

**NOTICE**

*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 44-102 respecting Shelf Distributions*

*Regulation to amend Regulation 81-101 respecting Mutual Fund Prospectus Disclosure*

**Consequential Amendments**

*Amendments to Policy Statement to Regulation 41-101 respecting General Prospectus Requirements*

*Amendments to Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions*

*Amendments to Policy Statement to Regulation 44-102 respecting Shelf Distributions*

*Amendments to Policy Statement to Regulation 81-101 respecting Mutual Fund Prospectus Disclosure*

**February 28, 2013**

## **Introduction**

We, the Canadian Securities Administrators (**CSA**), are implementing amendments to:

- *Regulation 41-101 respecting General Prospectus Requirements (**Regulation 41-101**);*
- *Regulation 44-101 respecting Short Form Prospectus Distributions (**Regulation 44-101**);*
- *Regulation 44-102 respecting Shelf Distributions (**Regulation 44-102**);*
- *Regulation 81-101 respecting Mutual Fund Prospectus Disclosure (**Regulation 81-101**).*

The references above to a regulation include its form(s).

We are also implementing changes to:

- *Policy Statement to Regulation 41-101 respecting General Prospectus Requirements (**Policy Statement 41-101**);*
- *Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions (**Policy Statement 44-101**);*
- *Policy Statement to Regulation 44-102 respecting Shelf Distributions (**Policy Statement 44-102**);*
- *Policy Statement to Regulation 81-101 respecting Mutual Fund Prospectus Disclosure (**Policy Statement 81-101**).*

The amendments to Regulation 41-101, Regulation 44-101, Regulation 44-102 and Regulation 81-101 and related changes to Policy Statement 41-101, Policy Statement 44-101, Policy Statement 44-102 and Policy Statement 81-101 are collectively referred to in this Notice as the “**Amendments and Related Changes**”.

Regulation 41-101 provides a comprehensive set of prospectus requirements for issuers. Regulation 44-101 sets out requirements for an issuer intending to file a prospectus in the form of a short form prospectus. Regulation 44-102 sets out requirements for a distribution under a short form prospectus using shelf procedures. Regulation 81-101 sets out requirements for an issuer that is a mutual fund to file a simplified prospectus, annual information form and fund facts document. Regulation 41-101, Regulation 44-101, Regulation 44-102 and Regulation 81-101 are collectively referred to in this Notice as the “**Prospectus Regulations**”.

The Amendments and Related Changes are expected to be adopted by each member of the CSA, and provided that all necessary ministerial approvals are obtained, will be effective May 14, 2013.

## **Substance and Purpose**

The primary purpose of the Amendments and Related Changes is to address user experience and the CSA's experience with the Prospectus Regulations since the implementation of the general prospectus regulation, Regulation 41-101, on March 17, 2008.

The Amendments and Related Changes are intended to:

- clarify certain provisions of the Prospectus Regulations;
- address gaps in the Prospectus Regulations;
- modify certain requirements in the Prospectus Regulations to enhance their effectiveness;
- remove or streamline certain requirements in the Prospectus Regulations that are burdensome for issuers and of limited utility for securityholders; and
- codify prospectus relief that has been granted in the past.

## **Background**

As part of a post-adoption process following implementation of Regulation 41-101 on March 17, 2008, the CSA tracked issues that arose in connection with Regulation 41-101 and other Prospectus Regulations, and developed amendments and related changes to address those issues where warranted. These amendments and related changes were published for comment on July 15, 2011 (the **July 2011 Materials**). Please refer to the July 2011 Materials for further background.

## **Summary of Written Comments Received by the CSA**

During the comment period, we received submissions from 28 commenters. We have considered the comments received and thank all the commenters for their input. The names of commenters are contained in Appendix A of this Notice and a summary of their comments, together with our responses, are contained in Appendix B of this Notice.

We note that the majority of the comment letters received related to our proposal in the July 2011 Materials to make experts subject to the requirement to submit to jurisdiction and appoint an agent. As described in Appendix B to this Notice, we have decided not to proceed with this proposal.

## **Summary of Changes to the July 2011 Materials**

We have made certain changes to the July 2011 Materials in response to the comments we received and related analysis.

The July 2011 Materials proposed that, going-forward, an issuer would not be required to deliver a personal information form (**PIF**) for an individual if the issuer or another issuer had previously delivered a PIF for that individual, provided certain conditions were satisfied. One requirement

we proposed was that the issuer deliver a certificate listing each individual for whom a PIF had previously been delivered and the details of the related prospectus filing, and which provided the issuer's certification that each such individual had confirmed that specified information in the previously delivered PIF remained correct. This certificate was set out in proposed Appendix A, Schedule 4 of Regulation 41-101 (**Schedule 4**).

We have eliminated Schedule 4 because it may place an unnecessary burden on issuers. Instead, we have added guidance in Policy Statement 41-101 and Policy Statement 44-101 reminding issuers that, when relying on a previously delivered PIF, the issuer should obtain appropriate confirmations from the individual that the specified information in the previously filed PIF is still correct. In lieu of Schedule 4, we have also substituted a more narrow condition that, where an issuer is relying on the previous delivery of a PIF by another issuer, the issuer must deliver that PIF or provide alternative information. We have added guidance to Policy Statement 41-101 and Policy Statement 44-101 that explains the alternative information we would normally consider sufficient.

In an effort to clarify the PIF filing requirements, we have also revised the drafting of the applicable provisions in subsections 9.1(2) and (3) of Regulation 41-101 (and equivalent provisions of Regulation 44-101) and have prepared new definitions for "personal information form", "TSX/TSXV personal information form" and "predecessor personal information form".

Also, in response to comments received in connection with the new principal distributor certificate requirement for investment funds in Regulation 41-101 and the amendments to the principal distributor certificate required by Regulation 81-101, we have changed the principal distributor certificates so that a principal distributor will be required to provide a certificate to the best of its knowledge, information and belief.

The rest of the changes to the July 2011 Materials are conforming changes or are minor in nature.

As none of the above-mentioned changes are material, we are not republishing the Amendments and Related Changes for comment.

### **Consequential Amendments**

We are also publishing consequential amendments to:

- *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards (Regulation 52-107);*
- *Regulation 51-102 respecting Continuous Disclosure Obligations (Regulation 51-102);*
- *Regulation 13-101 respecting the System for Electronic Document Analysis and Retrieval (Regulation 13-101).*

## **Other Changes**

We are also making changes to *Policy Statement to Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards (Policy Statement 52-107)*.

## **Guide to this Notice**

We have not published blacklines showing the changes we made to the July 2011 Materials. Instead, those changes have been described above under “Summary of Changes to the July 2011 Materials”.

We are publishing final amendments and changes (i.e. the July 2011 Materials, as modified in response to the comments we received) with this Notice.

## **Local Notices**

Certain jurisdictions will publish other information required by local securities legislation with this Notice.

## **Questions**

### **A. Questions relating to Investment Funds**

Certain amendments apply only to investment funds. These amendments are found in Form 41-101F2 *Information Required in an Investment Fund Prospectus* and Regulation 81-101 including Form 81-101F2 *Contents of Annual Information Form*. If your questions relate to these amendments, please refer your questions to any of:

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## **B. All Other Questions**

Certain amendments apply to issuers other than investment funds. These amendments are found in Regulation 41-101 including Form 41-101F1 *Information Required in a Prospectus*, Regulation 44-101 including Form 44-101F1 *Short Form Prospectus*, Regulation 44-102 and the consequential amendments to Regulation 52-107, Regulation 51-102 and Regulation 13-101. If your questions relate to these amendments, please refer your questions to any of:

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***List of Appendices***

Appendix A	List of Commenters
Appendix B	Summary of Comments and CSA Responses

## Appendix A

### List of Commenters

	COMMENTS	NAME	DATE
1.	Tiger International Resources Inc.	Patric Barry	September 21, 2011
2.	Sacrison Engineering	Ralph R. Sacrison P.E.	October 10, 2011
3.	Cairns Mining Australia Pty Ltd.	A.S. Marton	October 11, 2011
4.	Vector Corporate Finance Lawyers	Graham H. Scott	October 14, 2011
5.	Fraser Milner Casgrain LLP	Brian Abraham	October 12, 2011
6.	Tetra Tech Wardrop	Jeff Wilson	October 13, 2011
7.	Geoscientists Canada	Greg Finn	October 13, 2011
8.	The Australasian Institute of Mining and Metallurgy	Michael Catchpole	October 14, 2011
9.	DBRS	Mary Keogh	October 14, 2011
10.	Davies Ward Phillips & Vineberg LLP	Mindy B. Gilbert	October 14, 2011
11.	Canadian Bankers Association	Nathalie Clark	October 14, 2011
12.		Greg Kulla	October 14, 2011
13.		Ignacy A. Lipiec	October 14, 2011
14.	Pan-European Reserves & Resources Reporting Committee	Dr. Stephen Henley	October 14, 2011
15.	Resources Computing International Ltd	Dr. Stephen Henley	October 14, 2011
16.	Society for Mining, Metallurgy & Exploration	David L. Kanagy	October 14, 2011
17.	Canadian Institute of Mining, Metallurgy and Petroleum	Paul C. Bankes	October 14, 2011
18.	AMEC Americas Limited	Greg Gosson	October 14, 2011
19.	Hunter Dickerson Inc.	Trevor Thomas	October 14, 2011
20.	SRK Consulting (UK) Limited	Dr. Iestyn Humphreys	October 14, 2011
21.	Australasian Joint Ore Reserves Committee (JORC)	Peter Stoker	October 15, 2011
22.	European Federation of Geologists	Ruth Allington	October 15, 2011
23.	Chilean Commission for the Qualification of Competences in Mineral Prospects, Mineral Resources, and Mineral Reserves	Edmundo Tulcanaza	October 16, 2011
24.	AMC Consultants Pty Ltd.	Peter McCarthy	October 18, 2011
25.	The South African Mineral Codes – Samrec and Samval Committee	Edward PW Swindell Professor Nielen van der Merwe Dr. Johan Krynauw	October 19, 2011

26.	Committee for Mineral Reserves International Reporting Standards	Deborah A. McCombe	October 19, 2011
27.	The Australian Institute of Geoscientists	Andrew Waltho	October 20, 2011
28.	Osler, Hoskin & Harcourt LLP	Osler, Hoskin & Harcourt LLP	October 20, 2011

## Appendix B

***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 44-102 respecting Shelf Distributions, Regulation to amend Regulation 81-101 respecting Mutual Fund Prospectus Disclosure, amendments to Policy Statement to Regulation 41-101 respecting General Prospectus Requirements, to Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions, to Policy Statement to Regulation 44-102 respecting Shelf Distributions, and to Policy Statement to Regulation 81-101 respecting Mutual Fund Prospectus Disclosure, and Related Consequential Amendments and changes***

### Summary of Comments and CSA Responses

<i>No.</i>	<i>Subject (references are to current or proposed sections, items and paragraphs)</i>	<i>Summarized Comment</i>	<i>CSA Response</i>
<b><i>Regulation 41-101 respecting General Prospectus Requirements (Regulation 41-101)</i></b>			
1.	Subsection 2.3(1)- time to file final prospectus- 180 days to file final prospectus may still be insufficient for cross border offerings	1 commenter expressed that it is generally in agreement with the existing 90 day period and proposed new 180 day total period of time permitted to file a final prospectus. The commenter noted that the current 90 day period can sometimes be too short in the context of cross-border public offerings and that issuers may continue to require exemptive relief from filing the final prospectus within the prescribed timeframes.	We acknowledge the comment, and will consider relief applications on a case-by-case basis.
2.	Subsection 5.10.1(1)- certificate of principal distributor- principal distributor should not be held to the same standard	1 commenter expressed that a principal distributor of an investment fund should not be held to the same standard as the investment fund and the manager of the investment fund when certifying disclosure pursuant to Form 41-101F2 <i>Information Required in an</i>	After reviewing the comment received in connection with the principal distributor certificate requirement, we have decided to revise the certificate language so that the principal distributor will certify to the best of its knowledge,

		<i>Investment Fund Prospectus (Form 41-101F2).</i>	information and belief.
3.	Paragraph 9.1(2)(a)- personal information forms- clarification needed	1 commenter requested clarification regarding the exemption requirements relating to the filing of a personal information form and references the definition of “personal information form”. In reference to the definition of “personal information form”, the commenter indicates it is unclear as to whether a certificate and consent attached to a TSX/TSXV personal information form or the actual TSX/TSXV personal information form must have been executed in the prior three years in order to rely on the exemption in Subsection 9.1(2).	We acknowledge the comment. We have made certain changes to what we published for comment regarding previously filed personal information forms. These changes are described in this Notice under the heading “Summary of Changes to the July 2011 Materials”. Included in these changes is that we have made it clear that in all cases it is the certificate and consent that must be executed within three years of the prospectus filing.
4.	Paragraph 9.1(2)(a)- personal information forms- three year currency too short and certificate of issuer for each prospectus filing is too onerous	1 commenter expressed that the three-year time period and the certificate requirement for issuers to confirm the accuracy of the responses to specified questions in a previously filed personal information form for each of its directors, executive officers and promoters for each prospectus filing is onerous – especially for issuers that file multiple prospectuses each year. The commenter believed that the three-year time period is too frequent and that the requirement to file a personal information form every five years would address the CSA’s concern without unnecessarily burdening the industry.  The commenter also expressed that the certificate of issuer filed with each prospectus is	We acknowledge the comment. However, we believe that the three-year time period strikes the correct balance between the need for the consent to remain valid and a requirement to file in a frequency that is not overly burdensome to the individual.  We acknowledge the comment, and as stated previously we have made certain

		<p>too onerous, particularly given the current requirement to disclose legal proceedings, cease trade orders and bankruptcies etc. of directors and executive officers in a prospectus. The commenter expressed its concern that this may hinder the ability of an issuer to proceed with a transaction in a short timeframe, contrary to the principles of short-form prospectus offerings and is particularly problematic for issuers that file multiple prospectuses each year.</p>	<p>changes to what we published for comment regarding previously filed personal information forms. Among those changes was the elimination of the form to which the commenter is referring (Proposed Appendix A Schedule 4 “Certificate”).</p>
<p><b>Form 41-101F2 Information Required in an Investment Fund Prospectus</b></p>			
5.	<p>Item 3.3(1)(e) and Item 6.1(1)(b)- leverage disclosure for investment funds- enhanced disclosure requirement should not apply in all cases</p>	<p>1 commenter expressed that the enhanced disclosure requirements should not apply to preferred shares or securities of split corporations or trusts. The commenter indicated that split share offerings do not consider preferred shares to be leverage, in contrast, for example, to bank borrowings to which limitations are attached by a contract. Furthermore, from time to time, the actual amount of leverage can vary dramatically based on the value of the portfolio after issuance.</p>	<p>We acknowledge the comment, however, the issuance of preferred securities by a split share corporation can generate a significant amount of leverage for holders of capital securities. This leverage is a material feature of these funds and, as such, the potential for this leverage should be disclosed. Where the amount of leverage applicable to the capital securities of a split share corporation may vary from time to time, it would be necessary to disclose this fact in the prospectus and describe the significance of the leverage to holders of the capital securities.</p>
6.	<p>Item 39.4.1- certificate of the principal distributor- principal distributor should not be held to the same standard, and in addition qualifying language is needed</p>	<p>1 commenter expressed that the principal distributor of an investment fund should not be held to the same standard as the investment fund and the manager of the investment fund. The commenter expressed that the investment</p>	<p>See response to comment concerning proposed subsection 5.10.1(1) above.</p>

		<p>fund and the manager of the investment fund are involved in the creation of the investment fund and its ongoing operations and as such, are in a much better position to certify the disclosure.</p> <p>The commenter also expressed that the language included in the principal distributor certificate required by Form 41-101F2 should be qualified by the language “to the best of our knowledge, information and belief”. The commenter expressed that without such language, the principal distributor’s liability for disclosure may be impacted as the requirement to certify disclosure to the best of knowledge, information and belief is consistent with the due diligence defence which is available under securities legislation. The commenter further expressed that the same qualification should apply to the principal distributor certificate required by Form 81-101F2 <i>Contents of an Annual Information Form (Form 81-101F2)</i>.</p>	
<p><b>Regulation 44-101 respecting Short Form Prospectus Distributions (Regulation 44-101)</b></p>			
<p>7.</p>	<p>Section 2.8- notice of intention exemption- notice of intention unnecessary overall</p>	<p>1 commenter expressed that while the proposed amendments to Section 2.8 relax the requirement to file a notice of intention, it does not see the benefit of requiring an issuer to file a notice of intention in any circumstance. Many issuers may not file a notice of intention upon becoming a reporting issuer because of the fact that once the notice of intention is filed, an issuer becomes subject to higher fees when</p>	<p>We acknowledge the comment. In some cases, we use the notice of intention and the associated 10 day waiting period to perform a review of the issuer’s continuous disclosure. Also, the notice of intention filing helps inform us and market participants as to which issuers are short form eligible.</p>

		<p>filing its continuous disclosure documents. In many instances, issuers have overlooked the requirement to file the notice of intention, only to discover it once a bought deal is imminent at which point, given the 10 day waiting period, the transaction is jeopardized absent exemptive relief. The commenter expressed that it is unclear as to what purpose the notice serves, or that, on balance, the benefits of the notice outweigh the disadvantages associated with the requirement, especially where there are clear objective criteria that must be satisfied for an issuer to file a short form prospectus.</p>	
<p><b>Form 81-101F2 Contents of Annual Information Form</b></p>			
<p>8.</p>	<p>Item 22 – principal distributor certificate for mutual funds- principal distributor should not be held to the same standard, and in addition qualifying language is needed</p>	<p>1 commenter expressed that the principal distributor of a mutual fund should not be held to the same standard as the mutual fund and the manager of the mutual fund. The commenter expressed that the mutual fund and the manager of the mutual fund are involved in the creation of the investment fund and its ongoing operations and as such, are in a much better position to certify the disclosure.</p> <p>The commenter also expressed that the language “to the best of our knowledge, information and belief” should not be removed from the principal distributor certificate required by Form 81-101F2. The commenter expressed that without such language, the principal distributor’s liability for disclosure may be impacted as the requirement to certify</p>	<p>After reviewing the comment received in connection with the principal distributor certificate requirement, we have decided to revise the certificate language so that the principal distributor will certify to the best of its knowledge, information and belief.</p>

		disclosure to the best of knowledge, information and belief is consistent with the due diligence defence which is available under securities legislation. The commenter further expressed that the same qualification should apply to the principal distributor certificate required by Form 41-101F2.	
<b>Submission to Jurisdiction and Appointment of Agent- extending requirement to all foreign resident directors- subparagraphs 9.2(a)(vii) of Regulation 41-101 and 4.2(a)(vi) of Regulation 44-101</b>			
9.	Merit of extending non-issuer submission to jurisdiction and appointment of agent requirement to all foreign directors	<p>1 commenter agreed with the rationale for the extension of the requirement to all foreign directors.</p> <p>1 commenter expressed that this requirement may have unintended consequences, such as making foreign issuers reluctant to distribute securities in Canada, and dissuading foreign directors from acting on the boards of Canadian companies.</p>	<p>We acknowledge the comment.</p> <p>We currently require only foreign resident directors who sign the prospectus to execute the submission to jurisdiction and appointment of agent document. We extended the requirement to all foreign resident directors because we do not consider it appropriate to make a distinction between foreign directors who sign the prospectus and foreign directors who do not sign the prospectus.</p>
<b>Specific Questions- Submission to Jurisdiction and Appointment of Agent- extending requirement to foreign resident experts- subparagraphs 9.2(a)(vii) of Regulation 41-101 and 4.2(a)(vi) of Regulation 44-101</b>			
10.	Merit of extending non-issuer submission to jurisdiction and appointment of agent requirement to foreign experts	<p>27 commenters do not support this proposal. Their reasons include the following:</p> <ul style="list-style-type: none"> <li>• The proposal could result in:</li> </ul>	<p>We have decided that we will not proceed with this proposal at this time. However, we wish to respond to certain issues raised by commenters.</p>

		<ul style="list-style-type: none"><li>• significant practical and financial burden on Qualified Persons (as same are defined in <i>Regulation 43-101 respecting Standards of Disclosure for Mineral Projects (Regulation 43-101)</i>) who are foreign</li><li>• reduction of companies willing to list in Canada, and related loss by Canada of its position as a technical and financial leader in the mining industry</li><li>• an impact on timeliness of capital raising by issuers because: (i) the issuer will not have control over experts (who would have in some cases provided services in the past) to compel them to complete the form in the context of an offering, and (ii) it may be logistically difficult for a foreign Qualified Person to comply in the time frame of an offering because they operate in foreign jurisdictions, often work in remote locations and different time zones and may have to seek their own legal advice.</li><li>• reduction in the number of Qualified Persons willing to provide reports</li><li>• higher costs to retain Qualified Persons</li><li>• higher insurance costs for Qualified Persons</li><li>• an increase in litigation against foreign Qualified Persons, due to a</li></ul>	<p>Some commenters indicated that the proposal would increase or place new liability on experts. We want to emphasize that experts are already subject to statutory liability under securities legislation and the proposal would not have changed the extent to which an expert is liable.</p> <p>Also, we note that one commenter suggested that, in lieu of imposing the form filing requirement on foreign experts, the issuer could be required to include cautionary language in the prospectus about an investor's potential difficulty enforcing Canadian judgments abroad. Language to this effect is already prescribed under Item 1.12 of Form 41-101F1 <i>Information Required in a Prospectus (Form 41-101F1)</i> and Item 1.11 of Form 44-101F1 <i>Short Form Prospectus (Form 44-101F1)</i> in relation to foreign resident persons who are required to file a non-issuer's submission to jurisdiction and appointment of agent for service form. We have modified the Form 41-101F1 and Form 44-101F1 requirements to include reference to foreign resident experts.</p>
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		<p>possible perception that a foreign Qualified Person will be less effective at defending against suits launched in Canada</p> <ul style="list-style-type: none"> <li>• other jurisdictions responding by implementing similar or further requirements on technical professionals who are foreign in their jurisdiction (including Canadian Qualified Persons)</li> <li>• foreign Qualified Persons coming within the scope of other Canadian laws and regulation, such as legislation concerning taxation, carrying on business and professional associations</li> <li>• increase in liability of Qualified Persons* [see response]</li> </ul> <ul style="list-style-type: none"> <li>• the proposal is inconsistent with recent amendments made to other rules that streamline regulatory requirements for Qualified Persons in the transactional context</li> <li>• the proposal is inconsistent with the intended faster speed-to-market objective of the short form prospectus regime</li> </ul>	
<b>General Comments not Specifically Related to the Proposed Amendments</b>			
11.	General comment	5 commenters expressed that the current regulatory regime under Regulation 43-101 has isolated Canadian issuers, and caused some Qualified Persons to decide against working for Canadian companies.	We acknowledge the comment. However, addressing Regulation 43-101 is beyond the scope of this amendment project.

12.	Section 1.1 of Regulation 44-101-approved rating	<p>1 commenter expressed that under the definition of “approved rating” the rating mapping table for long-term debt, short-term debt, and preferred shares for approved rating organizations was incorrect for DBRS for the following two reasons:</p> <p>(i) DBRS’ BBB long-term rating is equated with a short-term rating of R-2, which is incorrect. DBRS’ short-term rating should be updated and corrected to R-3 so that it is on par with the other AROs cited in the table; and</p> <p>(ii) The reference to “DBRS Limited” should be changed to “DBRS” so that the ratings scales and mapping relates to all DBRS entities.</p>	<p>We acknowledge the comment. Regarding (i), it would be inappropriate to make a change for the rating of one agency without having solicited input from the market, including other rating agencies. Also, examination of credit ratings are outside the scope of this amendment project.</p> <p>Regarding (ii), in connection with the implementation in April 2012 of <i>Regulation 25-101 respecting Designated Rating Organizations</i>, an examination has been undertaken of all references to specific credit rating entities or organizations. These changes are unrelated to the proposed amendments and are beyond the scope of this project.</p>
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