

Notice of publication

Consequential amendments to registration, prospectus and continuous disclosure rules related to *Regulation 25-101* respecting *Designated Rating Organizations*

March 14, 2013

Introduction

We, the members of the Canadian Securities Administrators (CSA), are adopting consequential amendments to the following texts:

- *Policy Statement to Regulation 21-101 respecting Marketplace Operation;*
- *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations, including Form 31-103F1, Calculation of Excess Working Capital;*
- *Regulation 33-109 respecting Registration Information, including Form 33-109F6, Firm Registration;*
- *Regulation 41-101 respecting General Prospectus Requirements;*
- *Regulation 44-101 respecting Short Form Prospectus Distributions, including Form 44-101F1, Short Form Prospectus;*
- *Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions;*
- *Regulation 44-102 respecting Shelf Distributions;*
- *Policy Statement to Regulation 44-102 respecting Shelf Distributions;*
- *Regulation 45-106 respecting Prospectus and Registration Exemptions;*
- *Regulation 51-102 respecting Continuous Disclosure Obligations;*
- *National Policy 51-201: Disclosure Standards;*
- *Regulation 81-101 respecting Mutual Fund Prospectus Disclosure;*
- *Regulation 81-102 respecting Mutual Funds;*
- *Policy Statement to Regulation 81-102 respecting Mutual Funds;*
- *Regulation 81-106 respecting Investment Fund Continuous Disclosure;*

(collectively, the **DRO Consequential Amendments**).

The DRO Consequential Amendments are also available on the websites of CSA members, including the following:

- www.bsc.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 DRO Consequential Amendments. Subject to obtaining all necessary approvals, the DRO Consequential Amendments will come into force on **May 31, 2013**.

Substance and Purpose of the DRO Consequential Amendments

The DRO Consequential Amendments are adopted in order to fully implement the regulatory framework set out in *Regulation 25-101 respecting Designated Rating Organizations (Regulation 25-101)*, which came into effect on April 20, 2012¹. Regulation 25-101 imposes requirements on those credit rating agencies or organizations (**CROs**) that wish to have their credit ratings eligible for use in securities legislation by requiring them to apply to become a “designated rating organization” (**DRO**) and adhere to rules concerning conflicts of interest, governance, conduct, compliance, and required filings. This regulatory framework is consistent with international regimes applicable to CROs².

On October 31, 2012, the CSA designated each of DBRS Limited, Fitch, Inc., Moody’s Canada Inc., and Standard & Poor’s Rating Services (Canada) (the **Applicants**) pursuant to the requirements of Regulation 25-101³. The designation orders were granted on the basis that:

- The Applicants are in compliance in all material respects with Regulation 25-101 and the securities legislation applicable to credit rating organizations in each jurisdiction of Canada,
- The Applicants have filed all documentation required under Regulation 25-101, and
- Upon being designated as DROs, the Applicants are subject to the requirements set out in securities legislation in each jurisdiction of Canada.

¹ Except in Saskatchewan where Regulation 25-101 came into force on August 15, 2012.

² On October 5, 2012, the European Commission granted a decision on the recognition of the legal and supervisory regime for CROs set out in Regulation 25-101 as equivalent to the requirements of *Regulation (EC) No 1060/2009 on credit rating agencies* for recognizing credit ratings issued by CROs outside of the European Union. A copy of the equivalence decision is available on the website of the Official Journal of the European Union at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:278:0017:0018:EN:PDF>.

³ The CSA also granted interim designation orders on April 30, 2012, to each Applicant, which designated the Applicant as a DRO and exempted the Applicant from the provisions of Regulation 25-101 for six months to allow the Applicant to review and amend, if necessary, its policies, practices, and internal controls in order to be compliant in all material respects with Regulation 25-101.

Canadian securities legislation also includes a number of references to credit ratings. The DRO Consequential Amendments replace the current existing references to “approved rating organization”, and “approved credit rating organization” with “designated rating organization”. Similarly, the terms “approved rating” and “approved credit rating” are replaced with “designated rating”.

Summary of Written Comments Received by the CSA

The comment period for the DRO Consequential Amendments expired on October 24, 2012, and we received submissions from two commenters. We have considered these comments and we thank the commenters. A list of the commenters and a summary of their comments, together with our response, are contained in Appendix A to this notice.

Summary of Changes to the Proposed Materials

We have added additional guidance to *Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions (Policy Statement to Regulation 44-101)* and *Policy Statement to Regulation 81-102 respecting Mutual Funds (Policy Statement to Regulation 81-102)* indicating that it is reasonable to interpret the predecessor terms “approved credit rating”, “approved rating” and “approved credit rating organization” as having the same meaning as their respective successor terms, “designated rating” and “designated rating organization”. This additional guidance is intended to clarify that the DRO Consequential Amendments should not impact existing agreements, such as trust indentures or other private contracts, that were entered into before the date the DRO Consequential Amendments come into force.

Local Notices and Amendments

Certain jurisdictions are publishing other information required by local securities legislation or regarding amendments to local securities legislation as an appendix to this notice.

Questions

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

Lucie J. Roy
Senior Policy Advisor
Direction 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

Katie DeBartolo
Accountant, Corporate Finance
Ontario Securities Commission
416-593-2166
kdebartolo@osc.gov.on.ca

Sheryl Thomson
Senior Legal Counsel, Legal Services
Corporate Finance
British Columbia Securities Commission
604-899-6778
sthomson@bcsc.bc.ca

APPENDIX A

SUMMARY OF COMMENTS AND RESPONSE ON NOTICE AND REQUEST FOR COMMENT

PROPOSED DRO CONSEQUENTIAL AMENDMENTS PUBLISHED JULY 26, 2012

This appendix summarizes the written public comments we received on the DRO Consequential Amendments. It also sets out our response to those comments.

List of Parties Commenting on the DRO Consequential Amendments

- Osler, Hoskin & Harcourt LLP
- Stikeman Elliott LLP

General Comments

Two commenters are concerned that the DRO Consequential Amendments will create unintended adverse consequences for existing agreements, such as trust indentures or other private contracts, which include references to “approved credit rating” and “approved credit rating organization”. The commenters are concerned that if the DRO Consequential Amendments are adopted as proposed, such agreements may need to be amended, which would create uncertainty and additional costs.

The commenters suggest that we include a provision in the DRO Consequential Amendments that recognizes the terms “approved credit rating” and “approved credit rating organization” as interchangeable with “designated rating” and “designated rating organization or its DRO affiliate” for any agreements entered into before the date the DRO Consequential Amendments come into force.

Response: We have added language to Policy Statement to Regulation 44-101 indicating that it is reasonable to interpret the predecessor terms “approved credit rating”, “approved rating” and “approved credit rating organization” as having the same meaning as their respective successor terms, “designated rating” and “designated rating organization”. We have also added similar language to Policy Statement to Regulation 81-102.