

NOTICE AND REQUEST FOR COMMENT

PROPOSED NATIONAL INSTRUMENT 25-101 DESIGNATED RATING ORGANIZATIONS, RELATED POLICIES AND CONSEQUENTIAL AMENDMENTS

March 18, 2011

1. Purpose of notice

We, the members of the Canadian Securities Administrators (the **CSA**), are publishing for comment revised versions of proposed National Instrument 25-101 *Designated Rating Organizations* (the **Proposed Instrument**), proposed policies and related consequential amendments. The Proposed Instrument would 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 publishing revised versions of:

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

The Proposed Instrument, the proposed consequential amendments and Proposed NP 11-205 are collectively referred to as the **Proposed Materials**.¹

We initially published for comment the Proposed Instrument and related policies and consequential amendments on July 16, 2010 (the **2010 Proposal**). We received nine comment letters. A summary of the comments we received and our responses to those comments are included in Annex A.

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

We are publishing the Proposed Materials with this Notice. Certain jurisdictions may also include additional local information in Annex G. In particular, those jurisdictions that are a party to Multilateral Instrument 11-102 *Passport System* (currently all jurisdictions except Ontario) are publishing for comment amendments to that instrument and its 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 for comment in Ontario.

2. Substance and purpose of the Proposed Instrument

CROs are not currently subject to formal securities regulatory oversight in Canada. However, the conduct of their business may have a significant impact upon credit markets. Further, ratings continue to be referred to within securities legislation. For both of these reasons, we think it is appropriate to develop a securities regulatory regime for CROs that is consistent with international standards and developments.

The Proposed Materials, together with the proposed legislative amendments (see below), are intended to implement an appropriate Canadian regulatory regime for CROs.

3. Summary of Key Changes Made to the Proposed Instrument

Mandatory Compliance with the IOSCO Code

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**). Notwithstanding the foregoing, the 2010 Proposal would have permitted a designated rating organization to deviate from a provision or provisions of the IOSCO Code in certain circumstances. This is generally referred to as the “comply or explain” approach to the IOSCO Code. Indeed, the central concept of the IOSCO Code is the “comply or explain” feature.

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**). In connection with the endorsement and certification provisions in articles 4 and 5 of the EU Regulation, staff of the Committee of European Securities Regulators (**CESR**)² 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 out of 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.

² The function of assessing the equivalency of other jurisdictions’ regulatory framework has since been transferred to the European Security Markets Authority.

Based on our discussions with CESR staff, we understand that CESR staff will not provide an equivalency recommendation to the European Commission if a jurisdiction's regulatory framework relies on the IOSCO Code's "comply or explain" model.

In order to be consistent with developing international standards and following discussions with CESR staff, we are proposing to require designated rating organizations to establish, maintain and comply with a code of conduct that incorporates a list of provisions set out in Appendix A to the Proposed Instrument, which is included as Annex B to this notice and request for comment. These provisions are based substantially on the IOSCO Code and have been supplemented and modified, as described below, to meet developing international standards and to clarify the conduct we expect of designated rating organizations.

As a result, we are proposing that, unless a designated rating organization obtains exemptive relief, its code of conduct would not be permitted to deviate from the provisions enumerated in Appendix A to the Proposed Instrument.

Additional Provisions to be Included in a Code of Conduct

In addition to the international trend towards mandating compliance with the IOSCO Code, many regulatory authorities are imposing additional requirements on CROs. In order to be consistent with international standards, we are proposing that a designated rating organization be required to include in its code of conduct additional provisions relating to the following matters:

- **Governance.** A designated rating organization would be required to include in its code of conduct the following provisions:
 - the designated rating organization must have a board of directors with at least half, but not fewer than two, independent members;
 - the compensation of the independent members of the board of directors must not be linked to the business performance of the designated rating organization, and must be arranged so as to preserve the independence of their judgment;
 - the designated rating organization must design sound administrative and accounting procedures, internal control mechanisms, procedures for risk assessment, and control and safeguard arrangements for information processing systems. The designated organization must also monitor and evaluate such procedures, mechanisms and systems;
 - the designated rating organization must not outsource functions if doing so materially impairs the quality of the designated rating organization's internal controls or the ability of the securities regulatory authority to perform compliance reviews of the designated rating organization.

- **Ratings Reports.** In addition to the disclosure in ratings reports provided for in the IOSCO Code, a designated rating organization's code of conduct would have to include provisions requiring the following additional disclosure in each ratings report:
 - 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;
 - any attributes and limitations of the credit rating;
 - all significant sources that were used to prepare the credit rating and whether the credit rating was disclosed to the rated entity before being issued and amended following such disclosure.

In each ratings report in respect of a securitized product, a designated rating organization's code of conduct would require the following additional disclosure:

- 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 degree to which the designated rating organization analyzes how sensitive a rating of a securitized product is to changes in the designated rating organization's underlying rating assumptions;
- 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 and whether the designated rating organization 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.

Compliance Officer

We also revised the proposed requirements applicable to compliance officers. Specifically, compliance officers would be prohibited from participating in the development of credit ratings, or methodologies or models used in developing credit ratings. Compliance officers also would be prohibited from participating in the establishment of compensation for most employees of the designated rating organization. Finally, the compensation of the compliance officer would have to be independent of the financial performance of the designated rating organization and structured so as to preserve the independence of the compliance officer's judgment.

Personal Information Forms

We have removed the originally proposed requirement that directors and officers of a designated rating organization or a CRO applying to be designated submit personal information forms.

4. Proposed Legislative Amendments

To make the Proposed Instrument as a rule and to 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 reviews³ 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 and British Columbia, the enabling legislation is either already in force or awaiting proclamation.

5. Proposed Companion Policy and Consequential amendments

We are no longer proposing to publish a companion policy. As a result of changes we made to the 2010 Materials, much of the guidance in the proposed companion policy would be no longer applicable. As a result, a companion policy to the Proposed Instrument is not necessary.

The adoption of a Canadian regulatory regime for CROs also entails amendments to each of National Instrument 41-101 *General Prospectus Requirements*, National Instrument 44-101 *Short Form Prospectus Distributions*, and National Instrument 51-102 *Continuous Disclosure Obligations*. Under the Proposed Instrument, designated rating organizations will be obligated to disclose certain information regarding their credit rating activities. The purpose of the consequential amendments is to require issuers to disclose complementary information regarding their dealings with the ratings industry.

Instead of requiring that issuers disclose the amounts paid to a CRO for ratings and other services provided by the CRO, we are now proposing that issuers be required to disclose only whether they paid for the rating.

The text of the consequential amendments may be found in Annexes C through E.

³ A specific compliance program will be developed after the Proposed Instrument is implemented and the first group of credit rating organizations have applied for designation.

6. Passport and Co-ordination of Review

Those jurisdictions that are a party to Multilateral Instrument 11-102 *Passport System* (all jurisdictions except Ontario, referred to as **Passport Jurisdictions**) are publishing for comment proposed amendments to that instrument and its companion policy to allow the passport system to be used for applications for designation by CROs and exemptive relief applications by designated rating organizations. In addition, all jurisdictions are publishing for comment Proposed NP 11-205, which provides CROs with guidance on the process for filing an application to become a designated rating organization in more than one jurisdiction of Canada.

We are proposing to add the Proposed Instrument to Appendix D of Multilateral Instrument 11-102, to permit the use of the passport system for applications for exemptive relief from the provisions of the Proposed Instrument. We have also proposed amendments to Companion Policy 11-102 CP *Passport System* to include guidance on the process for applications for designation.

The text of Proposed NP 11-205 may be found in Annex F. In the Passport Jurisdictions, the text of the proposed amendments to Multilateral Instrument 11-102 and Companion Policy 11-102 CP are in Annex G.

Except as described above, we are not proposing material changes to the versions of Multilateral Instrument 11-102 or Proposed NP 11-205 that were published with the 2010 Proposal.

7. Future Consequential Amendments

Following the adoption of the Proposed 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”.

These changes will be subject to a separate publication and comment process.

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 a “Nationally Recognized Statistical Rating Organization” (**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 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. Accordingly, if securities legislation were to require that designated rating organizations provide their consent to disclosure of their ratings and designated rating organizations refused to provide such consents, uncertainty could be infused into offerings of rated securities in Canada.

We support consideration of all measures that could increase the accountability of CROs for their ratings decisions. We will continue to monitor developments in the U.S. and other jurisdictions and will assess methods of increasing CRO accountability.

9. Use of Ratings in European Union

As noted above, the proposed Canadian regulatory framework applicable to CROs is being assessed for equivalence with the EU Regulation. The EU Regulation is scheduled to be effective as of June 7, 2011. In the absence of an equivalency determination from the European Commission by such date or other accommodation, CROs that issue ratings out of Canada will not be able to rely on the endorsement or certification models in the EU Regulation until such time as an equivalency determination is achieved. We are currently anticipating that our proposed regulatory framework will be implemented no earlier than the fall of 2011. Accordingly, there may be a period during which CROs that issue ratings out of Canada will not be able to rely on the endorsement or certification models.

10. Request for Comments

We welcome your comments on the Proposed Materials. Please submit your comments in writing on or before May 17, 2011. If you are not sending your comments by email, please include a CD ROM containing the submissions.

Address your submission to the following CSA members:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission

Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Government of Yukon
Superintendent of Securities, Department of Justice, Government of the Northwest Territories
Superintendent of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

Please deliver your comments only to the addresses that follow. Your comments will be forwarded to the remaining CSA members.

John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8
Fax: (416) 593-2318
Email: jstevenson@osc.gov.on.ca

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax : 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. Comments will be posted to the OSC web-site at www.osc.gov.on.ca.

11. Questions

Please refer your questions to any of:

Michael Brown
Assistant Manager, Corporate Finance
Ontario Securities Commission
(416) 593-8266
mbrown@osc.gov.on.ca

Jeffrey Klam
Legal Counsel, Corporate Finance
Ontario Securities Commission

(416) 595-8932
jklam@osc.gov.on.ca

Maye Mouftah
Legal Counsel, Compliance & Registrant Regulation
Ontario Securities Commission
(416) 593-2358
mmouftah@osc.gov.on.ca

Lucie J. Roy
Senior Policy Adviser
Service de la réglementation
Surintendance aux marchés des valeurs
Autorité des marchés financiers
(514) 395-0337, ext 4464
lucie.roy@lautorite.qc.ca

Ashlyn D'Aoust
Legal Counsel, Corporate Finance
Alberta Securities Commission
(403) 355-4347
ashlyn.daoust@asc.ca

Denise Weeres
Senior Legal Counsel, Corporate Finance
Alberta Securities Commission
(403) 297-2930
denise.weeres@asc.ca

Christina Wolf
Chief Economist
British Columbia Securities Commission
(604) 899-6860
cwolf@bcsc.bc.ca

Nazma Lee
Senior Legal Counsel
Legal Services, Corporate Finance
British Columbia Securities Commission
(604) 899-6867
nlee@bcsc.bc.ca

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 July 16, 2010

This annex summarizes the written public comments we received on the 2010 Proposal. It also sets out our responses to those comments.

List of Parties Commenting on the 2010 Proposal

The Business Development Bank of Canada (Paula L. Cruickshank)
The Canadian Advocacy Council for Canadian CFA Institute Societies (Ada Litvinov and Claude Reny)
Canadian Bankers Association (Nathalie Clark)
The Canadian Coalition for Good Governance (David F. Denison)
Dominion Bond Rating Service (Mary Keogh and Huston Loke)
Fitch Ratings (Francis Phillip)
Moody's Investors Service (Donald S. Carter and Janet Holmes)
OSC Investor Advisory Panel (Anita Anand)
Standard & Poor's (Tom Connell)

General Comments

Six commenters generally agreed with the original proposal to use the IOSCO Code as the basis for proposed regulation of CROs. The commenters generally agreed with the flexibility offered by the "comply or explain" model. One commenter noted that this approach would make it easier for CROs that operate in multiple countries to implement globally consistent structures, which in turn would assist CROs in producing ratings that were more comparable across jurisdictions. One commenter opined that a regulatory regime that requires a "comply or explain" approach to the IOSCO Code, while a step in the right direction, does not go far enough to protect the needs of investors.

Response: We thank the commenters for their support. The Proposed Materials maintain the IOSCO Code as the central component of the code of conduct required by the proposed regulatory regime. However, in order to be consistent with international standards, a mandatory approach to the provisions of the IOSCO Code has replaced the "comply or explain" model.

One commenter suggested that it was inappropriate to explain a code of conduct's deviation from the IOSCO Code within the code of conduct itself.

Response: Since we are now proposing that designated rating organizations be prohibited from deviating from the provisions to be included in its code of conduct, this comment is no longer relevant.

One commenter noted that the Proposed Instrument was unclear regarding the scope of the regulatory framework. Specifically, the commenter noted that it was unclear (i) which entity or entities within the CRO would be subject to the supervisory framework, and (ii) which ratings produced by the CRO should be treated as “designated ratings” under Canadian securities legislation.

Response: The only entities that will be subject to the supervisory framework will be those that apply to be, and are designated as, designated rating organizations. Only the ratings issued by a designated rating organization will be designated ratings under securities legislation. CROs applying to be designated will need to consider their corporate structure and inter-corporate relationships and ensure the application for designation is made by the entity or entities that want to have their ratings designated under the Proposed Instrument.

One of the commenters that supported the IOSCO approach was comfortable with it provided that it was accompanied by required compliance powers.

Response: Though we are no longer proposing to include the “comply or explain” feature of the IOSCO Code, we agree that compliance powers are an important part of the regulatory framework applicable to designated rating organizations. We believe the legislative amendments discussed in the notice, if enacted as contemplated, provide sufficient compliance powers.

One commenter noted that the 2010 Proposal did not demand full, complete disclosure about who is paying for the ratings, nor contain any penalties for those who failed to comply with the proposed regulatory framework. The commenter noted that even with a compliance officer in place and an annual report filed with securities regulators, investors could continue to lack full and accurate information regarding the securities that they are purchasing. The commenter noted that while the IOSCO Code does provide a framework for objective analysis to support a credit rating, it stopped short of promoting publication of the methodology used.

Response: We think users of ratings generally expect that the rated entity or its related entities have paid for credit ratings that are publicly disseminated. However, as part of our proposed consequential amendments, we are proposing that issuers disclose whether or not they have paid for credit ratings issued in respect of the rated entity or its securities.

While the 2010 Proposal did not set out specific consequences, a failure to comply with the Proposed Instrument, when implemented, would constitute a breach of securities law. Such breach could give rise to various enforcement provisions and remedies under applicable securities legislation.

We think that the obligation for ensuring that investors have full information regarding the securities they are purchasing should rest primarily with the issuer issuing the securities. Other CSA projects address appropriate disclosure to be provided

by issuers. For example, proposals are expected to be published in the near future that focus on the disclosure required with respect to securitized products.

We are now proposing that a designated rating organization's code of conduct include provisions requiring disclosure in each ratings report of the methodology used. See subsection 3.4(b) of Appendix A to the Proposed Instrument. Similarly, section 3.7 of Appendix A to the Proposed Instrument when included in a designated rating organization's code of conduct would require a designated rating organization to provide a full disclosure of its methodologies, models and key rating assumptions.

Regulation of Credit Ratings and Methodologies

Two commenters were concerned that the enabling legislation would not prohibit interference by securities regulators with rating content and methodology. On the other hand, one commenter suggested that securities regulators should oversee the content or methodology of ratings since the commenter viewed unjustifiably high ratings as being at the heart of the asset-backed commercial paper crisis. This commenter noted that ratings must be objective, and CROs must understand that their ratings may be subject to regulatory review, and not simply to oversight as a designated rating organization with associated compliance reviews.

Response: We are not proposing to regulate the content of ratings or methodologies used to determine credit ratings.

Section 2 of the Proposed Instrument provides that nothing in the Proposed Instrument shall be construed as authorizing the regulator to direct or regulate the content of credit ratings or methodologies used to determine credit ratings. Certain provincial legislatures have, and others may, include similar provisions in the legislative amendments to securities legislation enabling the regulatory framework applicable to CROs.

We note that regulatory authorities in other jurisdictions have not proposed to extend their regulation of CROs into such area and doing so would prevent our proposed regulatory framework from being considered "equivalent" to the EU Regulation.

Code of Conduct and Amendments

One commenter noted that sections 6(1) and (2) of the Proposed Instrument may require a designated rating organization to individually identify or otherwise highlight amendments to their code, as they are made from time to time. The commenter thought this was problematic, and urged the CSA to allow NRSROs to post on their website the code of conduct that is currently filed with the SEC as an exhibit to Form NRSRO. The commenter also requested clarification that presenting an amended and restated code of conduct without specifically identifying the amendments would satisfy its obligations.

Response: We do not interpret section 8 of the Proposed Instrument (corresponding to section 6 in the 2010 Proposal) to require a designated rating organization to

individually highlight amendments to its code of conduct. We have revised section 8 to clarify further.

Two commenters thought that the three-day window to update an amended code of conduct was too short. One commenter suggested a more reasonable time frame would be five business days. The other commenter suggested that it be changed to ten business days, to ensure consistency with the SEC's requirement for public disclosure of material changes to Form NRSRO and exhibits which include the NRSRO's code of ethics.

Response: We are of the view that five business days is an appropriate amount of time and revised our proposal accordingly.

One commenter noted that a CRO cannot "ensure" compliance with its code, as it could not guarantee 100% adherence.

Response: We have revised the requirement. As proposed in section 7(1) of the Proposed Instrument, a designated rating organization would now have to establish maintain and comply with their code of conduct. We remain of the view that ultimate responsibility for a designated rating organization's compliance with securities legislation rests with the designated rating organization.

Waivers From Provisions of the Code of Conduct

Three commenters believed that the prohibition against granting waivers from a designated rating organization's code of conduct was too onerous or otherwise inappropriate.

One commenter noted that the prohibition on waivers was problematic because it would reduce its flexibility to deal with unusual circumstances, and potentially prevent the commenter from issuing a rating. This commenter suggested that waivers be permitted if the designated rating organization explains where and why the waiver was granted and how the waiver nonetheless achieves the objectives of the IOSCO Code.

Another commenter noted that the restriction against waivers did not reflect the reality that a CRO might conclude that it would be reasonable to waive compliance with a provision in its code of conduct in order to achieve the objective of another provision of the IOSCO Code, opining that certain provisions of the IOSCO Code have competing objectives. This commenter suggested that waivers be permitted if the waiver is reasonable.

The third commenter believed it would be more prudent to require CROs to document any waivers of their code of conduct, than to prohibit waivers outright.

Three commenters, including one CRO, agreed that a designated rating organization's published code of conduct should reflect its actual practices and, therefore, did not think prohibiting waivers of the designated rating organization's Code was unreasonable. One commenter noted that CROs already have the ability to deviate from the Code through the "comply or explain" provision, therefore making additional waivers unnecessary.

Response: We think that a designated rating organization's activities should reflect its code of conduct and, as such, do not think waivers are appropriate. However, the Proposed Instrument allows the securities regulatory authorities to grant an exemption, if necessary, from the provisions of the Proposed Instrument. 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 designated rating organization'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.

Two commenters recommended that designated rating organizations not be required to include a statement about waivers in their codes of conduct due to concerns that it may result in Canada-only codes of conduct being adopted, which might hamper the ability of global CROs in providing truly global ratings.

Response: We expect a designated rating organization's code of conduct to be an accurate reflection of its practices and procedures. Accordingly, we have maintained the requirement to include a statement about waivers in the designated rating organization's code of conduct.

Compliance and Compliance Officers

One commenter was concerned that the provisions of the Proposed Instrument relating to the compliance officer would require reporting to the board in the event of a technical, minor or inadvertent breach. The commenter suggested that this could result in an undue focus of board resources on day-to-day management concerns that are ordinarily outside their province, and could result in diverting the attention of the directors and the most senior managers of the designated rating organization from more strategic policy and business management issues. Instead, the commenter suggested that reliance be placed on the governance arrangements established within the designated rating organization, including the requirement for a compliance officer to monitor and assess compliance with the organization's code and securities legislation.

Response: The compliance officer plays an integral role in a designated rating organization's compliance with its obligations under the Proposed Instrument and securities legislation. However, we think significant instances of non-compliance must be brought to the attention of the board of directors. We do not expect technical or minor breaches to inappropriately occupy the board's attention since the reporting requirement in the event of non-compliance only applies if one of the conditions set out in paragraphs (a) to (c) of Section 10(2) of the Proposed Instrument (corresponding to section 11(2) in the 2010 Proposal) is satisfied. In addition, we are now proposing a significance threshold for paragraphs (a) and (b) of Section 10(2).

One commenter did not object in principle to the requirement to have a compliance officer. Nonetheless, they believed that the proposed responsibilities of the compliance officer were over-broad. In particular, the commenter noted that, as drafted, section 11 of the Proposed Instrument would require a designated rating organization's compliance officer to monitor and

assess compliance with aspects of Canadian securities legislation that do not apply specifically to a designated rating organization's activities.

Response: We expect a designated rating organization to comply with securities legislation to the extent applicable and do not think that it is unreasonable to expect the compliance officer to be the individual chiefly responsible for such compliance.

One commenter suggested that the compliance officer's monitoring, assessment and reporting function should extend only to the designated rating organization itself and its employees, and not cover non-employees who are not affiliated with the designated rating organization but may nevertheless act on the designated rating organization's behalf in certain matters, such as lawyers, accountants, consultants, technology service providers, real estate brokers and financial advisors.

Response: We have revised our proposal so that the compliance officer's monitoring, assessment and reporting function will extend to the designated rating organization, the designated rating organization's employees and non-employees that provide services to the designated rating organization and who are involved in determining, approving or monitoring credit ratings. This would exclude the designated rating organization's lawyers, accountants, consultants, technology service providers, real estate brokers and financial advisors (so long as such service providers are not involved in the rating activities referred to above). However, we are of the view that to the extent a service provider is involved in rating activities, such service provider should be subject to the compliance officer's oversight.

One commenter noted that the compliance officer's duty to report non-compliance should be refined, as an obligation to report possible instances of non-compliance "as soon as possible" might be counterproductive, and could make it difficult for board members to attend given their busy schedules. The commenter suggested that compliance officer be required to report to the board on a timely basis after having a reasonable opportunity to assess the information and reach a conclusion about the significance of the non-compliance.

Response: We think that including a significance threshold with respect to the compliance officer's reporting obligations should reduce the burden on the designated rating organization's board of directors. We have also revised the section to state that the reporting must be done "as soon as reasonably possible" We expect that these two changes will limit the matters that are brought to the board's attention to those of significance. However, we do expect that such matters will be brought to the board's attention on a timely basis.

One commenter noted that CROs do not have "clients", and that the test in paragraph (b) of subsection 11(2) of the Proposed Instrument was too vague to implement, and that a "risk of harm to the capital markets" should be modified to include only "material" risks of harm. Another commenter thought the breach reporting requirement should be deleted altogether since a provision of the IOSCO Code imposed the same obligation. Alternatively, this commenter suggested that the test should be modified to include a materiality threshold.

Response: We replaced the references to “client” with references to “rated entity”. We note that the reporting provision of the IOSCO Code (which we adopted with minor modifications as section 1.20 of Appendix A to the Proposed Instrument) requires employees to report specified incidents of non-compliance to the compliance officer, who is charged with taking appropriate action. However, as the provision does not specifically require reporting to the board of directors of the designated rating organization, we propose to maintain section 10(2) (corresponding to section 11(2) in the 2010 Proposal). We have proposed a significance threshold in section 10(2).

One commenter believed that the proposed reporting of non-compliance to a board of directors by the compliance officer with respect to the risk of harm to investors and/or where there is a pattern of non-compliance is appropriate. However, the commenter suggested that having the compliance officer consider the risk of harm of non-compliance on the capital markets is overly broad, and beyond the typical scope of a compliance officer.

Response: We are proposing to maintain the requirement but we added a significance qualifier (as discussed above). We think it is important for compliance officers to be aware of risks resulting from the designated rating organization’s business as a rating agency.

Prohibited Conflicts of Interest

Two commenters noted that section 8 of the 2010 Proposal, which prohibited a CRO from issuing or maintaining a credit rating in the event of one of the enumerated conflict situations, was problematic, in that it did not provide an opportunity for the conflict to be rectified, which could be disruptive to the ratings process. Instead, one commenter suggested that such relationships should simply be prohibited, which would still allow for a supervisory action to be taken or for sanctions to be imposed if such a result was warranted in the circumstances.

Response: The prohibitions are no longer contained in the Proposed Instrument. Some of the enumerated conflicts highlighted by the commenters are included as provisions in the IOSCO Code and have been carried over into Appendix A. We have taken those conflicts that were not included in the IOSCO Code and added them as provisions in Appendix A. As a result, the presence of one of those conflicts will not require the designated rating organization to refrain from issuing ratings or to withdraw a rating. However, the presence of one of those conflicts would constitute a breach of the designated rating organization’s code of conduct and could result in regulatory action, including, if appropriate, enforcement proceedings.

One commenter was concerned about practices surrounding “rating agency conditions”, a term of agreement in many structured finance transactions which permit amendments or waivers to a structured finance program if the rating agency consents to the action, or otherwise concludes that it will not cause a reduction or suspension in the rating agency’s rating. In particular, the commenter wrote that this might constitute an invitation to the CRO to make recommendations to the issuer of the securitized product that would be no less concerning than the CRO making recommendations in connection with the initial rating.

Response: The provision in section 1.19 of Appendix A to the Proposed Instrument (which prevents a designated rating organization or its ratings employees from making recommendations to a rated entity regarding structure) applies during the entire time a rating is outstanding in respect of a rated entity. It is not limited to when the initial rating is assigned.

The same commenter was concerned that changes can be made to the structure of a structured finance instrument by satisfying a rating agency condition without investors having any knowledge that such actions have been taken. The commenter recommended an obligation for a designated rating organization to disclose when the designated rating organization provides notification that a rating agency condition has been satisfied and to describe what the proposed action was.

Response: Other CSA initiatives are in progress that will consider whether to require disclosure if an issuer of securitized products makes material changes to its structure. Consequently, we have not revised the Proposed Instrument to address this comment.

Books and Records

One commenter noted that the retention period for documents and records relating to credit rating activities should be limited to five years, to allow for harmonization with European law.

Response: We have not adopted this recommendation. Our proposed record retention requirements are consistent with other similar requirements in Canadian securities legislation.

Personal Information Forms

One commenter wrote that it was not necessary to collect additional personal information about the directors and officers of a designated rating organization. Another commenter queried what the CSA would do with PIFs for directors and officers of the designated rating organization. A third commenter suggested that the PIF only be requested if the CSA intended to do something with them.

Response: We removed the personal information form requirement.

Determination of Principal Regulator

Two commenters wrote that the factors listed in section 8 of proposed NP 11-205 for determining “significant connection” for purposes of establishing a designated rating organization’s principal regulator were appropriate. One of those commenters also suggested that the jurisdiction in which the CRO is registered as a business in Canada could also be relevant to the determination.

Response: We thank the commenters for their support and feedback. The criteria to be applied when determining a principal regulator in proposed Part 4B of MI 11-102 and

section 7(4) of proposed NP 11-205 are intended to be reasonably complete. However, if a designated rating organization cannot determine its principal regulator based on those criteria, it could consider as relevant the jurisdiction(s) in which it is registered to do business.

Expert Liability

Two commenters thought that CROs should be subject to the same civil liability as other experts whose reports are included, with their consent, in offering documents.

On the other hand, six commenters wrote that the CSA should maintain the exemption for designated rating organizations from the requirement to provide an expert's consent when the ratings of the designated rating organization are disclosed in a prospectus.

Several commenters that were in favour of maintaining the exemption were concerned about the possible unintended consequences of exposing designated rating organizations to expert's liability, such as the following:

- Consistent with the experience in the United States, designated rating organizations might refuse to provide their consent to have their ratings included in Canadian prospectuses, which can lead to less information being available in offering documents.
- Designated rating organizations that do provide their consent might adopt a more conservative, reactive or homogeneous approach to credit ratings resulting in less diversity of opinions.
- Canadian securities legislation requires an issuer to disclose its credit ratings in its offering documents. Issuers would be unable to comply with this requirement if the exemption is repealed and designated rating organizations refused to provide their consent. This could result in a "freezing" of debt offerings in Canada or could lead issuers to opt against obtaining credit ratings.
- The cost of obtaining credit ratings would increase which cost will be absorbed by investors.
- Competition in the CRO industry could be negatively impacted.
- Investors might place even greater reliance on credit ratings.
- Credit ratings are fundamentally different from other "expert" opinions for which consent is required.
- Issuers with less stable creditworthiness may be unable to obtain ratings since designated rating organizations will be less willing to assume the associated liability. This may limit such issuers' ability to access public markets.

One of the commenters that was in favour of subjecting designated rating organizations to expert liability suggested that the CSA delay final implementation of the Proposed Instrument pending resolution of the uncertainty in the U.S. regarding the application of expert's liability. The commenter referred to the refusal of NRSROs to consent to their ratings being included in a registration statement and to the original SEC "no-action" letter expiring January 24, 2011 in respect of an issuer that omits ratings disclosure from a registration statement relating to an

offering of asset-backed securities. If there are unexpected delays resolving the uncertainty in the U.S., the commenter recommended that the CSA proceed with the Proposed Instrument in its current form provided that the CSA commits to introducing provisions to establish civil liability once the situation in the U.S. is resolved.

Response: We acknowledge the comments above and, accordingly, are not proposing at this time to repeal the exemption in section 10.1(4) of National Instrument 41-101 General Prospectus Requirements (NI 41-101) or to make corresponding changes to the secondary market liability regime that would subject CROs to “expert” liability. However, we generally support measures that could increase the accountability of designated rating organizations for their ratings decisions and will assess any such options. We also continue to monitor developments in other jurisdictions.

We agree with the comment regarding timing of implementation of the Proposed Instrument. We understand that NRSROs have continued to refuse to consent to their ratings being included in registration statements and that the SEC has recently extended indefinitely the “no-action” letter referred to by the commenter. We do not expect to propose changes in this area until we have had an opportunity to fully assess the impact of similar approaches in other jurisdictions.

One commenter noted that the imposition of such liability was an imperfect solution, noting that CROs may be willing to bear the cost of potential liability, and the underlying issues relating to reputation and conflict of interest may be left unresolved.

Response: We take note of this comment. To the extent that we might propose measures that increase the accountability of CROs for their ratings decisions in the future, we would view such measures to be complimentary to other regulatory initiatives, such as the Proposed Instrument, aimed at addressing concerns regarding conflicts of interest, among other things.

Treatment of NRSROs

Two commenters supported the CSA’s decision to provide filing accommodations for NRSROs

Response: We thank the commenters for their support.

One commenter noted, however, that there was a potential mismatch between the requirement to file a form NRSRO with the SEC (no later than 90 days after the close of the calendar year) and the requirement in the 2010 Proposal. The commenter also noted that the reference to an NRSRO filing its “most recent Form NRSRO” could result in a requirement to file the Form NRSRO with Canadian regulators before it was required to be filed with the SEC. Finally, this commenter also noted that, to the extent that it is the intention of the CSA to require confidential portions of the Form NRSRO to be filed with securities regulators, the Proposed Instrument should make it clear that such information will be provided on a confidential basis only.

Response: We adopted this commenter’s suggested approach to filing requirements for designated rating organizations that file a Form NRSRO in place of Form 25-101F1. With respect to confidentiality, section (4) of the Instructions to Form 25-101F1 states that applicants may apply for a decision of the securities regulatory authority to hold portions of the form or other information in confidence. Designated rating organizations that file their Form NRSRO in place of Form 25-101F1 also will be able to apply for confidentiality.

Ratings Disclosure Requirements

One commenter objected to the requirement in Canadian securities legislation to disclose credit ratings in prospectuses and annual information forms on the ground that such requirements can contribute to over-reliance on ratings.

Response: At this time, we are not proposing to repeal the credit rating disclosure requirements in Canadian securities legislation.

One commenter noted that adding the phrase “any other kind of rating” to the prospectus rules is exceedingly broad and may contribute to a great deal of uncertainty as to what must be disclosed. The commenter noted that, given the focus on the Proposed Instrument on the issuance and maintenance of credit ratings, the requirement to disclose any other type of rating may produce superfluous disclosure.

Response: The phrase “any other kind of rating” was not added as part of the 2010 Proposal. This disclosure requirement was already in force. Since we have not had any indication that issuers are having difficulty complying with this requirement, we propose to maintain it.

Three commenters noted that the proposed provisions mandating disclosure of fees paid to CROs could undermine the IOSCO Code’s conflict of interest goals, particularly section 2.12, which prohibits employees who are involved in the rating process from participating in any discussion regarding fees with the entities they rate. The commenters also noted that this could similarly undermine the objectives of the Proposed Instrument.

One of those commenters noted that the fee disclosure could undermine competition, as the information was commercially sensitive. This same commenter objected to the requirement that issuers separately disclose the amounts paid to CROs and their affiliates for other services provided during the previous two years since it would be unduly burdensome for issuers and yield little in the way of meaningful disclosure for investors. This commenter suggested that disclosure of fees paid to an affiliate of a designated rating organization be required only if the payments are in respect of credit rating related services. The commenter agreed that an investor may want to know if a CRO is potentially influenced by the revenue stream that it and its affiliates receive from an issuer and its affiliates, if the revenue stream is relatively insignificant to the CRO, then it is very difficult to understand why an investor would need (or want) to know the actual dollar amounts involved.

Response: We acknowledge the concern of the commenters and are no longer proposing to require disclosure of the particular amount paid for the rating. We are now proposing that issuers be required to disclose only whether they paid for the rating. We also note the proposed provision in section 2.9(a) of Appendix A that requires disclosure by a designated rating organization of the fees received by the designated rating organization from a rated entity, its affiliates or related entities for services unrelated to its ratings services as a percentage of the total amount of fees received by the designated rating organization from such rated entity, its affiliates and related entities. This provision is based on section 2.8(a) of the IOSCO Code.

One commenter suggested that issuers be required to disclose the proportion that the aggregate fees received by a CRO or its affiliates from the issuer and its affiliates constitutes compared to fees for non-ratings services.

Response: We are proposing that a designated rating organization be required to include a similar provision in its code of conduct. Refer to section 2.9(a) of Appendix A to the Proposed Instrument.

One commenter also urged caution in developing a regime in Canada that may result in requiring issuers to obtain the consent of CROs for prospectuses used in the U.S. Such a development would have major unintended consequences on MJDS.

Response: We understand that “southbound” MJDS issuers can comply with both Canadian and SEC requirements without triggering a consent requirement, provided that the required Canadian disclosure is provided in the context of “issuer disclosure-related ratings information” that the SEC specifically exempted from application of the consent requirements in its July 22, 2010 compliance and disclosure interpretations. We will, however, continue to monitor developments that may affect “southbound” MJDS issuers.

Other Comments

One commenter requested that the CSA impose a requirement on all CROs that rate structured finance products to publish a notice each time an issuer, sponsor or underwriter of a structured finance offering provides a CRO with data in order to initiate a ratings process where the transaction proceeds but such CRO is not hired to provide a rating. This requirement would be intended to discourage ratings shopping.

Response: We are proposing that a designated rating organization be required to include in its code of conduct, a provision requiring this disclosure. See section 4.6 of Appendix A to the Proposed Instrument.

One commenter expressed its approval for the 2010 Proposal but noted that the Proposed Materials should be considered only an initial step in the process of removing reliance on CRO opinions from the investment process, including removing references to credit ratings provided by the CROs from all investment-related legislation.

Response: We first considered the removal of references to credit ratings with the publication of CSA Consultation Paper 11-405 Securities Regulatory Proposals Stemming from the 2007-2008 Credit Market Turmoil and its Effect on the ABCP Market in Canada. At that time, the CSA ABCP Committee did not recommend removing references to credit ratings primarily due to the difficulty with identifying appropriate alternative proxies.

Recently, the Dodd-Frank Wall Street Reform and Consumer Protection Act mandated that many U.S. statutory references to NRSRO ratings be eliminated within two years from the date of enactment and be replaced with standards of creditworthiness to be established by the relevant authority under each statute. The Dodd-Frank Act also requires every federal agency to review existing regulations that reference credit ratings, modify such regulations to remove the reference and substitute it with a standard of creditworthiness as deemed appropriate for such regulations.

At this time, we do not propose to remove all references to credit ratings from securities legislation. We will be monitoring international developments and alternative qualification criteria that are proposed as replacements for credit ratings. We will also consider other means of reducing reliance on credit ratings. Other CSA projects may also consider this issue in the context of specific regulatory instruments that refer to credit ratings.

ANNEX B
PROPOSED NATIONAL INSTRUMENT 25-101
DESIGNATED RATING ORGANIZATIONS

PART 1— DEFINITIONS AND INTERPRETATION

1. Definitions — In this Instrument,

“board of directors” means, for 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;

“compliance officer” means the compliance officer referred to in section 10;

“code of conduct” means the code of conduct referred to in Part 3 of this Instrument;

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

“DRO employee” means an individual employed by a designated rating organization, and includes any other person or company who provides services 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, 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;

“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.

2. Interpretation — Nothing in this Instrument is to be interpreted as regulating the content of a credit rating or the methodology a credit rating organization uses to determine a credit rating.

3. Affiliate — In this Instrument, a person or company is an affiliate of a designated rating organization if any of the following apply:

- (1) one of them is the subsidiary of the other;

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

(3) For the purposes of subsection (2), 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.

4. Credit Rating — In British Columbia only, 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.

5. Related Entity — In this Instrument, a related entity to an issuer of a securitized product includes an originator, arranger, underwriter, servicer or sponsor of the securitized product and any entity performing similar functions.

PART 2 — DESIGNATION OF RATING ORGANIZATIONS

6. Application for Designation —

(1) A credit rating organization that applies to be a designated rating organization must file a completed Form 25-101F1.

(2) Despite subsection (1), a credit rating organization that is an NRSRO may file its most recent Form NRSRO.

(3) A credit rating organization that applies to be a designated rating organization and that is incorporated or organized under the laws of a foreign jurisdiction and does not have an office in Canada must file a completed Form 25-101F2.

PART 3 — CODE OF CONDUCT

7. Code of Conduct —

- (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 listed in Appendix A.

8. Filing and Publication —

- (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.

9. Waivers — 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 4 — COMPLIANCE OFFICER

10. Compliance Officer —

- (1) A designated rating organization must have 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 report to the board of directors of the designated rating organization 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.
- (3) 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.
- (4) 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 and must be determined in a manner that preserves the independence of the compliance officer's judgment.

PART 5 — BOOKS AND RECORDS

11. Books and Records —

- (1) A designated rating organization must keep such books and records and other documents as are necessary to account for the conduct of its credit rating activities, its business transactions and financial affairs and must keep such other books, records and documents as may otherwise be required under securities legislation.
- (2) A designated rating organization must retain the books and records maintained under this section:
 - (a) for a period of seven years from the date the record was made or received;
 - (b) in a safe location and a durable form; and
 - (c) in a manner that permits it to be provided promptly to the securities regulatory authority upon request.

Part 6 — FILING REQUIREMENTS

12. Filing Requirements —

- (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) A NRSRO satisfies the requirements in subsections (1), and (2) if it files its annual certification of its Form NRSRO and each amendment to its Form NRSRO within 10 business days of the date of filing thereof with the SEC.

PART 7 — EXEMPTIONS AND EFFECTIVE DATE

13. Exemptions —

- (1) The regulator or the securities regulatory authority may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.
- (3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

14. Effective Date — This Instrument comes into force on ●, 2011.

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

2.1 A designated rating organization must adopt, implement and enforce written procedures 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 use rating methodologies that are rigorous, systematic, continuous and subject to validation based on historical experience, including back-testing.

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 any individual ratings employee employed by the designated rating organization. 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 must ensure that its ratings employees have appropriate knowledge and experience for the duties assigned.

2.5 A designated rating organization and its ratings employees must take 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.

2.6 A designated rating organization must 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, it must assess whether it is able to devote sufficient personnel with sufficient skill sets to make a credible rating assessment, and whether its personnel likely will have access to sufficient information needed in order make such an assessment. A designated rating organization must adopt all necessary measures so that the information it uses in assigning a rating is of sufficient quality to support a credible rating.

2.7 A designated rating organization must establish a review function made up of one or more senior managers with appropriate experience to review the feasibility of providing a credit rating for a type of structure that is significantly different from the structures the designated rating organization currently rates.

2.8 A designated rating organization must assess whether existing methodologies and models for determining credit ratings of securitized products are appropriate when the risk characteristics of the assets underlying a securitized product change significantly. If the quality of the available information is not satisfactory or if the complexity of a new type of instrument or security raises concerns about whether the designated rating organization can provide a credible rating, the designated rating organization must not issue or maintain a credit rating.

2.9 A designated rating organization must ensure continuity and regularity, and avoid bias, in the rating process.

B. Monitoring and Updating

2.10 A designated rating organization must establish a committee 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 must 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 instruments or securities. This process must be conducted independently of the business lines that are responsible for credit rating activities. The responsible committee must report to the board of directors of the designated rating organization.

2.11 When methodologies, models or key ratings assumptions used in credit rating activities are changed, a designated rating organization must do each of the following:

- (a) promptly, using the same means of communication as was used for the distribution of the affected credit ratings, disclose the likely scope of credit ratings expected to be affected by the change in methodologies, models or key ratings assumptions;
- (b) promptly place the affected credit ratings under observation;
- (c) within six months of the change, review the affected credit ratings;
- (d) re-rate all credit ratings that have been based on those methodologies, models or key rating assumptions if, following the review described in (c) above, the overall combined effect of the changes affects those credit ratings.

2.12 A designated rating organization must ensure that adequate personnel and financial resources are allocated to monitoring and updating its ratings. Except for ratings that clearly indicate they do not entail ongoing surveillance, once a rating is published the designated rating organization must 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 status 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 must incorporate all cumulative experience obtained.

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

2.14 If a designated rating organization makes its ratings available to the public and discontinues any rating, the designated rating organization must disclose that fact using the same means of communication as was used for the distribution of the rating. If a designated rating organization's ratings are provided only to its subscribers, the designated rating organization must announce to its subscribers if it discontinues any rating the subscriber subscribes for. In both cases, continuing publications by the designated rating organization of the discontinued rating must indicate the date the rating was last updated and disclose the fact that the rating is no longer being updated and the reasons for the decision to discontinue the rating.

C. Integrity of the Rating Process

2.15 A designated rating organization and its ratings employees must comply with all applicable laws and regulations governing its activities.

2.16 A designated rating organization and its ratings employees must deal fairly and honestly with rated entities, investors, other market participants, and the public.

2.17 A designated rating organization's ratings employees must be held to high standards of integrity, and a designated rating organization must not employ individuals with demonstrably compromised integrity.

2.18 A designated rating organization and its ratings employees must not, either implicitly or explicitly, give any assurance or guarantee of a particular rating prior to a rating assessment. Notwithstanding the foregoing, a designated rating organization is not precluded from developing prospective assessments used in securitized product transactions and similar transactions.

2.19 The following persons and companies must not make recommendations to a rated entity about the corporate or legal structure, assets, liabilities, or activities of the rated entity:

- (a) a designated rating organization;
- (b) an affiliate or associate of the designated rating organization;
- (c) the ratings employees of any of the above.

2.20 Upon becoming aware that the designated rating organization, its DRO employees or 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, a DRO employee of a designated rating organization must report such information immediately to the compliance officer. If the compliance officer receives such a report from a DRO employee, the compliance officer is obligated to take appropriate action, as determined by the laws and regulations of the jurisdiction and the rules and guidelines set forth by the designated rating organization. A designated rating organization must prohibit retaliation by other DRO employees or by the designated rating organization itself or its affiliates against any DRO employees who, in good faith, make such reports.

D. Governance Requirements

2.21 A designated rating organization must have a board of directors. At least one-half, but not fewer than two, of the members of the board of directors must be independent.

A member of the board of directors of the designated rating organization will not be considered independent if the director, other than in his or her capacity as a member of the board of directors or a committee thereof,

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

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

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

2.24 In addition to its other duties, the board of directors of a designated rating organization must specifically monitor the following:

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

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

2.26 A designated rating organization must monitor and evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with securities legislation and the designated rating organization's code of conduct, and take any measures necessary to address any deficiencies.

2.27 A designated rating organization must not outsource functions if doing so impairs materially the quality 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. Notwithstanding the foregoing, a designated rating organization must not outsource the functions of the designated rating organization's compliance officer as required by securities legislation.

3. INDEPENDENCE AND CONFLICTS OF INTEREST

A. General

3.1 A designated rating organization must not forbear or refrain from taking a rating action based on the potential effect (economic, political, or otherwise) of the action on the designated rating organization, a rated entity, an investor, or other market participant.

3.2 A designated rating organization and its ratings employees must use care and professional judgment to maintain both the substance and appearance of independence and objectivity.

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

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

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

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

B. Procedures and Policies

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

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

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

- (a) If a designated rating organization receives from a rated entity, its affiliates or related entities compensation unrelated to its ratings service, such as compensation for ancillary services (as referred to in section 3.5), a designated rating organization must disclose the percentage such non-rating fees represent out of the total amount of fees received by the designated rating organization from such rated entity, its affiliates and related entities.
- (b) If a designated rating organization receives directly or indirectly 10 percent or more of its annual revenue from a particular rated entity or subscriber, whether or not received from any affiliate or related entity of the rated entity or subscriber, disclose that and identify the particular rated entity or subscriber.
- (c) If a designated rating organization provides a credit rating of a securitized product, the designated rating organization must encourage the rated entity to publicly disclose all information regarding the securitized product that would reasonably be expected to be material to an investor or other credit rating organization in conducting their own independent analyses. A designated rating organization must disclose in its ratings reports in respect of a securitized product whether the rated entity has informed it that it is publicly disclosing all relevant information about the product being rated or if the information remains non-public.

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

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

C. Employee Independence

3.12 Reporting lines for a designated rating organization's ratings DRO employees and their compensation arrangements must be structured to eliminate or effectively manage actual and potential conflicts of interest.

- (a) A ratings employee must not be compensated or evaluated on the basis of the amount of revenue that the designated rating organization derives from rated entities that the ratings employee rates or with which the ratings employee regularly interacts.

- (b) A designated rating organization must conduct formal and periodic reviews of compensation policies and practices for a designated rating organization's DRO employees to ensure that these policies and practices do not compromise the objectivity of the designated rating organization's rating process.

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

3.14 A ratings employee must not participate in or otherwise influence the determination of a credit rating if any of the following apply:

- (a) the employee owns directly or indirectly securities or derivatives of the rated entity, other than holdings through an investment fund where exposure to the rated entity does not exceed 10% of the investment fund's portfolio;
- (b) the employee owns directly or indirectly securities or derivatives of a related entity to a rated entity, the ownership of which may cause or may be perceived as causing a conflict of interest;
- (c) the employee has had a recent employment, business or other relationship with the rated entity, its affiliates or related entities that may cause or may be perceived as causing a conflict of interest;
- (d) the employee has an associate who currently works for the rated entity, its affiliates or related entities.

3.15 A designated rating organization's ratings employees and their associates must not buy or sell or engage in any transaction in any security or derivative based on a security issued, guaranteed, or otherwise supported by any entity within such ratings employee's area of primary analytical responsibility, other than holdings through an investment fund where exposure to the rated entity does not exceed 10% of the investment fund's portfolio.

3.16 A designated rating organization's ratings employees and their associates, affiliates and related entities must not accept gifts, including entertainment, from anyone with whom the designated rating organization does business other than items provided in the context of normal business activities such as meetings that have an aggregate value of no more than nominal value.

3.17 If a DRO employee of a designated rating organization becomes involved in any personal relationship that creates any actual or potential conflict of interest, such DRO

employee must disclose such relationship to the designated rating organization's compliance officer.

3.18 A designated rating organization must review the past work of ratings employees that leave the employ of the designated rating organization and join a rated entity, or an affiliate or related entity of the rated entity the ratings employee has been involved in rating, or a financial firm with which the ratings employee had 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 A designated rating organization must distribute in a timely manner its ratings decisions regarding the entities and securities it rates.

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

4.3 Except for "private ratings" provided only to the rated entity, a designated rating organization must 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 must 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. Where the rating is based on more than one methodology, or where 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. If such information would be disproportionate to the length of the ratings report, the designated rating organization must include a prominent reference to where such information can be directly and easily accessed.
- (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. If such information would be disproportionate to the length of the ratings report, the designated rating

organization must include a prominent reference to where such information can be directly and easily accessed.

- (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 must make clear, in a prominent place, the limitations of the rating.
- (e) All significant 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 must 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. A designated rating organization must 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 must 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 A designated rating organization must 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.

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

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

4.9 A designated rating organization must assist investors in developing a greater understanding of what a credit rating is, and the limits to which credit ratings can be put to use vis-à-vis a particular type of financial product that the designated rating organization rates. A designated rating organization must clearly indicate the attributes and limitations of each credit rating.

4.10 When issuing or revising a rating, the designated rating organization must explain in its press releases and reports the key elements underlying the rating opinion.

4.11 Prior to issuing or revising a rating, a designated rating organization must 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. A designated rating organization must duly evaluate the response.

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

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

4.14 A designated rating organization must fully and publicly disclose any material modification to its methodologies, models, key ratings assumptions and significant systems, resources or procedures. Disclosure of such material modifications must be made prior to their going into effect. A designated rating organization must 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

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

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

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

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

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

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

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

4.22 DRO employees of a designated rating organization must not use or share confidential information for the purpose of buying or selling or engaging in any transaction in any security or derivative based on a security issued, guaranteed, or otherwise supported by any entity, 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 for a decision of the securities regulatory authority to hold portions of this form which discloses intimate financial, personal or other information in confidence. Securities regulatory authorities will consider such an application and accord confidential treatment to those sections to the extent permitted by law.*
- (5) *Where 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 10 of the Instrument. Provide detailed information regarding the applicant's legal structure and ownership.

Item 3. 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 4. 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 5. Code of Conduct

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

Item 6. 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 7. 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 8. Policies and Procedures re Internal Controls

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

Item 9. Policies and Procedures re Books and Records

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

Item 10. Credit analysts

Disclose the following information about the applicant's credit analysts and the persons who supervise the credit analysts:

- The total number of credit analysts,
- The total number of credit analyst supervisors,
- A general description of the minimum qualifications required of the credit analysts, including education level and work experience (if applicable, distinguish between junior, mid, and senior level credit analysts), and
- A general description of the minimum qualifications required of the credit analyst supervisors, including education level and work experience.

Item 11. 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 12. Specified Revenues

Disclose information, as applicable, regarding the applicant's aggregate revenues 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 13. 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:

- **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; and
- **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.

(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 revenues in that year by a factor of more than 1.5 times. Any such user must only be disclosed if, in that year, such user accounted for more than 0.25% of the applicant's worldwide total revenues.

Item 14. 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 15. 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/NRSRO)

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 above 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. Until six years after it has ceased to be a designated rating organization in any Canadian province or territory, the CRO shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before termination of this submission to jurisdiction and appointment of agent for service of process.
9. Until six years after it has ceased to be a designated rating organization in any Canadian province or territory, the CRO shall file an amended submission to

jurisdiction and appointment of agent for service of process at least 30 days before any change in the name or above address of the Agent.

10. This submission to jurisdiction and appointment of agent for service of process shall be 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 stated above.

Signature of Agent

Date

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

ANNEX C
PROPOSED 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 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 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 section (1), state that fact and state whether any payments were made to the credit rating organization in respect of any other service provided to you 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 derivatives, 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.”

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 your company that are 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 section (1), state that fact and state whether any payments were made to the credit rating organization in respect of any other service provided to you 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 derivatives, 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.”

4. This Instrument comes into force on ●, 2011.

ANNEX D
PROPOSED 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 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 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 section (1), state that fact and

state whether any payments were made to the credit rating organization in respect of any other service provided to you 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 derivatives, 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.”

- 3. This Instrument comes into force on ●, 2011.**

ANNEX E
PROPOSED 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 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 section (1), state that fact and

state whether any payments were made to the credit rating organization in respect of any other service provided to you 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 derivatives, 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.”

- 3. This Instrument comes into force on ●, 2011.**

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

PART 1 APPLICATION

1. Application

PART 2 DEFINITIONS

2. Definitions
3. Further definitions

PART 3 OVERVIEW, PRINCIPAL REGULATOR AND GENERAL GUIDELINES

4. Overview
5. Passport application
6. Dual application
7. Principal regulator for an application
8. Discretionary change in principal regulator

PART 4 FILING MATERIALS

9. Election to file under this policy and identification of principal regulator
10. Materials to be filed with application
11. Language
12. Materials to be filed to make a designation available in an additional passport jurisdiction under section 4B.6 of MI 11-102
13. Filing
14. Incomplete or deficient material
15. Acknowledgment of receipt of filing
16. Withdrawal or abandonment of application

PART 5 REVIEW OF MATERIALS

17. Review of passport application
18. Review and processing of dual application

PART 6 DECISION-MAKING PROCESS

19. Passport application
20. Dual application

PART 7 DECISION

21. Effect of decision made under passport application
22. Effect of decision made under dual application
23. Listing non-principal jurisdictions
24. Issuance of decision

PART 8 EFFECTIVE DATE

25. Effective date

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 section 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 section 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 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.besc.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 *.

ANNEX G
PART 1 OF 2
PROPOSED AMENDMENT INSTRUMENT TO
MULTILATERAL INSTRUMENT 11-102
PASSPORT SYSTEM

1. This Instrument amends Multilateral Instrument 11-102 Passport System.

2. The following Part is added:

PART 4B APPLICATION TO BECOME A DESIGNATED RATING ORGANIZATION

4B.1 Specified jurisdiction

For the purposes of this Part, the specified jurisdictions are British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and New Brunswick.

4B.2 Principal regulator – general

Subject to sections 4B.3 to 4B.5, the principal regulator for an application by a credit rating organization to become a designated rating organization is,

(a) the securities regulatory authority or regulator of the jurisdiction in which the head office of the credit rating organization is located,

(b) if the head office for a credit rating organization is not in a jurisdiction of Canada, the securities regulatory authority or regulator of the jurisdiction in which the largest branch office of the credit rating organization is located, or

(c) if neither the head office or a branch office of the credit rating organization is located in a jurisdiction of Canada, the securities regulatory authority or regulator of the jurisdiction with which the credit rating organization has the most significant connection.

4B.3 Principal regulator – head office not in a specified jurisdiction

Subject to section 4B.5, if the jurisdiction identified under section 4B.2 is not a specified jurisdiction, the principal regulator for the application is the securities regulatory authority or regulator of the specified jurisdiction with which the credit rating organization has the most significant connection.

4B.4 Principal regulator – designation not sought in principal jurisdiction

Subject to section 4B.5 if a credit rating organization is not seeking to become a designated rating organization in the jurisdiction of the principal regulator, as determined under section 4B.2 or 4B.3, as applicable, the principal regulator for the designation is the securities regulatory authority or regulator in the specified jurisdiction,

(a) in which the credit rating organization is seeking the designation, and

(b) with which the credit rating organization has the most significant connection.

4B.5 Discretionary change of principal regulator for application for designation

If a credit rating organization receives written notice from a securities regulatory authority or regulator that specifies a principal regulator for the credit rating organization’s application, the securities regulatory authority or regulator specified in the notice is the principal regulator for the designation.

4B.6 Deemed designation of a credit rating organization

(1) If an application to become a designated rating organization is made by a credit rating organization in the principal jurisdiction, the credit rating organization is deemed to be a designated rating organization in a local jurisdiction if,

(a) the local jurisdiction is not the principal jurisdiction for the application,

(b) the principal regulator for the application designated the credit rating organization and that designation is in effect,

(c) the credit rating organization that applied to be designated gives notice to the securities regulatory authority or regulator that this subsection is intended to be relied upon for the designation in the local jurisdiction, and

(d) the credit rating organization complies with any terms, conditions, restrictions or requirements imposed by the principal regulator as if they were imposed in the local jurisdiction.

(2) For the purpose of paragraph (1)(c), the credit rating organization may give the notice referred to in that paragraph by giving it to the principal regulator.

3. Appendix D is amended by inserting the following row (see non-shaded row below) immediately under the row containing the words “Institutional trade matching and settlement”:

Provision	BC	AB	SK	MB	Que	NS	NB	PEI	NL	YK	NWT	Nun	ON
Designated Rating Organizations	NI 25-101												

4. This Instrument comes into force on [●].

ANNEX G
PART 2 OF 2
PROPOSED AMENDMENTS TO
COMPANION POLICY 11-102CP PASSPORT SYSTEM
[Blackline]

PART 1 GENERAL

- 1.1 Definitions
- 1.2 Additional definitions
- 1.3 Purpose
- 1.4 Language of documents – Québec

PART 2 CONTINUOUS DISCLOSURE (Repealed)

PART 3 PROSPECTUS

- 3.1 Principal regulator for prospectus
- 3.2 Discretionary change in principal regulator for prospectus
- 3.3 Deemed issuance of receipt
- 3.4 Exemption from non-harmonized prospectus provisions (Repealed)
- 3.5 Transition for section 3.3

PART 4 DISCRETIONARY EXEMPTIONS

- 4.1 Application
- 4.2 Principal regulator for discretionary exemption applications
- 4.3 Discretionary change of principal regulator for discretionary exemption applications
- 4.4 Passport application of discretionary exemptions
- 4.5 Availability of passport for discretionary exemptions applied for before March 17, 2008

PART 4A REGISTRATION

- 4A.1..... Application
- 4A.2..... Registration by SRO
- 4A.3.....Principal regulator for registration
- 4A.4..... Discretionary change of principal regulator for registration
- 4A.5Registration
- 4A.6..... Terms and conditions of registration
- 4A.7..... Suspension
- 4A.8Termination
- 4A.9.....Surrender
- 4A.10.....Transition – terms and conditions in non-principal jurisdiction
- 4A.11..... Transition – notice of principal regulator for foreign firm

PART 4A APPLICATION TO BECOME A DESIGNATED RATING ORGANIZATION

- 4B.1 Application
- 4B.2.....Principal regulator for application for designation
- 4B.3.....Discretionary change of principal regulator for application for designation
- 4B.4 Passport application of designation

PART 5 EFFECTIVE DATE

- 5.1 Effective date

Appendix A

CD requirements under MI 11-101

Companion Policy 11-102CP
Passport System

PART 1 GENERAL

1.1 Definitions

In this Policy,

“CP 33-109” means Companion Policy 33-109CP *Registration Information*;

“domestic firm” means a firm whose head office is in Canada;

“domestic individual” means an individual whose working office is in Canada;

“MI 11-101” means Multilateral Instrument 11-101 *Principal Regulator System*;

“non-principal jurisdiction” means, for a person or company, a jurisdiction other than the principal jurisdiction;

“non-principal regulator” means, for a person or company, the securities regulatory authority or regulator of a jurisdiction other than the principal jurisdiction;

“NP 11-202” means National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*;

“NP 11-203” means National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*;

“NP 11-204” means National Policy 11-204 *Process for Registration in Multiple Jurisdictions*;

“NP 11-205” means National Policy 11-205 *Process for Designation of Credit Rating Organizations in Multiple Jurisdictions*;

“NRD” has the same meaning as in NI 31-102;

“NRD format” has the same meaning as in NI 31-102;

“SRO” means self regulatory organization; and

“T&C” means a term, condition, restriction or requirement imposed by a securities regulatory authority or regulator on the registration of a firm or an individual.

1.2 Additional definitions

Terms used in this policy and that are defined in NP 11-~~202~~, NP 11-~~203~~203, NP 11-204 and NP 11-~~204~~205 have the same meanings as in those national policies.

1.3 Purpose

(1) **General** – Multilateral Instrument 11-102 *Passport System* (the Instrument) and this policy implement the passport system contemplated by the Provincial/Territorial Memorandum of Understanding Regarding Securities Regulation.

The Instrument gives each market participant a single window of access to the capital markets in multiple jurisdictions. It enables a person or company to deal only with its principal regulator to

- get deemed receipts in other jurisdictions (except Ontario) for a preliminary prospectus and prospectus,
- obtain automatic exemptions in other jurisdictions (except Ontario) equivalent to most types of discretionary exemptions granted by the principal regulator, or
- register automatically in other jurisdictions (except Ontario).

The Instrument also enables a credit rating organization to obtain a deemed designation as a designated rating organization in other jurisdictions (except Ontario).

(2) **Process** – NP 11-~~202~~, NP 11-~~203~~203, NP 11-204 and NP 11-~~204~~205 set out the processes for a market participant in any jurisdiction to obtain a deemed prospectus receipt, an automatic exemption ~~or~~, automatic registration or automatic designation as a designated rating organization in a passport jurisdiction. These policies also set out processes for a market participant in a passport jurisdiction to get a prospectus receipt or a discretionary exemption from the OSC or to register in Ontario or to obtain designation as a designated rating organization in Ontario.

NP 11-203 also sets out the process for seeking exemptive relief in multiple jurisdictions that falls outside the scope of the Instrument. NP 11-203 applies to a broad range of exemptive relief applications, not just discretionary exemption applications from the provisions listed in Appendix D of the Instrument. For example, NP 11-203 applies to an application to be designated a reporting issuer, mutual fund, non-redeemable investment fund or insider (but not to an application to be designated as a designated rating organization, specifically covered in NP 11-205). It also applies to an application for a discretionary exemption from a provision not listed in Appendix D of the Instrument.

Please refer to NP 11-~~202~~, NP 11-~~203~~203, NP 11-204 and NP 11-~~204~~205 for more details on these processes.

(3) **Interpretation of the Instrument** – As with all national or multilateral instruments, you should read the Instrument from the perspective of the local jurisdiction in which you seek a deemed prospectus receipt or an automatic exemption or registration or designation as a designated rating organization. For example, if the Instrument does not specify where you file a document, it means that you must file it in the local jurisdiction. In this policy, we generally use the term ‘non-principal jurisdiction’ instead of ‘local jurisdiction’.

To get a deemed receipt for a prospectus in the non-principal jurisdiction, a filer must file the prospectus in the jurisdiction through SEDAR. Similarly, to get an automatic exemption based on a discretionary exemption granted in the principal jurisdiction, a filer must give notice under section 4.7(1)(c) of the Instrument to the securities regulatory authority or regulator in the non-principal jurisdiction. Under section 4.7(2) of the Instrument, a filer can satisfy the latter requirement by giving notice to the principal regulator instead of the securities regulatory authority or regulator in the non-principal jurisdiction.

To register in the non-principal jurisdiction, a firm or individual must make the required submission in the non-principal jurisdiction. To streamline the process, section 4A.3(3) of the Instrument allows a firm to make its submission to the principal regulator instead of the non-principal regulator. Submissions for individuals are made through NRD. If the principal regulator imposes a T&C on a firm’s or individual’s registration, or suspends, terminates or accepts the surrender of registration of the firm or individual, that decision applies automatically in the non-principal jurisdiction, whether or not the firm or individual registered in the non-principal jurisdiction under the Instrument.

To obtain a deemed designation as a designated rating organization in another jurisdiction, a credit rating organization must give notice under section 4B.6(1)(c) of the Instrument to the securities regulatory authority or regulator in the non-principal jurisdiction. Under section 4B.6(2) of the Instrument, a credit rating organization can satisfy the latter requirement by giving notice to the principal regulator instead of the securities regulatory authority or regulator in the non-principal jurisdiction.

(4) **Operation of law** – The provisions of the Instrument on prospectus receipt, discretionary exemptions, ~~and~~ registration and designation as a designated rating organization produce automatic legal outcomes in the non-principal jurisdiction that result from a decision made by the principal regulator. The effect is to make the law of the non-principal jurisdiction apply to a market participant as if the non-principal regulator had made the same decision as the principal regulator.

(5) **Applicable requirements** – A market participant must comply with the law of each jurisdiction in which it files a prospectus, is a reporting issuer, seeks registration ~~or~~, is registered or seeks designation as a designated rating organization.

Most prospectus, continuous disclosure ~~and~~, registration requirements and requirements relating to designated rating organizations are harmonized and are in rules or regulations commonly referred to as ‘national instruments’. The securities regulatory authorities and regulators intend to interpret and apply the harmonized requirements in national

instruments in a consistent way, and we have put practices and procedures in place to achieve this objective.

- Some jurisdictions have non-harmonized requirements in Securities Acts or local rules or regulations. In addition, some national instruments contain requirements or carve-outs for specific jurisdictions, which are apparent on the face of the instruments.
- Registrants will be subject to a few non-harmonized requirements. Section 4A.5 contains a description of these requirements.

(6) **Ontario** – The OSC has not adopted the Instrument, but the Instrument provides that the OSC can be a principal regulator for purposes of a prospectus filing under Part 3, a discretionary exemption application under Part ~~4~~4, registration under Part 4A, or an application for designation as a designated rating organization under Part 4B. Consequently, Ontario market participants have direct access to passport as follows:

- When the OSC issues a receipt for a prospectus to an issuer whose principal jurisdiction is Ontario, a deemed receipt is automatically issued in each passport jurisdiction where the market participant filed the prospectus under the Instrument.
- When the OSC grants a discretionary exemption to a market participant whose principal jurisdiction is Ontario, the person obtains an automatic exemption from the equivalent provision of securities legislation of each passport jurisdiction for which the person gives the notice described in section 4.7(1)(c) of the Instrument.
- A firm or individual whose principal jurisdiction is Ontario and who is registered in a category in Ontario is automatically registered in the same category in a passport jurisdiction when the firm or individual makes the required submission under the Instrument.
- When the OSC designates a credit rating organization as a designated rating organization, the credit rating organization obtains a deemed designation in each passport jurisdiction for which the credit rating organization gives the notice described in section 4B.6(1)(c) of the Instrument.

1.4 Language of documents – Québec

The Instrument does not relieve issuers filing in Québec from the linguistic obligations prescribed by Québec law, including the specific obligations in the Québec *Securities Act* (e.g. section 40.1). For example, where a prospectus is filed in several jurisdictions including Québec, the prospectus must be in French or in French and English.

PART 2 CONTINUOUS DISCLOSURE (Repealed)

PART 3 PROSPECTUS

3.1 Principal regulator for prospectus

For a prospectus filing subject to Part 3 of the Instrument, the principal regulator is the principal regulator identified under section 3.1 of the Instrument. Under this section, the principal regulator must be the securities regulatory authority or regulator in a specified jurisdiction. Section 3.1(1) of the Instrument specifies the following jurisdictions for purposes of that section: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia.

Section 3.4 of NP 11-202 gives guidance on how to identify the principal regulator for a prospectus filing subject to Part 3 of the Instrument.

3.2 Discretionary change in principal regulator for prospectus

Section 3.2 of the Instrument permits the securities regulatory authority or regulator to change the principal regulator for a prospectus filing subject to Part 3 of the Instrument on its own motion or on application. Section 3.5 of NP 11-202 gives guidance on the process for, and considerations leading to, a discretionary change in principal regulator for a prospectus filing subject to Part 3 of the Instrument.

3.3 Deemed issuance of receipt

Section 3.3 of the Instrument deems a receipt to be issued for a preliminary prospectus or prospectus in the non-principal jurisdiction if certain conditions are met. A deemed receipt in the non-principal jurisdiction has the same legal effect as a receipt issued in the principal jurisdiction.

To rely on section 3.3 of the Instrument in the non-principal jurisdiction, a filer must file on SEDAR the preliminary prospectus or the pro forma prospectus, and the prospectus, in both the non-principal jurisdiction and the principal jurisdiction. When filing, the filer must also indicate that it is filing the preliminary prospectus or pro forma prospectus under the Instrument. Under the law of the non-principal jurisdiction, these filings trigger the obligation to file supporting documents (e.g., consents and material contracts) and to pay required fees.

NP 11-202 sets out the process for making a waiver application for a prospectus filing subject to Part 3 of the Instrument.

If the principal regulator refuses to issue a receipt for a prospectus, it will notify the filer and the non-principal regulators by sending a refusal letter through SEDAR. In these circumstances, the Instrument will no longer apply to the filing and the filer may deal separately with the local securities regulatory authority or regulator in any non-principal jurisdiction in which the prospectus was filed to determine if the local securities regulatory authority or regulator would issue a local receipt.

3.4 Exemption from non-harmonized prospectus provisions (Repealed)

3.5 Transition for section 3.3

Section 3.3 of the Instrument applies to a preliminary prospectus or pro forma prospectus and their related prospectus, and to an amendment to a prospectus, filed on or after March 17, 2008.

Section 3.5(1) of the Instrument removes the deemed receipt that would otherwise be available in the non-principal jurisdiction under section 3.3 of the Instrument if a preliminary prospectus amendment is filed after March 17, 2008 and the related preliminary prospectus was filed before March 17, 2008.

Section 3.5(2) provides an exemption from the requirement in section 3.3(2)(b) of the Instrument to indicate on SEDAR, at the time of filing the preliminary prospectus or pro forma prospectus, that the preliminary prospectus or pro forma prospectus is filed under Instrument. This means there is a deemed receipt in the non-principal jurisdiction for a prospectus amendment if the related preliminary prospectus or pro forma prospectus was filed before March 17, 2008 and the filer indicated on SEDAR that it filed the amendment under the Instrument at the time of filing the amendment.

PART 4 DISCRETIONARY EXEMPTIONS

4.1 Application

Part 4 of the Instrument applies to an application for a discretionary exemption from a provision listed in Appendix D of the Instrument. Part 4 does not apply to a discretionary exemption application from a provision not listed in Appendix D of the Instrument or to other types of exemptive relief applications. For example, Part 4 does not apply to an application to designate a person to be a reporting issuer, mutual fund, non-redeemable investment fund or insider.

4.2 Principal regulator for discretionary exemption applications

For purposes of a discretionary exemption application under Part 4 of the Instrument, the principal regulator is the principal regulator identified under sections 4.1 to 4.5 of the Instrument. Except under section 4.4.1, the principal regulator must be the securities regulatory authority or regulator in a specified jurisdiction. Section 4.1 of the Instrument specifies the following jurisdictions for this purpose: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia.

Section 4.4.1 of the Instrument provides that the principal regulator for an application for exemption from a requirement in Parts 3 and 12 of NI 31-103 and Part 2 of NI 33-109 made in connection with an application for registration in the principal jurisdiction is the principal regulator as determined under section 4A.1 of the Instrument. The securities regulatory authority or regulator of each jurisdiction may be a principal regulator under section 4A.1 of the Instrument.

Section 3.6 of NP 11-203 gives guidance on how to identify the principal regulator for a discretionary exemption application under Part 4 of the Instrument.

4.3 Discretionary change of principal regulator for discretionary exemption applications

Section 4.6 of the Instrument permits the securities regulatory authority or regulator to change the principal regulator for a discretionary exemption application under Part 4 of the Instrument on its own motion or on application. Section 3.7 of NP 11-203 gives guidance on the process for, and considerations leading to, a discretionary change in principal regulator for a discretionary exemption application under Part 4 of the Instrument.

4.4 Passport application of discretionary exemptions

Section 4.7(1) of the Instrument exempts a person or company from an equivalent provision of securities legislation in the non-principal jurisdiction if the principal regulator for the application grants the discretionary exemption, the filer gives the notice required under paragraph (c) of that section and other conditions are met. The equivalent provisions from which an automatic exemption is available under section 4.7(1) of the Instrument are set out in Appendix D of the Instrument.

If the principal regulator revokes or cancels the discretionary exemption or it expires under a sunset clause, the exemption in section 4.7 is no longer available in the non-principal jurisdiction.

A discretionary exemption under section 4.7(1) of the Instrument is available in the passport jurisdictions for which the filer gives the required notice when filing the application. However, the discretionary exemption can become available later in other passport jurisdictions if the circumstances warrant. For example, if a reporting issuer obtains a discretionary exemption from a national continuous disclosure requirement in its principal jurisdiction and an automatic exemption under section 4.7(1) in three non-principal jurisdictions in 2008 and the issuer becomes a reporting issuer in a fourth non-principal jurisdiction in 2009, the issuer could obtain an automatic exemption in the new jurisdiction. To obtain the automatic exemption in the new jurisdiction, the issuer would have to give the notice referred to in section 4.7(1)(c) of the Instrument in respect of that jurisdiction and meet the other condition of the exemption.

Under section 4.7(2) of the Instrument the filer may give the required notice to the principal regulator instead of the non-principal regulator.

A filer should identify in the application all the exemptions required and give notice for all the jurisdictions in which section 4.7(1) of the Instrument is intended to be relied upon. If an exemption is required in a non-principal jurisdiction when the filer files the application, but the filer does not give the required notice for that jurisdiction until after the principal regulator grants the exemption, the securities regulatory authority or regulator of the non-principal jurisdiction will take appropriate action. This could include removing the exemption, in which case the filer may have an opportunity to be heard in that jurisdiction in appropriate circumstances.

A principal regulator's decision to vary a decision the principal regulator previously made to exempt a person or company from a provision set out in Appendix D of the Instrument has automatic effect in a non-principal jurisdiction if

- the person or company applied in the principal jurisdiction to have the decision varied and gave the notice required under section 4.7(1)(c) of the Instrument in respect of the non-principal jurisdiction,
- the principal regulator grants the exemption and the exemption is in effect, and
- the other conditions of section 4.7(1) of the Instrument are met.

If the principal regulator for an application for exemption from a filing requirement under section 6.1 of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) grants an exemption under section 4.7(1) of the Instrument, a person or company has an automatic exemption in a non-principal jurisdiction under the section only if

- the filing requirement arises from the person or company relying on one of the provisions referred to in section 6.1 of NI 45-106 in the principal jurisdiction,
- the person or company is relying on the equivalent exemption in the non-principal jurisdiction, and
- the person or company complies with the conditions of section 4.7(1) of the Instrument.

Because, under the Instrument, a person or company files an application for a discretionary exemption only in the principal jurisdiction to obtain an automatic exemption in multiple jurisdictions, the filer is required to pay fees only in the principal jurisdiction.

NP 11-203 sets out the process for seeking exemptive relief in multiple jurisdictions, including the process for seeking a discretionary exemption under Part 4 of the Instrument.

4.5 Availability of passport for discretionary exemptions applied for before March 17, 2008

Under section 4.8(1) of the Instrument, an exemption from the equivalent provision is automatically available in the local jurisdiction if

- an application was made in a specified jurisdiction before March 17, 2008 for an exemption from a provision of securities legislation that is now listed in Appendix D of the Instrument,
- the securities regulatory authority or regulator in the specified jurisdiction granted the exemption before, on or after March 17, 2008, and

- certain other conditions are met.

These conditions include giving the notice required under section 4.8(1)(c). Section 4.8(2) permits the filer to give the required notice to the securities regulatory authority or regulator that would be the principal regulator for the application under Part 4 if an application were to be made under that Part at the time the notice is given, instead of to the non-principal regulator.

Under section 4.1, the specified jurisdictions are British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia.

A specified jurisdiction for purposes of section 4.8 of the Instrument is a principal jurisdiction under MI 11-101.

The combined effect of sections 4.8(1) and 4.8(3) is to make an exemption from a CD requirement granted by the principal regulator before March 17, 2008 under MI 11-101 automatically available in the non-principal jurisdiction, even though the decision of the principal regulator under MI 11-101 does not refer to the non-principal jurisdiction. To benefit from this, however, the reporting issuer must comply with the terms and conditions of the decision of the principal regulator under MI 11-101. Only exemptions granted from CD requirements that are now listed in Appendix D of the Instrument become available in the non-principal jurisdiction in this way.

Appendix A of this policy lists the CD requirements from which a reporting issuer could get an exemption under section 3.2 of MI 11-101. Appendix D of the Instrument sets out the list of equivalent provisions.

PART 4A REGISTRATION

4A.1 Application

The Instrument permits a firm or individual to register automatically in a non-principal jurisdiction based on its principal jurisdiction registration. It also makes some types of regulatory decisions by a firm's or individual's principal regulator apply automatically in each non-principal jurisdiction where the firm or individual is registered, whether or not the firm or individual is registered automatically under the Instrument.

Permitted individual

The Instrument does not apply to “permitted individuals” under NI 33-109 because these individuals are not registered under securities legislation. The Instrument applies to a permitted individual only if the permitted individual becomes registered in a category in his or her principal jurisdiction and seeks registration in the same category in a non-principal jurisdiction.

Restricted dealers and their representatives

Section 4A.3 of the Instrument does not apply to a firm registered in the category of “restricted dealer” under NI 31-103. To register in a non-principal jurisdiction, a restricted dealer must apply directly to the non-principal regulator. Automatic registration under the Instrument does

not apply to restricted dealers because there are no standard requirements for this category and most firms registered as restricted dealers operate in a single jurisdiction. However, if a restricted dealer registers directly in the same category in a non-principal jurisdiction, the provisions of the Instrument relating to T&Cs (section 4A.5), suspension (section 4A.6), termination (section 4A.7) and surrender (section 4A.8) apply to the firm.

All the provisions of the Instrument apply to the dealing representatives of a restricted dealer. This includes automatic registration under section 4A.4 of the Instrument if the representative's sponsoring firm is registered as a restricted dealer in the representative's principal jurisdiction and the non-principal jurisdiction in which the representative seeks registration. It also includes the provisions of the Instrument relating to T&Cs (section 4A.5), suspension (section 4A.6), termination (section 4A.7) and surrender (section 4A.8).

4A.2 Registration by SRO

The securities regulatory authority or regulator in some jurisdictions has delegated, assigned or authorized an SRO to perform all or part of its registration function. The instrument applies to the decisions made by SROs under these arrangements. For more details, refer to section 3.5 of NP 11-204.

4A.3 Principal regulator for registration

The principal regulator of a firm or individual is the securities regulatory authority or regulator identified under section 4A.1 of the Instrument. The securities regulatory authority or regulator of any jurisdiction can be a principal regulator for registration.

Section 3.6 of NP 11-204 gives guidance on how to identify the principal regulator of a firm or individual under Part 4A of the Instrument.

4A.4 Discretionary change of principal regulator for registration

Section 4A.2 of the Instrument permits the securities regulatory authority or regulator to change the principal regulator for the purpose of Part 4A of the Instrument. Section 3.7 of NP 11-204 gives guidance on the process for a discretionary change of principal regulator for registration under Part 4A of the Instrument.

4A.5 Registration

Sections 4A.3 and 4A.4 of the Instrument are available for firms or individuals required to be registered under NI 31-103, except for firms registering as restricted dealers.

A firm or individual who registers in a non-principal jurisdiction under section 4A.3 or 4A.4 of the Instrument must comply with all applicable requirements of the non-principal jurisdiction, including the obligation to pay the required fees in that jurisdiction and any non-harmonized requirements.

In Québec, firms and individuals in the mutual fund and scholarship plan sectors are subject to a specific regulatory framework that also applies under passport:

- mutual fund firms registered in Québec are not required to be members of the Mutual Fund Dealers Association of Canada (MFDA) and are under the direct supervision of the Autorité des marchés financiers, as are scholarship plan firms,
- individuals in the mutual fund and scholarship plan sectors are required to be members of the Chambre de la sécurité financière,
- firms and individuals must maintain professional liability insurance, and
- firms must contribute to the Fonds d'indemnisation des services financiers which provides financial compensation to investors who are victims of fraudulent tactics or embezzlement committed by these firms or individuals.

In addition, in Québec, an individual who is a representative of an investment dealer cannot concurrently be employed by a financial institution and carry on business as a representative in a Québec branch of a financial institution unless he or she is a representative specialized in mutual funds or scholarship plans.

In British Columbia, investment dealers that trade in the U.S. over-the-counter markets must comply with local requirements to manage the risks of trading these securities, retain records and report quarterly to the Commission.

To register in a non-principal jurisdiction

Before making a submission under section 4A.3 or 4A.4, the firm or individual should ensure that the firm's or individual's principal jurisdiction is correctly identified in the firm's or individual's latest submission under NI 33-109.

Firm

Under section 4A.3(1) of the Instrument, if a firm is registered in its principal jurisdiction in a category set out in NI 31-103, other than the category of "restricted dealer", the firm is registered in the same category in a non-principal jurisdiction if the firm

- (a) has submitted a completed Form 33-109F6 in accordance with NI 33-109, and
- (b) is a member of an SRO if required for that category.

A firm should refer to Part 4 and section 5.2 of NP 11-204 for guidance on how to make its submission under the Instrument.

Under section 4A.3(3) of the Instrument, a firm may make the relevant submission by giving it to its principal regulator instead of the non-principal regulator. In a jurisdiction where the principal regulator has delegated, assigned or authorized an SRO to register firms, the firm should make the submission by giving it to the relevant office of the SRO.

To register under section 4A.3(1) of the Instrument, the firm must be a member of an SRO if required in the local jurisdiction for that category of registration. This condition does not apply if the firm has an exemption in the local jurisdiction from the requirement to be a member of the SRO. All jurisdictions require investment dealers to be members of the Investment Industry Regulatory Organization of Canada. All jurisdictions, except Québec, require mutual fund dealers to be members of the MFDA. A mutual fund dealer whose principal jurisdiction is Québec must be a member of the MFDA before it can register in another jurisdiction.

Individual

Under section 4A.4 of the Instrument, if an individual acting on behalf of a sponsoring firm is registered in his or her principal jurisdiction in a category set out in NI 31-103, the individual is registered in the same category in a non-principal jurisdiction if

- (a) the individual's sponsoring firm is registered in the non-principal jurisdiction in the same category as in the firm's principal jurisdiction,
- (b) the individual submitted a completed Form 33-109F2 or Form 33-109F4 in accordance with NI 33-109, and

the individual is a member or an approved person of an SRO if required for that category.

Section 5.2 of NP 11-204 provides guidance on how to make a submission.

To register under section 4A.4 of the Instrument, the individual must be a member or an approved person of an SRO if required in the local jurisdiction for that category of registration. This condition does not apply if the individual has an exemption in the local jurisdiction from the requirement to be a member or approved person of the SRO. Québec legislation requires individuals who are representatives of mutual fund or scholarship plan dealers to be members of the Chambre de la sécurité financière. Other jurisdictions require individuals who are representatives of mutual fund dealers to be approved persons under the rules of the MFDA.

For greater certainty, if an individual is registered in a category in his or her principal jurisdiction for more than one sponsoring firm, each sponsoring firm must be registered in the same category in the non-principal jurisdiction in which the individual seeks registration under section 4A.4 of the Instrument.

4A.6 Terms and conditions of registration

Section 4A.5 (1) of the Instrument provides that, if a firm or individual is registered in the same category in the principal jurisdiction and in the non-principal jurisdiction, a T&C imposed on the registration in the principal jurisdiction applies to the firm or individual as if it were imposed in the non-principal jurisdiction (i.e., by operation of law). Under section 4A.5(2) of the Instrument, a T&C continues to apply until the earlier of the date the securities regulatory authority or regulator that imposed it, cancels or revokes it, or it expires.

Under section 4A.5 of the Instrument, if the principal regulator amends or adds a T&C to a category in which a firm or individual is registered, the amended or additional T&C automatically applies to the firm's or individual's registration in the same category in the non-principal jurisdiction.

In the event of a change of principal regulator, and for each category in which a firm or an individual is registered in the non-principal jurisdiction under section 4A.3 or 4A.4 of the Instrument, the firm's or individual's

- original principal regulator will revoke any T&C it imposed, and
- new principal regulator will adopt any T&C's that are appropriate.

This will enable the new principal regulator to amend the firm's or individual's T&Cs in appropriate circumstances and result in any T&C amended by the new principal regulator applying automatically in a non-principal jurisdiction as if it had been imposed in that jurisdiction (i.e., by operation of law).

4A.7 Suspension

Under section 4A.6 of the Instrument, if a firm's or an individual's registration in the principal jurisdiction is suspended, the firm's or individual's registration is automatically suspended in any non-principal jurisdiction where the firm or individual is registered. For greater certainty, a suspension of registration is a suspension of a firm's or individual's trading or advising privileges and the firm or individual remains registered under securities legislation. A firm's or individual's registration is suspended on the same day in the principal jurisdiction and the non-principal jurisdiction. NRD will show the same suspension date in each relevant jurisdiction.

A firm's or individual's registration is suspended in the non-principal jurisdiction for as long as the firm's or individual's registration is suspended in the principal jurisdiction. If the principal regulator lifts a firm's or individual's suspension, the firm or individual may resume trading or advising in the non-principal jurisdiction on the date NRD shows that the suspension has been lifted. Any T&C imposed by the principal regulator when it lifts a suspension applies automatically in the non-principal jurisdiction under section 4A.5 of the Instrument.

4A.8 Termination

Under section 4A.7 of the Instrument, if a firm's or individual's registration in the principal jurisdiction is cancelled, revoked or terminated, as applicable, the firm's or individual's registration in the non-principal jurisdiction is automatically cancelled, revoked or terminated, as applicable. A firm's or individual's registration is terminated on the same date in the principal jurisdiction and the non-principal jurisdiction. NRD will show the same termination date in each relevant jurisdiction.

4A.9 Surrender

Under section 4A.8 of the Instrument, a firm's or individual's registration is automatically cancelled, revoked or terminated, as applicable, in a category in **all** non-principal jurisdictions in which the firm or individual is registered if the firm or individual applies to surrender registration in the category in its principal jurisdiction and the principal regulator accepts the surrender.

A firm should submit an application to surrender registration in one or more categories in the firm's principal jurisdiction and Ontario, if Ontario is a non-principal jurisdiction. The application should identify any non-principal jurisdiction where the firm is registered in the same category(ies). In a jurisdiction where the principal regulator has delegated, assigned or authorized an SRO to perform registration functions, a firm should submit its application to surrender to the relevant office of the SRO. A firm should refer to Appendix B of CP 33-109 for guidance on how to submit its application for surrender to the principal regulator or the relevant office of the SRO.

An individual should make the relevant NRD submission under NI 33-109 to surrender registration.

If a firm or individual applies to surrender a category in the principal jurisdiction, the principal regulator may suspend registration in the category pending surrender, or impose a T&C. See section 4A.7 of this Policy for guidance on suspension of registration.

If the principal regulator imposes a T&C, section 4A.5 of the Instrument provides that the T&C applies in each non-principal jurisdiction where a firm or individual is registered in the same category as if the T&C had been imposed in the non-principal jurisdiction.

The Instrument does not deal with a firm or individual that seeks to surrender a category in a non-principal jurisdiction only. If a firm or individual seeks to surrender a category in a non-principal jurisdiction, other than Ontario,

- the firm may still submit its application by giving it to the principal regulator only or, if the principal regulator has delegated, assigned or authorized an SRO to perform registration functions, the relevant office of the SRO in the principal jurisdiction,
- the individual should make the relevant NRD submission under NI 33-109,
- the firm's or individual's submission should indicate the non-principal jurisdiction where the firm or individual is applying to surrender registration, and
- the fact that a securities regulatory authority, regulator or SRO accepts the surrender of registration of a firm or individual in the non-principal jurisdiction does not affect the registration of the firm or individual in another jurisdiction.

4A.10 Transition – terms and conditions in non-principal jurisdiction

The purpose of section 4A.9(1) of the Instrument is to delay until October 28, 2009 the automatic application of section 4A.5 of the Instrument in a non-principal jurisdiction in which a firm or individual is registered on September 28, 2009. This gives the firm or individual time to make an application under section 4A.9(2) of the Instrument for an exemption from having a T&C imposed by the principal regulator apply automatically in the non-principal jurisdiction.

A firm or individual should apply for the exemption contemplated in section 4A.9(2) of the Instrument separately in each non-principal jurisdiction because the purpose of the exemption application is to give the firm or individual an opportunity to be heard on the automatic application in the non-principal jurisdiction of a T&C imposed by the principal regulator. For this reason, a firm or individual should not make the application under NP 11-203.

If a firm or individual does not apply for an exemption under section 4A.9(2) of the Instrument in a non-principal jurisdiction,

- a T&C imposed by the principal regulator automatically applies on October 28, 2009 in the non-principal jurisdiction , and
- a T&C previously imposed by the non-principal regulator ceases to apply unless it is enforcement related.

4A.11 Transition – notice of principal regulator for foreign firm

Under section 4A.10(1) of the Instrument, a foreign firm registered in a category in multiple jurisdictions before September 28, 2009 is required to submit the information to identify its principal jurisdiction in item 2.2(b) in Form 33-109F6 by submitting a Form 33-109F5 on or before October 28, 2009. This information will determine the foreign firm's principal regulator under section 4A.1 of the Instrument.

Section 4A.10(2) of the Instrument permits the foreign firm to make this submission to a non-principal regulator by giving it only to its principal regulator. In a jurisdiction where the principal regulator has delegated, assigned or authorized an SRO to perform registration functions, the foreign firm should make the submission to the relevant office of the SRO. Foreign firms should refer to Appendix B of CP 33-109 for guidance on how to make a submission.

Because the principal regulator for a foreign individual is the same as the principal regulator for the individual's sponsoring firm, the Instrument does not require the foreign individual to make a submission to identify the individual's principal regulator.

PART 4B APPLICATION TO BECOME A DESIGNATED RATING ORGANIZATION

4B.1 Application

Part 4B of the Instrument only applies to an application for designation as a designated rating organization. Designated rating organizations applying for a discretionary exemption from a provision of National Instrument 25-101 *Designated Rating Organizations* should refer to Part 4 of the Instrument.

4B.2 Principal regulator for application for designation

For purposes of an application for designation as a designated rating organization under Part 4B of the Instrument, the principal regulator is the principal regulator identified under sections 4B.1 to 4B.5 of the Instrument. The principal regulator must be the securities regulatory authority or regulator in a specified jurisdiction. Section 4B.1 of the Instrument specifies the following jurisdictions for this purpose: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and New Brunswick.

Section 7 of NP 11-205 gives guidance on how to identify the principal regulator for an application for designation as a designated rating organization under Part 4B of the Instrument.

4B.3 Discretionary change of principal regulator for application for designation

Section 4B.5 of the Instrument permits the securities regulatory authority or regulator to change the principal regulator for an application for designation as a designated rating organization under Part 4B of the Instrument on its own motion or on application. Section 8 of NP 11-205 gives guidance on the process for, and considerations leading to, a discretionary change in principal regulator for an application for designation as a designated rating organization under Part 4B of the Instrument.

4B.4 Passport application of designation

Section 4B.6(1) of the Instrument provides that a credit rating organization is deemed to be designated as a designated rating organization in the non-principal jurisdiction if the principal regulator for the application grants the designation, the credit rating organization gives the notice required under paragraph (c) of that section and other conditions are met.

A deemed designation under section 4B.6(1) of the Instrument is available in the passport jurisdictions for which the credit rating organization gives the required notice when filing the application for designation. Credit rating organizations should give the notice in paragraph (c) of that section for all passport jurisdictions. However, the deemed designation can become available later in other passport jurisdictions if the circumstances warrant. To obtain the deemed designation in the new jurisdiction, the credit rating organization would have to give the notice referred to in section 4B.6(1)(c) of the Instrument in respect of that jurisdiction and meet the other conditions of the designation.

Because, under the Instrument, a credit rating organization makes an application for designation only in the principal jurisdiction to obtain a deemed designation in multiple jurisdictions, the credit rating organization is required to pay fees only in the principal jurisdiction.

NP 11-205 sets out the process for seeking designation as a designated rating organization in multiple jurisdictions under Part 4B of the Instrument.

PART 5 EFFECTIVE DATE

5.1 Effective date

The Instrument applies to continuous disclosure documents, prospectuses and discretionary exemption applications filed on or after March 17, 2008.

The Instrument applies to an individual or firm seeking registration outside its principal jurisdiction on or after September 28, 2009. In addition, it applies to an individual or firm that is registered on that date unless the individual or firm requests and obtains an exemption under section 4A.9(2).

The Instrument applies to applications for designation as a designated rating organization filed on or after [●].

Companion Policy 11-102CP
Passport System

Appendix A

CD requirements under MI 11-101

For ease of reference, this appendix reproduces the definition of CD requirements in MI 11-101 even though some references might no longer be relevant because sections were repealed after September 19, 2005 when MI 11-101 came into force.

British Columbia:

Securities Act: section 85 and 117
Securities Rules: section 144 (except as it relates to fees), 145 (except as it relates to fees, 152 and 153
sections 2, 3 and 189 as they relate to a filing under another CD requirement, as defined in MI 11-101

Alberta:

Securities Act: sections 146, 149 (except as it relates to fees), 150, 152 and 157.1
Securities Commission Rules (General): except as it relates to a prospectus, section 143 – 169, 196 and 197

Saskatchewan:

The Securities Act, 1988: section 84, 86 – 88, 90, 94 and 95
The Securities Regulations: section 117 – 138.1 and 175 as it relates to a filing under another CD requirement, as defined under MI 11-101

Manitoba:

Securities Act: sections 101(1), 102(1), 104, 106(3), 119, 120 (except as it relates to fees) and 121– 130
Securities Regulation: sections 38 – 40 and 80 – 87

Québec:

Securities Act: sections 73 excluding the filing requirement of a statement of material change, 75 excluding the filing requirement, 76, 77 excluding the filing requirement, 78, 80 – 82.1, 83.1, 87, 105 excluding the filing requirement, 106 and 107 excluding the filing requirement
Securities Regulation: sections 115.1 – 119, 119.4, 120 – 138 and 141 – 161
Regulations: No. 14, No. 48, Q-11, Q-17 (Title IV) and 62 – 102

A document filed with or delivered to the Autorité des marchés financiers, delivered to securityholder in Québec or disseminated in Québec under section 3.2 of the Instrument, is deemed, for the purposes of securities legislation in Québec, to be a document filed, delivered or disseminated under Chapter II of Title III or section 84 of the *Securities Act* (Québec).

New Brunswick:

Securities Act: sections 89(1) – (4), 90, 91, 100 and 101

Nova Scotia:

Securities Act: section 81, 83, 84 and 91

General Securities Rules: sections 9, 140(2), 140(3) and 141

**Newfoundland
and Labrador:**

Securities Act: except as they relate to fees, sections 76, 78 – 80, 82, 86 and 87

Securities Regulations: sections 4 – 14 and 71 – 80

Yukon:

Securities Act: section 22(5) except as it relates to filing a new or amended prospectus

All jurisdictions:

- (a) National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, except as it relates to a prospectus,
- (b) National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, except as it relates to a prospectus,
- (c) National Instrument 51-102 *Continuous Disclosure Obligations*,
- (d) National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;
- (e) National Instrument 52-108 *Auditor Oversight*,
- (f) National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*,
- (g) National Instrument 52-110 *Audit Committees*, except in British Columbia
- (h) BC Instrument 52-509 *Audit Committees*, only in British Columbia
- (i) National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*,
- (j) National Instrument 58-101 *Disclosure of Corporate Governance Practices*,
- (k) section 8.5 of National Instrument 81-104 *Commodity Pools*, and

- (1) National Instrument 81-106 *Investment Fund Continuous Disclosure*.

[Amended ~~January 1, 2011~~●]