

October 19, 2010

Alberta Securities Commission  
Autorité des marchés financiers  
British Columbia Securities Commission  
Manitoba Securities Commission  
New Brunswick Securities Commission  
Nova Scotia Securities Commission  
Ontario Securities Commission  
Registrar of Securities, Prince Edward Island  
Saskatchewan Financial Services Commission – Securities Division  
Securities Commission of Newfoundland and  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Yukon Territory  
Superintendent of Securities, Nunavut

C/O: John Stevenson  
Secretary  
Ontario Securities Commission  
20 Queen Street West  
19<sup>th</sup> Floor, Box 55  
Toronto, Ontario  
M5H 3S8

Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, square Victoria, 22e étage  
C.P. 246, tour de la Bourse  
Montréal, Québec  
H4Z 1G3

Dear Sir/Madame:

**Proposed National Instrument 25-101 – Designated Rating Organizations,  
Related Policies and Consequential Amendments**

We have reviewed the above proposed amendments (which we will refer to collectively as the “Proposed Instrument”) and thank you for the opportunity to provide you with our comments.

Representing the interests of institutional shareholders, CCGG promotes good governance practices in Canadian public companies and the improvement of the regulatory environment to best align the interests of boards and management with those of their shareholders, and to promote the efficiency and effectiveness of the Canadian capital markets. CCGG has 41 members who collectively manage in excess of \$1.4 trillion of savings on behalf of most Canadians. A list of our members is attached to this submission.

## ***The CSA Approach***

In general, we agree with the CSA's approach of using the IOSCO *Code of Conduct Fundamentals for Credit Rating Agencies* (the "IOSCO Code") as the basis for the proposed regulation of credit rating agencies in Canada, as it reflects the global nature of credit ratings. We agree with the flexibility offered by the 'comply or explain' model, but also agree that in order for the Proposed Instrument to be effective, it is important for the CSA to have the power to order compliance with a particular provision of the IOSCO Code in certain circumstances, for example, where an unsatisfactory explanation is given for non-compliance.

## ***Civil Liability for Credit Rating Agencies***

We note, however, that the CSA has taken a different approach from the U.S and Australia on the issue of civil liability for credit rating agencies. As you are aware, as a result of amendments in the Dodd-Frank Act, credit rating agencies in the U.S. will be required to consent to issuers using credit ratings in their offering documents. If rating agencies consent, they will be subject to liability for any misrepresentations in the information they provide. If they do not consent, issuers will not be allowed to include credit ratings in their offering documents. We understand that a similar approach is being followed in Australia.

In general, our members agree with the U.S. and Australian approach and are of the view that credit rating agencies should be subject to the same civil liability as other experts whose reports are included, with their consent, in offering documents. Investors consider credit ratings as part of investment decision-making process, and issuers often highlight superior credit ratings when marketing their securities. We are not aware of any principled reasons to treat credit rating agencies differently from other experts.

Credit rating agencies may object to the potential scope of their liability, given the amount of securities that they rate. We believe, however, that the risk of indeterminate liability is already addressed in securities legislation. For example, s. 130 of the Ontario Securities Act specifically limits the liability of experts to any misrepresentations found in the reports, opinions or statements provided by them, and also contains numerous defences to liability, including a due diligence defence. Civil liability for secondary market disclosure (from which credit rating agencies are currently exempt) contains liability limits that would also address any such concerns. Other experts participating in the capital markets have operated under these liability provisions without undue consequences.

We acknowledge, however, that credit rating agencies in the U.S. have refused to provide their consent to include credit ratings in offering documents. The resulting confusion for market participants, particularly asset backed issuers who are required to include credit ratings in their offering documents, resulted in the SEC suspending the applicable provisions of the Dodd-Frank Act for six months. We also acknowledge that since more documents in Canada are required to include credit ratings, a similar approach by the CSA would have a more dramatic effect.

## *A Canadian Approach*

We understand that the SEC suspension of the relevant Dodd-Frank provisions will end in January, 2011. At that time, the CSA will be in a better position to know whether credit rating agencies will be prepared to consent to ratings being included in offering documents, or whether further regulatory action will be required. We recommend that the CSA delay final implementation of the Proposed Instrument until the situation in the U.S. is resolved. This would allow the CSA to consider the position taken by credit rating agencies in the U.S. and how the Canadian market would be affected if (as seems likely) they took a similar position in Canada. At that time, we recommend that the CSA put forward the necessary amendments to subject credit rating agencies to the same liability provisions as all other experts who provide information to issuers to be included in offering or other documents provided to investors.

However, if there are unexpected delays in the U.S., we recommend that the CSA proceed with the Proposed Instrument in its current form, provided that the CSA commits to introducing provisions to establish civil liability once the situation in the U.S. is resolved.

We thank you again for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Executive Director, Stephen Griggs, at 418.868.3585 or [sgriggs@ccgg.ca](mailto:sgriggs@ccgg.ca).

Yours very truly,

A handwritten signature in black ink, appearing to read "D.F. Denison". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

David F. Denison  
Chair of the Board  
Canadian Coalition for Good Governance

## CCGG MEMBERS

Acuity Investment Management Inc.  
Alberta Investment Management Corporation (AIMCo)  
Alberta Teachers' Retirement Fund Board  
Aurion Capital Management Inc.  
BlackRock Asset Management Canada Limited  
BMO Harris Investment Management Inc.  
British Columbia Investment Management Corporation (bcIMC)  
Burgundy Asset Management Ltd.  
Canada Post Corporation Registered Pension Plan  
CIBC Global Asset Management  
Colleges of Applied Arts and Technology Pension Plan (CAAT)  
Connor, Clark & Lunn Investment Management  
CPP Investment Board  
Franklin Templeton Investments Corp.  
Genus Capital Management  
Greystone Managed Investments Inc.  
Hospitals of Ontario Pension Plan (HOOPP)  
Jarislowsky Fraser Limited  
Leith Wheeler Investment Counsel Ltd.  
Lincluden Investment Management  
Mackenzie Financial Corporation  
McLean Budden Limited  
MFC Global Investment Management  
New Brunswick Investment Management Corporation (NBIMC)  
Northwest & Ethical Investments L.P.  
Ontario Municipal Employees Retirement Board (OMERS)  
Ontario Pension Board  
Ontario Teachers' Pension Plan (Teachers')  
OPSEU Pension Trust  
Public Sector Pension Investment Board (PSP Investments)  
RBC Asset Management Inc.  
Régimes de retraite de la Société de transport de Montréal  
Scotia Asset Management  
SEAMARK Asset Management Ltd.  
Sionna Investment Managers Inc.  
Standard Life Investments Inc.  
TD Asset Management Inc.  
UBS Global Asset Management (Canada) Co.  
University of Toronto Asset Management Corporation  
Workers' Compensation Board - Alberta  
York University Pension Plan