

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 ●.