Annex A

Summary of comments and responses on Notice and Request for Comment - Proposed National Instrument 25-101 Designated Rating Organizations, Related Policies and Consequential Amendments published July 16, 2010

This annex summarizes the written public comments we received on the 2010 Proposal. It also sets out our responses to those comments.

List of Parties Commenting on the 2010 Proposal

The Business Development Bank of Canada (Paula L. Cruickshank)
The Canadian Advocacy Council for Canadian CFA Institute Societies (Ada Litvinov and Claude Reny)
Canadian Bankers Association (Nathalie Clark)
The Canadian Coalition for Good Governance (David F. Denison)
Dominion Bond Rating Service (Mary Keogh and Huston Loke)
Fitch Ratings (Francis Phillip)
Moody's Investors Service (Donald S. Carter and Janet Holmes)
OSC Investor Advisory Panel (Anita Anand)
Standard & Poor's (Tom Connell)

General Comments

Six commenters generally agreed with the original proposal to use the IOSCO Code as the basis for proposed regulation of CROs. The commenters generally agreed with the flexibility offered by the "comply or explain" model. One commenter noted that this approach would make it easier for CROs that operate in multiple countries to implement globally consistent structures, which in turn would assist CROs in producing ratings that were more comparable across jurisdictions. One commenter opined that a regulatory regime that requires a "comply or explain" approach to the IOSCO Code, while a step in the right direction, does not go far enough to protect the needs of investors.

> ***Response: We thank the commenters for their support. The Proposed Materials maintain the IOSCO Code as the central component of the code of conduct required by the proposed regulatory regime. However, in order to be consistent with international standards, a mandatory approach to the provisions of the IOSCO Code has replaced the "comply or explain" model.***

One commenter suggested that it was inappropriate to explain a code of conduct's deviation from the IOSCO Code within the code of conduct itself.

> ***Response: Since we are now proposing that designated rating organizations be prohibited from deviating from the provisions to be included in its code of conduct, this comment is no longer relevant.***

One commenter noted that the Proposed Instrument was unclear regarding the scope of the regulatory framework. Specifically, the commenter noted that it was unclear (i) which entity or entities within the CRO would be subject to the supervisory framework, and (ii) which ratings produced by the CRO should be treated as "designated ratings" under Canadian securities legislation.

> ***Response: The only entities that will be subject to the supervisory framework will be those that apply to be, and are designated as, designated rating organizations. Only the ratings issued by a designated rating organization will be designated ratings under securities legislation. CROs applying to be designated will need to consider their corporate structure and inter-corporate relationships and ensure the application for designation is made by the entity or entities that want to have their ratings designated under the Proposed Instrument.***

One of the commenters that supported the IOSCO approach was comfortable with it provided that it was accompanied by required compliance powers.

> ***Response: Though we are no longer proposing to include the "comply or explain" feature of the IOSCO Code, we agree that compliance powers are an important part of the regulatory framework applicable to designated rating organizations. We believe the legislative amendments discussed in the notice, if enacted as contemplated, provide sufficient compliance powers.***

One commenter noted that the 2010 Proposal did not demand full, complete disclosure about who is paying for the ratings, nor contain any penalties for those who failed to comply with the proposed regulatory framework. The commenter noted that even with a compliance officer in place and an annual report filed with securities regulators, investors could continue to lack full and accurate information regarding the securities that they are purchasing. The commenter noted that while the IOSCO Code does provide a framework for objective analysis to support a credit rating, it stopped short of promoting publication of the methodology used.

> ***Response: We think users of ratings generally expect that the rated entity or its related entities have paid for credit ratings that are publicly disseminated. However, as part of our proposed consequential amendments, we are proposing that issuers disclose whether or not they have paid for credit ratings issued in respect of the rated entity or its securities.***
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> ***While the 2010 Proposal did not set out specific consequences, a failure to comply with the Proposed Instrument, when implemented, would constitute a breach of securities law. Such breach could give rise to various enforcement provisions and remedies under applicable securities legislation.***
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> ***We think that the obligation for ensuring that investors have full information regarding the securities they are purchasing should rest primarily with the issuer issuing the securities. Other CSA projects address appropriate disclosure to be provided***

by issuers. For example, proposals are expected to be published in the near future that focus on the disclosure required with respect to securitized products.

We are now proposing that a designated rating organization's code of conduct include provisions requiring disclosure in each ratings report of the methodology used. See subsection 3.4(b) of Appendix A to the Proposed Instrument. Similarly, section 3.7 of Appendix A to the Proposed Instrument when included in a designated rating organization's code of conduct would require a designated rating organization to provide a full disclosure of its methodologies, models and key rating assumptions.

Regulation of Credit Ratings and Methodologies

Two commenters were concerned that the enabling legislation would not prohibit interference by securities regulators with rating content and methodology. On the other hand, one commenter suggested that securities regulators should oversee the content or methodology of ratings since the commenter viewed unjustifiably high ratings as being at the heart of the asset-backed commercial paper crisis. This commenter noted that ratings must be objective, and CROs must understand that their ratings may be subject to regulatory review, and not simply to oversight as a designated rating organization with associated compliance reviews.

Response: We are not proposing to regulate the content of ratings or methodologies used to determine credit ratings.

Section 2 of the Proposed Instrument provides that nothing in the Proposed Instrument shall be construed as authorizing the regulator to direct or regulate the content of credit ratings or methodologies used to determine credit ratings. Certain provincial legislatures have, and others may, include similar provisions in the legislative amendments to securities legislation enabling the regulatory framework applicable to CROs.

We note that regulatory authorities in other jurisdictions have not proposed to extend their regulation of CROs into such area and doing so would prevent our proposed regulatory framework from being considered "equivalent" to the EU Regulation.

Code of Conduct and Amendments

One commenter noted that sections 6(1) and (2) of the Proposed Instrument may require a designated rating organization to individually identify or otherwise highlight amendments to their code, as they are made from time to time. The commenter thought this was problematic, and urged the CSA to allow NRSROs to post on their website the code of conduct that is currently filed with the SEC as an exhibit to Form NRSRO. The commenter also requested clarification that presenting an amended and restated code of conduct without specifically identifying the amendments would satisfy its obligations.

Response: We do not interpret section 8 of the Proposed Instrument (corresponding to section 6 in the 2010 Proposal) to require a designated rating organization to

individually highlight amendments to its code of conduct. We have revised section 8 to clarify further.

Two commenters thought that the three-day window to update an amended code of conduct was too short. One commenter suggested a more reasonable time frame would be five business days. The other commenter suggested that it be changed to ten business days, to ensure consistency with the SEC's requirement for public disclosure of material changes to Form NRSRO and exhibits which include the NRSRO's code of ethics.

Response: We are of the view that five business days is an appropriate amount of time and revised our proposal accordingly.

One commenter noted that a CRO cannot "ensure" compliance with its code, as it could not guarantee 100% adherence.

Response: We have revised the requirement. As proposed in section 7(1) of the Proposed Instrument, a designated rating organization would now have to establish maintain and comply with their code of conduct. We remain of the view that ultimate responsibility for a designated rating organization's compliance with securities legislation rests with the designated rating organization.

Waivers From Provisions of the Code of Conduct

Three commenters believed that the prohibition against granting waivers from a designated rating organization's code of conduct was too onerous or otherwise inappropriate.

One commenter noted that the prohibition on waivers was problematic because it would reduce its flexibility to deal with unusual circumstances, and potentially prevent the commenter from issuing a rating. This commenter suggested that waivers be permitted if the designated rating organization explains where and why the waiver was granted and how the waiver nonetheless achieves the objectives of the IOSCO Code.

Another commenter noted that the restriction against waivers did not reflect the reality that a CRO might conclude that it would be reasonable to waive compliance with a provision in its code of conduct in order to achieve the objective of another provision of the IOSCO Code, opining that certain provisions of the IOSCO Code have competing objectives. This commenter suggested that waivers be permitted if the waiver is reasonable.

The third commenter believed it would be more prudent to require CROs to document any waivers of their code of conduct, than to prohibit waivers outright.

Three commenters, including one CRO, agreed that a designated rating organization's published code of conduct should reflect its actual practices and, therefore, did not think prohibiting waivers of the designated rating organization's Code was unreasonable. One commenter noted that CROs already have the ability to deviate from the Code through the "comply or explain" provision, therefore making additional waivers unnecessary.

> ***Response: We think that a designated rating organization's activities should reflect its code of conduct and, as such, do not think waivers are appropriate. However, the Proposed Instrument allows the securities regulatory authorities to grant an exemption, if necessary, from the provisions of the Proposed Instrument. Staff of the securities regulatory authorities may be willing to recommend that relief be granted from the requirement to include a specific provision in a designated rating organization's code of conduct if it satisfies the applicable legislative test for granting the relief. Applications for exemptive relief may be made using the passport system.***

Two commenters recommended that designated rating organizations not be required to include a statement about waivers in their codes of conduct due to concerns that it may result in Canada-only codes of conduct being adopted, which might hamper the ability of global CROs in providing truly global ratings.

> ***Response: We expect a designated rating organization's code of conduct to be an accurate reflection of its practices and procedures. Accordingly, we have maintained the requirement to include a statement about waivers in the designated rating organization's code of conduct.***

Compliance and Compliance Officers

One commenter was concerned that the provisions of the Proposed Instrument relating to the compliance officer would require reporting to the board in the event of a technical, minor or inadvertent breach. The commenter suggested that this could result in an undue focus of board resources on day-to-day management concerns that are ordinarily outside their province, and could result in diverting the attention of the directors and the most senior managers of the designated rating organization from more strategic policy and business management issues. Instead, the commenter suggested that reliance be placed on the governance arrangements established within the designated rating organization, including the requirement for a compliance officer to monitor and assess compliance with the organization's code and securities legislation.

> ***Response: The compliance officer plays an integral role in a designated rating organization's compliance with its obligations under the Proposed Instrument and securities legislation. However, we think significant instances of non-compliance must be brought to the attention of the board of directors. We do not expect technical or minor breaches to inappropriately occupy the board's attention since the reporting requirement in the event of non-compliance only applies if one of the conditions set out in paragraphs (a) to (c) of Section 10(2) of the Proposed Instrument (corresponding to section 11(2) in the 2010 Proposal) is satisfied. In addition, we are now proposing a significance threshold for paragraphs (a) and (b) of Section 10(2).***

One commenter did not object in principle to the requirement to have a compliance officer. Nonetheless, they believed that the proposed responsibilities of the compliance officer were over-broad. In particular, the commenter noted that, as drafted, section 11 of the Proposed Instrument would require a designated rating organization's compliance officer to monitor and assess compliance with aspects of Canadian securities legislation that do not apply specifically to a designated rating organization's activities.

> ***Response: We expect a designated rating organization to comply with securities legislation to the extent applicable and do not think that it is unreasonable to expect the compliance officer to be the individual chiefly responsible for such compliance.***

One commenter suggested that the compliance officer's monitoring, assessment and reporting function should extend only to the designated rating organization itself and its employees, and not cover non-employees who are not affiliated with the designated rating organization but may nevertheless act on the designated rating organization's behalf in certain matters, such as lawyers, accountants, consultants, technology service providers, real estate brokers and financial advisors.

> ***Response: We have revised our proposal so that the compliance officer's monitoring, assessment and reporting function will extend to the designated rating organization, the designated rating organization's employees and non-employees that provide services to the designated rating organization and who are involved in determining, approving or monitoring credit ratings. This would exclude the designated rating organization's lawyers, accountants, consultants, technology service providers, real estate brokers and financial advisors (so long as such service providers are not involved in the rating activities referred to above). However, we are of the view that to the extent a service provider is involved in rating activities, such service provider should be subject to the compliance officer's oversight.***

One commenter noted that the compliance officer's duty to report non-compliance should be refined, as an obligation to report possible instances of non-compliance "as soon as possible" might be counterproductive, and could make it difficult for board members to attend given their busy schedules. The commenter suggested that compliance officer be required to report to the board on a timely basis after having a reasonable opportunity to assess the information and reach a conclusion about the significance of the non-compliance.

> ***Response: We think that including a significance threshold with respect to the compliance officer's reporting obligations should reduce the burden on the designated rating organization's board of directors. We have also revised the section to state that the reporting must be done "as soon as reasonably possible" We expect that these two changes will limit the matters that are brought to the board's attention to those of significance. However, we do expect that such matters will be brought to the board's attention on a timely basis.***

One commenter noted that CROs do not have "clients", and that the test in paragraph (b) of subsection 11(2) of the Proposed Instrument was too vague to implement, and that a "risk of harm to the capital markets" should be modified to include only "material" risks of harm. Another commenter thought the breach reporting requirement should be deleted altogether since a provision of the IOSCO Code imposed the same obligation. Alternatively, this commenter suggested that the test should be modified to include a materiality threshold.

> ***Response: We replaced the references to "client" with references to "rated entity". We note that the reporting provision of the IOSCO Code (which we adopted with minor modifications as section 1.20 of Appendix A to the Proposed Instrument) requires employees to report specified incidents of non-compliance to the compliance officer, who is charged with taking appropriate action. However, as the provision does not specifically require reporting to the board of directors of the designated rating organization, we propose to maintain section 10(2) (corresponding to section 11(2) in the 2010 Proposal). We have proposed a significance threshold in section 10(2).***

One commenter believed that the proposed reporting of non-compliance to a board of directors by the compliance officer with respect to the risk of harm to investors and/or where there is a pattern of non-compliance is appropriate. However, the commenter suggested that having the compliance officer consider the risk of harm of non-compliance on the capital markets is overly broad, and beyond the typical scope of a compliance officer.

> ***Response: We are proposing to maintain the requirement but we added a significance qualifier (as discussed above). We think it is important for compliance officers to be aware of risks resulting from the designated rating organization's business as a rating agency.***

<u>Prohibited Conflicts of Interest</u>

Two commenters noted that section 8 of the 2010 Proposal, which prohibited a CRO from issuing or maintaining a credit rating in the event of one of the enumerated conflict situations, was problematic, in that it did not provide an opportunity for the conflict to be rectified, which could be disruptive to the ratings process. Instead, one commenter suggested that such relationships should simply be prohibited, which would still allow for a supervisory action to be taken or for sanctions to be imposed if such a result was warranted in the circumstances.

> ***Response: The prohibitions are no longer contained in the Proposed Instrument. Some of the enumerated conflicts highlighted by the commenters are included as provisions in the IOSCO Code and have been carried over into Appendix A. We have taken those conflicts that were not included in the IOSCO Code and added them as provisions in Appendix A. As a result, the presence of one of those conflicts will not require the designated rating organization to refrain from issuing ratings or to withdraw a rating. However, the presence of one of those conflicts would constitute a breach of the designated rating organization's code of conduct and could result in regulatory action, including, if appropriate, enforcement proceedings.***

One commenter was concerned about practices surrounding "rating agency conditions", a term of agreement in many structured finance transactions which permit amendments or waivers to a structured finance program if the rating agency consents to the action, or otherwise concludes that it will not cause a reduction or suspension in the rating agency's rating. In particular, the commenter wrote that this might constitute an invitation to the CRO to make recommendations to the issuer of the securitized product that would be no less concerning than the CRO making recommendations in connection with the initial rating.

> ***Response: The provision in section 1.19 of Appendix A to the Proposed Instrument (which prevents a designated rating organization or its ratings employees from making recommendations to a rated entity regarding structure) applies during the entire time a rating is outstanding in respect of a rated entity. It is not limited to when the initial rating is assigned.***

The same commenter was concerned that changes can be made to the structure of a structured finance instrument by satisfying a rating agency condition without investors having any knowledge that such actions have been taken. The commenter recommended an obligation for a designated rating organization to disclose when the designated rating organization provides notification that a rating agency condition has been satisfied and to describe what the proposed action was.

> ***Response: Other CSA initiatives are in progress that will consider whether to require disclosure if an issuer of securitized products makes material changes to its structure. Consequently, we have not revised the Proposed Instrument to address this comment.***

Books and Records

One commenter noted that the retention period for documents and records relating to credit rating activities should be limited to five years, to allow for harmonization with European law.

> ***Response: We have not adopted this recommendation. Our proposed record retention requirements are consistent with other similar requirements in Canadian securities legislation.***

Personal Information Forms

One commenter wrote that it was not necessary to collect additional personal information about the directors and officers of a designated rating organization. Another commenter queried what the CSA would do with PIFs for directors and officers of the designated rating organization. A third commenter suggested that the PIF only be requested if the CSA intended to do something with them.

> ***Response: We removed the personal information form requirement.***

Determination of Principal Regulator

Two commenters wrote that the factors listed in section 8 of proposed NP 11-205 for determining “significant connection” for purposes of establishing a designated rating organization’s principal regulator were appropriate. One of those commenters also suggested that the jurisdiction in which the CRO is registered as a business in Canada could also be relevant to the determination.

Response: We thank the commenters for their support and feedback. The criteria to be applied when determining a principal regulator in proposed Part 4B of MI 11-102 and section 7(4) of proposed NP 11-205 are intended to be reasonably complete. However, if a designated rating organization cannot determine its principal regulator based on those criteria, it could consider as relevant the jurisdiction(s) in which it is registered to do business.

Expert Liability

Two commenters thought that CROs should be subject to the same civil liability as other experts whose reports are included, with their consent, in offering documents.

On the other hand, six commenters wrote that the CSA should maintain the exemption for designated rating organizations from the requirement to provide an expert's consent when the ratings of the designated rating organization are disclosed in a prospectus.

Several commenters that were in favour of maintaining the exemption were concerned about the possible unintended consequences of exposing designated rating organizations to expert's liability, such as the following:

- Consistent with the experience in the United States, designated rating organizations might refuse to provide their consent to have their ratings included in Canadian prospectuses, which can lead to less information being available in offering documents.
- Designated rating organizations that do provide their consent might adopt a more conservative, reactive or homogeneous approach to credit ratings resulting in less diversity of opinions.
- Canadian securities legislation requires an issuer to disclose its credit ratings in its offering documents. Issuers would be unable to comply with this requirement if the exemption is repealed and designated rating organizations refused to provide their consent. This could result in a "freezing" of debt offerings in Canada or could lead issuers to opt against obtaining credit ratings.
- The cost of obtaining credit ratings would increase which cost will be absorbed by investors.
- Competition in the CRO industry could be negatively impacted.
- Investors might place even greater reliance on credit ratings.
- Credit ratings are fundamentally different from other "expert" opinions for which consent is required.
- Issuers with less stable creditworthiness may be unable to obtain ratings since designated rating organizations will be less willing to assume the associated liability. This may limit such issuers' ability to access public markets.

One of the commenters that was in favour of subjecting designated rating organizations to expert liability suggested that the CSA delay final implementation of the Proposed Instrument pending resolution of the uncertainty in the U.S. regarding the application of expert's liability. The commenter referred to the refusal of NRSROs to consent to their ratings being included in a registration statement and to the original SEC "no-action" letter expiring January 24, 2011 in respect of an issuer that omits ratings disclosure from a registration statement relating to an offering of asset-backed securities. If there are unexpected delays resolving the uncertainty in the U.S., the commenter recommended that the CSA proceed with the Proposed Instrument in its current form provided that the CSA commits to introducing provisions to establish civil liability once the situation in the U.S. is resolved.

> ***Response: We acknowledge the comments above and, accordingly, are not proposing at this time to repeal the exemption in section 10.1(4) of National Instrument 41-101 General Prospectus Requirements (NI 41-101) or to make corresponding changes to the secondary market liability regime that would subject CROs to "expert" liability. However, we generally support measures that could increase the accountability of designated rating organizations for their ratings decisions and will assess any such options. We also continue to monitor developments in other jurisdictions.***
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> ***We agree with the comment regarding timing of implementation of the Proposed Instrument. We understand that NRSROs have continued to refuse to consent to their ratings being included in registration statements and that the SEC has recently extended indefinitely the "no-action" letter referred to by the commenter. We do not expect to propose changes in this area until we have had an opportunity to fully assess the impact of similar approaches in other jurisdictions.***

One commenter noted that the imposition of such liability was an imperfect solution, noting that CROs may be willing to bear the cost of potential liability, and the underlying issues relating to reputation and conflict of interest may be left unresolved.

> ***Response: We take note of this comment. To the extent that we might propose measures that increase the accountability of CROs for their ratings decisions in the future, we would view such measures to be complimentary to other regulatory initiatives, such as the Proposed Instrument, aimed at addressing concerns regarding conflicts of interest, among other things.***

Treatment of NRSROs

Two commenters supported the CSA's decision to provide filing accommodations for NRSROs

> ***Response: We thank the commenters for their support.***

One commenter noted, however, that there was a potential mismatch between the requirement to file a form NRSRO with the SEC (no later than 90 days after the close of the calendar year) and the requirement in the 2010 Proposal. The commenter also noted that the reference to an NRSRO filing its "most recent Form NRSRO" could result in a requirement to file the Form NRSRO with Canadian regulators before it was required to be filed with the SEC. Finally, this commenter also noted that, to the extent that it is the intention of the CSA to require confidential portions of the Form NRSO to be filed with securities regulators, the Proposed Instrument should make it clear that such information will be provided on a confidential basis only.

> ***Response: We adopted this commenter's suggested approach to filing requirements for designated rating organizations that file a Form NRSRO in place of Form 25-101F1. With respect to confidentiality, section (4) of the Instructions to Form 25-101F1 states that applicants may apply for a decision of the securities regulatory authority to hold portions of the form or other information in confidence. Designated rating organizations that file their Form NRSRO in place of Form 25-101F1 also will be able to apply for confidentiality.***

Ratings Disclosure Requirements

One commenter objected to the requirement in Canadian securities legislation to disclose credit ratings in prospectuses and annual information forms on the ground that such requirements can contribute to over-reliance on ratings.

> ***Response: At this time, we are not proposing to repeal the credit rating disclosure requirements in Canadian securities legislation.***

One commenter noted that adding the phrase "any other kind of rating" to the prospectus rules is exceedingly broad and may contribute to a great deal of uncertainty as to what must be disclosed. The commenter noted that, given the focus on the Proposed Instrument on the issuance and maintenance of credit ratings, the requirement to disclose any other type of rating may produce superfluous disclosure.

> ***Response: The phrase "any other kind of rating" was not added as part of the 2010 Proposal. This disclosure requirement was already in force. Since we have not had any indication that issuers are having difficulty complying with this requirement, we propose to maintain it.***

Three commenters noted that the proposed provisions mandating disclosure of fees paid to CROs could undermine the IOSCO Code's conflict of interest goals, particularly section 2.12, which prohibits employees who are involved in the rating process from participating in any discussion regarding fees with the entities they rate. The commenters also noted that this could similarly undermine the objectives of the Proposed Instrument.

One of those commenters noted that the fee disclosure could undermine competition, as the information was commercially sensitive. This same commenter objected to the requirement that issuers separately disclose the amounts paid to CROs and their affiliates for other services provided during the previous two years since it would be unduly burdensome for issuers and yield little in the way of meaningful disclosure for investors. This commenter suggested that disclosure of fees paid to an affiliate of a designated rating organization be required only if the payments are in respect of credit rating related services. The commenter agreed that an investor may want to know if a CRO is potentially influenced by the revenue stream that it and its affiliates receive from an issuer and its affiliates, if the revenue stream is relatively insignificant to the CRO, then it is very difficult to understand why an investor would need (or want) to know the actual dollar amounts involved.

> ***Response: We acknowledge the concern of the commenters and are no longer proposing to require disclosure of the particular amount paid for the rating. We are now proposing that issuers be required to disclose only whether they paid for the rating. We also note the proposed provision in section 2.9(a) of Appendix A that requires disclosure by a designated rating organization of the fees received by the designated rating organization from a rated entity, its affiliates or related entities for services unrelated to its ratings services as a percentage of the total amount of fees received by the designated rating organization from such rated entity, its affiliates and related entities. This provision is based on section 2.8(a) of the IOSCO Code.***

One commenter suggested that issuers be required to disclose the proportion that the aggregate fees received by a CRO or its affiliates from the issuer and its affiliates constitutes compared to fees for non-ratings services.

> ***Response: We are proposing that a designated rating organization be required to include a similar provision in its code of conduct. Refer to section 2.9(a) of Appendix A to the Proposed Instrument.***

One commenter also urged caution in developing a regime in Canada that may result in requiring issuers to obtain the consent of CROs for prospectuses used in the U.S. Such a development would have major unintended consequences on MJDS.

> ***Response: We understand that "southbound" MJDS issuers can comply with both Canadian and SEC requirements without triggering a consent requirement, provided that the required Canadian disclosure is provided in the context of "issuer disclosure-related ratings information" that the SEC specifically exempted from application of the consent requirements in its July 22, 2010 compliance and disclosure interpretations. We will, however, continue to monitor developments that may affect "southbound" MJDS issuers.***

<u>Other Comments</u>

One commenter requested that the CSA impose a requirement on all CROs that rate structured finance products to publish a notice each time an issuer, sponsor or underwriter of a structured finance offering provides a CRO with data in order to initiate a ratings process where the transaction proceeds but such CRO is not hired to provide a rating. This requirement would be intended to discourage ratings shopping.

> ***Response: We are proposing that a designated rating organization be required to include in its code of conduct, a provision requiring this disclosure. See section 4.6 of Appendix A to the Proposed Instrument.***

One commenter expressed its approval for the 2010 Proposal but noted that the Proposed Materials should be considered only an initial step in the process of removing reliance on CRO opinions from the investment process, including removing references to credit ratings provided by the CROs from all investment-related legislation.

> ***Response: We first considered the removal of references to credit ratings with the publication of CSA Consultation Paper 11-405 Securities Regulatory Proposals Stemming from the 2007-2008 Credit Market Turmoil and its Effect on the ABCP Market in Canada. At that time, the CSA ABCP Committee did not recommend removing references to credit ratings primarily due to the difficulty with identifying appropriate alternative proxies.***
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> ***Recently, the Dodd-Frank Wall Street Reform and Consumer Protection Act mandated that many U.S. statutory references to NRSRO ratings be eliminated within two years from the date of enactment and be replaced with standards of creditworthiness to be established by the relevant authority under each statute. The Dodd-Frank Act also requires every federal agency to review existing regulations that reference credit ratings, modify such regulations to remove the reference and substitute it with a standard of creditworthiness as deemed appropriate for such regulations.***
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> ***At this time, we do not propose to remove all references to credit ratings from securities legislation. We will be monitoring international developments and alternative qualification criteria that are proposed as replacements for credit ratings. We will also consider other means of reducing reliance on credit ratings. Other CSA projects may also consider this issue in the context of specific regulatory instruments that refer to credit ratings.***