amendments intended to align NI 25-101 with new provisions of the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies (the "**IOSCO Code**") of the International Organization of Securities Commissions (**IOSCO**). Where possible, we have also endeavored to provide alternative text for specific provisions of the Proposed Amendments. In attached Annex II, we provide our views in response to specific questions included in the CSA Notice and Request for Comment on the Proposed Amendments.

While we recognize the CSA's efforts to align the Canadian regulatory framework with global standards, we have two primary concerns with the Proposed Amendments. First, provisions of the Proposed Amendments introduced to maintain EU-equivalency are premature, and in some instances, either unnecessary or not properly calibrated to achieve their purpose. Second, while the IOSCO-related provisions of the Proposed Amendments serve an important purpose, they may not be sufficiently tailored for application to the DRO framework.

EU-Equivalence

The Proposed Amendments introduce new rules into the Canadian regulatory framework before the European Securities and Markets Authority (**ESMA**) has finalized its endorsement guidelines, and which are not required to maintain EU-equivalence under its proposed guidelines. ESMA requires a comparable credit rating agency (**CRA**) regulatory framework in Canada for credit ratings issued by designated rating organizations (**DROs**) to be eligible for regulatory use in the EU. It does not require a like-for-like transposition of EU rules into Canadian law. The Proposed Amendments include various provisions where no benefit to the Canadian capital markets is disclosed other than the need for the retention of Canada's equivalence status.

One example are the Proposed Amendments relating to the potential conflicts of interests associated with the fees that DROs charge to issuers. The rationale for the provisions is unclear, and there has been no cost-benefit analysis published to support the inclusion of the provisions. Moreover, ESMA has given a clear indication that it will not require the EU fee provision to be included in third country regimes in order to maintain equivalence.[3] Canadian securities laws,

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1 Moody's Canada's comments are limited to those amendments being made to NI 25-101.The Proposed Amendments also relate to: National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations; National Instrument 33-109 Registration Information; National Instrument 41-101 General Prospectus Requirements; National Instrument 44-101 Short Form Prospectus Distributions; National Instrument 44-102 Shelf Distributions; National Instrument 45-106 Prospectus Exemptions; National Instrument 51-102 Continuous Disclosure Obligations; National Instrument 81-102 Investment Funds; National Instrument 81-106 Investment Fund Continuous Disclosure; Companion Policy 21-101CP Marketplace Operation; and Companion Policy 81-102CP Investment Funds.

2 Regulation (EC) No 1060/2009 of the European Parliament and of the Council as amended by Regulation (EU) No 513/2001 and Regulation (EU) No 462/2013.

3 See paragraph 120 of the draft ESMA Updated Methodological Framework for assessing third-country legal and supervisory frameworks for the purposes of endorsement and equivalence (Article 4(3) and Article 5(6) of the CRA Regulation).

including the current DRO framework, already provide for extensive protection against conflicts of interest from interfering with the analytical process, including those caused by commercial relationships. In addition, fair competition is already addressed by Canada's competition law regime. There is no demonstrable need for these provisions to be included in the Canadian regulatory framework, and they should not be included in the final amendments.

IOSCO Code of Conduct

The Proposed Amendments are intended to reflect changes made to the IOSCO Code in 2015, but the provisions may not be sufficiently tailored for application to the DRO framework. It is important to recognize that the IOSCO Code and its provisions are not designed for direct implementation into national legislation, but rather "to offer a set of robust, practical measures as a guide to and a framework for CRAs with respect to protecting the integrity of the rating process, ensuring that investors and issuers are treated fairly, and safeguarding confidential material information provided them by issuers".[4] To this end, Moody's Canada has designed and implemented its Code of Professional Conduct to be broadly consistent with the IOSCO Code, while also being responsive to evolving market needs. We encourage the CSA to reconsider whether its proposed implementation of the IOSCO Code achieves the same objectives.

We would be happy to discuss our comments in more detail at your convenience.

Yours sincerely

/S/ Hilary Parkes

Hilary Parkes
Senior Vice President

[4] *IOSCO Code of Conduct Fundamentals for Credit Rating Agencies – Final Report* (March 2015).

ANNEX I

I. Proposed Amendments Related to EU-Equivalency

The Proposed Amendments are intended to introduce provisions included in the EU CRA Regulation into NI 25-101 with a view to retaining EU-equivalence status.

Moody's Canada notes that ESMA is not expected to finalize the updated Guidelines on Endorsement[5] until it publishes a final report in Q4 2017.[6] Until the final report is issued, there is no absolute certainty as to the approach ESMA will adopt with respect to its assessment of third-country regulatory regimes for endorsement and equivalence purposes. While we recognize the process to amend NI 25-101 requires time, we are concerned that the DRO regulatory regime in Canada may be premature pending ESMA's final guidance.

Moreover, even if ESMA adopts updated Guidelines on Endorsement consistent with the proposals it set forth in its Consultation Paper published earlier this year[7], the Proposed Amendments may not be required to maintain EU equivalence. For example, ESMA's draft Updated Methodological Framework for assessing third-country legal and supervisory frameworks for the purposes of endorsement and equivalence (Article 4(3) and Article 5(6) of the CRA Regulation) (the "Updated Methodological Framework") does not require verbatim equivalence of the EU CRA Regulation for a number of the Proposed Amendments, including:

- **Initial reviews and preliminary ratings**: Section 4.7 of Appendix A of NI 25-101; see paragraphs 128-129 of the Updated Methodological Framework;
- **Rating categories (i.e. colour-coding):** Section 4.14 of Appendix A of NI 25-101; see paragraph 125 of the Updated Methodological Framework;
- **Rating methodologies:** Sections 2.12.1, 2.13.1, 4.8.1, 4.15.1, and 4.15.2 of Appendix A of NI 25-101; see paragraph 115 of the Updated Methodological Framework;
- **Significant security holders:** Section 1 of NI 25-101; paragraph 2.20(d) and section 3.6.1 of Appendix A of NI 25-101; see paragraph 70 of the Updated Methodological Framework; and

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5 The EU CRA Regulation establishes the endorsement regime so that EU financial firms can use ratings for regulatory purposes issued by non-EU CRAs. The proposed update of the 2011 Guidelines on Endorsement by ESMA is mainly driven by the need to reflect the changes to Articles 6-12 and Annex I introduced by the EU CRA Regulation, which will enter into force for the purposes of equivalence and endorsement on 1 June 2018. On that basis, ESMA will update the Methodological Framework on which ESMA relies for assessing a third-country legal and supervisory framework for the purposes of endorsement and equivalence.

6 ESMA Press Release, *ESMA Proposes Updates to Endorsement Guidelines for 3rd Country Credit Ratings*, (April 4, 2017) (available at: https://www.esma.europa.eu/press-news/esma-news/esma-proposes-updates-endorsement-guidelines-3rd-country-credit-ratings).

7 ESMA Consultation Paper, *Update of the guidelines on the application of the endorsement regime under Article 4(3) of the Credit Rating Agencies Regulation* (4 April 2017) (available at: https://www.esma.europa.eu/file/21990/download?token=wL6pD8aJ).

- **Fees**: Section 3.9.1 of Appendix A of NI 25-101; see paragraph 120 of the Updated Methodological Framework.

Instead, the Updated Methodological Framework calls for similar requirements that can be fulfilled through means other than the parallel EU requirement provided that the same underlying objectives are served. Before directly importing provisions of the EU CRA Regulation to meet expected equivalence requirements, we would encourage the CSA to consider whether the provisions provided in NI 25-101 already meet these objectives.

Below we set out our concerns with specific Proposed Amendments introduced for EU equivalence purposes.

A. Appendix A: Independence and Conflicts of Interest - Procedures and Policies

Section 3.9.1: Fees

The Proposed Amendments include new provisions related to DRO fees which require DROs to ensure both of the following:

(a) fees charged to rated entities for the provision of credit ratings and ancillary services, as referred to in section 3.5[8], do not discriminate among rated entities in an unfair manner and have a reasonable relation to actual costs;

(b) fees charged to rated entities for the provision of credit ratings must not depend on the category of credit rating or any other result or outcome of the work performed.

We would discourage adoption of these provisions for three reasons: (1) competition among DROs is already regulated under Canada's competition law regime; (2) introduction of "actual cost" as a consideration for DRO fees misapprehends the nature of credit ratings; and (3) the proposed fee provisions are not required for EU-equivalence.

a. Canadian Competition Act

The facilitation of fair competition in the credit market, including competition among DROs, is already adequately regulated under Canada's competition law regime.[9] It is our view that there is

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[8] Section 3.5 of NI 25-101states:

> The designated rating organization and its affiliates will keep separate, operationally, legally and, if practicable, physically, their credit rating business and their rating employees from any ancillary services (including the provision of consultancy or advisory services) that may present conflicts of interest with their credit rating activities and will ensure that the provision of such services does not present conflicts of interest with their credit rating activities. The designated rating organization will define and publicly disclose what it considers, and does not consider, to be an ancillary service and identify those that are ancillary services. The designated rating organization must disclose why it believes that those ancillary services do not present a conflict of interest with its credit rating activities. The designated rating organization will disclose in each ratings report any ancillary services provided to a rated entity, its affiliates or related entities.

[9] For example, section 79(1) of the Competition Act, RSC 1985 - Prohibition where abuse of dominant position:

not a sufficient policy rationale to extend the purview of provincial and territorial securities laws to competition in the credit market. Unlike the market participants in Canada who are subject to such restrictions or regulation, such as clearing agencies, stock exchanges and trade repositories, DROs: (a) do not have a monopoly or quasi-monopoly with respect to the services that they provide, and (b) do not provide services that are integral to the day-to-day operations of Canada's securities markets.

b. "Actual Costs" are the Wrong Measure to Assess DRO Fees

The introduction of "actual costs" misapprehends the nature of credit ratings. In particular, it suggests that credit ratings are equivalent to tangible goods that may be sold to individual consumers one-at-a-time. There are two reasons why this analogy is misleading. In contrast to tangible goods, credit ratings are intellectual property, more akin to the contents of books, which are widely disseminated and broadly consumed. As a result, DROs cannot easily:

1. track and allocate costs to a specific credit rating on a one-to-one basis; and
2. establish fees purely on the basis of cost and margin.

Importantly, differences in DRO fees cannot uniformly be tied to cost differences because costs are but one of a number of variable components of fees for credit ratings and ancillary services. Even where a significant deviation might be identified, cost differences alone might not be the driver of the deviation. Fee variables can include both cost and non-cost components and can be impacted by a number of factors including, for example, the nature of the product/service being provided, the analytical complexity of the product/service, competition and market dynamics, and customer negotiation.

Furthermore, a material portion of DRO costs constitute indirect costs. They also include contingent and deferred expenses that are recognized over longer time periods. Therefore, while a DRO could possibly endeavor to determine granular information about its costs, a ratings-level cost analysis would necessarily be based on a significant number of assumptions and judgments.

c. The Proposed Amendments are not Required for EU-Equivalence

In accordance with ESMA's Updated Methodological Framework, the introduction of Section 3.9.1 is not required to maintain equivalence. The Updated Methodological Framework indicates that, "If this requirement is not in place, ESMA considers that there should be other

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Where, on application by the Commissioner, the Tribunal finds that

(a) one or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business,

(b) that person or those persons have engaged in or are engaging in a practice of anti-competitive acts, and

(c) the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market,

the Tribunal may make an order prohibiting all or any of those persons from engaging in that practice.

safeguards to ensure that the objectives of avoiding conflicts of interests and promoting fair competition are achieved".[10]

NI 25-101, in both its current and proposed amended form, contains a range of comprehensive safeguards to ensure that the objectives of avoiding conflicts of interests and promoting fair competition are achieved. These safeguards are consistent with the IOSCO Code and include, for example:

> 3.1 The designated rating organization will not refrain from, or unnecessarily delay, taking a rating action based in whole or in part on the potential effect (economic or otherwise) of the action on the designated rating organization, a rated entity, an investor, or other market participant. (Proposed Amendment to add "or unnecessary delay" to existing NI 25-101 provision.)
>
> 3.2 The designated rating organization and its employees will use care and professional judgment to remain independent and maintain the appearance of independence and objectivity. (Existing NI 25-101 provision.)
>
> 3.3 The determination of a credit rating or rating outlook will be influenced only by factors relevant to the credit assessment. (Proposed Amendment to add "or rating outlook" to existing NI 25-101 provision.)
>
> 3.4 The designated rating organization will not allow its decision to assign a credit rating or rating outlook to a rated entity or rated securities to be affected by the existence of, or potential for, a business relationship between the designated rating organization or its affiliates and any other person or company including, for greater certainty, the rated entity, its affiliates or related entities. (Proposed Amendment to add "or rating outlook" to existing NI 25-101 provision.)

NI 25-101 also includes additional provisions designed to prevent potential conflicts of interest related to commercial considerations, the provision of non-credit rating services by the DRO, DRO affiliations, and DRO employees' affiliations. These include: provisions requiring the DRO and its affiliates to keep separate their credit rating business and their rating employees from any ancillary services that may present conflicts of interest (section 3.5); prohibitions on DROs assigning credit ratings or outlooks to a person or company that is an affiliate or associate of the organization or a ratings employee (section 3.6); and prohibitions on DROs assigning credit ratings or outlooks in circumstances involving significant security holders of the DRO or their officers or directors (proposed section 3.6.1).

These measures are further enhanced by provisions in NI 25-101 that require DROs to adopt specific policies and procedures designed to identify and eliminate or manage and publicly and promptly disclose any actual or potential conflicts of interest that may influence the opinions and

[10] Paragraph 120 of the Updated Methodological Framework.

analyses of ratings employees (sections 3.7, 3.7.1 and 3.8).[11] As amended, NI 25-101 would also require DROs to periodically monitor and review these policies and procedures in order to evaluate their effectiveness and assess whether they should be updated (section 3.11.1).

Finally, NI 25-101 currently requires DROs to disclose the general nature of its compensation arrangements with rated entities, as well as more detailed information including: (1) the percentage non-rating fees represent out of the total amount of fees received by the DRO or its affiliate from the rated entity, the affiliate or the related entity; and (2) whether the DRO or its affiliates receives directly or indirectly 10 percent or more of its annual revenue from a particular rated entity or subscriber, and the identification of the particular rated entity or subscriber.

Taken together, these safeguards surely ensure that the objectives of avoiding conflicts of interests and promoting fair competition are achieved. If, despite these existing and proposed measures, the CSA determines that additional provisions are required in order to achieve equivalence, we would encourage the following amendments to proposed section 3.9.1:

> A designated rating organization must ensure that ~~both of the following:~~
>
> ~~(a) fees charged to rated entities for the provision of credit ratings and ancillary services, as referred to in section 3.5, do not discriminate among rated entities in an unfair manner and have a reasonable relation to actual costs;~~
>
> ~~(b)~~ fees charged to rated entities for the provision of credit ratings must not depend on the ~~category~~ level of credit rating or any other result or outcome of the work performed.

In addition striking subsection (a), we also suggest that "category" be replaced with "level" in subsection (b) to make clear that reference in section 3.9.1 relates to the level of the credit rating itself, as opposed to the category of credit rating product or service.

B. Appendix A: Quality and Integrity of the Ratings Process

Section 2.12.1: Errors in Methodologies and Application of Methodologies

New section 2.12.1 requires DROs to take certain actions to notify the securities regulatory authority and the affected rated entities and to publish public notices with respect to "errors in a rating methodology or its application".

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[11] Section 3.7.1 specifically notes the following potential conflicts of interest subject to disclosure by the DRO: (a) the DRO is paid to issue a credit rating by the rated entity or a related entity; (b) the DRO is paid by subscribers with a financial interest that could be affected by a credit rating action of the designated rating organization; (c) the DRO is paid by rated entities, related entities or subscribers for services other than issuing credit ratings or providing access to the designated rating organization's credit ratings; (d) the designated rating organization provides a preliminary indication or similar indication of credit quality to a rated entity or related entity prior to being retained to determine the final credit rating for the rated entity or related entity; (e) the designated rating organization has a direct or indirect ownership interest in a rated entity or related entity; (f) a rated entity or related entity has a direct or indirect ownership interest in the designated rating organization.

First, as noted above, this provision need not be an exact replica of the parallel EU requirement for equivalency purposes. To the extent the provision is adopted by the CSA, we would recommend the introduction of a materiality threshold in section 2.12.1:

> If a designated rating organization becomes aware of material errors in a rating methodology or its application, the designated rating organization must do all of the following if the errors could have an impact on its ratings:
>
> (a) promptly notify the regulator or securities regulatory authority and all affected rated entities of the errors and explain the impact or potential impact of the errors on its ratings, including the need to review existing ratings;
>
> (b) promptly publish a notice of the errors on its website, where the errors have an impact on its ratings;
>
> (c) promptly correct the errors in the rating methodology or the application;
>
> (d) apply the measures set out in paragraphs 2.12 (a) to (d) as if the correction of the error were a change contemplated by that section.

Without a materiality threshold, DROs could be prompted to take steps (a) through (d) regardless of whether the error had an impact or a potential impact on credit ratings. Such an outcome would arguably create unnecessary noise in the market and undermine the purpose of the provision, which is to alert regulators and users of credit ratings of impactful errors.

Section 2.20: Significant Security Holder – Recommendations to Rated Entities

The Proposed Amendments introduce a definition for "significant security holder"[12] and restrictions on activities related to significant security holders. While Moody's Canada does not object to the proposed definition of "significant security holder", we are concerned about the nature and scope of related restrictions that capture entities that are not DROs. In particular, the Proposed Amendments would revise section 2.20 to restrict a "significant security holder" of the DRO or of an affiliate[13] that is a parent of the DRO from making recommendations to a rated entity about the corporate or legal structure, assets, liabilities, or activities of the rated entity."

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[12] NI 25-101 defines "significant security holder" as follows: a person or company that has beneficial ownership of, or control or direction over, whether direct or indirect, or a combination of beneficial ownership of, and control or direction over, whether direct or indirect, securities of an issuer carrying more than 10 per cent of the voting rights attached to all of the issuer's outstanding voting securities.

[13] NI 25-101 defines "Affiliate" as follows:

(1) a person or company is an affiliate of another person or company if either of the following apply:

(a) one of them is the subsidiary of the other;

(b) each of them is controlled by the same person or company.

(2) For the purposes of paragraph (1)(b), a person or company (first person) is considered to control another person or company (second person) if any of the following apply:

Moody's Canada does not object to requirements that prohibit a DRO and its ratings employees from making recommendations to a rated entity about its corporate or legal structure, assets, liabilities, or activities. However, as drafted, we believe section 2.20 is already overly broad and impacts entities that do not provide credit rating services, have not applied for DRO status, and are otherwise outside the scope of the DRO regulatory framework. We would therefore recommend that existing subsection (b) and proposed subsection (d) of section 2.20 be revised as follows:

> A person or company listed below must not make a recommendation to a rated entity about the corporate or legal structure, assets, liabilities, or activities of the rated entity:
>
> (a) a designated rating organization;
> ~~(b) an affiliate or related entity of the designated rating organization;~~
> (c) the ratings employees of the designated rating organization ~~any of the above~~;
> (d) a significant security holder of the designated rating organization ~~or of an affiliate that is a parent of the designated rating organization.~~

C. Appendix A: Independence and Conflicts of Interest

Section 3.6.1: Significant Security Holder - Credit Ratings and Rating Outlooks

We request modification or clarification of proposed section 3.6.1(a). As currently drafted, proposed section 3.6.1 provides:

> A designated rating organization must not rate, or assign a rating outlook to, a person or company in any of the following circumstances:
>
> (a) a significant security holder of the designated rating organization, or of an affiliate that is a parent of the designated rating organization, is a significant security holder of the person or company, its affiliates or related entities;
>
> (b) an officer or director of a significant security holder of the designated rating organization, or of an affiliate that is a parent of the designated rating organization, is a significant security holder of the person or company, its affiliates or related entities.

In particular, the meaning of "is a significant security holder of the person or company, its affiliates or related entities" under subsection (a) is unclear and possibly overly broad. We propose the following modification to clarify its scope:

(a) the first person beneficially owns, or controls or directs, directly or indirectly, securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation;

(b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership;

(c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

> A designated rating organization must not rate, or assign a rating outlook to, a person or company in any of the following circumstances:
>
> > (a) a significant security holder of the designated rating organization, or of an affiliate that is a parent of the designated rating organization, is a significant security holder of the person or company, or an affiliate of the person or company that is a parent of the person or company; ~~its affiliates or related entities~~;
> >
> > (b) an officer or director of a significant security holder of the designated rating organization, or of an affiliate that is a parent of the designated rating organization, is a significant security holder of the person or company, or an affiliate of the person or company that is a parent of the person or company ~~its affiliates or related entities~~.

An alternative interpretation of subsections (a) and (b) would suggest that DROs would somehow be required to know the holdings of a potentially limitless number of related entities.

Section 3.7: Conflicts of Interest – Policies and Procedures

Existing section 3.7 requires that DROs identify and eliminate or manage and publicly disclose any actual or potential conflicts of interest that may influence the opinions and analyses of ratings employees. The Proposed Amendments would modify section 3.7 to state:

> The designated rating organization must identify and eliminate or manage and publicly disclose any actual or potential conflicts of interest that may influence the opinions and analyses of ratings employees, including opinions and analyses in respect of a credit rating or rating outlook.

While as a general matter Moody's Canada does not object to identifying and eliminating or managing and publicly disclosing any actual or potential conflicts of interest that may influence the opinions and analyses of ratings employees, we believe the amended section 3.7 could be further enhanced with the following modification:

> The designated rating organization must identify and eliminate or manage and publicly disclose, as appropriate, any actual or potential conflicts of interest that may influence the credit rating methodologies, credit rating actions, or analyses of the CRA or the judgment and analyses of the CRA's employees. ~~the opinions and analyses of ratings employees, including opinions and analyses in respect of a credit rating or rating outlook.~~

First, the additional language provides needed flexibility for the DRO to appropriately respond to potential or actual conflicts of interest. Second, this modification would be consistent with language in proposed section 3.7.1 that requires the DRO to adopt, implement and enforce policies and procedures to identify and eliminate or manage and publicly disclose, "as appropriate", actual or potential conflicts of interest. Third, the language we propose would better align this section with IOSCO Code provision 2.6.

Section 3.11: Oversight of the DRO by a Rated Entity

Existing section 3.11 provides that if a DRO is subject to the oversight of a rated entity, the DRO must use different DRO employees to conduct rating actions in respect of the rated entity than the employees that are involved in the oversight. The proposed amendment to section 3.11 introduces methodologies, and seemingly broadens the general restriction to all employees subject to the oversight:

> If a designated rating organization is subject to the oversight of a rated entity, or an affiliate or related entity of the rated entity, the designated rating organization ~~will~~ must use different DRO employees to conduct the rating actions in respect of that entity, or to develop or modify methodologies that apply to that entity, than those ~~involved in~~ that are subject to the oversight.

This amendment would prevent DRO credit analysts from participating in credit rating activities related to the sovereign or sub-sovereign in which they are located. This outcome would appear inconsistent with efforts to ensure that the best qualified analysts are assigned to specific credit rating portfolios.

In addition, the proposed amendment is inconsistent with section 2.11 of the IOSCO Code which states:

> In instances where rated entities or obligors (e.g., sovereign nations or states) have, or are simultaneously pursuing, oversight functions related to the CRA, the employees responsible for interacting with the officials of the rated entity or the obligor (e.g., government regulators) regarding supervisory matters should be separate from the employees that participate in taking credit rating actions or developing or modifying credit rating methodologies that apply to such rated entity or obligor.

We would encourage the CSA to reconsider the proposed amendments to section 3.11 and adopt the IOSCO Code provision.

D. Appendix A: Responsibilities to the Investing Public and Issues - Transparency and timeliness of ratings disclosure

Section 4.14: Colour Coding for Non-Participation

Amended section 4.14 would require DROs to disclose whether the rated entity and its related entities participated in the ratings process and whether the DRO had access to the accounts, management and other relevant internal documents of the rated entity or its related entities. In addition, each credit rating without that access would need to be identified as such using a clearly distinguishable colour code for the rating category.

We note first that in accordance with ESMA's Updated Methodological Framework, the proposed amendment to section 4.14 is not required to maintain equivalence. The Updated Methodological Framework indicates that, "whilst required by the CRA Regulation, it is not necessary that it is a legal requirement in the third country that [unsolicited and non-participating

credit ratings are] indicated using a clearly, distinguishable different colour code for the rating category".[14]

Second, we note that the proposed amendment to section 4.14 is not consistent with the parallel EU provision, and could create confusion among users of credit ratings. The EU CRA Regulation requires the use of a distinguishable colour code when a credit rating is both unsolicited and is issued without the participation of the rated entity. The EU requirement is as follows:

> Where a credit rating agency issues an unsolicited credit rating, it shall state prominently in the credit rating, using a clearly distinguishable different colour code for the rating category, whether or not the rated entity or a related third party participated in the credit rating process and whether the credit rating agency had access to the accounts, management and other relevant internal documents for the rated entity or a related third party.[15]

To the extent the CSA believes it necessary to adopt a colour coding requirement, we would urge it do so in a manner that is consistent with other similar global requirements. Should the CSA and other global regulators take a different approach, users of credit ratings will encounter multiple colour coding disclosure regimes with variable meanings. Such an outcome would arguably undermine the purpose of enhanced disclosure requirement.

E. Form 25-101F1: Designated Rating Organization Application and Annual Filing

The Proposed Amendments include changes to DRO annual filing requirements, including new information required under Item 13 of Form 25-101F. This information includes:

- Revenue from non-credit rating services provided to persons that also obtained credit rating services,
- Revenue from credit rating services for different asset classes, and
- Revenue from credit rating services and non-credit rating services provided to persons located in Canada.

First, we note that the Updated Methodological Framework indicates that the revenue information required by the EU need not be replicated in third-country jurisdictions for equivalence purposes.[16] Second, we would suggest that the third piece of data regarding revenue

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14 Paragraph 125 of the Updated Methodological Framework.

15 Article 10(5) of the EU CRA Regulation.

16 Paragraph 146 states, in part: "The level of detail concerning the disclosures mentioned in letter g) do not need to be identical to the EU requirements." Paragraph 145 (g) includes: financial information on the revenue of the credit rating agency, including total turnover, divided into fees from credit rating and ancillary services with a comprehensive description of each, including the revenues generated from ancillary services provided to clients of credit rating services and the allocation of fees to credit ratings of different asset classes. Information on total turnover shall also include a geographical allocation of that turnover to revenues generated in the Union and revenues worldwide.

from credit rating services and non-credit rating services provided to persons located in Canada be amended as follows:

- Revenue from credit rating services and non-credit rating services provided by the designated rating organization. ~~to persons located in Canada~~.

It may be impracticable for DROs to determine whether an entity or person that purchases credit rating services or non-credit rating services should be classified as "located in Canada". Entities that purchase credit rating and non-credit rating services often have complex global legal and organizational structures. As a result, it may be difficult to ascribe meaning to "located in Canada" for regulatory reporting purposes.

In addition, the regulatory framework for DROs, and CRAs generally, is applied based on the location of the lead analyst, rather than the location of the issuer. Revenue reporting tied directly to the DRO and the location of the lead analyst (in Canada) would be most consistent with the regulatory framework for DROs.

II. Proposed Amendments to Reflect New IOSCO Code Provisions

Moody's Canada supports the CSA's efforts to bring NI 25-101 in line with the current IOSCO Code as amended in March 2015. The Moody's Canada Code of Professional Conduct is designed to be substantially aligned with the IOSCO Code, and we have updated it to reflect the amendments made to the IOSCO Code in 2015. While we broadly support the most recent amendments to the IOSCO Code, we would encourage the CSA to consider modifications to certain of its provisions before introducing them to NI 25-101.

A. Part 5; Item 12 – Compliance Officer

Section 1.1: Officer of the DRO

New section 1.1 requires that the DRO's compliance officer be designated as an officer of the DRO, or a DRO affiliate that is a parent of the designated rating organization, under a by-law or similar authority of the designated rating organization or the DRO affiliate. We understand that the purpose of the provision is to ensure that the compliance officer is a senior level employee. We have no objection to the underlying purpose of the provision, but would suggest that section 1.1 be modified to also include officers of DRO affiliates, as follows:

> The compliance officer must be designated as an officer of the designated rating organization, an affiliate of the DRO, or a DRO affiliate that is a parent of the designated rating organization, under a by-law or similar authority of the designated rating organization or the DRO affiliate.

This more flexible language would not undermine the purpose of the provision, particularly given the additional requirements for the DRO compliance officer as set forth in new section 1.2:

> The compliance officer must have the education, training and experience that a reasonable person would consider necessary to competently perform the activities of the

compliance officer required under this Instrument and the designated rating organization's code of conduct.

B. Part 6; Item 13 - Books and Records

Section 1.1: Records to Reconstruct the Credit Rating Process

Moody's Canada does not object to requirements for DROs to maintain for a prescribed period of time the books, records and other documents that support its credit process. However, we would suggest that proposed section 1.1 be revised to state:

> A designated rating organization must keep such books and records and other documents that are sufficiently detailed to ~~reconstruct~~ document the credit rating process and describe the basis for any credit rating action.

The requirement to "reconstruct" the credit rating process is broad and may inadvertently suggest that DROs must maintain every book, record or other document that may have been considered or reviewed as part of the credit rating process, regardless of whether it was incidental to the credit rating process and the credit rating action. We believe our proposed modifications make clear that the objective is to maintain those materials that are relevant to the credit rating process and the resulting credit rating action.

C. Appendix A: Quality and Integrity of the Rating Process

Sections 2.28.1 and 2.28.2: Role of Compliance Officer

New sections 2.28.1 and 2.28.2 require that the DRO's compliance officer monitor and evaluate the adequacy and effectiveness of the DRO's policies, procedures and controls to ensure that the DRO and its employees comply with the DRO code of conduct and securities legislation.

First, we suggest modifying proposed section 2.28.1 to make clear that the oversight related to "securities legislation" is not overly broad, and is intended to address those aspects of securities legislation that are relevant to the DROs activities. Specifically, we propose the following modification to 2.28.1:

> A designated rating organization must adopt, implement and enforce policies, procedures and controls reasonably designed to ensure that the organization and its DRO employees comply with the organization's code of conduct and securities legislation as applicable to the activities of the designated rating organization as a credit rating organization.

Second, the DRO compliance officer is not solely responsible for the monitoring and evaluation activities described in section 2.28.1. These activities are conducted by the DRO's internal control functions. Therefore, we recommend the following modification to sections 2.28.2:

> The designated rating organization's ~~compliance officer~~ internal control functions must monitor and evaluate the adequacy and effectiveness of the designated rating organization's policies, procedures and controls referred to in section 2.28.1.

Sections 2.6 and 2.6.1: "False" Credit Rating Actions and Reports

Credit ratings are forward-looking opinions about credit risk. They are not statements of absolute fact. Moody's Canada's credit ratings address the probability that a financial obligation will not be honored as promised, and any financial loss suffered in the event of default. By definition, a credit rating in an opinion therefore cannot be "false." However, the Proposed Amendments contain provisions that suggest they can be.

Under existing section 2.6, DROs, its ratings employees and its agents must take all reasonable steps to avoid issuing a credit rating, action or report that is "false or misleading as to the general creditworthiness of a rated entity or rated securities". Proposed section 2.6.1 requires the DRO to adopt, implement and enforce policies, procedures and controls reasonably designed to avoid issuing a credit rating, action or report that is "false or misleading as to the general creditworthiness of a rated entity or rated securities".

To eliminate the suggestion a credit rating can be "false", we would recommend the following adjustment to existing section 2.6:

> The designated rating organization, its ratings employees and its agents must take all reasonable steps to avoid issuing a credit rating, action or report that is ~~false or~~ misleading as to the general creditworthiness of a rated entity or rated securities.

Similarly, we would suggest the following adjustment to proposed section 2.6.1:

> The designated rating organization must adopt, implement and enforce policies, procedures and controls reasonably designed to avoid issuing a credit rating, action or report that is ~~false or~~ misleading as to the general creditworthiness of a rated entity or rated securities.

Section 2.9: Appropriate Information, Knowledge or Expertise

The Proposed Amendments would revise section 2.9 to restrict the DRO from issuing or maintaining a credit rating for structures, instruments, securities or entities for which it does not have appropriate information, knowledge or expertise. Moody's Canada does not object to the underlying objective of amended section 2.9, but we suggest modifying it, in part, to recognize the role that affiliates of DROs may play in the credit rating process.

At Moody's Canada, credit ratings are determined collectively by rating committees by a majority vote, and not by any individual analyst. Rating committees, which are constituted individually for each issuer and obligation, have members who may be based in different MIS offices around the world. Rating committees that determine credit ratings assigned by Moody's Canada consist of analysts who have the appropriate knowledge and experience to address the analytical perspectives relevant to the issuer and obligation. Factors considered in determining the make-up of a rating committee may include the size of the issue, the complexity of the credit, and the introduction of a new instrument. This approach to the composition of rating committees helps Moody's Canada provide high quality credit ratings that are comparable across sectors, regions and countries.

Therefore, we propose to amend section 2.9 as follows:

> The designated rating organization must not issue or maintain a credit rating for structures, instruments, securities or entities for which it and its affiliates, collectively, does not have appropriate information, knowledge or expertise….

Section 2.19.1: Prohibition of Promises or Threats to Influence Rated Entities

New section 2.19.1 prohibits a DRO from making "promises or threats" to influence rated entities, related entities, other issuers, subscribers, users of the designated rating organization's ratings or other market participants to pay for credit ratings or other services. Moody's Canada does not object to the underlying purpose of this provision, but we are concerned that it appears to prohibit commercially reasonable practices. Presumably, the intention for this prohibition is to apply only to the ratings or outlooks that would be assigned by the DRO, rather than the commercial side of the business. We believe the following modification to section 2.19.1 would be consistent with this objective:

> A designated rating organization or a DRO employee must not make promises or threats about potential credit ratings or rating outlooks to influence rated entities, related entities, other issuers, subscribers, users of the designated rating organization's credit ratings or other market participants to pay for credit ratings or other services.

Section 2.25: DRO Board of Directors

Amended section 2.25 would require the board of directors of the DRO or a DRO affiliate that is a parent of the DRO to monitor compliance by the DRO and its employees with the DRO's code of conduct and with securities legislation. Consistent with our comments on proposed section 2.28.1, we recommend clarifying the scope of section 2.25 to limit it to securities legislation as it relates to the activities of the DRO as a credit rating organization:

> The board of directors of a designated rating organization or a DRO affiliate that is a parent of the designated rating organization must monitor all of the following:
>
> […]
>
> (e) the compliance by the designated rating organization and its DRO employees with the organization's code of conduct and with securities legislation as applicable to the activities of the designated rating organization as a credit rating organization.

Applying a broader or undefined scope would task the board of directors with monitoring activities that have nothing to do with its business as a DRO.

Section 2.29: Risk Management Committee

New section 2.29 would require that a DRO establish and maintain a risk management committee made up of one or more senior managers or DRO employees with the appropriate level of experience. Moody's Canada agrees that DROs benefit from a formal senior level risk management function. However, the size and infrastructure of DROs vary. In some instances, it may be impracticable to establish a senior level risk management committee. Instead, it may be more effective for the DRO to leverage the infrastructure of an affiliate of the DRO, or an

affiliate that is a parent of the DRO. Therefore, we would suggest amending Section 2.29 to permit DROs to leverage the risk management infrastructure of its affiliates, including its parent company.

> A designated rating organization must establish and maintain a risk management committee made up of one or more senior managers or DRO employees, or senior managers or employees of an affiliate of the DRO, or an affiliate that is the parent of the DRO, with the appropriate level of experience responsible for identifying, assessing, monitoring, and reporting the risks arising from its activities, including legal risk, reputational risk, operational risk, and strategic risk. The committee must be independent of any internal audit system and make periodic reports to the board of directors of the designated rating organization, or of a DRO affiliate that is a parent of the designated rating organization, and senior management to assist the board and senior management in assessing the adequacy of the policies and procedures the designated rating organization adopted, and how well the organization implemented and enforces the policies and procedures to manage risk, including the policies and procedures specified in the organization's code of conduct.

D. Appendix A: Independence and Conflicts of Interest

Sections 3.7.1 and 3.8: Disclosure of Unique or Specific Conflicts of Interest

Moody's Canada fully supports the disclosure of actual and potential conflicts of interest, and agrees that such disclosures should be made in a complete, timely, clear, concise, specific and prominent manner. We are concerned, however, that the proposed amendment to section 3.8 that requires disclosure of unique or specific actual or potential conflicts of interest may be redundant and impracticable.

First, section 3.7 of NI 25-101 already requires DROs to identify and publicly disclose any actual or potential conflicts of interest that may influence the options and analyses of ratings employees, including opinions and analyses in respect of a credit rating or rating outlook. Second, it is unclear which actual or potential conflicts of interests should be considered unique or specific relative to those already identified and disclosed through section 3.7. Third, it is difficult to envisage a scenario where a DRO could issue a credit rating or rating outlook subject to section 3.8 that is not otherwise prohibited or restricted by other sections of NI 25-101, including, for example, sections 3.2, 3.3, 3.6, and 3.6.1. Finally, it may also be impracticable to tailor disclosure at the granular level this provision seems to require. Therefore, we recommend that section 3.8 be modified as follows:

> The designated rating organization must disclose the actual or potential conflicts of interest it identifies under the policies, procedures and controls referred to in section 3.7.1 in a complete, timely, clear, concise, ~~specific~~ and prominent manner. ~~If the actual or potential conflict of interest is unique or specific to a credit rating action with respect to a particular rated entity or related entity, the conflict of interest must be disclosed in the same form and through the same means as the relevant credit rating action.~~

In addition, we suggest amending proposed section 3.7.1(e) which, in operation with section 3.8, would require a DRO to disclose as a potential conflict of issue when a rated entity or related entity has a direct or indirect ownership interest in the DRO. We do not object to the underlying purpose of the provision, but would recommend an introduction of a materiality threshold to section 3.7.1(e) as follows:

> A designated rating organization must adopt, implement and enforce policies, procedures and controls to identify and eliminate, or manage and disclose, as appropriate, any actual or potential conflicts of interest that may influence the credit rating methodologies, credit rating actions, or analyses by the designated rating organization or the judgment, opinions or analyses by ratings employees. Without limiting the generality of the foregoing, the policies, procedures and controls must address all of the following conflicts and ensure that no conflict influences the designated rating organization's credit rating methodologies or credit rating actions:
>
> (e) a rated entity or related entity has a significant direct or indirect ownership interest in the designated rating organization.

The absence of a materiality threshold would suggest that a DRO must disclose even the most remote ownership interest as a potential conflict of interest. This could result in over-disclosure and ultimately undermine the purpose of the provision.

E. Appendix A: Responsibilities to the Investing Public and Issues - Transparency and timeliness of ratings disclosure

Section 4.5(c): Disclosures for Structured Finance Products

The proposed amendment to section 4.5(c) is inconsistent with the limited role of DROs, and should not be incorporated into NI 25-101. The proposed amendment requires that DROs disclose "whether the issuer of the structured finance product has informed the [DRO] that it is publicly disclosing all relevant information about the product being rated or whether the information remains non-public."

Credit ratings play an important, but limited, role in the markets. Moody's Canada's credit ratings are forward-looking opinions that speak only to the relative credit risk of fixed income instruments; namely their relative probability of default and the potential severity of any financial losses to creditors. Over the past several years, the broader public policy agenda has focused on ensuring that credit rating agencies are very clear about what they are able to do, and the limitations of their role.

Furthermore, DROs are independent entities and are not advisors to the issuer or on the transaction. It is inconsistent with the role of DROs to: (1) encourage issuers to disclose information; and/or (2) disclose with their credit rating what the issuer has advised the DRO that it intended to disclose to the market. Having DROs make such disclosures may contribute to the incorrect perception that DROs are gatekeepers, which can lead to over-reliance on DROs. Instead of imposing obligations on DROs, we believe regulators should enhance the mandatory

disclosure and enforcement regime with respect to issuers' disclosures if they believe the existing framework is inadequate.

Accordingly, we discourage inclusion of section 4.5(c) in amended NI 25-101.

Sections 4.8.1 and 4.10: Plain Language

The Proposed Amendments introduce two provisions that require DROs to use "plain language" in public disclosures about its credit ratings. Moody's Canada does not object to the underlying disclosures required by the Proposed Amendments, but we are concerned with the requirement that the DRO use "plain language" in providing them.

Section 4.8.1 would require the DRO to use "plain language" when disclosing the assumptions, parameters, limits and uncertainties surrounding the methodologies and models it uses in its credit rating activities. Section 4.10 requires the DRO also use "plain language" when describing the attributes and limitations of each credit rating, and the risks of relying on the credit rating to make investment or other financial decisions.

The plain language requirement in sections 4.8.1 and 4.10 could lead to confusion among market participants about how credit ratings should and should not be used. Plain language requirements in financial services regulation are typically associated with products and services intended for use by retail customers. Credit ratings, however, are intended for use by market professionals. Financial market professionals have the resources and ability to request that DROs communicate their views in ways that they find useful. If a DRO does not communicate in ways that market professionals find helpful, credit ratings may be considered less useful and their credibility discounted.

Furthermore, because there is no objective standard for "plain language," DROs could be encouraged to over-simplify a necessarily complex analysis, which would not benefit users of credit ratings or the market as a whole.

We propose that sections 4.8.1 and 4.10 be amended to state that the required disclosures must be made "using language that investors and other users of credit ratings can understand".

Section 4.15: Changes to Methodologies

Section 4.15 is being amended to require that any disclosure of material modifications to a DRO's methodologies, models and key rating assumptions be made in a non-selective manner. We have no objection to the underlying objective of the provision, but would note that the amendment does not bring section 4.15 into alignment with the current IOSCO Code. The revisions to the IOSCO Code in 2015 included removal of the language note below.

> The designated rating organization must publicly disclose, in a timely fashion, any material modification to its methodologies, models, key ratings assumptions and significant systems, resources or procedures. Where a reasonable person would consider it feasible and appropriate, disclosure of such material modifications must be made before they go into effect. Any disclosure of such material modifications must be made in a non-selective manner. ~~The designated rating organization must carefully consider the~~

~~various uses of credit ratings before modifying its methodologies, models, key ratings assumptions and significant systems, resources or procedures.~~

We would encourage the same language be removed from proposed section 4.15.

F. Appendix A: Responsibilities to the Investing Public and Issues - Treatment of Confidential Information

Section 4.16: Measures to Protect Non-Public and Confidential Information

Amended section 4.16 requires DROs and DRO employees to take all reasonable measures to protect both:

(a) non-public information about a credit rating action, including information about a credit rating action before the credit rating or rating outlook is publicly disclosed or disseminated to subscribers;

(b) the confidential nature of information shared with them by rated entities under the terms of a confidentiality agreement or otherwise under a mutual understanding that the information is shared confidentially.

We note first that subsection (a) does not explicitly recognize section 4.12 which requires DROs to inform the issuer of "the critical information and principal considerations upon which a credit rating or rating outlook will be based" before the publication of the credit rating or rating outlook. We would suggest the following modification to amended section 4.16:

(a) except to the extent prior disclosure to the rated entity is required by section 4.12, non-public information about a credit rating action, including information about a credit rating action before the credit rating or rating outlook is publicly disclosed or disseminated to subscribers;

In addition, while we recognize that NI 25-101 is intended to provide the oversight framework for DROs, we would encourage the CSA to consider additional provisions that would impose a similar restriction on issuers to protect non-public and confidential credit rating information prior to its publication or dissemination to subscribers.

G. Appendix A: Responsibilities to the Investing Public and Issues

Section 4.25: Treatment of Complaints

New section 4.25 requires a DRO to establish and maintain a committee charged with receiving, retaining, and handling complaints from market participants and the public. It also requires that the DRO establish policies and procedures to handling the complaints, as well as a process for escalation to senior management and the board of directors of the DRO or an affiliate that is a parent of the DRO.

First, we propose aligning section 4.25 with the IOSCO Code by replacing "committee" with "function". In addition to being consistent with the IOSCO Code, this modification would also support the underlying purpose of the provision which is to establish a process whereby

complaints are received, retained and handled by employees independent of those responsible for rating actions, or for methodology development, revisions or approvals.

Second, it may impracticable for DROs to establish a committee or function charged with receiving, retaining, and handling complaints from market participants and the public. In some instances, it may be more effective for the DRO to leverage the infrastructure of one of its affiliates. In recognition of this, NI 25-101 already permits DROs to leverage the governance infrastructure of its affiliates or an affiliate that is a parent of the DRO in other circumstances (e.g. the board of directors).

We would therefore recommend the following modification to proposed section 4.25:

> A designated rating organization or an affiliate of the DRO, or a DRO affiliate that is the parent of the DRO, must establish and maintain a ~~committee~~ function charged with receiving, retaining, and handling complaints from market participants and the public. The designated rating organization must adopt implement and enforce policies, procedures and controls for receiving, retaining, and handling complaints, including those that are provided on a confidential basis. The policies and procedures must specify the circumstances under which a complaint must be reported to one or both of the following:
>
> (a) senior management of the designated rating organization;
>
> (b) the board of directors of the designated rating organization or of a DRO affiliate that is a parent of the designated rating organization.

What would be the implications to Canadian market participants if the EU did not continue to recognize the Canadian regulatory regime in NI 25-101 as "equivalent" for regulatory purposes in the EU? We are interested in details of how you would be impacted.

The EU CRA Regulation establishes the endorsement regime so that EU firms can use ratings for regulatory purposes issued by non-EU CRAs. This framework has succeeded in providing certainty and stability for CRAs, third-country regulators and the users of credit ratings. As noted in Moody's Investors Service response to ESMA's Consultation Paper on the endorsement regime[17], we believe the proposed changes could result in a number of significant unintended consequences including, for example: (1) regulatory inconsistency and arbitrage; (2) extra-territorial application of regulation; and ultimately, (3) market confusion with respect to the meaning of endorsement and uncertainty with respect to the standards applied by individual CRAs in different jurisdictions.

It is difficult to predict with any precision the potential impact of a non-equivalence finding by ESMA for Canada and its DRO framework. In our view, a non-equivalence finding regarding any jurisdiction is likely to be more immediately impactful on the capital markets, particularly the EU market, than on specific DROs. In the short-term, for example, it is likely that debt instruments rated by DROs would be ineligible for use by EU financial firms to satisfy capital regulatory requirements. At the same time, however, credit ratings issued by DROs would otherwise continue to be available for use by global market participants as they are today. Over the longer term, however, it is possible that issuers placing debt into the EU market may request that credit ratings be assigned by CRAs located in jurisdictions recognized as equivalent by ESMA. In that respect, a non-equivalence finding regarding Canada could adversely impact the ability for issuers rated by DROs to participate in the EU capital markets, and perhaps even more broadly. In turn, DROs may see a reduced demand for credit ratings produced in accordance with Canadian regulation, but not available for endorsement.

[17] Moody's Investors Service Comments on ESMA's Consultation Paper on the Update of the Guidelines on the Application of the Endorsement Regime (3 July 2017) *available at* https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBC_196628.

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October 4, 2017

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Re: Request for Comment on National Instrument 25-101

Dear Sirs / Mesdames:

S&P Global Ratings Canada, a business unit of S&P Global Canada Corp. ("*S&P Canada*"), a designated rating organization ("*DRO*") under National Instrument 25-101 ("*NI 25-101*"), appreciates the opportunity to comment on the Canadian Securities Administrators ("*CSA*") Request for Comment Relating to Designated Rating Organizations, published on July 6, 2017 ("*RFC*").

We focus our comments in this letter on the proposed amendments to NI 25-101 addressing (i) the new provisions in the March 2015 version of the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies (the "*IOSCO Code*") of the International Organization of Securities Commissions

("*IOSCO*") and (ii) the new requirements for credit rating agencies ("*CRAs*") in the European Union ("*EU*") resulting from the most recent amendment to EU Regulation 1060/2009 on credit rating agencies ("*CRA-3*").

We understand the CSA's desire for the EU and the European Securities and Markets Authority ("*ESMA*") to continue to recognize the Canadian regulatory regime as "*equivalent*" for regulatory purposes in the EU ("*EU Equivalency*") so that credit ratings issued by a DRO such as S&P Canada can continue to be endorsed by an EU-registered affiliate of the DRO and subsequently used for regulatory purposes in the EU.

In light of the global consistency of S&P Global Ratings' credit ratings and credit rating activities and our global network with multiple office locations, including our Toronto office, we underscore the importance of proximity to local markets when assigning analysts to the rating analysis of Canada-based entities and hence share the interest of the CSA and Canadian rated entities in continued EU Equivalency.

On April 4, 2017 ESMA published its *"Consultation Paper – Update of the guidelines on the application of the endorsement regime under Article 4(3) of the Credit Rating Agencies Regulation*" which in Annex III included an update to the Methodological Framework for assessing third-country legal and supervisory frameworks, (the *"ESMA CP"*) where ESMA sets out its preliminary considerations on how the CRA-3 amendments should be reflected in third country CRA oversight regimes such as NI 25-101.

With respect to a number of CRA-3 provisions referenced in the ESMA CP, ESMA acknowledges that "*ESMA does not expect identical requirements to be hard-wired into a third-country regulatory framework.*" and that ESMA may accept that certain elements "…*are not in place if the third-country supervisory and legal framework ensures an adequate level of quality, rigour and transparency of rating methodologies through other means*". There are regulatory regimes outside of the EU and Canada applicable to CRAs that have local or global reach (e.g. US rules governing Nationally Recognized Statistical Rating Organizations ("*NRSROs*")), and we note that those other local and global regimes are not identical to the ESMA provisions. We believe that the CSA should be open to considering additional amendments to its proposed changes to NI 25-101 that allow for a balanced approach toward meeting its objectives of maintaining EU Equivalency, while at the same time supporting efficiency in the drafting and application of regulatory requirements and not unnecessarily adding complexity and associated costs to the existing Canadian regulatory framework for DROs. We also note that we are not aware at this stage of any recent initiatives from other jurisdictions' authorities to revise their own CRA regulatory frameworks.

Our comments on the proposed changes to NI 25-101, Appendix A thereto and Form 25-101F1 are set out in the attached Annex A to this letter.

We wish to thank the CSA members for their considered review of our comments on the proposed changes to NI 25-101. Please contact me if you have any questions, or require any additional information.

Very truly yours,

S&P Global Ratings Canada,
a business unit of S&P Global Canada Corp.

By: _____
Name: Frank Staudohar
Title: Managing Director and Head of Canada Legal

Encls.

Cc: David Goldenberg
Holly Kulka
Patrick Nicholson
Mary McCann
Florian Wagner
Gerben de Noord

Annex A to S&P Global Ratings comment letter dated October 4, 2017
re: Request for Comment on National Instrument 25-101

NI 25-101

Proposed Text:

Section 12 (1.1) The compliance officer must be designated as an officer of the designated rating organization, or a DRO affiliate that is a parent of the designated rating organization, under a by-law or similar authority of the designated rating organization or the DRO affiliate.

S&P Global Ratings Comment:

Section 12(1.1) as currently drafted states that "*the compliance officer must be designated as an officer of the [DRO]*". To provide for flexibility, our comment is that the term "*officer*" should be complemented with the term "*senior level employee*" as used in the IOSCO Code at 1.23c. . We further comment that this paragraph be amended to explicitly recognize that the Designated Compliance Officer of an NRSRO that is related to the DRO may also perform the role of compliance officer of the DRO.

NI 25-101 – Appendix A

Proposed Text

2.2 A designated rating organization ~~will~~ must include a provision in its code of conduct that it ~~will~~ use only rating methodologies that are rigorous, systematic, continuous, capable of being applied consistently and subject to some means of objective validation based on historical experience, including back-testing.

S&P Global Ratings Comment

We note that the 2015 revisions to the IOSCO Code replaced the term "*systematic*" with the phrase "*capable of being applied consistently*" aiming, as they described it, "*to provide more clarity*". We would submit that if the CSA seeks to adopt the 2015 IOSCO changes in this section that they also delete the term "*systematic*" to avoid unnecessary duplication and possible confusion.

Proposed Text

2.7 The designated rating organization ~~will~~ must ensure that it has and devotes sufficient resources to carry out and maintain high-quality credit ~~assessments of~~ ratings for all rated entities and rated securities.

When deciding whether to rate or continue rating an entity or securities, the organization ~~will~~ must assess whether it is able to devote sufficient personnel with sufficient skill sets to ~~make a credible~~ provide a high-quality credit rating ~~assessment,~~ and whether its personnel are likely to have access to sufficient information needed in order ~~make~~ to provide such ~~an assessment~~ a rating.

A designated rating organization ~~will~~ must adopt all necessary measures so that the information it uses in assigning a credit rating or a rating outlook is of sufficient quality to support ~~a credible~~ what a reasonable person would conclude is a high-quality credit rating and is obtained from a source that a reasonable person would consider to be reliable.

S&P Global Ratings Comment

We believe that the proposed insertion of the reference to a "*high-quality*" rating qualified by the "*reasonable person*" standard is unnecessary as the comparable provisions of the EU Regulation 1060/2009 and the NRSRO Rules do not contain similar tests.

We believe that the current provisions of NI 25-101 are broadly aligned with the comparative provisions in the EU and the US CRA regulatory regimes and accordingly we don't believe that the proposed changes to include these two tests are required for continued EU Equivalency. In addition the adoption of the proposed changes would create in our view an uneven playing field between the US and the EU on the one hand and Canada on the other with respect to these provisions. We believe that the current reference to "credible rating" should remain.

Separately, in our view the insertion of "*high-quality*" credit rating qualified by the "*reasonable person*" standard is unworkable. We are concerned that applying a *reasonable person* test to the judgement of ratings quality, likely measured with the benefit of hindsight, exposes the credit ratings of DROs to a confusing performance benchmark.

It is important to recall what credit ratings are. S&P Global Ratings' credit ratings are opinions about credit risk. Our credit ratings express our opinion about the ability and willingness of an issuer, such as a corporation or state or city government, to meet its financial obligations in full and on time. Credit ratings can also speak to the credit quality of an individual debt issue, such as a corporate or municipal bond, and the relative likelihood that the issue may default. Credit ratings are not absolute measure of default probability. Since there are future events and developments that cannot be foreseen, the

assignment of credit ratings is not an exact science. Credit ratings are not intended as guarantees of credit quality or as exact measures of the probability that a particular issuer or debt issue will default.

When an issuer that was originally rated investment-grade defaults we may see criticism to the effect that the credit rating must have been flawed or inaccurate. Historical data clearly shows that debt originally rated investment-grade does default from time to time[1]. An investor holding a bond from a defaulted issuer may likely view the credit rating as not being "*high-quality*"; however the default alone does not mean the initial credit rating was inappropriate and not of "high-quality". A measure of a CRA's success is whether, in aggregate and over the long term, its credit ratings are correlated with actual default experience. We are concerned that the *reasonable person* test may establish a benchmark for measuring credit ratings quality that may not appropriately recognize the forward-looking nature of credit ratings and may subject credit ratings to standards that they were not designed to meet. The *reasonable person* test may also not appropriately recognize the fact that as between CRAs credit rating definitions and methodologies differ and are thus not necessarily comparable. In addition *reasonable persons*' views can vary widely as it relates to their risk tolerance associated with any particular credit rating – some persons may view credit rating transitions acceptable given their outlook for risk and other persons may see the same transitions as unacceptable. For all of these reasons, we believe that the insertion of "*high-quality*" qualified by the "*reasonable person*" test in this paragraph is confusing and unworkable and accordingly we request that the *reasonable person* test be deleted from the proposed text of paragraph 2.7.

We note that the equivalent provision of the EU Regulation 1060/2009 also does not contain a *reasonable person* test. To our understanding, *reasonable person* tests in relation to ratings quality have not been used in comparable provisions of CRA regulatory regimes outside of Canada.

[1] This is also widely recognized, including for example in the publication entitled "The ABCs of Credit ratings" produced by the SEC's Office of Investor Education and Advocacy and Office of Credit Ratings, which, among other things, discusses what credit are and are not, recognizing for example that "even debt rated 'AAA' can default" (https://www.sec.gov/investor/alerts/ib_creditratings.pdf).

Proposed Text

2.12.1 If a designated rating organization becomes aware of errors in a rating methodology or its application, the designated rating organization must do all of the following if the errors could have an impact on its ratings:

(a) promptly notify the regulator or securities regulatory authority and all affected rated entities of the errors and explain the impact or potential impact of the errors on its ratings, including the need to review existing ratings;

(b) promptly publish a notice of the errors on its website, where the errors have an impact on its ratings;

S&P Global Ratings Comment

We request the deletion of the word "*could*" in the introductory part of paragraph 2.12.1 so as to provide clarity to DROs regarding the threshold that triggers the actions required in subparagraphs (a) and (b). We are concerned that the word "*could*" creates a low threshold for notifications to rated entities and regulators that includes all errors, however technical or insignificant, given that at the point that an error is first identified all errors *could* be said to potentially impact credit ratings until such time as a proper assessment has been completed to conclude whether the error is one of substance impacting credit ratings. Separately the requirement to notify *all affected entities* as per subparagraph (a) suggests that an assessment of credit rating impact be completed to determine whether a particular entity's ratings *have* been affected which seems to contradict the lower *could* standard. Lastly we note that as drafted the *could* standard would compel notification to rated entities as per subparagraph (a) but not to the market, as per subparagraph (b) raising the risk of information asymmetries regarding credit ratings related information becoming available to limited segments of the market during the period between which errors may first be identified and the time in which errors are properly assessed to have credit ratings impact or not. For these reasons, we believe that the more useful threshold triggering action pursuant to paragraph 2.12.1 is errors that *have an impact* on credit ratings as determined by the CRA. We believe that this provides a clear and consistent trigger, results in meaningful information to regulators and rated entities and avoids the risk of credit ratings related information asymmetries in the market.

Proposed Text

2.20 A person or company listed below must not make a recommendation to a rated entity about the corporate or legal structure, assets, liabilities, or activities of the rated entity:

(d) a significant security holder of the designated rating organization or of an affiliate that is a parent of the designated rating organization.

S&P Global Ratings Comment

Proposed paragraph 2.20(d) in our understanding aims to manage potential conflicts of interests between DROs and their significant security holders. However, proposed paragraph 2.20(d) is neither a proportionate nor effective means to address potential conflicts of interest. Essentially, it would impose restrictions upon financial advisory activities of non-DRO entities through a National Instrument specifically regulating DROs. As CRAs cannot reasonably be held responsible for the actions of persons or entities over which they have no control, such provisions are better addressed through relevant securities legislation rather than through NI 25-101. Firms with significant financial holdings that also offer financial advisory services typically provide their financial advisory services through a division or business unit that is operationally and/or legally separated from the investment management division in accordance with firewall policies mandated by relevant securities regulation. As discussed further in our comment on paragraph 3.6.1 below, DROs that are, or whose parents are owned directly or indirectly by publicly traded companies cannot always easily identify their ultimate shareholders and DROs would not be in a position to find out whether a significant security holder has or has not provided financial advisory services to rated entities as such information is not generally disclosed publicly.

We therefore request the deletion of paragraph 2.20(d). Please also see our comment on paragraph 3.6.1 below.

Proposed Text

2.25 The board of directors of a designated rating organization or a DRO affiliate that is a parent of the designated rating organization must monitor all of the following:

(e) the compliance by the designated rating organization and its DRO employees with the organization's code of conduct and with securities legislation.

S&P Global Ratings Comment

There is a general alignment of the board composition and board duties requirements of NI-25-101 with those described in Section 15E(t)(2) and 15E(t)(3) of U.S. Securities Exchange Act of 1934 (the "*1934 Act*"). Canadian securities regulators have accepted, in the case of S&P Global Ratings, that a supervisory board of a NRSRO may address the requirements and functions prescribed by Part 3 of NI 25-101 and sections 2.22 through 2.25 of Appendix A of NI 25-101. We believe that paragraph 2.25 should remain aligned with the requirements of section 15E(t)(3) of the 1934 Act. We believe that maintaining this alignment instead of creating greater divergence through the addition of the proposed change to paragraph 2.25 would, for NRSRO boards that oversee Canadian DROs, reduce the potential confusion among supervisory board members regarding differing standards between the US and Canada and the execution of their supervisory duties. We also believe that continued alignment in this area would also avoid the unintended consequence that differing supervisory board requirements in Canada and the U.S. disincentivize the use of NRSRO boards for Canadian DROs resulting in the loss of efficiencies and the introduction of associated costs and burdens to DROs as well as replacing the board oversight of the Canadian operations in a global context with solely local oversight – all with little or no benefit to the market. Lastly we respectfully submit that continued alignment between the U.S. and Canadian requirements in this area should not pose a risk to NI 25-101's treatment of EU Equivalency.

Proposed Text

2.29 A designated rating organization must establish and maintain a risk management committee made up of one or more senior managers or DRO employees with the appropriate level of experience responsible for identifying, assessing, monitoring, and reporting the risks arising from its activities, including legal risk, reputational risk, operational risk, and strategic risk. The committee must be independent of any internal audit system and make periodic reports to the board of directors of the designated rating organization, or of a DRO affiliate that is a parent of the designated rating organization, and senior management to assist the board and senior management in assessing the adequacy of the policies and procedures the designated rating organization adopted, and how well the organization implemented and enforces the policies and procedures to manage risk, including the policies and procedures specified in the organization's code of conduct.

S&P Global Ratings Comment

We note that CSA members are seeking to incorporate the provisions of paragraph 4.2 of the IOSCO Code through the proposed addition of paragraph 2.29. We note, however that the IOSCO Code uses the term "*function*" rather than "*committee*" in its comparable section. To support consistency of interpretation and to avoid a requirement or perceived requirement for DROs to establish a specific committee where a DRO or NRSRO may have an established risk function at the DRO, NRSRO or parent level, we recommend that the term "*committee*" as proposed in paragraph 2.29 be replaced with the term *"committee or function*.".

Separately, we query why paragraph 2.29 includes the requirement to separate the activities of a risk management committee or function from a DRO's internal audit function given the independence of an internal audit function. Even though S&P Global Ratings has a separate risk management function, we do not see why it is necessary for NI 25-101 to limit the internal audit function in risk management.

Proposed Text

2.30 A designated rating organization must adopt, implement and enforce policies and procedures ensuring DRO employees undergo appropriate formal ongoing training at reasonably regular time intervals. For greater certainty, the policies and procedures must

b) be designed to ensure the subject matter covered by the training be relevant to the DRO employee's responsibilities and cover, as applicable, the following:

(iii) the laws governing the designated rating organization's credit rating activities;

S&P Global Ratings Comment

We understand that the intention of this proposed change is to adopt paragraph 4.3 of the IOSCO Code. We respectfully submit however that the inclusion of proposed subparagraph 2.30(b)(iii) is unnecessarily duplicative given the requirement set out in proposed subparagraph 2.30(b)(ii). Our comment is to request deletion of proposed subparagraph 2.30(b)(iii). The IOSCO Code is described to be a standard for CRA self-governance and as such it is understandable that the IOSCO Code would reference that in addition to the self-governance standards discussed that CRA training should also cover relevant applicable laws. The construct of NI 25-101 provides detailed governance requirements for DROs within Appendix A of NI 25-101 and then requires pursuant to Part 4, section 9 of NI 25-101 that a DRO's code of conduct "*must incorporate each of the provisions set out in Appendix A*". Given this construct the requirement in proposed paragraph 2.30 (b) (ii) which refers to training regarding the DRO's Code of Conduct in our view essentially covers the point intended by the IOSCO Code provision regarding training on laws governing credit rating activities. Assuming a DRO's Code of Conduct complies with the requirements of NI 25-101 then training on the Code of Conduct, where relevant and applicable, will effectively cover training on the laws governing a DRO's credit rating activities in Canada. In the alternative, we would respectfully request guidance regarding what additional training beyond training on a DRO's Code of Conduct, policies and procedures is intended by subparagraph 2.30(b)(iii).

Proposed Text

3.6.1 A designated rating organization must not rate, or assign a rating outlook to, a person or company in any of the following circumstances:

(a) a significant security holder of the designated rating organization, or of an affiliate that is a parent of the designated rating organization, is a significant security holder of the person or company, its affiliates or related entities;

(b) an officer or director of a significant security holder of the designated rating organization, or of an affiliate that is a parent of the designated rating organization, is an officer or director of the person or company, its affiliates or related entities.

S&P Global Ratings Comment

The proposal in paragraph 3.6.1 is in our view impractical and potentially triggers unintended consequences. DROs may be divisions of or be held by publicly traded companies which may, further, be based outside of Canada. Publicly traded companies cannot direct who buys or sells their stock. In our case, S&P Global Ratings business is a division of S&P Global Inc., a US public company listed on the New York Stock Exchange.

Typically, large institutional investors are shareholders in S&P 500 index constituents such as S&P Global Inc. that trade stocks frequently in the course of business and often manage multiple funds, both actively and passively, on behalf of many end-investors. Their aggregate holdings can therefore change significantly from day to day in ways that cannot be anticipated, and without the knowledge of a DRO. Regulatory filings by shareholders may be reported at a consolidated or unconsolidated level thereby adding complexity to data collection and analysis as ultimate shareholders that make unconsolidated filings may cross the 10% threshold without a DRO being aware.

Day to day changes in ownership of DROs or their parent entities could result in some or all credit ratings on Canadian debt being removed or reinstated periodically in an entirely unpredictable way. This would exacerbate market uncertainty and instability, as Canadian investors would be denied credit ratings on both Canadian and non-Canadian debt in such circumstances, including where holdings triggering the thresholds in paragraph 3.6.1 are transient.

In our view, shareholder restrictions in proposed paragraph 3.6.1 are not needed to reduce the potential conflicts of interest in the CRA business given other regulatory measures that have been adopted. Registered CRAs in the EU and NRSROs in the US as well as DROs in Canada already have substantial policies and procedures in place to protect the integrity of the analytical process, and these measures are actively overseen by competent authorities.

In the US and the EU, S&P Global Ratings publicly discloses on its public website the names of shareholders which have provided notification under applicable securities laws and rules that they own 5% or more of outstanding common stock of S&P Global Inc. This list of stockholders is updated periodically and is based upon publicly available information such as quarterly regulatory filings. Therefore, while S&P Global Inc. is able to identify the holders of record of its outstanding common stock, it may not always know the identity of the underlying owner of the shares, as the stock may be held in the name of the underlying owner's broker-dealer.

Therefore, in line with the regulatory goals of promoting transparency, we suggest as an alternative to proposed paragraph 3.6.1 that DROs be required to periodically and publicly disclose the names of the shareholders which have provided notification under applicable securities laws and rules that they own 10% or more of outstanding common stock of a DRO or its ultimate parent in a manner that is similar to the practices in the US and the EU.

We also note that ESMA CP paragraph 70(e) states: "*ESMA accepts that thresholds in a third country may be different or that the third-country legislation does not explicitly address shareholders requirements. However, the third-country laws and regulations should provide sufficient protection against the risk that the interests of a significant shareholder impacts on the independence of the CRA, its analysts and/or its credit ratings/rating outlooks.*"

In light of ESMA's comments, S&P Global Ratings also suggest to incorporate into paragraph 3.4 of NI 25-101 the CRA-3 amendments to Article 6.1 of the EU Regulation 1060/2009[2].

[2] Article 6(1) *A credit rating agency shall take all necessary steps to ensure that the issuing of a credit rating or a rating outlook is not affected by any existing or potential conflicts of interest or business relationship involving the credit rating agency issuing the credit rating or the rating outlook, its shareholders, managers, rating analysts, employees or any other natural person whose services are placed at the disposal or under the control of the credit rating agency, or any person directly or indirectly linked to it by control.* (We underlined the CRA-3 amendment)

Proposed Text

3.9.1 A designated rating organization must ensure both of the following:

(a) fees charged to rated entities for the provision of credit ratings and ancillary services, as referred to in section 3.5, do not discriminate among rated entities in an unfair manner and have a reasonable relation to actual costs;

S&P Global Ratings Comment

We understand that proposed paragraph 3.9.1 seeks to address the CRA-3 provision on "*fees to rated entities*" by DROs, which is intended to further mitigate conflicts of interest and facilitate fair competition in the credit rating market.

While subparagraph (b) in our view constitutes an appropriate measure in mitigating conflicts of interest and facilitating fair competition, we are very concerned about the proposed language in subparagraph (a).

Subparagraph (a) in our view (i) inappropriately intervenes in ordinary commercial exchanges and risks getting involved in the setting of fees or the imposition of price controls; (ii) assumes very broad powers for securities regulators in Canada to intervene in ordinary commercial exchanges when such powers are typically confined to specialized competition authorities for use in targeted investigations; and (iii) is not required by ESMA for EU Equivalency.

Specifically, the ESMA CP sets out the following concerning the proposed wording on fees charged to rated entities:

120. According to paragraph 3c of Section B of Annex I of the CRA Regulation, a CRA should ensure that fees charged to its clients for the provision of credit rating and ancillary services are not discriminatory and are based on actual costs. Fees charged for credit rating services shall not depend on the level of the credit rating issued by the CRA or on any other result or outcome of the work performed. If this requirement is not in place, ESMA considers that there should be other safeguards to ensure that the objectives of avoiding conflicts of interests and promoting fair competition are achieved.

In S&P Global Ratings' view, it is therefore not necessary for purposes of EU Equivalency to include the proposed paragraph 3.9.1(a). Subparagraph 3.9.1(b) and paragraph 2.17 [*The DRO, its ratings employees and agents must deal fairly, honestly and in good faith with rated entities, investors, other market participants, and the public.*] provide in our view these *safeguards* referred to in paragraph 120 of the ESMA CP.

For consistency in the order of Appendix A, S&P Global Ratings suggests to add paragraph 3.9.1(b) immediately after paragraph 2.17.

For additional background on the challenges to any eventual supervision of fees charged by CRAs, we refer to our response to ESMA's Discussion Paper on CRA-3 Implementation, dated July 10, 2013 (https://www.esma.europa.eu/file/11176/download?token=txxTgshC).

Proposed Text

3.11 If a designated rating organization is subject to the oversight of a rated entity, or an affiliate or related entity of the rated entity, the designated rating organization ~~will~~ must use different DRO employees to conduct the rating actions in respect of that entity, or to develop or modify methodologies that apply to that entity, than those ~~involved in~~ that are subject to the oversight.

S&P Global Ratings Comment

We understand paragraph 3.11 to be related to IOSCO Code paragraph 2.11 which sets out the scope of CRA employees that should not be responsible for interacting with supervisors regarding supervisory matters. However, the proposed amendment to paragraph 3.11 does not currently address that matter.

As employees of a DRO, all DRO staff including analysts are subject to oversight by Canadian securities regulators. As we consider Canadian securities regulators to be *affiliated with* or *related to* Canadian governmental entities, this paragraph as drafted potentially disqualifies all analysts based in Canada from rating Canadian governmental entities and all of their related entities.

S&P Global Ratings therefore requests the deletion of the proposed text changes and suggests a further redrafting of the paragraph to address the subject of IOSCO Code provision 2.11. The final part of paragraph 3.11 could, for example, be amended to read: "…*than those DRO employees who are primarily responsible for interacting with supervisors regarding supervisory or oversight matters*."

Proposed Text

4.2 ~~the~~ A designated rating organization ~~will~~ must publicly disclose its policies and procedures for distributing credit ratings, ~~ratings~~ actions, updates, rating outlooks and related reports and ~~updates~~ for when a credit rating ~~will~~ be withdrawn or discontinued.

S&P Global Ratings Comment

The proposed amendment to paragraph 4.2 requires the disclosure of "*procedures*". In our view this is too detailed a level of disclosure and we consider that policy level disclosure should be sufficient for users of credit ratings to understand the DROs approach to distribution, withdrawal and discontinuance of credit ratings. S&P Global Ratings considers procedures as constituting actions, prohibitions or limitations that implement policies. We believe that the disclosure of procedures documents, which support the technical implementation of related policies, will not meaningfully add to the users of credit ratings understandings on this point.

Proposed Text

4.4 In each of its ratings reports in respect of a credit rating or rating outlook, a designated rating organization ~~will~~ must disclose all of the following:

(a) when the credit rating was first released and when it was last updated, reviewed or assigned a rating outlook;

S&P Global Ratings Comment

We do not fully understand the proposed wording in paragraph 4.4 (a). In addition, S&P Global Ratings advises that it typically assigns rating outlooks to issuer-level credit ratings and not to issue-level credit ratings and that structured finance ratings for the most part are not assigned rating outlooks. Recognizing that not all credit ratings have rating outlooks and to clarify the text of the proposed changes we therefore suggest revising the proposed wording of paragraph 4.4(a) to read: "…*when it was last updated or reviewed and the current rating outlook, if any*".

Proposed Text

4.4 In each of its ratings reports in respect of a credit rating or rating outlook, a designated rating organization ~~will~~ must disclose all of the following:

e) all ~~material~~ significant sources, including the rated entity, its affiliates and related entities, that were used to prepare the credit rating or rating outlook and whether the credit rating or rating outlook has been disclosed to the rated entity or its related entities and amended following that disclosure before being issued.

S&P Global Ratings Comment

We query why the term "*material*" in subparagraph (e) was replaced with "*significant*". As "*material*" is a term commonly used in securities regulation, as well as in the EU Regulation 1060/2009 we suggest retaining "*material*" and not replacing it with "*significant*".

Proposed Text

4.5 In each of its ratings reports in respect of a credit rating or rating outlook for a structured finance product, a designated rating organization ~~will~~ must disclose all of the following:

S&P Global Ratings Comment

S&P Global Ratings typically assigns rating outlooks to issuer-level credit ratings and not to issue-level credit ratings; furthermore structured finance ratings for the most part are not assigned rating outlooks. We therefore suggest adding "*where applicable*" so that the sentence would read "…*credit rating or, where applicable, rating outlook*…"

Proposed Text

4.5 In each of its ratings reports in respect of a credit rating or rating outlook for a structured finance product, a designated rating organization ~~will~~ must disclose all of the following:

(c) whether the issuer of the structured finance product has informed the designated rating organization that it is publicly disclosing all relevant information about the product being rated or whether the information remains non-public.

S&P Global Ratings Comment

S&P Global Ratings agrees that CRAs/DROs should be transparent so that users of credit ratings can understand how its credit ratings were arrived at. However, S&P Global Ratings does not believe it should be responsible for disclosing/informing the market on whether the issuer of a structured finance product has publicly disclosed all relevant information about the product being rated or if such information remains non-public. Rather than placing such disclosure requirements on CRAs/DROs, it would be more appropriate, and consistent with common principles of securities regulation, to place the legal requirement to publicly disclose relevant information on the issuer who is the owner of the information.

S&P Global Ratings believes that its role as a CRA/DRO is to issue opinions on the creditworthiness of issues or issuers and not to be involved in the disclosure process related to the sale of securities nor bear the responsibility to review the veracity of issuers' statements regarding disclosures. This requirement could place a significant burden on CRAs. This is a role that is typically performed by advisers and underwriters supported by legal counsel in the context of an offering of securities and inconsistent with the role of a CRA/DRO.

We note that this obligation is not one that is imposed by CRA regulatory regimes applicable in the US or the EU. We also note that the South African Financial Services Board's Draft CRA Rules published for comment on 4 August 2011 contained a similarly worded provision[3] which was not retained in their Final Rules[4].

We also believe that the provision itself will be unworkable in practice with issuers potentially refusing to provide formal confirmations to DROs as to whether all relevant information was publicly disclosed,

[3] South Africa Financial Service Board: 4 August 2011 Draft Rules: Draft Rule 3.1(14) *(d) A credit rating agency must disclose in its rating announcements whether the issuer of a structured finance product has informed the credit rating agency that the issuer of a structured finance product is publicly disclosing all relevant information about the product being rated or if the information remains non-public.*

[4] Board Notice 228 of 2013, South Africa Financial Services Board.

particularly given the fact that issuers have no corresponding obligation under securities laws in Canada to provide such confirmations to DROs. Should some issuers be willing to provide such confirmations to DROs we would expect that statements from the issuers will likely be highly qualified and as such be of limited utility both to DROs and to users of ratings when reported by the DRO in its disclosures. We respectfully submit that the concern that the CSA is trying to address through the addition of paragraph 4.5(c) is a question of disclosure by issuers of securities which securities laws in Canada can and should address directly by way of amendments to the statutory disclosure obligations of issuers.

Based on the above our comment is to delete proposed paragraph 4.5(c).

Proposed Text

4.12 Before issuing or revising a credit rating or a rating outlook, the designated rating organization will must inform the issuer of the critical information and principal considerations upon which a credit rating or rating outlook ~~will~~ be based and afford the issuer ~~an~~ a reasonable opportunity to clarify any likely factual misperceptions or other matters that the designated rating organization would ~~wish~~ want to be made aware of in order to produce an accurate credit rating or rating outlook.

The designated rating organization ~~will~~ must inform the issuer during the business hours of the issuer. The designated rating organization must duly evaluate the response.

S&P Global Ratings Comment

Provision 4.12 as currently in effect, requires that a DRO must in advance of the publication of a credit rating, inform a rated entity of the critical information and principal considerations upon which the draft credit rating has been based and give the rated entity an opportunity to clarify any likely factual misperceptions or other matters the rated entity believes the DRO should be aware of. The proposed new wording goes further, requiring the rating itself to be disclosed to the rated entity *during business hours of the issuer* (or rated entity).

S&P Global Ratings regards notification *during business hours* as a best practice but does not advocate adding the proposed wording to provision 4.12. Restricting the pre-publication notice to business hours limits the ability of DROs to publish credit rating actions in a timely way where specific circumstances warrant an immediate release of credit rating actions.

The proposed addition of the term *reasonable* (*afford[ing] the issuer a* reasonable *opportunity*) in our view provides an appropriate safeguard that rated entities would typically have the opportunity to review the notification *during business hours*.

The requirement to notify *during business hours of the issuer* is difficult to administer from an operational point of view given (i) the time zone differences across Canada; (ii) the variability in public holidays across the provinces and territories; and (iii) the determination of where rated entities and/or individuals are located including the administrative burden to establish and maintain such information to ensure the business hour test is met. For example, the proposed text in paragraph 4.12 could be read to prohibit a DRO from communicating a rating action to the management team of a rated entity based in British Columbia while meeting with the CRA in person in Toronto at 9.30am Toronto time – which is outside of the business hours of the rated entity in British Columbia. We do not believe that this is what is intended.

On the basis of the above, rather than this being a strict legal requirement, S&P Global Ratings suggests adding the terms "*where feasible and appropriate*" as used in the IOSCO Code's provision 3.9.

This would, in our view also be consistent with the ESMA CP which states in paragraph 111 that: "*In respect of the requirement set out in paragraph 107 d) above, ESMA does not consider it necessary that there is a specific requirement that the CRA to inform the rated entity at least a full working day before the publication of a credit rating. Other timeframes may be acceptable as long as the CRA provides to the rated entity with the opportunity to draw attention to possible factual errors.*" For these reasons and recognizing also that the US NRSRO rules do not impose a similar requirement for issuer notification we do not believe that adoption of revisions to this paragraph that conform to the comparable IOSCO requirement should pose a risk to NI 25-101's treatment of EU Equivalency.

In the alternative should the CSA retain the proposed changes to this paragraph, notification *during business hours* should be understood by CSA members as the rated entity having the opportunity to review credit rating notifications *during business hours* even if the notification was sent after close of business hours the previous day.

Proposed Text

4.14 For each credit rating, the designated rating organization ~~will~~ must disclose whether the rated entity and its related entities participated in the rating process and whether the designated rating organization had access to the accounts, management and other relevant internal documents of the rated entity or its related entities. Each credit rating without that access must be identified as such using a clearly distinguishable colour code for the rating category. Each credit rating not initiated at the request of the rated entity ~~will~~ must be identified as such. The designated rating organization ~~will~~ must also publicly disclose its policies and procedures regarding unsolicited ratings.

S&P Global Ratings Comment

Paragraph 4.14 proposes to add the CRA-3 requirement to use colour codes in case of unsolicited credit ratings. In our view, the use of colour codes is neither a necessary nor effective means of disclosure. The colour coding is meant to indicate whether the DRO had "*access to the accounts, management and other relevant internal information*…" Rather than using a distinct colour (which may not be sufficiently distinct in documents printed by users, particularly in the case of non-colour printing), an indication of whether the DRO had *access* by using a description or a symbol we submit is at least as effective and would avoid imposing disproportionate development cost on DROs for possibly little effective benefit to users of credit ratings. We also note that the ESMA CP states in 125. (d) […] "*whilst required by the CRA Regulation, it is not necessary that it is a legal requirement in the third country that the latter is indicated using a clearly, distinguishable different colour code for the rating category;*"

Proposed Text

4.15.1 If the designated rating organization intends to make a significant change to an existing rating methodology, model or key rating assumption or use a new rating methodology that could have an impact on a credit rating, the designated rating organization must do both of the following:

(a) publish the proposed significant change or proposed new rating methodology on its website together with a detailed explanation of the reasons for, and the implications of, the proposed significant change or proposed new rating methodology;

S&P Global Ratings Comment

Rather than using "*significant change*" we suggest using "*material change*" for reasons outlined in our response to paragraph 4.4. In addition the use of "*material*" instead of "*significant*" will make this paragraph consistent with the related paragraph immediately prior, paragraph 4.15, which continues to the use the term "*material*". Our proposed additional change also removes the risk of confusion regarding whether to infer a potentially differing standard to be applied for the same concept of changes / modifications. Lastly we note that comparable provisions of US NRSRO rules also use the term 'material' in discussing actions to be taken by NRSROs with respect to changes / modifications to methodologies.

Proposed Text

4.15.2 If following the publication referred to in section 4.15.1, the designated rating organization makes a significant change to an existing rating methodology, model or key rating assumption or issues a new rating methodology that could have an impact on a credit rating, the designated rating organization must promptly publish on its website all of the following:

S&P Global Ratings Comment

Rather than using "*significant change*" we suggest using "*material change*" for reasons outlined in our response to paragraph 4.4. In addition the use of "*material*" instead of "*significant*" will make this paragraph consistent with the related paragraph immediately prior, paragraph 4.15, which continues to the use the term "*material*". Our proposed additional change also removes the risk of confusion regarding whether to infer a potentially differing standard to be applied for the same concept of changes / modifications. Lastly we note that comparable provisions of US NRSRO rules also use the term 'material' in discussing actions to be taken by NRSROs with respect to changes / modifications to methodologies.

Proposed Text

4.15.2 If following the publication referred to in section 4.15.1, the designated rating organization makes a significant change to an existing rating methodology, model or key rating assumption or issues a new rating methodology that could have an impact on a credit rating, the designated rating organization must promptly publish on its website all of the following:

(a) the revised or new rating methodology, model or key rating assumption,

(b) a detailed explanation of the revised or new methodology, model or key rating assumption, its date of application and the results of the consultation referred to in section 4.15.1;

S&P Global Ratings Comment

As paragraph 4.8 already requires a DRO to "*publicly disclose the methodologies, models and key rating assumptions*", we suggest that subparagraphs (a) and (b) could be combined to read: "(*a) the revised or new rating methodology, model or key rating assumption, or detailed description thereof; (b) its date of application and the results of the consultation referred to in section 4.15.1*;"

Proposed Text

4.15.2 If following the publication referred to in section 4.15.1, the designated rating organization makes a significant change to an existing rating methodology, model or key rating assumption or issues a new rating methodology that could have an impact on a credit rating, the designated rating organization must promptly publish on its website all of the following:

(c) copies of the written comments referred to in paragraph 4.15.1(b), except in the case where confidentiality is requested by the person who submitted the comment.

S&P Global Ratings Comment

When requesting comments on proposed changes, written responses received by DROs may lack relevance to questions being asked, may contain discussion of commercial matters or may potentially contain language that is not appropriate for publication. So as to avoid the publications of such comments, we suggest inserting the words "*as appropriate*" after "*comments*". Should the competent authorities have concerns about a DRO's approach to publication of comment letters, record keeping requirements as set out in article 13 of NI 25-101 would be understood to include the retention of comment letters received thereby allowing competent authorities to review a DRO's approach to publication of comment letters.

Proposed Text

4.16.1 A designated rating organization must consider applicable securities legislation governing insider trading or tipping when dealing with non-public information that it receives from an issuer.

A designated rating organization must maintain a list of all persons who have access to non-public information about a credit rating action, including information about a credit rating action before the credit rating or rating outlook is publicly disclosed or disseminated to subscribers.

For any credit rating action, the list must include applicable DRO employees and any person identified by the rated entity for purposes of the list.

S&P Global Ratings Comment

The additional wording proposed in 4.16(a) describing how a DRO and its DRO employees must not disclose confidential information, "*including information about a credit rating action before the credit rating or rating outlook is publicly disclosed or disseminated to subscribers*" in combination with newly proposed paragraph 4.16.1 we understand is aimed at addressing the CRA-3 provision setting out that "*until disclosure to the public, credit ratings [and] rating outlooks … shall be deemed to be inside information*" and that CRAs should maintain insider lists.

The ESMA CP states the following on the comparable section of CRA-3:

89. According to Article 10(2a) of the CRA Regulation, credit ratings, rating outlooks and information relating thereto, shall be treated as inside information, until the moment when they have been disclosed to the public.

90. ESMA considers these requirements to be very important for the reasons set out above, and it expects the objectives of these requirements to be met for the purposes of assessing equivalence.

In our understanding ESMA does not suggest that third country CRA regimes should have insider lists, but stresses instead the objectives of protection of unpublished credit ratings and rating outlooks. In our view, it is therefore not necessary for purposes of EU Equivalency to mandate insider lists. Introducing insider lists would also impose a significant administrative burden on DROs (and rated entities) that is neither required nor proportionate. As part of its standard practice S&P Global Ratings records the name and title of the person who was notified of an (unpublished) credit rating decision. Rather than introducing the novel concept of insider lists, S&P Global Ratings considers that the existing and proposed confidentiality requirements in paragraphs 4.16 to 4.21 of Appendix A to NI 25-101 (with the exception of 4.16.1) and S&P Global Ratings' internal policies and procedures sufficiently address the need to protect unpublished credit ratings and rating outlook decisions. This approach is broadly consistent with US controls on protection of inside information which also do not impose the requirement for insider lists on NRSROs.

Proposed Text

4.25 A designated rating organization must establish and maintain a committee charged with receiving, retaining, and handling complaints from market participants and the public. The designated rating organization must adopt implement and enforce policies, procedures and controls for receiving, retaining, and handling complaints, including those that are provided on a confidential basis. The policies and procedures must specify the circumstances under which a complaint must be reported to one or both of the following:

S&P Global Ratings Comment

Proposed paragraph 4.25 requires a DRO to "*establish and maintain a committee charged with receiving, retaining, and handling complaints*". In our view it is not necessary to create a separate committee for handling complaints when DRO can effectively address the governance and managing of complaints through established functions. For example, at S&P Global Ratings complaints are handled by the Compliance function along with other responsibilities. We are also not aware that the handling of complaints by CRAs in Canada or elsewhere has given rise to particular concerns. As the IOSCO Code at 5.3 uses the term "*function*" instead of "*committee*" we therefore suggest to amend 4.25 to state that a "*[DRO] must establish and maintain a committee* or function *charged with* or otherwise designate to an established function the responsibility for *receiving, retaining, and handling complaints*…".

Form 25-101F1

Proposed Text

Item 14A. Pricing Policy

Disclose the applicant's pricing policy for credit rating services and any ancillary services, including the fee structure and pricing criteria in relation to credit ratings for different asset classes.

S&P Global Ratings Comment

As set out in paragraph 142 of the ESMA CP, "*ESMA expects the third-country legal and supervisory framework to impose some form of disclosure requirement regarding revenue generation by the CRA and that the third-country supervisor has the power to request all the information listed above.*" We therefore do not consider that it is necessary for DROs to annually file pricing policies as the competent authorities in Canada already (i) annually receive financial and revenue related information from DROs and (ii) have the ability to obtain such additional documentation from DROs through regular requests for information. For these reasons we request that this proposed provision be deleted.

To the extent that the addition of this proposed text is related to the proposed oversight of DRO fees as set out in proposed paragraph 3.9 of Appendix A to NI 25-101, we also refer you to our comments above.

In the alternative, we request that this provision should explicitly recognize that the such materials are entitled to confidential treatment without having to make application for such treatment to ensure the protection of the DRO's commercially sensitive information.