

October 31, 2012

**In the Matter of
the Securities Legislation of
Ontario
(the Jurisdiction)**

and

**In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions
and**

**In the Matter of
DBRS Limited
(the Filer or DBRS Canada)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that:

- (a) pursuant to the confidentiality provisions of the Legislation (being subsection 140(2) of the *Securities Act* (Ontario)),
 - (i) the information referred to in Item 13 of Form 25-101F1 *Designated Rating Organization Application and Annual Filing* (**Form 25-101F1**), which may be calculated at a global level for the Filer as a whole, be held in confidence (and therefore not available to the public for inspection) for an indefinite period, to the extent permitted by law;
 - (ii) the information referred to in Item 14 of Form 25-101F1, which may be calculated at a global level for the Filer as a whole, be held in confidence (and therefore not available to the public for inspection) for an indefinite period, to the extent permitted by law; and
 - (iii) the information referred to in Item 15 of Form 25-101F1 be held in confidence (and therefore not available to the public for inspection) for an indefinite period, to the extent permitted by law,
- (collectively, the **Confidentiality Relief**); and

- (b) pursuant to section 15 of National Instrument 25-101 *Designated Rating Organizations* (**NI 25-101**), the Filer be exempted from the requirement in section 11 of NI 25-101, provided that the Filer complies with the procedures set out in the Business Code (as defined below) and described at paragraph 26 of this Decision Document (the **Code of Conduct Relief**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the Ontario Securities Commission (the **Principal Regulator**) is the principal regulator for this application; and
- (b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Yukon and Nunavut (the **Passport Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 or NI 25-101 have the same meanings in this decision, unless otherwise defined herein.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation governed by the *Business Corporations Act* (Ontario) with its registered and principal offices located in Toronto, Ontario.
2. The Filer is a credit rating agency (**CRA**) which provides credit rating opinions to a broad range of financial institutions, corporate entities, government bodies and various structured finance product groups in North America, Europe, Australasia and South America.
3. Affiliates of DBRS Canada are incorporated in the United States of America and in the European Union (**EU**) as follows:
 - (a) DBRS, Inc. (**DBRS US**), an affiliate of DBRS Canada, is a corporation existing under the laws of Delaware. DBRS US is registered with the SEC as a nationally recognized statistical rating organization (**NRSRO**), and DBRS Canada is a credit rating affiliate (as that term is defined in SEC Form NRSRO) of DBRS US;
 - (b) DBRS Ratings Limited (**DBRS UK**), an affiliate of DBRS, is a company incorporated in England and Wales and is a registered credit rating agency in

the EU. As DBRS UK is not an NRSRO credit rating affiliate, it is not included in the Filer's Form NRSRO.

DRBS US and DBRS UK are hereinafter collectively referred to as the **Affiliates**.

4. The Filer is privately owned and operated and is not a reporting issuer. Currently, the Filer, together with the Affiliates, rates more than 1,000 different companies and single-purpose vehicles that issue commercial paper, term debt and preferred shares in the global capital markets.
5. As more fully described in its application for designation as a designated rating organization (**DRO**) and the Designation Order referred to in paragraph 6 hereof, the Filer and the Affiliates is in compliance in all material respects with NI 25-101 and the securities legislation applicable to credit rating organizations in each jurisdiction in Canada and in any other jurisdiction in which the Filer or its credit rating affiliates operate.
6. In a concurrent decision, the Principal Regulator designated the Filer as a DRO under the Legislation.

The Confidentiality Relief

7. Subsection 14(1) of NI 25-101 requires a DRO to file a completed Form 25-101F1 no later than 90 days after the end of its most recently completed financial year.
8. Item 13 of Form 25-101F1 requires a DRO to disclose information, as applicable, regarding the applicant's aggregate revenue for the most recently completed financial year including: revenue from determining and maintaining credit ratings, revenue from subscribers, revenue from granting licenses or rights to publish credit ratings, and revenue from all other services and products offered by the DRO. Item 13 of Form 25-101F1 also provides that the financial information on the revenue of the DRO be divided into fees from credit rating and non-credit rating activities (the **Item 13 Information**).
9. In the United States, Exhibit 12 to Form NRSRO requires NRSROs to provide "[i]nformation regarding revenues for the fiscal or calendar year ending immediately before the date of the initial application." Such information is provided for subsequent years pursuant to SEC Rule 17g-3(a)(3) under the Securities Exchange Act of 1934 (**1934 Act**). However, NRSROs are permitted to provide this information confidentially. Likewise, Regulation (EC) No 1060/2009 of the European Parliament and of the Council, of 16 September 2009, on credit rating agencies (the **EU Regulation**) provides that revenue information must be provided quarterly and annually to the European Securities and Markets Authority (**ESMA**) but need not be disclosed publicly.

10. Item 14 of Form 25-101F1 requires a DRO to disclose “a list of the largest users of credit rating services of the applicant by the amount of net revenue earned by the applicant attributable to the user during the most recently completed financial year”. It also requires the DRO to disclose “a list of users of credit rating services whose contribution to the growth rate in the generation of revenue of the applicant in the previous fiscal year exceeded the growth rate in the applicant’s total revenue in that year by a factor of more than 1.5 times” (the **Item 14 Information**).
11. In the United States, Exhibit 10 to Form NRSRO requires NRSROs to provide “[a] list of the largest users of credit rating services by the amount of net revenue earned from the user during the fiscal year ending immediately before the date of the initial application”. Such information is provided for subsequent years pursuant to SEC Rule 17g-3(a)(5) under the 1934 Act. However, NRSROs are permitted to provide this information confidentially. Likewise, the EU Regulation provides that such information must be provided annually to ESMA but need not be disclosed publicly.
12. Public disclosure of the Item 13 Information and/or Item 14 Information would make that information available to the Filer’s analysts. The Filer believes that confidential treatment of the Item 13 Information and/or Item 14 Information helps to shield this information from the Filer’s analysts, thereby bolstering independence in the rating process by insulating the Filer’s analysts from commercial influences. In addition, some of the Item 13 Information and/or Item 14 Information is competitively sensitive information of the Filer.
13. Item 15 of Form 25-101F1 requires a DRO to attach a copy of the audited financial statements of the applicant, which must include a statement of financial position, a statement of comprehensive income, and a statement of changes in equity, for each of the three most recently completed financial years (the **Item 15 Information** and, collectively with the Item 13 Information and the Item 14 Information, the **Sensitive Information**).
14. In the United States, Exhibit 11 to Form NRSRO requires NRSROs to provide “[a]udited financial statements for each of the three fiscal calendar years ending immediately before the date of the initial application.” Such information is provided for subsequent years pursuant to SEC Rule 17g-3(a)(1) under the 1934 Act. However, NRSROs are permitted to provide this information confidentially. The EU Regulation does not have a similar requirement to provide such information on a yearly basis.
15. The Filer and its Affiliates are privately held companies that do not publicly issue audited financial statements.

16. Consistent with the requirements applicable to NRSROs under the 1934 Act and the EU Regulation, the Filer proposes to file the Sensitive Information on a confidential basis with the Principal Regulator.
17. Section (4) of the Instructions to Form 25-101F1 provides that an applicant may apply to the securities regulatory authority to hold in confidence portions of Form 25-101F1 which disclose intimate financial, personal or other information.
18. The Sensitive Information constitutes intimate financial, personal or other information related to the credit rating activities of the Filer that is not otherwise publicly available.
19. The Filer believes that none of the Sensitive Information, either individually or in the aggregate, is necessary to understand the remaining information provided in Form 25-101F1.
20. The Filer believes that: (i) the negative implications to the Filer, issuers or an investor relying on a credit rating were the Sensitive Information to be made public outweigh the desirability of adhering to the principle that material filed with the Principal Regulator be available to the public for inspection, and (ii) the disclosure of the Sensitive Information is not necessary in the public interest.
21. The Filer believes that the Sensitive Information is not material to an analyst, an issuer or an investor relying on a credit rating and, therefore, there is no prejudice or harm to the public as a result of the Sensitive Information remaining private.

The Code of Conduct Relief

22. The Filer has adopted and implemented the *Business Code of Conduct for the DBRS Group of Companies* (the **Business Code**), which is designed to be substantially aligned with the *International Organization of Securities Commissions Code of Conduct Fundamentals for Credit Rating Agencies* and includes provisions adopted to satisfy the requirements of NI 25-101.
23. The Filer has also adopted and maintains an Employee Code of Conduct (the **Employee Code**) which sets out, and provides guidance in respect of, the Filer's standards of conduct to be followed by the Filer's staff, and underpins the Filer's commitment to conducting its business in an ethical manner and with integrity.
24. The Filer has also appointed a global compliance officer (the **Global Chief Compliance Officer** or **GCCO**) who is supported by Compliance Officers in various jurisdictions to fulfill the functions set forth in NI 25-101, including monitoring and assessing compliance by the Filer and its DRO employees with the Business Code and the Legislation, as well as being responsible for the oversight of the Employee Code.

25. Section 11 of NI 25-101 provides that a DRO's code of conduct must specify that a DRO must not waive provisions of its code of conduct.

26. The Business Code does not include this provision. Section 4.1 of the Business Code provides as follows:

“The GCCO and Compliance Officers are responsible for the oversight of DBRS compliance with this Business Code and DBRS Staff compliance with the Employee Code of Conduct. DBRS will disclose on a timely basis any modifications made to this Business Code or how it is implemented and enforced.”

Likewise, the Employee Code includes a section which provides as follows:

“Waivers of the Code

DBRS may waive application of the provisions of this Code only in rare circumstances, based on a clear showing that such a waiver is warranted. Any requests for waiver must be made in writing to the GCCO.”

27. The Business Code, as well as the policies, procedures and internal controls that the Filer has implemented to ensure the objectivity and integrity of its ratings and the transparency of its operations (such as the Employee Code), is consistent in all material respects with the objectives of NI 25-101 and enables the Filer to:

- (a) accommodate the global nature of the Filer's operations;
- (b) implement high level principles that govern the conduct of the Filer's credit rating activities and underlying regulatory requirements in the jurisdictions where the Filer conducts credit rating activities; and
- (c) meet specific jurisdictional requirements, in addition to those which are reflected in the Business Code and the Employee Code.

28. The GCCO annually reviews and assesses the efficacy of the implementation and enforcement of the Business Code and the Employee Code.

29. The reporting line of the GCCO and other Compliance Officers is independent of the Filer's credit rating activities. The GCCO, while serving in such capacity, may not participate in any of the following:

- (a) the development of credit ratings, methodologies or models;
- (b) the establishment of compensation levels, other than for DRO employees reporting directly to the GCCO.

30. Within 90 days of its most recently completed financial year end, the Filer will deliver on a confidential basis to the Principal Regulator a report outlining any written waiver granted under section 4.1 of the Business Code and the Employee Code during the Filer's most recently completed financial year, including a description of the nature of the request and the relevant facts supporting the request.

Decision

The Principal Regulator is satisfied that this decision meets the test set out in the Legislation for the Principal Regulator to make this decision.

The decision of the Principal Regulator under the Legislation is that:

- (a) the Confidentiality Relief is granted provided that the Sensitive Information, which may be calculated at a global level for the Filer as a whole, is provided to the Principal Regulator on a confidential basis concurrently with the filing of Form 25-101F1 by the Filer; and
- (b) the Code of Conduct Relief is granted provided that:
 - (i) the Filer complies with the procedures regarding waivers set out in the Business Code and Employee Code and described at paragraph 26 of this Decision Document; and
 - (ii) the Filer complies with paragraph 30 of this Decision Document.

With respect to the Confidentiality Relief:

Ontario Securities Commission

Ontario Securities Commission

With respect to the Code of Conduct Relief:

Shannon O'Hearn
Manager, Corporate Finance
Ontario Securities Commission