S&P Global
Ratings

Frank Staudohar
S&P Global Ratings – Legal Department
Managing Director and Head of Legal Canada
130 King Street West
Suite 1100, PO Box 486
Toronto, ON M5X 1E5
frank.staudohar@spglobal.com
spglobal.com/ratings

Via E-Mail to: comment@osc.gov.on.ca & consultation-en-cours@lautorite.qc.ca

October 4, 2017

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Re: Request for Comment on National Instrument 25-101

Dear Sirs / Mesdames:

S&P Global Ratings Canada, a business unit of S&P Global Canada Corp. ("*S&P Canada*"), a designated rating organization ("*DRO*") under National Instrument 25-101 ("*NI 25-101*"), appreciates the opportunity to comment on the Canadian Securities Administrators ("*CSA*") Request for Comment Relating to Designated Rating Organizations, published on July 6, 2017 ("*RFC*").

We focus our comments in this letter on the proposed amendments to NI 25-101 addressing (i) the new provisions in the March 2015 version of the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies (the "*IOSCO Code*") of the International Organization of Securities Commissions

("*IOSCO*") and (ii) the new requirements for credit rating agencies ("*CRAs*") in the European Union ("*EU*") resulting from the most recent amendment to EU Regulation 1060/2009 on credit rating agencies ("*CRA-3*").

We understand the CSA's desire for the EU and the European Securities and Markets Authority ("*ESMA*") to continue to recognize the Canadian regulatory regime as "*equivalent*" for regulatory purposes in the EU ("*EU Equivalency*") so that credit ratings issued by a DRO such as S&P Canada can continue to be endorsed by an EU-registered affiliate of the DRO and subsequently used for regulatory purposes in the EU.

In light of the global consistency of S&P Global Ratings' credit ratings and credit rating activities and our global network with multiple office locations, including our Toronto office, we underscore the importance of proximity to local markets when assigning analysts to the rating analysis of Canada-based entities and hence share the interest of the CSA and Canadian rated entities in continued EU Equivalency.

On April 4, 2017 ESMA published its *"Consultation Paper – Update of the guidelines on the application of the endorsement regime under Article 4(3) of the Credit Rating Agencies Regulation*" which in Annex III included an update to the Methodological Framework for assessing third-country legal and supervisory frameworks, (the *"ESMA CP"*) where ESMA sets out its preliminary considerations on how the CRA-3 amendments should be reflected in third country CRA oversight regimes such as NI 25-101.

With respect to a number of CRA-3 provisions referenced in the ESMA CP, ESMA acknowledges that "*ESMA does not expect identical requirements to be hard-wired into a third-country regulatory framework.*" and that ESMA may accept that certain elements "…*are not in place if the third-country supervisory and legal framework ensures an adequate level of quality, rigour and transparency of rating methodologies through other means*". There are regulatory regimes outside of the EU and Canada applicable to CRAs that have local or global reach (e.g. US rules governing Nationally Recognized Statistical Rating Organizations ("*NRSROs*")), and we note that those other local and global regimes are not identical to the ESMA provisions. We believe that the CSA should be open to considering additional amendments to its proposed changes to NI 25-101 that allow for a balanced approach toward meeting its objectives of maintaining EU Equivalency, while at the same time supporting efficiency in the drafting and application of regulatory requirements and not unnecessarily adding complexity and associated costs to the existing Canadian regulatory framework for DROs. We also note that we are not aware at this stage of any recent initiatives from other jurisdictions' authorities to revise their own CRA regulatory frameworks.

Our comments on the proposed changes to NI 25-101, Appendix A thereto and Form 25-101F1 are set out in the attached Annex A to this letter.

We wish to thank the CSA members for their considered review of our comments on the proposed changes to NI 25-101. Please contact me if you have any questions, or require any additional information.

Very truly yours,

S&P Global Ratings Canada,
a business unit of S&P Global Canada Corp.

By: _____
Name: Frank Staudohar
Title: Managing Director and Head of Canada Legal

Encls.

Cc: David Goldenberg
Holly Kulka
Patrick Nicholson
Mary McCann
Florian Wagner
Gerben de Noord

Annex A to S&P Global Ratings comment letter dated October 4, 2017
re: Request for Comment on National Instrument 25-101

NI 25-101

Proposed Text:

Section 12 (1.1) The compliance officer must be designated as an officer of the designated rating organization, or a DRO affiliate that is a parent of the designated rating organization, under a by-law or similar authority of the designated rating organization or the DRO affiliate.

S&P Global Ratings Comment:

Section 12(1.1) as currently drafted states that "*the compliance officer must be designated as an officer of the [DRO]*". To provide for flexibility, our comment is that the term "*officer*" should be complemented with the term "*senior level employee*" as used in the IOSCO Code at 1.23c. . We further comment that this paragraph be amended to explicitly recognize that the Designated Compliance Officer of an NRSRO that is related to the DRO may also perform the role of compliance officer of the DRO.

NI 25-101 – Appendix A

Proposed Text

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

S&P Global Ratings Comment

We note that the 2015 revisions to the IOSCO Code replaced the term "*systematic*" with the phrase "*capable of being applied consistently*" aiming, as they described it, "*to provide more clarity*". We would submit that if the CSA seeks to adopt the 2015 IOSCO changes in this section that they also delete the term "*systematic*" to avoid unnecessary duplication and possible confusion.

Proposed Text

2.7 The designated rating organization ~~will~~ must ensure that it has and devotes sufficient resources to carry out and maintain high-quality credit ~~assessments of~~ ratings for all rated entities and rated securities.

When deciding whether to rate or continue rating an entity or securities, the organization ~~will~~ must assess whether it is able to devote sufficient personnel with sufficient skill sets to ~~make a credible~~ provide a high-quality credit rating ~~assessment,~~ and whether its personnel are likely to have access to sufficient information needed in order ~~make~~ to provide such ~~an assessment~~ a rating.

A designated rating organization ~~will~~ must adopt all necessary measures so that the information it uses in assigning a credit rating or a rating outlook is of sufficient quality to support ~~a credible~~ what a reasonable person would conclude is a high-quality credit rating and is obtained from a source that a reasonable person would consider to be reliable.

S&P Global Ratings Comment

We believe that the proposed insertion of the reference to a "*high-quality*" rating qualified by the "*reasonable person*" standard is unnecessary as the comparable provisions of the EU Regulation 1060/2009 and the NRSRO Rules do not contain similar tests.

We believe that the current provisions of NI 25-101 are broadly aligned with the comparative provisions in the EU and the US CRA regulatory regimes and accordingly we don't believe that the proposed changes to include these two tests are required for continued EU Equivalency. In addition the adoption of the proposed changes would create in our view an uneven playing field between the US and the EU on the one hand and Canada on the other with respect to these provisions. We believe that the current reference to "credible rating" should remain.

Separately, in our view the insertion of "*high-quality*" credit rating qualified by the "*reasonable person*" standard is unworkable. We are concerned that applying a *reasonable person* test to the judgement of ratings quality, likely measured with the benefit of hindsight, exposes the credit ratings of DROs to a confusing performance benchmark.

It is important to recall what credit ratings are. S&P Global Ratings' credit ratings are opinions about credit risk. Our credit ratings express our opinion about the ability and willingness of an issuer, such as a corporation or state or city government, to meet its financial obligations in full and on time. Credit ratings can also speak to the credit quality of an individual debt issue, such as a corporate or municipal bond, and the relative likelihood that the issue may default. Credit ratings are not absolute measure of default probability. Since there are future events and developments that cannot be foreseen, the

assignment of credit ratings is not an exact science. Credit ratings are not intended as guarantees of credit quality or as exact measures of the probability that a particular issuer or debt issue will default.

When an issuer that was originally rated investment-grade defaults we may see criticism to the effect that the credit rating must have been flawed or inaccurate. Historical data clearly shows that debt originally rated investment-grade does default from time to time[1]. An investor holding a bond from a defaulted issuer may likely view the credit rating as not being "*high-quality*"; however the default alone does not mean the initial credit rating was inappropriate and not of "high-quality". A measure of a CRA's success is whether, in aggregate and over the long term, its credit ratings are correlated with actual default experience. We are concerned that the *reasonable person* test may establish a benchmark for measuring credit ratings quality that may not appropriately recognize the forward-looking nature of credit ratings and may subject credit ratings to standards that they were not designed to meet. The *reasonable person* test may also not appropriately recognize the fact that as between CRAs credit rating definitions and methodologies differ and are thus not necessarily comparable. In addition *reasonable persons*' views can vary widely as it relates to their risk tolerance associated with any particular credit rating – some persons may view credit rating transitions acceptable given their outlook for risk and other persons may see the same transitions as unacceptable. For all of these reasons, we believe that the insertion of "*high-quality*" qualified by the "*reasonable person*" test in this paragraph is confusing and unworkable and accordingly we request that the *reasonable person* test be deleted from the proposed text of paragraph 2.7.

We note that the equivalent provision of the EU Regulation 1060/2009 also does not contain a *reasonable person* test. To our understanding, *reasonable person* tests in relation to ratings quality have not been used in comparable provisions of CRA regulatory regimes outside of Canada.

[1] This is also widely recognized, including for example in the publication entitled "The ABCs of Credit ratings" produced by the SEC's Office of Investor Education and Advocacy and Office of Credit Ratings, which, among other things, discusses what credit are and are not, recognizing for example that "even debt rated 'AAA' can default" (https://www.sec.gov/investor/alerts/ib_creditratings.pdf).

Proposed Text

2.12.1 If a designated rating organization becomes aware of errors in a rating methodology or its application, the designated rating organization must do all of the following if the errors could have an impact on its ratings:

(a) promptly notify the regulator or securities regulatory authority and all affected rated entities of the errors and explain the impact or potential impact of the errors on its ratings, including the need to review existing ratings;

(b) promptly publish a notice of the errors on its website, where the errors have an impact on its ratings;

S&P Global Ratings Comment

We request the deletion of the word "*could*" in the introductory part of paragraph 2.12.1 so as to provide clarity to DROs regarding the threshold that triggers the actions required in subparagraphs (a) and (b). We are concerned that the word "*could*" creates a low threshold for notifications to rated entities and regulators that includes all errors, however technical or insignificant, given that at the point that an error is first identified all errors *could* be said to potentially impact credit ratings until such time as a proper assessment has been completed to conclude whether the error is one of substance impacting credit ratings. Separately the requirement to notify *all affected entities* as per subparagraph (a) suggests that an assessment of credit rating impact be completed to determine whether a particular entity's ratings *have* been affected which seems to contradict the lower *could* standard. Lastly we note that as drafted the *could* standard would compel notification to rated entities as per subparagraph (a) but not to the market, as per subparagraph (b) raising the risk of information asymmetries regarding credit ratings related information becoming available to limited segments of the market during the period between which errors may first be identified and the time in which errors are properly assessed to have credit ratings impact or not. For these reasons, we believe that the more useful threshold triggering action pursuant to paragraph 2.12.1 is errors that *have an impact* on credit ratings as determined by the CRA. We believe that this provides a clear and consistent trigger, results in meaningful information to regulators and rated entities and avoids the risk of credit ratings related information asymmetries in the market.

Proposed Text

2.20 A person or company listed below must not make a recommendation to a rated entity about the corporate or legal structure, assets, liabilities, or activities of the rated entity:

(d) a significant security holder of the designated rating organization or of an affiliate that is a parent of the designated rating organization.

S&P Global Ratings Comment

Proposed paragraph 2.20(d) in our understanding aims to manage potential conflicts of interests between DROs and their significant security holders. However, proposed paragraph 2.20(d) is neither a proportionate nor effective means to address potential conflicts of interest. Essentially, it would impose restrictions upon financial advisory activities of non-DRO entities through a National Instrument specifically regulating DROs. As CRAs cannot reasonably be held responsible for the actions of persons or entities over which they have no control, such provisions are better addressed through relevant securities legislation rather than through NI 25-101. Firms with significant financial holdings that also offer financial advisory services typically provide their financial advisory services through a division or business unit that is operationally and/or legally separated from the investment management division in accordance with firewall policies mandated by relevant securities regulation. As discussed further in our comment on paragraph 3.6.1 below, DROs that are, or whose parents are owned directly or indirectly by publicly traded companies cannot always easily identify their ultimate shareholders and DROs would not be in a position to find out whether a significant security holder has or has not provided financial advisory services to rated entities as such information is not generally disclosed publicly.

We therefore request the deletion of paragraph 2.20(d). Please also see our comment on paragraph 3.6.1 below.

Proposed Text

2.25 The board of directors of a designated rating organization or a DRO affiliate that is a parent of the designated rating organization must monitor all of the following:

(e) the compliance by the designated rating organization and its DRO employees with the organization's code of conduct and with securities legislation.

S&P Global Ratings Comment

There is a general alignment of the board composition and board duties requirements of NI-25-101 with those described in Section 15E(t)(2) and 15E(t)(3) of U.S. Securities Exchange Act of 1934 (the "*1934 Act*"). Canadian securities regulators have accepted, in the case of S&P Global Ratings, that a supervisory board of a NRSRO may address the requirements and functions prescribed by Part 3 of NI 25-101 and sections 2.22 through 2.25 of Appendix A of NI 25-101. We believe that paragraph 2.25 should remain aligned with the requirements of section 15E(t)(3) of the 1934 Act. We believe that maintaining this alignment instead of creating greater divergence through the addition of the proposed change to paragraph 2.25 would, for NRSRO boards that oversee Canadian DROs, reduce the potential confusion among supervisory board members regarding differing standards between the US and Canada and the execution of their supervisory duties. We also believe that continued alignment in this area would also avoid the unintended consequence that differing supervisory board requirements in Canada and the U.S. disincentivize the use of NRSRO boards for Canadian DROs resulting in the loss of efficiencies and the introduction of associated costs and burdens to DROs as well as replacing the board oversight of the Canadian operations in a global context with solely local oversight – all with little or no benefit to the market. Lastly we respectfully submit that continued alignment between the U.S. and Canadian requirements in this area should not pose a risk to NI 25-101's treatment of EU Equivalency.

Proposed Text

2.29 A designated rating organization must establish and maintain a risk management committee made up of one or more senior managers or DRO employees with the appropriate level of experience responsible for identifying, assessing, monitoring, and reporting the risks arising from its activities, including legal risk, reputational risk, operational risk, and strategic risk. The committee must be independent of any internal audit system and make periodic reports to the board of directors of the designated rating organization, or of a DRO affiliate that is a parent of the designated rating organization, and senior management to assist the board and senior management in assessing the adequacy of the policies and procedures the designated rating organization adopted, and how well the organization implemented and enforces the policies and procedures to manage risk, including the policies and procedures specified in the organization's code of conduct.

S&P Global Ratings Comment

We note that CSA members are seeking to incorporate the provisions of paragraph 4.2 of the IOSCO Code through the proposed addition of paragraph 2.29. We note, however that the IOSCO Code uses the term "*function*" rather than "*committee*" in its comparable section. To support consistency of interpretation and to avoid a requirement or perceived requirement for DROs to establish a specific committee where a DRO or NRSRO may have an established risk function at the DRO, NRSRO or parent level, we recommend that the term "*committee*" as proposed in paragraph 2.29 be replaced with the term *"committee or function*.".

Separately, we query why paragraph 2.29 includes the requirement to separate the activities of a risk management committee or function from a DRO's internal audit function given the independence of an internal audit function. Even though S&P Global Ratings has a separate risk management function, we do not see why it is necessary for NI 25-101 to limit the internal audit function in risk management.

Proposed Text

2.30 A designated rating organization must adopt, implement and enforce policies and procedures ensuring DRO employees undergo appropriate formal ongoing training at reasonably regular time intervals. For greater certainty, the policies and procedures must

b) be designed to ensure the subject matter covered by the training be relevant to the DRO employee's responsibilities and cover, as applicable, the following:

(iii) the laws governing the designated rating organization's credit rating activities;

S&P Global Ratings Comment

We understand that the intention of this proposed change is to adopt paragraph 4.3 of the IOSCO Code. We respectfully submit however that the inclusion of proposed subparagraph 2.30(b)(iii) is unnecessarily duplicative given the requirement set out in proposed subparagraph 2.30(b)(ii). Our comment is to request deletion of proposed subparagraph 2.30(b)(iii). The IOSCO Code is described to be a standard for CRA self-governance and as such it is understandable that the IOSCO Code would reference that in addition to the self-governance standards discussed that CRA training should also cover relevant applicable laws. The construct of NI 25-101 provides detailed governance requirements for DROs within Appendix A of NI 25-101 and then requires pursuant to Part 4, section 9 of NI 25-101 that a DRO's code of conduct "*must incorporate each of the provisions set out in Appendix A*". Given this construct the requirement in proposed paragraph 2.30 (b) (ii) which refers to training regarding the DRO's Code of Conduct in our view essentially covers the point intended by the IOSCO Code provision regarding training on laws governing credit rating activities. Assuming a DRO's Code of Conduct complies with the requirements of NI 25-101 then training on the Code of Conduct, where relevant and applicable, will effectively cover training on the laws governing a DRO's credit rating activities in Canada. In the alternative, we would respectfully request guidance regarding what additional training beyond training on a DRO's Code of Conduct, policies and procedures is intended by subparagraph 2.30(b)(iii).

Proposed Text

3.6.1 A designated rating organization must not rate, or assign a rating outlook to, a person or company in any of the following circumstances:

(a) a significant security holder of the designated rating organization, or of an affiliate that is a parent of the designated rating organization, is a significant security holder of the person or company, its affiliates or related entities;

(b) an officer or director of a significant security holder of the designated rating organization, or of an affiliate that is a parent of the designated rating organization, is an officer or director of the person or company, its affiliates or related entities.

S&P Global Ratings Comment

The proposal in paragraph 3.6.1 is in our view impractical and potentially triggers unintended consequences. DROs may be divisions of or be held by publicly traded companies which may, further, be based outside of Canada. Publicly traded companies cannot direct who buys or sells their stock. In our case, S&P Global Ratings business is a division of S&P Global Inc., a US public company listed on the New York Stock Exchange.

Typically, large institutional investors are shareholders in S&P 500 index constituents such as S&P Global Inc. that trade stocks frequently in the course of business and often manage multiple funds, both actively and passively, on behalf of many end-investors. Their aggregate holdings can therefore change significantly from day to day in ways that cannot be anticipated, and without the knowledge of a DRO. Regulatory filings by shareholders may be reported at a consolidated or unconsolidated level thereby adding complexity to data collection and analysis as ultimate shareholders that make unconsolidated filings may cross the 10% threshold without a DRO being aware.

Day to day changes in ownership of DROs or their parent entities could result in some or all credit ratings on Canadian debt being removed or reinstated periodically in an entirely unpredictable way. This would exacerbate market uncertainty and instability, as Canadian investors would be denied credit ratings on both Canadian and non-Canadian debt in such circumstances, including where holdings triggering the thresholds in paragraph 3.6.1 are transient.

In our view, shareholder restrictions in proposed paragraph 3.6.1 are not needed to reduce the potential conflicts of interest in the CRA business given other regulatory measures that have been adopted. Registered CRAs in the EU and NRSROs in the US as well as DROs in Canada already have substantial policies and procedures in place to protect the integrity of the analytical process, and these measures are actively overseen by competent authorities.

In the US and the EU, S&P Global Ratings publicly discloses on its public website the names of shareholders which have provided notification under applicable securities laws and rules that they own 5% or more of outstanding common stock of S&P Global Inc. This list of stockholders is updated periodically and is based upon publicly available information such as quarterly regulatory filings. Therefore, while S&P Global Inc. is able to identify the holders of record of its outstanding common stock, it may not always know the identity of the underlying owner of the shares, as the stock may be held in the name of the underlying owner's broker-dealer.

Therefore, in line with the regulatory goals of promoting transparency, we suggest as an alternative to proposed paragraph 3.6.1 that DROs be required to periodically and publicly disclose the names of the shareholders which have provided notification under applicable securities laws and rules that they own 10% or more of outstanding common stock of a DRO or its ultimate parent in a manner that is similar to the practices in the US and the EU.

We also note that ESMA CP paragraph 70(e) states: "*ESMA accepts that thresholds in a third country may be different or that the third-country legislation does not explicitly address shareholders requirements. However, the third-country laws and regulations should provide sufficient protection against the risk that the interests of a significant shareholder impacts on the independence of the CRA, its analysts and/or its credit ratings/rating outlooks.*"

In light of ESMA's comments, S&P Global Ratings also suggest to incorporate into paragraph 3.4 of NI 25-101 the CRA-3 amendments to Article 6.1 of the EU Regulation 1060/2009[2].

[2] Article 6(1) *A credit rating agency shall take all necessary steps to ensure that the issuing of a credit rating or a rating outlook is not affected by any existing or potential conflicts of interest or business relationship involving the credit rating agency issuing the credit rating or the rating outlook, its shareholders, managers, rating analysts, employees or any other natural person whose services are placed at the disposal or under the control of the credit rating agency, or any person directly or indirectly linked to it by control.* (We underlined the CRA-3 amendment)

Proposed Text

3.9.1 A designated rating organization must ensure both of the following:

(a) fees charged to rated entities for the provision of credit ratings and ancillary services, as referred to in section 3.5, do not discriminate among rated entities in an unfair manner and have a reasonable relation to actual costs;

S&P Global Ratings Comment

We understand that proposed paragraph 3.9.1 seeks to address the CRA-3 provision on "*fees to rated entities*" by DROs, which is intended to further mitigate conflicts of interest and facilitate fair competition in the credit rating market.

While subparagraph (b) in our view constitutes an appropriate measure in mitigating conflicts of interest and facilitating fair competition, we are very concerned about the proposed language in subparagraph (a).

Subparagraph (a) in our view (i) inappropriately intervenes in ordinary commercial exchanges and risks getting involved in the setting of fees or the imposition of price controls; (ii) assumes very broad powers for securities regulators in Canada to intervene in ordinary commercial exchanges when such powers are typically confined to specialized competition authorities for use in targeted investigations; and (iii) is not required by ESMA for EU Equivalency.

Specifically, the ESMA CP sets out the following concerning the proposed wording on fees charged to rated entities:

120. According to paragraph 3c of Section B of Annex I of the CRA Regulation, a CRA should ensure that fees charged to its clients for the provision of credit rating and ancillary services are not discriminatory and are based on actual costs. Fees charged for credit rating services shall not depend on the level of the credit rating issued by the CRA or on any other result or outcome of the work performed. If this requirement is not in place, ESMA considers that there should be other safeguards to ensure that the objectives of avoiding conflicts of interests and promoting fair competition are achieved.

In S&P Global Ratings' view, it is therefore not necessary for purposes of EU Equivalency to include the proposed paragraph 3.9.1(a). Subparagraph 3.9.1(b) and paragraph 2.17 [*The DRO, its ratings employees and agents must deal fairly, honestly and in good faith with rated entities, investors, other market participants, and the public.*] provide in our view these *safeguards* referred to in paragraph 120 of the ESMA CP.

For consistency in the order of Appendix A, S&P Global Ratings suggests to add paragraph 3.9.1(b) immediately after paragraph 2.17.

For additional background on the challenges to any eventual supervision of fees charged by CRAs, we refer to our response to ESMA's Discussion Paper on CRA-3 Implementation, dated July 10, 2013 (https://www.esma.europa.eu/file/11176/download?token=txxTgshC).

Proposed Text

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

S&P Global Ratings Comment

We understand paragraph 3.11 to be related to IOSCO Code paragraph 2.11 which sets out the scope of CRA employees that should not be responsible for interacting with supervisors regarding supervisory matters. However, the proposed amendment to paragraph 3.11 does not currently address that matter.

As employees of a DRO, all DRO staff including analysts are subject to oversight by Canadian securities regulators. As we consider Canadian securities regulators to be *affiliated with* or *related to* Canadian governmental entities, this paragraph as drafted potentially disqualifies all analysts based in Canada from rating Canadian governmental entities and all of their related entities.

S&P Global Ratings therefore requests the deletion of the proposed text changes and suggests a further redrafting of the paragraph to address the subject of IOSCO Code provision 2.11. The final part of paragraph 3.11 could, for example, be amended to read: "…*than those DRO employees who are primarily responsible for interacting with supervisors regarding supervisory or oversight matters*."

Proposed Text

4.2 ~~the~~ A designated rating organization ~~will~~ must publicly disclose its policies and procedures for distributing credit ratings, ~~ratings~~ actions, updates, rating outlooks and related reports and ~~updates~~ for when a credit rating ~~will~~ be withdrawn or discontinued.

S&P Global Ratings Comment

The proposed amendment to paragraph 4.2 requires the disclosure of "*procedures*". In our view this is too detailed a level of disclosure and we consider that policy level disclosure should be sufficient for users of credit ratings to understand the DROs approach to distribution, withdrawal and discontinuance of credit ratings. S&P Global Ratings considers procedures as constituting actions, prohibitions or limitations that implement policies. We believe that the disclosure of procedures documents, which support the technical implementation of related policies, will not meaningfully add to the users of credit ratings understandings on this point.

Proposed Text

4.4 In each of its ratings reports in respect of a credit rating or rating outlook, a designated rating organization ~~will~~ must disclose all of the following:

(a) when the credit rating was first released and when it was last updated, reviewed or assigned a rating outlook;

S&P Global Ratings Comment

We do not fully understand the proposed wording in paragraph 4.4 (a). In addition, S&P Global Ratings advises that it typically assigns rating outlooks to issuer-level credit ratings and not to issue-level credit ratings and that structured finance ratings for the most part are not assigned rating outlooks. Recognizing that not all credit ratings have rating outlooks and to clarify the text of the proposed changes we therefore suggest revising the proposed wording of paragraph 4.4(a) to read: "…*when it was last updated or reviewed and the current rating outlook, if any*".

Proposed Text

4.4 In each of its ratings reports in respect of a credit rating or rating outlook, a designated rating organization ~~will~~ must disclose all of the following:

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

S&P Global Ratings Comment

We query why the term "*material*" in subparagraph (e) was replaced with "*significant*". As "*material*" is a term commonly used in securities regulation, as well as in the EU Regulation 1060/2009 we suggest retaining "*material*" and not replacing it with "*significant*".

Proposed Text

4.5 In each of its ratings reports in respect of a credit rating or rating outlook for a structured finance product, a designated rating organization ~~will~~ must disclose all of the following:

S&P Global Ratings Comment

S&P Global Ratings typically assigns rating outlooks to issuer-level credit ratings and not to issue-level credit ratings; furthermore structured finance ratings for the most part are not assigned rating outlooks. We therefore suggest adding "*where applicable*" so that the sentence would read "…*credit rating or, where applicable, rating outlook*…"

Proposed Text

4.5 In each of its ratings reports in respect of a credit rating or rating outlook for a structured finance product, a designated rating organization ~~will~~ must disclose all of the following:

(c) whether the issuer of the structured finance product has informed the designated rating organization that it is publicly disclosing all relevant information about the product being rated or whether the information remains non-public.

S&P Global Ratings Comment

S&P Global Ratings agrees that CRAs/DROs should be transparent so that users of credit ratings can understand how its credit ratings were arrived at. However, S&P Global Ratings does not believe it should be responsible for disclosing/informing the market on whether the issuer of a structured finance product has publicly disclosed all relevant information about the product being rated or if such information remains non-public. Rather than placing such disclosure requirements on CRAs/DROs, it would be more appropriate, and consistent with common principles of securities regulation, to place the legal requirement to publicly disclose relevant information on the issuer who is the owner of the information.

S&P Global Ratings believes that its role as a CRA/DRO is to issue opinions on the creditworthiness of issues or issuers and not to be involved in the disclosure process related to the sale of securities nor bear the responsibility to review the veracity of issuers' statements regarding disclosures. This requirement could place a significant burden on CRAs. This is a role that is typically performed by advisers and underwriters supported by legal counsel in the context of an offering of securities and inconsistent with the role of a CRA/DRO.

We note that this obligation is not one that is imposed by CRA regulatory regimes applicable in the US or the EU. We also note that the South African Financial Services Board's Draft CRA Rules published for comment on 4 August 2011 contained a similarly worded provision[3] which was not retained in their Final Rules[4].

We also believe that the provision itself will be unworkable in practice with issuers potentially refusing to provide formal confirmations to DROs as to whether all relevant information was publicly disclosed,

[3] South Africa Financial Service Board: 4 August 2011 Draft Rules: Draft Rule 3.1(14) *(d) A credit rating agency must disclose in its rating announcements whether the issuer of a structured finance product has informed the credit rating agency that the issuer of a structured finance product is publicly disclosing all relevant information about the product being rated or if the information remains non-public.*

[4] Board Notice 228 of 2013, South Africa Financial Services Board.

particularly given the fact that issuers have no corresponding obligation under securities laws in Canada to provide such confirmations to DROs. Should some issuers be willing to provide such confirmations to DROs we would expect that statements from the issuers will likely be highly qualified and as such be of limited utility both to DROs and to users of ratings when reported by the DRO in its disclosures. We respectfully submit that the concern that the CSA is trying to address through the addition of paragraph 4.5(c) is a question of disclosure by issuers of securities which securities laws in Canada can and should address directly by way of amendments to the statutory disclosure obligations of issuers.

Based on the above our comment is to delete proposed paragraph 4.5(c).

Proposed Text

4.12 Before issuing or revising a credit rating or a rating outlook, the designated rating organization will must inform the issuer of the critical information and principal considerations upon which a credit rating or rating outlook ~~will~~ be based and afford the issuer ~~an~~ a reasonable opportunity to clarify any likely factual misperceptions or other matters that the designated rating organization would ~~wish~~ want to be made aware of in order to produce an accurate credit rating or rating outlook.

The designated rating organization ~~will~~ must inform the issuer during the business hours of the issuer. The designated rating organization must duly evaluate the response.

S&P Global Ratings Comment

Provision 4.12 as currently in effect, requires that a DRO must in advance of the publication of a credit rating, inform a rated entity of the critical information and principal considerations upon which the draft credit rating has been based and give the rated entity an opportunity to clarify any likely factual misperceptions or other matters the rated entity believes the DRO should be aware of. The proposed new wording goes further, requiring the rating itself to be disclosed to the rated entity *during business hours of the issuer* (or rated entity).

S&P Global Ratings regards notification *during business hours* as a best practice but does not advocate adding the proposed wording to provision 4.12. Restricting the pre-publication notice to business hours limits the ability of DROs to publish credit rating actions in a timely way where specific circumstances warrant an immediate release of credit rating actions.

The proposed addition of the term *reasonable* (*afford[ing] the issuer a* reasonable *opportunity*) in our view provides an appropriate safeguard that rated entities would typically have the opportunity to review the notification *during business hours*.

The requirement to notify *during business hours of the issuer* is difficult to administer from an operational point of view given (i) the time zone differences across Canada; (ii) the variability in public holidays across the provinces and territories; and (iii) the determination of where rated entities and/or individuals are located including the administrative burden to establish and maintain such information to ensure the business hour test is met. For example, the proposed text in paragraph 4.12 could be read to prohibit a DRO from communicating a rating action to the management team of a rated entity based in British Columbia while meeting with the CRA in person in Toronto at 9.30am Toronto time – which is outside of the business hours of the rated entity in British Columbia. We do not believe that this is what is intended.

On the basis of the above, rather than this being a strict legal requirement, S&P Global Ratings suggests adding the terms "*where feasible and appropriate*" as used in the IOSCO Code's provision 3.9.

This would, in our view also be consistent with the ESMA CP which states in paragraph 111 that: "*In respect of the requirement set out in paragraph 107 d) above, ESMA does not consider it necessary that there is a specific requirement that the CRA to inform the rated entity at least a full working day before the publication of a credit rating. Other timeframes may be acceptable as long as the CRA provides to the rated entity with the opportunity to draw attention to possible factual errors.*" For these reasons and recognizing also that the US NRSRO rules do not impose a similar requirement for issuer notification we do not believe that adoption of revisions to this paragraph that conform to the comparable IOSCO requirement should pose a risk to NI 25-101's treatment of EU Equivalency.

In the alternative should the CSA retain the proposed changes to this paragraph, notification *during business hours* should be understood by CSA members as the rated entity having the opportunity to review credit rating notifications *during business hours* even if the notification was sent after close of business hours the previous day.

Proposed Text

4.14 For each credit rating, the designated rating organization ~~will~~ 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, management and other relevant internal documents of the rated entity or its related entities. Each credit rating without that access must be identified as such using a clearly distinguishable colour code for the rating category. Each credit rating not initiated at the request of the rated entity ~~will~~ must be identified as such. The designated rating organization ~~will~~ must also publicly disclose its policies and procedures regarding unsolicited ratings.

S&P Global Ratings Comment

Paragraph 4.14 proposes to add the CRA-3 requirement to use colour codes in case of unsolicited credit ratings. In our view, the use of colour codes is neither a necessary nor effective means of disclosure. The colour coding is meant to indicate whether the DRO had "*access to the accounts, management and other relevant internal information*…" Rather than using a distinct colour (which may not be sufficiently distinct in documents printed by users, particularly in the case of non-colour printing), an indication of whether the DRO had *access* by using a description or a symbol we submit is at least as effective and would avoid imposing disproportionate development cost on DROs for possibly little effective benefit to users of credit ratings. We also note that the ESMA CP states in 125. (d) […] "*whilst required by the CRA Regulation, it is not necessary that it is a legal requirement in the third country that the latter is indicated using a clearly, distinguishable different colour code for the rating category;*"

Proposed Text

4.15.1 If the designated rating organization intends to make a significant change to an existing rating methodology, model or key rating assumption or use a new rating methodology that could have an impact on a credit rating, the designated rating organization must do both of the following:

(a) publish the proposed significant change or proposed new rating methodology on its website together with a detailed explanation of the reasons for, and the implications of, the proposed significant change or proposed new rating methodology;

S&P Global Ratings Comment

Rather than using "*significant change*" we suggest using "*material change*" for reasons outlined in our response to paragraph 4.4. In addition the use of "*material*" instead of "*significant*" will make this paragraph consistent with the related paragraph immediately prior, paragraph 4.15, which continues to the use the term "*material*". Our proposed additional change also removes the risk of confusion regarding whether to infer a potentially differing standard to be applied for the same concept of changes / modifications. Lastly we note that comparable provisions of US NRSRO rules also use the term 'material' in discussing actions to be taken by NRSROs with respect to changes / modifications to methodologies.

Proposed Text

4.15.2 If following the publication referred to in section 4.15.1, the designated rating organization makes a significant change to an existing rating methodology, model or key rating assumption or issues a new rating methodology that could have an impact on a credit rating, the designated rating organization must promptly publish on its website all of the following:

S&P Global Ratings Comment

Rather than using "*significant change*" we suggest using "*material change*" for reasons outlined in our response to paragraph 4.4. In addition the use of "*material*" instead of "*significant*" will make this paragraph consistent with the related paragraph immediately prior, paragraph 4.15, which continues to the use the term "*material*". Our proposed additional change also removes the risk of confusion regarding whether to infer a potentially differing standard to be applied for the same concept of changes / modifications. Lastly we note that comparable provisions of US NRSRO rules also use the term 'material' in discussing actions to be taken by NRSROs with respect to changes / modifications to methodologies.

Proposed Text

4.15.2 If following the publication referred to in section 4.15.1, the designated rating organization makes a significant change to an existing rating methodology, model or key rating assumption or issues a new rating methodology that could have an impact on a credit rating, the designated rating organization must promptly publish on its website all of the following:

(a) the revised or new rating methodology, model or key rating assumption,

(b) a detailed explanation of the revised or new methodology, model or key rating assumption, its date of application and the results of the consultation referred to in section 4.15.1;

S&P Global Ratings Comment

As paragraph 4.8 already requires a DRO to "*publicly disclose the methodologies, models and key rating assumptions*", we suggest that subparagraphs (a) and (b) could be combined to read: "(*a) the revised or new rating methodology, model or key rating assumption, or detailed description thereof; (b) its date of application and the results of the consultation referred to in section 4.15.1*;"

Proposed Text

4.15.2 If following the publication referred to in section 4.15.1, the designated rating organization makes a significant change to an existing rating methodology, model or key rating assumption or issues a new rating methodology that could have an impact on a credit rating, the designated rating organization must promptly publish on its website all of the following:

(c) copies of the written comments referred to in paragraph 4.15.1(b), except in the case where confidentiality is requested by the person who submitted the comment.

S&P Global Ratings Comment

When requesting comments on proposed changes, written responses received by DROs may lack relevance to questions being asked, may contain discussion of commercial matters or may potentially contain language that is not appropriate for publication. So as to avoid the publications of such comments, we suggest inserting the words "*as appropriate*" after "*comments*". Should the competent authorities have concerns about a DRO's approach to publication of comment letters, record keeping requirements as set out in article 13 of NI 25-101 would be understood to include the retention of comment letters received thereby allowing competent authorities to review a DRO's approach to publication of comment letters.

Proposed Text

4.16.1 A designated rating organization must consider applicable securities legislation governing insider trading or tipping when dealing with non-public information that it receives from an issuer.

A designated rating organization must maintain a list of all persons who have access to non-public information about a credit rating action, including information about a credit rating action before the credit rating or rating outlook is publicly disclosed or disseminated to subscribers.

For any credit rating action, the list must include applicable DRO employees and any person identified by the rated entity for purposes of the list.

S&P Global Ratings Comment

The additional wording proposed in 4.16(a) describing how a DRO and its DRO employees must not disclose confidential information, "*including information about a credit rating action before the credit rating or rating outlook is publicly disclosed or disseminated to subscribers*" in combination with newly proposed paragraph 4.16.1 we understand is aimed at addressing the CRA-3 provision setting out that "*until disclosure to the public, credit ratings [and] rating outlooks … shall be deemed to be inside information*" and that CRAs should maintain insider lists.

The ESMA CP states the following on the comparable section of CRA-3:

89. According to Article 10(2a) of the CRA Regulation, credit ratings, rating outlooks and information relating thereto, shall be treated as inside information, until the moment when they have been disclosed to the public.

90. ESMA considers these requirements to be very important for the reasons set out above, and it expects the objectives of these requirements to be met for the purposes of assessing equivalence.

In our understanding ESMA does not suggest that third country CRA regimes should have insider lists, but stresses instead the objectives of protection of unpublished credit ratings and rating outlooks. In our view, it is therefore not necessary for purposes of EU Equivalency to mandate insider lists. Introducing insider lists would also impose a significant administrative burden on DROs (and rated entities) that is neither required nor proportionate. As part of its standard practice S&P Global Ratings records the name and title of the person who was notified of an (unpublished) credit rating decision. Rather than introducing the novel concept of insider lists, S&P Global Ratings considers that the existing and proposed confidentiality requirements in paragraphs 4.16 to 4.21 of Appendix A to NI 25-101 (with the exception of 4.16.1) and S&P Global Ratings' internal policies and procedures sufficiently address the need to protect unpublished credit ratings and rating outlook decisions. This approach is broadly consistent with US controls on protection of inside information which also do not impose the requirement for insider lists on NRSROs.

Proposed Text

4.25 A designated rating organization must establish and maintain a committee charged with receiving, retaining, and handling complaints from market participants and the public. The designated rating organization must adopt implement and enforce policies, procedures and controls for receiving, retaining, and handling complaints, including those that are provided on a confidential basis. The policies and procedures must specify the circumstances under which a complaint must be reported to one or both of the following:

S&P Global Ratings Comment

Proposed paragraph 4.25 requires a DRO to "*establish and maintain a committee charged with receiving, retaining, and handling complaints*". In our view it is not necessary to create a separate committee for handling complaints when DRO can effectively address the governance and managing of complaints through established functions. For example, at S&P Global Ratings complaints are handled by the Compliance function along with other responsibilities. We are also not aware that the handling of complaints by CRAs in Canada or elsewhere has given rise to particular concerns. As the IOSCO Code at 5.3 uses the term "*function*" instead of "*committee*" we therefore suggest to amend 4.25 to state that a "*[DRO] must establish and maintain a committee* or function *charged with* or otherwise designate to an established function the responsibility for *receiving, retaining, and handling complaints*…".

Form 25-101F1

Proposed Text

Item 14A. Pricing Policy

Disclose the applicant's pricing policy for credit rating services and any ancillary services, including the fee structure and pricing criteria in relation to credit ratings for different asset classes.

S&P Global Ratings Comment

As set out in paragraph 142 of the ESMA CP, "*ESMA expects the third-country legal and supervisory framework to impose some form of disclosure requirement regarding revenue generation by the CRA and that the third-country supervisor has the power to request all the information listed above.*" We therefore do not consider that it is necessary for DROs to annually file pricing policies as the competent authorities in Canada already (i) annually receive financial and revenue related information from DROs and (ii) have the ability to obtain such additional documentation from DROs through regular requests for information. For these reasons we request that this proposed provision be deleted.

To the extent that the addition of this proposed text is related to the proposed oversight of DRO fees as set out in proposed paragraph 3.9 of Appendix A to NI 25-101, we also refer you to our comments above.

In the alternative, we request that this provision should explicitly recognize that the such materials are entitled to confidential treatment without having to make application for such treatment to ensure the protection of the DRO's commercially sensitive information.