CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

Notice of Publication and Request for Comment

Proposed Amendments to
Regulation 45-106 respecting Prospectus and Registration Exemptions
Relating to the Short-term Debt Prospectus Exemption and Proposed Securitized Products Amendments

January 23, 2014

Introduction

The Canadian Securities Administrators (**CSA** or **we**) are publishing for a 90-day comment period proposed amendments **(**the **Proposed Amendments**) to *Regulation 45-106 respecting Prospectus and Registration Exemptions* (**Regulation 45-106**).

If adopted, the Proposed Amendments would, among other things:

- change the requirements that short-term debt securities must satisfy in order to be distributed under the short-term debt prospectus exemption in section 2.35 of Regulation 45-106 (the **Short-Term Debt Prospectus Exemption**);
- make the Short-Term Debt Prospectus Exemption unavailable for securitized products such as asset-backed commercial paper (**ABCP**); and
- introduce a new prospectus exemption in Regulation 45-106 for short-term securitized products in section 2.35.1, as qualified by sections 2.35.2 to 2.35.4 (the **Short-Term Securitized Products Prospectus Exemption**), that would only be available for ABCP backed by traditional or conventional assets.

The text of the Proposed Amendments is published with this notice and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.nbsc-cvmnb.ca
www.osc.gov.on.ca
www.fcaa.sk.ca
www.msc.gov.mb.ca

Substance and purpose

The Proposed Amendments consist of the following:

Proposed amendments relating to short-term debt

We are publishing for a first comment period proposed amendments (the **Proposed Short-Term Debt Amendments**) that would modify the credit ratings required to distribute short-term debt,

which is primarily commercial paper (**CP**), under the Short-Term Debt Prospectus Exemption. The Proposed Short-Term Debt Amendments are intended to:

- remove the regulatory disincentive for some CP issuers to obtain an additional credit rating;
- provide consistent treatment of CP issuers with similar credit risk; and
- maintain the current credit quality of CP distributed under the Short-Term Debt Prospectus Exemption.

See Part B of this notice for the background to and summary of the Proposed Short-Term Debt Amendments.

Proposed amendments relating to short-term securitized products

We published on April 1, 2011 a comprehensive set of proposed new rules and amendments (the **2011 Proposals**) that would have:

- introduced additional disclosure requirements for prospectus offerings of securitized products;
- introduced additional continuous disclosure and certification requirements for reporting issuers that had distributed securitized products;
- restricted the prospectus-exempt distribution of securitized products[1] to a class of highly-sophisticated investors through a new prospectus exemption (the **Eligible Securitized Products Investor Exemption**), as well as mandated offering and continuous disclosure even if the issuer of the securitized product was not a reporting issuer.

We do not intend to proceed with the aspects of the 2011 Proposals relating to prospectus and continuous disclosure requirements. We also do not intend to proceed with those aspects of the 2011 Proposals regarding the Eligible Securitized Products Investor Exemption and the prospectus-exempt distribution of term securitized products, i.e. securitized products with a maturity of one year or more.

We are, however, publishing for a second comment period a more targeted set of proposed amendments (the **Proposed Securitized Products Amendments**) that incorporate and modify certain aspects of the 2011 Proposals relating to the prospectus-exempt distribution of short-term securitized products, primarily ABCP. The Proposed Securitized Products Amendments are intended to address certain investor protection and systemic risk concerns raised by certain types of complex ABCP. They will also allow us to collect information on distributions of securitized products made under prospectus exemptions such as the accredited investor prospectus exemption (section 2.3 of Regulation 45-106) and the minimum amount investment prospectus exemption (section 2.10 of Regulation 45-106).

We propose to amend Regulation 45-106 as follows:

- The following prospectus exemptions would be unavailable for the distribution of short-term securitized products:

[1] The restriction would not have applied to securitized products that were issued or guaranteed by the government of Canada.

- the Short-Term Debt Prospectus Exemption;
- the private issuer prospectus exemption in section 2.4 (the **Private Issuer Prospectus Exemption**);
- the family, close friends and close business associates exemptions in sections 2.5 and 2.6 (the **Friends and Family Prospectus Exemption**);
- the founder, control person and family exemption in section 2.7 (the **Founder Prospectus Exemption**); and
- the offering memorandum exemption in section 2.9 (the **OM Prospectus Exemption**).

- A new Short-Term Securitized Products Prospectus Exemption would be introduced in section 2.35.1, as qualified by sections 2.35.2 to 2.35.4.

- Issuers who distribute securities under the Short-Term Securitized Products Exemption would be subject to initial offering and ongoing disclosure prescribed in the following new forms:
  - Form 45-106F7 *Information Memorandum for Short-Term Securitized Products* (**Form 45-106F7**); and
  - Form 45-106F8 *Monthly Disclosure Report for Short-Term Securitized Products Distributed under Section 2.35.1* (**Form 45-106F8**).

- Form 45-106F1 *Report of Exempt Distribution* would be amended to add securitized products as an industry classification.[2]

We also propose to make certain consequential amendments to *Regulation 25-101 respecting Designated Rating Organizations* (**Regulation 25-101** or the **DRO Regulation**), and are publishing these proposed amendments for the first time.

Finally, we are publishing for comment proposed changes to *Policy Statement to Regulation 45-106 respecting Prospectus and Registration Exemptions* (**Policy Statement 45-106**).

See Part C of this notice for the background to and summary of the Proposed Securitized Products Amendments.

A. Overview of CP and ABCP

The Proposed Short-Term Debt Amendments and the Proposed Securitized Products Amendments would primarily impact two types of short-term securities, CP and ABCP. CP and ABCP share some common characteristics. CP and ABCP:

- are distributed and trade in the short-term debt markets;
- typically have credit ratings;[3]

[2] The Exempt Distribution Report is required to be filed under section 6.1 of Regulation 45-106 to report distributions made under certain prospectus exemptions.

[3] In Canada, the main credit ratings organizations are DBRS Limited (**DBRS**), Moody's Canada Inc. (**Moody's**), Standard & Poor's Ratings Services (Canada) (**S&P**) and Fitch, Inc. (**Fitch**). DBRS rates virtually all Canadian CP and ABCP programs. Moody's also rates most Canadian ABCP programs.

- are primarily bought by institutional investors such as money market funds, pension funds; corporations, governments (provincial/territorial and municipal) and financial institution seeking to invest funds in short-term and highly liquid investments[4]; and
- are generally sold through banks or investment dealers.

ABCP, however, is a much more complex security than CP, as can be seen from the discussion below.

1. CP

CP is a form of short-term debt issued as an obligation of the issuing entity in the form of notes. CP issuers are usually large, creditworthy corporations. CP is usually issued at a discount and pays face value at maturity.

In Canada, CP is typically issued in one, two and three month terms, but may be issued for any term from one day to one year.

CP is generally issued to provide short-term funds for seasonal and working capital needs of businesses. It is also used to provide "bridge financing" for new capital investment or corporate takeovers until longer-term securities are issued.

CP is generally viewed as a lower-cost financing alternative to bank debt for issuers.

2. ABCP

(a) Overview

ABCP is also typically issued in the form of notes, with a maximum maturity of a year and a typical maturity of 30 days.

ABCP differs significantly from CP, however, because it is created through the use of securitization techniques and therefore is a more complex form of short-term debt. An ABCP transaction typically involves the use of a special purpose vehicle (**SPV**) known as a **conduit** that will hold cash-flow generating assets and issue notes to investors.

ABCP also differs significantly from term securitized products. [5] One obvious difference is that ABCP has a shorter maturity (one year or less) than term securitized products. A second important difference is that there is typically a mismatch between the maturity of ABCP on the

[4] Due to ABCP's greater complexity, ABCP investors are generally a subset of investors in CP, and tend to be larger institutional investors investing sufficient amounts to justify expending the additional resources necessary to make investment decisions.

[5] In a typical term securitization transaction:

- cash-flow generating financial assets such as mortgages, automobile loans and credit card receivables are sold to a bankruptcy-remote SPV (usually a trust) that issues debt (often called notes).
- payment of principal or interest on the notes is intended to come primarily from the cash generated by the assets held by the SPV, and
- the notes are structured into different classes or tranches with different payment priorities, with the most senior tranche obtaining the highest credit ratings through the use of credit enhancement mechanisms.

one hand, and the timing of payments from and maturity of the underlying pool assets on the other. The conduit will usually pay off maturing ABCP by "rolling" the ABCP, i.e. using proceeds from distributing additional ABCP to existing or new investors to pay off maturing ABCP.

However, in certain cases, there may be reasons unrelated to a default of the underlying assets that make it difficult to roll the ABCP. ABCP conduits therefore have liquidity facilities in place to ensure the timely payment of maturing paper for reasons other than defaults. Consequently, the terms of the liquidity support and the creditworthiness of the liquidity provider are of particular importance in ABCP securitizations.

(b) Types of ABCP

(i) Conventional ABCP

Traditionally, banks have set up ABCP programs to facilitate funding in the short-term debt markets for their clients' or their own business activities. For example, an ABCP conduit would issue ABCP and use the proceeds to acquire cash-flow generating assets such as mortgages that were originated by the bank or its clients. Currently, the Canadian ABCP market largely consists of these types of bank-sponsored ABCP programs that hold asset classes such as government-insured or conventional mortgages, home equity lines of credit and automobile loans.

(ii) Non-bank or credit arbitrage ABCP

In the period leading up to the global financial crisis of 2007-2008, there was a significant growth in credit arbitrage ABCP transactions sponsored by non-bank entities (**non-bank ABCP**). [6] Non-bank ABCP conduits used investor funds to acquire financial assets such as corporate bonds or asset-backed securities (**ABS**) (including ABS backed by US sub-prime mortgages), and would earn a spread based on the difference between the possible return of the underlying financial assets and the cost of funding those assets. In some cases, non-bank ABCP conduits would acquire synthetic assets involving the use of highly leveraged credit default swaps.[7]

During the global financial crisis of 2007-2008, the market for non-bank ABCP experienced a major market disruption when a significant amount of non-bank ABCP failed to roll (the **ABCP Market Disruption)**.[8] Market participants agreed to a standstill to freeze the non-

[6] Non-bank ABCP is also referred to as "third-party ABCP".

[7] Securitization activity generally falls within the broad category of "structured finance". However, because the notes issued by these types of non-bank ABCP conduits are hybrid instruments created by using securitization techniques to structure cash flows generated by derivative instruments, it may be more precise to describe them as structured finance products or structured products. Structured products typically have an embedded derivative that provides economic exposure to reference assets, indices or other economic values. See also the discussion regarding misaligned incentives and credit risk retention in **C. The Proposed Securitized Products Amendments.**

[8] Specifically, non-bank ABCP conduits were unable to fund maturing ABCP through issuing new notes as investors grew concerned that these conduits were exposed to deteriorating US sub-prime mortgages. These conduits had "market disruption"-style liquidity guarantees in place. The liquidity providers refused to provide support on the basis that, because bank ABCP continued to roll, there was no market disruption. Non-bank sponsors, in contrast to bank sponsors, did not have the balance sheet strength to support their conduits.

bank ABCP market. Ultimately, non-bank ABCP was restructured through a *Companies' Creditors Arrangement Act* proceeding.

Non-bank ABCP is no longer being issued in Canada.

3. Systemic risk and the short-term debt markets

The International Monetary Fund, the Bank for International Settlements and the Financial Stability Board (**FSB**) have defined systemic risk as:

> a risk of disruption to financial services that is (i) caused by an impairment of all or parts of the financial system and (ii) has the potential to have serious negative consequences for the real economy. Fundamental to the definition is the notion of negative externalities from a disruption or failure in a financial institution, market or instrument. All types of financial intermediaries, markets and infrastructure can potentially be systemically important to some degree.[9]

"Shadow banking" institutions and activities, i.e. those parts of the financial system that extend credit but are at least partly outside the traditional banking system, have been specifically identified as a potential source of significant systemic risk.[10] The Canadian shadow banking sector was estimated to be roughly 40 percent of nominal Canadian GDP at the end of 2012.

The following factors can contribute to the systemic risk posed by shadow banking:

- maturity transformation, where short-term liabilities are used to finance longer-term assets;
- liquidity transformation, where the assets being financed are illiquid and cannot be easily converted into cash;
- leverage, which can occur both within individual entities or build up at various stages of the intermediation chain; and
- imperfect credit-risk transfer, where some credit exposures are held off-balance-sheet or implicit support is provided by an entity that could expose this entity to losses.

The Canadian short-term debt markets, including the CP and ABCP markets, are part of the shadow banking sector as they involve, or potentially involve, the provision of credit by and to entities outside the regular banking system. However, as further described below, the four factors that contribute to systemic risk are not present to the same degree in the CP and ABCP markets.

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[9] *Guidance to Assess the Systemic Importance of Financial Institutions, Markets and Instruments: Initial Considerations*. November 2009.

[10] The discussion of shadow banking is taken from Gravelle, Grieder and Lavoie. "Monitoring and Assessing Risks in Canada's Shadow Banking Sector." Bank of Canada *Financial System Review* at 55-63. June 2013 (the **Shadow Banking Report**).

4. How CP and ABCP are currently distributed under securities law

Currently, CP and ABCP are generally distributed in reliance on the Short-Term Debt Prospectus Exemption. They are therefore issued and traded in what is commonly referred to as the "exempt market". The Short-Term Debt Prospectus Exemption came into effect on September 14, 2005.

In order to qualify for the Short-Term Debt Prospectus Exemption, CP and ABCP:

- must be short-term, i.e. have a maturity of one year or less from the date of issue;
- must not be convertible or exchangeable into, or accompanied by a right to purchase another security other than a security of the same type; and
- must have a designated rating from a designated rating organization (**DRO**) or its DRO affiliate.

The relevant definitions for designated rating and DRO are in *Regulation 81-102 respecting Mutual Funds* (**Regulation 81-102**). The designated rating provision requires the security in question to have a specified minimum credit rating. Furthermore, although it does not require additional credit ratings, if one is obtained, it too must be at or above the specified minimum. The net effect is that CP and ABCP must satisfy two conditions:

Type of condition	Terms
Rating Threshold Condition	The CP or ABCP must have at least one credit rating at or above: • DBRS – R1(low); • S&P – A1(low); • Moody's – P1; or • Fitch – F1.
Split Rating Condition	The CP or ABCP cannot have a rating below the ratings in the Rating Threshold Condition.

CP and ABCP distributed under the Short-Term Debt Prospectus Exemption can be issued to any investor and are not subject to any resale restrictions. Issuers who distribute securities under the Short-Term Debt Prospectus Exemption are not required to file Exempt Distribution Reports.

B. The Proposed Short-Term Debt Amendments

1. Background – unintended consequences of the Split Rating Condition

Soon after the Short-Term Debt Prospectus Exemption became effective, some CP issuers with multiple credit ratings contacted CSA staff with concerns that they were unable to comply with the Split Rating Condition and hence did not have a designated rating. As a result, these issuers could no longer issue CP on a prospectus-exempt basis.

The Split Rating Condition was intended to establish minimum credit quality standards for CP being distributed under the Short-Term Debt Prospectus Exemption. However, based on information and submissions from market participants involved in the distribution of CP, as well as our own analysis, it appears that the Split Rating Condition does not adequately reflect how

certain short-term credit ratings correlate across the DROs. In particular, the DBRS R-1(low) short-term credit rating can be equivalent to a short-term credit rating of S&P A-2, Moody's P-2 and Fitch F2.

As a result, the Split Rating Condition has two unintended consequences that can have negative effects on market fairness and efficiency.

(a) Regulatory disincentive for certain CP issuers to obtain additional credit ratings
CP issuers that have a single rating that satisfies the Rating Threshold Condition, but that expect that an additional rating from another DRO would be below the Rating Threshold Condition, may not seek additional ratings because of the Split Rating Condition. This is because obtaining the additional rating could make the Short-Term Debt Prospectus Exemption unavailable. Additional ratings may provide investors with more information regarding CP credit quality and issuers should not be discouraged from doing so.

(b) Differential treatment of certain CP issuers with similar credit risk
Despite the above regulatory disincentive, some CP issuers that have one credit rating that satisfies the Rating Threshold Condition nevertheless choose to obtain one or more additional credit ratings. Typically, these issuers have a DBRS rating that satisfies the Rating Threshold Condition, but also have or anticipate having one or more of the following additional credit ratings: S&P A-2, Moody's P-2 or Fitch F2. The result is that these issuers must apply for exemptive relief in order to distribute CP without a prospectus; while other issuers with similar credit risk – but only one credit rating – can use the Short-Term Debt Prospectus Exemption.

We have received a number of applications as a result of this issue, and exemptive relief has been granted from the prospectus requirement approximately 40 times since 2006. The exemptive relief allows CP to be distributed so long as it has at least one rating at or above:

- DBRS R-1(low);
- S&P A-2;
- Moody's P-2; or
- Fitch F2.

2. Summary of the Proposed Short-Term Debt Amendments

(a) Overview
We propose that the Short-Term Debt Prospectus Exemption be amended so that CP no longer has to satisfy the Split Rating Condition. Instead, we propose a modified split rating condition as set out below.

Type of condition	Terms
Rating Threshold Condition (unchanged)	The CP has at least one rating at or above: • DBRS – R-1(low); • S&P – A-1(low); • Moody's – P-1; or • Fitch – F1.
Modified Split Rating Condition	The CP has no rating below: • DBRS – R-1(low) (same as the rating threshold); • S&P – A-2; • Moody's – P-2; or • Fitch – F2.

We think that the Modified Split Rating Condition more accurately reflects how short-term credit ratings correlate across the DROs, and therefore:

- removes the regulatory disincentive for some CP issuers to obtain an additional credit rating;
- provides consistent treatment of CP issuers with similar credit risk; and
- maintains the current credit quality of CP distributed under the Short-Term Debt Prospectus Exemption.

The Proposed Short-Term Debt Amendments would not apply to short-term securitized products, i.e. ABCP. We are proposing a separate set of amendments to address ABCP, as set out below in **C. The Proposed Securitized Products Amendments**.

(b) Other issues and alternatives considered

We also considered whether there were other issues that needed to be addressed or other alternatives to be considered in connection with CP distributions under the Short-Term Debt Prospectus Exemption.

(i) Systemic risk concerns

We do not think that any changes to securities regulation of CP to address systemic risk concerns are necessary at this time. We have taken into account the following considerations in arriving at this view:

- the size of the CP market in relation to other sectors of the Canadian short-term debt markets;
- the level of complexity and opacity of CP as a type of security;
- the degree to which the four factors associated with systemic risk and shadow banking activity are present; and
- the CP market's ability to withstand financial stress as demonstrated during the global financial crisis.[11]

[11] The Bank of Canada did not discuss the CP sector in detail in its Shadow Banking Report, noting its generally small size and relative stability since the global financial crisis. See Shadow Banking Report at footnote 9.

(ii) Use of credit ratings

We considered whether the use of credit ratings in the Short-Term Debt Prospectus Exemption serves appropriate investor protection and market efficiency functions. We concluded that it was appropriate to use the Rating Threshold Condition and the Modified Split Rating Condition to establish parameters for the credit quality of CP that can be issued on a prospectus-exempt basis. We did not identify specific alternatives or additional conditions to credit ratings that would materially enhance investor protection or financial stability in the CP market. [12] We also note the implementation of the DRO Regulation, which introduced a framework for regulation of credit rating organizations that wish to have their credit ratings referred to within securities legislation. All the credit rating organizations whose ratings are included in the Short-Term Debt Prospectus Exemption are DROs under this framework.

(iii) Codifying the exemptive relief orders

We considered whether we should codify the exemptive relief orders in the Short-Term Debt Prospectus Exemption.[13] The exemptive relief orders have a lower ratings threshold of at least one rating at:

- DBRS R-1(low);
- S&P A-2;
- Moody's P-2;
- Fitch F2.

Furthermore, the exemptive relief orders do not contain any type of split rating condition.

In our view, the Modified Split Rating Condition is necessary in order to maintain minimum credit quality standards for CP distributed under the Short-Term Debt Prospectus Exemption. Based on our analysis of exemptive relief orders, the large majority of issuers that have obtained exemptive relief would be able to rely on the Short-Term Debt Prospectus Exemption as amended by the Proposed Short-Term Debt Amendments. Issuers of CP that would not satisfy the Short-Term Debt Prospectus Exemption as amended could apply for exemptive relief which would be considered on a case-by-case basis.

[12] In contrast, we identified significant issues with how non-bank ABCP was rated and the reliance placed by intermediaries and investors on those ratings. These issues are being addressed by the Proposed Securitized Products Amendments.

[13] All CSA members except Ontario have also issued parallel blanket orders that provide that the dealer registration requirement does not apply to trades in short-term debt by specified financial institutions. On December 5, 2013, these CSA members proposed a new exemption in *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* that contains the same conditions as these blanket orders, including that the short-term debt instruments have a designated rating and limiting the use of the exemption to trades with permitted clients. The accompanying notice and request for comment indicated that, prior to adoption, the designated rating requirement could be amended or removed based on the outcome of work in this area by other CSA committees.

3. Questions

We would appreciate feedback on the Proposed Short-Term Debt Amendments generally as well as on the following questions:

1. We are proposing a Modified Split Rating Condition as part of the Proposed Short-Term Debt Amendments in order to maintain minimum credit quality standards for CP that is issued through the Short-Term Debt Prospectus Exemption. Do you agree that some type of Split Rating Condition is necessary to achieve this objective, and if so, is the Modified Split Rating Condition we propose appropriate?

2. Is the Rating Threshold Condition in the Proposed Short-Term Debt Amendments appropriate? Should the Short-Term Debt Prospectus Exemption have a higher or lower rating threshold? If a lower threshold were adopted, would it raise investor protection concerns that lower-rated CP would be sold to less sophisticated or knowledgeable investors? If so, how could these concerns be addressed?

3. The Short-Term Debt Prospectus Exemption's primary condition relates to credit ratings. Do credit ratings in this context serve appropriate investor protection and market efficiency functions? Are there alternative or additional conditions that would materially enhance investor protection or financial stability?

4. Should the Short-Term Debt Prospectus Exemption be unavailable if:
   - a DRO has announced that a credit rating it has issued for the CP is under review and may be downgraded; and
   - that downgrade would result in the CP no longer satisfying both the Rating Threshold Condition and the Modified Split Rating Condition?

C. The Proposed Securitized Products Amendments

1. Background

(a) The 2011 Proposals

In the aftermath of the global financial crisis of 2007-2008, there was widespread international concern that securitization was a major source of risk to financial stability. Regulators in the US and Europe developed a variety of new rules targeted at securitization. Examples included rules requiring retention of minimum levels of credit risk by certain parties in a securitization (**credit risk retention**) and detailed disclosure of loans and assets being securitized (e.g. detailed disclosure about individual mortgages being securitized).

The CSA published the 2011 Proposals in order to seek comment on whether there was a need for a comprehensive reform of securities regulation in Canada with respect to securitization.[14] The 2011 Proposals contained a set of proposed new rules and amendments:

[14] Prior to the 2011 Proposals, the CSA published CSA Consultation Paper 11-405 *Securities Regulatory Proposals Stemming from the 2007-08 Credit Market Turmoil and its Effect on the ABCP Market in Canada* (the **ABCP Consultation Paper**). Among other things, the ABCP Consultation Paper explored various regulatory proposals

- Proposed *Regulation 41-103 respecting Supplementary Prospectus Disclosure Requirements for Securitized Products* (Regulation 41-103) and Form 41-103F1 *Supplementary Information Required in a Securitized Products Prospectus* (Form 41-103F1) (together, the **Proposed Prospectus Disclosure Regulation**).

- Proposed *Regulation 51-106 respecting Continuous Disclosure Requirements for Securitized Products* (Regulation 51-106), Form 51-106F1 *Payment and Performance Report for Securitized Products* (Form 51-106F1) and Form 51-106F2 *Report of Significant Events Relating to Securitized Products* (Form 51-106F2) (together, the **Proposed CD Regulation**).

- Proposed amendments to *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings* (Regulation 52-109), including
  - proposed Form 52-109FS1 *Certification of Annual Filings – Securitized Product Issuer*;
  - proposed Form 52-109FS1R *Certification of Refiled Annual Filings – Securitized Product Issuer*;
  - proposed Form 52-109FS1 *AIF Certification of Annual Filings in Connection with Voluntarily Filed AIF – Securitized Product Issuer*;
  - proposed Form 52-109FS2 *Certification of Interim Filings – Securitized Product Issuer*;
  - proposed Form 52-109FS2R *Certification of Refiled Interim Filings – Securitized Product Issuer*;

  (together, **the Proposed Certification Amendments**).

- Proposed amendments to
  - Regulation 45-106, including adding
    - proposed Form 45-106F7 *Information Memorandum for Short-Term Securitized Products*; and
    - proposed Form 45-106F8 *Periodic Disclosure Report for Short-Term Securitized Products Distributed under an Exemption from the Prospectus Requirement*; and
  - *Regulation 45-102 respecting Resale of Securities*;

  (together, the **Proposed Exempt Distribution Regulations**).

- Proposed consequential amendments to
  - *Regulation 41-101 respecting General Prospectus Requirements* (Regulation 41-101);
  - *Regulation 44-101 respecting Short Form Prospectus Distributions* (Regulation 44-101);
  - *Regulation 51-102 respecting Continuous Disclosure Obligations* (Regulation 51-102)

  (together, the **Proposed Consequential Amendments**).

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relating to the sale of ABCP, the regulation of credit rating organizations, the role of dealers in the sale of securitized products and the investment of money market funds in ABCP.

On June 18, 2010 the CSA published CSA Staff Notice 45-307 *Regulatory Developments Regarding Securitization*. That notice stated that our focus had broadened to encompass a review of securities regulation relating to all securitized products, not just ABCP, and to consider their distribution both publicly under a prospectus and under exemptions from the prospectus and registration requirements. This broadened focus reflected the widespread international concern that securitization was a major source of risk to financial stability.

The Proposed Prospectus Disclosure Regulation would have required additional disclosure for prospectus offerings of securitized products. The Proposed CD Regulation and the Proposed Certification Amendments would have imposed continuous disclosure and certification requirements specific to reporting issuers that had distributed securitized products. The term "securitized product" was defined very broadly in the 2011 Proposals to capture both conventional ABS and ABCP as well as hybrid instruments that combined securitization with derivatives.

The Proposed Exempt Distribution Regulations would have restricted the prospectus-exempt distribution of securitized products[15] to a class of highly-sophisticated investors through the Eligible Securitized Products Investor Exemption.[16] Those proposed rules would also have mandated initial offering and continuous disclosure even if the issuer of the securitized product was not a reporting issuer.

We included 47 questions in the notice accompanying the 2011 Proposals. In addition to asking questions on the proposed rules and amendments, the questions solicited feedback on whether we should:

- prescribe mandatory credit risk retention for originators and sponsors of securitization transactions, including minimum levels of credit risk retention for particular types of securitized products;
- mandate asset or loan-level disclosure; and
- prohibit securitization transaction parties from entering into transactions that present conflicts of interest with investors.

(b) Overview of key comments received on the 2011 Proposals

We received 31 comment letters from issuers, investors, investor advocacy groups, banks, bank-affiliated dealers, credit rating agencies, lawyers and interest/lobby groups. We would like to thank all commenters for their comments. See Annex A for a list of the commenters and a summary of comments.

Although there was some support expressed for the 2011 Proposals, the majority of commenters expressed concerns that they were a disproportionate response to the risk posed by Canadian securitization activity. Commenters particularly raised concerns that the Proposed Exempt Distribution Regulations:

- unfairly stigmatized the securitization market and would potentially have a negative impact on its liquidity;
- reflected a "product-centric" approach to regulation that was inappropriate; and
- did not differentiate between term ABS and short-term securitized products such as ABCP, the former requiring less regulatory intervention.

[15] The restriction would not have applied to securitized products that were issued or guaranteed by the government of Canada.

[16] These investors would be equivalent to "permitted clients" as defined in *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations.*

(c) Additional work

In addition to reviewing the comments received, we also conducted our own review and analysis of the Canadian securitization market. We also:

- consulted informally with investors in the Canadian securitization market, particularly those investing in ABCP, to find out if investors are receiving sufficient information to understand the nature of the security and its risks and rewards;
- participated in a working group of the International Organization of Securities Commissions (**IOSCO**)[17] that was formed to look at securitization regulation and reform as part of the FSB's work on securitization as a form of "shadow banking";[18] and
- engaged in ongoing dialogue with other Canadian regulators on the systemic risks posed by securitization in Canada.

2. Revised approach

Based on the feedback we received through the comment process and our additional work, we have determined that the comprehensive reform of securitized products securities regulation contemplated by the 2011 Proposals is unnecessary at this time. Consequently, we do not intend to proceed with certain aspects of the 2011 Proposals, and are significantly revising other aspects.

(a) Proposals relating to Securitized Products distributed and traded in the public markets

We do not intend to proceed with:

- the Proposed Prospectus Disclosure Regulations;
- the Proposed CD Regulation;
- the Proposed Certification Amendments; and
- the Proposed Consequential Amendments.

We will continue to monitor international developments related to the disclosure required of issuers of ABS and other securitized products in the public markets.

We will also continue to evaluate the nature and quality of disclosure in prospectuses used to distribute securitized products, as well as the continuous disclosure filed by reporting issuers that have distributed securitized products. We are considering whether it is necessary or advisable to issue a staff notice or other regulatory guidance outlining our expectations regarding the prospectus disclosure that an issuer must provide to satisfy the requirement to provide full, true and plain disclosure of material facts regarding the securitized product.

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[17] IOSCO published the final report on *Global Developments in Securitisation Regulation* on November 16, 2012 (the **IOSCO Securitization Report**). The report is available on the IOSCO website http://www.iosco.org.

[18] Among other things, the FSB is addressing concerns over the shadow banking sector that include: a heavy reliance on short-term wholesale funding, a variety of incentive problems in securitization that weakened lending standards, and a general lack of transparency that hid growing amounts of leverage and mismatch between long-term credit extension and short-term funding. See http://www.financialstabilityboard.org.

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(b) Proposals relating to Securitized Products distributed and traded in the exempt market
We do not intend to proceed with the Eligible Securitized Products Investor Exemption, nor to require that securitized products only be distributed on a prospectus-exempt basis through that exemption. We also are not imposing additional restrictions on the prospectus-exempt distribution of term securitized products.

We have instead developed a more targeted set of amendments focusing on short-term securitized products such as ABCP as described below in **3. Summary of the Proposed Securitized Products Amendments**. Among other things, we propose to:

- make the Short-Term Debt Prospectus Exemption unavailable for securitized products such as asset-backed commercial paper (**ABCP**); and
- introduce a new prospectus exemption in Regulation 45-106 for short-term securitized products in section 2.35.1, as qualified by sections 2.35.2 to 2.35.4 (the **Short-Term Securitized Products Prospectus Exemption**), that would only be available for conventional or traditional ABCP.

(c) Rationale for the revised approach
In our view, with the exception of non-bank ABCP (that is no longer being issued), securitization activity in Canada currently does not raise systemic risk or investor protection concerns that warrant the type of comprehensive regulatory intervention contemplated by the 2011 Proposals.

(i) Systemic risk concerns
The global financial crisis showed that securitization markets can be a source of systemic risk when:

- they are susceptible to rapid deterioration in performance and contraction of activity (including freezing);
- these markets are sizeable;
- these markets require the support of banks and other major financial firms through liquidity or credit enhancement arrangements; and
- disruptions in these markets impact the rest of the financial system due to the interconnectedness of financial firms and markets.

These concerns are mitigated in respect of Canadian securitization activity for two reasons. [19]

[19]For additional discussion of these points, see the Shadow Banking Report at 57-60.

First, the large majority of Canadian securitized products are National Housing Act Mortgage-Backed Securities (**NHA MBS**) and Canada Mortgage Bonds. These securitized products are guaranteed by the government, and the underlying residential mortgages are also insured by the government. Due to these explicit government guarantees, the majority of Canadian securitized products did not experience, and are not prone to, the investor flight and fire sales that occurred in the mortgage-backed securitization sector in the United States.

Second, in addition to being relatively small in size, the private-label (i.e. non-NHA MBS or Canada Mortgage Bond) securitization sector in Canada is conservative and largely subject to prudential oversight. Most of the current outstanding private-label securitization (including ABCP) is sponsored by Canadian banks regulated by the Office of the Superintendent of Financial Institutions (**OSFI**). The assets being securitized are conventional or traditional cash-flow generating assets such as credit cards, conventional or insured mortgages, home equity lines of credit and automobile loans. In contrast, the securitizations that deteriorated rapidly were backed by unconventional and/or synthetic, leveraged assets (e.g. sub-prime mortgages and leveraged super-senior transactions involving credit default swaps), the risks of which were not properly understood by market participants. Much of this securitization activity was sponsored by non-bank entities that were not subject to prudential oversight.

(ii) Investor protection concerns

With the notable exception of non-bank ABCP pre-financial crisis, Canadian securitized products do not appear to raise greater or different investor protection concerns than other types of complex structured securities such that a product-specific set of rules is justified. Post-financial crisis, non-bank ABCP is no longer being issued; while conventional ABCP conduits are providing better disclosure to investors and have effective liquidity support provisions in place.

We also note that other types of measures address investor protection concerns, such as:

- the implementation of the DRO Regulation, which creates a framework for the regulation of credit rating organizations that wish to have their credit ratings referred to within securities legislation; and
- compliance reviews of investment dealers and other registrants, and the issuance of guidance by the Investment Industry Regulatory Organization of Canada with respect to new product due diligence and know-your-client and suitability assessments.

(iii) Misaligned incentives in securitization and mandatory credit risk retention

One of the issues on which we specifically sought feedback was whether securities regulation should mandate credit risk retention for securitization transactions to address concerns regarding misaligned incentives. [20] Several jurisdictions have introduced or are in the process of introducing mandatory credit risk retention rules.[21]

[20] The IOSCO Securitization Report recommended that IOSCO member jurisdictions should evaluate and formulate approaches to aligning incentives of investors and securitizers in the securitization value chain, including where appropriate, through mandating retention of risk in securitization products.

[21] In Europe, Article 122a(1) of the Banking Consolidation Directive provides that European banks can only be exposed to the credit risk of a securitization if the originator, sponsor or original lender retained at least 5% of the credit risk. European regulators are currently in the process of implementing Basel III proposals through a European Capital Requirements Regulation that contains similar provisions to Article 122a(1), with associated technical

In securitization, misaligned incentives occur when originators of assets and/or sponsors of the securitization (**securitizers**) have incentives to behave in ways that further their own interest but that are contrary to the interests of other securitization parties (most significantly the investor) and to the stability of the securitization market as whole. Misaligned incentives therefore have the potential to raise both systemic risk and investor protection concerns.

Misaligned incentives were particularly prevalent in two types of transactions that accounted for much of the growth in securitization activity in the period leading to the financial crisis:

Sub-prime mortgage securitizations involving the originate-to-distribute business model
This type of transaction primarily occurred in the US securitization markets. In the originate-to-distribute model, a lender would originate sub-prime mortgages with a view to selling them to a financial intermediary such as an investment bank for the purpose of securitizing those mortgages. These originators did not have an incentive to properly underwrite these sub-prime mortgages because they were not exposed to the associated credit risk.

Use of securitization techniques and derivatives to create structured finance products
A number of transactions involved creating hybrid instruments using securitization techniques and derivatives. In these transactions, the underlying financial assets were not loans or receivables, but "synthetic" assets where a derivative such as a credit default swap was used to generate cash flows to make payment on the notes. Although these instruments are often referred to as securitized products, they are more precisely classified as structured finance or structured products.

The most notable term structured finance product was the synthetic collateral debt obligation (**CDO**), and the most notable short-term structured finance product was credit arbitrage ABCP backed by synthetic assets.[22] In both cases, leverage was often used to increase yield to investors.

In both types of transactions, securitizers were incentivized to maximize short-term revenues from structured finance activity through the sale of securitized and structured products backed by leveraged assets; as opposed to properly assessing and managing the risks of sub-prime mortgage products or novel and complex structured finance techniques. These activities rapidly built up levels of leverage and maturity mismatching (in the case of credit arbitrage ABCP) that were poorly understood by most securitizers, investors and regulators. As the performance of sub-prime mortgages began to deteriorate, these securitized and structured products also began to perform badly. Market activity significantly contracted and in some cases froze. The disruptions in these markets had a major impact on global credit markets generally, leading to the financial crisis of 2007-2008.

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standards that were published for consultation in May 2013. In the U.S., U.S. regulators published in September 2013 for a second consultation period rules to implement the risk retention requirements in the Dodd-Frank Act.

[22] In a typical synthetic CDO transaction, an SPV would enter into a credit default swap where the counterparty (usually a financial intermediary such as an investment bank) paid for protection against the default of a reference portfolio of sub-prime mortgage bonds. The SPV would issue notes to investors, and proceeds from the sale would be used to fund the collateral for the credit default swap. In a credit arbitrage ABCP transaction, the conduit would use funds acquired from the issuance of ABCP to acquire notes from an SPV of the type described above.

Based on the comments we have received on the 2011 Proposals and our own review, it appears to us that the Canadian securitization market for traditional assets (as opposed to synthetic or arbitrage assets) by-and-large was, and continues to be, free from the types of incentive misalignment that facilitated excessive leverage and maturity mismatching entering the financial system. As noted above:

- government-guaranteed securitized products are a large portion of the Canadian securitization market;
- private-label securitizations involve conventional assets; and
- securitizers are generally subject to prudential oversight.

Another important difference that was identified by commenters is that the originate-to-distribute model is not prevalent in Canada.

At the transaction level, securitization structures typically contain credit enhancements that are intended to align the incentives and interests of securitizers with investors by exposing the originator to the risk of expected loss on the assets. Types of credit enhancements include:

- overcollateralization;
- excess spread;
- cash reserve accounts that trap or contain cash to pay investors; and
- subordination.

The first three forms of credit enhancement are heavily used in Canadian securitization markets, and in our view, achieve the objectives of mandatory credit risk retention.

In light of the foregoing factors, we do not propose to introduce mandatory credit risk retention. We do think, however, that when issuers are required to provide disclosure to investors, there should be clear and transparent disclosure on:

- whether and how a securitization transaction has been structured to align the economic incentives and interests of the securitization parties with investors; and
- whether and to what degree a securitizer has retained credit risk.

In the case of prospectuses offering securitized products, we think that appropriate incentive alignment and credit risk retention disclosure will generally be necessary for full, true and plain disclosure of material facts. We also are proposing that this type of disclosure be required as a condition of the proposed Short-Term Securitized Products Prospectus exemption, as further described below.

3. Summary of the Proposed Securitized Products Amendments

(a) Amendments to Regulation 45-106

(i) Overview

As discussed above, we do not think that the comprehensive approach in the 2011 Proposals is required. However, the ABCP Market Disruption demonstrates the need for changes to how short-term securitized products such as ABCP are distributed on a prospectus-exempt basis. In particular, the current Short-Term Debt Prospectus Exemption fails to make a distinction between CP and ABCP as types of short-term debt instruments, even though ABCP raises greater investor protection and systemic risk concerns.

From an investor protection perspective, ABCP:

- is a more complex security, as a result of the use of securitization techniques; and
- has greater liquidity risk due to the maturity mismatch between the underlying assets and the ABCP.

From a systemic risk perspective, ABCP structures inherently involve maturity transformation and liquidity transformation. Furthermore, in the case of credit arbitrage ABCP (and in particular those instruments with significant exposure to credit derivatives), the rapid growth of this sector in the years leading to the financial crisis facilitated build-up of leverage and imperfect credit-risk transfer.

To address these investor protection and systemic risk concerns, we think that there should be a separate prospectus exemption for short-term securitized products with conditions that:

- take into account their particular characteristics and risks; and
- reflect improved market practices post-financial crisis.

The exemption would only be available for ABCP backed by conventional or traditional assets.

Furthermore, while we do not propose to prohibit the issuance of credit arbitrage ABCP backed by synthetic assets on a prospectus-exempt basis, we think that this type of highly complex ABCP (assuming its return to our markets) generally should be issued in reliance on prospectus exemptions that have resale conditions and require the filing of Exempt Distribution Reports.

We therefore propose to:

- exclude short-term securitized products from being distributed under the Short-Term Debt Prospectus Exemption, the Private Issuer Prospectus Exemption, the Friends and Family Prospectus Exemption, the Founders Prospectus Exemption and the OM Prospectus Exemption;
- create a Short-Term Securitized Products Prospectus Exemption in new section 2.35.1 of Regulation 45-106, as qualified by sections 2.35.2 to 2.35.4, that requires the short-term securitized product to satisfy a number of conditions; and

- prescribe an information memorandum (Form 45-106F7) and certain ongoing disclosure, including a monthly disclosure report (Form 45-106F8) and timely disclosure reports.

(ii) Significant features of the Short-Term Securitized Products Prospectus Exemption

The significant features of the Short-Term Securitized Products Prospectus Exemption are outlined below.

Two credit ratings – s. 2.35.2(a)(i) and (ii)

A conduit that issues short-term securitized products would be required to have credit ratings from at least two DROs. Each credit rating must be at or above a prescribed minimum level, which is higher than the minimum level we propose for CP. We think the requirement for two credit ratings at a higher minimum level is appropriate in light of ABCP's greater complexity and liquidity risk. The exemption is unavailable for a short-term securitized product if any of its credit ratings are under review by the relevant DRO and it would be reasonable for the conduit to expect that the review would result in the credit rating being withdrawn or downgraded below the prescribed minimum level.

Prescribed liquidity support – s. 2.35.2(a)(iii) and (iv); s. 2.35.3

In order to enhance investor protection and reduce reliance on credit ratings, we have proposed a number of liquidity support requirements. These include requiring:

- a "global-style" liquidity facility so that the liquidity provider is required to provide funding to pay off maturing ABCP in all circumstances other than the bankruptcy or insolvency of the conduit or default of the underlying assets;
- that the liquidity provider be a deposit-taking institution that is regulated by OSFI or a similar provincial regulatory authority; and
- that the liquidity provider have long-term credit ratings from at least two DROs that are at or above a prescribed minimum level.

Permitted assets – s. 2.35.2(c)

A conduit relying on the exemption would have to contractually agree that its asset pool would consist only of traditional asset classes such as bonds, leases, mortgages and receivables. Securities of other conduits subject to the same asset class restrictions would be permitted. The purpose of this condition is to prevent a conduit from relying on the exemption if its asset pool includes credit derivatives or highly structured or leveraged credit products.

Mandatory information memorandum – 2.35.4(1)(a); Form 45-106F7

We propose that a conduit would be required to prepare and make available to investors an information memorandum in a prescribed form prior to the investor purchasing the short-term securitized product. The prescribed disclosure is intended to:

- reflect the better disclosure practices we have observed in the ABCP market;
- align with the disclosure required by the Bank of Canada for ABCP to be eligible as collateral under its Standing Liquidity Facility;
- establish a minimum standard for disclosure; and
- support standardization of disclosure.

Among other things, we propose to require disclosure regarding:

- a conduit's investment guidelines, including information regarding concentration and correlation limits, credit quality of assets and the originators of assets;
- liquidity support;
- credit enhancements;
- an investor's property interest in the conduit's assets and its priority of claim over the assets;
- provisions designed to protect a holder from material deterioration in asset pool performance; and
- prior performance of the conduit or the significant parties to the securitization transaction.

Contractual obligation to provide continuous disclosure – s. 2.35.4(1)(c); s. 2.35.4(5), (6) and (7); Form 45-106F8

We propose to require a conduit to contractually agree with investors to provide certain ongoing disclosure. The first component is a prescribed monthly disclosure report, to be prepared and made available within 30 days of month end. The monthly disclosure report would facilitate investors receiving standardized disclosure of the assets underlying the ABCP. Because the information memorandum may be prepared before the conduit has acquired an asset pool, the monthly disclosure report is designed to provide investors with disclosure of the actual assets held and any changes to them, certain program-level information, the flow of funds, and a summary of securitization transactions in the relevant period.

The second component is a timely disclosure report which would be required in the event of either:

- a change to the information in the most recent monthly disclosure report, or
- an event occurring that would reasonably be expected to materially affect either payments on that class of short-term securitized product or performance of the assets in the asset pool.

We propose to limit the obligation to provide a timely disclosure report to circumstances in which an investor would reasonably require the information to make an informed investment decision.

Risk retention and incentive and interest alignment disclosure – Form 45-106F8, Item 11

We think it is important that there is clear disclosure about whether and how an ABCP structure aligns incentives of the securitization transaction parties with the interests of the investor. We therefore propose to require risk retention and incentive and interest alignment disclosure in the monthly disclosure report.

Investor and regulator access to disclosure – s. 2.35.4

The information memorandum, monthly disclosure reports and timely disclosure reports must be made reasonably available to investors and securities regulators. In recognition that ABCP transactions occur in the exempt market, we are not proposing a requirement that these disclosure documents be filed with securities regulators. However, we would require conduits to undertake to deliver the monthly disclosure reports and timely disclosure reports to securities regulators on request.

(iii)Proposed amendments to the Exempt Distribution Report

We are re-proposing that the Exempt Distribution Report be amended to add securitization conduits as an industry classification to allow us to collect information on certain prospectus-exempt distributions of securitized products.

(b) Proposed consequential amendments to Regulation 25-101

The Proposed Securitized Products Amendments contain a definition of "securitized product" that differs from the definition in the 2011 Proposals. The revised definition reflects the more targeted nature of the Proposed Securitized Product Amendments.

Regulation 25-101 currently contains a definition for "securitized product" that is different from the one we are proposing. To avoid having two different definitions for the same term, we propose to replace the term "securitized product" in Regulation 25-101 with the term "structured finance product". We think that "structured finance product" more accurately captures the securities set out in the current definition in Regulation 25-101, which includes traditional securitized products as well as hybrid instruments involving securitization and derivatives.

(c) Proposed changes to Policy Statement 45-106

We are proposing to change Policy Statement 45-106 by adding a new section 4.6.1 that would provide guidance on:

- the scope of the term "short-term securitized product";
- how a document can be made "reasonably available"; and
- whom we would expect to be a "significant party" for a securitization.

(d) Summary of comments on the 2011 Proposals relevant to the Proposed Securitized Products Amendments

In developing the Proposed Securitized Products Amendments, we considered a number of comments received in connection with the 2011 Proposals that are relevant to ABCP and short-term securitized products. A summary of these comments and our responses is in Annex A of this notice.

4. Questions

We would appreciate feedback on the Proposed Securitized Products Amendments generally, as well as on the following questions:

1. We are not prohibiting short-term securitized products that do not satisfy the conditions in the Short-Term Securitized Products Prospectus Exemption (e.g. credit arbitrage ABCP) from being distributed in reliance on other prospectus exemptions such as the accredited investor and minimum investment amount exemptions.

   (a) Should certain types of short-term securitized products not be allowed to be sold on a prospectus-exempt basis?

(b) Is it likely that short-term securitized products would be sold under other prospectus exemptions besides the Short-Term Securitized Products Prospectus Exemption, and if so, which ones? What factors affect the probability of this occurring?

(c) Are there other types of structured or structured finance products that would not be captured by the definition of "securitized product", but that also should not be issued under the Short-Term Debt Prospectus Exemption? Should we broaden the types of products to be excluded from the Short-Term Debt Prospectus Exemption to encompass all structured finance short-term debt instruments?

2. Are the credit rating requirements (two credit ratings at a prescribed minimum level) for short-term securitized products sold under the Short-Term Securitized Products Prospectus Exemption appropriate?

3. We have prescribed a number of liquidity support requirements to address liquidity risk arising from the maturity mismatch in ABCP.

   (a) The Bank of Canada's eligibility policies for collateral under its Standing Liquidity Facility require that sponsors of ABCP conduits have certain credit ratings, as opposed to the liquidity provider. Should there also be requirements in the Short-Term Securitized Products Prospectus Exemption as to the types of entities that can sponsor ABCP conduits (including credit ratings of those entities)?

   (b) How common is it for a sponsor to not also be the liquidity provider?

   (c) In order to reduce the risk associated with relying on a single credit rating of one DRO, we are proposing that two credit ratings be required for the liquidity provider. Do you agree with this approach?

   (d) Are the proposed minimum credit rating levels for the liquidity provider appropriate?

   (e) We have proposed that the liquidity provider be prudentially regulated by OSFI or a provincial regulatory authority. Would this cause problems for current ABCP programs? To what extent do foreign banks, not regulated by OSFI, act as liquidity providers to Canadian conduits?

   (f) If we were to allow foreign banks (not subject to OSFI oversight) to act as liquidity providers, to what extent would it be appropriate to require that they be subject to Basel III? What concerns exist with respect to allowing U.S. banks to act as liquidity providers if they are not subject to Basel III?

   (g) Are the proposed circumstances when a liquidity provider is permitted not to advance funds appropriate?

4. The Short-Term Securitized Products Prospectus Exemption is available for short-term securitized products that are convertible or exchangeable into or accompanied by a right to

purchase another short-term securitized product that would qualify for the exemption. Is this appropriate?

5. Are there assets in addition to those listed in section 2.35.2(c) of the proposed Short-Term Securitized Products Prospectus Exemption that a conduit should be allowed to hold? Are these assets currently found in the Canadian ABCP market?

6. Do the proposed triggers for timely disclosure reports cover all material events of which investors would want to be informed?

7. Given its length and the introduction of two associated forms, would it be more user-friendly to have the Short-Term Securitized Products Prospectus Exemption and the new forms in a stand-alone rule instead of as part of Regulation 45-106?

8. The Proposed Securitized Products Amendments do not require that issuers that distribute ABCP under the proposed Short-Term Securitized Products Prospectus Exemption report those distributions to securities regulators. For the purposes of monitoring market trends and the build-up of risk:

   (a) what information should be available to securities regulators and other systemic risk regulators regarding ABCP distributed, outstanding, or traded;

   (b) what would be the most effective or efficient means of reporting for ABCP issuers; and

   (c) what would be an appropriate reporting frequency for issuers, that balances the resources that would be needed to prepare a report with the importance of having up-to-date information?

G. Request for comments

1. Request for comments

We welcome your comments on the Proposed Amendments and feedback on the specific questions we have posed.

Please note that comments received will be made publicly available and posted on the website of the Ontario Securities Commission at www.osc.gov.on.ca and on the website of the Autorité des marchés financiers at www.lautorite.qc.ca and may be posted on the websites of certain other securities regulatory authorities. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

2. How to provide your comments

Please provide your comments in writing by **April 23, 2014**. Please provide your comments in Microsoft Word, Windows format.

Please address your submission to all members of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Please deliver your comments **only** to the three addresses that follow. Your comments will be distributed to the other CSA member jurisdictions.

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3. Questions

Please refer your questions to any of the following:

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Annex A
List of Commenters on 2011 Proposals

and

Summary of Comments Received on 2011 Proposals Relevant to the Proposed Securitized Products Amendments

List of Commenters on 2011 Proposals

RBC Capital Markets
Desjardins
DBRS
TingleMerret LLP
American Automotive Leasing Association
Scott Venturo LLP
Stikeman Elliott, LLP
SecureCare Investments Inc.
Ally Credit Canada Limited
National Bank Financial Inc.
Canadian Foundation for Advancement of Investor Rights (FAIR)
Moody's Canada Inc.
Canadian Imperial Bank of Commerce
Osler, Hoskin & Harcourt LLP
Standard & Poor's
Business Development Bank of Canada
Canadian Finance & Leasing Association
TD Securities Inc.
Exempt Market Dealers Association of Canada (EMDA)
Siskinds
American Securitization Forum
BMO Capital Markets
Olympia Trust Company
Canadian Bankers Association
Investment Industry Association of Canada
Borden Ladner Gervais LLP
Scotia Capital Inc.
Merrill Lynch Canada Inc.
Manulife Bank
CNH Capital America LLC
Fleming LLP

Summary of Comments Received on 2011 Proposals Relevant to the Proposed Securitized Products Amendments

1. Prescribed information memorandum for short-term securitized products distributed in the exempt market

The 2011 Proposals would have required that an issuer of short-term securitized products prepare a prescribed form of information memorandum as a condition of the Eligible Securitized Products Investor Exemption.

We received a number of comments on this issue. Some of the views expressed included:

- Requiring and prescribing information memorandum disclosure for distributions of short-term securitized products may adversely affect the ABCP market. Sufficient information is provided in the information memorandum for short-term securitized products; the same information should be required for long-term securitized products.

- A prescribed information memorandum is necessary. Program level information would not be problematic to include in an information memorandum. Other items relating to transaction-specific disclosures change frequently and potentially on a daily basis. It is not possible to aggregate and update this information on all transactions on a daily basis, insert it in an updated information memorandum and distribute the information to investors. It is more suitable to disclose this transaction specific information through monthly investor reports rather than through an information memorandum.

- It should not be necessary to standardize the form of the information memorandum provided the required information is contained therein.

- The mandated disclosure for short-term securitized products should closely follow the requirements of the Bank of Canada eligibility criteria under the Standing Liquidity Facility.

- If everyone is required to submit in a similar format, those persons reviewing the disclosure are able to better differentiate the products and assess the ongoing merits/risk.

- The only issuers of ABCP remaining in Canada are bank- sponsored conduits. It is not necessary to prescribe certain disclosure for short-term securitized products such as ABCP.

We continue to think that a prescribed form of information memorandum is appropriate for short-term securitized products. It will help to improve transparency and comparability and thus enhance investor protection as well as reduce the risk of destabilizing market disruptions. In order to reduce unnecessary regulatory burden or duplication, we have tried to align our proposals with the disclosure required by the Bank of Canada for collateral under its Standing Liquidity Facility. We also do not require that an information memorandum contain transaction-specific disclosures, but instead have introduced a concept that the information memorandum and other continuous disclosure documents be made reasonably available prior to making an investment.

2. Prescribed continuous disclosure for short-term securitized products distributed in the exempt market

The 2011 Proposals would have required that an issuer of short-term securitized products prepare a prescribed monthly disclosure as a condition of the Eligible Securitized Products Investor Exemption.

We received comments that both supported and disagreed with prescribing continuous disclosure. Specific comments included:

- Prescribed data can assist investors by increasing the uniformity in monthly reporting.

- The cumulative effect of the proposed rules would seem to require ABCP conduits to maintain current disclosure on a virtually daily basis. The strain on resources and the effect on costs that would ultimately be passed onto originators may well be sufficient to effectively destroy an economic model that has been a crucial source of credit in the Canadian market. Disclosure of such items should only be required as elements of ongoing monthly disclosure.

- The proposed requirement to deliver and post monthly reports within 15 days from the end of each month should be extended to 45 days from the end of each month.

In order to reduce unnecessary regulatory burden or duplication we have tried to align our proposals with:

- the disclosure required by the Bank of Canada for collateral under its Standing Liquidity Facility; and

- the disclosure that ABCP conduits provide to DBRS for publication in DBRS's monthly ABCP reports.

We are also revising various timing requirements in respect of the continuous disclosure required for short-term securitized products under the Short-Term Securitized Products Prospectus Exemption. Furthermore, issuers would not be required to maintain an "evergreen" memorandum.

3. Delivery to securities regulators of disclosure documents prescribed for short-term securitized products and availability to the public

In the 2011 Proposals, we asked whether the continuous disclosure documents relating to short-term securitized products distributed under the Eligible Securitized Products Investor Exemption should be made available to the public. We also asked if these documents should be delivered to securities regulators.

One investor commented that even if securitized products are not generally available to the public, a broader provision of disclosure would promote transparency in the market and help other investors to better evaluate the risks. Continuous disclosure should be available to the public unless it concerns private placement agreements. One commenter indicated that having

non-reporting issuers provide the information to securities regulators would be an unnecessary administrative burden to issuers with no material benefits.

We think that the concept of making the information memorandum and continuous disclosure reasonably available to investors provides appropriate transparency without unnecessary administrative burden. We have revised our proposals so that issuers of short-term securitized products would have to deliver the monthly disclosure report and timely disclosure report to securities regulators on request, but not as a matter of course.

4. Civil liability for misrepresentations in the information memorandum and continuous disclosure documents; two-day withdrawal rights

In the 2011 Proposals, we indicated that we thought investors should have statutory or contractually equivalent rights to take legal action for misrepresentations in an information memorandum against issuers, sponsors of securitized products and underwriters.

We received comments for and against this concept. One commenter recommended adding promoters to the list. Other commenters disagreed and commented that securitized products distributed on a prospectus-exempt basis should not be treated differently from other debt and equity securities.

Specific comments included the following:

- The proposal is disproportionate to the risk of misrepresentation in the Canadian securitization market which is dominated by the major Canadian banks and finance companies.

- Mandating an information memorandum that includes statutory rights of action is unduly burdensome and would directly increase the costs of raising capital.

- Creating a separate private placement regime for securitized products, including statutory civil rights of action against issuers, sponsors and underwriters for a misrepresentation in an information memorandum, would cause investors to view securitized products, including short term securitized products as being inherently riskier, even if unwarranted.

We also indicated that we thought there should be statutory civil liability for misrepresentation in the continuous disclosure provided by an issuer of securitized products in the exempt market. We again received comments both for and against this concept.

We asked if there should be a right for an investor to withdraw within two days of investing in a securitization transaction. We received a comment that this would be impracticable for short-term securitized products, as money market instruments operate on a same-day settlement basis. In addition, such a right would create uncertainty that would affect the ability to fund an issuer's ongoing obligations with respect to its outstanding ABCP as well as its obligations pursuant to the various securitization transactions to which it is a party.

In light of the above comments, and the other conditions we are imposing on the prospectus-exempt issuance of ABCP, we do not think it is necessary to introduce additional statutory rights of action beyond those that may already exist in a jurisdiction for misrepresentations in the information memorandum or continuous disclosure documents. We also do not think a two-day right of withdrawal is necessary or practicable.