Notice of publication

Regulation 25-101 respecting Designated Rating Organizations

Related Policies and Consequential Amendments

1. Purpose of Notice

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

Specifically, we are adopting the following materials:

- the Regulation,
- *Regulation to amend Regulation 41-101 respecting General Prospectus Requirements*,
- *Regulation to amend Regulation 44-101 respecting Short Form Prospectus Distributions*,
- *Regulation to amend Regulation 51-102 respecting Continuous Disclosure Obligations*, and
- *Policy Statement 11-205 respecting Process for Designation of Credit Rating Organizations in Multiple Jurisdictions* (Policy Statement 11-205).

The Regulation, the consequential amendments and Policy Statement 11-205 are collectively referred to as the Materials. They are published together with this notice.

Jurisdictions that are a party to *Regulation 11-102 respecting Passport System* (currently all jurisdictions except Ontario) are also publishing amendments to that regulation and policy statement that permit the use of the passport system for designation applications by CROs and exemptive relief applications by designated rating organizations. These related amendments are published together with this notice.

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

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

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

2. Substance and Purpose of the Regulation

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

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

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

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

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

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

3. Summary of Key Changes Made to the Regulation

We have made some revisions to the 2011 Proposal, including minor drafting changes made only for the purposes of clarification or in response to comments received.

The paragraphs below describe the key changes made to the 2011 Proposal. As the changes are not considered material, we are not republishing the Regulation for a further comment period.

— *Application of the Regulation to DRO Affiliates Outside of Canada*

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

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

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

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

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

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

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

4. Legislative Amendments

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

- the power to designate a CRO under the legislation,

- the power to conduct compliance reviews of a CRO, and to require a CRO to provide the securities regulatory authority with access to relevant books, information and documents,

- the power to make an order that a CRO submit to a review of its practices and procedures, where such an order is considered to be in the public interest, and

- confirmation that the securities regulatory authorities may not direct or regulate the content of credit ratings or the methodologies used to determine credit ratings.

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

5. Policy Statement 11-205

Policy Statement 11-205, published with this notice, describes the process for the filing and review of an application to become a designated rating organization in more than one jurisdiction of Canada.

6. Consequential Amendments

We are also adopting related consequential amendments to the following:

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

These related consequential amendments are published with this notice and will require issuers to more fully describe their relationship with CROs.

7. Future Consequential Amendments

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

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

8. Civil Liability

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

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

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

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

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

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

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

9. Written Comments

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

10. Local Notices

Certain jurisdictions are publishing other information required by local securities legislation in this notice.

11. Questions

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

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

Frédéric Duguay
Legal Counsel, Corporate Finance
Ontario Securities Commission
416-593-3677
fduguay@osc.gov.on.ca

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

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

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Annex A

Summary of Comments and Responses on Notice and Request for Comment

Notice and Request for Comment – Draft Regulation 25-101 respecting Designated Rating Organizations, Related Policy Statements and Consequential Amendments
Published March 18, 2011

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

List of Parties Commenting on the 2011 Proposal

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

General Comments

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

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

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

Governance

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

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

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

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

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

Response: Section 3.5 of Appendix A of the Regulation has been revised to require separation of a DRO's credit rating business from its ancillary services only where such services may present a potential conflict of interest. We have also added a requirement to ensure that a DRO providing ancillary services which do not necessarily present conflicts of interest with the DRO's rating business, has in place procedures and mechanisms designed to minimize the likelihood that conflicts will arise. We think this amendment is in line with not only the IOSCO Code, but also U.S. and European regimes.

Code of Conduct as Securities Law

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

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

Waiver of Code of Conduct

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

Response: We disagree. We think it is important for a DRO to comply with all provisions set out in its code of conduct. Staff of the securities regulatory authorities may be willing to recommend that relief be granted from the requirement to include a specific provision in a DRO's code of conduct if it satisfies the applicable legislative test for granting the relief. Applications for exemptive relief may be made using the passport system.

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

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

Amendments to Code of Conduct

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

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

Compliance Officer

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

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

Another commenter suggested that the reporting requirements for the compliance officer are overly broad and outside of the role of a DRO. The commenter was not aware of any reasonable and objective standard related to the determination of whether a particular situation presents a risk of significant harm to the capital markets. The commenter therefore suggested that this accountability be removed.

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

Definition of Ratings Employee

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

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

Ratings Shopping and Disclosure of Preliminary Ratings

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

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

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

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

Disclosure re Securitization

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

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

Use of Form NRSRO

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

Response: The granting of confidential treatment for information that has been filed with securities regulatory authorities involves the exercise of discretion by the appropriate decision maker. Nonetheless, we fully expect the decision maker

will consider the nature and extent of any confidential treatment accorded to the document by the SEC in making their determination.

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

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

Disclosure re Ancillary Services

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

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

Monitoring and Updating

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

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

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

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

Methodologies

One commenter suggested amending section 2.2 of Appendix A of the Regulation to require use of rating methodologies that are subject to validation based on historical testing only where such processes would be feasible. Otherwise, the commenter noted that the requirement for back-testing in all cases would make it difficult or impossible to rate new products, develop new methodologies or modify methodologies to address newly identified risks. The inclusion of "where feasible" would be consistent with the IOSCO Code, the commenter suggested.

The same commenter also suggested amending section 2.6 of Appendix A of the Regulation to add the following language: "If the rating involves a type of financial product presenting limited historical data (such as an innovative financial vehicle), the CRA should make clear, in a prominent place, the limitations of the rating".

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

Equity Ownership

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

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

Review of Past Employee's Work

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

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

Disclosure and Content of Ratings Report

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

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

Disclosure of Historical Default Rates

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

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

Disclosure re Methodologies

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

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

Confidential Information

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

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

Effective Date

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

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

Passport

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

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

Amendments to Prospectus and CD Rules

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

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