Chapter 5

Rules and Policies

5.1.1 Revised CSA Notice – NI 25-101 Designated Rating Organizations, Related Policies and Consequential Amendments

REVISED CSA NOTICE[1]

NATIONAL INSTRUMENT 25-101
DESIGNATED RATING ORGANIZATIONS

RELATED POLICIES AND CONSEQUENTIAL AMENDMENTS

1. Purpose of Notice

We, the members of the Canadian Securities Administrators (**CSA**), are adopting National Instrument 25-101 *Designated Rating Organizations* (the **Instrument**), related policies and related consequential amendments. The Instrument will impose requirements on those credit rating agencies or organizations (**CROs**) that wish to have their credit ratings eligible for use in securities legislation.

Specifically, we are adopting the materials included in the following annexes:

- the Instrument (Annex B),
- Consequential amendments to National Instrument 41-101 *General Prospectus Requirements* (Annex C),
- Consequential amendments to National Instrument 44-101 *Short Form Prospectus Distributions* (Annex D),
- Consequential amendments to National Instrument 51-102 *Continuous Disclosure Obligations* (Annex E), and
- National Policy 11-205 *Process for Designation of Credit Rating Organizations in Multiple Jurisdictions* **(NP 11-205**) (Annex F).

The Instrument, the consequential amendments and NP 11-205 are collectively referred to as the **Materials**.

Jurisdictions that are a party to Multilateral Instrument 11-102 *Passport System* (currently all jurisdictions except Ontario) are also publishing amendments to that instrument and companion policy that permit the use of the passport system for designation applications by CROs and exemptive relief applications by designated rating organizations. As Ontario is not a party to Multilateral Instrument 11-102, these amendments will not be published in Ontario.

The Materials are also available on the websites of CSA members, including the following:

- www.bcsc.bc.ca
- www.albertasecurities.com
- www.osc.gov.on.ca
- www.lautorite.qc.ca
- www.msc.gov.mb.ca
- www.nbsc-cvmnb.ca
- www.gov.ns.ca/nssc

[1] This is a revised version of the Materials originally published on January 27, 2012. The revisions are of a non-material nature.

In some jurisdictions, Ministerial approvals are required for the implementation of the Materials. Subject to obtaining all necessary approvals, the Materials will come into force on **April 20, 2012**.

2. Substance and Purpose of the Instrument

CROs play a significant role in the credit markets, and ratings issued by CROs continue to be referred to within securities legislation. However, CROs are not currently subject to formal securities regulatory oversight in Canada. As a result, we think it is appropriate to develop a securities regulatory regime for CROs that is consistent with international standards and developments. The Instrument, together with the related legislative amendments (described below), are intended to implement an appropriate Canadian regulatory regime for CROs.

We initially published for comment the Instrument, related policies and consequential amendments on July 16, 2010 (the **2010 Proposal**). The 2010 Proposal would have required that a designated rating organization establish, maintain and ensure compliance with a code of conduct that complies with each provision of the IOSCO *Code of Conduct Fundamentals for Credit Rating Agencies* (the **IOSCO Code**). However, in the spirit of the IOSCO Code, the 2010 Proposal would have also permitted a designated rating organization to deviate from a provision or provisions of the IOSCO Code in certain circumstances; this was referred to as a "comply or explain" model.

The European Union has implemented a regulatory framework for CROs in the form of *Regulation (EC) No 1060/2009 on credit rating agencies* (the **EU Regulation**). The EU Regulation contains some provisions that are also found in the IOSCO Code but that are now legally binding. A registration procedure has thus been introduced to enable the European Commission to monitor the activities of CROs. For recognizing the ratings issued by CROs outside of the European Union, the European Commission must make a decision confirming that the standards of regulation in a non-European country are "equivalent" to the EU Regulation.

In connection with the endorsement and certification provisions in articles 4 and 5 of the EU Regulation, staff of the European Security Markets Authority have been assessing whether the proposed Canadian regulatory framework applicable to CROs is "equivalent" to the EU Regulation. The failure to obtain an equivalency determination from the European Commission, and the consequent inability of a CRO that issues ratings in Canada to rely on the endorsement or certification models in the EU Regulation, would have a negative impact on such CROs. The issuers that such CROs rate might also be negatively impacted to the extent those ratings are used for regulatory purposes in the European Union.

To be consistent with developing international standards and to facilitate a positive equivalency determination from the European Commission, we republished for comment the Instrument, related policies and consequential amendments on March 18, 2011 (the **2011 Proposal**). The 2011 Proposal departed from the "comply or explain" model and required designated rating organizations to establish, maintain and comply with a code of conduct that incorporates a list of provisions set out in Appendix A of the Instrument. These provisions are based substantially on the IOSCO Code and have been supplemented and modified to meet developing international standards and to clarify the conduct we expect of designated rating organizations.

Unless a designated credit rating organization obtains exemptive relief, its code of conduct would not be permitted to deviate from the provisions enumerated in the Instrument.

3. Summary of Key Changes Made to the Instrument

We have made some revisions to the 2011 Proposal, including minor drafting changes made only for the purposes of clarification or in response to comments received. The paragraphs below describe the key changes made to the 2011 Proposal. As the changes are not considered material, we are not republishing the Instrument for a further comment period.

– Application of the Instrument to DRO Affiliates Outside of Canada

The 2011 Proposal clarified that CROs applying to be designated rating organizations (**DROs**) pursuant to the Instrument will have to ensure that the application for designation is made by the entity or entities that want to have their credit ratings used in Canada. A number of commenters have expressed concern that the 2011 Proposal could be read to constitute an attempt to apply the Canadian regime extra-territorially. Commenters also asked whether it is necessary or efficient for the Canadian regulatory regime to extend to non-Canadian CRO affiliates of DROs when a number of these affiliates are already, or likely will become, subject to regulatory oversight in other jurisdictions.

While we do not think that the 2011 Proposal would, at law, have resulted in extra-territorial application of the Instrument, we have nonetheless amended the Instrument so that it clearly applies on only a local level. This has primarily been achieved through the adoption of the definition of **DRO affiliate**. Section 1 of the Instrument now provides that a DRO affiliate is

> *an affiliate of a designated rating organization that issues credit ratings in a foreign jurisdiction and that has been designated as a DRO affiliate under the terms of the designated rating organization's designation.*

A DRO affiliate is not required to comply with all of the Instrument, although where appropriate, references to a DRO affiliate are included in the Instrument and the prescribed code of conduct provisions in Appendix A to the Instrument.

The suitability of an affiliate to be designated as a "DRO affiliate" under a designation order of a CRO will be determined on a case-by-case basis at the time of designation. A CRO applying for a designation should provide the name of each affiliate proposed as a DRO affiliate, the jurisdiction of incorporation, or equivalent, and the address of the principal place of business of such affiliate.

In determining whether a CRO in a foreign jurisdiction should be designated as a DRO affiliate, we will consider the legal and supervisory framework of the foreign jurisdiction, including whether the CRO is authorized or registered in that foreign jurisdiction and whether the CRO is subject to effective supervision and enforcement. We may also consider the ability of the competent regulatory authority of the foreign jurisdiction to assess and monitor the compliance of the CRO established in the foreign jurisdiction.

Future consequential amendments (see below) will provide that a designated rating is a rating that is provided by either a designated rating organization or its DRO affiliate.

4. Legislative Amendments

To make the Instrument as a rule and fully implement the regulatory regime it contemplates, certain amendments to local securities legislation are required. In addition to rule-making authority, changes to the local securities legislation may include:

- the power to designate a CRO under the legislation,
- the power to conduct compliance reviews of a CRO, and to require a CRO to provide the securities regulatory authority with access to relevant books, information and documents,
- the power to make an order that a CRO submit to a review of its practices and procedures, where such an order is considered to be in the public interest, and
- confirmation that the securities regulatory authorities may not direct or regulate the content of credit ratings or the methodologies used to determine credit ratings.

In Québec, Ontario, Alberta, British Columbia, Manitoba, New Brunswick and Nova Scotia the enabling legislation is either already in force or awaiting proclamation. In Saskatchewan, the enabling legislation will be proclaimed later in the Spring.

5. NP 11-205

NP 11-205 contained in Annex F describes the process for the filing and review of an application to become a designated rating organization in more than one jurisdiction of Canada.

6. Consequential Amendments

We are also adopting related consequential amendments to the following:

- National Instrument 41-101 *General Prospectus Requirements*,
- National Instrument 44-101 *Short Form Prospectus Distributions*, and
- National Instrument 51-102 *Continuous Disclosure Obligations*.

These related consequential amendments are contained in Annexes C, D & E and will require issuers to more fully describe their relationship with CROs.

7. Future Consequential Amendments

Following the implementation of the Instrument and the application for designation by interested CROs, we propose to make further consequential amendments to our rules to reflect the new regime.

Among other things, these amendments will replace existing references to "approved rating organization" and "approved credit rating organization" with "designated rating organization". Similar changes will also be made to the term "approved rating".

8. Civil Liability

Certain international jurisdictions have either adopted or are considering adopting changes to their securities legislation to impose greater civil liability upon CROs.

In the U.S., the *Dodd-Frank Wall Street Reform and Consumer Protection Act* repealed an exemption which exempted an NRSRO from having to provide a consent if its ratings were included in a registration statement.

Since the repeal of the U.S. exemption, we understand that NRSROs have refused to provide their consent to their ratings being included in a registration statement. In the case of Regulation AB, which requires ratings disclosure in a registration statement relating to an offering of asset-backed securities, the U.S. Securities and Exchange Commission (**SEC**) has issued a "no-action" letter exempting asset-backed issuers from the disclosure requirement. As a result, the repeal of the exemption in the U.S. has not resulted in CROs being exposed to additional liability.

Similarly, the Australian Securities and Investments Commission (**ASIC**) withdrew relief that allowed issuers of investment products to cite credit ratings without the consent of CROs. CROs have responded to ASIC's decision by refusing to consent, with the result that retail investors cannot access credit ratings in Australia.

In Canada, similar changes would involve revoking those provisions of securities legislation that provide a "carve-out" from the consent requirements for expertized portions of a prospectus or secondary market disclosure document. We are not at this time proposing such changes because we do not think that the benefits of subjecting designated rating organizations to "expert" liability in Canada would outweigh the potential costs. Unlike the U.S. and Australia, we require specified disclosure in prospectuses and annual information forms if a credit rating has been sought or if the issuer is aware that one has or will be issued.

On November 15, 2011, the European Commission published for comment a draft amendment to the EU Regulation in relation to the civil liability of CROs towards investors. This amendment would render a CRO liable in circumstances where it infringes, whether intentionally or with gross negligence, the EU Regulation, thereby causing damage to an investor having relied on a credit rating of such CRO, provided the infringement in question affected the credit rating.

We will continue to monitor developments in the U.S. and other jurisdictions and will assess methods of increasing CRO accountability.

9. Written Comments

The comment period for the 2011 Proposal expired on May 17, 2011 and we received submissions from four commenters. We have considered these comments and we thank all the commenters. A list of the four commenters and a summary of their comments, together with our responses, are contained in Annex A.

10. Local Notices

Certain jurisdictions are publishing other information required by local securities legislation. In Ontario this information is contained in Annex G.

11. Questions

If you have any questions, please refer them to any of the following:

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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 MARCH 18, 2011

This annex summarizes the written public comments we received on the 2011 Proposal. It also sets out our responses to those comments.

List of Parties Commenting on the 2011 Proposal

- Fitch Ratings
- Moody's Investors Service
- McGraw-Hill Companies (Canada) Corp. (S&P Canada)
- DBRS

General Comments

One commenter noted that regulatory harmony is very important, and that the proposal needed to be calibrated to global precedent notably in the areas of transparency and disclosure, analytical independence and objectivity of the ratings process. Because of the global nature of the credit rating business, the commenter recommended the CSA pick an existing regulatory regime and adopt its language verbatim.

Three other commenters were concerned about a perceived "extra-territorial" scope of the proposed rule. Each of the commenters noted that the associated increase in these entities' business and regulatory costs would be disproportionate to the regulatory objectives the CSA is seeking to achieve. One commenter questioned the necessity of having the Canadian regulatory framework extend to non-Canadian affiliates of DROs, especially when imposing such requirements on these entities, many of which already are or likely will become subject to regulatory oversight in other jurisdictions, will significantly increase the complexity of their operations.

> ***Response: We appreciate the global nature of the credit rating business and the difficulty of operating this business on an international level. While we do not agree that the Instrument has any inappropriate extra-territorial reach, we have nonetheless further revised the Instrument to harmonize it with existing international regulation. In particular, we have clarified the scope of the Instrument through the addition of the DRO affiliate concept.***

Governance

Three commenters believed that the governance provisions in section D of Appendix A of the Instrument should be revised to allow a DRO to satisfy the requirement to have a board of directors by constituting a board at either the level of the DRO or at the level of its direct or indirect parent entity.

> ***Response: We have revised the Instrument and clarified that either a designated rating organization or a DRO affiliate that is a parent of the DRO must have a board of directors (see sections 7 and 8 of the Instrument).***

One commenter queried how the director independence provisions would be interpreted, noting that many of the potential leading candidates for appointment to a DRO's board are likely to be familiar with credit ratings and to be current or past users of credit ratings, either in a personal capacity or as representatives of entities that use credit ratings. The commenter recommended that further guidance on the interpretation of the director independence provisions be provided.

> ***Response: We have revised section 2.21 of Appendix A of the Instrument (now section 8 of the Instrument) to clarify that, in forming its opinion, the board of directors is not required to conclude that a member is not independent solely on the basis that the member is, or was, a user of the designated rating organization's rating services.***

One commenter noted that section 3.5 of Appendix A of the Instrument specifies that a DRO must separate, operationally and legally, its credit rating business and its credit rating employees from any ancillary businesses (including the provision of consultancy or advisory services) of the DRO. The commenter suggested that as currently drafted, this section goes substantially beyond the requirements of the IOSCO Code and similar regulatory regimes in the U.S., Europe, Australia and Hong Kong.

> ***Response: Section 3.5 of Appendix A of the Instrument has been revised to require separation of a DRO's credit rating business from its ancillary services only where such services may present a potential conflict of***

interest. We have also added a requirement to ensure that a DRO providing ancillary services which do not necessarily present conflicts of interest with the DRO's rating business, has in place procedures and mechanisms designed to minimize the likelihood that conflicts will arise. We think this amendment is in line with not only the IOSCO Code, but also U.S. and European regimes.

Code of Conduct as Securities Law

One commenter noted that some of the provisions of the IOSCO Code (on which the code of conduct provisions in Appendix A of the Instrument are based) are ambiguous or impose obligations whose scope is unclear. Consequently, the commenter suggested that Appendix A should not be converted into securities law. The commenter believed that in some cases, there would not be sufficient time to get an exemption but that it would be in the public interest for a DRO to waive a provision of its code so that it can, for example, disclose on a timely basis significant, new information to the market about an issuer or obligation. As an alternative, the commenter suggested reclassifying the requirement for a DRO to have a code of conduct as an ongoing "term and condition" of designation, and specifying that a DRO's breach of its code of conduct does not, in itself, constitute a breach of securities law. Under this construction, a DRO's breach of its code of conduct would only be a factor that CSA members could consider in deciding whether or not to suspend, revoke or impose further terms and conditions upon the designation of a CRO as a DRO.

Response: We disagree. The purpose of adopting the Instrument is to bring credit rating agencies within our regulatory ambit and to ensure that their behaviours are bounded by legal obligations. As a result, we think it is appropriate that a breach of a DRO's code of conduct should constitute a breach of securities law.

Waiver of Code of Conduct

One commenter recommended that section 9 (now section 11) of the Instrument be revised to permit a DRO to waive one or more provisions of its code of conduct in certain limited circumstances, provided that it creates and maintains a written record documenting the reasons for the waiver.

Response: We disagree. We think it is important for a DRO to comply with all provisions set out in its code of conduct. 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 DRO'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.

Another commenter was concerned with the requirement in Part 3, section 7 (now Part 4, section 9) of the Instrument, which requires a DRO to "incorporate each of the provisions listed in Appendix A", as they believe that this is too prescriptive. They note that as currently drafted, this suggests that a DRO's code must contain identical provisions to those contained in Appendix A, and that this does not provide a DRO with the ability to implement and comply with the provisions in a way that suits its circumstances, business needs and requirements. The commenter did not object *per se* to the concept of mandatory compliance, but noted there must be flexibility for the DRO to determine how it describes how the various provisions are implemented. The commenter also noted that the CSA had indicated that it expects a DRO's code of conduct to be an accurate reflection of its practices and procedures. The commenter suggested that mandating that a DRO's code of conduct must incorporate each of the provisions listed in Appendix A could result in the DRO's code of conduct not accurately reflecting how the DRO complies with this requirement.

Response: We reiterate our expectation that a DRO's code of conduct will be an accurate reflection of its practices and procedures.

Amendments to Code of Conduct

One commenter noted that the proposed rule provides that each time an amendment is made to a code of conduct, a DRO must file an amended code and prominently display the amended code on its website within five business days of the amendment coming into effect. To harmonize internationally, the commenter recommended changing this from five to ten business days.

Response: Given the importance of the code of conduct to DRO regulation, we remain of the view that any amendments to it should be filed and publicly displayed within five business days. We do not think that this will create undue hardship with compliance in other jurisdictions.

Compliance Officer

Two commenters noted that section 2.27 (now section 2.28) of Appendix A of the Instrument specifies that a DRO must not outsource the DRO's compliance officer. The commenters believed that that the prohibition against outsourcing the compliance officer is unnecessary in the context of the organizations that have a comprehensive compliance framework and sufficient people to support the infrastructure within the group of companies.

Response: We have revised the Instrument and clarified that either a designated rating organization or a DRO affiliate that is a parent of the DRO must have a compliance officer. In light of this revision, we do not think that any further accommodation is necessary in this regard.

Another commenter suggested that the reporting requirements for the compliance officer are overly broad and outside of the role of a DRO. The commenter was 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. The commenter therefore suggested that this accountability be removed.

Response: We disagree. We remain of the view that as market participants, DROs should be cognizant of the greater systemic risks that surround them, and should consider risks resulting from the DROs' business as rating agencies. Thus, we have retained the broad mandate of the DRO compliance officer.

Definition of Ratings Employee

One commenter believed that the term "ratings employee" could be construed to include non-analytical staff. The commenter recommended replacing this term with the term "analyst".

Response: We think that the definition of "ratings employee", which includes only those DRO employees who participate in determining, approving or monitoring a credit rating issued by a DRO, remains appropriate.

Ratings Shopping and Disclosure of Preliminary Ratings

One commenter said that the provisions of section 4.6 (now section 4.7) of Appendix A of the Instrument will not effectively deter rating shopping. The commenter suggested that the disclosure requirement could be interpreted as requiring DROs to disclose information about potential transactions before the issuer discloses the transaction and could even be interpreted as requiring disclosure of potential transactions that are never implemented. As a result, the commenter recommended deleting this section, and instead enhancing the mandatory disclosure regime for structured finance products.

Response: We disagree, and note that identical provisions have also been incorporated into the EU Regulation.

Another commenter suggested that the definition of "rated entity" should not include entities that receive an initial review or a preliminary rating, as this would be too broad and inconsistent with international requirements. The commenter recommended that the definition of rated entity be modified to mean only entities for which a DRO provides a final rating.

Response: In our view, the provisions of the Instrument should apply equally to those entities that have received a final rating from a DRO as well as to those that are in the process of rating. Accordingly, we have not narrowed the definition of "rated entity" as suggested.

Disclosure re Securitization

Two commenters objected to the provision in section 3.9(c) of Appendix A of the Instrument, which requires a DRO to disclose in its ratings reports for securitized products whether the rated entity (*i.e.*, the issuer) has informed the DRO that it is publicly disclosing all relevant information about the product being rated or if the information remains non-public. Both commenters believed that a CRO should not be required to monitor such disclosure. Both commenters believed that the public disclosure of this information was the responsibility of issuers, arrangers and trustees.

Response: As a result of recently proposed CSA initiatives regarding securitized products, we have deleted the requirement in section 3.9(c).

Use of Form NRSRO

One commenter noted that in the 2011 Proposal, we provided a response that indicates that a DRO who files its Form NRSRO in place of Form 25-101F1 will be able to apply for confidentiality. Due to the commercially sensitive nature of this information, the commenter was concerned that an application for confidentiality could be denied. The commenter therefore urged the CSA to specify that if the information is treated by the SEC as confidential it will also automatically receive the same treatment in Canada.

Response: The granting of confidential treatment for information that has been filed with securities regulatory authorities involves the exercise of discretion by the appropriate decision maker. Nonetheless, we fully expect the decision maker will consider the nature and extent of any confidential treatment accorded to the document by the SEC in making their determination.

Another commenter appreciated the ability to file a completed Form NRSRO in lieu of a Form 25-101F1. However, given the differences between the regulatory regimes, the commenter recommended that all CROs be required to file Form 25-101F1 in connection with both their initial application and ongoing filings.

Response: We have not made the suggested change. We also note that we have added a requirement that any entity that will be a DRO affiliate upon the designation of a CRO that does not have an office in Canada must file a completed Form 25-101F2.

Disclosure re Ancillary Services

One commenter noted that section 3.9 of Appendix A of the Instrument requires that if a DRO receives from a rated entity, its affiliates or related entities compensation unrelated to its credit rating business (such as compensation for ancillary services) the DRO must disclose the percentage that such non-rating fees represent with respect to the total amount of fees received by the DRO from such rated entity, its affiliates and related entities. The commenter suggested that the administrative cost of gathering and computing such information would be significant, and that the information would not provide useful information to users of ratings.

Response: We disagree and think that users of credit ratings would be very interested in knowing the proportion of the DRO's income that was derived from its rating business as compared to the ancillary businesses. Consequently, we have not made a change to address this comment.

Monitoring and Updating

One commenter believed that section 2.10 (now section 2.11) of Appendix A of the Instrument, which deals with annual committee reviews of methodologies, models and key ratings assumptions, should be amended to permit the participation of analytical employees to ensure that the reviewers have a deep understanding of the appropriate analytical factors.

Response: As drafted, section 2.11 of Appendix A of the Instrument is consistent with the terms of the IOSCO Code. We do note, however, that the IOSCO Code also provides that independence need only be achieved "[w]here feasible and appropriate for the size and scope of its [a CRO's] credit rating services". Smaller DROs that find that independence in the review is not feasible and appropriate may consider applying for exemptive relief.

Another commenter recommended that the requirement in section 2.10 (now section 2.11) of Appendix A of the Instrument be amended to recognize that the required committee can be established by a DRO's affiliate outside of Canada.

Response: As discussed above, we have added a definition of DRO affiliate to the Instrument, which in effect addresses this comment, among other things.

Methodologies

One commenter suggested amending section 2.2 of Appendix A of the Instrument to require use of rating methodologies that are subject to validation based on historical testing only where such processes would be feasible. Otherwise, the commenter noted that 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. The inclusion of "where feasible" would be consistent with the IOSCO Code, the commenter suggested.

The same commenter also suggested amending section 2.6 of Appendix A of the Instrument to add the following language: "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".

Response: We disagree. We remain of the view that the use of historical testing is important when developing rigorous and systematic methodologies. We also note that this requirement for historical testing is also found in Article 8 of the EU Regulation.

Equity Ownership

Two commenters noted that sections 3.14 and 3.15 of Appendix A of the Instrument both reference "an investment fund where exposure to the rated entity does not exceed 10% of the investment fund's portfolio". The commenters were concerned that this ownership criterion is difficult to apply in practice and suggested we use internationally consistent concepts and language.

Response: We note the concern and have revised sections 3.14 and 3.15 accordingly.

Review of Past Employee's Work

One commenter suggested limiting the review of a past employee's work to situations where the employee was involved in the credit rating or had significant dealings with the financial firm in the past year.

Response: We have revised the text of section 3.18 of Appendix A of the Instrument so that it applies only to employees that were involved in the credit rating or had significant dealings with the rated entity within the past year.

Disclosure and Content of Ratings Report

Two commenters suggested that the provisions of sections 4.4 and 4.5 of Appendix A of the Instrument be revised to more closely track the language of the EU Regulation.

Response: We have revised sections 4.4 and 4.5 of Appendix A of the Instrument accordingly.

Disclosure of Historical Default Rates

Two commenters believed that the requirement to disclose historical default rates every six months in section 4.12 (now section 4.13) of Appendix A of the Instrument was burdensome. One commenter suggested this should be modified to be an annual requirement, while the other simply noted that other international jurisdictions such as Hong Kong and Singapore do not specify a timeline.

Response: We agree and have revised section 4.13 of Appendix A of the Instrument to require such disclosure on an annual basis only.

Disclosure re Methodologies

Two commenters noted that the requirement in section 4.14 (now section 4.15) of Appendix A of the Instrument, which requires a DRO to disclose material methodology modifications prior to them going into effect, may be inappropriate in some circumstances. The commenters recommended such disclosure should only be made where "feasible and appropriate".

Response: We agree and have revised section 4.15 of Appendix A of the Instrument accordingly.

Confidential Information

Two commenters were concerned that the prohibition in section 4.21 of Appendix A of the Instrument, which provides that a DRO must not share confidential information with employees of any affiliate that is not a DRO, was too narrow.

Response: We have revised section 4.21 of Appendix A of the Instrument to provide that a DRO may also share information with employees of a DRO affiliate. We think this will provide sufficient flexibility while still achieving the purpose of the provision.

Effective Date

One commenter recommended that the CSA allow six months of implementation time in which to allow credit rating organizations to apply for designation.

Response: We will endeavour to adopt and bring into force the proposed Instrument promptly so as to commence the designation process as quickly as feasible. We remain cognizant of the fact that the designation of a CRO may require legal, operational or other changes within the organization that may take some time to implement.

Passport

One commenter said that the certification required by Part 4, section 10 of proposed NP 11-205, that the filer and "any relevant party is not in default of securities legislation applicable to CROs in any jurisdiction in Canada or in any jurisdiction in which the filer operates" is overly broad and vague. In addition, the commenter suggested that instead of "default", a standard such as "material breach" be used.

Response: We disagree and note that similar language has been successfully used in national policies regarding the operation of passport. Consequently, we have not revised the text of the policy as suggested.

Amendments to Prospectus and CD Rules

One commenter suggested that section 2 of the amending instrument for National Instruments 41-101, 44-101 and 51-102 should be amended to specifically state that actual fees paid to CROs are not required to be disclosed.

Response: Upon review, we think that the wording of the prospectus and CD rules is sufficiently clear. As a result, we have not made further changes to these instruments.

ANNEX B

NATIONAL INSTRUMENT 25-101
DESIGNATED RATING ORGANIZATIONS

PART 1 – DEFINITIONS AND INTERPRETATION

Definitions

1. In this Instrument

"board of directors" means, in the case of a designated rating organization that does not have a board of directors, a group that acts in a capacity similar to a board of directors;

"code of conduct" means the code of conduct referred to in Part 4 of this Instrument and may include, for greater certainty, one or more codes;

"compliance officer" means the compliance officer referred to in section 12;

"designated rating organization" means a credit rating organization that has been designated under securities legislation;

"DRO affiliate" means an affiliate of a designated rating organization that issues credit ratings in a foreign jurisdiction and that has been designated as a DRO affiliate under the terms of the designated rating organizations' designation;

"DRO employee" means an individual, other than an employee or agent of a DRO affiliate, who is

(a) employed by a designated rating organization, or

(b) an agent who provides services directly to the designated rating organization and who is involved in determining, approving or monitoring a credit rating issued by the designated rating organization;

"Form NRSRO" means the annual certification on Form NRSRO, including exhibits, required to be filed by an NRSRO under the 1934 Act;

"NRSRO" means a nationally recognized statistical rating organization, as defined in the 1934 Act;

"rated entity" means a person or company that is issuing, or that has issued, securities that are the subject of a credit rating issued by a designated rating organization and 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;

"rated securities" means the securities issued by a rated entity that are the subject of a credit rating issued by a designated rating organization;

"ratings employee" means any DRO employee who participates in determining, approving or monitoring a credit rating issued by the designated rating organization;

"related entity" means in relation to an issuer of a securitized product, an originator, arranger, underwriter, servicer or sponsor of the securitized product or any person or company performing similar functions;

"securitized product" means any of the following:

(a) a security that entitles the security holder to receive payments that primarily depend on the cash flow from self-liquidating financial assets collateralizing the security, such as loans, leases, mortgages, and secured or unsecured receivables, including:

(i) an asset-backed security;

(ii) a collateralized mortgage obligation;

(iii) a collateralized debt obligation;

(iv) a collateralized bond obligation;

(v) a collateralized debt obligation of asset-backed securities;

(vi) a collateralized debt obligation of collateralized debt obligations;

(b) a security that entitles the security holder to receive payments that substantially reference or replicate the payments made on one or more securities of the type described in paragraph (a) but that do not primarily depend on the cash flow from self-liquidating financial assets that collateralize the security, including:

(i) a synthetic asset-backed security;

(ii) a synthetic collateralized mortgage obligation;

(iii) a synthetic collateralized debt obligation;

(iv) a synthetic collateralized bond obligation;

(v) a synthetic collateralized debt obligation of asset-backed securities;

(vi) a synthetic collateralized debt obligation of collateralized debt obligations.

Interpretation

2. 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.

Affiliate

3. (1) In this Instrument, a person or company is an affiliate of another person or company if either of the following apply:

(a) one of them is the subsidiary of the other;

(b) each of them is controlled by the same person or company.

(2) For the purposes of paragraph (1)(b), a person or company (first person) is considered to control another person or company (second person) if any of the following apply:

(a) the first person beneficially owns, or controls or directs, directly or indirectly, securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation;

(b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership;

(c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

Credit rating

4. In British Columbia, credit rating means an assessment that is publicly disclosed or distributed by subscription concerning the creditworthiness of an issuer,

(a) as an entity, or

(b) with respect to specific securities or a specific pool of securities or assets.

Market participant in Ontario

5. In Ontario, a DRO affiliate is deemed to be a market participant.

PART 2 – DESIGNATION OF RATING ORGANIZATIONS

Application for designation

6. (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 that is incorporated or organized under the laws of a foreign jurisdiction and does not have an office in Canada must file a completed Form 25-101F2.

(4) Any person or company that will be a DRO affiliate upon the designation of a credit rating agency that does not have an office in Canada must file a completed Form 25-101F2.

PART 3 – BOARD OF DIRECTORS

Board of directors

7. A designated rating organization must not issue a credit rating unless it, or a DRO affiliate that is a parent of the designated rating organization, has a board of directors.

Composition

8. (1) For the purposes of section 7, a board of directors of a designated rating organization, or the board of directors of the DRO affiliate that is a parent of the designated rating organization, as the case may be, must be composed of a minimum of three members.

(2) At least one-half, but not fewer than two, of the members of the board of directors must be independent of the organization and any DRO affiliate.

(3) For the purposes of subsection (2), a member of the board of directors is not considered independent if the director

(a) other than in his or her capacity as a member of the board of directors or a board committee, accepts any consulting, advisory or other compensatory fee from the designated rating organization or a DRO affiliate;

(b) is a DRO employee or an employee or agent of a DRO affiliate;

(c) has a relationship with the designated rating organization that could, in the opinion of the board of directors, be reasonably expected to interfere with the exercise of a director's independent judgment; or

(d) has served on the board of directors for more than five years in total.

(4) For the purposes of paragraph 3(c), in forming its opinion, the board of directors is not required to conclude that a member is not independent solely on the basis that the member is, or was, a user of the designated rating organization's rating services.

PART 4 – CODE OF CONDUCT

Code of conduct

9. (1) A designated rating organization must establish, maintain and comply with a code of conduct.

(2) A designated rating organization's code of conduct must incorporate each of the provisions set out in Appendix A.

Filing and publication

10. (1) A designated rating organization must file a copy of its code of conduct and post a copy of it prominently on its website promptly upon designation.

(2) Each time an amendment is made to a code of conduct by a designated rating organization, the amended code of conduct must be filed, and prominently posted on the organization's website, within five business days of the amendment coming into effect.

Waivers

11. A designated rating organization's code of conduct must specify that a designated rating organization must not waive provisions of its code of conduct.

PART 5 – COMPLIANCE OFFICER

Compliance officer

12. (1) A designated rating organization must not issue a credit rating unless it, or a DRO affiliate that is a parent of the designated rating organization, has a compliance officer that monitors and assesses compliance by the designated rating organization and its DRO employees with the organization's code of conduct and with securities legislation.

(2) The compliance officer must regularly report on his or her activities directly to the board of directors.

(3) The compliance officer must report to the board of directors as soon as reasonably possible if the compliance officer becomes aware of any circumstances indicating that the designated rating organization or its DRO employees may be in non-compliance with the organization's code of conduct or securities legislation and any of the following apply:

(a) the non-compliance would reasonably be expected to create a significant risk of harm to a rated entity or the rated entity's investors;

(b) the non-compliance would reasonably be expected to create a significant risk of harm to the capital markets;

(c) the non-compliance is part of a pattern of non-compliance.

(4) The compliance officer must not, while serving in such capacity, participate in any of the following:

(a) the development of credit ratings, methodologies or models;

(b) the establishment of compensation levels, other than for DRO employees reporting directly to the compliance officer.

(5) The compensation of the compliance officer and of any DRO employee that reports directly to the compliance officer must not be linked to the financial performance of the designated rating organization or its DRO affiliates and must be determined in a manner that preserves the independence of the compliance officer's judgment.

PART 6 – BOOKS AND RECORDS

Books and records

13. (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, whichever is later;

(b) in a safe location and a durable form; and

(c) in a manner that permits it to be provided promptly to the securities regulatory authority upon request.

PART 7 – FILING REQUIREMENTS

Filing requirements

14. (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) Upon any of the information in a Form 25-101F1 filed by a designated rating organization becoming materially inaccurate, the designated rating organization must promptly file an amendment to, or an amended and restated version of, its Form 25-101F1.

(3) Until six years after it has ceased to be a designated rating organization in any jurisdiction of Canada, a designated rating organization must file a completed amended Form 25-101F2 at least 30 days before

(a) the termination date of Form 25-101F2, or

(b) the effective date of any changes to Form 25-101F2.

(4) Until six years after it has ceased to be a DRO affiliate in any jurisdiction of Canada, a DRO affiliate must file a completed amended Form 25-101F2 at least 30 days before

(a) the termination date of Form 25-101F2, or

(b) the effective date of any changes to Form 25-101F2.

PART 8 – EXEMPTIONS AND EFFECTIVE DATE

Exemptions

15. (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.

Effective date

16. This Instrument comes into force on April 20, 2012.

APPENDIX A TO NATIONAL INSTRUMENT 25-101

DESIGNATED RATING ORGANIZATIONS – PROVISIONS REQUIRED TO BE INCLUDED IN A DESIGNATED RATING ORGANIZATION'S CODE OF CONDUCT

1. INTERPRETATION

1.1 A term used in this code of conduct has the same meaning as in National Instrument 25-101 *Designated Rating Organizations* if used in that Instrument.

2. QUALITY AND INTEGRITY OF THE RATING PROCESS

A. Quality of the rating process

I – General requirements

2.1 A designated rating organization must adopt, implement and enforce procedures in its code of conduct to ensure that the credit ratings it issues are based on a thorough analysis of all information known to the designated rating organization that is relevant to its analysis according to its rating methodologies.

2.2 A designated rating organization must include a provision in its code of conduct that it will use only rating methodologies that are rigorous, systematic, continuous and subject to validation based on experience, including back-testing.

II – Specific provisions

2.3 Each ratings employee involved in the preparation, review or issuance of a credit rating, action or report must use methodologies established by the designated rating organization. Each ratings employee must apply a given methodology in a consistent manner, as determined by the designated rating organization.

2.4 A credit rating must be assigned by the designated rating organization and not by an employee or agent of the designated rating organization.

2.5 A credit rating must reflect all information known, and believed to be relevant, to the designated rating organization, consistent with its published methodology. The designated rating organization will ensure that its ratings employees and agents have appropriate knowledge and experience for the duties assigned.

2.6 The designated rating organization, its ratings employees and its agents must take all reasonable steps to avoid issuing a credit rating, action or report that is false or misleading as to the general creditworthiness of a rated entity or rated securities.

2.7 The designated rating organization will ensure that it has and devotes sufficient resources to carry out high-quality credit assessments of all rated entities and rated securities. When deciding whether to rate or continue rating an entity or securities, the organization will assess whether it is able to devote sufficient personnel with sufficient skill sets to make a credible rating assessment, and whether its personnel are likely to have access to sufficient information needed in order make such an assessment. A designated rating organization will adopt all necessary measures so that the information it uses in assigning a rating is of sufficient quality to support a credible rating and is obtained from a source that a reasonable person would consider to be reliable.

2.8 The designated rating organization will appoint a senior manager, or establish a committee made up of one or more senior managers, with appropriate experience to review the feasibility of providing a credit rating for a structure that is significantly different from the structures the designated rating organization currently rates.

2.9 The designated rating organization will assess whether the methodologies and models used for determining credit ratings of a securitized product are appropriate when the risk characteristics of the assets underlying the securitized product change significantly. If the quality of the available information is not satisfactory or if the complexity of a new type of structure, instrument or security should reasonably raise concerns about whether the designated rating organization can provide a credible rating, the designated rating organization will not issue or maintain a credit rating.

2.10 The designated rating organization will ensure continuity and regularity, and avoid conflicts of interest, in the rating process.

B. Monitoring and updating

2.11 The designated rating organization will establish a committee to be responsible for implementing a rigorous and formal process for reviewing, on at least an annual basis, and making changes to the methodologies, models and key ratings

assumptions it uses. This review will include consideration of the appropriateness of the designated rating organization's methodologies, models and key ratings assumptions if they are used or intended to be applied to new types of structures, instruments or securities. This process will be conducted independently of the business lines that are responsible for credit rating activities. The committee will report to its board of directors or the board of directors of a DRO affiliate that is a parent of the designated rating organization.

2.12 If a methodology, model or key ratings assumption used in a credit rating activity is changed, the designated rating organization will do each of the following:

(a) promptly identify each credit rating likely to be affected if the credit rating were to be re-rated using the new methodology, model or key ratings assumption and, using the same means of communication the organization generally uses for the credit ratings, disclose the scope of credit ratings likely to be affected by the change in methodology, model or key ratings assumption;

(b) promptly place each credit rating identified under subsection (a) under surveillance;

(c) within six months of the change, review each credit rating identified under subsection (a) with respect to its accuracy;

(d) re-rate a credit rating if, following the review required in subsection (c), the change, alone or combined with all other changes, affects the accuracy of the credit rating.

2.13 The designated rating organization will ensure that adequate personnel and financial resources are allocated to monitoring and updating its credit ratings. Except for ratings that clearly indicate they do not entail ongoing monitoring, once a rating is published the designated rating organization will monitor the rated entity's creditworthiness on an ongoing basis and, at least annually, update the rating. In addition, the designated rating organization must initiate a review of the accuracy of a 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 must promptly update the rating, as appropriate, based on the results of such review.

Subsequent monitoring will incorporate all cumulative experience obtained.

2.14 If the designated rating organization uses separate analytical teams for determining initial ratings and for subsequent monitoring, the organization will ensure each team has the requisite level of expertise and resources to perform their respective functions competently and in a timely manner.

2.15 If the designated rating organization discloses a credit rating to the public and subsequently discontinues the rating, the designated rating organization will disclose that the rating has been discontinued using the same means of communication as was used for the disclosure of the rating. If the designated rating organization discloses a rating only to its subscribers, if it discontinues the rating, the designated rating organization will disclose to each subscriber of that rating that the rating has been discontinued. In both cases, a subsequent publication by the designated rating organization of the discontinued rating will indicate the date the rating was last updated and disclose that the rating is no longer being updated and the reasons for the decision to discontinue the rating.

C. Integrity of the rating process

2.16 The designated rating organization, its ratings employees and agents will comply with all applicable laws and regulations governing its activities.

2.17 The designated rating organization, its ratings employees and agents must deal fairly, honestly and in good faith with rated entities, investors, other market participants, and the public.

2.18 The designated rating organization will hold its ratings employees and agents to a high standard of integrity, and the designated rating organization will not employ an individual which a reasonable person would consider to be lacking in or have compromised integrity.

2.19 The designated rating organization and its ratings employees and agents will not, either implicitly or explicitly, give any assurance or guarantee of a particular rating prior to a rating assessment. The designated rating organization may develop prospective assessments if the assessment is to be used in a securitized product or similar transaction.

2.20 A person or company listed below must not make a recommendation 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 related entity of the designated rating organization;

(c) the ratings employees of any of the above.

2.21 The designated rating organization will instruct its employees and agents that, upon becoming aware that the organization, another employee or an affiliate, or an employee of an affiliate of the designated rating organization, is or has engaged in conduct that is illegal, unethical or contrary to the designated rating organization's code of conduct, the employee or agent must report that information immediately to the compliance officer. Upon receiving the information, the compliance officer will take appropriate action, as determined by the laws and regulations of the jurisdiction and the rules and guidelines set forth by the designated rating organization. The designated rating organization will not take or allow retaliation against the employee or agent by employees, agents, the designated rating organization itself or its affiliates.

D. Governance requirements

2.22 The designated rating organization will not issue a credit rating unless a majority of its board of directors, or the board of directors of a DRO affiliate that is a parent of the designated rating organization, including its independent directors, have, what a reasonable person would consider, sufficient expertise in financial services to fully understand and properly oversee the business activities of the designated rating organization. If the designated rating organization issues a credit rating for a securitized product, at least one independent member and one other member must have, what a reasonable person would consider to be, in-depth knowledge and experience at a senior level, regarding the securitized product.

2.23 The designated rating organization will not issue a credit rating if a member of its board of directors, or the board of directors of a DRO affiliate that is a parent of the designated rating organization, participated in any deliberation involving a specific rating in which the member has a financial interest in the outcome of the rating.

2.24 The designated rating organization will not compensate an independent member of its board of directors, or the board of directors of a DRO affiliate that is a parent of the designated rating organization, in a manner or in an amount that a reasonable person could conclude that the compensation is linked to the business performance of the designated rating organization or its affiliates. The organization will only compensate directors in a manner that preserves the independence of the director.

2.25 The board of directors of a designated rating organization or a DRO affiliate that is a parent of the designated rating organization must 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 any 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 2.11.

2.26 The designated rating organization will design reasonable administrative and accounting procedures, internal control mechanisms, procedures for risk assessment, and control and safeguard arrangements for information processing systems. The designated rating organization will implement and maintain decision-making procedures and organizational structures that clearly, and in a documented manner, specify reporting lines and allocate functions and responsibilities.

2.27 The designated rating organization will monitor and evaluate the adequacy and effectiveness of its administrative and accounting procedures, internal control mechanisms, procedures for risk assessment, and control and safeguard arrangements for information processing systems, established in accordance with securities legislation and the designated rating organization's code of conduct, and take any measures necessary to address any deficiencies.

2.28 The designated rating organization will not outsource activities if doing so impairs materially the effectiveness of the designated rating organization's internal controls or the ability of the securities regulatory authority to conduct compliance reviews of the designated rating organization's compliance with securities legislation or its code of conduct. The designated rating organization will not outsource the functions or duties of the designated rating organization's compliance officer.

3. INDEPENDENCE AND CONFLICTS OF INTEREST

A. General

3.1 The designated rating organization will not refrain from taking a rating action based in whole or in part on the potential effect (economic or otherwise) of the action on the designated rating organization, a rated entity, an investor, or other market participant.

3.2 The designated rating organization and its employees will use care and professional judgment to remain independent and maintain the appearance of independence and objectivity.

3.3 The determination of a credit rating will be influenced only by factors relevant to the credit assessment.

3.4 The designated rating organization will not allow its decision to assign a credit rating to a rated entity or rated securities to be affected by the existence of, or potential for, a business relationship between the designated rating organization or its affiliates and any other person or company including, for greater certainty, the rated entity, its affiliates or related entities.

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

3.6 The designated rating organization will not rate a person or company that is an affiliate or associate of the organization or a ratings employee. The designated rating organization must not assign a credit rating to a person or company if a ratings employee is an officer or director of the person or company, its affiliates or related entities.

B. Procedures and policies

3.7 The designated rating organization will identify and eliminate or manage and publicly disclose any actual or potential conflicts of interest that may influence the opinions and analyses of ratings employees.

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

3.9 The designated rating organization will disclose the general nature of its compensation arrangements with rated entities.

(1) If the designated rating organization or an affiliate receives from a rated entity, an affiliate or a related entity compensation unrelated to its ratings service, such as compensation for ancillary services (as referred to in section 3.5), the designated rating organization will disclose the percentage that non-rating fees represent out of the total amount of fees received by the designated rating organization or its affiliate, as the case may be, from the rated entity, the affiliate or the related entity.

(2) If the designated rating organization or its affiliates receives directly or indirectly 10 percent or more of its annual revenue from a particular rated entity or subscriber, including revenue received from an affiliate or related entity of the rated entity or subscriber, the organization will disclose that fact and identify the particular rated entity or subscriber.

3.10 A designated rating organization and its DRO employees and their associates must not trade a security, derivative or exchange contract if the organization's employee's or associate's interests in the trade conflict with their interests relating to a credit rating.

3.11 If a designated rating organization is subject to the oversight of a rated entity, or an affiliate or related entity of the rated entity, the designated rating organization will use different DRO employees to conduct the rating actions in respect of that entity than those involved in the oversight.

C. Employee independence

3.12 Reporting lines for a ratings employee or DRO employees and their compensation arrangements will be structured to eliminate or manage actual and potential conflicts of interest.

(1) The designated rating organization will not compensate or evaluate a ratings employee on the basis of the

amount of revenue that the designated rating organization or its affiliates derives from rated entities that the ratings employee rates or with which the ratings employee regularly interacts.

(2) The designated rating organization will conduct reviews of compensation policies and practices for its DRO employees within reasonable regular time periods to ensure that these policies and practices do not compromise the objectivity of the designated rating organization's rating process.

3.13 The designated rating organization will take reasonable steps to ensure that its ratings employees, and any agent who has responsibility for developing or approving procedures or methodologies used for determining credit ratings, do not initiate, or participate in, discussions or negotiations regarding fees or payments with any rated entity or its affiliates or related entities.

3.14 The designated rating organization will not permit a ratings employee to participate in or otherwise influence the determination of a credit rating if the ratings employee

(a) owns directly or indirectly securities, derivatives or exchange contracts of the rated entity, other than holdings through an investment fund;

(b) owns directly or indirectly securities, derivatives or exchange contracts of a rated entity or its related entities, the ownership of which causes or may reasonably be perceived as causing a conflict of interest;

(c) has had a recent employment, business or other relationship with the rated entity, its affiliates or related entities that causes or may reasonably be perceived as causing a conflict of interest; or

(d) has an associate who currently works for the rated entity, its affiliates or related entities.

3.15 The designated rating organization will not permit a ratings employee or an associate of such ratings employee to buy or sell or engage in any transaction involving a security, a derivative or an exchange contract based on a security issued, guaranteed, or otherwise supported by any person or company within such ratings employee's area of primary analytical responsibility, other than holdings through an investment fund.

3.16 The designated rating organization will not permit a ratings employee or an associate of such ratings employee to accept gifts, including entertainment, from anyone with whom the designated rating organization does business, other than items provided in the normal course of business if the aggregate value of all gifts received is nominal.

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, the DRO employee must disclose the relationship to the designated rating organization's compliance officer. The designated rating organization will not issue a credit rating if a DRO employee has an actual or potential conflict of interest with a rated entity. If the credit rating has been issued, the designated rating organization will publicly disclose in a timely manner that the credit rating may be affected.

3.18 The designated rating organization will review the past work of any ratings employee that leaves the organization and joins a rated entity (or an affiliate or related entity of the rated entity) if

(a) the ratings employee has, within the last year, been involved in rating the rated entity, or

(b) the rated entity is a financial firm with which the ratings employee had, within the last year, significant dealings as part of his or her duties at the designated rating organization.

4. RESPONSIBILITIES TO THE INVESTING PUBLIC AND ISSUERS

A. Transparency and timeliness of ratings disclosure

4.1 The designated rating organization will distribute in a timely manner its ratings decisions regarding the entities and securities it rates.

4.2 The designated rating organization will publicly disclose its policies for distributing ratings, ratings reports and updates.

4.3 Except for a rating it discloses only to the rated entity, a designated rating organization will disclose to the public, on a non-selective basis and free of charge, any ratings decision regarding rated entities that are reporting issuers or the securities of such issuers, as well as any subsequent decisions to discontinue such a rating, if the rating decision is based in whole or in part on material non-public information.

4.4 In each of its ratings reports, a designated rating organization will disclose the following:

(a) when the rating was first released and when it was last updated;

(b) the principal methodology or methodology version that was used in determining the rating and where a description of that methodology can be found. If the rating is based on more than one methodology, or if a review of only the principal methodology might cause investors to overlook other important aspects of the rating, the designated rating organization must explain this fact in the ratings report, and include a discussion of how the different methodologies and other important aspects factored into the rating decision;

(c) the meaning of each rating category and the definition of default or recovery, and the time horizon the designated rating organization used when making a rating decision;

(d) any attributes and limitations of the credit rating. If the rating involves a type of financial product presenting limited historical data (such as an innovative financial vehicle), the designated rating organization will disclose, in a prominent place, the limitations of the rating;

(e) all material sources, including the rated entity, its affiliates and related entities, that were used to prepare the credit rating and whether the credit rating has been disclosed to the rated entity or its related entities and amended following that disclosure before being issued.

4.5 In each of its ratings reports in respect of a securitized product, a designated rating organization will disclose the following:

(a) 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. The designated rating organization will also disclose the degree to which it analyzes how sensitive a rating of a securitized product is to changes in the designated rating organization's underlying rating assumptions;

(b) the level of assessment the designated rating organization has performed concerning the due diligence processes carried out at the level of underlying financial instruments or other assets of securitized products. The designated rating organization will also disclose whether it has undertaken any assessment of such due diligence processes or whether it has relied on a third-party assessment and how the outcome of such assessment impacts the credit rating.

4.6 If, to a reasonable person, the information required to be included in a ratings report under sections 4.4 and 4.5 would be disproportionate to the length of the ratings report, the designated rating organization will include a prominent reference to where such information can be easily accessed.

4.7 A designated rating organization will 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.

4.8 The designated rating organization will 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 will 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.

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

4.10 The designated rating organization will 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 in relation to a particular type of financial product that the designated rating organization rates. The designated rating organization will clearly indicate the attributes and limitations of each credit rating.

4.11 When issuing or revising a rating, the designated rating organization will provide in its press releases and public reports an explanation of the key elements underlying the rating opinion.

4.12 Before issuing or revising a rating, the designated rating organization will 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 designated rating organization would wish to be made aware of in order to produce an accurate rating. The designated rating organization will duly evaluate the response.

4.13 Every year, the designated rating organization will publicly 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 will explain this. This information will include verifiable, quantifiable historical information about the performance of its rating opinions, organized and structured, and, where possible, standardized in such a way so as to assist investors in drawing performance comparisons between different designated rating organizations.

4.14 For each rating, the designated rating organization will 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 will be identified as such. The designated rating organization will also disclose its policies and procedures regarding unsolicited ratings.

4.15 The designated rating organization will fully and publicly disclose, in a timely fashion, any material modification to its methodologies, models, key ratings assumptions and significant systems, resources or procedures. Where a reasonable person would consider feasible and appropriate, disclosure of such material modifications will be made before they go into effect. The designated rating organization will carefully consider the various uses of credit ratings before modifying its methodologies, models, key ratings assumptions and significant systems, resources or procedures.

B. The treatment of confidential information

4.16 The designated rating organization and its DRO employees will 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 will not disclose confidential information.

4.17 The designated rating organization and its DRO employees will not use confidential information for any purpose except for their rating activities or in accordance with applicable legislation or a confidentiality agreement with the rated entity to which the information relates.

4.18 The designated rating organization and its DRO employees will 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.

4.19 A designated rating organization will ensure that its DRO employees do not engage in transactions in securities, derivatives or exchange contracts when they possess confidential information concerning the issuer of such security or to which the derivative or the exchange contract relates.

4.20 A designated rating organization will cause its DRO employees to familiarize themselves with the internal securities trading policies maintained by the designated rating organization and certify their compliance with such policies within reasonable regular time periods.

4.21 The designated rating organization and its DRO employees will 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.

4.22 The designated rating organization and its DRO employees will not share confidential information entrusted to the designated rating organization with employees of any affiliate that is not a designated rating organization or a DRO affiliate. The designated rating organization and its DRO employees will not share confidential information within the designated rating organization, except as necessary in connection with the designated rating organization's credit rating functions.

4.23 A designated rating organization will ensure that its DRO employees do not use or share confidential information for the purpose of buying or selling or engaging in any transaction in any security, derivative or exchange contract based on a security issued, guaranteed, or otherwise supported by any person or company, or for any other purpose except the conduct of the designated rating organization's business.

FORM 25-101F1
Designated Rating Organization Application and Annual Filing

Instructions

(1) Terms used in this form but not defined in this form have the meaning given to them in the Instrument.

(2) Unless otherwise specified, the information in this form must be presented as at the last day of the applicant's most recently completed financial year. If necessary, the applicant must update the information provided so it is not misleading when it is filed. For information presented as at any date other than the last day of the applicant's most recently completed financial year, specify the relevant date in the form.

(3) Applicants are reminded that it is an offence under securities legislation to give false or misleading information on this form.

(4) Applicants may apply to the securities regulatory authority to hold in confidence portions of this form which disclose intimate financial, personal or other information. Securities regulatory authorities will consider the application and accord confidential treatment to those portions to the extent permitted by law.

(5) When this form is used for an annual filing, the term "applicant" means the designated rating organization.

Item 1. Name of Applicant

State the name of the applicant.

Item 2. Organization and Structure of Applicant

Describe the organizational structure of the applicant, including, as applicable, an organizational chart that identifies the ultimate and intermediate parent companies, subsidiaries, and material affiliates of the applicant (if any); an organizational chart showing the divisions, departments, and business units of the applicant; and an organizational chart showing the managerial structure of the applicant, including the compliance officer referred to in section 12 of the Instrument. Provide detailed information regarding the applicant's legal structure and ownership.

Item 3. DRO Affiliates

Provide the name, address and governing jurisdiction of each affiliate that is (or, in the case of an applicant, proposes to be) a DRO affiliate.

Item 4. Rating Distribution Model

Briefly describe how the applicant makes its credit ratings readily accessible for free or for a fee. If a person must pay a fee to obtain a credit rating made readily accessible by the applicant, provide a fee schedule or describe the price(s) charged.

Item 5. Procedures and Methodologies

Briefly describe the procedures and methodologies used by the applicant to determine credit ratings, including unsolicited credit ratings. The description must be sufficiently detailed to provide an understanding of the processes employed by the applicant in determining credit ratings, including, as applicable:

- policies for determining whether to initiate a credit rating;
- the public and non-public sources of information used in determining credit ratings, including information and analysis provided by third-party vendors;
- whether and, if so, how information about verification performed on assets underlying or referenced by a security issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction is relied on in determining credit ratings;
- the quantitative and qualitative models and metrics used to determine credit ratings, including whether and, if so, how assessments of the quality of originators of assets underlying or referenced by a security issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction factor into the determination of credit ratings;

- the methodologies by which credit ratings of other credit rating agencies are treated to determine credit ratings for securities issued by an asset pool or as part of any asset-backed or mortgaged-backed securities transaction;

- the procedures for interacting with the management of a rated obligor or issuer of rated securities;

- the structure and voting process of committees that review or approve credit ratings;

- procedures for informing rated obligors or issuers of rated securities about credit rating decisions and for appeals of final or pending credit rating decisions; and

- procedures for monitoring, reviewing, and updating credit ratings, including how frequently credit ratings are reviewed, whether different models or criteria are used for ratings surveillance than for determining initial ratings, whether changes made to models and criteria for determining initial ratings are applied retroactively to existing ratings, and whether changes made to models and criteria for performing ratings surveillance are incorporated into the models and criteria for determining initial ratings; and procedures to withdraw, or suspend the maintenance of, a credit rating.

An applicant may provide the location on its website where additional information about the procedures and methodologies is located.

Item 6. Code of Conduct

Unless previously provided, attach a copy of the applicant's code of conduct.

Item 7. Policies and Procedures re Non-public Information

Unless previously provided, attach a copy of the most recent written policies and procedures established, maintained, and enforced by the applicant to prevent the misuse of material non-public information.

Item 8. Policies and Procedures re Conflicts of Interest

Unless previously provided, attach a copy of the most recent written policies and procedures established with respect to conflicts of interest.

Item 9. Policies and Procedures re Internal Controls

Describe the applicant's internal control mechanisms designed to ensure the quality of its credit rating activities.

Item 10. Policies and Procedures re Books and Records

Describe the applicant's policies and procedures regarding record-keeping.

Item 11. Ratings Employees

Disclose the following information about the applicant's ratings employees and the persons who supervise the ratings employees:

- The total number of ratings employees,

- The total number of ratings employees supervisors,

- A general description of the minimum qualifications required of the ratings employees, including education level and work experience (if applicable, distinguish between junior, mid, and senior level ratings employees), and

- A general description of the minimum qualifications required of the ratings employees supervisors, including education level and work experience.

Item 12. Compliance Officer

Disclose the following information about the compliance officer of the applicant:

- Name,
- Employment history,
- Post secondary education, and
- Whether employed by the applicant full-time or part-time.

Item 13. Specified Revenue

Disclose information, as applicable, regarding the applicant's aggregate revenue for the most recently completed financial year:

- Revenue from determining and maintaining credit ratings,
- Revenue from subscribers,
- Revenue from granting licenses or rights to publish credit ratings, and
- Revenue from all other services and products offered by the credit rating organization (include descriptions of any major sources of revenue).

Include financial information on the revenue of the applicant divided into fees from credit rating and non-credit rating activities, including a comprehensive description of each.

This information is not required to be audited.

Item 14. Credit Rating Users

(a) Disclose a list of the largest users of credit rating services of the applicant by the amount of net revenue earned by the applicant attributable to the user during the most recently completed financial year. First, determine and list the 20 largest issuers and subscribers in terms of net revenue. Next, add to the list any obligor or underwriter that, in terms of net revenue during the financial year, equalled or exceeded the 20th largest issuer or subscriber. In making the list, rank the users in terms of net revenue from largest to smallest and include the net revenue amount for each person. For purposes of this Item:

- **"credit rating services"** means any of the following: rating an issuer's securities (regardless of whether the issuer, underwriter, or any other person or company paid for the credit rating) and providing credit ratings, credit ratings data, or credit ratings analysis to a subscriber; and
- **"net revenue"** means revenue earned by the applicant for any type of service or product provided to the person or company, regardless of whether related to credit rating services, and net of any rebates and allowances the applicant paid or owes to the person or company.

(b) Disclose a list of users of credit rating services whose contribution to the growth rate in the generation of revenue of the applicant in the previous fiscal year exceeded the growth rate in the applicant's total revenue in that year by a factor of more than 1.5 times. A user must be disclosed only if, in that year, the user accounted for more than 0.25% of the applicant's worldwide total revenue.

Item 15. Financial Statements

Attach a copy of the audited financial statements of the applicant, which must include a statement of financial position, a statement of comprehensive income, and a statement of changes in equity, for each of the three most recently completed financial years. If the applicant is a division, unit, or subsidiary of a parent company, the applicant may provide audited consolidated financial statements of its parent company.

Item 16. Verification Certificate

Include a certificate of the applicant in the following form:

> The undersigned has executed this Form 25-101F1 on behalf of, and on the authority of, [the Applicant]. The undersigned, on behalf of the [Applicant], represents that the information and statements contained in this Form, including appendices and attachments, all of which are part of this Form, are true and correct.
>
> _____ _____
> (Date) (Name of the Applicant/Designated Rating Organization)
>
> By: _____
> (Print Name and Title)
>
> _____
> (Signature)

FORM 25-101F2
Submission to Jurisdiction and Appointment of Agent for Service of Process

1. Name of credit rating organization (the **CRO**):

2. Jurisdiction of incorporation, or equivalent, of CRO:

3. Address of principal place of business of CRO:

4. Name of agent for service of process (the **Agent**):

5. Address for service of process of Agent in Canada (the address may be anywhere in Canada):

6. The CRO designates and appoints the Agent at the address of the Agent stated in Item 5 as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the **Proceeding**) arising out of, relating to or concerning the issuance and maintenance of credit ratings or the obligations of the CRO as a designated rating organization, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.

7. The CRO irrevocably and unconditionally submits to the non-exclusive jurisdiction of

   (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces and territories of Canada in which it is a designated rating organization; and

   (b) any administrative proceeding in any such province or territory,

   in any Proceeding arising out of or related to or concerning the issuance or maintenance of credit ratings or the obligations of the CRO as a designated rating organization.

8. This submission to jurisdiction and appointment of agent for service of process is governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

_____ _____
Signature of Credit Rating Organization Date

_____
Print name and title of signing officer
of Credit Rating Organization

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of CRO] under the terms and conditions of the appointment of agent for service of process set out in this document.

_____ _____
Signature of Agent Date

_____
Print name of person signing and, if Agent
is not an individual, the title of the person

ANNEX C

AMENDMENTS TO
NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*

1. National Instrument 41-101 *General Prospectus Requirements* is amended by this Instrument.

2. Form 41-101F1 *Information Required in a Prospectus* is amended by replacing section 10.9 with the following:

"**10.9 Ratings** (1) If the issuer has asked for and received a credit rating, or if the issuer is aware that it has received any other kind of rating, including a stability rating or a provisional rating, from one or more credit rating organizations for securities of the issuer that are outstanding, or will be outstanding, and the rating or ratings continue in effect, disclose

(a) each rating received from a credit rating organization;

(b) for each rating disclosed under paragraph (a), the name of the credit rating organization that has assigned the rating;

(c) a definition or description of the category in which each credit rating organization rated the securities and the relative rank of each rating within the organization's overall classification system;

(d) an explanation of what the rating addresses and what attributes, if any, of the securities are not addressed by the rating;

(e) any factors or considerations identified by the credit rating organization as giving rise to unusual risks associated with the securities;

(f) a statement that a credit rating or a stability rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the credit rating organization; and

(g) any announcement made by, or any proposed announcement known to the issuer that is to be made by, a credit rating organization to the effect that the organization is reviewing or intends to revise or withdraw a rating previously assigned and required to be disclosed under this section.

(2) If payments were, or reasonably will be, made to a credit rating organization that provided a rating described in subsection (1), state that fact and state whether any payments were made to the credit rating organization in respect of any other service provided to the issuer by the credit rating organization during the last two years.

INSTRUCTIONS

There may be factors relating to a security that are not addressed by a credit rating organization when they give a rating. For example, in the case of cash settled derivative instruments, factors in addition to the creditworthiness of the issuer, such as the continued subsistence of the underlying interest or the volatility of the price, value or level of the underlying interest may be reflected in the rating analysis. Rather than being addressed in the rating itself, these factors may be described by a credit rating organization by way of a superscript or other notation to a rating. Any such attributes must be discussed in the disclosure under this section.

A provisional rating received before the issuer's most recently completed financial year is not required to be disclosed under this section."

3. Form 41-101F2 *Information Required in an Investment Fund Prospectus* is amended by replacing section 21.8 with the following:

"**21.8 Ratings** (1) If the investment fund has asked for and received a credit rating, or if the investment fund is aware that it has received any other kind of rating, including a stability rating or a provisional rating, from one or more credit rating organizations for securities of the investment fund that are outstanding, or will be outstanding, and the rating or ratings continue in effect, disclose

(a) each rating received from a credit rating organization;

(b) for each rating disclosed under paragraph (a), the name of the credit rating organization that has assigned the rating;

(c) a definition or description of the category in which each credit rating organization rated the securities and the relative rank of each rating within the organization's overall classification system;

(d) an explanation of what the rating addresses and what attributes, if any, of the securities are not addressed by the rating;

(e) any factors or considerations identified by the credit rating organization as giving rise to unusual risks associated with the securities;

(f) a statement that a credit rating or a stability rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the credit rating organization; and

(g) any announcement made by, or any proposed announcement known to the investment fund that is to be made by, a credit rating organization to the effect that the organization is reviewing or intends to revise or withdraw a rating previously assigned and required to be disclosed under this section.

(2) If payments were, or reasonably will be, made to a credit rating organization that provided a rating described in subsection (1), state that fact and state whether any payments were made to the credit rating organization in respect of any other service provided to the investment fund by the credit rating organization during the last two years.

INSTRUCTIONS

There may be factors relating to a security that are not addressed by a credit rating organization when they give a rating. For example, in the case of cash settled derivative instruments, factors in addition to the creditworthiness of the issuer, such as the continued subsistence of the underlying interest or the volatility of the price, value or level of the underlying interest may be reflected in the rating analysis. Rather than being addressed in the rating itself, these factors may be described by a credit rating organization by way of a superscript or other notation to a rating. Any such attributes must be discussed in the disclosure under this section.

A provisional rating received before the investment fund's most recently completed financial year is not required to be disclosed under this section."

4. The effect of these amendments applies to a prospectus or a prospectus amendment of an issuer or an investment fund where the preliminary prospectus is filed on or after April 20, 2012; for all other prospectuses or prospectus amendments, the provisions of National Instrument 41-101 *General Prospectus Requirements* in force on April 19, 2012 apply.

5. This Instrument comes into force on April 20, 2012.

ANNEX D

AMENDMENTS TO
NATIONAL INSTRUMENT 44-101 *SHORT FORM PROSPECTUS DISTRIBUTIONS*

1. National Instrument 44-101 *Short Form Prospectus Distributions* is amended by this Instrument.

2. Form 44-101F1 *Short Form Prospectus* is amended by replacing Item 7.9 with the following:

"**7.9 Ratings** (1) If the issuer has asked for and received a credit rating, or if the issuer is aware that it has received any other kind of rating, including a stability rating or a provisional rating, from one or more credit rating organizations for securities of the issuer that are outstanding, or will be outstanding, and the rating or ratings continue in effect, disclose

(a) each rating received from a credit rating organization;

(b) for each rating disclosed under paragraph (a), the name of the credit rating organization that has assigned the rating;

(c) a definition or description of the category in which each credit rating organization rated the securities and the relative rank of each rating within the organization's overall classification system;

(d) an explanation of what the rating addresses and what attributes, if any, of the securities are not addressed by the rating;

(e) any factors or considerations identified by the credit rating organization as giving rise to unusual risks associated with the securities;

(f) a statement that a credit rating or a stability rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the credit rating organization; and

(g) any announcement made by, or any proposed announcement known to the issuer that is to be made by, a credit rating organization to the effect that the organization is reviewing or intends to revise or withdraw a rating previously assigned and required to be disclosed under this section.

(2) If payments were, or reasonably will be, made to a credit rating organization that provided a rating described in subsection (1), state that fact and state whether any payments were made to the credit rating organization in respect of any other service provided to the issuer by the credit rating organization during the last two years.

INSTRUCTIONS

There may be factors relating to a security that are not addressed by a credit rating organization when they give a rating. For example, in the case of cash settled derivative instruments, factors in addition to the creditworthiness of the issuer, such as the continued subsistence of the underlying interest or the volatility of the price, value or level of the underlying interest may be reflected in the rating analysis. Rather than being addressed in the rating itself, these factors may be described by a credit rating organization by way of a superscript or other notation to a rating. Any such attributes must be discussed in the disclosure under this section.

A provisional rating received before the issuer's most recently completed financial year is not required to be disclosed under this section."

3. The effect of these amendments applies to a short form prospectus or a short form prospectus amendment of an issuer where the preliminary short form prospectus is filed on or after April 20, 2012; for all other short form prospectuses or short form prospectus amendments, the provisions of National Instrument 44-101 *Short Form Prospectus Distributions* in force on April 19, 2012 apply.

4. This Instrument comes into force on April 20, 2012.

ANNEX E

AMENDMENTS TO
NATIONAL INSTRUMENT 51-102 *CONTINUOUS DISCLOSURE OBLIGATIONS*

1. National Instrument 51-102 *Continuous Disclosure Obligations* is amended by this Instrument.

2. Form 51-102F2 *Annual Information Form* is amended by replacing section 7.3 with the following:

"**7.3 Ratings** (1) If you have asked for and received a credit rating, or if you are aware that you have received any other kind of rating, including a stability rating or a provisional rating, from one or more credit rating organizations for securities of your company that are outstanding, or will be outstanding, and the rating or ratings continue in effect, disclose

(a) each rating received from a credit rating organization;

(b) for each rating disclosed under paragraph (a), the name of the credit rating organization that has assigned the rating;

(c) a definition or description of the category in which each credit rating organization rated the securities and the relative rank of each rating within the organization's overall classification system;

(d) an explanation of what the rating addresses and what attributes, if any, of the securities are not addressed by the rating;

(e) any factors or considerations identified by the credit rating organization as giving rise to unusual risks associated with the securities;

(f) a statement that a credit rating or a stability rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the credit rating organization; and

(g) any announcement made by, or any proposed announcement known to your company that is to be made by, a credit rating organization to the effect that the organization is reviewing or intends to revise or withdraw a rating previously assigned and required to be disclosed under this section.

(2) If payments were, or reasonably will be, made to a credit rating organization that provided a rating described in subsection (1), state that fact and state whether any payments were made to the credit rating organization in respect of any other service provided to your company by the credit rating organization during the last two years.

INSTRUCTIONS

There may be factors relating to a security that are not addressed by a credit rating organization when they give a rating. For example, in the case of cash settled derivative instruments, factors in addition to the creditworthiness of the issuer, such as the continued subsistence of the underlying interest or the volatility of the price, value or level of the underlying interest may be reflected in the rating analysis. Rather than being addressed in the rating itself, these factors may be described by a credit rating organization by way of a superscript or other notation to a rating. Any such attributes must be discussed in the disclosure under section 7.3.

A provisional rating received before the company's most recently completed financial year is not required to be disclosed under section 7.3."

3. The effect of these amendments applies only to documents required to be prepared, filed, delivered or sent under National Instrument 51-102 *Continuous Disclosure Obligations* for periods relating to a financial year ending on or after April 20, 2012; for documents required to be prepared, filed, delivered or sent under that Instrument for periods relating to a financial year ending before April 20, 2012, the provisions of that Instrument in force on April 19, 2012 apply.

4. This Instrument comes into force on April 20, 2012.

ANNEX F

NATIONAL POLICY 11-205
PROCESS FOR DESIGNATION OF CREDIT RATING ORGANIZATIONS IN MULTIPLE JURISDICTIONS

NATIONAL POLICY 11-205
PROCESS FOR DESIGNATION OF CREDIT RATING ORGANIZATIONS IN MULTIPLE JURISDICTIONS

PART 1 APPLICATION

1. Application – This policy describes the process for the filing and review of an application to become a designated rating organization in more than one jurisdiction of Canada.

PART 2 DEFINITIONS

2. Definitions – In this policy

"AMF" means the regulator in Québec;

"application" means an application to become a designated rating organization;

"dual application" means an application described in section 6 of this policy;

"dual review" means the review under this policy of a dual application;

"filer" means

(a) a person or company filing an application, or

(b) an agent of a person or company referred to in paragraph (a);

"MI 11-102" means Multilateral Instrument 11-102 *Passport System;*

"NI 25-101" means National Instrument 25-101 *Designated Rating Organizations*;

"notified passport jurisdiction" means a passport jurisdiction for which a filer gave the notice referred to in section 4B.6(1)(c) of MI 11-102;

"OSC" means the regulator in Ontario;

"passport application" means an application described in section 5 of this policy;

"passport jurisdiction" means the jurisdiction of a passport regulator;

"passport regulator" means a regulator that has adopted MI 11-102;

"regulator" means a securities regulatory authority or regulator.

3. Further definitions – Terms used in this policy that are defined in MI 11-102, National Instrument 14-101 *Definitions* or NI 25-101 have the same meanings as in those instruments.

PART 3 OVERVIEW, PRINCIPAL REGULATOR AND GENERAL GUIDELINES

4. Overview

This policy applies to an application to become a designated rating organization in multiple jurisdictions. These are the possible types of applications:

(a) The principal regulator is a passport regulator and the filer does not seek a designation in Ontario. This is a "passport application."

(b) The principal regulator is the OSC and the filer also seeks a designation in a passport jurisdiction. This is also a "passport application."

(c) The principal regulator is a passport regulator and the filer also seeks a designation in Ontario. This is a "dual application."

5. Passport application

(1) If the principal regulator is a passport regulator and the filer does not seek a designation in Ontario, the filer files the application only with, and pays fees only to, the principal regulator. Only the principal regulator reviews the application. The principal regulator's decision to grant the designation automatically results in a deemed designation in the notified passport jurisdictions.

(2) If the principal regulator is the OSC and the filer also seeks designation in a passport jurisdiction, the filer files the application only with, and pays fees only to the OSC. Only the OSC reviews the application. The OSC's decision to grant the designation automatically results in a deemed designation in the notified passport jurisdictions.

6. Dual application – Designation sought in passport jurisdiction and Ontario

If the principal regulator is a passport regulator and the filer also seeks a designation in Ontario, the filer files the application with, and pays fees to the principal regulator and the OSC. The principal regulator reviews the application and the OSC, as non-principal regulator, coordinates its review with the principal regulator. The principal regulator's decision to grant the designation automatically results in a deemed designation in the notified passport jurisdictions and, if the OSC has made the same decision as the principal regulator, evidences the decision of the OSC.

7. Principal regulator for an application

(1) For an application under this policy, the principal regulator is identified in the same manner as in sections 4B.2 to 4B.5 of MI 11-102.

(2) If the filer cannot determine its principal regulator under 4B.2(a) or (b) of MI 11-102, section 4B.2(c) of MI 11-102 requires that the filer determine its principal regulator by determining the specified jurisdiction with which the filer has the most significant connection. Section 4B.3 and 4B.4 also establish circumstances in which the filer may need to determine its principal regulator.

(3) For the purpose of this section, a specified jurisdiction is one of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and New Brunswick.

(4) The factors a filer should consider in identifying the principal regulator for the application based on the most significant connection test are, in order of influential weight:

(a) jurisdiction where the filer generated the majority of its credit rating related revenue in the 3-year period preceding the date of its application, or

(b) jurisdiction where the filer issued the most initial ratings in the 3-year period preceding the date of its application.

8. Discretionary change in principal regulator

(1) If the principal regulator identified under section 7 of this policy thinks it is not the appropriate principal regulator, it will first consult with the filer and the appropriate regulator and then give the filer a written notice of the new principal regulator and the reasons for the change.

(2) A filer may request a discretionary change of principal regulator for an application if

(a) the filer concludes that the principal regulator identified under section 7 of this policy is not the appropriate principal regulator,

(b) the location of the head office changes over the course of the application,

(c) the most significant connection to a specified jurisdiction changes over the course of the application, or

(d) the filer withdraws its application in the principal jurisdiction because it does not want to be designated in that jurisdiction.

(3) Regulators do not anticipate changing a principal regulator except in exceptional circumstances.

(4) A filer should submit a written request for a change in principal regulator to its current principal regulator and include the reasons for requesting the change.

PART 4 FILING MATERIALS

9. Election to file under this policy and identification of principal regulator

In an application, the filer should indicate whether it is filing a passport application or a dual application and identify the principal regulator for the application.

10. Materials to be filed with application

(1) For a passport application, the filer should remit to the principal regulator the fees payable under the securities legislation of the principal regulator, and file the following materials with the principal regulator only:

(a) a written application in which the filer:

(i) states the basis for identifying the principal regulator under section 7 of this policy,

(ii) gives notice of the non-principal passport jurisdictions for which section 4B.6 of MI 11-102 is intended to be relied upon,

(iii) states that the filer and any relevant party is not in default of securities legislation applicable to credit rating organizations in any jurisdiction of Canada or in any jurisdiction in which the filer operates or, if the filer is in default, the nature of the default;

(b) the materials required by Part 2 of NI 25-101;

(c) other supporting materials.

(2) For a dual application, the filer should remit the fees payable under the securities legislation of the principal regulator and the OSC, and file the following materials with the principal regulator and the OSC:

(a) a written application in which the filer:

(i) states the basis for identifying the principal regulator under section 7 of this policy,

(ii) gives notice of the non-principal passport jurisdictions for which section 4B.6 of MI 11-102 is intended to be relied upon;

(iii) states that the filer is not in default of securities legislation applicable to credit rating organizations in any jurisdiction of Canada or in any jurisdiction in which the filer operates or, if the filer is in default, the nature of the default;

(b) the materials required by Part 2 of NI 25-101;

(c) other supporting materials.

11. Language – A filer seeking a designation in Québec should file a French language version of the draft decision when the AMF is acting as principal regulator.

12. Materials to be filed to make a designation available in an additional passport jurisdiction under section 4B.6 of MI 11-102

(1) Under section 4B.6 of MI 11-102, the principal regulator's decision to grant the designation under a passport application or dual application can become available in a non-principal passport jurisdiction for which the filer did not give the notice referred to in section 10(1)(a)(ii) or 10(2)(a)(ii) of this policy in the initial application if certain conditions are met. One of the conditions is that the filer gives the notice under section 4B.6(1)(c) of MI 11-102 for the additional non-principal passport jurisdiction.

(2) For greater certainty, a filer may not rely on section 4B.6 of MI 11-102 to obtain an automatic designation under the provision of Ontario's securities legislation.

(3) The filer should give the notice referred to in subsection (1) to the principal regulator for the initial application. The notice should

(a) list each relevant non-principal passport jurisdiction for which notice is given that section 4B.6 of MI 11-102 is intended to be relied upon,

(b) include the date of the decision of the principal regulator for the initial application, if the notice is given under section 4B.6(1)(c) of MI 11-102,

(c) include the citation for the principal regulator's decision, and

(d) confirm that the designation is still in effect.

(4) The regulator that receives the notice referred to in section 10 will send a copy of the notice and its decision to the regulator in the relevant non-principal passport jurisdiction.

13. Filing – A filer should send the application materials in paper together with the fees to

(a) the principal regulator, in the case of a passport application, and

(b) the principal regulator and the OSC in the case of a dual application.

The filer should also provide an electronic copy of the application materials, including the draft decision document, by e-mail or on CD ROM. Filing the application concurrently in all required jurisdictions will make it easier for the principal regulator and non-principal regulators, if applicable, to process the application expeditiously.

Filers should send application materials by e-mail using the relevant address or addresses listed below:

British Columbia	www.bcsc.bc.ca (click on BCSC e-services and follow the steps)
Alberta	legalapplications@asc.ca
Saskatchewan	exemptions@sfsc.gov.sk.ca
Manitoba	exemptions.msc@gov.mb.ca
Ontario	applications@osc.gov.on.ca
Québec	Dispenses-Passeport@lautorite.qc.ca
New Brunswick	Passport-passeport@nbsc-cvmnb.ca
Nova Scotia	nsscexemptions@gov.ns.ca
Prince Edward Island	CCIS@gov.pe.ca
Newfoundland and Labrador	securitiesexemptions@gov.nl.ca
Yukon	corporateaffairs@gov.yk.ca
Northwest Territories	securitiesregistry@gov.nt.ca
Nunavut	legalregistries@gov.nu.ca

14. Incomplete or deficient material – If the filer's materials are deficient or incomplete, the principal regulator may ask the filer to file an amended application. This will likely delay the review of the application.

15. Acknowledgment of receipt of filing

After the principal regulator receives a complete and adequate application, the principal regulator will send the filer an acknowledgment of receipt of the application. The principal regulator will send a copy of the acknowledgement to any other regulator with whom the filer has filed the application. The acknowledgement will identify the name, phone number, fax number and e-mail address of the individual reviewing the application.

16. Withdrawal or abandonment of application

(1) If a filer withdraws an application at any time during the process, the filer is responsible for notifying the principal regulator and any non-principal regulator with whom the filer filed the application and for providing an explanation of the withdrawal.

(2) If at any time during the review process, the principal regulator determines that a filer has abandoned an application, the principal regulator will notify the filer that it will mark the application as "abandoned". In that case, the principal regulator will close the file without further notice to the filer unless the filer provides acceptable reasons not to close the file in writing within 10 business days. If the filer does not, the principal regulator will notify the filer and any non-principal regulator with whom the filer filed the application that the principal regulator has closed the file.

PART 5 REVIEW OF MATERIALS

17. Review of passport application

(1) The principal regulator will review any passport application in accordance with its securities legislation and securities directions and based on its review procedures, analysis and considering previous decisions.

(2) The filer will deal only with the principal regulator, who will provide comments to and receive responses from the filer.

18. Review and processing of dual application

(1) The principal regulator will review any dual application in accordance with its securities legislation and securities directions, and based on its review procedures, analysis and considering previous decisions. Please refer to section 10(2) of this policy for guidance on filing an application with the OSC as non-principal regulator with whom a filer should file a dual application.

(2) The filer will generally deal only with the principal regulator, who will be responsible for providing comments to the filer once it has completed its own review. However, in exceptional circumstances, the principal regulator may refer the filer to the OSC as non-principal regulator.

PART 6 DECISION-MAKING PROCESS

19. Passport application

(1) After completing the review process and after considering the recommendation of its staff, the principal regulator will determine whether to grant or deny the designation sought in a passport application.

(2) If the principal regulator is not prepared to grant the designation based on the information before it, it will notify the filer accordingly.

(3) If a filer receives a notice under subsection (2) and this process is available in the principal jurisdiction, the filer may request the opportunity to appear before, and make submissions to, the principal regulator.

20. Dual application

(1) After completing the review process and after considering the recommendation of its staff, the principal regulator will determine whether to grant or deny the designation sought in a dual application and immediately circulate its decision to the OSC.

(2) The OSC will have at least 10 business days from receipt of the principal regulator's decision to confirm whether it has made the same decision and is opting in or is opting out of the dual review.

(3) If the OSC is silent, the principal regulator will consider that the OSC has opted out.

(4) If the filer shows that it is necessary and reasonable in the circumstances, the principal regulator may request, but cannot require, the OSC to abridge the opt-out period.

(5) The principal regulator will not send the filer a decision for a dual application before the earlier of

(a) the expiry of the opt-out period, or

(b) receipt from the OSC of the confirmation referred to in subsection (2).

(6) If the principal regulator is not prepared to grant the designation a filer sought in its dual application based on the information before it, it will notify the filer and the OSC.

(7) If a filer receives a notice under subsection (6) and this process is available in the principal jurisdiction, the filer may request the opportunity to appear before, and make submissions to, the principal regulator. The principal regulator may hold a hearing on its own, or jointly or concurrently with the OSC. After the hearing, the principal regulator will send a copy of the decision to the filer and the OSC.

(8) If the OSC elects to opt out it will notify the filer and the principal regulator and give its reasons for opting out. The filer may deal directly with the OSC to resolve outstanding issues and obtain a decision without having to file a new application or pay any additional related fees. If the filer and the OSC resolve all outstanding issues, the OSC may opt back into the dual review by

notifying the principal regulator within the opt-out period referred to in subsection (2).

PART 7 DECISION

21. Effect of decision made under passport application

(1) The decision of the principal regulator under a passport application is the decision of the principal regulator. Under MI 11-102, a filer is automatically designated in the notified passport jurisdictions as a result of the decision of the principal regulator making the designation.

(2) Except in the circumstances described in section 12(1) of this policy, the designation is effective in each notified passport jurisdiction on the date of the principal regulator's decision (even if the regulator in the notified passport jurisdiction is closed on that date). In the circumstances described in section 12(1) of this policy, the designation is effective in the relevant non-principal passport jurisdiction on the date the filer gives the notice under section 4B.6(1)(c) of MI 11-102 for that jurisdiction (even if the regulator in that jurisdiction is closed on that date).

22. Effect of decision made under dual application

(1) The decision of the principal regulator under a dual application is the decision of the principal regulator. Under MI 11-102, a filer is automatically designated in the notified passport jurisdictions as a result of the decision of principal regulator making the designation. The decision of the principal regulator under a dual application also evidences the OSC's decision, if the OSC has confirmed that it has made the same decision as the principal regulator.

(2) The principal regulator will not issue the decision until the earlier of

(a) the date that the OSC confirms that it has made the same decision as the principal regulator, or

(b) the date the opt-out period referred to in section 20(2) of this policy has expired.

23. Listing non-principal jurisdictions

(1) For convenience, the decision of the principal regulator on a passport application or a dual application will refer to the notified passport jurisdictions, but it is the filer's responsibility to ensure that it gives the required notice for each jurisdiction for which section 4B.6(1) of MI 11-102 is intended to be relied upon.

(2) The decision of the principal regulator on a dual application will contain wording that makes it clear that the decision evidences and sets out the decision of the OSC to the effect that it has made the same decision as the principal regulator.

(3) For a dual application for which Québec is not the principal jurisdiction, the AMF will issue a local decision concurrently with and in addition to the principal regulator's decision. The AMF decision will contain the same terms and conditions as the principal regulator's decision. No other local regulator will issue a local decision.

24. Issuance of decision – The principal regulator will send the decision to the filer and to all non-principal regulators.

PART 8 EFFECTIVE DATE

25. Effective date

This policy comes into effect on April 20, 2012.

ANNEX G

ADDITIONAL INFORMATION REQUIRED IN ONTARIO

Notice of Commission Approval

On December 20, 2011 the Ontario Securities Commission (the **Commission**) approved the publication of National Instrument 25-101 *Designated Rating Organizations* (the **Instrument**) and related consequential amendments pursuant to section 143 of the *Securities Act* (Ontario) (the **Act**). Also on that day, the Commission adopted NP 11-205 pursuant to section 143.8 of the Act (collectively, the **Materials**).

On February 29, 2012 a quorum of the Commission approved non-material drafting changes to the Materials designed to achieve uniformity of drafting across Canada.

The Materials have an effective date of April 20, 2012.

Delivery to the Minister

The original version of the Materials was delivered to the Minister of Finance on January 25, 2012. No approval was given by the Minister with regard to the original version of the Instrument and the related consequential amendments. A revised version of the Materials replaced the original version and was delivered to the Minister on March 2, 2012. The Minister has a 60-day statutory period within which he may approve or reject the revised version of the Instrument and the related consequential amendments or return them for further consideration. We have requested that the Minister make an expedited decision on the revised version of the Instrument and the related consequential amendments by April 5, 2012. If the Minister approves the revised version of the Instrument and the related consequential amendments by this date, they will come into force on April 20, 2012.