

Court File No.: CV-12-9606-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**

**IN THE MATTER OF THE ONTARIO SECURITIES COMMISSION AND THE
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

- and -

**IN THE MATTER OF A DECLARATION CONCERNING THE INTERPRETATION OF
THE ORDER OF JUNE 5, 2008 MADE BY THE HONOURABLE C. CAMPBELL J.
APPROVING A PLAN OF COMPROMISE AND ARRANGEMENT INVOLVING
METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS II CORP. *ET AL.*
PURSUANT TO THE COMPANIES CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C.
C-36, AS AMENDED**

BY: **Ontario Securities Commission and
Investment Industry Regulatory Organization of Canada**
Applicants

AFFIDAVIT

I, Kathryn Daniels, of the City of Toronto, in the Province of Ontario, AFFIRM AND SAY:

1. I have been engaged in management of the Enforcement Branch of the Ontario Securities Commission (the "Commission") since 2003 and have been a Deputy Director of the Enforcement Branch since January, 2009. As such, I have personal knowledge of the facts set out in this Affidavit, except where indicated otherwise, in which case I have identified the source of the information and believe the information to be true.

ABCP Settlements

2. Following August 13, 2007, when the market for non-bank sponsored ABCP (“third-party ABCP”) in Canada froze, the Commission, in cooperation with the Autorité des marchés financiers (“AMF”) and the Investment Industry Regulatory Organization of Canada (“IIROC”), conducted a joint investigation into the ABCP market freeze and securities regulatory issues arising from it.
3. On June 5, 2008, The Honourable C. Campbell J. made an order (the “ABCP Order”) under the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, that approved a plan of arrangement and released all “ABCP Dealers” and other “Released Parties” as defined in the ABCP Order from, and enjoined, all claims and proceedings relating to their participation in the third-party ABCP market. The ABCP Order excepted from this release and injunction regulatory and self-regulatory proceedings and investigations by bodies like the Commission and IIROC and the exercise by such bodies of their powers and remedies, provided that they not make “any order or award to compensate or make restitution to an aggrieved person or company or to pay general or punitive damages to any other person or company” (ABCP Order, paras. 17-19). A copy of the ABCP Order is attached to this Affidavit as Exhibit “A”.
4. As a result of its investigation, and as permitted by the ABCP order, enforcement staff of the Commission (“Commission Staff”) determined to initiate proceedings against two

ABCP Dealers, the Canadian Imperial Bank of Commerce and CIBC World Markets Inc. (together “CIBC”), which were settled in accordance with the terms of a settlement agreement with CIBC dated December 16, 2009.

5. In the settlement agreement with CIBC, CIBC admitted that it “engaged in conduct contrary to the public interest by failing to adequately respond to emerging issues in the third-party ABCP market insofar as it continued to sell third-party ABCP without engaging compliance and other appropriate processes for the assessment of such information and concerns” after July 24, 2007, when it received an email from Coventree Inc. (“Coventree”) containing information about the U.S. subprime exposure in Coventree’s third-party ABCP, and up to August 3, 2007.
6. In this settlement agreement, CIBC also agreed to an order, to be made by the Commission pursuant to section 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), that “CIBC pay to the Commission the sum of \$21.7 million, to be allocated under s. 3.4(2)(b) of the Act to or for the benefit of third parties”.
7. On December 21, 2009, the Commission made an order approving the settlement agreement with CIBC and requiring it to pay \$21.7 million to the Commission “to be allocated under section 3.4(2)(b) of the Act to or for the benefit of third parties”. A copy of the Order of the Commission and the settlement agreement with CIBC is attached to this Affidavit as Exhibit “B”.

8. Commission Staff also determined to initiate proceedings against another ABCP Dealer, HSBC Bank of Canada (“HSBC”), which were settled in accordance with the terms of a settlement agreement with HSBC, also dated December 16, 2009.
9. In the settlement agreement with HSBC, HSBC admitted that it “engaged in conduct contrary to the public interest by failing to adequately respond to emerging issues in the third-party ABCP market insofar as it continued to sell third-party ABCP without engaging compliance and other appropriate processes for the assessment of such information and concerns” after July 24, 2007, when it received the email from Coventree containing information about the U.S. subprime exposure in Coventree’s third-party ABCP, and up to August 10, 2007.
10. In this settlement agreement, HSBC also agreed to an order, to be made by the Commission pursuant to section 127(1) of the Act, that “HSBC pay the Commission the sum of \$5,925,000, to be allocated under s. 3.4(2)(b) of the Act to or for the benefit of third parties”.
11. On December 21, 2009 the Commission made an order approving the settlement agreement with HSBC and requiring it to pay \$5,925,000 to the Commission “to be allocated under section 3.4(2)(b) of the Act to or for the benefit of third parties”. A copy of the Commission’s Order and of the settlement agreement with HSBC is attached to this Affidavit as Exhibit “C”.
12. The terms of the settlement agreements with CIBC and HSBC did not address the purposes for which the amounts to be paid by them to the Commission might be

allocated, and no such allocation was addressed in the Commission hearings that considered these settlement agreements or in the Commission orders approving them.


13. The settlements with CIBC and HSBC were announced in a joint press release issued by the Commission, the AMF and IIROC on December 21, 2009. The joint press release also announced settlements reached by the AMF and IIROC with other ABCP Dealers and said, with regard to financial penalties imposed under the settlements, that “a fair and appropriate use for the sanction monies will be determined in accordance with applicable laws, court orders and in the public interest.” A copy of the joint press release of December 21, 2009 is attached to this Affidavit as Exhibit “D”.
14. The settlement agreements were entered into voluntarily by CIBC and HSBC. CIBC and HSBC paid the agreed amounts to the Commission in December, 2009, after the settlements were approved by the Commission.


Proposed Allocation of Amounts Paid

15. The Commission is required by subsection 3.4(2) of the Act to pay into the Consolidated Revenue Fund money received by it pursuant to an order imposing an administrative penalty or disgorgement in an enforcement proceeding or as a payment to settle enforcement proceedings commenced by Commission Staff, unless the money is “designated under the terms of the order or settlement for allocation to or for the benefit of third parties.” Funds received by the Commission that are so designated are held in a segregated bank account and allocated as the Commission may determine. The

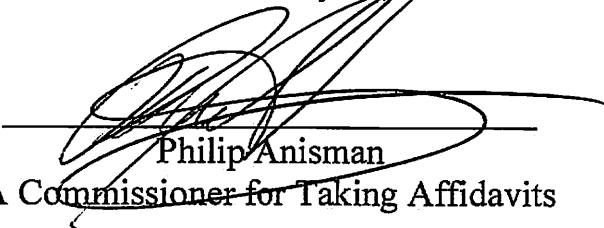
Commission allocates such funds to uses that it determines to be fair and appropriate in accordance with applicable laws, court orders and the public interest. A copy of an excerpt from the Commission's 2011 Annual Report (page 11) describing funds held by the Commission pursuant to designations in orders and settlements is attached to this Affidavit as Exhibit "E".

16. No person has any entitlement to receive funds held by the Commission in its segregated bank account. As a result, an allocation of such funds by the Commission is an *ex gratia* payment by it.
17. Commission Staff have recommended to the Commission that it allocate the funds paid by CIBC to CIBC clients who purchased third-party ABCP from it between July 25 and August 3, 2007, and who were not aware of the email referred to in paragraph 5, above, or its contents.
18. Commission Staff have also recommended to the Commission that it allocate the funds paid by HSBC to HSBC clients who purchased third-party ABCP from it between July 25 and August 10, 2007, and who were not aware of the email referred to in paragraph 9, above, or its contents.
19. In formulating its recommendations, Commission Staff have cooperated with staff of IIROC ("IIROC Staff") who have recommended similar allocations by IIROC of fines paid to it under the settlements referred to in paragraph 13, above, in a process to be administered jointly by the Commission and IIROC.

- Affirmed before me
at the City of Toronto
in the Province of Ontario
this 15th day of February, 2012
- 
A Commissioner for taking Affidavits, etc.
Philip Anisman


Kathryn Daniels

This is Exhibit "A" to the
Affidavit of Kathryn Daniels,
affirmed February 15, 2012



Philip Anisman
A Commissioner for Taking Affidavits

Court File No. 08-CL-7440

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

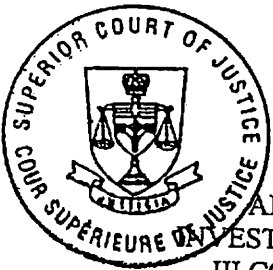
THE HONOURABLE

) THURSDAY, THE 5TH

)

MR. JUSTICE CAMPBELL

) DAY OF JUNE, 2008



IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE AND
ARRANGEMENT INVOLVING METCALFE & MANSFIELD ALTERNATIVE
INVESTMENTS II CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS
III CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS V CORP.,
METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS XI CORP.,
METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS XII CORP.,
4446372 CANADA INC. AND 6932819 CANADA INC.,
TRUSTEES OF THE CONDUITS LISTED IN SCHEDULE "A" HERETO

BETWEEN:

THE INVESTORS REPRESENTED ON
THE PAN-CANADIAN INVESTORS COMMITTEE FOR THIRD-PARTY STRUCTURED
ASSET-BACKED COMMERCIAL PAPER LISTED IN SCHEDULE "B" HERETO

Applicants

- and -

METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS II CORP.,
METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS III CORP.,
METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS V CORP.,
METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS XI CORP.,
METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS XII CORP.,
4446372 CANADA INC. AND 6932819 CANADA INC.,
TRUSTEES OF THE CONDUITS LISTED IN SCHEDULE "A" HERETO

Respondents

SANCTION ORDER

- 2 -

THIS MOTION made by the investors represented on the Pan-Canadian Investors Committee for Third-Party Structured Asset-Backed Commercial Paper (the "Committee") listed in Schedule "B" hereto (each, an "Applicant", collectively, the "Applicants"), for an Order pursuant to section 6 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") sanctioning the Applicants' Amended Plan of Compromise and Arrangement dated March 19, 2008 as it may be amended from time-to-time in accordance with its terms (the "Plan") and for ancillary relief associated with the implementation of the Plan, was heard May 12, May 13 and June 3, 2008 at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Purdy Crawford sworn March 17, 2008, Affidavit of James Mavor sworn April 17, 2008, Affidavit of James Mavor sworn May 5, 2008, Affidavit of Dennis M. Byrd sworn April 18, 2008, Affidavit of Jay Hoffman sworn April 18, 2008, Affidavit of Colin Kilgour sworn April 15, 2008, Affidavit of Colin Kilgour sworn May 1, 2008, Affidavit of Colin Kilgour sworn May 5, 2008, Affidavit of Francois Laurin sworn April 15, 2008, Affidavit of Philippe Rainville sworn April 15, 2008, Affidavit of Lyne Gilbert sworn April 15, 2008, Affidavit of Nicholas Dyson Corlett Willis sworn April 15, 2008, Affidavit of Mario Busque sworn April 18, 2008, Affidavit of Andre Belzile sworn April 15, 2008, Affidavit of Daniel Arguin sworn April 15, 2008, Affidavit of Jean-Luc Van Eyck sworn April 16, 2008, Affidavit of Sylvain Guennette sworn April 16, 2008, Affidavit of Murielle Allatt sworn April 21, 2008, Affidavit of Louis Champagne sworn April 22, 2008, Affidavit of John Pitcher sworn May 8, 2008, Affidavit of Richard Flynn sworn May 9, 2008, Affidavit of Scott Bridge sworn April 16, 2008, Affidavit of Allen Breeding sworn April 17, 2008, Affidavit of Heather Avrith sworn April 16, 2008, Affidavit of Heather Avrith sworn May 9, 2008, Affidavit of Heather Avrith sworn May 28, 2008, Affidavit of Paul Rose sworn May 5, 2008, Affidavit of Michael Bardell sworn April 16, 2008, Affidavit of Michael Bardell sworn June 2, 2008, Affidavit of Michael Bardell sworn May 2, 2008, Affidavit of Deanna Watters sworn May 5, 2008, Affidavit of Hy Bloom sworn April 14, 2008, Affidavit of Tony Giardini sworn April 18, 2008, Affidavit of Tony Giardini sworn April 29, 2008, Affidavit of Scott Edmonds sworn April 17, 2008, Affidavit of Eliezer Karp sworn April 11, 2008, Affidavit of Henry Juroviesky sworn April 13, 2008, Affidavit of Joanne O'Neill sworn May 1, 2008, Affidavit of Douglas Wynn sworn May 8, 2008 and all Exhibits to said Affidavits, and the First Report of Ernst & Young

- 3 -

Inc. in its capacity as Monitor (the "Monitor") dated March 17, 2008, Second Report of the Monitor dated April 11, 2008, Supplement to the Second Report of the Monitor dated April 15, 2008, Third Report of the Monitor dated April 18, 2008, Fourth Report of the Monitor dated April 24, 2008, Fifth Report of the Monitor dated April 28, 2008, Sixth Report of the Monitor dated May 1, 2008, Seventh Report of the Monitor dated May 6, 2008, Eighth Report of the Monitor dated May 28, 2008, Ninth Report of the Monitor dated June 2, 2008 and all Appendices to said Reports, and on hearing the submissions of counsel for the Applicants, the Respondents Metcalfe & Mansfield Alternative Investments II Corp., Metcalfe & Mansfield Alternative Investments III Corp., Metcalfe & Mansfield Alternative Investments V Corp., Metcalfe & Mansfield Alternative Investments XI Corp. and Metcalfe & Mansfield Alternative Investments XII Corp., the Respondent 4446372 Canada Inc., the Respondent 6932819 Canada Inc., the Monitor, the Asset Providers, the Ad Hoc Committee and PricewaterhouseCoopers Inc., in its capacity as Financial Advisor to the Ad Hoc Committee, the Ad Hoc Retail Creditors Committee, 131519 Canada Inc., Aéroports de Montréal Capital Inc., Aéroports de Montréal Inc., Agence Métropolitaine de Transport (AMT), Air Transat A.T. Inc., Alliance Pipeline Ltd., Bank of Montreal, Bank of Nova Scotia, Becmar Investments Ltd., BlackRock Financial Management, Inc., Brookfield Asset Management and Partners Ltd., Caisse de Dépôt et Placement du Québec, Canadian Imperial Bank of Commerce, CIBC Mellon Trust Company, Computershare Trust Company of Canada and BNY Trust Company of Canada, as Indenture Trustees, Cardacian Mortgage Services, Inc., Cinar Corporation, Computershare Trust Company of Canada as Original Issuer Trustee, Coventree Capital Inc., Dadrex Holdings Inc., DBRS Limited, Desjardins Group, Encore Trust, Giro Inc., The Goldfarb Corporation, Hy Bloom Inc., The Investment Dealers Association of Canada and the Investment Industry Regulatory Organization of Canada, Ivanhoe Mines Inc., Jazz Air LP, The Jean Coutu Group (PJC) Inc., JTI-Macdonald Corp., Jura Energy Corporation, Labopharm Inc., Metcalfe & Mansfield Capital Corporation, National Bank Financial Inc., National Bank of Canada, New Gold Inc., Newshore Financial Services Inc., Nereus Financial Inc., Nexstar Energy Ltd., Northern Orion Canada Pampas Ltd., Petrolifera Petroleum Ltd., Pomerleau Inc., Pomerleau Ontario Inc., Power Play Resources Limited, Quanto Financial Corporation, Redcorp Ventures Ltd., Royal Bank of Canada, Sabre Energy Ltd., Sabre Tooth Energy Ltd., Securitus Capital Corp., Standard Energy Inc., Tecsys Inc., The Toronto-Dominion Bank, Transat Tours Canada Inc., UTS Energy

- 4 -

Corporation, Vaquero Resources Ltd., Vêtements de sports RGR Inc., WebTech Wireless Inc., West Energy Ltd., Wynn Capital Corp. Inc. no one else appearing although notice of this motion was duly given pursuant to the Meeting Order of this Court dated March 17, 2008 (the "Meeting Order") and service was effected as appears from the Affidavits of Service of Darlene Moffett sworn May 7, 2008 and May 28, 2008, filed:

SERVICE

1. **THIS COURT ORDERS** that in accordance with the Meeting Order this Motion is properly returnable and hereby dispenses with further service thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Order shall have the meanings ascribed to such terms in the Plan.

SERVICE AND MEETING OF CREDITORS

3. **THIS COURT ORDERS AND DECLARES** that the Meeting Order remains in full force and effect, unvaried and unamended.

4. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service and delivery of the Meeting Documents (as defined in the Meeting Order) and that the Meeting called pursuant to paragraph 18 of the Meeting Order was duly convened, held and conducted, in conformity with the CCAA and the Meeting Order.

AMENDMENT OF PLAN

5. **THIS COURT ORDERS AND DECLARES** that the amendments to the Plan described in Schedule "C" to this Order are hereby approved and the Committee is hereby authorized and directed to forthwith deliver to the Monitor, for posting on the Website, a restated Plan dated as of the date hereof.

- 5 -

SANCTION OF PLAN

6. THIS COURT ORDERS AND DECLARES that:

- (a) the Plan has been approved by the requisite majorities of the Noteholders present and voting, either in person or by proxy, at the Meeting, all in conformity with the CCAA and the terms of the Initial Order;
- (b) the Applicants and the Respondents have acted in good faith and with due diligence, have complied with the provisions of the CCAA, and have not done or purported to do (nor does the Plan do or purport to do) anything that is not authorized by the CCAA;
- (c) the Applicants and the Respondents have adhered to, and acted in accordance with all Orders of this Court in the CCAA Proceedings; and
- (d) the Plan, together with all of the compromises, arrangements, transactions, releases, discharges, injunctions and results provided for therein and effected thereby are fair, reasonable and in the best interests of the Noteholders and does not unfairly disregard the interests of any Person (whether a Noteholder or otherwise).

7. THIS COURT ORDERS that the Plan is hereby sanctioned and approved pursuant to Section 6 of the CCAA.

PLAN IMPLEMENTATION

8. THIS COURT ORDERS that the CCAA Parties and the Monitor, as the case may be, are authorized and directed to take all steps and actions, and to do all things, necessary or appropriate to enter into or implement the Plan in accordance with its terms, and enter into, execute, deliver, implement and consummate all of the steps, transactions and agreements contemplated pursuant to the Plan including the Approved Agreements.

- 6 -

9. **THIS COURT ORDERS** that the Applicants shall provide to the Monitor forms of the Approved Agreements for posting on the Website no later than seven (7) days before the Plan Implementation Date and, if any amendments are made subsequent to posting of such documents, the Applicants shall forthwith provide to the Monitor a blacklined version thereof for posting on the Website.

10. **THIS COURT ORDERS** that upon the satisfaction or waiver, as applicable, of the conditions precedent set out in Section 8.1 of the Plan, the Monitor shall file with this Court a certificate that states that all conditions precedent set out in Section 8.1 of the Plan have been satisfied or waived, as applicable, and that, with the filing of such certificate by the Monitor, the Plan Implementation Date shall have occurred in accordance with the Plan.

11. **THIS COURT ORDERS** upon the Plan Implementation Date occurring, the Monitor, the CCAA Parties, the Issuing and Paying Agents, the New Issuer Trustee, the issuing and paying agent(s) in respect of the Plan Notes, the Depositary and CDS Clearing & Depositary Services Inc. and the participants therein are hereby directed and authorized to complete the distributions contemplated under the Plan.

12. **THIS COURT ORDERS AND DECLARES** that any distributions under the Plan and this Order shall not constitute a "distribution" for the purposes of section 159 of the Income Tax Act (Canada), section 270 of the Excise Tax Act (Canada) and section 107 of the Corporations Tax Act (Ontario) and any party in making any such payments is not "distributing", nor shall be considered to have "distributed", such funds, and shall not incur any liability under the above-mentioned statutes for making any payments ordered and is hereby forever released, remised and discharged from any claims against it under section 159 of the Income Tax Act (Canada), section 270 of the Excise Tax Act (Canada) and section 107 of the Corporations Tax Act (Ontario).

13. **THIS COURT ORDERS AND DECLARES** that as of the Plan Implementation Date, the Plan, including all compromises, arrangements, transactions, releases, discharges and injunctions provided for therein, shall inure to the benefit of and be binding and effective upon the Noteholders, the Monitor and all other Persons affected thereby, and on their respective heirs, administrators, executors, legal personal representatives, successors and assigns.

- 7 -

14. **THIS COURT ORDERS** that, subject to the performance by the CCAA Parties, the Plan Participants and the Monitor of their respective obligations under the Plan, and except to the extent expressly provided otherwise by the Plan or this Order, no Person who is a party to any obligation or agreement with the CCAA Parties shall, following the Plan Implementation Date, accelerate, terminate, rescind, refuse to perform or repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such obligation or agreement, by reason:

- (a) of any event(s) that occurred on or prior to the Plan Implementation Date that would have entitled any other Person thereto to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of the CCAA Parties);
- (b) of the fact that relief under the CCAA has been sought or obtained in respect of the CCAA Parties, that the CCAA Proceedings have been commenced or completed, or that the within restructuring has been implemented in respect of the CCAA Parties; or
- (c) of any compromises or arrangements effected pursuant to this Plan.

15. **THIS COURT ORDERS** that, as of the Plan Implementation Date, each Noteholder shall be deemed to have consented and agreed to all of the provisions of the Plan in their entirety and, in particular, each Noteholder shall be deemed:

- (a) to have executed and delivered to the Monitor and to the relevant Plan Participants all consents, releases or agreements required to implement and carry out the Plan in its entirety; and
- (b) to have agreed that if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Noteholder and the CCAA Parties as of the Plan Implementation Date and the provisions of the Plan, the provisions of the Plan take precedence and priority and the provisions of such agreement or other arrangement shall be deemed to be amended accordingly.

RELEASES, DISCHARGES AND INJUNCTIONS

16. **THIS COURT ORDERS AND DECLARES** that the compromises, arrangements, exculpations, releases, discharges and injunctions contemplated in the Plan, including those granted by and for the benefit of the Released Parties, are integral components thereof and are necessary for, and vital to, the success of the Plan and that, effective on the Plan Implementation Date, all such compromises, arrangements, exculpations, releases, discharges and injunctions are hereby sanctioned, approved and given full force and effect in accordance with and subject to their respective terms.

17. **THIS COURT ORDERS** that without limiting the effect or validity of any provision of this Order or the Plan and for greater certainty, immediately upon the Plan Implementation Date having occurred, every Person (regardless of whether or not such Person is a Noteholder), including each of the Released Parties on the Person's own behalf and on behalf of the Person's respective affiliates, present and former officers, directors, employees, associated individuals, auditors, financial advisors, legal counsel, other professionals, sureties, insurers, indemnitees, agents, dependents, heirs, representatives and assigns, as applicable, hereby fully, finally, irrevocably and unconditionally releases and forever discharges each of the Released Parties of and from any and all past, present and future claims, rights, interests, actions, rights of indemnity, liabilities, demands, duties, injuries, damages, expenses, fees (including attorneys' fees and liens), costs, compensation, or causes of action of whatsoever kind or nature whether foreseen or unforeseen, known or unknown, asserted or unasserted, contingent or actual, liquidated or unliquidated, whether in tort or contract, whether statutory, at common law or in equity, based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly: any act or omission existing or taking place on or prior to the Plan Implementation Date relating to or otherwise in connection with the Third-Party ABCP market in Canada, the ABCP Conduits, the Affected ABCP, the business and affairs of any of the Released Parties relating to or otherwise in connection with the Affected ABCP, Affected ABCP Credit Default Swaps, the LSS Assets, Hybrid Assets and Traditional Assets, including without limitation any of such assets that are Ineligible Assets, the CCAA Proceedings, the activities undertaken or not undertaken as a result of the Standstill, in anticipation of or preparation for the restructuring of the Affected ABCP and/or the CCAA Proceedings, the Information Statement,

- 9 -

the Meeting or the Plan (collectively, the "ABCP Market Claims"); and each Person shall not make or continue any claims or proceedings whatsoever based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, the substance of the facts giving rise to any matter herein released (including, without limitation, any action, cross-claim, counter-claim, third party action or application) against any Person who claims or might reasonably be expected to claim in any manner or forum against one or more of the Released Parties, including, without limitation, by way of contribution or indemnity, in common law, or in equity, or under the provisions of any statute or regulation, and that in the event that any of the Released Parties are added to such claim or proceeding, it will immediately discontinue any such claim or proceeding. Notwithstanding the foregoing, nothing herein shall release or discharge a Released Party from its obligations, if any, under the Plan or any Approved Agreements. This paragraph does not apply to Unaffected Claims.

18. **THIS COURT ORDERS** that without limiting the effect or validity of any provision of this Order or the Plan and for greater certainty, immediately upon Plan Implementation occurring, all Persons (regardless of whether or not such Persons are Noteholders), along with their respective affiliates, present and former officers, directors, employees, associated individuals, auditors, financial advisors, legal counsel, other professionals, sureties, insurers, indemnitees, agents, dependents, heirs, representatives and assigns, as applicable, are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to ABCP Market Claims, from (i) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Released Parties; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against the Released Parties or their property; (iii) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits or demands, including without limitation, by way of contribution or indemnity or other relief, in common law, or in equity, or under the provisions of any statute or regulation, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes such a claim or might reasonably be expected to make such a claim, in any manner or forum, against one or

- 10 -

more of the Released Parties; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind; or (v) taking any actions to interfere with the implementation or consummation of this Plan. This paragraph does not apply to enjoin the making of Unaffected Claims.

19. **THIS COURT ORDERS** that, notwithstanding paragraphs 17 and 18, nothing in this Order shall: (i) release, enjoin or compromise claims against directors of the Respondents that are described in Section 5.1(2) of the CCAA; or (ii) stay, release, discharge, bar, enjoin or otherwise interfere with any powers or remedies of, or proceedings or investigations by, any regulatory or self-regulatory body having jurisdiction (pursuant to any applicable statute, regulation, rule or, in the case of the Investment Industry Regulatory Organization of Canada, contract) over any Released Party concerning such Released Party's involvement in the creation, issue, sale or rating of any Affected ABCP, provided that paragraphs 17 and 18 would be effective to release and enjoin the making of any order or award to compensate or make restitution to an aggrieved person or company or to pay general or punitive damages to any other person or company.

20. **THIS COURT ORDERS** that, without derogating from Section 9.3 of the Plan, paragraphs 17 and 18 hereof do not apply to an Excepted Claim (and only an Excepted Claim as strictly defined herein) by a Potential Plaintiff (as hereinafter defined) against a Potential Defendant (as hereinafter defined) for Damages (as hereinafter defined), provided that:

(a) for the purposes of this paragraph 20, a "Potential Plaintiff" shall mean a Noteholder other than:

- (i) ABCP Dealers, including any ABCP Dealer that is an institution represented by a member of the Investors Committee, the Asset Providers, and the Canadian Banks, together with, in all cases, all subsidiaries thereof and affiliates thereof, both upstream and downstream;
- (ii) the following Noteholders that are institutions represented by members of the Investors Committee: Alberta Treasury Branches operating as ATB Financial, Caisse de Dépôt et Placement du Québec, Canada Mortgage and

- 11 -

Housing Corporation, Canada Post Corporation, Credit Union Central of Alberta Limited, Credit Union Central of British Columbia, Credit Union Central of Canada, Credit Union Central of Ontario, Credit Union Central of Saskatchewan, Desjardins Group, Magna International Inc., NAV Canada, Northwater Capital Management Inc., Public Sector Pension Investment Board, and The Governors of the University of Alberta in respect of all Affected ABCP under the direct or indirect (including through affiliates) ownership, administration, management or control of the foregoing Noteholders, including but not limited to the Affected ABCP such Noteholders indicated to the Monitor for the purposes of voting on the Plan (collectively, the "Noteholders' Affected ABCP"), and all other Persons, including all subsidiaries and affiliates of the foregoing Noteholders both upstream and downstream, in respect of the Noteholders' Affected ABCP; and

- (iii) any clients or former clients of Canaccord Capital Corporation and Credential Securities Inc. that receive the payments contemplated by the publicly-announced "Canaccord Relief Program" or the "Credential Relief Program" (together, the "Programs"), provided that any client or former client of Canaccord Capital Corporation or Credential Securities Inc. that elected to participate in the Programs who does not receive payment of the purchase price to be paid by Canaccord Capital Corporation or Credential Securities Inc. before the end of the 20th business day after the completion of the distribution of Plan Notes shall be eligible and permitted to be a "Potential Plaintiff" for the purposes of this paragraph 20 and the nine week time period referenced in paragraph 20(f)(ii) shall commence as of that date;
- (b) for the purposes of this paragraph 20 and an Excepted Claim, "Potential Defendant" shall mean the ABCP Dealer that sold the specific Affected ABCP which is the subject of the Excepted Claim;

- 12 -

- (c) for the purposes of this paragraph 20, "Excepted Claim" shall mean a claim that contains all of the allegations required by paragraph 20(d) hereof and is based on allegations that the Potential Plaintiff suffered damages (or, if civil law applies to an Excepted Claim, prejudice) as a direct result of purchasing specific Affected ABCP in reliance on express fraudulent misrepresentations relevant to such specific Affected ABCP made directly by an authorized representative of the Potential Defendant to the Potential Plaintiff at the time such specific Affected ABCP held by the Potential Plaintiff was purchased from the Potential Defendant, that the representative made with the intention of inducing the Potential Plaintiff to purchase such specific Affected ABCP and that the representative knew to be false, and to be successful in such claim, each element of the Excepted Claim as set forth in this paragraph 20(c) and the particulars required by paragraph 20(d) must be proven; provided that, for greater certainty, nothing in this paragraph 20(c) is intended to create a new cause of action;
- (d) for the purposes of this paragraph 20, the initial pleadings of an Excepted Claim shall set out particulars of the following elements:
 - (i) the allegation that an authorized representative of a Potential Defendant made one or more express fraudulent misrepresentations directly to the Potential Plaintiff at the time of the sale of such specific Affected ABCP purchased by the Potential Plaintiff from the Potential Defendant with the intention to induce the Potential Plaintiff to purchase such specific Affected ABCP;
 - (ii) the allegation that the representations of the Potential Defendant's authorized representative was knowingly false to the knowledge of the representative where the Potential Plaintiff identifies:
 - 1. the name of the authorized representative of the Potential Defendant, including position if known;

- 13 -

2. the person or persons to whom the representation was made, including position with the Potential Plaintiff;
 3. the date or dates of the purchase of such specific Affected ABCP;
 4. the text of the representation said to be materially untrue and whether oral or in writing;
 5. the action taken by the Potential Plaintiff in reliance on the representation;
- (iii) the allegation that the Potential Plaintiff placed reliance on the representation and the basis on which it is alleged that the reliance was reasonable; and
- (iv) the detriment alleged to be suffered by the Potential Plaintiff;
- (e) the Potential Defendant may move before the CCAA Court for a determination that the claim of the Potential Plaintiff, as pled, does not constitute an Excepted Claim, and the determination of the CCAA Court shall be binding on the parties;
- (f) a Potential Plaintiff shall only have the right to pursue an Excepted Claim if:
- (i) the Potential Plaintiff expressly waives the application of Sections 10.1 and 10.2 of the Plan and paragraphs 17 and 18 hereof as they apply to any defences or counterclaims against the Potential Plaintiff that the Potential Defendant may wish to assert;
 - (ii) subject to paragraph 20(a)(iii), the Potential Plaintiff serves and files an initial pleading in a proceeding to pursue the Excepted Claim containing the particulars required by paragraph 20(d) within nine weeks of the date of delivery of notice by the Monitor;
 - (iii) the Potential Plaintiff affords to the Potential Defendant the opportunity, which the Potential Defendant may exercise within 10 days of service of

- 14 -

the Potential Plaintiff's initial pleading, to offer to purchase the Potential Plaintiff's Plan Notes issued on account of the specific Affected ABCP that is the subject of the Excepted Claim free and clear of any encumbrances (the "Subject Plan Notes"), and if the Subject Plan Notes are purchased by the Potential Defendant, then the Potential Plaintiff shall post cash or a letter of credit acceptable to the Potential Defendant as security in an amount equal to the estimated legal costs on a full indemnity basis (as may be determined by the Court in which the proceeding is commenced) of the Potential Defendant with respect to the Excepted Claim;

- (iv) if the Subject Plan Notes are not sold pursuant to (iii) above, the Potential Plaintiff shall post upon receipt its unencumbered Subject Plan Notes as security for costs relating to the proceeding provided that the Potential Plaintiff shall not be required to post any Subject Plan Notes (and if Subject Plan Notes have been posted, the Potential Plaintiff shall be entitled to release and possession of such notes) upon posting cash or a letter of credit acceptable to the Potential Defendant as security in an amount equal to the estimated legal costs on a full indemnity basis (as may be determined by the Court in which the proceeding is commenced) of the Potential Defendant with respect to the Excepted Claim; and
- (v) a Potential Plaintiff which has continued to hold or has received, as the case may be, the unencumbered Subject Plan Notes, after posting cash or a letter of credit as security for costs in accordance with paragraph 20(f)(iv), shall be entitled to encumber or dispose of any or all of such Subject Plan Notes;
- (g) except as provided in this paragraph 20, paragraphs 17 and 18 shall remain in full force and effect, and for greater certainty,
 - (i) a Potential Plaintiff may not commence any claim other than an Excepted Claim;

- 15 -

- (ii) a Potential Plaintiff may pursue an Excepted Claim only as provided by, and in accordance with the time limits set out in, this paragraph 20, and any Excepted Claim that is not pursued as provided by, and in accordance with the time limits set out in, this paragraph 20 is subject to paragraphs 17 and 18 and to Sections 10.1 and 10.2 of the Plan and therefore is forever released and barred upon the Plan Implementation Date having occurred;
- (iii) no claim other than an Excepted Claim shall be advanced by any Potential Plaintiff, even if such claim arises from the same set of facts that allegedly give rise to the Excepted Claim, and the Excepted Claim may not be expanded by the Potential Plaintiff through the discovery process provided that adding further factual particulars in respect of the Excepted Claim through the discovery process shall not be an expansion of the Excepted Claim; and
- (iv) a Potential Defendant may not under any circumstances seek contribution, indemnity or other relief over in respect of an Excepted Claim from another Released Party (other than the Potential Plaintiff, as contemplated by paragraph 20(f)(i)) where a Potential Plaintiff pursues an Excepted Claim against that Potential Defendant in accordance with this paragraph 20;
- (h) a Potential Plaintiff who proves each element of an Excepted Claim and proves the particulars thereof set forth in paragraph 20(d) shall be entitled to no more than damages ("Damages") equal to the difference between (i) the principal amount of the specific Affected ABCP, together with interest thereon, and (ii) the value of the consideration, including the Subject Plan Notes and any amounts distributed to the Potential Plaintiff on the Subject Plan Notes, previously distributed on account of such specific Affected ABCP through the implementation of the Plan. The value of the consideration in (ii) with respect to Subject Plan Notes that have been disposed of by the Potential Plaintiff shall be

- 16 -

the greatest of (x) the proceeds of disposition of such Subject Plan Notes together with any amounts previously distributed thereon, (y) the value of such Subject Plan Notes at the date of judgment on the Excepted Claim, together with any amounts previously distributed thereon, and (z) to the extent that the Potential Defendant purchases Plan Notes in a bona fide arm's length purchase at fair market value of the same class as the Subject Plan Notes within a reasonable period of time prior to the date Damages are assessed in respect of the Excepted Claim ("Purchased Plan Notes"), the purchase price paid by the Potential Defendant for the Purchased Plan Notes together with any amounts previously distributed on such Subject Plan Notes plus, to the extent that the Purchased Plan Notes are less in principal amount than the Subject Plan Notes, the value of the balance of Subject Plan Notes that the Potential Plaintiff disposed of computed as the greater of (x) and (y) in respect of such balance. Where the Potential Plaintiff is entitled to receive Damages, both the Potential Plaintiff and the Potential Defendant shall have the option of requiring the unsuccessful Potential Defendant to purchase, or requiring the Potential Plaintiff to sell to the Potential Defendant, as the case may be, the balance of the Potential Plaintiff's Subject Plan Notes as the Potential Plaintiff shall then hold and which were issued on account of the specific Affected ABCP for which Damages are payable, free and clear of any encumbrances, for the amount set out in (i) in respect of the specific Affected ABCP on account of which such Subject Plan Notes were issued, less any amounts previously distributed to the Potential Plaintiff as contemplated by (ii) in respect of the specific Affected ABCP on account of which such Subject Plan Notes were issued and on those Subject Plan Notes;

- (i) the successful litigant will be entitled to legal costs on a full indemnity basis with respect to Excepted Claim(s); and
- (j) the Monitor shall, within five Business Days following the date of this Order, give notice of the rights of Potential Plaintiffs under this paragraph 20 and Section 10.4 of the Plan as follows:

- 17 -

- (i) sending a notice to each party represented on the service list for this proceeding;
- (ii) posting a notice on the Website;
- (iii) sending a notice to each Noteholder who filed a Voter Identification Form or Voter Confirmation Form with the Monitor, by e-mail or (where no e-mail address was provided to the Monitor) by courier at the last e-mail or mailing address provided to the Monitor by the Noteholder;
- (iv) sending a notice to CDS and requesting that CDS notify its participants of the notice; and
- (v) sending a notice to each Registered Holder and requesting that such Registered Holder notify any parties on whose behalf the Registered Holder is holding Affected ABCP.

APPROVAL OF THE MONITOR'S REPORTS

21. **THIS COURT ORDERS** that the Reports of the Monitor and the activities of the Monitor referred to therein be and are hereby approved.

DISCHARGE OF MONITOR

22. **THIS COURT ORDERS** that on the Plan Implementation Date, and subject to this Order, the Monitor shall be discharged and released and shall have no further obligations or responsibilities, except only with respect to any remaining duties or powers required to implement and give effect to the terms of the Plan and this Order.

23. **THIS COURT ORDERS** that the completion of the Monitor's duties shall be evidenced, and its final discharge shall be effected by the filing by the Monitor with this Court of a certificate of discharge.

24. **THIS COURT ORDERS AND DECLARES** that the actions and conduct of the Monitor in the CCAA Proceedings are hereby approved and that the Monitor has satisfied all of

- 18 -

its obligations up to and including the date of this Order, and that in addition to the protections in favour of the Monitor as set out in the Orders of this Court in the CCAA Proceedings to date, the Monitor shall not be liable for any act or omission on the part of the Monitor, including with respect to any reliance thereof, including without limitation, with respect to any information disclosed, any act or omission pertaining to the discharge of duties under the Plan or as requested by the Applicants or with respect to any other duties or obligations in respect of the implementation of the Plan, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Subject to the foregoing, and in addition to the protections in favour of the Monitor as set out in the Orders of this Court, any claims against the Monitor in connection with the performance of its duties as Monitor are hereby released, stayed, extinguished and forever barred and the Monitor shall have no liability in respect thereof.

25. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court and on prior written notice to the Monitor and such further order securing, as security for costs, the solicitor and his own client costs of the Monitor in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

26. **THIS COURT ORDERS** that the Monitor, its affiliates, and their respective officers, directors, employees and agents, and counsel for the Monitor, are hereby released and discharged from any and all claims that any Persons may have or be entitled to assert against the Monitor, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of issue of this Order in any way relating to, arising out of or in respect of the CCAA Proceedings.

CHARGES

27. **THIS COURT ORDERS** that, upon the terms of Section 6.5 of the Plan being met, the CCAA Charges on the assets of the CCAA Parties provided for in the Initial CCAA Order and

any subsequent Orders in the CCAA Proceedings shall automatically be fully and finally terminated, discharged and released on the Plan Implementation Date.

28. **THIS COURT ORDERS** that, notwithstanding the preceding paragraph, the Monitor shall continue to hold the benefit of a CCAA Charge, as provided in the Initial CCAA Order, until the Monitor has completed its duties under the Plan and the fees and disbursements of the Monitor and its counsel have been fully paid.

INITIAL CCAA ORDER AND OTHER ORDERS

29. **THIS COURT ORDERS** that:

- (a) except to the extent that the Initial CCAA Order has been varied by or is inconsistent with this Order or any further Order of this Court, the provisions of the Initial CCAA Order shall remain in full force and effect until the Plan Implementation Date; provided that the protections granted in favour of the Monitor shall continue in full force and effect after the Plan Implementation Date; and
- (b) all other Orders made in the CCAA Proceedings shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by, or are inconsistent with, this Order or any further Order of this Court in the CCAA Proceedings; provided that the protections granted in favour of the Monitor shall continue in full force and effect after the Plan Implementation Date.

EFFECT, RECOGNITION, ASSISTANCE

30. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may otherwise be enforceable.

31. **THIS COURT REQUESTS** the aid, recognition and assistance of other courts in Canada in accordance with Section 17 of the CCAA and requests that the Federal Court of

- 20 -

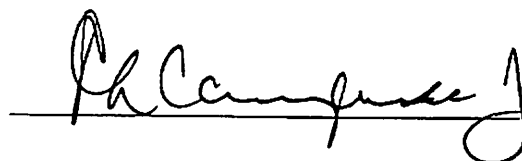
Canada and the courts and judicial, regulatory and administrative bodies of or by the provinces and territories of Canada, the Parliament of Canada, the United States of America, the states and other subdivisions of the United States of America including, without limitation, the U.S. District Court, and other nations and states act in aid, recognition and assistance of, and be complementary to, this Court in carrying out the terms of this Order and any other Order in this proceeding. Each of Applicants and the Monitor shall be at liberty, and is hereby authorized and empowered, to make such further applications, motions or proceedings to or before such other court and judicial, regulatory and administrative bodies, and take such other steps, in Canada or the United States of America, as may be necessary or advisable to give effect to this Order.

32. **THIS COURT ORDERS AND DECLARES** that this Order will form the basis for an exemption from the registration requirements under section 3(a)10 of the *United States Securities Act of 1933*, as amended, in respect of certain securities to be issued pursuant to the Plan.

ADVICE AND DIRECTION

33. **THIS COURT ORDERS** that the Applicants may from time to time apply to this Court for advice and directions concerning further amendments to the Plan.

34. **THIS COURT ORDERS** that any of the Monitor, the Applicants or the Respondents may from time to time apply to this Court for advice and directions concerning the implementation of the Plan or the discharge of their powers and duties hereunder.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 05 2008

PER/PAR: 

SCHEDULE "A"**Conduit Trusts**

Apollo Trust
Apsley Trust
Aria Trust
Aurora Trust
Comet Trust
Encore Trust
Gemini Trust
Ironstone Trust
MMAI-I Trust
Newshore Canadian Trust
Opus Trust
Planet Trust
Rocket Trust
Selkirk Funding Trust
Silverstone Trust
Slate Trust
Structured Asset Trust
Structured Investment Trust III
Symphony Trust
Whitehall Trust

-22-

SCHEDULE "B"

Applicants

ATB Financial
Caisse de Dépôt et Placement du Québec
Canaccord Capital Corporation
Canada Mortgage and Housing Corporation
Canada Post Corporation
Credit Union Central Alberta Limited
Credit Union Central of British Columbia
Credit Union Central of Canada
Credit Union Central of Ontario
Credit Union Central of Saskatchewan
Desjardins Group
Magna International Inc.
National Bank Financial Inc./National Bank Of Canada
NAV Canada
Northwater Capital Management Inc.
Public Sector Pension Investment Board
The Governors of the University of Alberta

SCHEDULE "C"

Amendments to Amended Plan of Compromise and Arrangement dated March 19, 2008

Section 1.1

- in the definition of "ABCP Dealers" at the end, before the semi-colon, insert "or that purchased any of the Affected ABCP on behalf of its clients"
- in the definition of "Liquidity Providers" delete "Barclays Bank plc"
- in the definition of "Released Parties" delete "Satellite Trusts Parties" and replace with "Satellite Trust Parties", delete "Canadian Depositary" and replace with "The Canadian Depositary" and replace "Depositary Services" with "Depositary Services"
- delete the definition of "Satellite Trust" and replace with:

"Satellite Trust" means a trust created pursuant to a base trust agreement or a declaration of trust in respect of which any of the ABCP Conduits, alone or together with other ABCP Conduits, holds all or substantially all of the beneficial ownership interests or debt interests.

- after the definition of "SN Tracking Notes" insert the following new definition:

"Specified Satellite Trusts" means the following Satellite Trusts: Constellation Credit Linked Trust (CB LSS-2) Series 2006-1, Constellation Credit Linked Trust (CB LSS) Series 2005-1, Constellation Credit Linked Trust (Super Senior 2) Series 2005-1, Constellation Credit Linked Trust (Shamrock) Series 2005-1, Constellation Credit Linked Trust (CDXLS 1) Series 2006-1, Constellation Credit Linked Trust (PML-M2) Series 2006-1, Constellation Credit Linked Trust (ML LSS) Series 2006-1, Constellation Credit Linked Trust (ML6 L/S) Series 2006-1, Constellation Credit Linked Trust (Banff) Series 2006-1, Constellation Credit Linked Trust (Galibier) Series 2006-1, Constellation Credit Linked Trust (Super Senior 3) Series 2005-1, Constellation Credit Linked Trust (Super Senior 4) Series 2005-1, Constellation Credit Linked Trust (iTraxx 1) Series 2006-1, Constellation Credit Linked Trust (IML-CDS-2) Series 2005-1, Constellation Credit Linked Trust (IML-CDS) Series 2005-1, Constellation Credit Linked Trust (Integrity) Series 2005-1, Constellation Credit Linked Trust (Integrity) Series 2005-2, Constellation Credit Linked Trust (ML LSS-2) Series 2006-1, Constellation Credit Linked Trust (Stamford) Series 2006-1, Constellation Credit Linked Trust (MPL-CDN) Series 2006-1, Constellation Credit Linked Trust (MPL-US) Series 2006-1, Constellation Credit Linked Trust (SYNREMIC) Series

-ii-

2005-1, Nemertes Credit Linked Trust (MT-LSS) Series 2005, Nemertes Credit Linked Certificate Trust (Commerce-LSS) Series 2005, Nemertes Credit Linked Certificate Trust (CADBANA) Series 2005-1, Nemertes Credit Linked Certificate Trust (EC Super Senior) Series 2005-1, Nemertes Credit Linked Certificate Trust (LSS II) Series 2005, Nemertes Credit Linked Certificate Trust (ML-LSS II) Series 2006, Nemertes Credit Linked Certificate Trust (Morningside) Series 2005, Nemertes Credit Linked Certificate Trust (BCO-LSS) Series 2006, Nemertes Credit Linked Certificate Trust (Citi-LSS) Series 2006, Nemertes Credit Linked Certificate Trust (Commerce-LSS II) Series 2006, Nemertes Credit Linked Certificate Trust (ML-LSS) Series 2006, Nemertes Credit Linked Certificate Trust (ML-LSS IV) Series 2006 and Coastal Mountain Base Trust Series 2006-1;

Section 3.3

- delete the words “as against a CCAA Party” from the lead-in language

Section 5.2(c)

- at the beginning, above the heading MAV1, insert the following new paragraph:

Each of the Specified Satellite Trusts will redeem all outstanding certificates issued by it and will satisfy the redemption price by issuing to the holder one or more demand non-interest bearing promissory notes (each, a “Satellite Trust Promissory Note”) having a principal amount equal to the adjusted cost base (as defined in subsection 107(1) of the *Income Tax Act* (Canada)) of the certificate immediately prior to it being redeemed.

- in the first sentence of the paragraph that is immediately below the heading MAV1, after “and Ineligible Assets” insert “(or where the Synthetic and Hybrid Assets and Ineligible Assets are owned by a Satellite Trust other than a Specified Satellite Trust, that portion of the ABCP Conduit’s interest in the Satellite Trust)”
- at the end of the paragraph that is immediately below the heading MAV1, insert the following new paragraph:

Where an ABCP Conduit transfers assets to MAV1 pursuant to the foregoing and thereby transfers to MAV1 a Satellite Trust Promissory Note of a Specified Satellite Trust, that Specified Satellite Trust will assign, transfer and convey to MAV1 the same proportion of its Synthetic and Hybrid Assets as that transferred by the ABCP Conduit holding its Satellite Trust Promissory Note. MAV1 will satisfy the purchase price for the transferred assets by assuming the same proportionate amount of the respective Specified Satellite Trust’s obligations (i)

-iii-

incurred by it to fund or refinance the acquisition and ownership of such assets and preserving the rank and priority of repayment of such obligations, and (ii) under the Satellite Trust Promissory Note issued by it as described above.

- in the first sentence of the paragraph that is immediately below the heading MAV2, after “and Ineligible Assets” insert “(or where the Synthetic and Hybrid Assets and Ineligible Assets are owned by a Satellite Trust other than a Specified Satellite Trust, a portion of the ABCP Conduit’s interest in the Satellite Trust)”
- at the end of the first paragraph that is immediately below the heading the MAV2, insert the following new paragraph:

Where an ABCP Conduit transfers assets to MAV2 pursuant to the foregoing and thereby transfers to MAV2 a Satellite Trust Promissory Note of a Specified Satellite Trust, that Specified Satellite Trust will assign, transfer and convey to MAV2 the same proportion of its Synthetic and Hybrid Assets as that transferred by the ABCP Conduit holding its Satellite Trust Promissory Note. MAV2 will satisfy the purchase price for the transferred assets by assuming the same proportionate amount of the respective Specified Satellite Trust’s obligations (i) incurred by it to fund or refinance the acquisition and ownership of such assets and preserving the rank and priority of repayment of such obligations, and (ii) under the Satellite Trust Promissory Note issued by it as described above.

Section 5.2(d)

- in the first sentence, after the first occurrence of “Ineligible Assets”, insert “, and each Specified Satellite Trust owning Ineligible Assets,”
- in the second sentence, in sub-paragraph (i), after “ABCP Conduit’s”, insert “or Specified Satellite Trust’s” and after “Conduits”, insert “or Specified Satellite Trusts”
- in sub-paragraph (ii), after “ABCP Conduits”, insert “(or Satellite Trust Promissory Note in the case of a Specified Satellite Trust)”
- after the first paragraph, insert the following new paragraph:

Upon completion of the transfers set out in Section 5.2(c) and this Section 5.2(d) the Satellite Trust Promissory Notes will be cancelled.

Section 5.2(e)

- in the first sentence, after “its Exclusively Traditional Assets”, insert “(or where the Exclusively Traditional Assets are owned by a Satellite Trust other than a Specified Satellite Trust, the ABCP Conduit’s interest in that Satellite Trust)”

Section 5.2(f)

- after the words “ABCP Conduits”, insert “or applicable Satellite Trusts, as the case may be”

Section 5.2(h)

- at the end of the first sentence, delete “MAV1 Notes, MAV2 Notes and/or MAV3 Notes” and replace with “Plan Notes”

Section 5.2(k)

- in the first sentence, after “ABCP Conduits” insert “and Specified Satellite Trusts”
- in the first sentence, insert “and” before “(ii)” and delete “the shares of each of the Respondents will be acquired by the New Issuer Trustee on behalf of the MAVs (or by a new entity) and (iii)”

Section 6.1

- in the last sentence of the first paragraph insert after “Noteholder” the following “, other than National Bank of Canada and National Bank Financial Inc.,”

Section 6.2

- in the first sentence, delete the first “will” and replace with “may” and delete the second “will” and replace with “would”
- at the end of the second sentence, insert before the period “, if and when directed to do so by the Monitor”

-v-

Section 6.6

- in the second sentence, after “on” insert “or after”
- after the second sentence insert the following sentence:

The amount payable to Noteholders on account of interest (the “Interest Entitlement”) on Affected ABCP as of the Plan Implementation Date shall be determined by the Investors Committee with the assistance of the Monitor and shall be limited to and calculated in reference to, those surplus funds.

- at the end of the section, add the following new sentence:

Any right of Noteholders to receive interest in excess of the Interest Entitlement will be extinguished before the exchange of Affected ABCP described in Section 5.2(h) occurs.

Section 6.7

- delete all of Section 6.7 and replace with the following:

Registered Noteholders (whose names appear on the registers maintained by the Issuing and Paying Agents) and participants (“Institutional Participants”) in the clearing and depository systems maintained by CDS Clearing & Depository Services Inc. in respect of Affected ABCP for which CDS Clearing & Depository Services Inc. is the registered holder (collectively, “Depositing Holders”) will be required to properly complete and deliver tender and transmittal documentation, together with all physical certificates held by such Depositing Holder (if any), to the Depository (either directly or indirectly using the automated CDSX on-line system), as directed by the Monitor and the Depository. Following the Plan Implementation Date, upon receipt of all properly completed required documentation, the Depository will deliver (or instruct the New Indenture Trustees to deliver) to such Depositing Holders the Plan Notes to which each is entitled in accordance with this Plan, which Plan Notes may be delivered directly by way of physical certificates or by way of a confirmation of a global deposit position with CDS Clearing & Depository Services Inc., as appropriate. Certain holders of Plan Notes may be required to continue to hold physical certificates. Depositing Holders who fail to deliver the required documentation within two (2) years of the Plan Implementation Date may be barred, at the option of the applicable MAVs, from receiving distributions of Plan Notes in respect of such Affected ABCP. No Plan Note will be issued in an amount less than one dollar (\$1). All amounts will be rounded down to the nearest whole dollar. The transmittal documentation (including any letter of transmittal) will include instructions as to the calculation of entitlements to Plan Notes, including for the

-vi-

purposes of allocating to beneficial holders on behalf of whom a Depositing Holder may hold Affected ABCP.

Sections 10.3 and 10.4

- after Section 10.2, add the following new sections:

10.3 Notwithstanding sections 10.1 and 10.2, nothing in this Plan shall: (i) release, enjoin or compromise claims against directors of the Respondents that are described in Section 5.1(2) of the CCAA; or (ii) stay, release, discharge, bar, enjoin or otherwise interfere with any powers or remedies of, or proceedings or investigations by, any regulatory or self-regulatory body having jurisdiction (pursuant to any applicable statute, regulation, rule or, in the case of the Investment Industry Regulatory Organization of Canada, contract) over any Released Party concerning such Released Party's involvement in the creation, issue, sale or rating of any Affected ABCP, provided that sections 10.1 and 10.2 would be effective to release and enjoin the making of any order or award to compensate or make restitution to an aggrieved person or company or to pay general or punitive damages to any other person or company.

10.4 Without derogating from Section 9.3, Sections 10.1 and 10.2 do not apply to an Excepted Claim (and only an Excepted Claim as strictly defined herein) by a Potential Plaintiff (as hereinafter defined) against a Potential Defendant (as hereinafter defined) for Damages (as hereinafter defined), provided that:

- (a) for the purposes of this Section 10.4, a "Potential Plaintiff" shall mean a Noteholder other than:
 - (i) ABCP Dealers, including any ABCP Dealer that is an institution represented by a member of the Investors Committee, the Asset Providers, and the Canadian Banks, together with, in all cases, all subsidiaries thereof and affiliates thereof, both upstream and downstream;
 - (ii) the following Noteholders that are institutions represented by members of the Investors Committee: Alberta Treasury Branches operating as ATB Financial, Caisse de Dépôt et Placement du Québec, Canada Mortgage and Housing Corporation, Canada Post Corporation, Credit Union Central of Alberta Limited, Credit Union Central of British Columbia, Credit Union Central of Canada, Credit Union Central of Ontario, Credit Union Central of Saskatchewan, Desjardins Group, Magna International Inc., NAV Canada, Northwater Capital Management Inc., Public Sector Pension Investment Board, and The Governors of the University of Alberta in respect of all Affected ABCP

-vii-

under the direct or indirect (including through affiliates) ownership, administration, management or control of the foregoing Noteholders, including but not limited to the Affected ABCP such Noteholders indicated to the Monitor for the purposes of voting on the Plan (collectively, the "Noteholders' Affected ABCP"), and all other Persons, including all subsidiaries and affiliates of the foregoing Noteholders both upstream and downstream, in respect of the Noteholders' Affected ABCP; and

- (iii) any clients or former clients of Canaccord Capital Corporation and Credential Securities Inc. that receive the payments contemplated by the publicly-announced "Canaccord Relief Program" or the "Credential Relief Program" (together, the "Programs"), provided that any client or former client of Canaccord Capital Corporation or Credential Securities Inc. that elected to participate in the Programs who does not receive payment of the purchase price to be paid by Canaccord Capital Corporation or Credential Securities Inc. before the end of the 20th business day after the completion of the distribution of Plan Notes shall be eligible and permitted to be a "Potential Plaintiff" for the purposes of this Section 10.4 and the nine week time period referenced in Section 10.4(f)(ii) shall commence as of that date;
- (b) for the purposes of this Section 10.4 and an Excepted Claim, "Potential Defendant" shall mean the ABCP Dealer that sold the specific Affected ABCP which is the subject of the Excepted Claim;
- (c) for the purposes of this Section 10.4, "Excepted Claim" shall mean a claim that contains all of the allegations required by Section 10.4(d) hereof and is based on allegations that the Potential Plaintiff suffered damages (or, if civil law applies to an Excepted Claim, prejudice) as a direct result of purchasing specific Affected ABCP in reliance on express fraudulent misrepresentations relevant to such specific Affected ABCP made directly by an authorized representative of the Potential Defendant to the Potential Plaintiff at the time such specific Affected ABCP held by the Potential Plaintiff was purchased from the Potential Defendant, that the representative made with the intention of inducing the Potential Plaintiff to purchase such specific Affected ABCP and that the representative knew to be false, and to be successful in such claim, each element of the Excepted Claim as set forth in this Section 10.4(c) and the particulars required by Section 10.4(d)

-viii-

must be proven; provided that, for greater certainty, nothing in this Section 10.4(c) is intended to create a new cause of action;

- (d) for the purposes of this Section 10.4, the initial pleadings of an Excepted Claim shall set out particulars of the following elements:
 - (i) the allegation that an authorized representative of a Potential Defendant made one or more express fraudulent misrepresentations directly to the Potential Plaintiff at the time of the sale of such specific Affected ABCP purchased by the Potential Plaintiff from the Potential Defendant with the intention to induce the Potential Plaintiff to purchase such specific Affected ABCP;
 - (ii) the allegation that the representations of the Potential Defendant's authorized representative was knowingly false to the knowledge of the representative where the Potential Plaintiff identifies:
 - 1. the name of the authorized representative of the Potential Defendant, including position if known;
 - 2. the person or persons to whom the representation was made, including position with the Potential Plaintiff;
 - 3. the date or dates of the purchase of such specific Affected ABCP;
 - 4. the text of the representation said to be materially untrue and whether oral or in writing;
 - 5. the action taken by the Potential Plaintiff in reliance on the representation;
 - (iii) the allegation that the Potential Plaintiff placed reliance on the representation and the basis on which it is alleged that the reliance was reasonable; and
 - (iv) the detriment alleged to be suffered by the Potential Plaintiff;
- (e) the Potential Defendant may move before the CCAA Court for a determination that the claim of the Potential Plaintiff, as pled, does not constitute an Excepted Claim, and the determination of the CCAA Court shall be binding on the parties;
- (f) the Sanction Order shall provide that, notwithstanding any motion or application for leave to appeal or appeal from the Sanction

-ix-

Order, the Monitor shall notify all Potential Plaintiffs of their rights under this Section 10.4 within five Business Days following the date of the Sanction Order and a Potential Plaintiff shall only have the right to pursue an Excepted Claim if:

- (i) the Potential Plaintiff expressly waives the application of Sections 10.1 and 10.2 as it applies to any defences or counterclaims against the Potential Plaintiff that the Potential Defendant may wish to assert;
- (ii) subject to Section 10.4(a)(iii), the Potential Plaintiff serves and files an initial pleading in a proceeding to pursue the Excepted Claim containing the particulars required by Section 10.4(d) within nine weeks of the date of delivery of notice by the Monitor;
- (iii) the Potential Plaintiff affords to the Potential Defendant the opportunity, which the Potential Defendant may exercise within 10 days of service of the Potential Plaintiff's initial pleading, to offer to purchase the Potential Plaintiff's Plan Notes issued on account of the specific Affected ABCP that is the subject of the Excepted Claim free and clear of any encumbrances (the "Subject Plan Notes"), and if the Subject Plan Notes are purchased by the Potential Defendant, then the Potential Plaintiff shall post cash or a letter of credit acceptable to the Potential Defendant as security in an amount equal to the estimated legal costs on a full indemnity basis (as may be determined by the Court in which the proceeding is commenced) of the Potential Defendant with respect to the Excepted Claim;
- (iv) if the Subject Plan Notes are not sold pursuant to (iii) above, the Potential Plaintiff shall post upon receipt its unencumbered Subject Plan Notes as security for costs relating to the proceeding provided that the Potential Plaintiff shall not be required to post any Subject Plan Notes (and if Subject Plan Notes have been posted, the Potential Plaintiff shall be entitled to release and possession of such notes) upon posting cash or a letter of credit acceptable to the Potential Defendant as security in an amount equal to the estimated legal costs on a full indemnity basis (as may be determined by the Court in which the proceeding is commenced) of the Potential Defendant with respect to the Excepted Claim; and
- (v) a Potential Plaintiff which has continued to hold or has received, as the case may be, the unencumbered Subject

-x-

Plan Notes, after posting cash or a letter of credit as security for costs in accordance with Section 10.4(f)(iv), shall be entitled to encumber or dispose of any or all of such Subject Plan Notes;

- (g) except as provided in this Section 10.4, Sections 10.1 and 10.2 shall remain in full force and effect, and for greater certainty,
 - (i) a Potential Plaintiff may not commence any claim other than an Excepted Claim;
 - (ii) a Potential Plaintiff may pursue an Excepted Claim only as provided by, and in accordance with the time limits set out in, this Section 10.4, and any Excepted Claim that is not pursued as provided by, and in accordance with the time limits set out in, this Section 10.4 is subject to Sections 10.1 and 10.2 and therefore is forever released and barred;
 - (iii) no claim other than an Excepted Claim shall be advanced by any Potential Plaintiff, even if such claim arises from the same set of facts that allegedly give rise to the Excepted Claim, and the Excepted Claim may not be expanded by the Potential Plaintiff through the discovery process provided that adding further factual particulars in respect of the Excepted Claim through the discovery process shall not be an expansion of the Excepted Claim; and
 - (iv) a Potential Defendant may not under any circumstances seek contribution, indemnity or other relief over in respect of an Excepted Claim from another Released Party (other than the Potential Plaintiff, as contemplated by Section 10.4(f)(i)) where a Potential Plaintiff pursues an Excepted Claim against that Potential Defendant in accordance with this Section 10.4;
- (h) a Potential Plaintiff who proves each element of an Excepted Claim and proves the particulars thereof set forth in Section 10.4(d) shall be entitled to no more than damages ("Damages") equal to the difference between (i) the principal amount of the specific Affected ABCP, together with interest thereon, and (ii) the value of the consideration, including the Subject Plan Notes and any amounts distributed to the Potential Plaintiff on the Subject Plan Notes, previously distributed on account of such specific Affected ABCP through the implementation of the Plan. The value of the consideration in (ii) with respect to Subject Plan Notes that have been disposed of by the Potential Plaintiff shall be the greatest of (x) the proceeds of disposition of such Subject Plan

-xi-

Notes together with any amounts previously distributed thereon, (y) the value of such Subject Plan Notes at the date of judgment on the Excepted Claim, together with any amounts previously distributed thereon, and (z) to the extent that the Potential Defendant purchases Plan Notes in a bona fide arm's length purchase at fair market value of the same class as the Subject Plan Notes within a reasonable period of time prior to the date Damages are assessed in respect of the Excepted Claim ("Purchased Plan Notes"), the purchase price paid by the Potential Defendant for the Purchased Plan Notes together with any amounts previously distributed on such Subject Plan Notes plus, to the extent that the Purchased Plan Notes are less in principal amount than the Subject Plan Notes, the value of the balance of Subject Plan Notes that the Potential Plaintiff disposed of computed as the greater of (x) and (y) in respect of such balance. Where the Potential Plaintiff is entitled to receive Damages, both the Potential Plaintiff and the Potential Defendant shall have the option of requiring the unsuccessful Potential Defendant to purchase, or requiring the Potential Plaintiff to sell to the Potential Defendant, as the case may be, the balance of the Potential Plaintiff's Subject Plan Notes as the Potential Plaintiff shall then hold and which were issued on account of the specific Affected ABCP for which Damages are payable, free and clear of any encumbrances, for the amount set out in (i) in respect of the specific Affected ABCP on account of which such Subject Plan Notes were issued, less any amounts previously distributed to the Potential Plaintiff as contemplated by (ii) in respect of the specific Affected ABCP on account of which such Subject Plan Notes were issued and on those Subject Plan Notes; and

- (i) the successful litigant will be entitled to legal costs on a full indemnity basis with respect to Excepted Claim(s).

Section 11.1

- in the lead-in language delete "Margin Funding" and replace with "MFF"

Schedule "A"

- under "Apollo Trust", delete "Series F"
- under "Rocket Trust", immediately following "Series B" insert "Series D"

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED

Court File No.: 08-CL-7440

AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT INVOLVING
METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS II CORP., ET AL.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

SANCTION ORDER

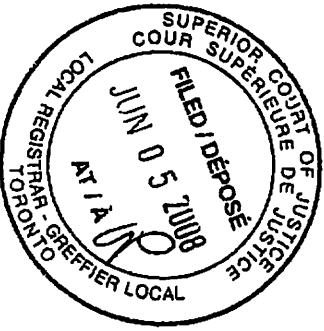
GOODMANS LLP

Barristers & Solicitors
250 Yonge Street, Suite 2400
Toronto, Canada M5B 2M6

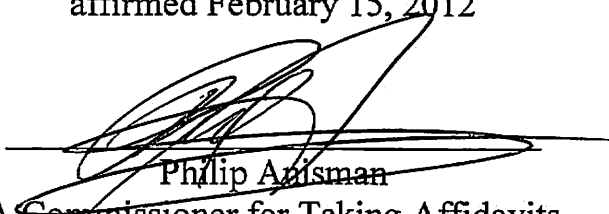
Benjamin Zarnett LSUC#: 17247M
Fred Myers LSUC#: 26301A
Brian F. Empey LSUC#: 30640G

Tel: 416.979.2211
Fax: 416.979.1234

Counsel for the Applicants



This is Exhibit "B" to the
Affidavit of Kathryn Daniels,
affirmed February 15, 2012



Philip Arisman
A Commissioner for Taking Affidavits

**IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED**

AND

**IN THE MATTER OF
CANADIAN IMPERIAL BANK OF COMMERCE
AND CIBC WORLD MARKETS INC.**

ORDER

WHEREAS on December 18, 2009, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in relation to Canadian Imperial Bank of Commerce and CIBC World Markets Inc. (together, "CIBC");

AND WHEREAS CIBC and Staff of the Commission ("Staff") entered into a settlement agreement dated December 16, 2009 attached hereto as Appendix "A" (the "Settlement Agreement") in which they agreed to a settlement of the proceeding commenced by the Notice of Hearing dated December 18, 2009, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, and upon hearing submissions from counsel for Staff and CIBC;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS ORDERED THAT:

1. The Settlement Agreement is approved;
2. CIBC shall submit to a review of its compliance practices and procedures in accordance with the Terms of Reference attached at Schedule "B" to the Settlement Agreement;
3. CIBC pay to the Commission the sum of \$21.7 million, to be allocated under section 3.4(2)(b) of the Act to or for the benefit of third parties; and
4. CIBC pay the costs of the Commission's investigation in the amount of \$300,000.

DATED at Toronto this 21st day of December, 2009.

"James E.A. Turner"

"Mary G. Condon"

APPENDIX "A"

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
CANADIAN IMPERIAL BANK OF COMMERCE
AND CIBC WORLD MARKETS INC.

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 and section 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), it is in the public interest for the Commission to make certain orders in respect of Canadian Imperial Bank of Commerce and CIBC World Markets Inc. (together, "CIBC").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding commenced by Notice of Hearing dated December 18, 2009 (the "Proceeding") against CIBC according to the terms and conditions set out in Part IV of this Settlement Agreement. CIBC agrees to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III – AGREED FACTS

3. CIBC admits the facts set out in this Settlement Agreement solely for the purposes of this Settlement Agreement. This Settlement Agreement and the facts and admissions set out herein are without prejudice to CIBC in any proceeding including, without limitation, any civil, administrative, quasi-criminal or criminal actions or proceedings that may be brought by any person or agency, whether or not this Settlement Agreement is approved by the Commission.

OVERVIEW

4. Canadian Imperial Bank of Commerce is a bank listed on Schedule I of the *Bank Act* (Canada). Its head office is located in Toronto, Ontario. CIBC World Markets Inc. is a corporation incorporated under the laws of the Province of Ontario. It is a wholly owned subsidiary of CIBC. Its head office is also located in Toronto, Ontario.
5. On August 13, 2007, the Canadian non-bank sponsored asset-backed commercial paper ("ABCP" or "third-party ABCP") market froze, leaving Canadian investors holding illiquid investments that they could neither sell nor redeem.
6. CIBC was an agent for issuers in the third-party ABCP market. In that capacity, CIBC bought and sold third-party ABCP.

ASSET-BACKED COMMERCIAL PAPER

7. ABCP is a short-term debt instrument with typical maturities of 30 to 180 days. ABCP is backed by a pool of underlying assets and offers a yield slightly better than the yield offered on short-term government debt.
8. ABCP is issued by a special purpose vehicle (also referred to as a conduit). In Canada, ABCP is issued by trusts established by sponsors. Sponsors generally select underlying assets, administer the assets and arrange for the sale of the ABCP notes. The Canadian ABCP market included two categories: bank-sponsored and non-bank-sponsored (or third party) ABCP.
9. As the underlying assets held by conduits were long-term and the ABCP notes were short-term, there was a timing mismatch between the cash flowing from the assets and the cash needed to repay maturing ABCP. For many years, conduits met their maturity obligations by selling newly issued ABCP, the proceeds of which were used to pay maturing ABCP. The liquidity of ABCP was an important characteristic for investors along with credit ratings and yields.

10. To safeguard against difficulty meeting maturity obligations, conduits entered into agreements with liquidity providers which provided credit lines under certain conditions. In general, there were two types of liquidity facilities: (1) general market disruption ("GMD") and (2) global-style. GMD liquidity was also called "Canadian-style" since it was only available in the Canadian ABCP market. Unlike global-style liquidity facilities, Canadian-style liquidity facilities required specified "general market disruption" events and a credit rating affirmation before liquidity was provided.
11. Liquidity agreements were subject to confidentiality provisions. Many details of the pre-conditions required for liquidity support, including the definition of a "general market disruption event", were not known to the public, investors or to the distributors of ABCP who were not also liquidity providers. Conduits generally disclosed the existence of their liquidity arrangements and disclosed that there were pre-conditions to draws.
12. In Ontario, as of September 14, 2005, pursuant to National Instrument 45-106 – *Prospectus and Registration Exemptions*, the issuance and sale of commercial paper, including ABCP, was exempt from the requirements to deliver a prospectus, provided that such commercial paper matured not more than one year from the date of issue and had an "approved credit rating" from an "approved credit rating organization".
13. The conduits issuing the ABCP were not reporting issuers under applicable securities laws and were not required to engage in continuous disclosure under Canadian securities laws.
14. Dominion Bond Rating Services Limited ("DBRS"), an approved credit rating organization, was the sole credit rating organization which rated third-party ABCP in Canada. To this end, DBRS had access to the following information regarding third-party ABCP: the details of the structure, the underlying assets and the liquidity agreements.
15. On January 19, 2007, DBRS announced changes to its rating methodology for certain new transactions entered into by ABCP issuers. The DBRS press release set out specific new rating criteria, including a requirement for global-style liquidity, to be applied prospectively in the marketplace.

THIRD-PARTY ABCP

16. ABCP has been in the Canadian marketplace for over a decade, and non-bank sponsors entered the marketplace in approximately 2000.
17. Historically, the assets underlying ABCP consisted of traditional assets such as consumer loans, credit card receivables and residential mortgages. Non-traditional complex synthetic assets, such as collateralized debt obligations, came into these structures over time.
18. Third-party ABCP was typically issued by a series of notes, the most common being Series "A" Notes and Series "E" Notes. The "A" Notes were supported by the Canadian-style liquidity facilities. "E" Notes were not supported by liquidity facilities, but could be extended up to 364 days after the original maturity date if certain conditions were met, including that market conditions did not allow for "E" Notes to be sold at a specified spread.
19. The sponsors provided limited information regarding the underlying pool of assets in conduits issuing ABCP. Sponsors typically provided an information memorandum describing the basic elements of ABCP. In most cases, the general asset classes were the only information publicly disclosed; there was no disclosure of the specific assets held in the conduits or the terms of the liquidity agreements supporting the ABCP.

COVENTREE INC.

20. At all material times, Coventree Inc. was the largest sponsor of third-party ABCP in Canada. Coventree Inc. also issued third-party ABCP through a subsidiary, Nereus Financial Inc. ("Nereus").
21. At all material times, Coventree Inc. and Nereus (collectively, "Coventree") sponsored the following third-party ABCP conduits: Apollo Trust, Aurora Trust, Comet Trust, Gemini Trust, Planet Trust, Rocket Trust, Slate Trust, Venus Trust, Structured Investment Trust III and Structured Asset Trust.
22. All Coventree conduits but one received an R1-(high) rating (the highest credit rating available, equivalent to a "AAA" for long term debt) by DBRS, as did other Canadian third-party ABCP. This rating remained in place at all material times up to and including August 13, 2007. Coventree ABCP was rated by DBRS above the minimum "approved credit rating" required by NI 45-106 at all material times.

DISTRIBUTION OF THIRD-PARTY ABCP

23. In general, third-party ABCP was distributed to investors through a dealer group (the "dealer syndicate"). Typically, one member of the dealer syndicate would be appointed as lead dealer. Some of the lead dealer's daily duties included the allocation of ABCP notes to dealer syndicate members and setting the yield in consultation with the conduit sponsor.
24. The dealer syndicate members maintained trading lines, up to a credit limit, for third-party ABCP mainly to provide a market-making function. Dealer syndicate members would typically purchase third-party ABCP that was not sold at the end of a trading day. These positions were to be held on a short-term basis, typically overnight, until the notes could be sold to investors. Dealer syndicate members also purchased third-party ABCP from investors in the secondary market. While the dealer syndicate was under no obligation to purchase any third-party ABCP, they did so to provide a secondary market, maintain liquidity in the market and/or as a service to investors. Dealer syndicate members other than the lead dealer also had the option to turn back ABCP to the lead dealer if they were unable to sell their daily allocation, but this was not their ordinary practice.
25. Third-party ABCP traded in a dealer market, also known as an over-the-counter ("OTC") market. Unlike an auction market or exchange, the OTC market did not have a centralized quotation system and/or a centralized repository containing disclosure information that investors could access independently.
26. The primary information that dealers disclosed to investors was the name, yield, term and credit rating of third-party ABCP.

THE MARKET FREEZE

27. On August 13, 2007, a number of Canadian third-party ABCP conduits including the Coventree conduits were unable to sell new ABCP to fund the repayment of maturing ABCP. Many of the conduits' liquidity providers did not agree that the conditions for liquidity funding had occurred and refused to provide liquidity to the affected conduits.
28. As of August 13, 2007, the third-party ABCP market totalled approximately \$35 billion, with Coventree conduits representing approximately 46 percent of the value of the third-party ABCP market.
29. On August 16, 2007, a consortium representing banks, asset providers and major ABCP holders agreed to take steps to establish normal operations in the ABCP market. This agreement was known as the Montreal Proposal.
30. A Pan-Canadian Investors Committee, including investors who were signatories to the Montreal Proposal plus other significant holders, was established to oversee the restructuring of third-party ABCP. It put forward the Plan of Compromise and Arrangement (the "Plan"), which was implemented on January 21, 2009.
31. Pursuant to the Plan, holders of the eligible third-party ABCP had their short-term notes exchanged for longer term notes to match more closely the maturity dates of the underlying assets. These new notes were issued by Master Asset Vehicles ("MAVs"). It is not currently possible to determine if any or all of the notes of the MAVs will mature at par value.

CIBC'S ROLE IN SELLING THIRD PARTY ABCP

32. CIBC first started selling third-party ABCP around 2000. CIBC sold ABCP to investors pursuant to a registration exemption found in section 4.1 of OSC Rule 45-501 – *Ontario Prospectus and Registration Exemptions*, which is available to CIBC as a financial intermediary, and pursuant to an exemption order made in favour of CIBC by the Ontario Securities Commission on October 23, 2006.
33. CIBC sold third-party ABCP to corporations and institutional investors through its Money Market Desk.

EMERGING ISSUES**(a) US Subprime Exposure**

34. During the period from March to June, 2007, increasing defaults in US subprime mortgages started to place strains on credit markets in the United States.
35. Prior to July 24, 2007, CIBC had obtained some subprime information about third-party ABCP on the following occasions:

- (a) Two representatives of CIBC, some ABCP investors that purchased through CIBC and other market participants attended a Coventree investor presentation in late April 2007. At that presentation, Coventree covered a number of topics, including disclosing that the overall US subprime exposure in its conduits was 7.4 percent and that all assets remained enhanced to AAA and were performing as expected.
- (b) In mid-March 2007, CIBC obtained some information respecting US subprime exposure for third-party ABCP conduits from the lead dealer on behalf of a third party ABCP investor.
36. On July 24, 2007, a third-party ABCP investor sold \$100 million of its non-Coventree third-party ABCP prior to maturity to CIBC.
37. Later on July 24, 2007, Coventree sent an email (the "July 24th email") to all of Coventree's syndicate members, including CIBC, setting out information regarding US subprime exposure in Coventree conduits as of June 28, 2007 and indicating the following:
- (a) low loss levels;
- (b) that subprime deal vintages were focused in pre-2006 vintages; and
- (c) that all assets were performing as expected and remained at AAA level.
38. The July 24th email stated that "[a]t Coventree we are committed to furnishing our investors and dealer partners with the information they need to continue to support us through market cycles."
39. The July 24th email listed the US subprime exposure in each of the conduits as follows:

Conduits	Series A	Series E	Total ABCP
Aurora Trust	0%	8%	3%
Comet Trust	0%	42%	16%
Planet Trust	26%	3%	17%
Slate Trust	0%	16%	13%
Apollo Trust Gemini Trust Rocket Trust Venus Trust	0%	0%	0%
SAT	0%	0%	0%
SIT III	1%	0%	1%
TOTAL	3%	6%	5%

40. The information communicated in the July 24th email by Coventree was not verifiable by CIBC through publicly available sources. In order to understand the information and its context, CIBC contacted Coventree to seek further information, and was advised by Coventree that all of the information contained in the July 24th email was known to DBRS.
41. Coventree advised that it was not going to generally disclose the July 24th email to investors but did not prohibit the disclosure of the information contained in the July 24th email and advised that CIBC could use its judgment in disclosing the information.
42. The July 24th email was disseminated to certain staff at both the bank and dealer.
43. On July 24, 2007, CIBC Risk Management initiated a review of all credit limits for commercial paper. While this review was in progress, CIBC Risk Management instructed the Money Market Desk to temporarily refrain from buying Coventree-sponsored ABCP until the Risk Management review was complete. When CIBC Risk Management's review was complete on July 26, 2007, credit limits were adjusted downward from prior limits. Historically, those credit limits were not fully utilized.

Decisions, Orders and Rulings

44. Between July 25 and August 1, 2007, CIBC-sponsored conduits allowed Coventree-sponsored ABCP to mature without rolling into new ABCP.
45. CIBC disclosed the information contained in the July 24th email to at least two investors. It did not generally disclose the information to Coventree-sponsored ABCP investors that purchased through CIBC.

(b) *Liquidity Issues*

46. CIBC became aware, starting on July 30, 2007, that spreads were beginning to widen on third-party ABCP and those spreads continued to widen until August 13, 2007.
47. CIBC was also aware that two investors were reducing their exposure to third-party ABCP by declining to roll third-party ABCP. In addition, CIBC declined to provide bids for all "E" Notes as of July 30, 2007. Further, CIBC began to return unsold third-party ABCP to the lead dealer.
48. By August 3, 2007, CIBC was concerned that liquidity issues may affect the third-party ABCP market more generally.

CIBC'S RESPONSE TO EMERGING ISSUES

49. CIBC continued to sell Coventree and certain other third-party ABCP from July 25 to August 3, 2007. During that period, CIBC sold \$245 million to investors who may not have been aware of those issues, \$22 million of which came from CIBC's inventory (excluding sales of ABCP that matured prior to August 13, 2007).
50. On Friday, August 3, 2007, the Money Market Desk learned from Coventree's lead dealer that Coventree would likely be unable to fund its maturing ABCP upon the resumption of the market on Tuesday, August 7, 2007 (after a long weekend). This was the first time that CIBC received information indicating a likelihood of default by a third-party ABCP sponsor.
51. Given the new information received on Friday, August 3, 2007, CIBC became concerned about the possibility of a market disruption in Coventree ABCP occurring during the following week. Over the long weekend that followed, appropriate senior management of CIBC were advised of the emerging issues and assessed the risks to holders and prospective purchasers of Coventree ABCP. CIBC notified the Bank of Canada of its concerns on two occasions that weekend. During the long weekend, CIBC decided that it would no longer offer Coventree-sponsored ABCP for sale when the market reopened on Tuesday, August 7, 2007.
52. In the period from August 7, 2007 to August 13, 2007, while the third-party ABCP market continued functioning, CIBC did not sell, or offer to sell, any Coventree ABCP.
53. On August 13, 2007, ten days after CIBC stopped selling third-party ABCP, the third-party ABCP market froze.
54. As at August 13, 2007, CIBC held for its own account \$358 million in frozen third-party ABCP.
55. CIBC did not inform senior management or compliance of the emerging issues in the third-party ABCP market prior to Saturday, August 4, 2007. As a result, there was a delay in engaging appropriate processes for assessing the impact of emerging issues in the third-party ABCP market.
56. More generally, CIBC did not conduct new product review with respect to third-party ABCP, nor changes to ABCP. In addition, CIBC did not provide formal training to its sales representatives concerning the third-party ABCP product.

CIBC'S ADMISSION

57. Between July 25 and August 3, 2007, CIBC engaged in conduct contrary to the public interest by failing to adequately respond to emerging issues in the third-party ABCP market insofar as it continued to sell third-party ABCP without engaging compliance and other appropriate processes for the assessment of such information and concerns.

CIBC'S POSITION

58. CIBC participated in the Montreal Proposal, an agreement among market participants to protect investor value in the third-party ABCP market, which was an essential first step in the restructuring process approved by the Ontario Superior Court of Justice under the Companies' Creditors Arrangement Act (Canada). CIBC contributed approximately \$300 million in liquidity lines to help make the Plan financially viable.
59. CIBC fully cooperated with the joint regulatory investigation at its own expense.

PART IV – TERMS OF SETTLEMENT

60. CIBC agrees to the terms of settlement listed below.
61. The Commission will make an order pursuant to section 127(1) and section 127.1 of the Act that:
- (a) The Settlement Agreement is approved;
 - (b) CIBC shall submit to a review of its compliance practices and procedures in accordance with the Terms of Reference attached at Schedule "B";
 - (c) CIBC pay to the Commission the sum of \$21.7 million, to be allocated under s. 3.4(2)(b) of the Act to or for the benefit of third parties; and
 - (d) CIBC pay the costs of the Commission's investigation in the amount of \$300,000.
62. CIBC agrees to personally make any payments ordered above through immediately available funds when the Commission approves this Settlement Agreement. CIBC will not be reimbursed for, or receive a contribution toward, this payment from any other person or company.

PART V – STAFF COMMITMENT

63. If the Commission approves this Settlement Agreement, Staff, the Investment Industry Regulatory Organization of Canada and Autorité des marchés financiers will not commence any proceeding against the Respondent or any of its affiliates or their respective present or former directors, officers, employees or agents in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 64 below.
64. If the Commission approves this Settlement Agreement and CIBC fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against CIBC. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VI – PROCEDURE FOR APPROVAL OF SETTLEMENT

65. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for December 21, 2009 or on another date agreed to by Staff and CIBC, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.
66. Staff and CIBC agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on CIBC's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.
67. If the Commission approves this Settlement Agreement, CIBC agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.
68. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.
69. Whether or not the Commission approves this Settlement Agreement, CIBC will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART VII – DISCLOSURE OF SETTLEMENT AGREEMENT

70. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:
- i. this Settlement Agreement and all discussions and negotiations between Staff and CIBC before the settlement hearing takes place will be without prejudice to Staff and CIBC; and

- ii. Staff and CIBC will each be entitled to all available proceedings, remedies and challenges. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.
71. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

72. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.
73. A fax copy of any signature will be treated as an original signature.

Dated this 16th day of December, 2009

CANADIAN IMPERIAL BANK OF COMMERCE

By : "Charles W. Gerber"
Name: Charles W. Gerber
Title: Senior Vice President

CIBC WORLD MARKETS INC.

By: "Robert J. Richardson"
Name: Robert J. Richardson
Title: Vice President & Director

STAFF OF THE ONTARIO SECURITIES COMMISSION

By: "Kathryn Daniels"
Name: Kathryn Daniels
Title: Deputy Director, Enforcement

SCHEDULE "A"

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
CANADIAN IMPERIAL BANK OF COMMERCE
AND CIBC WORLD MARKETS INC.

ORDER

WHEREAS on December 1, 2009, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in relation to Canadian Imperial Bank of Commerce and CIBC World Markets Inc. (together, "CIBC");

AND WHEREAS CIBC and Staff of the Commission ("Staff") entered into a settlement agreement dated December 16, 2009 (the "Settlement Agreement") in which they agreed to a settlement of the proceeding commenced by the Notice of Hearing dated December 1, 2009, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, and upon hearing submissions from counsel for Staff and CIBC;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS ORDERED THAT:

1. The Settlement Agreement is approved;
2. CIBC shall submit to a review of its compliance practices and procedures in accordance with the Terms of Reference attached at Schedule "B" to the Settlement Agreement;
3. CIBC pay to the Commission the sum of \$21.7 million, to be allocated under section 3.4(2)(b) of the Act to or for the benefit of third parties; and
4. CIBC pay the costs of the Commission's investigation in the amount of \$300,000.

DATED at Toronto this day of December, 2009.

SCHEDULE "B"

TERMS OF REFERENCE FOR
COMPLIANCE REVIEWA. Retention of the Consultant

1. The Consultant's reasonable compensation and expenses shall be borne exclusively by Canadian Imperial Bank of Commerce and CIBC World Markets Inc. (the "Respondent").
2. The agreement with the Consultant ("Agreement") shall provide that the Consultant examine the policies, procedures and effectiveness of:
 - a. the Respondent's compliance and oversight functions concerning its trading and sales within the fixed income department;
 - b. any committees or other mechanisms established to review and approve new fixed income securities products and changes to those products;
 - c. the Respondent's training of its staff concerning new fixed income securities products and changes to those products;
 - d. the Respondent's training of its staff concerning the escalation of issues to compliance and engaging other appropriate processes;
 - e. limitations on disclosure of material non-public information and confidential information as between the Respondents, and the Respondents' training of their staff regarding same.

(collectively, the "Review").

B. The Consultant's Reporting Obligations

1. The Consultant shall issue a draft report to the Respondent within 3 months of appointment and in that regard will be provided the opportunity to present its report to the Board of Directors of the Respondent.
2. The Consultant shall engage with the Respondent in discussions regarding the draft report with a view to reaching consensus and finalizing the report within 1 month of the delivery of the draft report. If requested by the Consultant, the Consultant will be provided with an opportunity to present its final report to the Board of Directors of the Respondent, and may explain any areas of disagreement with management of the Respondent.
3. The Consultant will deliver the final report to the Respondent.
4. Staff with prior notice may attend at the premises of the Respondent and review the draft and final versions of the Consultant's report.
5. The Consultant's draft and final reports shall include a description of the review performed, the conclusions reached, and the Consultant's recommendations for any changes or improvements to the Respondent's policies and procedures as the Consultant reasonably deems necessary to conform to regulatory requirements.
6. The Respondent will, within 60 days after receipt of the Consultant's report, advise the Staff of the OSC ("OSC Staff") of a timetable to implement the recommendations contained in the report; however, in the event the Respondent disagrees with any of the recommendations, the Respondent shall so advise OSC Staff and provide to the Consultant reasons for such position and, if applicable, any alternative actions, policies or procedures the Respondent intends to adopt.
7. Staff may attend at the premises of the Respondent and may review the Consultant's report with respect to the implementation of the Consultant's recommendations.
8. The Respondent shall certify to the OSC, by certificate executed on its behalf by each of the CEO, the UDP, the CCO and the Chair of the Board of Directors of the Respondent, that the Respondent has implemented

those recommendations of the Consultant which it had agreed upon, and will do so promptly following such implementation.

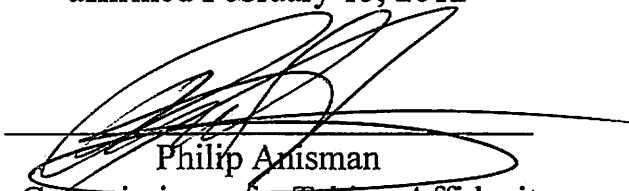
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9. For greater certainty, the terms of this compliance review do not limit in any respect the authority of the OSC to undertake, as part of its normal course audit activities, a review of all matters within the scope of the Review or any other aspect of the business of the Respondent.

C. Terms of the Consultant's Retention

1. The appointment of the Consultant shall be made promptly following the approval of the Settlement Agreement, but in any event by no later than January 31, 2010, by mutual agreement between the Respondent and OSC Staff.
2. The Consultant shall have reasonable access to all of the Respondent's books and records and the ability to meet privately with the Respondent's personnel. The Respondent shall instruct and otherwise encourage its officers, directors, and employees to cooperate fully with the review conducted by the Consultant, and inform its officers, directors, and employees that failure to cooperate with the Review may be grounds for disciplinary action.
3. The Consultant shall have the right, as reasonable and necessary in his or her judgment, to retain, at the Respondent's expense, lawyers, accountants, and other persons or firms, other than officers, directors, or employees of the Respondent, to assist in the discharge of the Consultant's obligations. The Respondent shall pay all reasonable fees and expenses (as reasonably documented) of any persons or firms retained by the Consultant.
4. The Consultant shall make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of his or her responsibilities.

This is Exhibit "C" to the
Affidavit of Kathryn Daniels,
affirmed February 15, 2012



Philip Anisman
A Commissioner for Taking Affidavits

2.2 Orders**2.2.1 HSBC Bank Canada**

**IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED**

AND

**IN THE MATTER OF
HSBC BANK CANADA**

ORDER

WHEREAS on December 18, 2009, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in relation to HSBC Bank Canada ("HSBC");

AND WHEREAS HSBC entered into a settlement agreement with Staff of the Commission ("Staff") dated December 16, 2009 attached hereto as Appendix "A" (the "Settlement Agreement") in which it agreed to a settlement of the proceeding commenced by the Notice of Hearing dated December 18, 2009, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, and upon hearing submissions from counsel for Staff and HSBC;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS ORDERED THAT:

1. The Settlement Agreement is approved;
2. HSBC shall submit to a review of its compliance practices and procedures in accordance with the Terms of Reference attached at Schedule "B" to the Settlement Agreement;
3. HSBC pay to the Commission the sum of \$5,925,000, to be allocated under section 3.4(2)(b) of the Act to or for the benefit of third parties; and
4. HSBC pay the costs of the Commission's investigation in the amount of \$75,000.

DATED at Toronto this 21st day of December, 2009.

"James E.A. Turner"

"Mary G. Condon"

APPENDIX "A"

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
HSBC BANK CANADA

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 and section 127.1 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the "Act"), it is in the public interest for the Commission to make certain orders in respect of HSBC Bank Canada ("HSBC").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding commenced by Notice of Hearing dated December 18, 2009 (the "Proceeding") against HSBC according to the terms and conditions set out in Part IV of this Settlement Agreement. HSBC agrees to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III – AGREED FACTS

3. HSBC admits the facts set out in this Settlement Agreement solely for the purposes of this Settlement Agreement. This Settlement Agreement and the facts and admissions set out herein are without prejudice to HSBC in any proceeding including, without limitation, any civil, administrative, quasi-criminal or criminal actions or proceedings that may be brought by any person or agency, whether or not this Settlement Agreement is approved by the Commission.

OVERVIEW

4. HSBC is a bank listed on Schedule II of the *Bank Act* (Canada). Its head office is located in Vancouver, British Columbia and its money market treasury function is located in Toronto, Ontario. HSBC is not a registrant under the Act.
5. On August 13, 2007, the Canadian non-bank sponsored asset-backed commercial paper ("ABCP" or "third-party ABCP") market froze, leaving Canadian investors holding illiquid investments that they could neither sell nor redeem.
6. HSBC was an agent for issuers in the third-party ABCP market. In that capacity, HSBC bought and sold third party ABCP.

ASSET-BACKED COMMERCIAL PAPER

7. ABCP is a short-term debt instrument with typical maturities of 30 to 180 days. ABCP is backed by a pool of underlying assets and offers a yield slightly better than the yield offered on short-term government debt.
8. ABCP is issued by a special purpose vehicle (also referred to as a conduit). In Canada, the conduits are trusts established by sponsors. Sponsors generally select underlying assets, administer the assets and arrange for the sale of the ABCP notes. The Canadian ABCP market included two categories: bank-sponsored and non-bank-sponsored (or third party) ABCP.
9. As the underlying assets held by conduits were long-term and the ABCP notes were short-term, there was a timing mismatch between the cash flowing from the assets and the cash needed to repay maturing ABCP. For many years, conduits met their maturity obligations by selling newly issued ABCP, the proceeds of which were used to pay maturing ABCP. The liquidity of ABCP was an important characteristic for investors along with credit ratings and yields.
10. To safeguard against difficulty meeting maturity obligations, conduits entered into agreements with liquidity providers which provided credit lines under certain conditions. In general, there were two types of liquidity facilities: (1) general

market disruption ("GMD") and (2) global-style. GMD liquidity was also called "Canadian-style" since it was only available in the Canadian ABCP market. Unlike global-style liquidity facilities, Canadian-style liquidity facilities required specified "general market disruption" events and a credit rating affirmation before liquidity was provided.

11. Liquidity agreements were subject to confidentiality provisions. Many details of the pre-conditions required for liquidity support, including the definition of a "general market disruption event", were not known to the public, investors or to the distributors of ABCP who were not also liquidity providers. Conduits generally disclosed the existence of their liquidity arrangements and disclosed that there were pre-conditions to draws.
12. As of September 2005, ABCP distributed in Canada was prospectus-exempt under the short-term debt exemption in section 2.35 of National Instrument 45-106 – *Prospectus and Registration Exemptions*, which provided an exemption for commercial paper with an approved credit rating from an approved credit rating organization. The conduits issuing the ABCP were not reporting issuers under applicable securities laws.
13. Dominion Bond Rating Services Limited ("DBRS"), an approved credit rating organization, was the sole credit rating organization which rated third-party ABCP in Canada.
14. On January 19, 2007, DBRS announced changes to its rating methodology for certain new transactions entered into by ABCP issuers. The DBRS press release set out specific new rating criteria, including a requirement for global-style liquidity, to be applied prospectively in the marketplace.

THIRD-PARTY ABCP

15. ABCP has been in the Canadian marketplace for over a decade, and non-bank sponsors entered the marketplace in approximately 2000.
16. Historically, the assets underlying ABCP consisted of traditional assets such as consumer loans, credit card receivables and residential mortgages. Non-traditional complex synthetic assets, such as collateralized debt obligations, came into these structures over time.
17. Third-party ABCP was typically issued by a series of notes, the most common being Series "A" Notes and Series "E" Notes. The "A" Notes were supported by the Canadian-style liquidity facilities. "E" Notes were not, but could be extended up to 364 days after the original maturity date if certain conditions were met, including that market conditions did not allow for "E" Notes to be sold at a specified spread.
18. The sponsors provided limited information regarding the underlying pool of assets in conduits issuing ABCP. Sponsors typically provided an information memorandum describing the basic elements of ABCP. In most cases, the general asset classes were the only information publicly disclosed; there was no disclosure of the specific assets held in the conduits or the terms of the liquidity agreements supporting the ABCP.

COVENTREE INC.

19. At all material times, Coventree Inc. was the largest sponsor of third-party ABCP in Canada. Coventree Inc. also issued third-party ABCP through a subsidiary, Nereus Financial Inc. ("Nereus").
20. At all material times, Coventree Inc. and Nereus (collectively, "Coventree") sponsored the following third-party ABCP conduits: Apollo Trust, Aurora Trust, Comet Trust, Gemini Trust, Planet Trust, Rocket Trust, Slate Trust, Venus Trust, Structured Investment Trust III and Structured Asset Trust.
21. All Coventree conduits but one received an R1-(high) rating (the highest credit rating available, equivalent to a "AAA" for long term debt) by DBRS, as did other Canadian third-party ABCP. This rating remained in place at all material times up to and including August 13, 2007. Coventree ABCP was rated by DBRS above the minimum "approved credit rating" required by NI 45-106 at all material times.

DISTRIBUTION OF THIRD-PARTY ABCP

22. In general, third-party ABCP was distributed to investors through a dealer group (the "dealer syndicate"). Typically, one member of the dealer syndicate would be appointed as lead dealer. Some of the lead dealer's daily duties included the allocation of ABCP notes to dealer syndicate members and setting the yield in consultation with the conduit sponsor.
23. The dealer syndicate members maintained trading lines, up to a credit limit, for third-party ABCP mainly to provide a market-making function. Dealer syndicate members would typically purchase third-party ABCP that was not sold at the end of a trading day. These positions were to be held on a short-term basis, typically overnight, until the notes could be

sold to investors. Dealer syndicate members also purchased third-party ABCP from clients in the secondary market. While the dealer syndicate was under no obligation to purchase any third-party ABCP, they did so to provide a secondary market, maintain liquidity in the market and/or as a service to their clients. Dealer syndicate members other than the lead dealer also had the option to turn back ABCP to the lead dealer if they were unable to sell their daily allocation, but this was not their ordinary practice.

24. Third-party ABCP traded in a dealer market, also known as an over-the-counter ("OTC") market. Unlike an auction market or exchange, the OTC market did not have a centralized quotation system and/or a centralized repository containing disclosure information that investors could access independently.
25. The primary information that dealers disclosed to investors was the name, yield, term and credit rating of third-party ABCP.

THE MARKET FREEZE

26. On August 13, 2007, a number of Canadian third-party ABCP conduits including the Coventree conduits were unable to sell new ABCP to fund the repayment of maturing ABCP. Many of the conduits' liquidity providers did not agree that the conditions for liquidity funding had occurred and refused to provide liquidity to the affected conduits.
27. As of August 13, 2007, the third-party ABCP market totalled approximately \$35 billion, with Coventree conduits representing approximately 46 percent of the value of the third-party ABCP market.
28. On August 16, 2007, a consortium representing banks, asset providers and major ABCP holders agreed to take steps to establish normal operations in the ABCP market. This agreement was known as the Montreal Proposal.
29. A Pan-Canadian Investors Committee, including investors who were signatories to the Montreal Proposal plus other significant holders, was established to oversee the restructuring of third-party ABCP. It put forward the Plan of Compromise and Arrangement (the "Plan"), which was implemented on January 21, 2009.
30. Pursuant to the Plan, holders of the eligible third-party ABCP had their short-term notes exchanged for longer term notes to match more closely the maturity dates of the underlying assets. These new notes were issued by Master Asset Vehicles ("MAVs"). It is not currently possible to determine if any or all of the notes of the MAVs will mature at par value.

HSBC'S ROLE IN SELLING THIRD PARTY ABCP

31. HSBC first started selling third-party ABCP around 2002. HSBC sold ABCP to investors pursuant to a registration exemption found in section 4.1 of OSC Rule 45-501 – *Ontario Prospectus and Registration Exemptions*, which is available to HSBC as a financial intermediary.
32. Over time, HSBC took on various roles in the third-party ABCP market. When the market froze on August 13, 2007, HSBC's activities in respect of third-party ABCP included acting as:
 - (a) a financial market intermediary, dealing in third-party ABCP conduits available in the market; and
 - (b) a liquidity provider for reference assets in two Coventree conduits, namely Rocket Trust and Gemini Trust.
33. HSBC sold third-party ABCP primarily to institutional investors.

EMERGING ISSUES

(a) *US Subprime Exposure*

34. During the period from March to June, 2007, increasing defaults in US subprime mortgages started to place strains on credit markets in the United States.
35. Prior to July 24, 2007, HSBC received information from Coventree about third-party ABCP on the following occasions:
 - (a) HSBC and some of its clients were among the ABCP investors and other market participants who attended a Coventree investor presentation in late April 2007. At that presentation, Coventree covered a number of topics, including disclosing that the overall US subprime exposure in its conduits was 7.4 percent and that all assets remained enhanced to AAA and were performing as expected.

- (b) In early July 2007, one of HSBC's clients who had investments in ABCP made an enquiry with HSBC about a media article concerning the US subprime situation. HSBC approached Coventree for further information in response to this client enquiry. On July 6, 2007, Coventree sent an email to HSBC with an attachment detailing Coventree's US subprime exposure by conduit as at February 28, 2007. Although the attachment showed that the aggregate US subprime exposure in Coventree conduits was 7.39 percent, the Comet, Planet and Slate conduits were revealed to have elevated exposure to US subprime at 15.8, 19.1 and 21.3 percent respectively. Coventree also indicated that all deals remained enhanced to AAA level, and that all of the subprime deals were done prior to 2006. A Coventree representative stated in the email that the attached information could be forwarded to ABCP investors by HSBC.
- (c) On July 9, 2007, Coventree sent a subsequent email to HSBC as an update to its July 6, 2007 email detailing Coventree's US subprime exposure by conduit and note series as of June 29, 2007. Although the email showed that the aggregate US subprime exposure was at 7 percent, the Comet E, Planet A and Slate E note series were shown to have higher levels of exposure at 41, 30 and 22 percent respectively.
36. On July 24, 2007, Coventree sent an email (the "July 24th email") to all of Coventree's syndicate members, including HSBC, setting out information regarding US subprime exposure in Coventree conduits as of June 28, 2007 and indicating the following:
- (a) low loss levels;
- (b) that subprime deal vintages were focused in pre-2006 vintages; and
- (c) that all assets were performing as expected and remained at AAA level.
37. The July 24th email stated that "[a]t Coventree we are committed to furnishing our investors and dealer partners with the information they need to continue to support us through market cycles."
38. The July 24th email listed the US subprime exposure in each of the conduits as follows:

Conduits	Series A	Series E	Total ABCP
Aurora Trust	0%	8%	3%
Comet Trust	0%	42%	16%
Planet Trust	26%	3%	17%
Slate Trust	0%	16%	13%
Apollo Trust Gemini Trust Rocket Trust Venus Trust	0%	0%	0%
SAT	0%	0%	0%
SIT III	1%	0%	1%
TOTAL	3%	6%	5%

39. Coventree did not put any limitations on disclosure of the information contained in the July 24th email.
40. The information communicated by Coventree to HSBC on the occasions noted above was not verifiable by HSBC through publicly available sources. The publicly available DBRS rating remained unchanged throughout the period that HSBC received the communications from Coventree. HSBC did not disclose the information it received from Coventree to its Coventree-sponsored ABCP investor clients.
- (b) **Liquidity Issues**
41. Beginning on July 30, 2007, HSBC became aware of certain factors that, in the aggregate, suggested there were liquidity issues affecting the third-party ABCP market:
- (a) from July 30, 2007, spreads began to widen on third-party ABCP and continued to widen until August 13, 2007;

- (b) on July 30, 2007, HSBC learned that other dealers were turning back unsold third-party ABCP to the lead dealer;
- (c) on August 1, 2007, one client declined to roll \$53 million of Coventree Planet "A" ABCP (although that client subsequently rolled \$19.3 million of Aurora "E" and \$15.4 million of Rocket "E" ABCP on August 3, 2007);
- (d) on August 2, 2007, HSBC first learned that another dealer was no longer bidding on third-party ABCP;
- (e) on August 7, 2007, HSBC learned that one of the Coventree dealer syndicate members had recently resigned from the dealer syndicate;
- (f) on August 7, 2007, HSBC learned that the third-party ABCP market was experiencing pressure because of an issuance of new bank-sponsored ABCP into the market on August 3, 2007; and
- (g) on August 8, 2007, HSBC learned that another dealer was no longer bidding on third party ABCP.

42. In addition to the foregoing factors HSBC:

- (a) declined to provide bids for third-party ABCP in the secondary market beginning on August 8, 2007;
- (b) returned unsold third-party ABCP to the lead dealer; and
- (c) examined the provisions of its liquidity agreements with Coventree, and the pre-conditions to payment, and began to monitor daily movement within the ABCP market.

43. By August 8, 2007, HSBC was aware that liquidity issues were affecting the entire third-party ABCP market.

HSBC'S RESPONSE TO EMERGING ISSUES

- 44. HSBC did not inform Compliance of the emerging issues in the third-party ABCP market prior to the market freeze. As a result, there was a delay in engaging appropriate processes for assessing the impact of emerging issues in the third-party ABCP market.
- 45. More generally, prior to the market freeze HSBC did not conduct new product review with respect to third-party ABCP, nor changes to ABCP. Furthermore, HSBC did not provide formal training to its sales representatives concerning the ABCP product.
- 46. HSBC continued to sell third-party ABCP:
 - (a) with exposure to US subprime, from July 25 to August 10, 2007; and
 - (b) despite the liquidity issues described above, after August 8, 2007.
- 47. During those periods, HSBC sold \$172 million to clients who may not have been aware of those issues, \$2.6 million of which came from HSBC's inventory (excluding sales of ABCP that matured prior to August 13, 2007).
- 48. Prior to July 2007, HSBC's inventory fluctuated with the demand for third-party ABCP between \$8.8 million and \$89.4 million.
- 49. As at August 13, 2007, HSBC held for its own account \$52 million in frozen third-party ABCP.

HSBC'S ADMISSION

- 50. Between July 25 and August 13, 2007, HSBC engaged in conduct contrary to the public interest by failing to adequately respond to emerging issues in the third-party ABCP market insofar as it continued to sell third-party ABCP without engaging compliance and other appropriate processes for the assessment of such information and concerns.

HSBC'S POSITION

- 51. Throughout the crisis, HSBC supported the preservation and then the restructuring of the non-bank ABCP market through actions such as the following:
 - (a) its participation in the Montreal Proposal;

- (b) upon being advised that the liquidity draw requests for Coventree Rocket and Gemini liquidity agreements had been pre-empted by the Montreal Accord, HSBC began negotiations to purchase assets from the relevant Coventree conduits in exchange for cash, and those transactions closed in due course.

52. HSBC fully cooperated with the joint regulatory investigation of Coventree at its own significant expense.

PART IV – TERMS OF SETTLEMENT

53. HSBC agrees to the terms of settlement listed below.
54. The Commission will make an order pursuant to section 127(1) and section 127.1 of the Act that:
- (a) the Settlement Agreement is approved;
 - (b) HSBC shall submit to a review of its compliance practices and procedures in accordance with the Terms of Reference attached at Schedule "B";
 - (c) HSBC pay to the Commission the sum of \$5,925,000, to be allocated under s. 3.4(2)(b) of the Act to or for the benefit of third parties; and
 - (d) HSBC pay the costs of the Commission's investigation in the amount of \$75,000.
55. HSBC agrees to personally make any payments ordered above by immediately available funds when the Commission approves this Settlement Agreement. HSBC will not be reimbursed for, or receive a contribution toward, this payment from any other person or company.

PART V – STAFF COMMITMENT

56. If the Commission approves this Settlement Agreement, Staff, the Investment Industry Regulatory Organization of Canada and Autorité des marchés financiers will not commence any proceeding against the Respondent or any of its affiliates or their respective present or former directors, officers, employees or agents in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 57 below.
57. If the Commission approves this Settlement Agreement and HSBC fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against HSBC. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VI – PROCEDURE FOR APPROVAL OF SETTLEMENT

58. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for December 21, 2009, or on another date agreed to by Staff and HSBC, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.
59. Staff and HSBC agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on HSBC's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.
60. If the Commission approves this Settlement Agreement, HSBC agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.
61. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.
62. Whether or not the Commission approves this Settlement Agreement, HSBC will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART VII – DISCLOSURE OF SETTLEMENT AGREEMENT

63. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

- i. this Settlement Agreement and all discussions and negotiations between Staff and HSBC before the settlement hearing takes place will be without prejudice to Staff and HSBC; and
 - ii. Staff and HSBC will each be entitled to all available proceedings, remedies and challenges. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.
64. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

65. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.
66. A fax copy of any signature will be treated as an original signature.

Dated this 16th day of December, 2009

HSBC BANK CANADA

By: "J. Lindsay Gordon"
Name: J. Lindsay Gordon
Title: Chief Executive Officer

STAFF OF THE ONTARIO SECURITIES COMMISSION

By: "Kathryn Daniels"
Name: Kathryn Daniels
Title: Deputy Director, Enforcement

SCHEDULE "A"**IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED****AND****IN THE MATTER OF
HSBC BANK CANADA****ORDER**

WHEREAS on December 7, 2009, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in relation to HSBC Bank Canada ("HSBC");

AND WHEREAS HSBC entered into a settlement agreement with Staff of the Commission ("Staff") dated December 16, 2009 (the "Settlement Agreement") in which it agreed to a settlement of the proceeding commenced by the Notice of Hearing dated December 7, 2009, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, and upon hearing submissions from counsel for Staff and HSBC;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS ORDERED THAT:

1. The Settlement Agreement is approved;
2. HSBC shall submit to a review of its compliance practices and procedures in accordance with the Terms of Reference attached at Schedule "B" to the Settlement Agreement;
3. HSBC pay to the Commission the sum of \$5,925,000, to be allocated under section 3.4(2)(b) of the Act to or for the benefit of third parties; and
4. HSBC pay the costs of the Commission's investigation in the amount of \$75,000.

DATED at Toronto this day of December, 2009.

TERMS OF REFERENCE FOR
COMPLIANCE REVIEWA. Retention of the Consultant

1. The Consultant's reasonable compensation and expenses shall be borne exclusively by HSBC Bank Canada (the "Respondent").
2. The agreement with the Consultant ("Agreement") shall provide that the Consultant examine the policies, procedures and effectiveness of:
 - a. the Respondent's compliance and oversight functions concerning its trading and sales within the fixed income department;
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(collectively, the "Review").

B. The Consultant's Reporting Obligations

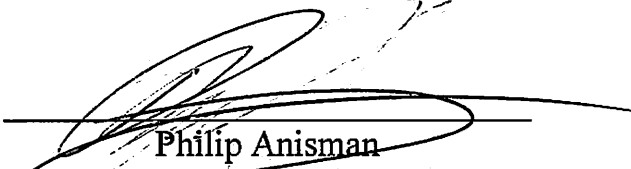
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8. The Respondent shall certify to the OSC, by certificate executed on its behalf by each of the CEO, the CCO and the Chair of the Board of Directors of the Respondent, that the Respondent has implemented those recommendations of the Consultant which it had agreed upon, and will do so promptly following such implementation.

9. For greater certainty, the terms of this compliance review do not limit in any respect the authority of the OSC to undertake, as part of their normal course audit activities, a review of all matters within the scope of the Review or any other aspect of the business of the Respondent.

C. Terms of the Consultant's Retention

1. The appointment of the Consultant shall be made promptly following the approval of the Settlement Agreement, but in any event by no later than January 31, 2010, by mutual agreement between the Respondent and OSC Staff.
2. The Consultant shall have reasonable access to all of the Respondent's books and records and the ability to meet privately with the Respondent's personnel. The Respondent shall instruct and otherwise encourage its officers, directors, and employees to cooperate fully with the review conducted by the Consultant, and inform its officers, directors, and employees that failure to cooperate with the Review may be grounds for disciplinary action.
3. The Consultant shall have the right, as reasonable and necessary in his or her judgment, to retain, at the Respondent's expense, lawyers, accountants, and other persons or firms, other than officers, directors, or employees of the Respondent, to assist in the discharge of the Consultant's obligations. The Respondent shall pay all reasonable fees and expenses (as reasonably documented) of any persons or firms retained by the Consultant.
4. The Consultant shall make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of his or her responsibilities.

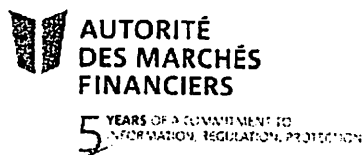
This is Exhibit "D" to the
Affidavit of Kathryn Daniels,
affirmed February 15, 2012



Philip Anisman
A Commissioner for Taking Affidavits



ONTARIO
SECURITIES
COMMISSION



FOR IMMEDIATE RELEASE

ABCP

SETTLEMENTS REACHED FOLLOWING A JOINT INVESTIGATION

Montréal, December 21st, 2009 – The *Autorité des marchés financiers* (AMF), the Ontario Securities Commission (OSC) and the Investment Industry Regulatory Organization of Canada (IIROC) announced that they have reached settlements in connection with the investigations into the Canadian asset-backed commercial paper (ABCP) market providing for the payment of \$138.8 million in administrative penalties and investigation costs, broken down as follows:

Institution	Amount obtained
National Bank Financial Inc. (NBF)	\$75 million
Scotia Capital Inc. (Scotia)	\$29.27 million
Canadian Imperial Bank of Commerce and CIBC World Markets Inc. (CIBC / CIBCWM)	\$22 million
HSBC Bank Canada (HSBC)	\$6 million
Laurentian Bank Securities Inc. (Laurentian)	\$3.2 million
Canaccord Financial Ltd. (Canaccord)	\$3.1 million
Credential Securities Inc. (Credential)	\$0.2 million

With regard to financial penalties imposed, a fair and appropriate use for the sanction monies will be determined in accordance with applicable laws, court orders and in the public interest. In addition, the sanctions approved by the respective organizations include a focus upon compliance – each institution agrees to have an independent compliance review or verification of its fixed income department undertaken by an outside consultant.

Settlements were reached between the regulators and those seven institutions involved in the Canadian third party ABCP market. The OSC has reached two settlements: one with CIBC and the other with HSBC. IIROC has reached three settlements, with Scotia, Canaccord and Credential respectively. Lastly, the AMF has reached two settlements, one of which is with NBF, and the other with Laurentian.

Five of the institutions involved are alleged to have failed to adequately respond to issues in the third party ABCP market, as they continued to buy and/or sell without engaging compliance and other appropriate processes for assessing such issues. Particularly, they did not disclose to all their clients the July 24th e-mail from Coventree providing the subprime exposure of each Coventree ABCP conduit. In the case of Credential and Canaccord, these institutions are alleged to have failed to take adequate steps to ensure that its Approved Persons understood the complexities of the third party ABCP and, in not taking these adequate steps, did not ensure that the purchase of third party ABCP was appropriately understood by its clients.

The enforcement review activity related to the ABCP matter is the product of a close collaboration among the AMF, the OSC and IIROC who worked together in the public interest to respond to the securities regulatory issues arising from the ABCP market freeze.



ONTARIO
SECURITIES
COMMISSION



AUTORITÉ
DES MARCHÉS
FINANCIERS

5 YEARS OF A COMMITMENT TO
INFORMATION, REGULATION, PROTECTION



IIROC
Investment Industry
Regulatory Organization
of Canada

OCRCVM
Organisme canadien de
réglementation du commerce
des valeurs mobilières

The OSC and IIROC have begun disciplinary hearings against Coventree and Deutsche Bank Securities Limited in this matter.

The *Autorité des marchés financiers* (AMF) is the regulatory and oversight body for Québec's financial sector.

The OSC is the regulatory body responsible for overseeing Ontario's capital markets, which include the equities, fixed income and derivatives markets.

IIROC is the national self-regulatory organization which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada.

– 30 –

Information:

AUTORITÉ DES MARCHÉS FINANCIERS

Media only:
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Spokeperson
514-940-2176

Information Centre:
Québec City: 418-525-0337
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ONTARIO SECURITIES COMMISSION

For Media Inquiries:
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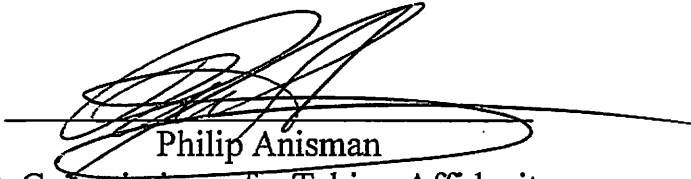
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For Investor Inquiries:
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This is Exhibit "E" to the
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Philip Anisman
A Commissioner for Taking Affidavits

NOTES TO THE FINANCIAL STATEMENTS
March 31, 2011

5. Funds Held Pursuant to Designated Settlements and Orders

The OSC has a number of settlement agreements and orders arising from enforcement proceedings where monies from these settlements and orders are to be set aside and allocated to such third parties as the OSC may determine. The accumulated funds are held in a segregated bank account and earn interest at the monthly average bank prime rate less 1.75%. A fair and appropriate use for these funds will be determined in accordance with applicable laws, court orders and in the public interest.

The balance at March 31, 2010 included a settlement for \$1,900,000, the allocation of which was subject to the approval of the responsible Minister as required under the provision of the *Securities Act* in effect at the time the settlement was approved. During the year, the Minister approved an allocation to the Ministry of Finance for financial literacy.

As at March 31, 2011, the accumulated balance is determined as follows:

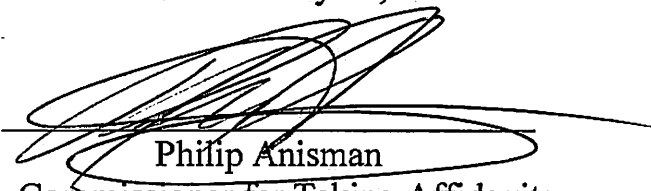
	2011	2010
Opening balance	\$ 43,495,838	\$ 17,180,263
Settlements and Orders	4,527,223	29,842,804
Interest	449,785	125,771
Payments		
Investor Education Fund (Note 15(b)(i))	(2,968,862)	(3,370,000)
Ministry of Finance – Financial Literacy	(1,900,000)	–
Others	–	(283,000)
Closing balance	\$ 43,603,984	\$ 43,495,838
Represented by:		
Cash	\$ 42,860,235	\$ 43,392,254
Receivables	743,749	103,584
	\$ 43,603,984	\$ 43,495,838

6. Funds in Trust

The OSC is in receipt of payments from the operator of the System for Electronic Data Analysis and Retrieval (SEDAR), the National Registration Database (NRD), and the System for Electronic Disclosure by Insiders (SEDI) representing the accumulated surplus from the operations of SEDAR, NRD, and SEDI. The total accumulated funds as at March 31, 2011 were \$64,880,151 (2010 – \$49,135,268), representing total payments received to date of \$62,644,618 (2010 – \$46,907,190) and interest earned to date of \$2,873,542 (2010 – \$2,310,262), less payments issued to date totalling \$638,009 (2010 – \$82,184). These funds are held in trust by the OSC in accordance with agreements amongst the OSC, the Alberta Securities Commission, the British Columbia Securities Commission, and L'Autorité des marchés financiers. In the case of NRD, the Investment Industry Regulatory Organization of Canada is also a party to the applicable agreement. These funds shall be used to offset any shortfall in revenues from the systems, to develop or enhance the systems and to reduce fees charged to users of the systems. These funds are held in segregated bank accounts and earn interest at the monthly average bank prime rate less 1.75%.

The Canadian Securities Administrators (CSA) plan to redevelop these systems in a multi-year phased approach. Funding for this redevelopment program will come from accumulated surplus amounts. As at March 31, 2011, accumulated payments, related to the development or enhancement of the systems, totalled \$638,009 (2010 – \$82,184).

This is Exhibit "F" to the
Affidavit of Kathryn Daniels,
affirmed February 15, 2012



Philip Anisman
A Commissioner for Taking Affidavits

DRAFT –ABCP news release

Feb. 10, 2012

OSC and IIROC apply to court for distribution of ABCP fine proceeds

February xx, 2012 (Toronto, ON) – The Ontario Securities Commission (OSC) and Investment Industry Regulatory Organization of Canada (IIROC) have applied to the Superior Court of Justice of Ontario – Commercial List to confirm that their proposed plan to distribute funds to investors who purchased third-party Asset-Backed Commercial Paper (ABCP) is permitted by an earlier court order.

The OSC and IIROC have asked the Court to rule that the Order dated June 5, 2008 by the Honourable C. Campbell J. (the “ABCP Order”) does not preclude them from distributing \$59.875 million received from the following five investment dealers in settling ABCP enforcement actions:

- Canadian Imperial Bank of Commerce/CIBC World Markets Inc. and HSBC Bank of Canada agreed to pay \$21.7 million and \$5.925 million, respectively, to the OSC.
- Scotia Capital Inc., Canaccord Financial Ltd. and Credential Securities Inc. agreed to pay \$28.95 million, \$3.1 million and \$200,000, respectively, to IIROC.

The application outlines the OSC’s and IIROC’s proposed plan to distribute the funds to certain eligible investors who purchased ABCP from a settling dealer.

The application is scheduled to be heard on March 13, 2012 in Toronto. More information on the proposed distributions will be published by the OSC and IIROC following the court’s decision.

The OSC is the regulatory body responsible for overseeing Ontario’s capital markets. The OSC administers and enforces Ontario’s securities and commodity futures laws. Its mandate is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

IIROC is the national self-regulatory organization which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada. IIROC sets high quality regulatory and investment industry standards, protects investors and strengthens market integrity while maintaining efficient and competitive capital markets.

-30-

Related documents: (links)

- NOA
- Affidavits (2)
- The settlement agreements
- Applicants' Factum
- ABCP Order (2008)

For More Information:

ONTARIO SECURITIES COMMISSION

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For Investor Inquiries:

IIROC Complaints and Inquiries Centre

1-877-442-4322 (Toll Free)

**IN THE MATTER OF THE ONTARIO SECURITIES COMMISSION AND
THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

Court File No.: CV-12-9606-00CL

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

AFFIDAVIT OF KATHRYN DANIELS
(Affirmed February 15, 2012)

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Solicitor for the Applicants