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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

Re: Proposed National Instrument 25-101:
Designated Rating Organizations

Ladies and Gentlemen:

Fitch Ratings ("Fitch") submits this letter in response to the Notice and Request for Comments of the Canadian Securities Administrators (the "CSA") on the revised versions of the *Proposed National Instrument 25-101 Designated Rating Organizations, Related Policies and Consequential Amendments* (collectively, the "Proposed Materials"). Set forth below is our response to the CSA proposal to require a Designated Rating Organization (a "DRO") to establish, maintain and comply with the code of conduct that is included as Appendix A to Annex B of the Proposed Materials. We have only commented on those aspects of the Proposed Materials about which we have specific concerns.

Scope of the Proposed Materials

Fitch Ratings is unclear as to whether the intent of the Proposed Materials is to impose certain regulations on (i) any credit rating agency or organization (a "CRA") that wishes its credit ratings to be eligible for use for regulatory purposes in Canada, regardless of whether such CRA is domiciled in Canada or (ii) any CRA that wishes its ratings to be eligible for use for regulatory purposes in Canada, only in such cases that the CRA actually issues such credit ratings in Canada. If the CSA's intent is the former, then Fitch is concerned that some of the provisions in the Proposed Materials raise the issues of extraterritoriality and inconsistent regulation. If the CSA's intent is the latter, then Fitch is concerned that some of the provisions in the Proposed Materials, as drafted, may generate unintended burdens on small CRAs that form part of a larger global group of rating agencies.

The CSA, in its Proposed Materials, indicates that there is an international trend towards mandating compliance with the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies (the "IOSCO Code"). Due to this trend, the CSA is proposing not only that a CRA that registers as a DRO must fully comply with the existing IOSCO Code, but also with additional provisions (collectively, the "Revised Code") which the CSA believes reflect developing international standards.

If the CSA intends this regulatory regime to apply to any CRA that desires its credit ratings to be eligible for use for regulatory purposes in Canada, regardless of whether such CRA is domiciled in Canada or not, then we fear that compliance with the Revised Code could result in considerable problems.

It is precisely because international standards are constantly evolving to reflect the concerns of individual regulators that Fitch recommends that the CSA reconsider the scope of its regulatory requirements. Some CRAs, including Fitch, rate issuers and security issuances around the world. As a result, these CRAs must already comply with differing, and sometimes inconsistent, regulatory regimes. Notwithstanding this situation, CRAs have created company-wide codes of conduct, based on the IOSCO Code, to ensure that all rating agency employees around the globe follow the same best-practice principles. Given the global coverage of the CRAs codes of conduct, however, these codes are by necessity principles based documents whose requirements are often met through crafting specific supporting policies and procedures.

Furthermore, CRAs often have to implement additional practices to satisfy the mandates of regulators in individual jurisdictions. Few of these practices are incorporated in detail into the codes of conduct, however, because the codes would become long, unwieldy documents that contained some conflicting provisions. By drafting separate policies to address the particular concerns of individual regulatory bodies, a CRA is able to maintain one code that ensures the consistent application of best practice principles worldwide.

It is unlikely that the Revised Code, given its prescriptive nature, will be able to settle all current regulatory differences and anticipate future ones. Thus, if the CSA intends its regulatory requirement to apply to all ratings that may be used for regulatory purposes in Canada, irrespective of where they are issued, its approach is likely to lead to tensions between different regulations over time, and a code of conduct with appendices for differing country-specific provisions, exceptions and qualifications. Having multiple codes or country-specific codes undermines the very notion of having consistent best-practice principles that all CRA employees follow.

One example of why the Revised Code appears to be intended to have an extra-territorial scope is Section 4.21 of Appendix A. This Section states that a DRO may not share confidential information that it receives with an affiliate of such DRO that is not also a DRO. As a result, unless the respective DRO affiliates are also DROs themselves, analysts of a DRO based in Canada would be unable to share information and conduct cross-border rating committees. This restriction would severely impede the normal operations of international CRAs.

Of course, despite the language of Section 1 of the Request for Comment concerning the "Purpose of Notice", and the language of Section 4.21 of the Revised Code, the CSA may not have intended to propose that it regulate CRAs that are located outside of Canada. The CSA indicates in the Proposed Materials that in proposing the Revised Code it is seeking to ensure that a CRA that issues ratings out of Canada will be able to receive an equivalency determination from the European Union. This consideration of the CSA leads one to infer that the Proposed Materials may have only been intended to regulate any CRA that actually issues its credit ratings in Canada and wishes its ratings to be eligible for use for regulatory purposes in Canada. If this assumption is correct, then some of the provisions of the Revised Code may place a significant and unnecessary regulatory burden on smaller CRAs that form part of a larger global group.

For example, Section 2.21 of the Revised Code requires a DRO to have a board of directors with at least one-half, but not fewer than two, of the members of the board independent. Furthermore, Section 2.27 of the Revised Code indicates that a DRO "must not" outsource the functions of the DRO's compliance officer as required by securities legislation. A local office of a CRA often uses the compliance personnel of its parent entity to ensure that it complies with all applicable local regulations. The governance requirements of Sections 2.21 and 2.27, as drafted, would require a DRO to establish a governance infrastructure irrespective of whether such functions already exist within its global structures and regardless of whether its ratings volume and revenues could support these local positions. Such provisions could act as a deterrent to either a new CRA forming in Canada or a CRA domiciled outside of Canada establishing a rating's presence in Canada. As a result, Fitch recommends that, if the CSA intends its regulations to apply to local entities only, then the Revised Code should be amended to clarify that smaller CRAs that form part of larger global agencies are permitted to rely on central governance, compliance, control and risk management functions located outside of Canada.

Section 3.9 (c) – Disclosure by CRA of whether rated entity has disclosed information

Regardless of the intended scope of the Proposed Materials, Fitch agrees with the CSA's goal of providing more information about structured finance products to investors in these securities. Section 2.2.8 (c) of Fitch's Code of Conduct states that "Fitch shall encourage issuers and originators of structured finance products to disclose publicly all relevant information with respect to such products to enable investors to conduct their own analyses independently of that of rating agencies. [...] Fitch expects that such public disclosure will happen." Fitch does not believe, however, that a CRA should be required to monitor the disclosure by rated entities of the very information that such entities create. Instead, Fitch believes that if the CSA considers it necessary for this information to be in the public domain, then the CSA should require that issuers, arrangers and trustees disclose this information to investors themselves.

Thank you for giving us the opportunity to provide our comments. We hope that you find them useful, and that you will give them due consideration. Please do not hesitate to contact me in New York at 212-908-0790, francis.phillip@fitchratings.com should you wish to discuss this matter further.

Yours sincerely,

Francis Phillip

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