CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

Notice and Request for Comment

Proposed National Instrument 25-101 *Designated Rating Organizations*, Related Policies and Consequential Amendments

1. Purpose of notice

We, the members of the Canadian Securities Administrators (the CSA) are publishing for comment a proposed rule, policies and related consequential amendments that would impose requirements on those credit rating organizations that wish to have their credit ratings eligible for use in places where credit ratings are referred to in securities legislation.

Specifically, we are publishing:

- National Instrument 25-101 *Designated Rating Organizations* (the Proposed Instrument),
- Companion Policy 25-101CP to National Instrument 25-101 *Designated Rating Organizations* (the Proposed Companion Policy),
- Consequential amendments to National Instrument 41-101 *General Prospectus Requirements*,
- Consequential amendments to National Instrument 44-101 *Short Form Prospectus Distributions*,
- Consequential amendments to National Instrument 51-102 *Continuous Disclosure Obligations*, and
- National Policy 11-205 *Process for Designation as a Designated Rating Organization in Multiple Jurisdictions* (the Proposed NP 11-205).

The Proposed Instrument, the Proposed Companion Policy, the proposed consequential amendments and Proposed NP 11-205 are collectively referred to as the Proposed Materials.[1]

We are publishing the Proposed Materials with this Notice. Certain jurisdictions may also include additional local information in Annex I. In particular, those jurisdictions that are a party to Multilateral Instrument 11-102 *Passport System* (currently all jurisdictions except Ontario) are publishing for comment amendments to that instrument that permit the use of the passport system in designating credit rating agencies or organizations (CROs). As Ontario is not a party to Multilateral Instrument 11-102, these amendments will not be published for comment in Ontario.

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[1] In jurisdictions other than Ontario, the Proposed Materials also include the proposed amendments to Multilateral Instrument 11-102 *The Passport System*.

2. Substance and purpose of the Proposed Instrument

CROs are not currently subject to formal securities regulatory oversight in Canada. However, as the conduct of their business may have a significant impact upon financial markets, and because ratings continue to be referred to within securities legislation, we think it is appropriate to develop a securities regulatory regime for CROs that is consistent with international standards and developments.

The Proposed Materials, together with the suggested legislative amendments (see below), are intended to implement an appropriate Canadian regulatory regime for CROs.

3. Summary of the Proposed Instrument

Under the Proposed Instrument, a CRO can apply for designation as a designated rating organization by filing an application containing prescribed information. The term "designated rating organization" will ultimately replace the concept of "approved rating organization" that is currently found in securities legislation (see "Future Consequential Amendments" below).

The central requirement of the Proposed Instrument is that, once designated, a designated rating organization must establish, maintain and ensure compliance with a code of conduct that is on terms substantially the same as the IOSCO *Code of Conduct Fundamentals for Credit Rating Agencies* (the IOSCO Code). Originally published in December 2004, the IOSCO Code was designed to serve as a model upon which CROs could base their own codes of conduct. In light of problems within the credit markets, IOSCO's CRO Task Force further considered the role CROs played in rating structured finance transactions, and the IOSCO Code was modified in May 2008 to reflect its recommendations.[2] Currently, the IOSCO Code addresses issues such as:

- CRO conflicts of interest (Part 2)[3]
- misunderstandings by investors about what ratings mean (section 3.5)
- adequate staffing of CROs (sections 1.7 and 1.9)
- the quality of information used in making rating decisions (section 1.7)
- the ability to rate novel products (sections 1.7-1 and 1.7-3)
- the differentiation of ratings for different securities (section 3.5(b)), and
- the provision of public disclosure of historical information about the performance of ratings (section 3.8).

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2 The revised IOSCO Code may be found at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD271.pdf.

3 Conflicts of interest are addressed generally in Part 2 of the IOSCO Code. In particular, the IOSCO Code addresses (a) conflicts of interest arising from rated issuers paying fees for their ratings (section 2), (b) the need for CROs to separate their rating business from consulting work (section 2.5), and (c) the ability of CROs to perform ancillary services (section 2.5). In addition, section 1.14 of the IOSCO Code specifies that CRO analysts should not make proposals or recommendations regarding the design of structured products.

Consistent with the model of the IOSCO Code, a designated rating organization will only be permitted to deviate from the specific requirements of the IOSCO Code if it explains the deviation and indicates how its code nonetheless achieves the objectives of the IOSCO Code.

In addition to the "comply or explain" requirement, and similar to the approaches taken in other jurisdictions, the Proposed Instrument will also impose certain specific requirements on a designated rating organization. These provisions require a designated rating organization to:

- have policies and procedures reasonably designed to identify and manage any conflicts of interest that arise in connection with the issuance of credit ratings,
- not issue or maintain a credit rating in the face of specified conflicts of interest,
- appoint a compliance officer to be responsible for monitoring and assessing the designated rating organization's compliance with its code of conduct and the proposed regulatory framework,
- have policies and procedures reasonably designed to prevent the inappropriate use and/or dissemination of certain material non-public information, including a pending undisclosed rating action, and
- file on an annual basis a form containing prescribed information.

4. Proposed Legislative Amendments

To make the Proposed Instrument as a rule and to fully implement the regulatory regime it contemplates, certain amendments to local securities legislation will be required. In addition to rule-making authority, changes to the local securities legislation may include:

- the power to designate a CRO under the legislation,
- the power to conduct compliance reviews of a CRO, and require the CRO to provide the securities regulatory authority with access to relevant books, information and documents,
- the power to make an order that a CRO submit to a review of its practices and procedures, where such an order is considered to be in the public interest, and
- confirmation that the securities regulatory authorities may not direct or regulate the content of credit ratings or the methodologies used to determine credit ratings.

In Québec, Alberta and British Columbia amendments have already been introduced and are expected to come into force at the same time as the Proposed Instrument.

5. Prior comment process
On October 6, 2008, the CSA published for comment a consultation paper entitled *Securities Regulatory Proposals Stemming from the 2007-08 Credit Market Turmoil and its Effect on the ABCP Market in Canada* (the Consultation Paper).

In the Consultation Paper, the CSA ABCP Working Group (the Committee) proposed to establish a regulatory framework applicable to certain CROs that would have required adherence to the "comply or explain" provision of the IOSCO Code. The Committee also proposed to provide securities regulators with authority to require changes to such CROs' practices and procedures.

Since the expiry of the comment period in February 2009, the Committee has been modifying its proposal to take into account comments received on the Consultation Paper and comparable regulatory frameworks developed in other jurisdictions.

A summary of the relevant comments received, together with the CSA response to those comments, may be found in Annex A.

6. Proposed Companion Policy and Consequential amendments
The purpose of the Proposed Companion Policy is to provide interpretational guidance on elements of the Proposed Instrument. A copy of the Proposed Companion Policy may be found in Annex D.

The adoption of a Canadian regulatory regime for CROs also entails amendments to each of National Instrument 41-101 *General Prospectus Requirements*, National Instrument 44-101 *Short Form Prospectus Distributions*, and National Instrument 51-102 *Continuous Disclosure Obligations*. Under the Proposed Instrument, designated rating organizations will be obligated to provide certain information regarding their credit rating activities. The purpose of the consequential amendments is to require issuers to provide complementary information regarding their dealings with the ratings industry. The text of these amendments may be found in Annexes E through G.

7. Passport and Co-ordination of Review
Those jurisdictions that are a party to Multilateral Instrument 11-102 *Passport System* (all those jurisdictions except Ontario, referred to as Passport Jurisdictions) are publishing for comment proposed amendments to that instrument to allow it to be used for the review of designation applications by CROs. In addition, all jurisdictions are publishing for comment Proposed NP 11-205, which provides CROs with guidance in determining where they should apply for designation. The text of Proposed NP 11-205 may be found in Annex H. In the Passport Jurisdictions, the text of the proposed amendments to Multilateral Instrument 11-102 may be found in Annex I.

8. Future Consequential Amendments

Following the adoption of the Proposed Instrument and the application for designation by interested CROs, we propose to make further consequential amendments to our rules to reflect the new regime. Specifically, these amendments will replace existing references to "approved rating organization" and "approved credit rating organization" with "designated rating organization". Similar changes will also be made to the definition of "approved rating" which appears in securities legislation.

These changes would be subject to a separate publication and comment process.

9. Civil Liability and Other International Developments

Certain international jurisdictions have either adopted or are considering adopting changes to their securities legislation to impose greater civil liability upon CROs.[4] In Canada, similar changes would involve revoking those provisions of the securities legislation that provide a "carve-out" from the consent requirements for expertized portions of a prospectus or secondary market disclosure document.

We continue to monitor these and other international developments.

10. Request for Comments

We welcome your general comments on the Proposed Materials.

We also invite comments on specific aspects of the Proposed Instrument. The request for specific comments is located in Annex B to this Notice.

Please submit your comments in writing on or before October 25, 2010. If you are not sending your comments by email, please include a CD ROM containing the submissions.

Address your submission to the following CSA member commissions:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission

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[4] In the United States, the SEC published for comment *A concept release on possible rescission of rule 436(g) under the Securities Act of 1933*: 17 CFR Part 220 (Release Nos. 33-9071; 34-60798; IC-28943; File No. S7-25-09). The comment period closed December 14, 2009. In Australia, ASIC has decided to withdraw current class order relief that allows issuers of investment products to cite credit ratings without the consent of credit rating agencies. As liability for the content of disclosure only attaches to persons who have consented to having their statements cited, the class order relief has implications for the accountability of credit rating agencies. See 09-225AD *ASIC gives credit ratings agencies improved control over ratings use* dated Thursday 12 November 2009.

Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

Please deliver your comments only to the addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8
Fax: (416) 593-2318
Email: jstevenson@osc.gov.on.ca

M^{e} 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
Fax : 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. Comments will be posted to the OSC web-site at www.osc.gov.on.ca.

11. Questions
Please refer your questions to any of:

Michael Brown
Assistant Manager, Corporate Finance
Ontario Securities Commission
(416) 593-8266
mbrown@osc.gov.on.ca

Jeffrey Klam
Legal Counsel, Corporate Finance
Ontario Securities Commission
(416) 595-8932
jklam@osc.gov.on.ca

Maye Mouftah
Legal Counsel, Compliance & Registrant Regulation
Ontario Securities Commission
(416) 593-2358
mmouftah@osc.gov.on.ca

Lucie J. Roy
Senior Policy Adviser
Service de la réglementation
Surintendance aux marchés des valeurs
Autorité des marchés financiers
(514) 395-0337, ext 4464
lucie.roy@lautorite.qc.ca

Denise Weeres
Senior Legal Counsel, Corporate Finance
Alberta Securities Commission
(403) 297-2930
denise.weeres@asc.ca

Christina Wolf
Economist
British Columbia Securities Commission
(604) 899-6860
cwolf@bcsc.bc.ca

Noreen Bent
Manager and Senior Legal Counsel
Legal Services, Corporate Finance
British Columbia Securities Commission
(604) 899-6741
nbent@bcsc.bc.ca

Nazma Lee
Senior Legal Counsel
Legal Services, Corporate Finance
British Columbia Securities Commission
(604) 899-6867
nlee@bcsc.bc.ca

July 16, 2010

Annex A

Summary of Relevant Comments and Responses on CSA Consultation Paper 11-405 Securities Regulatory Proposals Stemming from the 2007-08 Credit Market Turmoil and its Effect on the ABCP Market in Canada

This annex summarizes the relevant written public comments we received on the Consultation Paper. It also sets out our responses to those comments.

List of Parties Commenting on the Consultation Paper

Brian Neysmith
Canada's Venture Capital & Private Equity Association (Gregory Smith)
Canadian Advocacy Council (Ross E. Hallett)
Canadian Bankers Association (Nathalie Clark)
Canadian Life and Health Insurance Association (James Wood)
Canadian Imperial Bank of Commerce (Claude-Étienne Borduas)
Desjardins, Fédération des caisses du Québec (Yves Morency)
Dominion Bond Rating Service (Mary Keogh)
Fasken Martineau DuMoulin LLP (Geoff Clarke, Brandon Tigchelaar and Patrick Dolan)
Fitch Ratings (Sharon Raj)
The Investment Funds Institute of Canada (Joanne De Laurentiis)
Investment Industry Association of Canada (Ian C. W. Russell)
Mavrix Funds Management Inc.
Moody's Investors Service (Donald S. Carter and Janet Holmes)
Mouvement d'éducation et de défense des actionnaires (Yves Michaud)
Ontario Bar Association (Jamie K. Trimble and Christopher Garrah)
RBC Asset Management Inc. and Phillips, Hager & North Investment Management Ltd. (Daniel E. Chornous)
Social Investment Organization (Eugene Ellmen)
Standard & Poor's (Vickie A. Tillman)
TD Asset Management Inc. (Barbara F. Palk)
TD Securities Inc. (Anne Haldimand and Jay Smales)

General Comments

Eleven commenters supported establishing a regulatory framework applicable to CROs that requires compliance with the "comply or explain" provision of the IOSCO Code. Two other commenters supported establishing a regulatory framework for CROs in general but did not specifically comment on the form the framework should take.

Response: We thank the commenters for their support. We have maintained the requirement to adhere to the "comply or explain" provision of the IOSCO Code as the central component of the proposed regulatory regime.

Some commenters cautioned against increased regulation of CROs. For example, one commenter opined that the market has corrected on its own and will require CROs to address deficiencies even without increased regulation. Another commenter noted that given the importance of CROs in Canadian credit markets, any regulatory framework applicable to CROs should ensure that it does not act as a deterrent to their continued operation in Canada or increase compliance costs to the point where only the largest issuers could afford to have their securities rated. A third commenter expressed concern that increased regulation of CROs could undermine investors' own responsibilities to undertake due diligence in respect of potential investments.

> ***Response: We note the various measures adopted by the CROs to improve their business models, particularly efforts aimed at strengthening rating methodologies and managing conflicts of interest. Nevertheless, we think it is advisable to establish a regulatory framework applicable to CROs in Canada. Recognizing that most CROs are subject to regulation in several jurisdictions, we strived to limit unnecessary compliance costs as much as possible. We do not think that increased regulation of CROs will cause investors to perform less due diligence in respect of potential investments.***

Several commenters did not object to regulation of CROs in Canada but expressed concerns with the proposed regulatory framework. One commenter thought that it was unclear whether CROs that meet the definition of "approved credit rating organization" are automatically subject to the regulatory framework. The commenter suggested that only CROs who wish to have their ratings used for regulatory purposes should be subject to the regulatory framework.

> ***Response: The proposed regulatory framework would apply to any CRO that is a "designated rating organization". This concept will replace the existing concept of "approved rating organizations" and "approved credit rating organizations". Designation as a designated rating organization will not be mandatory for any CRO, as a CRO will have to apply for status as a designated rating organization in order to for its ratings to be eligible for use in places where credit ratings are referred to in securities legislation. If a CRO does not wish to have its ratings eligible to be so used, the CRO need not seek to be designated in any Canadian jurisdiction.***

One of the commenters that supported a regulatory framework tied to the IOSCO Code noted that it should be principles based so that it is dynamic, adaptable, accounts for the differences among CROs, and avoids intruding upon the substance of ratings and rating methodologies. In fact, five commenters proposed a prohibition in the regulatory framework against the CSA regulating the substance of credit ratings or the procedures and methodologies by which a CRO determines credit ratings. This would be consistent with the manner in which the SEC oversees CROs in the United States.

> ***Response: We acknowledge the comment in favour of a dynamic and flexible regulatory framework. To that end, the principal component of our proposal is that a designated rating organization must establish, maintain and ensure compliance with a code of conduct that is on terms substantially the same as the IOSCO Code. Consistent with this model, a designated rating organization would be permitted to deviate from***

the specific requirements of the IOSCO Code provided that it explains the deviation and indicates how its code nonetheless achieves the objectives of the IOSCO Code. We are of the view that allowing a designated rating organization's code of conduct to deviate in this manner imports sufficient flexibility into our proposed regulatory regime to accommodate the differences among CROs, while nonetheless ensuring that the CRO consider and abide by the underlying animating principles.

In addition, securities regulatory authorities will, in most cases, be prohibited from directing or regulating the content of credit ratings or the methodologies. This prohibition will be similar to the prohibition in the United States and Europe.

Another commenter suggested going beyond the IOSCO Code and requiring CROs to disclose the methodology used in determining ratings of ABCP.

Response: the IOSCO Code states that a CRO should indicate the principal methodology or methodology version that was used in determining the rating and where a description of that methodology can be found (see section 3.3 of the IOSCO Code). In light of current compliance with this provision[5], we do not believe that such a requirement is necessary.

Need for Harmonization

Seven commenters, including four CROs, suggested that any regulatory framework applicable to CROs should be harmonized and co-ordinated among jurisdictions. The commenters noted that different regulatory initiatives in Canada, the United States, Europe, Australia and elsewhere will make compliance difficult for CROs that operate globally. Specifically, one commenter submitted that CROs applying for recognition in Canada should be able to submit to the CSA the documentation prepared in connection with other jurisdictions' requirements in satisfaction of all or some of the Canadian requirements.

Response: Our proposed regulatory regime takes these concerns into account through incorporation of the IOSCO Code as the central component of the framework. In addition, accommodation is made for CROs that are also "nationally recognized statistical rating organizations" (or NRSROs), who will be able to file their most recently completed Form NRSRO in lieu of Form 25-101F1.

We acknowledge the developing international movement towards co-ordination of regulatory efforts with respect to CROs. Certain CSA jurisdictions participate in IOSCO Standing Committee 6 regarding credit rating agencies. The mandate of this committee includes examining options for international co-operation for regulating CROs. Though we support international co-operation in this regard to the greatest

5 In March 2009, IOSCO published a "Review of Implementation of the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies" which noted that each of the CROs that are "approved credit ratings organizations" under the current regime is substantially in compliance with Section 3.3 of the IOSCO Code.

extent practicable, we maintain the jurisdiction to perform compliance reviews of designated rating organizations at our discretion.

Enforcement Issues and the Authority of Securities Regulators

Several commenters were generally supportive of the CSA having powers to conduct examinations and to enforce compliance with the CRO framework. Two commenters supported giving authority to the CSA to make orders in the public interest that impose terms and conditions on the conduct of the business of an "approved credit rating organization". Another commenter supported the need for the CSA to conduct reviews of a CRO's practices and procedures including reviewing the extent of compliance with the IOSCO Code and the CRO's own policies and procedures. Two commenters emphasized the importance of the CSA having the ability to exercise enforcement powers in respect of a breach by a CRO of securities laws.

Response: We think that the statutory amendments that have been passed or are being considered in the various CSA jurisdictions will provide the appropriate compliance and enforcement authority.

One commenter supported the authority of the regulator to make orders in the public interest as part of the regulatory framework provided that any such orders do not affect the substance of the ratings or methodologies of the CRO. The commenter supported the CSA having the authority to revoke a CRO's status as an "approved credit rating organization" but only upon material deviations from the IOSCO Code.

Response: As noted above, securities regulatory authorities will, in most cases, be prohibited from directing or regulating the content of credit ratings or the methodologies. However, each of the securities regulators will have the ability to withdraw a CRO's designation provided it is in the public interest to do so.

Two commenters suggested that the CROs should be notified and granted the opportunity to answer concerns and/or take remedial action before any remedy is imposed by the CSA on a CRO.

Response: We anticipate that the relevant CRO would be provided with an opportunity to be heard prior to any enforcement order being issued.

One commenter acknowledged the need for the CSA to obtain information from CROs as part of effective regulation but cautioned that the ability of the CSA to request information should be subject to confidentiality and privilege.

Response: The legislative amendments that are contemplated as part of the securities regulatory framework for CROs would provide securities regulators with authority to obtain necessary information. The ability to keep information confidential is subject to any obligations under privacy and freedom of information laws.

Four commenters, each a CRO, raised concerns with the component of the regulatory framework applicable to CROs that would give the CSA the authority to make orders in the public interest

that impose terms and conditions on the conduct of business of an "approved credit rating organization". In addition, three of these commenters raised concerns with the component of the regulatory framework applicable to CROs that would give the CSA the authority to order an approved CRO to "make any changes to its practices and procedures relating to its business as a CRO that are ordered by securities regulators."

> ***Response: We note these comments. The proposed regulatory framework would provide the securities regulatory authority in CSA jurisdictions with the authority to order that a CRO submit to a review of its practices and procedures and institute such changes as may be ordered. This is an existing power that certain jurisdictions have over other market participants. We do not think that this authority is too broad and note that securities regulatory authorities will, in most cases, be prohibited from directing or regulating the content of credit ratings or the methodologies.***
>
> ***To facilitate the designation of CROs in multiple jurisdictions, we (other than Ontario) are developing a proposal to extend the application of the passport system into this new area. Proposed amendments to Multilateral Instrument 11-102 Passport System are being published concurrently with this Notice – see Annex H and I.***

One commenter raised concerns with the component of the framework that would give the CSA the authority to require that an approved CRO comply with any particular provision in the IOSCO Code. The commenter suggested that it introduces rigidity and undermines the flexibility that the IOSCO Code meant to preserve through the "comply or explain" model. Instead, the CSA should not regulate beyond requiring full compliance with the "comply or explain" provision of the IOSCO Code.

> ***Response: In our view, one of the significant benefits of importing the "comply or explain" model of the IOSCO Code into our proposed regulatory framework is its flexibility. However, the regulatory framework might not be effective if a designated rating organization chose to explain (rather than comply with) many of the provisions of the IOSCO Code. The proposed regulatory framework would empower securities regulators to require a designated rating organization to comply with any particular provision of the IOSCO Code through their authority to have a designated rating organization submit to a review of its practices and procedures and to institute such changes as may be ordered by securities regulatory authorities.***

One commenter suggested that the proposed framework should explicitly state that breaches of the framework will not give rise to private causes of action.

> ***Response: We do not agree with this comment.***

Disclosure Requirements for CRO

Three commenters supported requiring public disclosure of all information provided to a CRO and used by the CRO in determining and monitoring a rating as a condition to issuing a rating. One other commenter supported requiring public disclosure of all information provided to a CRO and used by the CRO in determining and monitoring a rating but thought that the obligation to make such disclosure should be on the issuer. That commenter suggested that CROs should not be permitted to rate a security unless public disclosure has been made.

> ***Response: Notwithstanding these comments, the proposed framework does not include the requirement to disclose publicly all information provided to a CRO and used by the CRO in determining and monitoring a rating as a condition to issuing a rating. In addition to the comments cited above, we note that the SEC also decided against pursuing a similar requirement that it had proposed.***
>
> ***As described in CSA Notice 45-307 Regulatory Developments Regarding Securitization, the CSA is reviewing disclosure requirements in connection with the distribution of securitized products and is considering imposing additional conditions, including disclosure, in connection with the distribution of securitized products in the exempt market. However, those matters are not being considered as a part of the regulatory framework applicable to CROs.***

One commenter suggested that the CSA publish an annual report on the role of CROs, their code of ethics and professional conduct, the transparency of their methods and the impact of their activities on issuers and the financial markets. This is similar to an applicable requirement in France.

> ***Response: We do not propose to publish an annual report of this nature. We propose to require a designated rating organization to publish its code of conduct conspicuously on its website. The designated rating organization would also be required to explain any deviations from the IOSCO Code and how its code of conduct achieves the principles of the IOSCO Code notwithstanding the deviation. We think that the responsibility for publicly disseminating this information should remain with the designated rating organization. Having this information publicly available will allow market participants to evaluate the designated rating organization against the standards of the IOSCO Code.***

One commenter noted that it appeared that the CROs do not provide information in French and suggested that such a requirement be imposed.

> ***Response: In Québec, section 40.1 of the Securities Act requires that a number of documents used in connection with specific transactions be drafted in French. Any credit rating and commentary relating thereto included in these documents must be in French. We do not propose to otherwise regulate the language in which market participants choose to carry on their business.***

Other comments on the CRO framework

One commenter suggested that an independent body be established in order to set a fee schedule for ratings after consulting with the CROs. The commenter also suggested that issuers disclose in their annual report the amount of fees paid to each CRO. Finally, the commenter suggested that fees should be based on services rendered instead of the size of the offering.

> ***Response: We do not propose to regulate the manner in which fees for providing ratings is determined. However, Form 25-101F1 will require designated rating organization*s *to disclose the largest 20 issuers and subscribers in terms of net revenue. In addition, an issuer's prospectus and annual information form will be required to contain disclosure regarding the amount of fees paid to a CRO for a rating.***

Annex B

Specific Requests for Comment

In addition to your general comments on the Proposed Materials, we also invite comments on the following specific issues:

1. Section 7 of the Proposed Instrument provides that a Code of Conduct must specify that waivers of the Code are prohibited. The purpose of this provision is to ensure that the Code of Conduct reflects actual conduct within the designated rating organization. Do you think this provision is feasible? Does it achieve its purpose?

2. Item 3 of Form 25-101F1 requires a CRO (other than an NRSRO) applying to be designated under the Proposed Instrument to provide a completed personal information form (or **PIF**) for each director and executive officer of the applicant, as well as the compliance officer, unless previously provided. Do you believe the costs of requiring a PIF outweigh the benefits of these background checks? Should background checks be periodically requested for all existing designated rating organizations? If so, how often?

3. The test for determining the principal regulator for a CRO's designation application is set out in amendments to Multilateral Instrument 11-102 *Passport System*. Where a CRO does not have a head office or branch office located in Canada, the principal regulator is determined on the basis of "significant connection". Factors for determining "significant connection" are listed in section 8 of Proposed NP 11-205.

   Are the factors in section 8 suitable and listed in the appropriate order of influential weight?

4. Currently, securities legislation does not require a CRO whose rating is referred to in a prospectus or other disclosure document to file an “expert’s consent” with securities regulators, which would result in the assumption of statutory liability for its opinion. See, for example, section 10.1 of National Instrument 41-101 *General Prospectus Requirements.* Do you think that such an exemption is still appropriate in Canada?

Annex C

Proposed National Instrument 25-101
Designated Rating Organizations

PART 1— DEFINITIONS AND INTERPRETATION

1. Definitions — In this Instrument,

compliance officer means the compliance officer referred to in section 11;

code of conduct means the code of conduct referred to in Part 3 of this Instrument;

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

Form NRSRO means the completed form required to be filed by an NRSRO under the 1934 Act;

IOSCO Code means the *Code of Conduct Fundamentals for Credit Rating Agencies of the International Organization of Securities Commissions*, as amended from time to time;

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

2. Interpretation — 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.

PART 2 — DESIGNATION OF RATING ORGANIZATIONS

3. Application for Designation —

(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 and that is incorporated or organized under a foreign jurisdiction and does not have an office in Canada must file a completed Form 25-101F2.

4. Market Participant in Ontario — In Ontario, a designated rating organization is designated as a market participant.

PART 3 — CODE OF CONDUCT

5. Code of Conduct —

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

(2) The code of conduct must comply with each provision of the IOSCO Code.

(3) Despite subsection (2), the code of conduct may deviate from a provision or provisions of the IOSCO Code if the code of conduct indicates:

(a) how it deviates from the provision or provisions of the IOSCO Code; and

(b) how it nonetheless achieves the objectives of that provision or provisions of the IOSCO Code.

6. Filing and Publication —

(1) A designated rating organization must file a copy of its code of conduct and post a copy of it, together with any amendments, prominently on its website.

(2) Any amendment to a code of conduct by a designated rating organization must be filed, and prominently posted on the organization's website, within three days of the amendment coming into effect.

7. Waivers — A code of conduct must specify that a designated rating organization must not waive provisions of its code of conduct.

PART 4 — ADDITIONAL MINIMUM REQUIREMENTS

8. Conflicts of Interest — A designated rating organization must not issue or maintain a credit rating:

(a) where the designated rating organization, a credit analyst that participated in determining the credit rating, or a person responsible for approving the credit rating, directly owns securities of, or has any other direct ownership interest in, the person or company that is subject to the credit rating;

(b) with respect to a person or company that is an affiliate or associate of the designated rating organization;

(c) 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 or company that is subject to the credit rating;

(d) with respect to a security where the designated rating organization or a person or company that is an affiliate or associate of the designated rating organization made recommendations to the issuer, underwriter, or sponsor of the securities about the corporate or legal structure, assets, liabilities, or activities of the issuer of the securities;

(e) where the fee paid for the rating was negotiated, discussed, or arranged by a person within the designated rating organization who has responsibility for participating in determining credit ratings or for developing or approving procedures or methodologies used for determining credit ratings, including qualitative and quantitative models; or

(f) where a credit analyst who participated in determining or monitoring the credit rating, or a person responsible for approving the credit rating received gifts, including entertainment, from the issuer, underwriter, or sponsor of the securities being rated, other than items provided in the context of normal business activities such as meetings that have an aggregate value of no more than nominal value.

9. Conflict of Interest Policy — A designated rating organization must have policies and procedures reasonably designed to identify and manage any conflicts of interest that arise in connection with the issuance of credit ratings.

10. Policy on Material Non-Public Information — A designated rating organization must have policies and procedures reasonably designed to prevent:

(a) the inappropriate dissemination within or outside the designated rating organization of material non-public information obtained in connection with the performance of credit rating services;

(b) the purchase or sale of securities by a person within the designated rating organization, or the conferring of any other benefit from any transaction in securities, when the person is aware of material non-public information obtained in connection with the performance of credit rating services; and

(c) the inappropriate dissemination within or outside the designated rating organization of a pending credit rating action before issuing the credit rating on the Internet or through another readily accessible means.

11. Compliance Officer —

(1) A designated rating organization must have a compliance officer that monitors and assesses compliance by the designated rating organization, and individuals acting on its behalf, with the organization's code of conduct and with securities legislation.

(2) The compliance officer must report to the board of directors of the designated rating organization (or the equivalent) as soon as possible if the compliance officer becomes aware of any circumstances indicating that the designated rating organization, or any individual acting on its behalf, may be in non-compliance with the organization's code of conduct or securities legislation and:

(a) the non-compliance creates, in the opinion of a reasonable person, a risk of harm to a client or the client's investors,

(b) the non-compliance creates, in the opinion of a reasonable person, a risk of harm to the capital markets; or

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

PART 5 — BOOKS AND RECORDS

12. Books and Records —

(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.

(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;

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

(c) in a manner that permits it to be provided to the securities regulatory authority in a reasonable period of time.

Part 6 — Annual Filing Requirements

13. Annual Filing Requirement —

(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) Despite subsection (1), a designated rating organization may file its most recently completed Form NRSRO on or before the earlier of

(a) 90 days after the end of its most recently completed financial year, and

(b) the date the credit rating organization files its Form NRSRO with the SEC.

PART 7 — EXEMPTIONS AND EFFECTIVE DATE

14. Exemptions —

(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 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.

15. Effective Date — This Instrument comes into force on ●.

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 for a decision of the securities regulatory authority to hold portions of this form which discloses intimate financial, personal or other information in confidence. Securities regulatory authorities will consider such an application and accord confidential treatment to those sections to the extent permitted by law.

(5) Where 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 11 of the Instrument.

Item 3. Personal Information Form
Provide the information required by Appendix A to this form for each director and executive officer of the applicant, as well as the compliance officer, unless previously provided.

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 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 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 written policies and procedures established with respect to conflicts of interest.

Item 9. Credit analysts
Disclose the following information about the applicant's credit analysts and the persons who supervise the credit analysts:

- The total number of credit analysts,
- The total number of credit analyst supervisors,
- A general description of the minimum qualifications required of the credit analysts, including education level and work experience (if applicable, distinguish between junior, mid, and senior level credit analysts), and
- A general description of the minimum qualifications required of the credit analyst supervisors, including education level and work experience.

Item 10. 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 11. Specified Revenues
Disclose information, as applicable, regarding the applicant's aggregate revenues 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).

This information is not required to be audited.

Item 12. Credit Rating Users
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:

- **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; and

- **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.

Item 13. Financial Statements
Attach a copy of the audited financial statements of the applicant, which must include a balance sheet, an income statement and statement of cash flows, 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 14. 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/NRSRO)

By: _____
(Print Name and Title)

_____
(Signature)

Appendix A to Form 25-101F1

AUTHORIZATION OF INDIRECT COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION

In connection with the filing required of a credit rating organization (or **CRO**) under National Instrument 25-101, the attached Schedule 1 contains information (the **Information**) concerning every individual for whom the CRO is required to provide the Information under Item 3 of Form 25-101F1. The CRO is required by provincial and territorial securities legislation to deliver the Information to those regulators listed in Schedule 3 with whom the CRO has filed an application for designation.

The CRO confirms that each individual who has completed a Schedule 1:

(a) has been notified by the CRO

(i) of the CRO's delivery to the regulator of the Information in Schedule 1 pertaining to that individual,

(ii) that the Information is being collected indirectly by the regulator under the authority granted to it by provincial and territorial securities legislation or provincial legislation relating to documents held by public bodies and the protection of personal information,

(iii) that the Information is being collected and used for the purpose of enabling the regulator to administer and enforce provincial and territorial securities legislation, including those obligations that require or permit the regulator to refuse to designate a CRO if it appears to the regulator that it would be contrary to the public interest to do so, or to revoke a designation of a CRO if it appears to be in the public interest to do so, and

(iv) of the contact, business address and business telephone number of the regulator in the local jurisdiction as set out in the attached Schedule 3, who can answer questions about the regulator's indirect collection of the Information;

(b) has read and understands the Personal Information Collection Policy attached hereto as Schedule 2; and

(c) has, by signing the certificate and consent in Schedule 1, authorized the indirect collection, use and disclosure of the Information by the regulator as described in Schedule 2.

Date: _____

_____
Name of CRO

Per:_____

_____
Name

_____
Official Capacity
(Please print the name of the person signing on behalf of the CRO)

PERSONAL INFORMATION FORM
AND AUTHORIZATION OF INDIRECT COLLECTION,
USE AND DISCLOSURE OF PERSONAL INFORMATION

Schedule 1
Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information

This Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information (the **PIF**) is to be completed by every individual who is required to do so under Item 3 of Form 25-101F1 .

The securities regulatory authorities do not make any of the information provided in this PIF public.

General Instructions:

All Questions	**All questions must have a response.** The response of "N/A" or "Not Applicable" for any questions, except Question 1B will not be accepted.
Questions 3 to 6	Please check (√) in the appropriate space provided. If your answer to any of questions 3 to 6 is "YES", you must, in an attachment, provide complete details, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. **Any attachment must be initialled by the person completing this PIF.** Responses must consider all time periods.

CAUTION

An individual who makes a false statement commits an offence under securities legislation. Steps may be taken to verify the answers you have given in this PIF, including verification of information relating to any previous criminal record.

DEFINITIONS

"Offence" An offence includes:

(a) a summary conviction or indictable offence under the *Criminal Code* (Canada);

(b) a quasi-criminal offence (for example under the *Income Tax Act* (Canada), the *Immigration and Refugee Protection Act* (Canada) or the tax, immigration, drugs, firearms, money laundering or securities legislation of any jurisdiction);

(c) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory therein; or

(d) an offence under the criminal legislation of any foreign jurisdiction;

NOTE: If you have received a pardon under the *Criminal Records Act* (Canada) and it has not been revoked, you must disclose the pardoned offence in this PIF. In such circumstances:

(a) the appropriate written response would be "Yes, pardon granted on (date)"; and

(b) you must provide complete details in an attachment to this Form.

"Proceedings" means:

(a) a civil or criminal proceeding or inquiry before a court;

(b) a proceeding before an arbitrator or umpire or a person or group of persons authorized by law to make an inquiry and take evidence under oath in the matter;

(c) a proceeding before a tribunal in the exercise of a statutory power of decision making where the tribunal is required by law to hold or afford the parties to the proceeding an opportunity for a hearing before making a decision; or

(d) a proceeding before a self-regulatory organization authorized by law to regulate the operations and the standards of practice and business conduct of its members and their representatives, in which the self-regulatory organization is required under its by-laws or rules to hold or afford the parties the opportunity for a hearing before making a decision, but does not apply to a proceeding in which one or more persons are required to make an investigation and to make a report, with or without recommendations, if the report is for the information or advice of the person to whom it is made and does not in any way bind or limit that person in any decision the person may have the power to make;

"securities regulatory authority" (or "SRA") means a body created by statute in any jurisdiction or in any foreign jurisdiction to administer securities law, regulation and policy (e.g. securities commission), but does not include an exchange or other self regulatory or professional organization;

"self regulatory or professional organization" means:

(a) a stock, commodities, futures or options exchange;

(b) an association of investment, securities, mutual fund, commodities, or future dealers;

(c) an association of investment counsel or portfolio managers;

(d) an association of other professionals (e.g. legal, accounting, engineering); and

(e) any other group, institution or self-regulatory entity, recognized by a securities regulatory authority, that is responsible for the enforcement of rules, disciplines or codes under any applicable legislation, or considered a self regulatory or professional organization in another country.

1. IDENTIFICATION OF INDIVIDUAL COMPLETING FORM

A.

LAST NAME	FIRST NAME(S)	MIDDLE NAME(S) (If none, please state)

NAME(S) MOST COMMONLY KNOWN BY:

NAME OF CRO

Present Position with CRO – check all that are applicable	☑	Disclose the date appointed or elected		
		Month	Day	Year
Director				
Officer				
Other				

B.

Other than the name given in Question 1A above, provide any legal names, assumed names or nicknames under which you have carried on business or have otherwise been known, including information regarding any name change(s) resulting from marriage, divorce, court order or any other process. Use an attachment if necessary.	FROM		TO	
	MM	YY	MM	YY

C.

Gender		Date of Birth			Place of Birth		
Male		Month	Day	Year	City	Province/State	Country
Female							

D.

MARITAL STATUS	FULL NAME OF SPOUSE– include common law	OCCUPATION OF SPOUSE

E.

TELEPHONE AND FACSIMILE NUMBERS AND E-MAIL ADDRESS			
RESIDENTIAL	( )	FACSIMILE	( )
BUSINESS	( )	E-MAIL	

F.

RESIDENTIAL ADDRESS - Provide current residential address. **STREET ADDRESS, CITY, PROVINCE/STATE, COUNTRY & POSTAL/ZIP CODE**

2. CITIZENSHIP

	YES	**NO**
(i) Are you a Canadian Citizen?		
(ii) Do you hold citizenship in any country other than Canada?		
(iii) If "Yes" to Question 2(ii), provide the name of the country(s):		

3. OFFENCES

If you answer "YES" to any item in this Question 3, you must provide complete details in an attachment.	**YES**	**NO**
A. Have you ever pleaded guilty to or been found guilty of an offence?		
B. Are you the subject of any current charge, indictment or proceeding for an offence?		
C. To the best of your knowledge, are you or have you **ever** been a director, officer, promoter, insider, or control person of an issuer, in any jurisdiction or in any foreign jurisdiction, at the time of events, where the issuer:		
(i) has ever pleaded guilty to or been found guilty of an offence?		
(ii) is the subject of any current charge, indictment or proceeding for an offence?		

4. BANKRUPTCY

If you answer "YES" to any item in this Question 4, you must provide complete details in an attachment and attach a copy of any discharge, release or other applicable document.	**YES**	**NO**
A. Have you, in any jurisdiction or in any foreign jurisdiction, within the past **10 years** had a petition in bankruptcy issued against you, made a voluntary assignment in bankruptcy, made a proposal under any bankruptcy or insolvency legislation, been subject to any proceeding, arrangement or compromise with creditors, or had a receiver, receiver-manager or trustee appointed to manage your assets?		

B. Are you now an undischarged bankrupt?		
C. To the best of your knowledge, are you or have you **ever** been a director, officer, promoter, insider, or control person of an issuer, in any jurisdiction or in any foreign jurisdiction, at the time of events, or for a period of 12 months preceding the time of events, where the issuer:		
(i) has made a petition in bankruptcy, a voluntary assignment in bankruptcy, a proposal under any bankruptcy or insolvency legislation, been subject to any proceeding, arrangement or compromise with creditors or had a receiver, receiver-manager or trustee appointed to manage the issuer's assets?		
(ii) is now an undischarged bankrupt?		

5. PROCEEDINGS – If you answer "YES" to any item in Question 5 you must provide complete details in an attachment.

	YES	**NO**
A. CURRENT PROCEEDINGS BY SECURITIES REGULATORY AUTHORITY OR SELF REGULATORY OR PROFESSIONAL ORGANIZATION. Are you now, in any jurisdiction or in any foreign jurisdiction, the subject of:		
(i) a notice of hearing or similar notice issued by a SRA?		
(ii) a proceeding or to your knowledge, under investigation, by an exchange or other self regulatory or professional organization?		
(iii) settlement discussions or negotiations for settlement of any nature or kind whatsoever with a SRA or any self regulatory or professional organization?		
B. PRIOR PROCEEDINGS BY SECURITIES REGULATORY AUTHORITY OR SELF REGULATORY OR PROFESSIONAL ORGANZIATIONS. Have you ever:		
(i) been reprimanded, suspended, fined, been the subject of an administrative penalty, or otherwise been the subject of any disciplinary proceedings of any kind whatsoever, in any jurisdiction or in any foreign jurisdiction, by a SRA or self regulatory or professional organization?		
(ii) had a registration or licence for the trading of securities, exchange or commodity futures contracts, real estate, insurance or mutual fund products cancelled, refused, restricted or suspended?		

	Yes	No
(iii) been prohibited or disqualified under securities, corporate or any other legislation from acting as a director or officer of a reporting issuer?		
(iv) had a cease trading or similar order issued against you or an order issued against you that denied you the right to use any statutory prospectus or registration exemption?		
(v) had any other proceeding of any nature or kind taken against you?		
C. SETTLEMENT AGREEMENT(S)		
Have you ever entered into a settlement agreement with a SRA, self regulatory or professional organization, attorney general or comparable official or body, in any jurisdiction or in any foreign jurisdiction, in a matter that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading in securities or exchange or commodity futures contracts, illegal distributions, failure to disclose material facts or changes or similar conduct, or any other settlement agreement with respect to any other violation of securities legislation in a jurisdiction or in a foreign jurisdiction or the rules of any self regulatory or professional organization?		
D. To the best of your knowledge, are you now or have you ever been a director, officer, promoter, insider, or control person of an issuer at the time of such event, in any jurisdiction or in any foreign jurisdiction, for which a securities regulatory authority or self regulatory or professional organization has:		
(i) refused, restricted, suspended or cancelled the registration or licensing of an issuer to trade securities, exchange or commodity futures contracts, or to sell or trade real estate, insurance or mutual fund products?		
(ii) issued a cease trade or similar order or imposed an administrative penalty of any nature or kind whatsoever against the issuer, other than an order for failure to file financial statements that was revoked within 30 days of its issuance?		
(iii) refused a receipt for a prospectus or other offering document, denied any application for listing or quotation or any other similar application, or issued an order that denied the issuer the right to use any statutory prospectus or registration exemptions?		
(iv) issued a notice of hearing, notice as to a proceeding or similar notice against the issuer?		
(v) taken any other proceeding of any nature or kind against the issuer, including a trading halt, suspension or delisting of the issuer (other than in the normal course for proper dissemination of information, pursuant to a reverse takeover, backdoor listing or similar transaction)?		
(vi) entered into a settlement agreement with the issuer in a matter that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading in securities or exchange or commodity futures contracts, illegal distributions, failure to disclose material facts or changes or similar conduct by the issuer, or involved in any other violation of securities legislation in a jurisdiction or in a foreign jurisdiction or a self regulatory or professional organization's rules?		

6. CIVIL PROCEEDINGS – If you answer "YES" to any item in this Question 6, you must provide complete details in an attachment.

	Yes	No
A. JUDGMENT, GARNISHMENT AND INJUNCTIONS **Has a court in any jurisdiction or in any foreign jurisdiction:**		
(i) rendered a judgment, ordered garnishment or issued an injunction or similar ban (whether by consent or otherwise) against you in a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
(ii) rendered a judgment, ordered garnishment or issued an injunction or similar ban (whether by consent or otherwise) against an issuer, for which you are currently or have ever been a director, officer, promoter, insider or control person, in a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
B. CURRENT CLAIMS		
(i) Are you now subject, in any jurisdiction or in any foreign jurisdiction, of a claim that is based in whole or in part on actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
(ii) To the best of your knowledge, are you currently or have you ever been a director, officer, promoter, insider or control person of an issuer now subject, in any jurisdiction or in any foreign jurisdiction, of a claim that is based in whole or in part on actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
C. SETTLEMENT AGREEMENT		
(i) Have you ever entered into a settlement agreement, in any jurisdiction or in any foreign jurisdiction, in a civil action that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
(ii) To the best of your knowledge, are you currently or have you ever been a director, officer, promoter, insider or control person of an issuer that has entered into a settlement agreement, in any jurisdiction or in any foreign jurisdiction, in a civil action that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		

CERTIFICATE AND CONSENT

I, _____ hereby certify that:
(Please Print – Name of Individual)

(a) I have read and understood the questions, cautions, acknowledgement and consent in this PIF, and the answers I have given to the questions in this PIF and in any attachments to it are true and correct, except where stated to be to the best of my knowledge, in which case I believe the answers to be true;

(b) I have read and understand the Personal Information Collection Policy attached hereto as Schedule 2 (the **Personal Information Collection Policy**);

(c) I consent to the collection, use and disclosure of the information in this PIF and to the collection, use and disclosure of further personal information in accordance with the Personal Information Collection Policy; and

(d) I understand that I am providing this PIF to a regulator listed in Schedule 3 attached hereto and I am under the jurisdiction of the regulator to which I submit this PIF, and it is a breach of securities legislation to provide false or misleading information to the regulator.

_____
Date

_____
Signature of Person Completing this PIF

Schedule 2
Personal Information Collection Policy

The regulators listed in Schedule 3 *Regulators* collect the personal information in Schedule 1 *Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information* under the authority granted to them under provincial and territorial securities legislation. Under securities legislation, the regulators do not make any of the information provided in Schedule 1 public.

The regulators collect the personal information in Schedule 1 for the purpose of enabling the regulators to administer and enforce provincial and territorial securities legislation, including those provisions that require or permit the regulators to refuse to designate a CRO if it appears to the regulator that it would be contrary to the public interest to do so, or to revoke a designation of a CRO if it appears to be in the public interest to do so.

You understand that by signing the certificate and consent in Schedule 1, you are consenting to the CRO submitting your personal information in Schedule 1 (the **Information**) to the regulators and to the collection and use by the regulators of the Information, as well as any other information that may be necessary to administer and enforce provincial and territorial securities legislation. This may include the collection of information from law enforcement agencies, other government or nongovernmental regulatory authorities, self-regulatory organizations, exchanges, and quotation and trade reporting systems in order to conduct background checks, verify the Information and perform investigations and conduct enforcement proceedings as required to ensure compliance with provincial and territorial securities legislation.

You understand that the CRO is required to deliver the Information to the regulators because the CRO has filed an application for designation under provincial and territorial securities legislation. You also understand that you have a right to be informed of the existence of personal information about you that is kept by regulators, that you have the right to request access to that information, and that you have the right to request that such information be corrected, subject to the applicable provisions of the freedom of information and protection of privacy legislation adopted by each province and territory.

You also understand and agree that the Information the regulators collect about you may also be disclosed, as permitted by law, where its use and disclosure is for the purposes described above. The regulators may also use a third party to process the Information, but when this happens, the third party will be carefully selected and obligated to comply with the limited use restrictions described above and with provincial and federal privacy legislation.

Warning**:** *It is an offence to submit information that, in a material respect and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.*

Questions
If you have any questions about the collection, use, and disclosure of the information you provide to the regulators, you may contact the regulator in the jurisdiction in which the required information is filed, at the address or telephone number listed in Schedule 3.

PERSONAL INFORMATION FORM
AND AUTHORIZATION OF INDIRECT COLLECTION,
USE AND DISCLOSURE OF PERSONAL INFORMATION

Schedule 3
Regulators

Local Jurisdiction	**Regulator**
Alberta	Securities Review Officer Alberta Securities Commission Suite 400 300 – 5th Avenue S.W Calgary, Alberta T2P 3C4 Telephone: (403) 297-6454 E-mail: inquiries@seccom.ab.ca www.albertasecurities.com
British Columbia	Review Officer British Columbia Securities Commission P.O. Box 10142 Pacific Centre 701 West Georgia Street Vancouver, British Columbia V7Y 1L2 Telephone: (604) 899-6854 Toll Free within British Columbia and Alberta: (800) 373-6393 E-mail: inquiries@bcsc.bc.ca www.bcsc.bc.ca
Manitoba	Director, Corporate Finance The Manitoba Securities Commission 500-400 St. Mary Avenue Winnipeg, Manitoba R3C 4K5 Telephone: (204) 945-2548 E-mail: securities@gov.mb.ca www.msc.gov.mb.ca
New Brunswick	Director Regulatory Affairs and Chief Financial Officer New Brunswick Securities Commission 85 Charlotte Street, Suite 300 Saint John, New Brunswick E2L 2J2 Telephone: (506) 658-3060 Fax: (506) 658-3059 E-mail: information@nbsc-cvmnb.ca
Newfoundland and Labrador	Director of Securities Department of Government Services and Lands P.O. Box 8700 West Block, 2nd Floor, Confederation Building St. John's, Newfoundland and Labrador A1B 4J6 Telephone: (709) 729-4189 www.gov.nf.ca/gsl/cca/s
Northwest Territories	Securities Registries Department of Justice Government of the Northwest Territories P.O. Box 1320, Yellowknife, Northwest Territories X1A 2L9 Telephone: (867) 873- 7490 www.justice.gov.nt.ca/SecuritiesRegistry/SecuritiesRegistry.html

Nova Scotia	Deputy Director, Compliance and Enforcement Nova Scotia Securities Commission P.O. Box 458 Halifax, Nova Scotia B3J 2P8 Telephone: (902) 424-5354 www.gov.ns.ca/nssc
Nunavut	Government of Nunavut Legal Registries Division P.O. Box 1000 – Station 570 Iqaluit, Nunavut X0A 0H0 Telephone: (867) 975-6590
Ontario	Administrative Assistant to the Director of Corporate Finance Ontario Securities Commission 19th Floor, 20 Queen Street West Toronto, Ontario M5H 2S8 Telephone: (416) 597-0681 E-mail: Inquiries@osc.gov.on.ca www.osc.gov.on.ca
Prince Edward Island	Deputy Registrar, Securities Division Shaw Building 95 Rochford Street, P.O. Box 2000, 4th Floor Charlottetown, Prince Edward Island C1A 7N8 Telephone: (902) 368-4550 www.gov.pe.ca/securities
Québec	Autorité des marchés financiers Stock Exchange Tower P.O. Box 246, 22nd Floor 800 Victoria Square Montréal, Québec H4Z 1G3 Attention: Responsable de l'accès à l'information Telephone: (514) 395-0337 Toll Free in Québec: (877) 525-0337 www.lautorite.qc.ca
Saskatchewan	Director Saskatchewan Financial Services Commission Suite 601, 1919 Saskatchewan Drive Regina, Saskatchewan S4P 4H2 Telephone: (306) 787-5842 www.sfsc.gov.sk.ca
Yukon	Registrar of Securities Department of Justice Andrew A. Philipsen Law Centre 2130 – 2nd Avenue, 3rd Floor Whitehorse, Yukon Territory Y1A 5H6 Telephone: (867) 667-5005

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 above 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. Until six years after it has ceased to be a designated rating organization in any Canadian province or territory, the CRO shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before termination of this submission to jurisdiction and appointment of agent for service of process.

9. Until six years after it has ceased to be a designated rating organization in any Canadian province or territory, the CRO shall file an amended submission to jurisdiction and

appointment of agent for service of process at least 30 days before any change in the name or above address of the Agent.

10. This submission to jurisdiction and appointment of agent for service of process shall be 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 stated above.

_____ _____

Signature of Agent Date

_____

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

Annex D

Companion Policy 25-101CP to
National Instrument 25-101
Designated Rating Organizations

PART 1 INTRODUCTION

Introduction –National Instrument 25-101 *Designated Rating Organizations* (the **Instrument**) creates a securities regulatory framework for credit rating organizations. This Companion Policy states the views of the Canadian securities regulatory authorities on various matters related to the Instrument.

Scope – Nothing in the 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.

PART 2 DESIGNATION OF RATING ORGANIZATIONS

Section 3 – Application requirements and additional information – Section 3 of the Instrument sets of the documents that must be provided in connection with an application for designation. To properly assess an application, securities regulators may request further information, documentation, and access to records. Failure to comply with such a request may result in the application being delayed or refused.

PART 3 CODE OF CONDUCT

Deviations from the IOSCO Code – Although a designated rating organization's code of conduct may deviate from the provisions of the IOSCO Code, section 7 of the Instrument provides that a code of conduct must also specify that a designated rating organization must not waive provisions of its code of conduct. The purpose of section 7 is to ensure that the behaviour and conduct publicly articulated in a code of conduct actually reflects the behaviour and conduct within a designated rating organization.

PART 4 ADDITIONAL MINIMUM REQUIREMENTS

Section 8 Conflict of Interest – The prohibited conflicts listed in section 8 of the Instrument are not intended to be exhaustive, or to supersede a designated rating organization's obligation to ensure compliance with its code of conduct, which must address the various conflict of interest provisions referred to in the IOSCO Code.

Annex E

Proposed Amendments to
National Instrument 41-101
General Prospectus Requirements

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

2. Form 41-101F1 Information Required in a Prospectus is amended by replacing section 10.9 with the following:

"**10.9 Ratings** (1) If you have asked for and received a credit rating, or if you are aware that you have received any other kind of rating, including a stability rating or a provisional rating, from one or more credit rating organizations for securities of your company that are outstanding and the rating or ratings continue in effect, disclose

(a) each rating received from a credit rating organization;

(b) for each rating disclosed under paragraph (a), the name of the credit rating organization that has assigned the rating;

(c) a definition or description of the category in which each credit rating organization rated the securities and the relative rank of each rating within the organization's overall classification system;

(d) an explanation of what the rating addresses and what attributes, if any, of the securities are not addressed by the rating;

(e) any factors or considerations identified by the credit rating organization as giving rise to unusual risks associated with the securities;

(f) a statement that a credit rating or a stability rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the credit rating organization; and

(g) any announcement made by, or any proposed announcement known to the issuer that is to be made by, a credit rating organization to the effect that the organization is reviewing or intends to revise or withdraw a rating previously assigned and required to be disclosed under this section.

(2) If payments were, or reasonably will be, made to a credit rating organization that provided a rating described in section (1), state that fact and separately disclose the amounts paid to the credit rating organization with respect to:

(a) the rating, and

(b) any other service provided to you by the credit rating organization during the last two years.

INSTRUCTIONS
There may be factors relating to a security that are not addressed by a credit rating organization when they give a rating. For example, in the case of cash settled derivatives, factors in addition to the creditworthiness of the issuer, such as the continued subsistence of the underlying interest or the volatility of the price, value or level of the underlying interest may be reflected in the rating analysis. Rather than being addressed in the rating itself, these factors may be described by a credit rating organization by way of a superscript or other notation to a rating. Any such attributes must be discussed in the disclosure under this section."

3. Form 41-101F2 Information Required in an Investment Fund Prospectus is amended by replacing section 21.8 with the following:

"**21.8 Ratings** (1) If the investment fund has asked for and received a credit rating, or if the investment fund is aware that it has received any other kind of rating, including a stability rating or a provisional rating, from one or more credit rating organizations for securities of your company that are outstanding and the rating or ratings continue in effect, disclose

(a) each rating received from a credit rating organization;

(b) for each rating disclosed under paragraph (a), the name of the credit rating organization that has assigned the rating;

(c) a definition or description of the category in which each credit rating organization rated the securities and the relative rank of each rating within the organization's overall classification system;

(d) an explanation of what the rating addresses and what attributes, if any, of the securities are not addressed by the rating;

(e) any factors or considerations identified by the credit rating organization as giving rise to unusual risks associated with the securities;

(f) a statement that a credit rating or a stability rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the credit rating organization; and

(g) any announcement made by, or any proposed announcement known to the investment fund that is to be made by, a credit rating organization to the

effect that the organization is reviewing or intends to revise or withdraw a rating previously assigned and required to be disclosed under this section.

(2) If payments were, or reasonably will be, made to a credit rating organization that provided a rating described in section (1), state that fact and separately disclose the amounts paid to the credit rating organization with respect to:

(a) the rating, and

(b) any other service provided to you by the credit rating organization during the last two years."

INSTRUCTIONS
There may be factors relating to a security that are not addressed by a credit rating organization when they give a rating. For example, in the case of cash settled derivatives, factors in addition to the creditworthiness of the issuer, such as the continued subsistence of the underlying interest or the volatility of the price, value or level of the underlying interest may be reflected in the rating analysis. Rather than being addressed in the rating itself, these factors may be described by a credit rating organization by way of a superscript or other notation to a rating. Any such attributes must be discussed in the disclosure under this section."

4. This Instrument comes into force on ●.

Annex F

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. Form 44-101F1 Short Form Prospectus is amended by replacing Item 7.9 with the following:

"**7.9 Ratings** (1) If you have asked for and received a credit rating, or if you are aware that you have received any other kind of rating, including a stability rating or a provisional rating, from one or more credit rating organizations for securities of your company that are outstanding and the rating or ratings continue in effect, disclose

(a) each rating received from a credit rating organization;

(b) for each rating disclosed under paragraph (a), the name of the credit rating organization that has assigned the rating;

(c) a definition or description of the category in which each credit rating organization rated the securities and the relative rank of each rating within the organization's overall classification system;

(d) an explanation of what the rating addresses and what attributes, if any, of the securities are not addressed by the rating;

(e) any factors or considerations identified by the credit rating organization as giving rise to unusual risks associated with the securities;

(f) a statement that a credit rating or a stability rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the credit rating organization; and

(g) any announcement made by, or any proposed announcement known to the issuer that is to be made by, a credit rating organization to the effect that the organization is reviewing or intends to revise or withdraw a rating previously assigned and required to be disclosed under this section.

(2) If payments were, or reasonably will be, made to a credit rating organization that provided a rating described in section (1), state that fact and separately disclose the amounts paid to the credit rating organization with respect to:

(a) the rating, and

(b) any other service provided to you by the credit rating organization during the last two years.

INSTRUCTIONS
There may be factors relating to a security that are not addressed by a credit rating organization when they give a rating. For example, in the case of cash settled derivatives, factors in addition to the creditworthiness of the issuer, such as the continued subsistence of the underlying interest or the volatility of the price, value or level of the underlying interest may be reflected in the rating analysis. Rather than being addressed in the rating itself, these factors may be described by a credit rating organization by way of a superscript or other notation to a rating. Any such attributes must be discussed in the disclosure under this section."

3. This Instrument comes into force on ●.

Annex G

Proposed Amendments to
National Instrument 51-102
Continuous Disclosure Obligations

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

2. Form 51-102F2 *Annual Information Form* is amended by replacing section 7.3 with the following:

"**7.3 Ratings** (1) If you have asked for and received a credit rating, or if you are aware that you have received any other kind of rating, including a stability rating or a provisional rating, from one or more credit rating organizations for securities of your company that are outstanding and the rating or ratings continue in effect, disclose

(a) each rating received from a credit rating organization;

(b) for each rating disclosed under paragraph (a), the name of the credit rating organization that has assigned the rating;

(c) a definition or description of the category in which each credit rating organization rated the securities and the relative rank of each rating within the organization's overall classification system;

(d) an explanation of what the rating addresses and what attributes, if any, of the securities are not addressed by the rating;

(e) any factors or considerations identified by the credit rating organization as giving rise to unusual risks associated with the securities;

(f) a statement that a credit rating or a stability rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the credit rating organization; and

(g) any announcement made by, or any proposed announcement known to the issuer that is to be made by, a credit rating organization to the effect that the organization is reviewing or intends to revise or withdraw a rating previously assigned and required to be disclosed under this section.

(2) If payments were, or reasonably will be, made to a credit rating organization that provided a rating described in section (1), state that fact and separately disclose the amounts paid to the credit rating organization with respect to:

(a) the rating, and

(b) any other service provided to you by the credit rating organization during the last two years.

INSTRUCTIONS
There may be factors relating to a security that are not addressed by a credit rating organization when they give a rating. For example, in the case of cash settled derivatives, factors in addition to the creditworthiness of the issuer, such as the continued subsistence of the underlying interest or the volatility of the price, value or level of the underlying interest may be reflected in the rating analysis. Rather than being addressed in the rating itself, these factors may be described by a credit rating organization by way of a superscript or other notation to a rating. Any such attributes must be discussed in the disclosure under section 7.3."

3. This Instrument comes into force on ●.

Annex H

National Policy 11-205
Process for Designation of Credit Rating Organizations in Multiple Jurisdictions

National Policy 11-205
Process for Designation of Credit Rating Organizations in Multiple Jurisdictions

PART 1 APPLICATION

1. Application – This policy describes the process for the filing and review of an application to become a designated rating organization in more than one jurisdiction of Canada.

PART 2 DEFINITIONS

2. Definitions – In this policy

"AMF" means the regulator in Québec;

"application" means an application to become a designated rating organization;

"dual application" means an application described in section 6 of this policy;

"dual review" means the review under this policy of a dual application;

"filer" means

(a) a person or company filing an application, or

(b) an agent of a person or company referred to in paragraph (a);

"MI 11-102" means Multilateral Instrument 11-102 Passport System;

"NI 25-101" means National Instrument 25-101 Designated Rating Organizations;

"notified passport jurisdiction" means a passport jurisdiction for which a filer gave the notice referred to in section 4B.6 (1) (c) of MI 11-102;

"OSC" means the regulator in Ontario;

"passport application" means an application described in section 5 of this policy;

"passport jurisdiction" means the jurisdiction of a passport regulator;

"passport regulator" means a regulator that has adopted MI 11-102;

"regulator" means a securities regulatory authority or regulator.

3. Further definitions – Terms used in this policy that are defined in MI 11-102, National Instrument 14-101 Definitions or NI 25-101 have the same meanings as in those instruments.

PART 3 OVERVIEW, PRINCIPAL REGULATOR AND GENERAL GUIDELINES

4. Overview

This policy applies to any application. These are the possible types of applications:

(a) The principal regulator is a passport regulator and the filer does not seek a designation in Ontario. This is a "passport application."

(b) The principal regulator is the OSC and the filer also seeks a designation in a passport jurisdiction. This is also a "passport application."

(c) The principal regulator is a passport regulator and the filer also seeks a designation in Ontario. This is a "dual application."

5. Passport application

(1) If the principal regulator is a passport regulator and the filer does not seek a designation in Ontario, the filer files the application only with, and pays fees only to, the principal regulator. Only the principal regulator reviews the application. The principal regulator's decision to grant the designation automatically results in a deemed designation in the notified passport jurisdictions.

(2) If the principal regulator is the OSC and the filer also seeks designation in a passport jurisdiction, the filer files the application only with, and pays fees only to the OSC. Only the OSC reviews the application. The OSC's decision to grant the designation automatically results in a deemed designation in the notified passport jurisdictions.

6. Dual application – Designation sought in passport jurisdiction and Ontario

If the principal regulator is a passport regulator and the filer also seeks a designation in Ontario, the filer files the application with, and pays fees to the principal regulator and the OSC. The principal regulator reviews the application and the OSC, as non-principal regulator, coordinates its review with the principal regulator. The principal regulator's decision to grant the designation automatically results in a deemed designation in the notified passport jurisdictions and, if the OSC has made the same decision as the principal regulator, evidences the decision of the OSC.

7. Principal regulator for an application

(1) For an application under this policy, the principal regulator is identified in the same manner as in sections 4B.2 to 4B.5 of MI 11-102.

(2) If the filer cannot determine its principal regulator under 4B.2 (a) or (b) of MI 11-102, section 4B.2(c) of MI 11-102 requires that the filer determine its principal regulator by determining the specified jurisdiction with which the filer has the most significant connection. Section 4B.3 and 4B.4 also establish circumstances in which the filer may need to determine its principal regulator.

(3) For the purpose of this section, a specified jurisdiction is one of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and New Brunswick.

(4) The factors a filer should consider in identifying the principal regulator for the application based on the most significant connection test are, in order of influential weight:

(a) jurisdiction where the filer generated the majority of its credit rating related revenue in the 3-year period preceding the date of its application, or

(b) jurisdiction where the filer issued the most initial ratings in the 3-year period preceding the date of its application.

8. Discretionary change in principal regulator

(1) If the principal regulator identified under section 7 of this policy thinks it is not the appropriate principal regulator, it will first consult with the filer and the appropriate regulator and then give the filer a written notice of the new principal regulator and the reasons for the change.

(2) A filer may request a discretionary change of principal regulator for an application if

(a) the filer concludes that the principal regulator identified under section 7 of this policy is not the appropriate principal regulator,

(b) the location of the head office changes over the course of the application,

(c) the most significant connection to a specified jurisdiction changes over the course of the application, or

(d) the filer withdraws its application in the principal jurisdiction because it does not want to be designated in that jurisdiction.

(3) Regulators do not anticipate changing a principal regulator except in exceptional circumstances.

(4) A filer should submit a written request for a change in principal regulator to its current principal regulator and include the reasons for requesting the change.

PART 4 FILING MATERIALS

9. Election to file under this policy and identification of principal regulator

In an application, the filer should indicate whether it is filing a passport application or a dual application and identify the principal regulator for the application.

10. Materials to be filed with application

(1) For a passport application, the filer should remit to the principal regulator the fees payable under the securities legislation of the principal regulator, and file the following materials with the principal regulator only:

(a) a written application in which the filer:

(i) states the basis for identifying the principal regulator under section 7 of this policy,

(ii) gives notice of the non-principal passport jurisdictions for which section 4B.6 of MI 11-102 is intended to be relied upon,

(iii) states that the filer and any relevant party is not in default of securities legislation applicable to credit rating organizations in any jurisdiction of Canada or in any jurisdiction in which the filer operates or, if the filer is in default, the nature of the default;

(b) the materials required by section 2 of NI 25-101.

(c) other supporting materials.

(2) For a dual application, the filer should remit the fees payable under the securities legislation of the principal regulator and the OSC, and file the following materials with the principal regulator and the OSC:

(a) a written application in which the filer:

(i) states the basis for identifying the principal regulator under section 7 of this policy,

(ii) gives notice of the non-principal passport jurisdictions for which section 4B.6 of MI 11-102 is intended to be relied upon;

(iii) states that the filer is not in default of securities legislation applicable to credit rating organizations in any jurisdiction of Canada or in any jurisdiction in which the filer operates or, if the filer is in default, the nature of the default;

(b) the materials required by section 2 of NI 25-101;

(c) other supporting materials.

11. Language - A filer seeking a designation in Québec should file a French language version of the draft decision when the AMF is acting as principal regulator.

12. Materials to be filed to make a designation available in an additional passport jurisdiction under section 4B.6 of MI 11-102

(1) Under section 4B.6 of MI 11-102, the principal regulator's decision to grant the designation under a passport application or dual application can become available in a non-principal passport jurisdiction for which the filer did not give the notice referred to in section 10(1) (a) (ii) or 10(2) (a) (ii) of this policy in the initial application if certain conditions are met. One of the conditions is that the filer gives the notice under section 4B.6 (1) (c) of MI 11-102 for the additional non-principal passport jurisdiction.

(2) For greater certainty, a filer may not rely on section 4B.6 of MI 11-102 to obtain an automatic designation under the provision of Ontario's securities legislation.

(3) The filer should give the notice referred to in subsection (1) to the principal regulator for the initial application. The notice should

(a) list each relevant non-principal passport jurisdiction for which notice is given that section 4B.6 of MI 11-102 is intended to be relied upon,

(b) include the date of the decision of the principal regulator for the initial application, if the notice is given under section 4B.6(1)(c) of MI 11-102,

(c) include the citation for the regulator's decision, and

(d) confirm that the designation is still in effect.

(4) The regulator that receives the notice referred to in section 10 will send a copy of the notice and its decision to the regulator in the relevant non-principal passport jurisdiction.

13. Filing – A filer should send the application materials in paper together with the fees to

(a) the principal regulator, in the case of a passport application, and

(b) the principal regulator and the OSC in the case of a dual application.

The filer should also provide an electronic copy of the application materials, including the draft decision document, by e-mail or on CD ROM. Filing the application concurrently in all required jurisdictions will make it easier for the principal regulator and non-principal regulators, if applicable, to process the application expeditiously.

Filers should send application materials by e-mail using the relevant address or addresses listed below:

British Columbia	www.bcsc.bc.ca (click on BCSC e-services and follow the steps)
Alberta	legalapplications@asc.ca
Saskatchewan	exemptions@sfsc.gov.sk.ca
Manitoba	exemptions.msc@gov.mb.ca

Ontario	applications@osc.gov.on.ca
Québec	Dispenses-Passeport@lautorite.qc.ca
New Brunswick	Passport-passeport@nbsc-cvmnb.ca
Nova Scotia	nsscexemptions@gov.ns.ca
Prince Edward Island	CCIS@gov.pe.ca
Newfoundland and Labrador	securitiesexemptions@gov.nl.ca
Yukon	corporateaffairs@gov.yk.ca
Northwest Territories	securitiesregistry@gov.nt.ca
Nunavut	legalregistries@gov.nu.ca

14. Incomplete or deficient material – If the filer's materials are deficient or incomplete, the principal regulator may ask the filer to file an amended application. This will likely delay the review of the application.

15. Acknowledgment of receipt of filing

After the principal regulator receives a complete and adequate application, the principal regulator will send the filer an acknowledgment of receipt of the application. The principal regulator will send a copy of the acknowledgement to any other regulator with whom the filer has filed the application. The acknowledgement will identify the name, phone number, fax number and e-mail address of the individual reviewing the application.

16. Withdrawal or abandonment of application

(1) If a filer withdraws an application at any time during the process, the filer is responsible for notifying the principal regulator and any non-principal regulator with whom the filer filed the application and for providing an explanation of the withdrawal.

(2) If at any time during the review process, the principal regulator determines that a filer has abandoned an application, the principal regulator will notify the filer that it will mark the application as "abandoned". In that case, the principal regulator will close the file without further notice to the filer unless the filer provides acceptable reasons not to close the file in writing within 10 business days. If the filer does not, the principal regulator will notify the filer and any non-principal regulator with whom the filer filed the application that the principal regulator has closed the file.

PART 5 REVIEW OF MATERIALS

17. Review of passport application

(1) The principal regulator will review any passport application in accordance with its securities legislation and securities directions and based on its review procedures, analysis and considering previous decisions.

(2) The filer will deal only with the principal regulator, who will provide comments to and receive responses from the filer.

18. Review and processing of dual application

(1) The principal regulator will review any dual application in accordance with its securities legislation and securities directions, and based on its review procedures, analysis and considering previous decisions. The principal regulator will consider any comments from a non-principal regulator with whom the filer filed the application. Please refer to section 10 (2) of this policy for guidance on filing an application with the OSC as non-principal regulator with whom a filer should file a dual application.

(2) The filer will generally deal only with the principal regulator, who will be responsible for providing comments to the filer once it has considered the comments from the non-principal regulators and completed its own review. However, in exceptional circumstances, the principal regulator may refer the filer to the OSC as non-principal regulator.

PART 6 DECISION-MAKING PROCESS

19. Passport application

(1) After completing the review process and after considering the recommendation of its staff, the principal regulator will determine whether to grant or deny the designation sought in a passport application.

(2) If the principal regulator is not prepared to grant the designation based on the information before it, it will notify the filer accordingly.

(3) If a filer receives a notice under subsection (2) and this process is available in the principal jurisdiction, the filer may request the opportunity to appear before, and make submissions to, the principal regulator.

20. Dual application

(1) After completing the review process and after considering the recommendation of its staff, the principal regulator will determine whether to grant or deny the designation sought in a dual application and immediately circulate its decision to the OSC.

(2) The OSC will have at least 10 business days from receipt of the principal regulator's decision to confirm whether it has made the same decision and is opting in or is opting out of the dual review.

(3) If the OSC is silent, the principal regulator will consider that the OSC has opted out.

(4) If the filer shows that it is necessary and reasonable in the circumstances, the principal regulator may request, but cannot require, the OSC to abridge the opt-out period.

(5) The principal regulator will not send the filer a decision for a dual application before the earlier of

(a) the expiry of the opt-out period, or

(b) receipt from the OSC of the confirmation referred to in subsection (2).

(6) If the principal regulator is not prepared to grant the designation a filer sought in its dual application based on the information before it, it will notify the filer and the OSC.

(7) If a filer receives a notice under subsection (6) and this process is available in the principal jurisdiction, the filer may request the opportunity to appear before, and make submissions to, the principal regulator. The principal regulator may hold a hearing on its own, or jointly or concurrently with the OSC. After the hearing, the principal regulator will send a copy of the decision to the filer and the OSC.

(8) If the OSC elects to opt out it will notify the filer and the principal regulator and give its reasons for opting out. The filer may deal directly with the OSC to resolve outstanding issues and obtain a decision without having to file a new application or pay any additional related fees. If the filer and the OSC resolve all outstanding issues, the OSC may opt back into the dual review by notifying the principal regulator within the opt-out period referred to in subsection (2).

PART 7 DECISION

21. Effect of decision made under passport application

(1) The decision of the principal regulator under a passport application is the decision of the principal regulator. Under MI 11-102, a filer is automatically designated in the notified passport jurisdictions as a result of the decision of the principal regulator making the designation.

(2) Except in the circumstances described in section 12 (1) of this policy, the designation is effective in each notified passport jurisdiction on the date of the principal regulator's decision (even if the regulator in the notified passport jurisdiction is closed on that date). In the circumstances described in section 12 (1) of this policy, the designation is effective in the relevant non-principal passport jurisdiction on the date the filer gives the notice under section 4B.6 (1)(c) of MI 11-102 for that jurisdiction (even if the regulator in that jurisdiction is closed on that date).

22. Effect of decision made under dual application

(1) The decision of the principal regulator under a dual application is the decision of the principal regulator. Under MI 11-102, a filer is automatically designated in the notified passport jurisdictions as a result of the decision of principal regulator making the designation. The decision of the principal regulator under a dual application also evidences the OSC's decision, if the OSC has confirmed that it has made the same decision as the principal regulator.

(2) The principal regulator will not issue the decision until the earlier of

(a) the date that the OSC confirms that it has made the same decision as the principal regulator, or

(b) the date the opt-out period referred to in section 20(2) of this policy has expired.

23. Listing non-principal jurisdictions

(1) For convenience, the decision of the principal regulator on a passport application or a dual application will refer to the notified passport jurisdictions, but it is the filer's responsibility to ensure that it gives the required notice for each jurisdiction for which section 4B.6(1) of MI 11-102 is intended to be relied upon.

(2) The decision of the principal regulator on a dual application will contain wording that makes it clear that the decision evidences and sets out the decision of the OSC to the effect that it has made the same decision as the principal regulator.

(3) For a dual application for which Québec is not the principal jurisdiction, the AMF will issue a local decision concurrently with and in addition to the principal regulator's decision. The AMF decision will contain the same terms and conditions as the principal regulator's decision. No other local regulator will issue a local decision.

24. Issuance of decision – The principal regulator will send the decision to the filer and to all non-principal regulators.

PART 8 EFFECTIVE DATE

25. Effective date

This policy comes into effect on *.

Annex I

Proposed Amendments to
Multilateral Instrument 11-102
Passport System

Multilateral Instrument 11-102 *Passport System* is amended by adding the following:

PART 4B APPLICATION TO BECOME A DESIGNATED RATING ORGANIZATION

4B.1 Specified jurisdiction

For the purposes of this Part, the specified jurisdictions are British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and New Brunswick.

4B.2 Principal regulator – general

Subject to sections 4B.3 to 4B.5, the principal regulator for an application by a credit rating organization to become a designated rating organization is,

(a) the securities regulatory authority or regulator of the jurisdiction in which the head office of the credit rating organization is located,

(b) if the head office for a credit rating organization is not in a jurisdiction of Canada, the securities regulatory authority or regulator of the jurisdiction in which the largest branch office of the credit rating organization is located, or

(c) if neither the head office or a branch office of the credit rating organization is located in a jurisdiction of Canada, the securities regulatory authority or regulator of the jurisdiction with which the credit rating organization has the most significant connection.

4B.3 Principal regulator – head office not in a specified jurisdiction

Subject to section 4B.5, if the jurisdiction identified under section 4B.2 is not a specified jurisdiction, the principal regulator for the application is the securities regulatory authority or regulator of the specified jurisdiction with which the credit rating organization has the most significant connection.

4B.4 Principal regulator – designation not sought in principal jurisdiction

Subject to section 4B.5 if a credit rating organization is not seeking to become a designated rating organization in the jurisdiction of the principal regulator, as determined under section 4B.2 or 4B.3, as applicable, the principal regulator for the designation is the securities regulatory authority or regulator in the specified jurisdiction,

(a) in which the credit rating organization is seeking the designation, and

(b) with which the credit rating organization has the most significant connection.

4B.5 Discretionary change of principal regulator for application for designation

If a credit rating organization receives written notice from a securities regulatory authority or regulator that specifies a principal regulator for the credit rating organization's application, the securities regulatory authority or regulator specified in the notice is the principal regulator for the designation.

4B.6 Deemed designation of a credit rating organization

(1) If an application to become a designated rating organization is made by a credit rating organization in the principal jurisdiction, the credit rating organization is deemed to be a designated rating organization in a local jurisdiction if,

(a) the local jurisdiction is not the principal jurisdiction for the application,

(b) the principal regulator for the application designated the credit rating organization and that designation is in effect,

(c) the credit rating organization that applied to be designated gives notice to the securities regulatory authority or regulator that this subsection is intended to be relied upon for the designation in the local jurisdiction, and

(d) the credit rating organization complies with any terms, conditions, restrictions or requirements imposed by the principal regulator as if they were imposed in the local jurisdiction.

(2) For the purpose of paragraph (1)(c), the credit rating organization may give the notice referred to in that paragraph by giving it to the principal regulator.