

**CSA Notice of Amendments  
Relating to Designated Rating Organizations**

**Amendments to  
National Instrument 31-103 *Registration Requirements, Exemptions and  
Ongoing Registrant Obligations*,  
National Instrument 33-109 *Registration Information*,  
National Instrument 41-101 *General Prospectus Requirements*,  
National Instrument 44-101 *Short Form Prospectus Distributions*,  
National Instrument 44-102 *Shelf Distributions*,  
National Instrument 45-106 *Prospectus Exemptions*,  
National Instrument 51-102 *Continuous Disclosure Obligations*,  
National Instrument 81-102 *Investment Funds*  
and  
National Instrument 81-106 *Investment Fund Continuous Disclosure*  
and  
Changes to  
Companion Policy 21-101CP *Marketplace Operation*  
and  
Companion Policy 81-102CP *Investment Funds***

**March 29, 2018**

**Introduction**

The Canadian Securities Administrators (the **CSA** or **we**) are making amendments (the **Amendments**) to:

- National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**),
- National Instrument 33-109 *Registration Information* (**NI 33-109**),
- National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**),
- National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**),
- National Instrument 44-102 *Shelf Distributions* (**NI 44-102**),
- National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**),
- National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**),
- National Instrument 81-102 *Investment Funds* (**NI 81-102**), and
- National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**).

We are also making changes (the **Changes**) to:

- Companion Policy 21-101CP *Marketplace Operation* (**21-101CP**), and

- Companion Policy 81-102CP *Investment Funds (81-102CP)*.

The Amendments and the Changes relate to designated rating organizations (**DROs**) and credit ratings of DROs. The text of the Amendments and the Changes is contained in Annexes C to M of this notice.

The Amendments and the Changes are expected to be made by each member of the CSA. In some jurisdictions, Ministerial approvals are required for the Amendments. Provided all necessary ministerial approvals are obtained, the Amendments and the Changes are effective on June 12, 2018. Where applicable, Annex N provides information about each jurisdiction's approval process.

### **Substance and Purpose**

The Amendments and the Changes relate to an application by Kroll Bond Rating Agency, Inc. (**Kroll**) for designation as a DRO.

We are amending NI 44-101 and NI 44-102 to recognize credit ratings of Kroll, but only for the purposes of the alternative eligibility criteria in section 2.6 of NI 44-101 and section 2.6 of NI 44-102 for issuers of asset-backed securities (**ABS**) to file a short form prospectus or shelf prospectus, respectively (the **ABS Short Form Eligibility Criteria**).

The Amendments and Changes also address the following matters (the **Other Matters**):

- To ensure that Kroll credit ratings are only recognized for purposes of the ABS Short Form Eligibility Criteria, we included clarifying language in provisions of NI 31-103, NI 33-109, NI 41-101, NI 45-106, NI 81-102, NI 81-106 and 21-101CP that refer to DROs or credit ratings of DROs.
- We included certain "housekeeping" revisions in the Amendments and the Changes.

### **Background**

Currently, there are four DROs in Canada: S&P Global Ratings Canada (**S&P**), Moody's Canada Inc. (**Moody's**), Fitch Ratings, Inc. (**Fitch**) and DBRS Limited (**DBRS**).

Kroll has filed an application for designation as a DRO. The Ontario Securities Commission (**OSC**) is the principal regulator for the Kroll application. Kroll mainly operates in the United States.

Subject to confirmation and completion of certain matters by Kroll, staff are recommending that Kroll be designated as a DRO, but only for purposes of the ABS Short Form Eligibility Criteria. We are making the Amendments and Changes so that Kroll credit ratings are only recognized for purposes of the ABS Short Form Eligibility Criteria.

See Annex A for further background on, and explanation of, the Amendments and Changes relating to the Kroll application for designation as a DRO.

## Summary of Written Comments Received by the CSA

On July 6, 2017, we published a Notice and Request for Comment relating to the Amendments and the Changes (the **July 2017 Materials**). The comment period for the July 2017 Materials ended on October 4, 2017. We received written submissions from one commenter. We have considered the comments received and thank the commenter for their input. The name of the commenter is contained in Annex B of this notice and a summary of their comments, together with our responses, are contained in Annex B of this notice. The comment letter can be viewed on the websites of each of:

- the Alberta Securities Commission at [www.albertasecurities.com](http://www.albertasecurities.com),
- the Autorité des marchés financiers at [www.lautorite.qc.ca](http://www.lautorite.qc.ca), and
- the Ontario Securities Commission at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

## Summary of Changes

We revised the July 2017 Materials in relation to the Amendments and the Changes to include references to successor credit rating organizations if designated under securities legislation. These revisions will allow for future reorganizations of DROs without having to effect further rule and policy amendments. The revisions are reflected in the Amendments and the Changes we are publishing concurrently with this notice. As these changes are not material, we are not republishing the Amendments and the Changes for a further comment period.

## Update on proposed amendments to National Instrument 25-101

The July 2017 materials also included proposed amendments to National Instrument 25-101 *Designated Rating Organizations (NI 25-101)*. We are still considering the proposed amendments to NI 25-101 as a result of the written submissions we received from four commenters, including three existing DROs.

The proposed amendments to NI 25-101 were intended to reflect new requirements for credit rating organizations (**CROs**) in the European Union (**EU**) that must be included in NI 25-101 by June 1, 2018 in order for:

- the EU to continue to recognize the Canadian regulatory regime as “equivalent” for certain regulatory purposes in the EU (**EU equivalency**), and
- credit ratings of a Canadian office of a DRO to continue to be available for use for certain regulatory purposes in the EU.

The proposed amendments to NI 25-101 were also intended to reflect new provisions in the March 2015 version of the Code of Conduct Fundamentals for Credit Rating Agencies of the International Organization of Securities Commissions.

## *Recent EU developments*

The EU regulation on credit rating agencies (the **EU CRA Regulation**) allows credit ratings issued outside the EU to be used for regulatory purposes in the EU when they are either:

- “endorsed” by CROs established in the EU, or
- issued by “certified” CROs.

After the end of the comment period for the July 2017 Materials, on November 17, 2017, the European Securities and Markets Authority (**ESMA**) published final technical guidance on the application of the EU's methodological framework for assessing third country legal and supervisory frameworks for purposes of the EU endorsement regime and the EU equivalence/certification regime (the **Fall 2017 ESMA Publications**).

- In the Fall 2017 ESMA Publications, ESMA indicated that ESMA is now of the view that it is less onerous for a third country's regulatory regime for CROs to meet the requirements for the EU endorsement regime than the EU equivalence/certification regime.
- This represents a change in ESMA's approach to EU equivalency matters under the EU CRA Regulation.
- We have asked ESMA for a formal decision that the current version of NI 25-101 is sufficient for the Canadian regime for DROs to continue to be recognized for the EU endorsement regime after the EU equivalency deadline of June 1, 2018.
- Since the existing DROs in Canada are only relying on the EU endorsement regime, such a formal decision would mean that the CSA would not have to finalize the proposed amendments to NI 25-101 before the EU equivalency deadline of June 1, 2018.
- Consequently, we plan to delay the proposed amendments to NI 25-101 until a later date in 2018. Those amendments would be required in order for the Canadian regime for DROs to be recognized for the EU equivalence/certification regime. Since the existing DROs in Canada are not relying on the EU equivalence/certification regime, there is no urgency to finalize the proposed amendments to NI 25-101 before the EU equivalency deadline of June 1, 2018.

## **Contents of Annexes**

This notice includes the following annexes:

- Annex A sets out background on the Amendments and Changes relating to the Kroll application for designation as a DRO,
- Annex B sets out the name of the commenter and a summary of their comments, together with our responses,
- Annex C sets out the Amendments to NI 31-103,
- Annex D sets out the Amendments to NI 33-109,
- Annex E sets out the Amendments to NI 41-101,
- Annex F sets out the Amendments to NI 44-101,
- Annex G sets out the Amendments to NI 44-102,
- Annex H sets out the Amendments to NI 45-106,
- Annex I sets out the Amendments to NI 51-102,
- Annex J sets out the Amendments to NI 81-102,
- Annex K sets out the Amendments to NI 81-106,
- Annex L sets out the Change to 21-101CP, and
- Annex M sets out the Change to 81-102CP.

Where applicable, Annex N provides additional information relevant for local jurisdictions.

## Questions

Please refer your questions to any of the following:

Michael Bennett  
Senior Legal Counsel, Corporate Finance  
Ontario Securities Commission  
(416) 593-8079  
mbennett@osc.gov.on.ca

Nazma Lee  
Senior Legal Counsel, Corporate Finance  
British Columbia Securities Commission  
(604) 899-6867  
nlee@bcsc.bc.ca

Lanion Beck  
Senior Legal Counsel, Corporate Finance  
Alberta Securities Commission  
(403) 355-3884  
lanion.beck@asc.ca

Alexandra Lee  
Senior Policy Adviser, Corporate Finance  
Autorité des marchés financiers  
(514) 395-0337, ext. 4465  
alexandra.lee@lautorite.qc.ca