CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

Notice and Request for Comments

Proposed National Instrument 41-103
Supplementary Prospectus Disclosure Requirements for Securitized Products

Proposed National Instrument 51-106
Continuous Disclosure Requirements for Securitized Products
and Proposed Amendments to
National Instrument 52-109
Certification of Disclosure in Issuers' Annual and Interim Filings

Proposed Amendments to National Instrument 45-106
Prospectus and Registration Exemptions **and**
National Instrument 45-102 ***Resale of Securities***

Proposed Consequential Amendments

April 1, 2011

1. Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for comment proposed rules and rule amendments relating to securitized products (the **Proposed Securitized Products Rules**). The Proposed Securitized Product Rules set out a new framework for the regulation of securitized products in Canada. There are two main features of the Proposed Securitized Products Rules:

1. Enhanced disclosure requirements for securitized products issued by reporting issuers; and

2. New rules that narrow the class of investors who can buy securitized products on a prospectus-exempt basis (in the "exempt market"), and require that issuers of securitized products provide disclosure at the time of distribution, as well as on an on-going basis.

The Proposed Securitized Products Rules consist of the following materials, which we are publishing for a 90-day comment period:

- Proposed National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products* (**NI 41-103**) and Form 41-103F1 *Supplementary Information Required in a Securitized Products Prospectus* (**Form 41-103F1**) (collectively, the **Proposed Prospectus Disclosure Rule**);

- Proposed National Instrument 51-106 *Continuous Disclosure Requirements for Securitized Products* (**NI 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**) (collectively, the **Proposed CD Rule**);

- Proposed amendments to National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 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*;

  (collectively, the **Proposed Certification Amendments**);

- Proposed amendments to
  - National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**), including
    - 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
  - National Instrument 45-102 *Resale of Securities*;

  (collectively, the **Proposed Exempt Distribution Rules**); and

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

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

We are not, at this time, publishing any companion policy guidance. We will consider the comments we receive and will draft proposed guidance at that time.

The text of the Proposed Securitized Products Rules is contained in the following Schedules A to D. Certain jurisdictions may include additional information in Annex I.

Schedule A:	Proposed Prospectus Disclosure Rule
Schedule B:	Proposed CD Rule and Proposed Certification Amendments
Schedule C:	Proposed Exempt Distribution Rules
Schedule D:	Proposed Consequential Amendments
Annex I	Local Information

The above documents 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.sfsc.gov.sk.ca
www.msc.gov.mb.ca

For more information on the comment process, see below under "How To Provide Your Comments".

2. Background – The benefits and risks of securitization

(a) What is securitization and why is it important?

Securitization refers to the process by which a special purpose vehicle (**SPV**) is used to create securities (which we refer to as securitized products) that entitle holders to payments that are supported by the cash flows from a pool of financial assets held by the SPV. In Canada, common types of financial assets include credit card receivables, automobile leases and residential mortgages. Less frequently, the assets may themselves be securitized products, such as residential mortgage-backed securities (in this case, the process is often referred to as a resecuritization) or may be "synthetic assets" created through the use of derivatives.

Securitization can have a positive impact on the supply of credit, and thus provide important economic benefits. As noted in a recent article,

> Securitization represents an important source of credit to the economy. By converting non-tradable financial assets into tradable instruments, securitization has the potential to expand the supply of credit beyond what would be available solely through banks and other financial intermediaries.[1]

However, as the recent global financial crisis demonstrated, if not properly regulated, the securitization markets can be a source of systemic risk. The collapse of sub-prime securitizations in the United States had major spillover effects into other markets and into the wider U.S. and global economy, and was a major contributing factor to the financial crisis.

Securitized products share certain basic features that distinguish them from standard debt securities, including:

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[1] Scott Hendry, Stéphane Lavoie, and Carolyn Wilkins. 2010. "Securitized Products, Disclosure, and the Reduction of Systemic Risk." Bank of Canada *Financial System Review* (June): 47-55.

- *Originate-to-distribute model* – Under this model, a loan originator (such as a bank) packages the loans into pools and sells them into special purpose off-balance sheet vehicles, thus no longer bearing the contractual risk of default. This model, which is fundamental to securitized products, is particularly prone to conflicts of interest, because the various parties in the securitization chain have different incentives. For example, originators are incentivized to maximize loan creation rather than to carefully screen borrowers, and arrangers are incentivized to maximize short-term underwriting and structuring revenue rather than mitigate product risk.

- *Alteration of credit risk through structured finance techniques* – Another feature of securitized products is use of structured finance techniques (such as pooling and tranching) to alter the credit risk associated with underlying assets. The risks associated with some of these techniques can be difficult to assess, even by highly sophisticated investors. For example, not all investors may have appreciated how sensitive the expected performance of securitized products could be to changes in the assumptions used to model credit risk, specifically (i) default probability and recovery value; (ii) correlation of defaults between tranches; and (iii) declines in aggregate economic conditions.

(b) International proposals on the regulation of securitization

International bodies and other jurisdictions have put forward a number of proposals on how to improve regulation of securitization. These include:

- the International Organization of Securities Commissions' (**IOSCO**) "Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities" (the **IOSCO ABS Disclosure Principles**);

- the IOSCO's Technical Committee's Task Force's "Unregulated Financial Markets and Products – Final Report"; and

- the United States Securities and Exchange Commission's (**SEC**) April 2010 notice of proposed rule-making relating to ABS and other structured finance products (the **SEC April 2010 Proposals**).

Furthermore, in July 2010, the *Dodd-Frank Wall Street Reform and Consumer Protection Act* was enacted in the U.S. (the **Dodd-Frank Act**), which included a number of provisions dealing with securitization. The SEC also has made rules implementing certain provisions of the Dodd-Frank Act relating to enhanced disclosure regarding representations and warranties, and issuer review of assets underlying securitized product assets, as well as published proposed rules regarding risk retention (together with the SEC April 2010 Proposals and the Dodd-Frank Act collectively, the **U.S. Securitization Initiatives**).

(c) CSA Initiatives Relating to the Financial Crisis

The Canadian economy has not been immune to the effects of the global financial crisis. Canada experienced significant turmoil in the market for asset-backed commercial paper (**ABCP**), specifically the freezing of $32 billion of non-bank or third-party sponsored ABCP in August 2007. In the October 2008 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 **October 2008 ABCP Concept Proposal**), the CSA explored, among other things, securities regulatory proposals in connection with the sale of ABCP. Since that time, the CSA's focus has broadened to encompass all securitized products and their distribution both publicly under a prospectus and in the exempt market under exemptions from the prospectus requirements.

In the last year, as part of the CSA's work relating to the financial crisis, the CSA has also published for comment:

- proposed National Instrument 25-101 *Designated Rating Organizations* with respect to oversight of credit rating organizations (**NI 25-101**); and

- Consultation Paper 91-401 *Over-the-Counter Derivatives Regulation in Canada* setting out high-level proposals for regulating derivatives trading in Canada.

3. Substance and purpose of the Proposed Securitized Products Rules

The Proposed Securitized Products Rules set out a new framework for the regulation of securitized products in Canada. There are two main features of the Proposed Securitized Products Rules:

1. Enhanced disclosure requirements for securitized products issued by reporting issuers; and

2. New rules that narrow the class of investors who can buy securitized products on a prospectus-exempt basis in the exempt market, and require that issuers of securitized products provide disclosure at the time of distribution, as well as on an on-going basis.

The Proposed Exempt Distribution Rules in particular are a significant departure from the current exempt market regulatory regime.

We have been guided by three general principles in developing the proposed rules:

1. The rules should seek to achieve the following objectives, in a manner that fosters market efficiency:

- Investors who buy securitized products should have the information to understand the features and risks of the products and whether such securities are appropriate for their investment objectives; and

- Investors should have access to information when they need it to value the products at the time of investment and on an ongoing basis.

2. The rules should facilitate transparency in the securitization market so that it can continue to function even in times of financial stress. This will reduce the risk that problems in the securitization market will spill over to other markets and the wider economy, thus contributing to systemic risk. Systemic risk is an area where regulation is particularly important, as private arrangements among market participants may not adequately address the issue.

3. The rules should take into account the particular features of the Canadian securitization markets. In particular, rules should be proportionate to the risks associated with particular types of securitized products available in Canada, and should not unduly restrict investor access to securitized products. Canada experienced significant turmoil in the ABCP market in August 2007. However, for a number of reasons, the Canadian securitization market did not experience a sub-prime mortgage securitization bubble.

In general, we currently are not proposing to introduce, but instead to seek comment on, certain requirements that are features of the U.S. Securitization Initiatives. We have done so where we think that further feedback and analysis is required to determine (a) whether the proposed requirement will achieve its intended aims and if so, how to appropriately design the requirement; or (b) whether it is appropriate for the Canadian context. In particular, we are seeking comment on the following types of requirements:

- requirements that securitizations be structured in a particular manner, such as requiring that sponsors or other transaction parties retain a minimum tranche or tranches of the securitization (a “skin-in-the-game requirement”);

- requirements for due diligence, such as requiring the issuer to review the pool assets;

- requiring or restricting the involvement of particular parties in a securitization, such as imposing independence requirements or restrictions on conflicts of interest; and

- requirements for new disclosure that we think would be a major departure from what is already being provided pursuant to transaction agreements, such as asset- or loan-level disclosure, provision of a computer waterfall payment program, and requiring sponsors or originators to file reports on fulfilled and unfulfilled repurchase requests across all securitizations.

At this time, we are not proposing to eliminate credit ratings as an eligibility criterion to access the short form or shelf prospectus systems.

Please refer to the section **Questions on the Proposed Securitized Products Rules** for specific questions on the above issues.

Finally, the regulation of credit rating organizations, and their role in securities markets generally, will be addressed by other initiatives such as proposed NI 25-101, which addresses oversight of credit rating organizations. We also are reviewing the prospectus exemptions more broadly, particularly the accredited investor exemption and the minimum investment amount exemption.

4. Summary of the Proposed Securitized Products Rules

(a) Application – new definition of securitized products

We are proposing a new definition for a "securitized product," which is found in proposed NI 41-103 and which triggers the application of the Proposed Securitized Products Rules (subject to the exemptions described below). This definition is intended to be broad. It includes securities where the payments are derived from cash-generating financial assets, such as loans, leases and receivables. It includes securities backed by assets that are themselves securities, such as bonds and other securitized products such as residential mortgage-backed securities. It also includes securities where payments are derived from "synthetic assets" such as credit default swaps or other derivatives.

The definition of asset-backed security remains the same as the current definition in NI 51-102.

However, the Proposed Securitized Products Rules will not apply to the following securities:

- covered bonds; and
- securities, other than debt securities, issued by a mortgage investment entity.

Covered bonds are debt securities issued by a financial institution. Payments on the debt are guaranteed by another entity, such as an SPV, that holds a pool of high-quality, cash-generating financial assets originated by the financial institution, for example, prime residential mortgages. Because covered bonds, at least as currently structured, are primarily obligations of the financial institution with the cover or collateral pool serving as a credit enhancement, they do not seem to raise the same policy concerns as standard securitized products.

We are also proposing to exclude non-debt securities issued by a "mortgage investment entity" (**MIE**) from these additional requirements for a variety of reasons. The CSA is

currently considering the regulatory analysis of MIEs as part of a separate initiative.

Please refer to the section **Questions on the Proposed Securitized Products Rules** for specific questions on these issues.

(b) Summary of the Proposed Prospectus Disclosure Rule

The Proposed Prospectus Disclosure Rule requires that a prospectus used to qualify a distribution of securitized products contain specific disclosure relating to securitized products. The disclosure requirements are intended to be consistent with the IOSCO ABS Disclosure Principles, as well as the current disclosure required for registration of asset-backed securities by the SEC's Regulation AB (**Reg AB**). Where we have considered it appropriate, we have also included elements from the U.S. Securitization Initiatives. Our intent is to improve the consistency and comparability of prospectus disclosure.

We are not currently proposing to change the eligibility criteria for short form and shelf prospectuses. We note, however, that eligibility is restricted to asset-backed securities, and securitized products that are not asset-backed securities would continue to be ineligible for the short form or shelf prospectus systems.

The required disclosure for all prospectuses used to distribute securitized products is set out in Form 41-103F1. As most prospectus offerings of securitized products are of asset-backed securities, we have drafted the disclosure based on these types of offerings. However, we expect issuers of all types of securitized products to consider each of the disclosure items in the Form and conduct a meaningful analysis of whether a particular item is relevant to the securitized product or securitized products transaction.

The following is a summary of the disclosure required by Form 41-103F1.

Item 1 – Parties with significant functions and responsibilities

The prospectus must identify and describe the functions and responsibilities performed by each of the following parties involved in the securitized product transaction:

- sponsor;
- arranger;
- depositor;
- originator;
- issuer;
- servicer;
- trustee; and
- any other party with a material role in the securitized product transaction, such as a custodian, intermediate transferor or liquidity provider in the secondary market.

If certain enumerated relationships exist amongst the above parties, the prospectus must provide disclosure about those relationships.

The prospectus must also disclose whether any of the above parties is or has been engaged in the 12 months before the date of the prospectus in a transaction that would involve in or result in any material conflict of interest with respect to an investor in the securitized products being distributed.

Item 2 – Significant obligors of pool assets

The prospectus must identify significant obligors, and provide selected financial information or financial statements in respect of the significant obligor, depending on the significance of the obligor to the pool assets. If a significant obligor is itself an issuer of securitized products, and the applicable pool assets are securitized products, the prospectus must provide disclosure regarding the pool assets required by Items 1 to 10 of Form 41-103F1.

Item 3 – Pool assets

The prospectus must provide information regarding the pool assets, including:

- selection criteria;
- material pool characteristics;
- delinquent and non-performing assets;
- sources of pool cash flow;
- representations and warranties regarding the pool assets, and information relating to repurchase or replacement obligations in connection with such representations and warranties;
- claims on pool assets;
- information on prefunding or revolving periods; and
- transaction agreement terms governing the modification of pool asset terms.

Item 4 – Static pool information

The prospectus must provide static pool information if it would be material. If no static pool information is provided, the prospectus must explain why such disclosure is omitted.

Item 5 – Description of the securitized products

The prospectus must describe each securitized product being distributed.

Item 6 – Retention of securitized products

The prospectus must disclose whether a party described in Item 1 is retaining a portion of a tranche or tranches, the amount retained, and whether it has been hedged.

At this time, we are not proposing to require that any party to a securitization transaction retain an economic interest in the securitization, but only that any such retention is disclosed.

Item 7 – Structure of the transaction

The prospectus must provide information about the following:

- the flow of funds for the securitized product transaction;
- the distribution frequency and cash maintenance in respect of the securitized product;
- fees and expenses;
- excess cash flow;
- issuances of additional series or classes of securitized products by master trusts;
- any optional or mandatory redemption or termination feature; and
- prepayment, maturity and yield considerations.

Items 8 and 9 – Credit enhancement and other support, and certain derivative instruments

The prospectus must describe material external and internal credit enhancements or support, as well as each derivative instrument used to alter the payment characteristics of the payments on the securitized product. It must identify the providers of significant credit support and derivative counterparties. Depending on the significance of the support or derivative instrument, selected financial information or financial statements must be provided for the credit supporter or derivative counterparty.

Item 10 – Credit ratings

The prospectus must provide certain information related to the credit rating of the securitized product being distributed.

Item 11 – Reports

The prospectus must describe reports or documents that will be provided to the holders of the securitized products being distributed and how they are made available, and any other report or document to be filed with a securities regulatory authority.

Item 12 – Legal proceedings and regulatory actions

The prospectus must provide disclosure of legal proceedings and regulatory actions in respect of parties described in Item 1.

(c) Summary of the Proposed CD Rule and the Proposed Certification Amendments

The Proposed CD Rule requires that reporting issuers with issued and outstanding securitized products file specific continuous disclosure in addition to complying with the general continuous disclosure obligations in NI 51-102. However, the additional requirements do not apply where the securitized products are covered bonds or non-debt securities of MIEs. The disclosure requirements are largely based on the requirements of Reg AB. Where we have considered it appropriate, we have also included elements from the SEC April 2010 Proposals. Our intent is to improve the consistency and comparability of continuous disclosure.

The disclosure requirements apply to any securitized product issued by a reporting issuer regardless of whether the securitized product was issued through a prospectus or using a prospectus exemption. We are not proposing to "grandfather" current outstanding securitized products or implement a transition period. However, we are asking a specific question on this issue. Please refer to the section **Questions on the Proposed Securitized Products Rules**.

The following is a summary of several significant features of the Proposed CD Rule.

(i) Payment and performance report (section 4 and Form 51-106F1)

A reporting issuer must file a Form 51-106F1 within 15 days after each payment date for each series or class of securitized products it has issued. The report must contain information regarding payment distribution and pool performance reflecting the pool's performance at the most recent payment distribution period. The disclosure required in Form 51-106F1 is largely derived from the SEC's Form 10-D, and the issuer must provide the required disclosure to the extent applicable. If none of the disclosure in Form 51-106F1 is applicable due to the attributes of the securitized product or the structure of the securitized product, the reporting issuer can file an alternative report that contains all information that would be material to an investor regarding the payment distribution and performance of the series or class of securitized products.

(ii) Timely disclosure of significant events (section 5 and Form 51-106F2)

If an event enumerated in section 5 of proposed NI 51-106 occurs, a reporting issuer must immediately issue and file a news release disclosing the event, and file a Form 51-106F2 describing the event no later than two business days after the event. The enumerated events are largely derived from the SEC's Form 8-K. In addition, we have also included a more general disclosure trigger in paragraph 5(2)(m), which requires disclosure of any other event that affects payment distribution or pool performance that an investor would consider material.

Reporting issuers will still be required to file material change reports under NI 51-102. A reporting issuer is not required to file Form 51-106F2 if it is filing a material change report in respect of the same event under NI 51-102.

(iii) Annual servicer report (section 6 and Appendix A)

Each servicer whose servicing activities relate to more than five percent of the pool assets must assess its compliance with each servicing standard set out in Appendix A of the Proposed CD Rule that it has identified as being applicable to it. The servicing standards in Appendix A of the Proposed CD Rule are not legal obligations under securities law, and are intended only as uniform measures against which the servicing of a particular asset pool can be assessed. Appendix A is largely drawn from provisions of Reg AB relating to servicers.

The servicer must prepare a report that states whether the servicer complied with each standard during the reporting issuer's most recently-completed financial year. The servicer report must be audited.

The servicer must provide the report to the reporting issuer, who in turn must file it by the later of the date it files its AIF or its annual financial statements and annual MD&A.

(iv) Annual servicer certificate (section 7)

Each servicer enumerated in Items 1.7(1)(a), (b) or (c) of Form 41-103F1 must provide a reporting issuer with a certificate that discloses the extent of the servicer's compliance with the applicable servicing agreement for the reporting issuer's most recently completed financial year. There is no prescribed form of certificate. The reporting issuer must file the certificate by the later of the date it files its AIF or its annual financial statements and annual MD&A.

(v) Disclosure of servicer non-compliance (section 8)

A reporting issuer's MD&A must include a discussion of any significant instance of non-compliance with the applicable servicing standards in Appendix A, or the relevant servicing agreement, that has been disclosed to it by a servicer through the servicer report or servicer certificate it has provided to the reporting issuer.

(vi) The Proposed Certification Amendments

We are proposing amendments to NI 52-109 that exempt reporting issuers that issue securitized products and that are subject to NI 51-106 from the requirements to establish and maintain disclosure controls and procedures and internal control over financial reporting in Part 3 of NI 52-109. The proposed amendments also provide for modified forms of certificate for reporting issuers who are subject to proposed NI 51-106.

(d) Summary of the Proposed Exempt Distribution Rules

The Proposed Exempt Distribution Rules create a new regulatory regime for distributions of securitized products on a prospectus-exempt basis. We propose to significantly narrow the class of investors who can invest in securitized products, and require disclosure at the time of issuance as well as on a continuous basis.

We also propose creating a modified regime for short-term securitized products that have a maturity of not more than one year from the date of issuance, which is intended to take into account their particular features and distribution methods. In Canada, short-term securitized products are primarily ABCP. We received a number of comments on the October 2008 ABCP Concept Proposal, which we have considered in developing the proposed short-term securitized products regime.

We recognize that the Proposed Exempt Distribution Rules are a significant departure from the current regulatory regime in the exempt market. We therefore have a number of questions with respect to our proposed approach of narrowing the class of investors who can invest in securitized products and imposing disclosure requirements. We also are asking whether there are other means to protect investors while permitting broader access to securitized products, for example, through requiring investors to purchase securitized products in the exempt market through a registrant subject to suitability obligations in respect of the purchaser. Please refer to the section **Questions on the Proposed Securitized Products Rules**.

The following is a summary of several significant features of the Proposed Exempt Distribution Rules.

(i) Removal of existing prospectus exemptions

We propose that the following prospectus exemptions in NI 45-106 be unavailable for distributions of securitized products that are not covered bonds or non-debt securities of MIEs:

- section 2.3 (the accredited investor exemption);
- section 2.4 (the private issuer exemption);
- section 2.9 (the offering memorandum exemption);
- section 2.10 (the minimum amount investment exemption);
- subsection 2.34(2)(d) and (d.1) (financial institution or Schedule III bank specified debt exemption);
- section 2.35 (the short-term debt exemption)**.**

Instead, we propose to add a new prospectus exemption for the distribution of securitized products.

(ii) New Securitized Product Exemption (section 2.44)

Proposed section 2.44 contains the new prospectus exemption for distributions of securitized products to an "eligible securitized product investor" purchasing as principal (the **Securitized Product Exemption**). The definition of "eligible securitized product investor" essentially is the same as the definition of "permitted client" in National Instrument 31-103 *Registration Requirements and Exemptions*.

(iii) Information memorandum requirements (section 2.46)

A condition of the Securitized Product Exemption is that the issuer must deliver an information memorandum to each purchaser at the same time or before the purchase. Different disclosure requirements apply depending on whether the securitized product is a short-term securitized product.

A. Securitized products that are not short-term (paragraph 2.46(1)(b))

We do not prescribe a form of information memorandum where an issuer uses the Securitized Product Exemption to distribute securitized products that mature more than one year from the date of issue. However, the information memorandum must disclose sufficient information about the securitized product and securitized product transaction to enable a prospective purchaser to make an informed investment decision. We think that this general requirement, along with the items described in **C. General Requirements** below, constitute a base disclosure platform, while giving market participants flexibility to develop appropriate additional disclosure.

B. Short-term securitized products

We are prescribing Form 45-106F7 *Information Memorandum for Short-Term Securitized Products* (**Form 45-106F7**) as the form of information memorandum for distributions of short-term securitized products under the Securitized Product Exemption. A "short-term securitized product" is a securitized product that includes ABCP and matures not more than one year from the date of issue. We developed Form 45-106F7 by reviewing, among other things, existing ABCP information memoranda, the information that the Bank of Canada expects when reviewing whether to accept ABCP issued by an ABCP program as eligible collateral for its Standing Liquidity Facility, and comment letters on the October 2008 ABCP Concept Proposal.

The prescribed disclosure in Form 45-106F7 is in addition to the general requirement that the information memorandum disclose sufficient information about the securitized product and securitized product transaction to enable a prospective purchaser to make an informed investment decision.

We propose a prescribed form because we think that transparency and consistent disclosure are particularly important to the stability of the short-term securitized product

markets. Investors in short-term instruments such as ABCP are extremely sensitive to delays in payment, and also expect repayment in full. During times of financial instability, investors who lack adequate information about the quality of the underlying ABCP program assets and any liquidity facility may indiscriminately refuse to buy new paper, which can in turn increase the risk that the market may freeze entirely and contribute to a liquidity crisis.

C. General requirements

In addition, all information memoranda must:

- describe statutory or contractual rights of action for misrepresentation;
- describe the resale restrictions that apply to the securitized product;
- contain a certificate signed by the issuer's CEO (or the equivalent), CFO (or the equivalent), promoter and sponsor (if the sponsor did not sign as a promoter) as to no misrepresentation; and
- contain a certificate signed by each underwriter as to no misrepresentation to the best of its knowledge, information and belief.

An information memorandum must not contain a misrepresentation.

An information memorandum must be posted on a website at the same time or before it is delivered to a purchaser. Issuers may password protect websites where such documents are posted if the issuer provides an undertaking to the securities regulatory authority to provide access to the website.

The issuer must also deliver a copy of the information memorandum to the securities regulatory authorities.

(iv) Periodic and timely disclosure (sections 6A.2 to 6A.5)

These proposed requirements only apply to non-reporting issuers who distribute securitized products under the Securitized Product Exemption (or other prospectus exemption prior to the Securitized Product Exemption being enacted).

A. Securitized products that are not short-term (sections 6A.2 and 6A.3)

We propose that the issuer must prepare a payment and performance report using Form 51-106F1 (as if the issuer were a reporting issuer, and subject to certain modifications) and post it on a website no later than 15 days after each payment date specified by the relevant transaction agreement.

The issuer must also prepare a timely disclosure report upon the occurrence of an event described in paragraphs 5(2)(a) to (m) of proposed NI 51-106 using Form 51-106F2 (as if the issuer were a reporting issuer). The issuer must post it on a website no later than two

business days after the date on which the event occurs, and send a copy of the report to holders of securitized products, or otherwise advise holders that it has issued the report and describe the nature of the event.

Issuers may password protect websites where such documents are posted if the issuer provides an undertaking to the securities regulatory authority to provide access to the website.

The issuer must also deliver copies of the above reports to the securities regulatory authorities.

B. Short-term securitized products (sections 6A.4 and 6A.5)

For short-term securitized products, we propose that the issuer must prepare a monthly report using Form 45-106F8 *Periodic Disclosure Report for Short-Term Securitized Products Distributed under an Exemption from the Prospectus Requirement.* The issuer must post the report on a website no later than 15 days after the end of each calendar month. We developed this Form by reviewing, among other things, monthly reports prepared by ABCP dealers and credit rating organizations, comment letters on the SEC April 2010 Proposals and their impact on ABCP, and comment letters on the October 2008 ABCP Concept Proposal.

The issuer must also prepare a timely disclosure report disclosing the following information, if an investor would reasonably require the information to make an informed investment decision:

- a change to the information in the most recent monthly report or information memorandum; or

- an event that affects payment distribution or performance of the pool.

The issuer must post the timely disclosure report on a website no later than two business days after the date of the event.

Issuers may password protect websites where such documents are posted if the issuer provides an undertaking to the securities regulatory authority to provide access to the website.

The issuer must also deliver copies of the above reports to the securities regulatory authorities.

(v) Reasonable access to documents (sections 2.45 and 6A.6)

In order to maintain transparency in the exempt market, we propose that an issuer must provide each holder of securitized products who purchased securitized products under a prospectus exemption with continued reasonable access to the information memorandum

and the various periodic and timely disclosure reports until one year from the date that the securitized product ceases to be outstanding.

We also propose that the issuer must provide reasonable access to the above documents to each person who requests access and is a prospective investor who meets the definition of eligible securitized product investor. Issuers may obtain confidentiality undertakings and take such steps as necessary to satisfy themselves that a prospective investor meets the definition of eligible securitized product investor.

Reasonable access includes making the document available on a password protected website if the issuer provides an undertaking to the securities regulatory authority to provide the regulator with access to the website.

(vi) Statutory civil liability and withdrawal rights

Statutory civil liability

We think that investors should have rights to sue the issuer, the sponsor and each underwriter for damages if the information memorandum required by the Securitized Product Exemption contains a misrepresentation. The right of action should be available without the investor being required to prove reliance on the misrepresentation.

Assuming that we proceed with this approach, in most jurisdictions, this outcome can be achieved by prescribing the information memorandum required under the proposed Securitized Product Exemption as an offering document to which statutory civil liability rights apply. In most jurisdictions, a statutory right of action for damages is available against the issuer, each of the individuals who were directors at the date of the prescribed document, and anyone else who signs the document (which would include sponsors and underwriters under our proposals). An action for rescission in lieu of damages would also be available against the issuer.

In Ontario, however, the statutory rights to sue for misrepresentation in a prescribed offering document would only apply against an issuer, and legislative amendments would be required for statutory rights of action to be available against sponsors and underwriters.

Withdrawal rights

In certain jurisdictions, there are also statutory provisions which provide an investor with a right to withdraw from the purchase within two days of receiving a prescribed offering document. This is similar to the two day right of withdrawal that exists in the prospectus regime. Staff of the commissions in the jurisdictions where that right applies are considering whether it is appropriate that the two day right of withdrawal apply to securitized products. We recognize that the two day right provides an opportunity for sober second thought which could be useful when assessing complex products but also appreciate that under the proposed new Securitized Product Exemption, all investors will

be relatively sophisticated. Please refer to the section **Questions on the Proposed Securitized Products Rules**.

(vii) Reports of exempt distribution (sections 6.1 and 6.2)

We propose that a Form 45-106F1 must be filed for a distribution under the Securitized Product Exemption. If the distribution is of a short-term securitized product, which tend to be offered on a continuous basis, the report need only be filed 30 days after the calendar year in which the distribution occurs.

(viii) Resale

We propose that the first trade of a securitized product distributed under the Securitized Product Exemption is a distribution. Therefore, the only prospectus exemption that would be available for resale of a securitized product would be section 2.44, thus creating a specialized "closed-system" for securitized products. Otherwise, the resale would require qualification by prospectus, or exemptive relief from the prospectus requirement.

(e) Proposed consequential amendments

We are proposing a number of consequential amendments to NI 41-101, NI 44-101 and NI 51-102 that flow from the Proposed Securitized Products Rules.

5. Cost Benefit Analysis

The focus of the Proposed Securitized Products Rules is to increase transparency in the securitization market and to limit access to securitized products in the exempt market to those investors best able to evaluate the features and risks of these products. We acknowledge that there will be costs associated with many of the changes being proposed. As part of the consultation process, we will work to assess the impact of the Proposed Securitized Products Rules. We encourage you to provide submissions on the costs and benefits associated with the proposals we are publishing for comment.

6. Legislative Amendments

CSA members may need to obtain legislative amendments in order to implement the Proposed Securitized Products Rules and statutory civil liability regime discussed in this Notice. These include obtaining rule-making authority to directly impose obligations on servicers and other parties that are not reporting issuers, as well as legislative amendments in respect of statutory civil liability for misrepresentations in offering documents and continuous disclosure relating to securitized products in the exempt market.

We have not initiated any steps toward obtaining legislative amendments at this time. We will consider doing so as part of our review of the comments on the Proposed Securitized Products Rules.

7. Questions on the Proposed Securitized Products Rules

We have a number of questions on the Proposed Securitized Products Rules and securitization where we would appreciate your feedback. We encourage you to provide detailed explanations in support of your answers. We also encourage you to provide submissions on the implications of any of the Proposed Securitized Products Rules on cost, timing and market access for issuers, investors and market intermediaries such as registrants.

(a) General

1. We welcome any comments on the three principles we have taken into account in developing the Proposed Securitized Products Rules, which are set out under **Substance and purpose of the Proposed Securitized Products Rules.** Are these the right principles? Are there additional principles we should take into account and if so, what should these be?

2. The Dodd-Frank Act requires federal banking agencies and the SEC to jointly prescribe rules that will require a "securitizer" (generally the issuer, sponsor or depositor) to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of securitized products, transfers, sells or conveys to a third party, subject to certain mandatory exemptions and discretionary exemptions. The SEC recently published proposed risk retention rules. The SEC April 2010 Proposals also contain a risk retention requirement as one of the proposed conditions of shelf-eligibility for asset-backed securities, which are intended to replace the current credit rating eligibility criteria. Is it necessary or appropriate for us to make rules prescribing mandatory risk retention for securitized products in order to mitigate some of the risks associated with securitization? If so, what are the appropriate types and levels of risk retention for particular types of securitized products?

3. The Dodd-Frank Act amends the Securities Act of 1933 to prohibit sponsors, underwriters or placement agents of securitized products, or affiliates of such entities, from engaging in any transaction that would involve or result in any material conflict of interest with respect to any investor in a sale of securitized products. The prohibition against such activity will apply for one year after the closing date of the sale and provides for certain exceptions that relate to risk-mitigating hedging activities intended to enhance liquidity. Should there be a similar prohibition in our rules? If so, what practical conflicts would this rule prevent that are seen in Canada today?

4. Are there circumstances where we should require that certain material parties be independent from each other and if so, what are they? For example, should we require that an underwriter in a securitization be independent from the sponsor by proposing amendments to National Instrument 33-105 *Underwriting Conflicts*? Should we require that auditors who audit the annual servicer report be

independent from the sponsor?

5. Is the definition of "securitized product" sufficiently clear, particularly for those persons who will be involved in selling these products to investors? Do elements of the definition, e.g., "collateralized mortgage obligation", "collateralized debt obligation", "synthetic", need to be defined?

6. Is the proposed carve-out for covered bonds from the Proposed Securitized Products Rules appropriate? Should there be additional conditions imposed in order for the carve-out to be available and if so, what should these be?

7. Is the proposed carve-out for non-debt securities of MIEs from the Proposed Securitized Products Rules appropriate? Should there be additional conditions imposed in order for the carve-out to be available and if so, what should these be?

(b) The Proposed Prospectus Disclosure Rule

Eligibility for the shelf system

8. Should there be restrictions on the kinds of asset-backed securities distributions that are eligible for the shelf system and if so, what should those be and why? Should there be similar restrictions to those in Reg AB, such as prescribed time limits on revolving periods for transactions backed by non-revolving assets, caps on prefunding amounts, and restrictions on pool assets (e.g., no non-revolving assets in a master trust, caps on the proportion of delinquent assets in the pool, and prohibitions against non-performing assets)?

9. Do investors need additional time to review shelf supplements prior to sale? Should we require the supplement (without price-related information) to be filed on SEDAR prior to first sale? What would be an appropriate amount of time, and would it change if loan- or asset-level disclosure was mandated?

10. Should the approved rating eligibility criterion for the short form and shelf prospectus systems be replaced with alternative criteria? In the alternative, if the approved rating eligibility criterion is maintained, should the issuer also satisfy one or more additional criteria such as those in the SEC April 2010 Proposals:

    (i) 5% vertical slice risk retention;
    (ii) third party review of repurchase or replacement obligations in connection with alleged breaches of representations and warranties;
    (iii) a certificate from the CEO of a sponsor and an issuer that at the time of each offering off a shelf prospectus that the assets in the pool have characteristics that provide a reasonable basis to believe that they will produce, taking into account internal credit enhancements, sufficient cash flows to service any payments due and payable on the securities as described in the prospectus?

11. Do offerings of asset-backed securities through the MTN/continuous distributions prospectus supplement provisions under Part 8 of National Instrument 44-102 *Shelf Distributions* give investors enough time to review the information or provide the public disclosure of the offering on a sufficiently timely basis?

Pool asset and payment disclosure

12. The SEC April 2010 Proposals require disclosure of asset- or loan-level data in some cases, and grouped asset disclosure in others (e.g. for credit card receivables). We are not proposing to require asset- or loan-level disclosure or grouped asset disclosure. Is this level of disclosure necessary and if so, what are appropriate standardized data points?

13. The SEC April 2010 Proposals require that issuers provide a computer waterfall payment program to investors. We currently are not proposing to impose a similar requirement. Is this type of program necessary and if so, why?

Mandatory review of pool assets

14. In connection with the requirements of the Dodd-Frank Act, the SEC has made a rule requiring that issuers who offer asset-backed securities pursuant to a registration statement must perform a review of the pool assets underlying the asset-backed securities. The issuer may conduct the review or an issuer may employ a third party engaged for purposes of performing the review provided the third party is named in the registration statement and consents to being named as an expert, or alternatively, the issuer adopts the findings and conclusions of the third party as its own. Should we introduce a similar requirement for prospectus offerings of securitized products?

Risk factor disclosure

15. We are not proposing to prescribe risk factor disclosure. Should Form 41-103F1 contain prescribed risk factor disclosure and if so, what disclosure should be prescribed? For example, are there standard risk factors associated with particular underlying asset classes that should always be included in a prospectus?

Incorporation by reference of Form 51-106F1 and Form 51-106F2

16. Should Form 51-106F1 and Form 51-106F2 filings previously filed by a reporting issuer be required to be incorporated by reference in other short form prospectus offerings by the same issuer? What types of filings are appropriate or necessary for incorporation, and which are not? Would the requirements regarding static pool disclosure in Item 4 of the proposed Form 41-103F1 be sufficient?

Registration

17. Are there any existing registration categories or registration exemptions that should be modified or made unavailable for the distribution of securitized products under a prospectus, or their subsequent resale?

(c) The Proposed CD Rule and Proposed Certification Amendments

Interaction with NI 51-102

18. The Proposed CD Rule requires reporting issuers that issue securitized products to make several new filings in addition to the filings required by NI 51-102. In light of these new proposed filings, should reporting issuers be exempt in whole or in part from the requirements of NI 51-102 and related forms? For example, do the costs associated with preparing and filing audited financial statements of the issuer outweigh the benefits to investors? We believe there may be circumstances where financial information about the issuer may be important to investors, such as information relating to derivative transactions to which the issuer is a party, or information relating to other liabilities of the issuer that may rank higher to or equally with the notes held by investors, and thereby reduce the potential recovery of investors in the case of an insolvency of the issuer. If we propose an exemption from the requirement to prepare and file audited financial statements, how should we address these concerns? What conditions should we include?

Application to all outstanding series or class of securitized products issued by a reporting issuer

19. The proposed continuous disclosure requirements apply in respect of all securitized products issued by the reporting issuer, regardless of whether they were distributed under a prospectus or on a prospectus-exempt basis. For example, a reporting issuer must file a Form 51-106F1 in respect of each outstanding series or class of securitized products it has issued, regardless of whether it was issued under a prospectus or on a prospectus-exempt basis. Should there be a "grandfathering" or transitional provision put in place?

20. Should the proposed continuous disclosure requirements only apply in respect of securitized products that the reporting issuer distributed via prospectus? If yes, how should we address the concern that other securitized products issued by the same issuer on an exempt basis may become freely tradeable but without the reporting issuer being required to provide any ongoing disclosure about these other securities?

21. Should there be a legending or notice requirement to explain resale restrictions for securitized products that have been distributed on an exempt basis?

Timely disclosure

22. Section 5 of NI 51-106 requires timely disclosure of a range of enumerated "significant" events largely derived from Form 8-K. Would adding, modifying or deleting any of the criteria on this list make it a better regime for timely disclosure? If so, what changes should be made?

Statutory Civil Liability

23. Should the new documents that are required to be filed under the Proposed CD Rule be prescribed as core documents for secondary market civil liability?

Certification

24. Is it appropriate to exempt reporting issuers that issue securitized products and that are subject to the Proposed CD Rule from the requirements to establish and maintain disclosure controls and procedures and internal control over financial reporting in Part 2 of NI 52-109?

25. The proposed forms of certification for reporting issuers that issue securitized products does not contain a note to reader similar to the note to reader required for venture issuer forms of certification. Should there be a note to reader required for the certifications and if so, what information should the note to reader contain?

Report of fulfilled and unfulfilled repurchase/replacement requests

26. We are proposing that if an originator, sponsor or other party has repurchase or replacement obligations in respect of pool assets collateralizing securitized products distributed under a prospectus, the prospectus must provide historical demand, repurchase and replacement information for those parties in respect of other securitizations where those parties had similar obligations, where the same class of assets was securitized, and where the securitized products were distributed under a prospectus. Subsequently, demand, repurchase and replacement information must be provided in Form 51-106F1. Is this type of disclosure adequate, or is it necessary to have this type of information provided by originators and sponsors for all securitizations in which they have been involved (including those in the exempt market)? For example, in connection with the requirements of the Dodd-Frank Act, the SEC has made a rule requiring any securitizer to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer, so that investors may identify asset originators with clear underwriting deficiencies. The securitizer must file an initial "look-back" report, and subsequently update the information on a quarterly basis.

(d) The Proposed Exempt Distribution Rules

General approach

27. We are proposing a new Securitized Product Exemption which focuses on a specific product that has unique features and risks. Is this product-centred approach appropriate? Should we instead be focusing on reforming the exempt market as a whole?

28. Should securitized products be allowed to be sold in the exempt market, or should they only be sold under a prospectus?

Who can buy

29. We are proposing to remove a number of existing prospectus exemptions through which securitized products can be sold. Should we permit securitized products to continue to be sold through some existing exemptions and if so, which exemptions?

30. The proposed Securitized Product Exemption in section 2.44 only permits certain "highly-sophisticated" investors (i.e., eligible securitized product investors) to buy securitized products on a prospectus-exempt basis. Other investors generally would only be able to buy securitized products that are distributed through a prospectus. Is this the right approach? If not, what approach should we take? In particular, should we permit other investors to purchase securitized products in the exempt market through a registrant subject to suitability obligations in respect of the purchaser? Would having a registrant involved adequately address our investor protection concerns? Please refer to Question 32 for additional related questions.

31. If our proposed approach to restrict access to securitized products to "highly-sophisticated" investors is appropriate, is the proposed list of eligible securitized product investors the right one? If not, how should it be modified? In particular, we would appreciate feedback on the following:

A. Expanded list of who would qualify as an eligible securitized product investor

Should we expand the list of eligible securitized product investors? For example:

<u>Individuals (paragraph (n) of the definition)</u>

- Should we include high-income individuals and if so, at what level of income, e.g. $1 million?

- Should we permit inclusion of spousal income or assets when calculating applicable income or asset thresholds for individuals?

- Should other types of assets be included when calculating asset thresholds for individuals, not just net realizable financial assets and if so, what types of assets should be permitted?

Persons or companies who are not individuals (paragraph (p) of the definition)

- Should we lower the net asset threshold of $25 million for persons or companies (other than individuals or investment funds)? If so, what is the appropriate net asset threshold for these entities?

Other investors

- Are there other categories of investors who should be included in the list of eligible securitized product investors and if so, what should those be? For example, should we include an individual registered or formerly registered under securities legislation?

B. Should we require that each beneficiary of the managed account in paragraph (k) of the proposed definition meet the criteria set out in the other paragraphs of the definition of eligible securitized product investor?

C. Should the list of eligible securitized product investors be narrowed? For example, should the financial thresholds under the proposed definition of eligible securitized product investor be raised? Are there entities in the proposed definition who should not qualify as eligible securitized product investors?

32. We continue to consider other possible prospectus exemptions for securitized products, along with appropriate conditions to such prospectus exemptions. We would appreciate your feedback on the following possible exemptions and conditions, and whether they should be in lieu of, or in addition to, the proposed Securitized Product Exemption:

A. *Enhanced accredited investor or minimum amount investment prospectus exemption*

Should we maintain availability of the accredited investor and minimum investment amount prospectus exemptions? Should their continued availability require additional conditions and if so, what should those be? For example, should we require either or both of the following additional conditions:

(a) the issuer must provide an information memorandum and possibly ongoing disclosure; and

(b) the investor must buy the securitized product from a registrant?

B. Minimum amount investment prospectus exemption specifically for securitized products

Should we have a prospectus exemption that would permit an investor to purchase securitized products provided the minimum amount invested is relatively high? If so, what would be an appropriate minimum amount threshold?

C. Specified ABCP prospectus exemption

Should investors who are neither eligible securitized product investors nor accredited investors be permitted to invest in ABCP provided certain risk-mitigating conditions are met? If so, what conditions should we impose on these distributions? Would ABCP that satisfies the following conditions be appropriate for non-accredited investors:

- the ABCP has received a minimum of two prescribed credit ratings;
- the ABCP is backed by a committed global-style liquidity facility that represents at least 100% of the outstanding face value of the ABCP and is provided by an entity with a minimum prescribed credit rating;
- the sponsor is federally or provincially regulated and has a minimum prescribed credit rating;
- the ABCP does not have direct or indirect actual or potential exposure to highly structured products such as collateralized debt obligations or credit derivatives (except for obtaining asset-specific protection for the ABCP program);
- the ABCP program does not use leveraged credit derivatives that could subject the program to collateral calls; and
- the issuer must provide an information memorandum and ongoing disclosure?

If the ABCP satisfies the above conditions, should we also require that an investor, or certain types of investors (for example, a “retail” investor) must buy the securitized product from a registrant? If so, what types of investors would benefit from this requirement?

33. Should we provide for more limited access to securitized products than has been proposed?

Disclosure

34. The objectives of requiring disclosure for prospectus-exempt distributions of securitized products are to:

- create incentives for enhanced due diligence by sponsors and underwriters who must prepare the disclosure, and investors who will be expected to take the disclosure into account in making their investment decision;
- improve the quality and consistency of disclosure;
- facilitate a transparent, and thus stable, securitization market.

Will our proposed requirements for disclosure in the exempt market achieve or further these objectives?

35. Is there a class of investor for whom it is not necessary to require that some form of disclosure be provided in connection with the purchase of securitized products on a prospectus-exempt basis? If so, what type of investor?

36. Is there a type of "private-label" (as opposed to government-issued or -guaranteed) securitized product for which disclosure is not necessary? If so, what type of securitized product?

37. We are not prescribing specific disclosure for the initial distribution of securitized products, other than short-term securitized products such as ABCP. Is this an appropriate approach? What impact would requiring an information memorandum for distributions of non short-term securitized products have on costs, timing and market access?

38. We are prescribing certain disclosure for short-term securitized products such as ABCP (proposed Form 45-106F7 *Information Memorandum for Short-Term Securitized Products*). Is this an appropriate approach? Would adding, modifying, or deleting any of the prescribed disclosure improve the requirements? Should we mandate the format in which any of the disclosure is provided, for example, XML? What impact will requiring prescribed disclosure for distributions of short-term securitized products have on costs, timing and market access?

39. We are requiring that ongoing disclosure be made available to investors in securitized products. Is this an appropriate approach? Are the prescribed forms (Form 51-106F1 in the case of non short-term securitized products, and Form 45-106F8 *Periodic Disclosure Report for Short-Term Securitized Products*

Distributed under an Exemption from the Prospectus Requirement) appropriate? Would adding, modifying or deleting any of the prescribed disclosure improve the requirements? Should we mandate the form in which any of the disclosure is provided, for example, XML? What impact will requiring ongoing disclosure for securitized products have on costs, timing and market access?

40. We have proposed that certain ongoing disclosure be made available to investors in securitized products via the issuer's website. We propose that the issuer be required to provide access to prospective investors who request access. Is there a better method of making disclosure available to prospective investors and if so, what? Should the disclosure be generally publicly available via the issuer's website or SEDAR?

41. We have proposed that the information memoranda and all disclosure required to be provided to investors be delivered to securities regulators. We expect that, subject to requests under freedom of information legislation, these documents will not be generally available to the public. We thought this appropriate given that the securitized products are not generally available to the public. Is this an appropriate approach?

Statutory civil liability

42. We propose that there should be statutory civil rights of action against issuers, sponsors and underwriters for misrepresentations in an information memorandum provided in connection with a distribution of securitized products in the exempt market. Have we identified the appropriate parties whom an investor should be able to sue? If not, should any parties be added or removed?

43. Should there be statutory civil liability for misrepresentations in the continuous disclosure provided by an issuer of securitized product? If so, who should the investor be able to sue and why?

44. In certain jurisdictions, there are statutory provisions which also provide an investor with a right to withdraw from the purchase within two days of receiving a prescribed offering document. Should these rights of withdrawal apply to information memoranda used for the distribution of short-term securitized products? Should these rights of withdrawal apply to information memoranda used for the distribution of securitized products that are not short-term?

Resale

45. We propose that the first trade of a securitized product distributed under the Proposed Securitized Product Exemption is a distribution, creating a specialized "closed-system" for securitized products that are not issued under a prospectus. Is the proposed resale treatment appropriate?

Registration

46. Are there any existing registration categories or registration exemptions that should be modified or made unavailable for the distribution and resale of securitized products in the exempt market?

47. In order to qualify for the proposed Securitized Product Exemption in section 2.44, registered firms and individuals will need to be able to identify which products are securitized products. Are there categories of registrants that will not have the appropriate proficiency to identify securitized products and understand their risks? For example, should exempt market dealers be restricted in any way from dealing in securitized products?

How to provide your comments

You must submit your comments in writing by **July 1, 2011**. If you are sending your comments by email, you should also send an electronic file containing the submissions in Microsoft Word.

Please address your comments to all of the CSA member commissions as follows:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

Please send your comments only to the addresses below. Your comments will be forwarded to the remaining CSA jurisdictions.

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Please note that all comments received during the comment period will be made publicly available. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

We will post all comments received during the comment period to the OSC website at www.osc.gov.on.ca to improve the transparency of the policy-making process.

Questions

Please refer your questions to any of the following:

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