

**CSA Notice of
Amendments to
National Instrument 45-106 *Prospectus and Registration Exemptions*
Relating to the Short-term Debt Prospectus Exemption and
Short-term Securitized Products**

February 19, 2015

A. Introduction

The Canadian Securities Administrators (**CSA** or **we**) are making amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**) to, 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 NI 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 short-term securitized products prospectus exemption in section 2.35.1 of NI 45-106 (as qualified by sections 2.35.2 to 2.35.4) (the **Short-term Securitized Products Prospectus Exemption**), that will only be available for short-term securitized products that satisfy certain conditions.

We are also making changes to Companion Policy 45-106 *Prospectus and Registration Exemptions* (**45-106CP**) and we are making consequential amendments to National Instrument 25-101 *Designated Rating Organizations* (**NI 25-101** or the **DRO Rule**).

Provided all necessary ministerial approvals are obtained, the amendments to NI 45-106 and the consequential amendments to NI 25-101 will come into force on May 5, 2015, subject to certain transitional provisions described more fully below.

The changes to 45-106 CP will also come into force on May 5, 2015.

B. The Short-term Debt Amendments

1. Substance and Purpose

We are amending section 2.35 of NI 45-106 (the **Short-term Debt Amendments**) to modify the credit ratings required to distribute short-term debt, which is primarily commercial paper (**CP**), under the Short-term Debt Prospectus Exemption.

Under the current Short-term Debt Prospectus Exemption, short-term debt must satisfy the following conditions:

Type of condition	Terms
Rating Threshold Condition	The short-term debt has at least one credit rating at or above: <ul style="list-style-type: none"> • DBRS Limited (DBRS) – R-1(low); • Fitch, Inc. (Fitch) – F1; • Moody’s Canada Inc. (Moody’s Canada) – P-1; or • Standard & Poor’s Ratings Services (Canada) (S&P Canada) – A-1(Low).
Split Rating Condition	The short-term debt has no rating below the ratings in the Rating Threshold Condition.

The Short-term Debt Amendments will modify the Split Rating Condition. The net effect is that short-term debt will have to satisfy the following conditions:

Type of condition	Terms
Rating Threshold Condition (unchanged)	The short-term debt has at least one rating at or above: <ul style="list-style-type: none"> • DBRS – R-1(low); • S&P Canada – A-1(Low) (Canada national scale); • Moody’s Canada – P-1; or • Fitch – F1.
Modified Split Rating Condition	The short-term debt has no rating below: <ul style="list-style-type: none"> • DBRS – R-1(low); • Fitch – F2; • Moody’s Canada – P-2; or • S&P Canada – A-1(Low) (Canada national scale) or A-2 (global scale).

The 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.

2. Background

We published the Short-term Debt Amendments for a 90-day comment period on January 23, 2014.

3. Summary of Written Comments Received by the CSA

During the comment period, we received submissions from six commenters on the Short-term Debt Amendments. We have considered the comments received and thank all of the commenters for their input. The names of commenters are contained in Annex D of this notice, as well as a summary of their comments together with our responses.

4. Summary of Changes since Publication for Comment

We have made only one change to the version of the Short-term Debt Amendments that was published for comment. The change relates to the prescribed credit ratings for S&P Canada.

S&P Canada issues credit ratings using either its Canada national scale or its global scale. The proposed Modified Split Rating Condition did not specify whether the S&P Canada A-2 rating was in respect of the Canada national scale or the global scale. We now specify that the relevant ratings are A-1(Low) for the Canada national scale and A-2 for the global scale.¹

As this change is not material, we are not re-publishing the Short-term Debt Amendments for a further comment period.

5. Coming into Force

Subject to the necessary approvals, the Short-term Debt Amendments will come into force on May 5, 2015.

C. The Short-term Securitized Products Amendments

1. Substance and Purpose

We are making several amendments to NI 45-106 related to the prospectus-exempt distribution of short-term securitized products (the **Short-term Securitized Products Amendments**). The Short-term Securitized Products Amendments are intended to:

- address investor protection and systemic risk concerns raised by certain types of complex short-term securitized products that were issued in Canada pre-financial crisis, i.e. non-bank sponsored ABCP; and
- allow us to collect information on distributions of securitized products made under prospectus exemptions such as the accredited investor prospectus exemption (section

¹ For more information on the equivalency between ratings under the Canada national scale and the global scale, see *Standard and Poor's Rating Definitions* (November 20, 2014). Available at https://www.globalcreditportal.com/ratingsdirect/renderArticle.do?articleId=1221284&SctArtId=198387&from=CM&nsl_code=LIME.

2.3 of NI 45-106) and the minimum amount investment prospectus exemption (section 2.10 of NI 45-106).

The amendments to NI 45-106 relating to securitized products are as follows:

- The following prospectus exemptions will be unavailable for the distribution of short-term securitized products:
 - the Short-term Debt Prospectus Exemption;
 - the private issuer prospectus exemption in section 2.4 (the **Private Issuer Prospectus Exemption**);
 - the friends, family, and business associates prospectus exemptions in sections 2.5 and 2.6 (the **Friends and Family Prospectus Exemption**);
 - the founder, control person and family prospectus exemption in section 2.7 (the **Founder Prospectus Exemption**); and
 - the offering memorandum prospectus exemption in section 2.9 (the **OM Prospectus Exemption**).
- A new Short-term Securitized Products Prospectus Exemption will be created in section 2.35.1, as qualified by sections 2.35.2 to 2.35.4.
- Issuers (i.e. conduits) who distribute securities under the Short-term Securitized Products Exemption must disclose the following:
 - information about the conduit, including its structure, business and operations, in Form 45-106F7 *Information Memorandum for Short-term Securitized Products Distributed under Section 2.35.1* (the **Information Memorandum**) on or before the date that a purchaser purchases a short-term securitized product;
 - monthly information about the conduit, including asset transactions, asset pools and their performance, in Form 45-106F8 *Monthly Disclosure Report for Short-term Securitized Products Distributed under Section 2.35.1* (the **Monthly Disclosure Report**) no later than 50 days from the end of the most recent month; and
 - timely information about certain significant events relating to the conduit's credit rating and the payment of principal or interest no later than the second business day after the conduit becomes aware of the change or event.
- Form 45-106F1 *Report of Exempt Distribution* and Form 45-106F6 *British Columbia Report of Exempt Distribution* (each an **Exempt Distribution Report**) will have a new industry classification for a securitized products issuer so that we can collect data regarding the distribution of securitized products under other prospectus exemptions.²

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

We are also making changes to 45-106CP to provide guidance on certain aspects of the Short-term Securitized Products Prospectus Exemption.

2. Background

We published on April 1, 2011 a comprehensive set of proposed new rules and amendments (the **2011 Proposals**) relating to securitized products 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; and
- restricted the prospectus-exempt distribution of securitized products 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.

After considering the comments and additional review and analysis, we decided not to proceed with the aspects of the 2011 Proposals relating to prospectus and continuous disclosure requirements. We also decided not 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 determined that the comprehensive reform of securitized products securities regulation contemplated by the 2011 Proposals was unnecessary at this time.

We published for comment a more targeted set of Securitized Products Amendments for a 90-day comment period on January 23, 2014 (the **2014 Proposals**). The 2014 Proposals focused on short-term securitized products, which are primarily ABCP. The 2014 Proposals were as follows:

- 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 Founder Prospectus Exemption and the OM Prospectus Exemption;
- create a Short-term Securitized Products Prospectus Exemption in new section 2.35.1 of NI 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, Monthly Disclosure Reports and timely disclosure reports.

3. Summary of Written Comments Received by the CSA

During the comment period, we received submissions from 14 commenters. We have considered the comments received and thank all of the commenters for their input. The names of commenters are contained in Annex D of this notice, as well as a summary of their comments together with our responses.

4. Summary of Changes since Publication for Comment

In response to comments, the Short-term Securitized Products Prospectus Exemption, the related forms and 45-106CP changes we are adopting reflect a number of changes from the 2014 Proposals. As these changes are not material, we are not re-publishing the Short-term Securitized Products Amendments for a further comment period.

There are no changes to the amendments we proposed to the DRO Rule in the 2014 Proposals.

(a) Short-term Securitized Products Prospectus Exemption

The main conditions of the Short-term Securitized Products Prospectus Exemption are:

- the conduit has a “global-style” liquidity agreement with an appropriate financial institution;
- there are no synthetic assets in any of the conduit’s asset pools; and
- there is disclosure about:
 - the conduit’s structure, business and operations;
 - the performance of the assets in the conduit’s asset pool(s); and
 - events that impact the payment of interest or principal.

We have refined aspects of these conditions in order to better align them with market practice while still maintaining the core elements of the Short-term Securitized Products Prospectus Exemption. We describe some of the changes below.

(i) Modified credit ratings requirements for short-term securitized products

We originally proposed that short-term securitized products issued under the Short-term Securitized Products Prospectus Exemption must have at least two credit ratings, both at the highest rating categories of:

- R-1(high)(sf) if issued by DBRS;
- F1+sf if issued by Fitch;
- P-1(sf) if issued by Moody’s Canada;
- A-1(High)(sf) if issued by S&P Canada.

We have modified this condition. Short-term securitized products will still need to have two credit ratings, but only one will need to be at the highest rating category. The second and any additional credit rating cannot be lower than:

- R-1(low)(sf) if issued by DBRS;
- F-2sf if issued by Fitch;
- P-2(sf) if issued by Moody’s Canada;
- A-1(Low)(sf) (Canada national scale) or A-2(sf) (global scale) if issued by S&P Canada.

We have also included the relevant S&P Canada ratings for both the Canada national scale and the global scale.

In our view, this modification achieves our intent of only allowing ABCP of high credit quality to be issued through the prospectus exemption, while significantly reducing the risk of disruption to the ABCP market if bank sponsors and liquidity providers experience credit rating downgrades due to the introduction of the bail-in regime applicable to Canada's domestic systemically important banks, as proposed by the Department of Finance Canada on August 1, 2014.³

Certain designated rating organizations have changed their outlook for the six major Canadian banks to "Negative" from "Stable" as a result of the proposed bail-in regime. We understand that the long-term credit ratings of these banks will likely be lowered by one to two notches upon introduction of the bail-in regime. This is expected to result in a lowering of the short-term credit ratings of some of the banks. These changes are not being driven by a reduction in the credit quality of the banks but by the reduced likelihood of government support.

Any downgrades in the short-term credit ratings of banks due to the bail-in regime could also result in downgrades in the credit ratings of the ABCP for which they are sponsors and liquidity providers below the ratings categories we originally proposed. These downgrades would not be driven by a reduction in their ability to provide liquidity support. We therefore think it is appropriate to provide more flexibility in the credit ratings required by the Short-term Securitized Products Prospectus Exemption.

(ii) Removal of requirement regarding no expected credit rating downgrades

We originally proposed that the Short-term Securitized Products Prospectus Exemption would be unavailable for a short-term securitized product if:

- any of its credit ratings were under review by the relevant designated rating organization; 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.

We also proposed a similar condition regarding credit ratings of a liquidity provider.

We have removed these conditions as we recognize that a conduit is not necessarily in a position to make this type of determination.

³The *Taxpayer Protection and Bank Recapitalization Regime: Consultation Paper* outlines the proposed bail-in regime applicable to Canada's domestic systemically important banks and is a follow-up to the announcement in the 2013 federal budget that such a regime would be forthcoming in Canada. The proposed bail-in regime reduces the likelihood of government support and clarifies that the banks' shareholders and creditors are responsible for bearing losses.

(iii) Liquidity agreement requirements

We have made the following changes:

- modified the credit rating requirements for liquidity providers so that they are short-term, rather than long term; and
- removed the provision that would have required, in a situation where a conduit had more than one liquidity provider, that there needed to be another liquidity provider that would guarantee or otherwise commit to providing support in the event of non-payment by a liquidity provider.

These changes are intended to better align the requirements with the operation of liquidity arrangements in the Canadian market.

We have changed the conditions so that a deposit-taking institution can be a liquidity provider if it is regulated by or has been approved to carry on business in Canada by OSFI or a provincial regulator. The effect of this change is that a foreign bank that is a Schedule III bank can be a liquidity provider. We think that a foreign deposit-taking institution that OSFI or a provincial regulator regulates or has approved to carry on business (i.e. a Schedule II or Schedule III bank) should be allowed to be a liquidity provider, provided it satisfies all the other conditions relating to liquidity support.

(iv) Modified timing for availability of Monthly Disclosure Report

We originally proposed that a conduit be required to make each Monthly Disclosure Report reasonably available to a holder of securitized products within 30 days from the end of the most recent month to which it relates. We have modified this condition so that the report must be reasonably available within 50 days.

(v) Triggers for and timing of timely disclosure report

We originally proposed that a conduit prepare a timely disclosure report if there was

- a change to the information required to be provided in the most recent monthly disclosure report; or
- an event that the conduit would reasonably expect to materially affect payment on a short-term securitized product or the performance of the assets in the asset pool.

We have narrowed the list of events that trigger a timely disclosure report to focus on events that affect the payment of interest or principal on the short-term securitized product. We also require the conduit to prepare a timely disclosure report in the event of a downgrade in one or more of the conduit's credit ratings.

We also have changed the timing requirement. The timely disclosure report is now required to be provided to or made reasonably available no later than two business days, rather than calendar days, after the conduit becomes aware of the change or event.

(vi) Other drafting changes

We have made several drafting changes to the definitions to make them more consistent with short-term securitization (i.e. ABCP) structures in the Canadian market.

(b) Information Memorandum

We have made several revisions to the Information Memorandum as follows:

- focused the disclosure so that it is in respect of the conduit’s structure and operations;
- moved disclosure about specific asset transactions and asset pools to the Monthly Disclosure Report;
- clarified certain requirements; and
- eliminated duplicative disclosure.

The requirement to disclose information regarding interest alignment and risk retention has been moved from the Monthly Disclosure Report to the Information Memorandum.

We also are no longer requiring that the identities of principal obligors and originators be provided. Currently, principal obligors and originators have an expectation that their identities are kept confidential. Furthermore, in our view, this information is not necessary for investors to understand the credit quality and performance of a conduit’s asset transactions and asset pools. The requirements have been modified to focus on disclosure of parties responsible for a significant role in the conduit’s structure or operations.

(c) Monthly Disclosure Report

We have made several revisions to the Monthly Disclosure Report. We have:

- focused the disclosure so that it is in respect of specific asset transactions and asset pools and moved disclosure about the conduit’s structure and operations to the Information Memorandum;
- eliminated duplicative disclosure; and
- eliminated disclosure which in our view is not necessary for investors to understand the credit quality and performance of a conduit’s asset transactions, where such disclosure
 - could raise confidentiality or competitive concerns (e.g. the specific credit ratings of sellers, fees and expenses); or
 - would require conduits to take additional steps to collect or present information that go beyond current market practice (e.g. average term of assets, performance ratios other than default or loss ratios).

(d) Exempt Distribution Reports

We originally proposed to add “securitization conduits” as a new industry classification. We have modified our proposal to change the new industry classification to “securitized product issuers” as the term “securitization conduit” now refers to issuers of short-term securitized products rather than issuers of securitized products generally.

(e) 45-106CP

We have provided additional guidance on the following:

- the definition of “asset pool”;
- the interaction of the conditions of the Short-Term Securitized Products Prospectus Exemption with credit ratings; and
- liquidity agreements and on who can act as a liquidity provider.

5. Coming into Force

Subject to the necessary approvals, the Short-term Securitized Products Amendments will come into force on May 5, 2015. There are several transition provisions as follows:

- an Information Memorandum that is provided to or made reasonably available to a purchaser need only be prepared in accordance with Form 45-106F7 for a distribution of a short-term securitized product that takes place on or after November 5, 2015;
- a Monthly Disclosure Report that is provided to or made reasonably available to a holder of a short-term securitized product pursuant to an undertaking or agreement in writing need not be prepared in accordance with Form 45-106F8 in respect of any asset transaction that a conduit entered into on or before November 5, 2015.

D. Local Matters

Annex E is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

E. Annexes

Annex A Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions*

Annex B Amendments to National Instrument 25-101 *Designated Rating Organizations*

Annex C Changes to Companion Policy 45-106 *Prospectus and Registration Exemptions*

Annex D Summary of Comments

Annex E Local Matters

F. Questions

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