

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
Standard & Poor's Ratings Services (Canada), a business unit of The McGraw-Hill
Companies (Canada) Corporation
(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 (Specified Revenue) of Form 25-101F1 *Designated Rating Organization Application and Annual Filing (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; and
 - (ii) the information referred to in Item 14 (Credit Rating Users) 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 S&P Code of Conduct (as defined below) and described at paragraph 23 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 separately identifiable business unit of a corporation governed by the laws of Nova Scotia with its registered and principal offices located in Toronto, Ontario, which corporation is an indirect wholly-owned subsidiary of The McGraw-Hill Companies, Inc. (**McGraw-Hill**), a corporation organized under the laws of New York.
2. The Filer, together with the other components of S&P Ratings Services (the **Credit Rating Affiliates**), provides credit rating opinions, research and risk analysis to a broad range of financial institutions, corporate entities, government bodies and various structured finance product groups in North America, Europe, Africa, Australasia and South America.
3. The Filer is a component of Standard & Poor's Ratings Services (**S&P Ratings Services**) which is a Nationally Recognized Statistical Rating Organization (**NRSRO**) regulated by the SEC, and which includes related global offices that issue ratings under the Ratings Services global brand. S&P Ratings Services is comprised of, and conducts its business globally through, wholly-owned direct and indirect subsidiaries or divisions of McGraw-Hill. The credit rating activities of S&P Ratings Services are conducted globally by this business unit in accordance with a code of conduct, policies and guidelines, and criteria that are generally globally applicable.
4. Currently, the Filer, together with the Credit Rating Affiliates, has more than one million ratings outstanding covering corporate, government and special purposes

- issuers and obligors and their commercial paper, term debt and other debt securities 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 Credit Rating Affiliates are 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 and the 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 25-101 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 such information must be provided annually to the European Securities and Markets Authority (**ESMA**) but need not be disclosed publicly.
10. Public disclosure of the Item 13 Information would put in the public domain information that is proprietary and confidential and of a level of financial granularity that is not usually released to the public. Such information is commercially sensitive. Additionally, disclosure of such information could damage the Filer's relationship with its customers, who expect such information to be maintained confidentially.

11. 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**).
12. 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 the European Securities and Markets Authority and to the credit rating organization’s home regulator but need not be disclosed publicly.
13. 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 the Filer’s analysts, thereby bolstering independence in the rating process by insulating the Filer’s analysts from commercial influences.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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.

19. The Sensitive Information is not material to 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

20. The Filer has adopted and implemented the *Standard & Poor's Ratings Services Code of Conduct* (the **S&P Code of Conduct**), 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.
21. The Filer has also appointed a compliance officer (the **Chief Compliance Officer**) to fulfill the functions set forth in NI 25-101, including monitoring and assessing compliance by the Filer and its DRO employees with the S&P Code of Conduct and the Legislation.
22. 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.
23. The S&P Code of Conduct does not include this provision. The introduction section of the S&P Code of Conduct provides as follows:

“The mission of Standard & Poor's is to provide high-quality, objective, independent, and rigorous analytical information to the marketplace. In pursuit of this mission, among other things, Standard & Poor's engages in Credit Rating Activities and issues Credit Ratings.

Standard & Poor's has adopted this Code of Conduct (the “Code”) to reflect the high level principles that govern the conduct of its Credit Rating Activities. This Code also reflects the high-level principles underlying Regulatory Requirements in the jurisdictions where Standard & Poor's conducts Credit Rating Activities. Standard & Poor's implements the principles set forth in this Code through policies, procedures, and guidelines (collectively, “policies”) as well as through its operational and control infrastructures.

All Employees must comply with this Code and its related policies. Each year all Employees are required to read the Code and affirm their compliance with it and its related policies by signing an affirmation statement. The President of Standard & Poor's (or her/his designee) is responsible for overseeing compliance with this Code, its related policies, and Standard & Poor's Regulatory Commitments and must approve in writing the grant of exceptions to this Code or its related policies but may only grant such exceptions when they do not otherwise violate a

Regulatory Commitment or other applicable law or regulation. Standard & Poor's Chief Compliance Officer has day-to-day operational responsibility for compliance with, and interpretation of, the Code, its related policies, and Standard & Poor's Regulatory Commitments.”

24. The S&P Code of Conduct, 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, meets in all material respects the objectives of NI 25-101 and enables the Filer to:
 - (a) accommodate the global nature of the Filer's operations;
 - (b) implement the core principles outlined in the S&P Code of Conduct related to its credit ratings — objectivity, independence, integrity and transparency; and
 - (c) maintain and enforce globally consistent policies, procedures and internal controls that meet specific jurisdictional requirements, in addition to those which are reflected in the S&P Code of Conduct.
25. The Chief Compliance Officer annually reviews and assesses the efficacy of the implementation and enforcement of the S&P Code of Conduct.
26. The reporting line of the Chief Compliance Officer is independent of the Filer's credit rating activities. The Chief Compliance Officer, 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 Chief Compliance Officer.
27. 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 the S&P Code of Conduct, 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 S&P Code of Conduct and described at paragraph 23 of this Decision Document; and
- (ii) the Filer complies with at paragraph 27 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