



Insight beyond the rating.

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June 29, 2016

The Governments of:
British Columbia,
Ontario,
Saskatchewan,
New Brunswick,
Prince Edward Island,
Yukon and Canada

By Electronic Mail:

Re: Comments on the Revised Consultation Draft of the Capital Markets Stability Act
published on May 5, 2016 (the Revised Draft CMSA)

DBRS appreciates the opportunity to provide comments on the Revised Draft CMSA which reflects stakeholder comments received on the initial draft from August 2014.

The revised Draft CMSA empowers the Capital Markets Regulatory Authority (the CMRA) to monitor national capital markets to identify emerging systemic risks and address them as necessary through regulatory measures focused on products, practices, and benchmarks. It also includes new investigative tools and updated capital markets-related criminal offences to strengthen criminal enforcement.

The Revised Draft CMSA makes a number of substantive changes from the initial draft. Overall, the Revised Draft CMSA is intended to complement the existing regulatory framework by providing supplemental powers to address potential or perceived regulatory gaps.

Importantly, the Revised Draft CMSA replaces entity-level designation powers, except for trade repositories, with more targeted powers to manage systemic risks related to the capital markets. It includes a materiality threshold for the exercise of the CMRA's regulatory powers that is aligned with systemic risk focus of international groups such as the Financial Stability Board (FSB) and the International Organization of Securities Commissions (IOSCO). To prevent unnecessary regulatory burden and duplicative efforts across federal, provincial and foreign regulatory authorities, the new systemic risk powers are to be used only when necessary or to the extent that information does not already exist and systemically important benchmarks, products and practices are not already regulated. In any case, such powers are to be used in coordination with other regulators.



Credit Rating Organizations (CROs) are no longer designated as systemically important

In the Revised Draft CMSA, CROs are no longer designated as systemically important. DBRS agrees with this change. CROs play a significant, though limited, role in the capital markets in providing an alternate information source to investors regarding credit risk. Credit ratings are not statements of fact, but rather, are forward looking opinions about credit risk which reflect the creditworthiness of an issuer, rated entity, and/or security. There are other measures of credit risk in the market. Removing CROs from being systemically important helps to mitigate any unintended reliance on credit ratings and recognizes their more limited, subjective role as one risk tool among others available to investors for use in their decision making process. In addition, it also recognizes that no one firm is critical to the functioning of the Canadian capital markets.

Authority to address specific systemic risks

The Revised Draft CMSA provides the CMRA with the ability to prohibit or restrict, through regulation, practices that are prescribed to be systematically risky, including practices in relation to the use of credit ratings (including how investment policies govern that use), and conflicts of interest related to the determination of credit ratings.

DBRS, together with its major competitors, have been formally regulated in Canada since April 2012 through existing provincial securities legislation, including National Instrument 25-101 Designated Rating Organizations (NI 25-101). NI 25-101 imposes, and DBRS understands will continue to impose, upon designated rating organizations (DROs) substantial registration and ongoing compliance standards regarding objectivity, integrity and transparency for those CROs who wish to have their ratings eligible for use in Canadian securities legislation. In particular, NI 25-101 requires each DRO to adopt a Code of Conduct that includes a variety of requirements to either eliminate or manage conflicts of interest within the ratings process. At the base of the Code of Conduct is the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies (IOSCO Code) which, among other things, is designed to reduce systemic risk.

Given the breadth of existing coverage, DBRS questions the necessity of providing the CMRA with additional powers to regulate conflicts of interest under section 22 of the Revised Draft CMSA. Moreover, any harm caused by such conflicts of interest are more likely to arise on an individual credit ratings basis with the issuer or other parties with whom the DRO may have a conflict, and would not likely rise to the systemic risk level, that is, one that would materially impact Canada's financial stability and economy in an adverse manner, as described in section 3 of the Revised Draft CMSA.



Should you have any questions regarding DBRS's comments, please do not hesitate to contact me.

Very truly yours,

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

Mary Keogh
Managing Director, Global Regulatory Affairs

cc:

Doug Turnbull, Vice Chairman - Country Head, Canada

Joe Stroud, Chief Legal Counsel

Michael Brown, Vice President, Compliance Officer & Regulatory Counsel