October 26, 2010

To:

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
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

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

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

Dear Me Beaudoin and Mr. Stevenson

Re: Proposed NI 25-101 Designated Rating Organizations, Related Policies and Consequential Amendments.

The Canadian Advocacy Council of CFA Institute Canadian Societies (CAC)[1] is pleased to respond to the Request for Comments in which the Canadian Securities Administrators (CSA) invited interested parties to submit comments on a Proposed National Instrument 25-101 Designated Rating Organizations and related matters ("NI 25-101").

[1] The CAC represents the 12 Canadian member societies of the CFA Institute constituting over 11,000 members who are active in Canada's capital markets. Members of the CAC consist of portfolio managers, investment analysts, corporate finance professionals, and other capital markets participants. The CAC's has been charged by Canada's CFA Institute member societies to review Canadian regulatory, legislative and standard setting activities.

General comments:

The CFA Institute Standards of Professional Conduct (the "Standards") requires CFA charterholders to exercise diligence, independence, and thoroughness in analyzing investments, making investment recommendations, and taking investment actions, as well as have a reasonable and adequate basis, supported by appropriate research and investigation, for any investment analysis, recommendation, or action.

Consistent with the expectations of the Standards, the CAC believes that investors should not rely solely on opinions provided by rating agencies in their investment decisions, but should conduct their own thorough research into all proposed investments, including fixed income investments, prior to investing.

Enshrining credit ratings within legislation as the standard of reference of investment risk provides an enhanced air of legitimacy to credit raters' opinions, and in some cases limits investment options only to instruments assigned a certain credit rating. Investors can be misled by the legislation into thinking that if a certain credit rating is considered "investment grade" by the regulators, then any security carrying that rating may be blindly accepted as an appropriate investment by investors as well.

The current rating agencies' business model, where the agencies are paid by the same issuers that they rate and may provide with other consulting services, is fraught with potential for conflict of interest. Because regulators implicitly provide the weight of regulatory approval to credit ratings by including them in legislation, regulators need to accept responsibility for ensuring the rating agencies' conflicts of interests are mitigated through rating agencies' internal policies, or by some other means. The proposed NI 25-101 addresses this issue by allowing regulators to require and monitor adherence to the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies for designated CRAs.

The CAC supports regulatory oversight of the CRAs and agrees that the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies is a suitable framework for such oversight, but views this as only an initial step in the process of removing reliance on CRA's opinions from the investment process, including removing references to credit ratings provided by the CRAs from all investment-related legislation and removing any exemptions from legal liability that would apply to the credit rating agencies' research opinions.

Specific comments:

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?

We agree that waivers of the published Code of Conduct should be prohibited. The rating agencies already have the ability to deviate from the IOSCO Code through the "comply or explain" provision, therefore additional waivers are not necessary.

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?

We do not believe it is necessary to collect additional personal information about directors and officers of the rating agencies.

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?

The factors listed in section 8 of f Proposed NP 11-205 are sufficient for determining "significant connection".

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?

Consistent with the view that credit rating agencies' opinions should not be treated any differently than any other expert entity's research and opinions, the CAC believes that credit rating agencies should not receive any exemptions from statutory liability. All opinions of experts that are included in prospectuses should be treated in the same way.

Concluding remarks

We thank you for the opportunity to provide the foregoing comments. We would be happy to address any questions you may have and we appreciate the time you are taking to consider our point of view. Please feel welcome to contact us at chair@cfaadvocacy.ca.

Yours respectfully,

(signed 'Ada Litvinov')

(signed 'Claude Reny')

Ada Litvinov, CFA
Member
Canadian Advocacy Council
1-403-770-1273

Claude Reny, CFA
Chair,
Canadian Advocacy Council
1-514-288-5900