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Insight beyond the rating.

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To: Members of the Canadian Securities Administrators (the CSA)
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

Via email to:
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Re: Revised Version of Proposed National Instrument 25-101 Designated Rating Organizations (the Proposed Instrument), Related Policies and Consequential Amendments (collectively, the Proposed Materials)[1]

Dear CSA:

DBRS[2] very much appreciates the opportunity to provide the CSA with its comments on the Proposed Instrument towards ensuring a regulatory framework that is workable for credit rating agencies domiciled within and outside Canada. The Proposed Instrument would impose requirements on credit rating agencies or credit rating organizations (CROs) that wish to have their credit ratings eligible for use in Canadian securities legislation.

DBRS is Canada's leading CRO with headquarters in Toronto and offices in Chicago, London and New York. DBRS' credit ratings, research and financial analysis help investors make informed financial decisions. DBRS' role in Canada is of particular significance, with comprehensive ratings coverage for all provinces, virtually all corporate entities, major banks and insurance companies, and asset-backed securities. DBRS is the primary CRO for term securities, commercial paper, and preferred shares, and is the only CRO that focuses on emerging Canadian companies. As the only Canadian based CRO, DBRS believes it plays a unique and critical role in

[1] In jurisdictions other than Ontario, the Proposed Materials also include the proposed amendments to Multilateral Instrument 11-102 *The Passport System*, as well as Companion Policy 11-102CP to Multilateral Instrument 11-102 *The Passport System*, black-lined to show proposed changes to the current Companion Policy 11-102CP.

[2] DBRS operates its ratings business through DBRS Limited, DBRS, Inc. and DBRS Ratings Limited.

the Canadian capital market. It is on this basis that DBRS offers its comments on the CSA's Proposed Instrument.

General comments

The CSA initially published for comment the initial Proposed Instrument, related policies and consequential amendments on July 16, 2010 (2010 Proposal). DBRS submitted a comment letter[3]. The 2010 Proposal was based on the "comply or explain" approach to the IOSCO Code. The Proposed Instrument reflects significant changes from the 2010 Proposal. These changes include mandatory compliance to a code of conduct that incorporates a list of provisions set out in Appendix A to the Proposed Instrument[4] which are similar to the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies (the IOSCO Code) but have been supplemented and modified. A designated rating organization (DRO) would not be permitted to deviate from provisions in Appendix A unless the DRO obtains exemptive relief.

The CSA has determined that the European Securities and Markets Authority (ESMA[5]) will not provide an equivalency recommendation to the European Commission if a jurisdiction's framework relies on the IOSCO Code's "comply or explain" model. Under the EU CRA Regulation[6] an equivalent regulatory regime must be implemented in a third country and by June 7, 2011 for the use of such ratings in the European Union (EU). It is anticipated that the Canadian regulatory framework will be implemented no earlier than Fall 2011. As such, the CSA indicates there will be a period during which CRO ratings issued out of Canada cannot be used for regulatory purposes unless EU regulators determine an interim solution.[7] At the time of writing, an extension to the June 7, 2011 EU equivalence date had not been formally published nor had ESMA issued related guidelines.

As a global CRO whose ratings are used internationally, DBRS believes that regulation or in the case of Canada, requirements for a code of conduct should be internationally harmonized to the extent possible. The Proposed Instrument has importantly focused on measures to ensure the high quality, independence and transparency of ratings. The proposed governance requirements including a Board of Directors are a critical aspect of these measures and accommodate the unique Canadian market. The Proposed Instrument also recognizes the importance of EU equivalence regarding the use of Canadian ratings and developments in international standards.

However, in addition to supplementing and modifying the IOSCO Code, the Proposed Instrument also deviates substantively from EU CRA Regulation and SEC NRSRO rules[8]. In light of

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[3] DBRS Letter Responding to Canadian Securities Administrators Proposal for CROs published October 25, 2010

[4] Appendix A to the Proposed Instrument is included in Annex B.

[5] ESMA assumed the work of the former Committee of European Securities Regulators (CESR).

[6] EU Credit Rating Regulation 1060/2009 (EU CRA Regulation).

[7] Refer to DBRS Comments on ESMA's Guidelines on the Application of the Endorsement Regime for Rating Agencies published on April 1, 2011.

[8] U.S. Securities and Exchange Commission (SEC) rules for Nationally Recognized Statistical Rating Organizations (NRSRO).

ongoing developments and challenges in the CRA industry, DBRS suggests that the CSA proposal needs to be calibrated to global precedent notably in the areas of transparency and disclosure, analytical independence and objectivity of the ratings process.

The IOSCO Code is a common global set of measures that without modification is only one aspect of international regulatory frameworks. A globally consistent IOSCO Code serves all investors. DBRS maintains a global Business Code of Conduct based on the IOSCO Code that provides the foundation for its compliance in other jurisdictions.

DBRS believes the CSA should adopt the IOSCO Code as a base requirement, and then clearly specify the additional requirements that provide for international equivalency. Based on our analysis, there are areas where neither the IOSCO Code nor the EU CRA Regulation or SEC NRSRO requirements have been followed. As a global rating agency that must comply with various jurisdictions, DBRS suggests the CSA use established requirements as a guiding "rule of thumb". Given the cross-jurisdictional use of ratings, even minor deviations from global precedent create a destabilizing impact on the consistency of ratings and the capital markets. Moreover, a different Canadian regime would increase the cost and compliance burden of CROs without any additional net benefit. In particular, cost increases could disproportionately impact smaller Canadian issuers if CROs operating in Canada are required to adopt and comply with a code of conduct that differs in numerous and substantive ways from global precedents. On that basis, and particularly to facilitate EU equivalence, DBRS suggests the CSA should pick a regime – the IOSCO Code or the EU CRA Regulation for each point of concern, and use that language on a verbatim basis.

As a final point, notwithstanding the importance of international coordination efforts, it is more critical that the CSA produce a regulatory framework that is workable in Canada over the long-term than targeting an implementation deadline.

Detailed comments

DBRS has focused its comments on Annex B, Parts 1-7 and Appendix A of the Proposed Instrument.

Annex B

Part 1 – Definitions and Interpretation

The definition for rated entities includes "… a person or company that made a submission to a designated rating organization for the designated rating organization's initial review or for a preliminary rating but did not request a final rating." Referencing entities that receive an initial review or a preliminary rating is too broad and inconsistent with international requirements. DBRS suggests that the definition be modified to only mean entities for which the DRO provides a final rating.

The Proposed Instrument defines "ratings employee" to mean "any DRO employee who participates in determining, approving or monitoring a credit rating issued by the designated rating organization." The term ratings employee could be construed as including non-analytical staff. DBRS suggests the use of the term "analyst" for consistency with the IOSCO Code. This is a particularly important distinction with regards to the Independence and Conflicts of Interest measures outlined in Section 3.

Part 2 – Designation of Rating Organizations and Part 6 – Filing Requirements

Under Part 2, it is proposed that a CRO that is an NRSRO may file its most recent Form NRSRO to satisfy the application for designation in lieu of the proposed DRO Application and Annual Filing (Form 25-101F1). Under Part 6, a CRO that is a NRSRO may satisfy the annual and material change filings requirement by filing its annual certification of Form NRSRO and subsequent amendments within 10 business days of filing with the SEC, in lieu of filing Form 25-101F1.

As an NRSRO, DBRS appreciates the ability to leverage the NRSRO filing information. However, given the differences between the NRSRO requirements and those set forth in the Proposed Instrument, it is unclear how the CSA would be able to evaluate compliance with Canadian regulation based on Form NRSRO. As such, DBRS suggests that all CROs be required to file Form 25-101F1 for their DRO application and for ongoing filings notably given the differences between the CSA proposal and the SEC NRSRO requirements and information.

Part 3 – Code of Conduct

Under 8, Filing and Publication, each time an amendment is made to its code of conduct, the DRO must file an amended code of conduct and prominently post it on its website within five business days of the amendment coming into effect. To harmonize with international filing standards, DBRS suggests that the CSA change the requirement from five to ten business days.

Part 4 – Compliance Officer

Under 10, the DRO's Compliance officer is required to report to the DRO's board of directors as soon as reasonably possible if he/she becomes aware of any circumstances indicating that the DRO may be in non-compliance with its code of conduct or securities legislation and on, among other areas, "where the non-compliance would reasonably be expected to create a significant risk of harm to the capital markets." DBRS suggests that such reporting is overly broad and outside the role of a DRO. DBRS is not aware of any reasonable and objective standard related to the determination of whether a particular situation presents a risk of significant harm to the capital markets. DBRS would suggest that this accountability be removed.

Appendix A

Certain proposed CSA provisions under quality and integrity of the rating process, independence and conflicts of interest, transparency and timeliness of ratings disclosure and treatment of confidential information differ from the IOSCO Code and the EU CRA Regulation. However, any variation from global precedent makes it difficult to operate as a global CRO whose ratings are used in various jurisdictions.

To assist the CSA, DBRS has provided specific language at the end of its' comment letter that reflects either IOSCO Code or EU CRA Regulation language in a verbatim fashion.

The following comments highlight areas of particular concern to DBRS:

2. Quality and Integrity of the Rating Process

A. Quality of the rating process

Proposed provision 2.2 states “A designated rating organization must use rating methodologies that are rigorous, systematic, continuous and subject to validation based on historical experience, including back-testing.” The requirement for back-testing in all cases would make it difficult or impossible to rate new products, develop new methodologies or modify methodologies to address newly identified risks. In comparison, IOSCO Code provision 1.2 recognizes the importance of changed and new methodologies by requiring that “A CRA should use rating methodologies that are rigorous, systematic, and, where possible, result in ratings that can be subjected to some form of objective validation based on historical experience.” As such, DBRS suggests the use of IOSCO Code provision 1.2.

Proposed provision 2.6 generally follows the IOSCO Code but does not include the requirement for transparency regarding innovative financial products which is an important disclosure element for investors. DBRS suggests that it add the following language from IOSCO Code provision 1.7 “If the rating involves a type of financial product presenting limited historical data (such as an innovative financial vehicle), the CRA should make clear, in a prominent place, the limitations of the rating.”

B. Monitoring and Updating

Proposed provision 2.10 requires a DRO to establish a committee responsible for reviewing, on at least an annual basis, methodologies, models and key ratings assumptions. The review process must be conducted independently of the business lines that are responsible for credit rating activities and must also report to the DRO’s board of directors (Board).

DBRS agrees that the reporting to the Board provides an important measure of independence. However, as per IOSCO Code provision 1.7-2, DBRS believes that some involvement of the analytical area in the review of ratings methodologies helps to ensure high ratings quality. The public interest is not served if this review function does not have a deep understanding of the analytical factors which involvement of those responsible for credit rating activities could provide. DBRS has implemented a variety of measures to ensure ratings integrity and to prevent conflicts of interest including requirements at rating committee for voters independent of the business lines and separate methodology and criteria committees.

3. Independence and Conflicts of Interest

B. Policies and Procedures

Proposed provision 3.9(c) states “If a designated rating organization provides a credit rating of a securitized product, the designated rating organization must encourage the rated entity to publicly disclose all information regarding the securitized product that would reasonably be expected to be material to an investor or other credit rating organization in conducting their own independent analyses. A designated rating organization must disclose in its ratings reports in respect of a securitized product whether the rated entity has informed it that it is publicly disclosing all relevant information about the product being rated or if the information remains non-public.”

This proposed provision is similar to IOSCO Code provision 2.9(c). However, as outlined in its Business Code of Conduct, DBRS supports a structured finance issuer disclosure regime but does not disclose in its ratings announcements the extent to which the issuer complies with its disclosure obligations as it believes that is the obligation of the issuer to provide this information. As drafted, unless a DRO obtains exemptive relief from a provision of the code of conduct, it would not be permitted to deviate from it. DBRS suggests that it would be odd to request relief

from a provision in respect of which the obligation to comply rests with an issuer. DBRS therefore, suggests that this provision be struck from the Proposed Instrument to obviate the need to request an exemption.

C. Employee Independence

As discussed under Annex B, Part 1 – Definitions and Interpretation section, DBRS suggests that the term "ratings employee" be revised to "analyst" in line with the IOSCO Code to ensure that the independence and conflicts of interest measures including ratings determination and personal trading are appropriately focused on analytical staff.

Proposed provision 3.14 outlines restrictions on a ratings employee's participation or influence in the determination of a rating under certain conditions. This includes where "(a) the employee owns directly or indirectly securities or derivatives of the rated entity, other than holdings through an investment fund where exposure to the rated entity does not exceed 10% of the investment fund's portfolio; and (b) the employee owns directly or indirectly securities or derivatives of a related entity to a rated entity, the ownership of which may cause or may be perceived as causing a conflict of interest."

In addition, proposed provision 3.15 imposes personal trading restrictions on ratings employees and their associates in "in any transaction in any security or derivative based on a security issued, guaranteed, or otherwise supported by any entity within such ratings employee's area of primary analytical responsibility, other than holdings through an investment fund where exposure to the rated entity does not exceed 10% of the investment fund's portfolio."

The IOSCO Code does not specify a 10% ownership limit on investment funds nor on indirect ownership of securities. In addition, there are no EU CRA Regulation or SEC NRSRO stipulations regarding the investment of funds nor a prohibition on indirect ownership of securities.

DBRS suggests that a 10 % ownership criterion is an unnecessary addition in both provisions. The IOSCO Code and the EU CRA Regulation prohibit an analyst and anyone involved in the ratings process and family members from buying or selling securities or derivatives within that person's area of primary analytical responsibility other than diversified collective investment schemes. Examples of such schemes include ETFs and mutual funds. It would be very difficult for an analyst to monitor or influence these diversified collective schemes.

4. Responsibilities to the Investing Public and Issuers

A. Transparency and Timeliness of Ratings Disclosure

Proposed provisions 4.4 and 4.5 regarding the disclosure of detailed ratings information is similar to the EU CRA Regulation, though some of the language is different and certain additional disclosures regarding structured finance have not been included. Given the robustness of the EU ratings disclosures and the importance of this information to international investors[9], DBRS suggests that the CSA could accomplish the objectives supported by provisions 4.4 and 4.5 by adopting the related EU CRA ratings disclosure requirements.

[9] At the time of writing, the new SEC NRSRO ratings disclosures requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act had not yet been proposed for comment. They are anticipated to be proposed during the May –July 2011 timeframe.

In addition, the CSA mandates these disclosures in a DRO's ratings report whereas the EU CRA Regulation permits discretion on the location of such disclosure. For EU ratings, DBRS has disclosed this information in its EU ratings press releases which provides a high level of freely available public transparency. DBRS notes this to be a practice consistent with other CROs. DBRS suggests that the CSA adopt the EU approach, and permit flexibility as to the location of such disclosure.

Proposed provision 4.6 requires the DRO to disclose "on an ongoing basis information about all securitized products submitted to it for its initial review or for a preliminary rating, including whether the issuer requested the designated rating organization to provide a final rating." The IOSCO Code does not include a requirement for the publication of preliminary ratings. While the EU CRA Regulation requires disclosure of preliminary ratings, it does not require disclosure regarding the final rating. It is not clear why the CSA requires this. DBRS suggests that the CSA use the same requirement as the EU CRA Regulation.

Proposed provision 4.12 requires semi-annual disclosure of historical default rates of a DRO's rating categories and whether these default rates have changed over time. The IOSCO Code and SEC NRSRO rules require annual ratings transition and default performance disclosures. ESMA has clarified that the EU central data repository project (CEREP) meets the EU requirement for semi-annual default and transition data. CEREP requires EU registered CROs to submit global data twice annually to allow for ratings comparisons across corporate, public finance and structured finance ratings categories. That is, there is no separate EU requirement to disclose/publish semi-annual ratings transition and default studies. DBRS suggests that the CSA provision be modified to an annual requirement.

Proposed provision 4.14 requires a DRO to fully and publicly disclose any material modification to its methodologies, models, key ratings assumptions and significant systems, resources or procedures "prior to their going into effect." The EU CRA Regulation does not require advance disclosure of material methodology modifications, and the IOSCO Code only requires it where feasible and appropriate. Such advance notice would increase market uncertainty regarding possible affected ratings which could be unwarranted. DBRS believes that ratings should provide an assessment which includes all relevant information at that time. This principle requires that from time to time methodologies be changed on an expedited basis. As such, DBRS believes that it is inappropriate to mandate advance disclosure of material methodology modifications and suggests the CSA adopt the IOSCO Code language.

B. Treatment of Confidential Information

Proposed provision 4.21 states that "A designated rating organization and its DRO employees must not share confidential information entrusted to the designated rating organization with employees of any affiliate that is not a designated rating organization. A designated rating organization and its DRO employees must not share confidential information within the designated rating organization, except as necessary in connection with the designated rating organization's credit rating functions."

This proposed confidential information approach does not recognize the global nature of CROs. It deviates from the IOSCO Code which permits sharing of information between affiliated entities that are not DROs, but that are not CRAs. As drafted, the Proposed Instrument would require designation of all CRO affiliated entities even where an affiliated CRO's ratings would not be used in Canada. DBRS suggests that the provision be revised to the IOSCO Code language.

DBRS appreciates the opportunity to provide its comments, and has proposed suggested language in the attached appendix.

We would be pleased to further discuss any of the matters raised herein and/or provide additional information. Please do not hesitate to contact us.

Very truly yours,

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Appendix to DBRS' Comment Letter

DBRS suggested language for Appendix A of the Proposed Instrument. Numerical references used herein reflect numbering used in the Proposed Instrument.

2. Quality and Integrity of the Rating Process

A. Quality of the Rating Process

2.1 A DRO should adopt, implement and enforce written procedures to ensure that the opinions it disseminates are based on a thorough analysis of all information known to the DRO that is relevant to its analysis according to its published rating methodologies. *(As per IOSCO Code provision 1.1)*

2.2 A DRO should use rating methodologies that are rigorous, systematic, and, where possible, result in ratings that can be subjected to some form of objective validation based on historical experience. *(As per IOSCO Code provision 1.2)*

2.3 In assessing an issuer's creditworthiness, analysts involved in the preparation or review of any rating action must use methodologies established by the DRO. Analysts should apply a given methodology in a consistent manner, as determined by the DRO. *(As per IOSCO Code provision 1.3)*

2.4 Credit ratings should be assigned by the DRO and not by any individual analyst employed by the DRO; ratings should reflect all information known, and believed to be relevant, to the DRO, consistent with its published methodology; and the DRO should use people who, individually or collectively (particularly where rating committees are used) have appropriate knowledge and experience in developing a rating opinion for the type of credit being applied. *(As per IOSCO Code provision 1.4)*

2.5 A DRO and its analysts must take steps to avoid issuing a credit rating, action or report that contain misrepresentations or are otherwise misleading as to the general creditworthiness of an issuer or obligation. *(As per IOSCO Code provision 1.6)*

2.6 A DRO should ensure that it has and devotes sufficient resources to carry out high-quality credit assessments of all obligations and issuers it rates. When deciding whether to rate or continue rating an obligation or issuer, it should assess whether it is able to devote sufficient personnel with sufficient skill sets to make a proper rating assessment, and whether its personnel likely will have access to sufficient information needed in order make such an assessment. A DRO should adopt reasonable measures so that the information it uses in assigning a rating is of sufficient quality to support a credible rating. If the rating involves a type of financial product presenting limited historical data (such as an innovative financial vehicle), the DRO should make clear, in a prominent place, the limitations of the rating. *(As per IOSCO Code provision 1.7)*

2.7 A DRO should establish a review function made up of one or more senior managers with appropriate experience to review the feasibility of providing a credit rating for a type of structure that is significantly different from the structures the DRO currently rates. *(As per IOSCO Code provision 1.7-1)*

2.8 A DRO should assess whether existing methodologies and models for determining credit ratings of structured products are appropriate when the risk characteristics of the assets

underlying a structured product change materially. In cases where the complexity or structure of a new type of structured product or the lack of robust data about the assets underlying the structured product raise serious questions as to whether the DRO can determine a credible credit rating for the security, the DRO should refrain from issuing a credit rating. *(As per IOSCO Code provision 1.7-3.)*

2.9 A DRO must structure its ratings teams to promote continuity and avoid bias, in the rating process. *(As per IOSCO Code provision 1.8)*

B. Monitoring and Updating

2.10 A DRO should establish and implement a rigorous and formal review function responsible for periodically reviewing the methodologies and models and significant changes to the methodologies and models it uses. Where feasible and appropriate for the size and scope of its credit rating services, this function should be independent of the business lines that are principally responsible for rating various classes of issuers and obligations. *(As per IOSCO Code provision 1.7-2.)*

The responsible committee (formal review function) must report to the board of directors of the designated rating organization. *(As per the CSA Proposed Instrument)*

2.11 When methodologies, models or key rating assumptions used in credit rating activities are changed, a DRO shall:
(a) immediately, using the same means of communication as used for the distribution of the affected credit ratings, disclose the likely scope of credit ratings to be affected;
(b) review the affected credit ratings as soon as possible and no later than six months after the change, in the meantime placing those ratings under observation; and
(c) re-rate all credit ratings that have been based on those methodologies, models or key rating assumptions if, following the review, the overall combined effect of the changes affects those credit ratings.
(As per EU CRA Regulation Article 8.6)

2.12 A DRO should ensure that adequate personnel and financial resources are allocated to monitoring and updating its ratings. Except for ratings that clearly indicate they do not entail ongoing surveillance, once a rating is published the DRO must monitor on an ongoing basis and update the rating by:
(a) regularly reviewing the issuer's creditworthiness;
(b) initiating a review of the status of the rating upon becoming aware of any information that might reasonably be expected to result in a rating action (including termination of a rating), consistent with the applicable rating methodology; and,
(c) updating on a timely basis the rating, as appropriate, based on the results of such review.
Subsequent monitoring should incorporate all cumulative experience obtained. Changes in ratings criteria and assumptions should be applied where appropriate to both initial ratings and subsequent ratings.
(As per IOSCO Code provision 1.9)

2.13 If a DRO uses separate analytical teams for determining initial ratings and for subsequent monitoring of structured finance products, each team must have the requisite level of expertise and resources to perform their respective functions in a timely manner.
(As per IOSCO Code provision 1.9-1)

2.14 Where a DRO makes its ratings available to the public, the DRO should publicly announce if it discontinues rating an issuer or obligation. Where a DRO's ratings are provided only to its subscribers, the DRO should announce to its subscribers if it discontinues rating an issuer or obligation. In both cases, continuing publications by the DRO of the discontinued rating should indicate the date the rating was last updated and the fact that the rating is no longer being updated. *(As per IOSCO Code provision 1.10)*

C. Integrity of the Rating Process

2.15 A DRO and its employees should comply with all applicable laws and regulations governing its activities in each jurisdiction in which it operates. *(As per IOSCO Code provision 1.11)*

2.16 A DRO and its employees should deal fairly and honestly with issuers, investors, other market participants, and the public. *(As per IOSCO Code provision 1.12)*

2.17 A DRO's analysts must be held to high standards of integrity, and a DRO must not employ individuals with demonstrably compromised integrity. *(As per IOSCO Code provision 1.13)*

2.18 A DRO and its employees should not, either implicitly or explicitly, give any assurance or guarantee of a particular rating prior to a rating assessment. Notwithstanding the foregoing, a DRO is not precluded from developing prospective assessments used in structured product transactions and similar transactions. *(As per IOSCO Code provision 1.14)*

2.19 The following persons and companies must not make recommendations to a rated entity about the corporate or legal structure, assets, liabilities, or activities of the rated entity:
(a) a designated rating organization;
(b) an affiliate or associate of the designated rating organization;
(c) the ratings employees of any of the above.
(As per the CSA Proposed Instrument)

2.20 Upon becoming aware that another employee or entity under common control with the DRO is or has engaged in conduct that is illegal, unethical or contrary to the DRO's code of conduct, a DRO employee should report such information immediately to the individual in charge of compliance or an officer of the DRO, so proper action may be taken. A DRO's employees are not necessarily expected to be experts in the law. Nonetheless, its employees are expected to report the activities that a reasonable person would question. Any DRO officer who receives such a report from a DRO employee is obligated to take appropriate action, as determined by the laws and regulations of the jurisdiction and the rules and guidelines set forth by the DRO. DRO management should prohibit retaliation by other DRO staff or by the DRO itself against any employees who, in good faith, make such reports.
(As per IOSCO Code provision 1.16)

D. Governance Requirements

2.21 A designated rating organization must have a board of directors. At least one-half, but not fewer than two, of the members of the board of directors must be independent. A member of the board of directors of the designated rating organization will not be considered independent if the director, other than in his or her capacity as a member of the board of directors or a committee thereof,
(a) accepts any consulting, advisory or other compensatory fee from the designated rating organization;

(b) is a DRO employee of the designated rating organization or any of its affiliates;
(c) has a relationship with the designated rating organization that could, in the view of the designated rating
organization's board of directors, be reasonably expected to interfere with the exercise of a director's independent judgment.

2.22 A member of the board of directors of the designated rating organization must be disqualified from any deliberation involving a specific rating in which such member has a financial interest in the outcome of the rating.

2.23 The compensation of the independent members of the designated rating organization's board of directors must not be linked to the business performance of the designated rating organization, and must be arranged so as to preserve the independence of their judgment. The term of office of the independent directors must be for a pre-established fixed period, not to exceed five years and must not be renewable.

2.24 In addition to its other duties, the board of directors of a designated rating organization must specifically monitor the following:
(a) the development of the credit rating policy and of the methodologies used by the designated rating organization in its credit rating activities;
(b) the effectiveness of the internal quality control system of the designated rating organization in relation to credit rating activities;
(c) the effectiveness of measures and procedures instituted to ensure that any conflicts of interest are identified and either eliminated or managed and disclosed, as appropriate;
(d) the compliance and governance processes, including the performance of the committee identified in section 2.10.

(Provisions 2.21 to 2.24 are as per the CSA Proposed Instrument.)

2.25 A DRO shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems. Those internal control mechanisms shall be designed to secure compliance with decisions and procedures at all levels of the credit rating agency. A DRO shall implement and maintain decision-making procedures and organizational structures that clearly, and in a documented manner, specify reporting lines and allocate functions and responsibilities. *(As per EU CRA Regulation Annex 1, Section A, paragraph 4).*

2.26 A DRO shall monitor and evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this Regulation, and take appropriate measures to address any deficiencies. *(As per EU CRA Regulation Annex 1, Section A, paragraph 10).*

2.27 Outsourcing of important operational functions shall not be undertaken in such a way as to impair materially the quality of the credit rating agency's internal control and the ability of the competent authorities to supervise the credit rating agency's compliance with obligations under this Regulation. *(As per EU CRA Regulation, Article 9)*

3. INDEPENDENCE AND CONFLICTS OF INTEREST

A. General

3.1 A DRO should not forbear or refrain from taking a rating action based on the potential effect (economic, political, or otherwise) of the action on the DRO, a rated entity, an investor, or other market participant. *(As per IOSCO Code provision 2.1)*

3.2 A DRO and its analysts should use care and professional judgment to maintain both the substance and appearance of independence and objectivity. *(As per IOSCO Code provision 2.2)*

3.3 The determination of a credit rating must be influenced only by factors relevant to the credit assessment. *(As per IOSCO Code provision 2.3)*

3.4 The credit rating that a designated rating organization assigns to a rated entity or rated securities must not be affected by the existence of, or potential for, a business relationship between (i) the designated rating organization and its affiliates, and (ii) the rated entity its affiliates or related entities or any other party, or the non-existence of such a relationship.

3.5 A designated rating organization must keep separate, operationally and legally, its credit rating business and its rating employees from any ancillary businesses (including the provision of consultancy or advisory services) of the designated rating organization and must ensure that the provision of such services does not present conflicts of interest with its credit rating activities. A designated rating organization must also define and publicly disclose what it considers, and does not consider, to be an ancillary business. A designated rating organization must disclose in each ratings report any ancillary services provided to a rated entity, its affiliates or related entities.

3.6 A designated rating organization must not rate a person or company that is an affiliate or associate of the DRO or a ratings employee. A designated rating organization must not rate an entity if an analyst is an officer or director of the rated entity, its affiliates or related entities.

(Provisions 3.4 – 3.6 are as per CSA Proposed Instrument)

B. Procedures and Policies

3.7 A designated rating organization shall identify and either eliminate or manage and disclose, clearly and prominently, any actual or potential conflicts of interest that may influence the opinions and analyses of ratings employees.

3.8 A designated rating organization must disclose the actual or potential conflicts of interest it identifies pursuant to section 3.7 in a complete, timely, clear, concise, specific and prominent manner.

3.9 A designated rating organization must disclose the general nature of its compensation arrangements with rated entities.
(a) If a designated rating organization receives from a rated entity, its affiliates or related entities compensation unrelated to its ratings service, such as compensation for ancillary services (as referred to in section 3.5), a designated rating organization must disclose the percentage such non-rating fees represent out of the total amount of fees received by the designated rating organization from such rated entity, its affiliates and related entities.
(b) If a designated rating organization receives directly or indirectly 10 percent or more of its annual revenue from a particular rated entity or subscriber, whether or not received from any

affiliate or related entity of the rated entity or subscriber, disclose that and identify the particular rated entity or subscriber.

3.10 A designated rating organization and its DRO employees and their associates must not engage in any securities or derivatives trading that presents conflicts of interest with the designated rating organization's rating activities.

3.11 If a designated rating organization is subject to oversight functions performed by a rated entity, its affiliates or related entities, the designated rating organization must use different DRO employees to conduct rating actions in respect of that entity than those involved in the oversight issues.

(Except for Provision 3.9(c) which has been removed, provisions 3.7- 3.11 are the same as the CSA Proposed Instrument).

C. Employee Independence

3.12 Reporting lines for DRO employees and their compensation arrangements should be structured to eliminate or effectively manage actual and potential conflicts of interest.
(a) A DRO's code of conduct should also state that a DRO analyst will not be compensated or evaluated on the basis of the amount of revenue that the DRO derives from issuers that the analyst rates or with which the analyst regularly interacts.
(b) A DRO should conduct formal and periodic reviews of compensation policies and practices for DRO analysts and other employees who participate in or might otherwise have an effect on the rating process to ensure that these policies and practices do not compromise the objectivity of the DRO's rating process.
(As per IOSCO Code provision 2.11)

3.13 A designated rating organization's analysts, and any person within the designated rating organization who has responsibility for developing or approving procedures or methodologies used for determining credit ratings, must not initiate, or participate in, discussions or negotiations regarding fees or payments with any rated entity or its affiliates or related entities.
(As per the CSA Proposed Instrument)

3.14 No person[10] shall participate in or otherwise influence the determination of a credit rating of any particular rated entity if that person:
(a) owns financial instruments of the rated entity, other than holdings in diversified collective investment schemes;
(b) owns financial instruments of any entity related to a rated entity, the ownership of which may cause or may be generally perceived as causing a conflict of interest, other than holdings in diversified collective investment schemes;
(c) has had a recent employment, business or other relationship with the rated entity that may cause or may be generally perceived as causing a conflict of interest.
(As per EU Regulation Annex 1, Section C, paragraph 2 (a to c))

[10] As per EU CRA Regulation: Person defined as: rating analysts, employees of the credit rating agency as well as any other natural person whose services are placed at the disposal or under the control of the credit rating agency and who is directly involved in credit rating activities, and persons closely associated with them.

3.15 A DRO's analysts and anyone involved in the rating process (or their spouse, partner or minor children) should not buy or sell or engage in any transaction in any security or derivative based on a security issued, guaranteed, or otherwise supported by any entity within such analyst's area of primary analytical responsibility, other than holdings in diversified collective investment schemes. *(As per IOSCO Code provision 2.14)*

3.16 A designated rating organization's analysts and their associates, affiliates and related entities must not accept gifts, including entertainment, from anyone with whom the designated rating organization does business 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.
(As per the CSA Proposed Instrument)

3.17 If a DRO employee of a designated rating organization becomes involved in any personal relationship that creates any actual or potential conflict of interest, such DRO employee must disclose such relationship to the designated rating organization's compliance officer. *(As per the CSA Proposed Instrument)*

3.18 A DRO should establish policies and procedures for reviewing the past work of analysts that leave the employ of the DRO and join an issuer the DRO analyst has been involved in rating, or a financial firm with which the DRO analyst has had significant dealings as part of his or her duties at the DRO. *(As per IOSCO Code provision 2.17)*

4. RESPONSIBILITIES TO THE INVESTING PUBLIC AND ISSUERS

A. Transparency and Timeliness of Ratings Disclosure

4.1 A DRO should distribute in a timely manner its ratings decisions regarding the entities and securities it rates. *(As per IOSCO Code provision 3.1)*

4.2 A DRO should publicly disclose its policies for distributing ratings, ratings reports and updates. *(As per IOSCO Code provision 3.2)*

4.3 Except for "private ratings" provided on a non-public basis, a DRO should disclose to the public, on a non-selective basis and free of charge, any rating regarding publicly issued securities, or public issuers themselves, as well as any subsequent decisions to discontinue such a rating, if the rating action is based in whole or in part on material non-public information.
(As per IOSCO Code provision 3.4)

4.4 A DRO shall ensure that at least:
(a) all substantially material sources, including the rated entity or, where appropriate, a related third party, which were used to prepare the credit rating are indicated together with an indication as to whether the credit rating has been disclosed to that rated entity or its related third party and amended following that disclosure before being issued;
(b) the principal methodology or version of methodology that was used in determining the rating is clearly indicated, with a reference to its comprehensive description; where the credit rating is based on more than one methodology, or where reference only to the principal methodology might cause investors to overlook other important aspects of the credit rating, including any significant adjustments and deviations, the credit rating agency shall explain this fact in the credit rating and indicate how the different methodologies or these other aspects are taken into account in the credit rating;

(c) the meaning of each rating category, the definition of default or recovery and any appropriate risk warning, including a sensitivity analysis of the relevant key rating assumptions, such as mathematical or correlation assumptions, accompanied by worst-case scenario credit ratings as well as best-case scenario credit ratings are explained;
(d) the date at which the credit rating was first released for distribution and when it was last updated is indicated clearly and prominently; and
(e) information is given as to whether the credit rating concerns a newly issued financial instrument and whether the credit rating agency is rating the financial instrument for the first time.
(As per EU CRA Regulation Annex 1, Section D, paragraph 2 a to e).

(f) A DRO shall state clearly and prominently when disclosing credit ratings any attributes and limitations of the credit rating. In particular, a DRO shall prominently state when disclosing any credit rating whether it considers satisfactory the quality of information available on the rated entity and to what extent it has verified information provided to it by the rated entity or its related third party. If a credit rating involves a type of entity or financial instrument for which historical data is limited, the DRO shall make clear, in a prominent place, such limitations of the credit rating.

In a case where the lack of reliable data or the complexity of the structure of a new type of financial instrument or the quality of information available is not satisfactory or raises serious questions as to whether a DRO can provide a credible credit rating, the DRO shall refrain from issuing a credit rating.

(DBRS has added (f) as per EU CRA Regulation Annex 1, Section D, 4)

4.5 Additional obligations in relation to credit ratings of structured finance instruments)

(a) Where a DRO rates a structured finance product, it shall provide in the credit rating, all information about loss and cash-flow analysis it has performed or is relying upon and an indication of any expected change in the credit rating.
(b) A DRO shall state what level of assessment it has performed concerning the due diligence processes carried out at the level of underlying financial instruments or other assets of structured finance instruments. The DRO shall disclose whether it has undertaken any assessment of such due diligence processes or whether it has relied on a third-party assessment, indicating how the outcome of such assessment impacts the credit rating.
(c) Where a DRO issues credit ratings of structured finance instruments, it shall accompany the disclosure of methodologies, models and key rating assumptions with guidance which explains assumptions, parameters, limits and uncertainties surrounding the models and rating methodologies used in such credit ratings, including simulations of stress scenarios undertaken by the agencies when establishing the ratings. Such guidance shall be clear and easily comprehensible.

4.6 A DRO shall disclose, on an ongoing basis, information about all structured finance products submitted to it for its initial review or for a preliminary rating . Such disclosure shall be made whether or not issuers contract with the DRO for a final rating.

(Provisions 4.5 and 4.6 are as per EU CRA Regulation Annex 1, Section D, II - Additional obligations in relation to credit ratings of structured finance instruments)

4.7 A designated rating organization must publicly disclose the methodologies, models and key rating assumptions (such as mathematical or correlation assumptions) it uses in its credit rating activities and any material modifications to such methodologies, models and key rating assumptions. This disclosure must include sufficient information about the designated rating organization's procedures, methodologies and assumptions (including financial statement adjustments that deviate materially from those contained in the issuer's published financial statements and a description of the rating committee process, if applicable) so that outside parties can understand how a rating was arrived at by the designated rating organization.

4.8 A designated rating organization must differentiate ratings of structured finance products from traditional corporate bond ratings through a different rating symbology. A designated rating organization must also disclose how this differentiation functions. A designated rating organization must clearly define a given rating symbol and apply it in a consistent manner for all types of securities to which that symbol is assigned.

(Provisions 4.7 and 4.8 are as per the CSA Proposed Instrument)

4.9 A DRO should assist investors in developing a greater understanding of what a credit rating is, and the limits to which credit ratings can be put to use vis-à-vis a particular type of financial product that the DRO rates. A DRO should clearly indicate the attributes and limitations of each credit rating and the limits to which the DRO verifies information provided to it by the issuer or originator of a rated security. *(As per IOSCO Code provision 3.5(c))*

4.10 When issuing or revising a rating, the DRO should explain in its press releases and reports the key elements underlying the rating opinion. *(As per IOSCO Code provision 3.6)*

4.11 Where feasible and appropriate, prior to issuing or revising a rating, the DRO should inform the issuer of the critical information and principal considerations upon which a rating will be based and afford the issuer an opportunity to clarify any likely factual misperceptions or other matters that the DRO would wish to be made aware of in order to produce an accurate rating. A DRO will duly evaluate the response. Where in particular circumstances the DRO has not informed the issuer prior to issuing or revising a rating, the DRO should inform the issuer as soon as practical thereafter and, generally, should explain the reason for the delay.
(As per IOSCO Code provision 3.7)

4.12 On an annual basis, a designated rating organization must disclose data about the historical default rates of its rating categories and whether the default rates of these categories have changed over time. If the nature of the rating or other circumstances make a historical default rate inappropriate, statistically invalid, or otherwise likely to mislead the users of the rating, the designated rating organization must explain this. This information must include verifiable, quantifiable historical information about the performance of its rating opinions, organized and structured, and, where possible, standardized in such a way to assist investors in drawing performance comparisons between different designated rating organizations.
(As per the CSA Proposed Instrument except have changed "Every six months" to "On an annual basis")

4.13 For each rating, the designated rating organization must disclose whether the rated entity and its related entities participated in the rating process and whether the designated rating organization had access to the accounts and other relevant internal documents of the rated entity or its related entities. Each rating not initiated at the request of the rated entity must be identified

as such. A designated rating organization must also disclose its policies and procedures regarding unsolicited ratings. *(As per the CSA Proposed Instrument)*

4.14 Because users of credit ratings rely on an existing awareness of DRO methodologies, practices, procedures and processes, the DRO should fully and publicly disclose any material modification to its methodologies and significant practices, procedures, and processes. Where feasible and appropriate, disclosure of such material modifications should be made prior to their going into effect. A DRO should carefully consider the various uses of credit ratings before modifying its methodologies, practices, procedures and processes.
(As per IOSCO Code provision 3.10)

B. Treatment of Confidential Information

4.15 A designated rating organization and its DRO employees must take all reasonable measures to protect the confidential nature of information shared with them by rated entities under the terms of a confidentiality agreement or otherwise under a mutual understanding that the information is shared confidentially. Unless otherwise permitted by the confidentiality agreement or required by applicable laws, regulations or court orders, the designated rating organization and its DRO employees must not disclose confidential information in press releases, through research conferences, to future employers, or in conversations with investors, other rated entities, other persons or otherwise.

4.16 A designated rating organization and its DRO employees must use confidential information only for purposes related to its rating activities or otherwise in accordance with any confidentiality agreements with the rated entities.

4.17 A designated rating organization and its DRO employees must take all reasonable measures to protect all property and records relating to credit rating activities and belonging to or in possession of the designated rating organization from fraud, theft or misuse.

4.18 DRO employees of a designated rating organization must not engage in transactions in securities or derivatives when they possess confidential information concerning the issuer of such security or to which the derivative relates.

4.19 DRO employees of a designated rating organization must familiarize themselves with the internal securities trading policies maintained by the designated rating organization and periodically certify their compliance with such policies.

4.20 A designated rating organization and its DRO employees must not selectively disclose any non-public information about ratings or possible future rating actions of the designated rating organization, except to the issuer or its designated agents.

(Provisions 4.15 to 4.20 are as per the CSA Proposed Instrument)

4.21 DRO employees should not share confidential information entrusted to the DRO with employees of any affiliated entities that are not CRAs. DRO employees should not share confidential information within the DRO, except on an "as needed" basis. *(As per IOSCO Code provision 3.17)*
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4.22 DRO employees should not use or share confidential information for the purpose of trading securities, or for any other purpose except the conduct of the DRO's business. *(As per IOSCO Code provision 3.18)*