

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
Moody's Canada Inc.
(the Filer)**

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 for Moody's Investor Service (MIS) 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

(ii) the information referred to in Item 14 of Form 25-101F1, which may be calculated at a global level for MIS 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,

(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 that a designated rating organization's (**DRO**) code of conduct must specify that a DRO must not waive provisions of its code of

conduct, provided that the Filer complies with the procedures regarding waivers set out in the MIS Canada Code (as defined below) and described at paragraph 25 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

Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in Moody's Canada Inc. Code of Professional Conduct delivered to the Principal Regulator prior to the date hereof (the **MIS Canada Code**), which will be published on moodys.com promptly upon this decision being made. 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 federal laws of Canada with its registered and head office located in Toronto, Ontario.
2. The Filer provides credit rating opinions, research and risk analysis regarding a broad range of financial institutions, corporate entities, government bodies and various structured finance products in Canada, which may from time to time be used outside of Canada.
3. The Filer is a wholly owned subsidiary of Moody's Overseas Holdings, Inc. (**MOH**), which itself is a wholly-owned subsidiary of Moody's Corporation (**MCO**). MCO, the parent company, is a publicly held Delaware corporation whose board of directors (the **MCO Board**) is subject to the full corporate governance regime imposed by Delaware law, rules made under the Securities Exchange Act of 1934 (**1934 Act**) and the New York Stock Exchange.
4. The Filer is: (i) a "credit rating affiliate" of MIS Inc., which is a Nationally Recognized Statistical Rating Organization (**NRSRO**) in the United States

- (US); (ii) listed on MIS Inc.'s Form NRSRO as a credit rating affiliate; and (iii) in compliance in all material respects with US federal securities law applicable to NRSROs and their credit rating affiliates.
5. In general terms, MCO and its direct and indirect subsidiaries (collectively, **Moody's**) are organized as follows. Moody's has two principal businesses. Moody's Investors Service (**MIS**) is the credit rating agency (**CRA**). The term MIS refers to MIS Inc. and the wholly owned subsidiaries of MCO that engage in Rating Services. The term Moody's Analytics (**MA**) refers to the companies that carry out all other, non-rating commercial activities.
 6. MIS has adopted the Moody's Investor Services Code of Professional Conduct (the **MIS Code**), which is designed to be substantially aligned with the International Organization of Securities Commissions (**IOSCO**) Code of Conduct Fundamentals for Credit Rating Agencies (the **IOSCO Code**). The MIS Canada Code is similarly designed to be substantially aligned with the IOSCO Code. MCO and MIS have also implemented a range of globally applicable policies, procedures and guidance (**Global Policies**) that are designed to achieve the objectives set out in the IOSCO Code and/or satisfy regulatory requirements that MIS implements globally.
 7. The Filer 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 operates.
 8. In a concurrent decision, the Principal Regulator designated the Filer as a DRO under the Legislation.

The Confidentiality Relief

9. 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.
10. 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**).
11. 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.” However, NRSROs are permitted to provide this information confidentially. Such information is provided for subsequent years pursuant to SEC Rule 17g-3(a)(3) under the Securities Exchange Act of 1934 (**1934 Act**). 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 (other than the high-level financial information on the revenue of the credit rating agency that is required to be disclosed in a credit rating agency’s annual transparency report).

12. Some of the Item 13 Information is competitively sensitive information of MIS.
13. 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** and, collectively with the Item 13 Information, the **Sensitive Information**).
14. 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”. However, NRSROs are permitted to provide this information confidentially. Such information is provided for subsequent years pursuant to SEC Rule 17g-3(a)(5) under the 1934 Act. Likewise, the EU Regulation provides that such information must be provided annually to ESMA and to the CRA’s home regulator but need not be disclosed publicly.
15. Public disclosure of the Item 14 Information would make that information available to the Filer’s Analysts. The Filer believes that confidential treatment of the Item 14 Information helps to shield this information from MIS Analysts, thereby bolstering independence in the rating process by insulating Analysts from commercial influences.
16. The Filer proposes to file the Sensitive Information on a confidential basis to 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 information or other 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, the Issuer 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. Upon being designated as a DRO, the Filer intends to adopt and implement the MIS Canada 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. Upon being designated as a DRO, the Filer intends to appoint a compliance officer of MIS as its "designated compliance officer" (**DCO**) to fulfill the functions set forth in NI 25-101, including monitoring and assessing compliance by the Filer and its DRO employees with the MIS Canada Code and the Legislation.
24. 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.
25. Section 4.2 of the MIS Canada Code provides as follows:

“MIS Canada will not waive any provisions of this Code, unless the MIS Compliance Department grants a written waiver in particular circumstances. If the provision or provisions in this Code for which a waiver is sought apply to an individual, the individual must request the waiver in writing, including the relevant facts supporting the request, and obtain approval from the individual’s Manager and the DCO. If the request for a waiver is urgent and it is not feasible for the relevant individual to request the waiver on a timely basis, then the individual’s Manager may request the waiver. If the provision or provisions in this Code for which a waiver is sought apply to MIS Canada, then an officer of MIS Canada must request the waiver in writing, including the relevant facts supporting the request, and obtain approval from the DCO. If the request for a waiver is urgent and it is not feasible for the DCO to grant the waiver on a timely basis, then the DCO’s Manager, the designated compliance officer for Europe, the Middle East and Africa, the designated compliance officer for Asia-Pacific, or MCO’s general counsel may grant the waiver.”

26. The Filer believes that section 4.2 of the MIS Canada Code is consistent in all material respects with the objectives of NI 25-101 and will enable the Filer to:
 - (a) accommodate the global nature of MIS's operations;
 - (b) provide independent and globally consistent Credit Ratings; and
 - (c) maintain and enforce globally consistent policies and procedures designed to achieve regulatory objectives.
27. The Compliance Department annually reviews and assesses the efficacy of the implementation and enforcement of the MIS Canada Code.
28. The reporting line of the Compliance Department is independent of the Filer’s Credit Rating activities. Neither the DCO nor any other employee within the Compliance Department, may: (1) perform Credit Ratings; (2) participate in the development of ratings methodologies or models; (3) perform marketing or sales functions; or (4) participate in establishing compensation levels, other than for Compliance Department employees.
29. 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 4.2 of the MIS Canada 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 MIS 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 MIS Canada Code and described at paragraph 25 of this Decision Document; and
 - (ii) the Filer complies with paragraph 29 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