Insight beyond the rating.

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British Columbia Securities Commission
Alberta Securities Commission
Ontario Securities Commission
Autorite des marches financiers

Re: Securities Regulatory Proposals Stemming from the 2007- 08 Credit Market Turmoil and its Effect on the ABCP Market in Canada – Consultation Paper of The Canadian Securities Administrators - "CSA Consultation Paper 11- 405"

Dear Sirs/Madames:

DBRS appreciates the opportunity to provide comments on the "CSA Consultation Paper 11-405" (the "Consultation Paper"). DBRS has focused its comments on: proposal 1 regarding a regulatory framework for credit rating agencies ("CRA Framework"), proposal 2 to amend the short term debt exemption to make it unavailable to distributions of asset backed short term debt ("Short-Term Debt Exemption") and proposal 4 regarding reducing reliance on credit ratings in Canadian securities legislation ("Credit Rating References").

DBRS is a global credit rating agency (CRA) based in Toronto, Canada that was established in 1976 and is still privately owned by its founders. With offices in New York and Chicago, DBRS analyzes and rates a wide variety of issuers and instruments, including financial institutions, insurance issuers, corporate issuers, issuers of government and municipal securities and various structured transactions in North America, Europe, Australasia and South America.

The current problems in the global credit markets stem from a confluence of factors related to the U.S. sub-prime mortgage crisis which spilled over into Canada. With a concurrent stress on liquidity, the Asset-Backed Commercial Paper ("ABCP") market was negatively impacted with non-bank sponsored ABCP being the most visible casualty. A key lesson learned by DBRS from this crisis has been the need for additional transparency and disclosure, and the need for a change to liquidity standards to eliminate the concept of market disruption.

Over the last year, DBRS has undertaken a variety of initiatives[1] to help restore confidence in credit rating opinions and the credit rating process

[1] Refer to the May 27, 2008 Press Release titled "DBRS Revises Rating Approaches for Canadian Structured Finance" published on www.dbrs.com.

On a global basis, DBRS has extensively dialogued with investors, regulatory bodies, financial markets supervisors and a wide variety of trade organizations particularly regarding the role of a credit rating agency and its rating opinions.

Among other things, at the request of regulatory authorities and market participants, DBRS participated with certain other NRSROs[2] in developing measures to improve the quality and transparency of credit ratings and the independence of the rating agencies, and in conferring with the Technical Committee of the International Organization of Securities Commissions (IOSCO) on the May 2008 revisions to the IOSCO Code of Fundamentals for Credit Rating Agencies (the "IOSCO Code").

The IOSCO Code is a globally recognized framework of practical measures designed to improve investor protection, the fairness, efficiency and transparency of the securities markets and to reduce systematic risk. DBRS believes the IOSCO Code continues to serve as an appropriate foundation for prudent regulatory oversight in all jurisdictions.

DBRS published a revised Business Code of Conduct ("DBRS Business Code") to reflect its adherence to the amended IOSCO Code and to reaffirm, among other things, its commitment to high standards of independence, integrity and transparency. The DBRS Business Code also reflects other regulatory requirements and best business practices and is supported by a broad array of policies, procedures and internal controls to ensure the objectivity and integrity of its ratings and the transparency of its operations. The DBRS Business Code is a comprehensive living document that is modified from time to time.

In Canada, a general market disruption standard was utilized for almost twenty years. DBRS initiated change regarding the use of this standard in January 2007 and following the disruption in the ABCP market, DBRS required a global liquidity standard ("GLS") for rating all ABCP conduits. All rated ABCP is now supported by GLS.[3] DBRS implemented a new product/criteria committee to oversee new and revised criteria, methodologies and models to augment its governance processes. DBRS has updated a variety of Structured Finance methodologies and continues to review its methodologies and makes adjustments, as necessary.

DBRS also took the initiative to restructure its ABCP Conduit reporting process and level of disclosure to an individual transaction level on a monthly basis which is the leading disclosure of its type among all ABCP markets in the world. DBRS publishes comprehensive monthly disclosures of asset classes and performance metrics for all DBRS-

[2] Each CRA is registered with the U.S. Securities and Exchange Commission ("SEC") as a Nationally Recognized Statistical Rating Organization ("NRSRO"). This is also referred to as the NRSRO Group.

[3] In a September 12, 2007 press release, DBRS announced its updated criteria for rating Canadian ABCP conduits and outlined the GLS. DBRS worked with market participants to complete a review of existing conduits for GLS compliance by December 31, 2007. One hundred per cent of Canadian ABCP rated by DBRS is now GLS compliant.

rated Canadian ABCP conduits and term asset-backed securities (ABS). Investors and other stakeholders are able to determine the nature of the underlying assets on a transaction-by-transaction and conduit-by-conduit basis and perform their own analytics based on the performance of assets. If new kinds of assets are added to ABCP conduits, DBRS will disclose this and provide a summary of the nature of these new asset types and their related risks. DBRS will decline to rate ABCP conduits where this level of information is not forthcoming.

The Consultation Paper acknowledges DBRS transparency and disclosure efforts which DBRS very much appreciates. DBRS is also continuously improving transparency and disclosure by working with issuers to ultimately publish the names of counterparty exposures (for example, for foreign exchange and interest rate swaps) and draw conditions for access to liquidity facilities.

In the U.S., the SEC has recently published additional rules regarding transparency, rating quality and conflicts of interest, among other areas, which DBRS, as an NRSRO, will be implementing. The SEC has also published rule re-proposals on which DBRS will be commenting.

And in Europe, a regulatory framework for CRAs has been published which is in process of review and consultation for approval in spring 2009. DBRS is very committed to ratings coverage in the European market and has regulatory recognition and market acceptance in a wide variety of European countries. DBRS is conversing with European regulators and legislators to ensure the final regulatory framework is balanced and recognizes the global nature of the ratings industry.

Proposal 1 – The CRA Framework

Proposal 1 consists of two parts which DBRS will comment on separately:

"The Committee proposes establishing a regulatory framework applicable to "approved credit rating organizations" that requires compliance with the "comply or explain" provision of the IOSCO Code of Conduct and provides securities regulators authority to require changes to a CRAs practices and procedures. " ("CRA Framework")

"The Committee also will consider whether to require public disclosure of all information provided by an issuer that is used by a CRA in rating an asset-backed security." ("Disclosure Requirement")

CRA Framework

In view of the global nature of the credit markets and the CRA industry, DBRS appreciates the Committee's efforts to co-ordinate its proposed regulatory initiatives with the work of IOSCO, the SEC and other international regulatory authorities.

Notwithstanding its belief in a market based self-regulatory model, DBRS acknowledges the Committee's interest in oversight of CRAs that carry on business in Canada. To this end, DBRS does not object in principle to the introduction of a regulatory framework in Canada.

The CSA specifically seeks comment regarding the following questions:

> • *Is the CRA Framework an appropriate regulatory scheme? Does it go far enough in imposing standards and obligations on CRAs? If a more comprehensive registration regime (similar to the U.S. model) is preferable, what other obligations or conditions of registration should be imposed on CRAs?*

DBRS agrees that the CRA Framework is an appropriate regulatory scheme to the extent that it is based on "comply or explain" to the IOSCO Code. As previously highlighted, DBRS has adopted the amended IOSCO Code and implemented a variety of measures that support it.

Where the CSA believes it must go further than the IOSCO Code, DBRS suggests the CRA Framework should support comprehensive mutual recognition of other established regulatory regimes such as the SEC NRSRO regime. However, DBRS notes that as proposed the CRA Framework is a fragmented approach to CRA regulation because it is based on provincial authority.

Jurisdiction and Harmonization

The Consultation Paper provides that none of the jurisdictions represented on the Committee currently have statutory authority to implement the proposed CRA Framework. Legislative change would be required to implement it.

Given the international nature of the CRA industry, DBRS suggests that thirteen individual securities regulators are not the appropriate authorities to be implementing the CRA Framework. While the CSA proposal espouses harmonization with regulators in other jurisdictions such as the SEC, it allows for provincial differences in permitting an unfettered ability for each securities regulator to require changes to a CRA's practices and procedures. This is at odds with any globally harmonized approach to regulation.

DBRS suggests that a national securities regulator would be a more consistent, effective and efficient means to regulate the CRA industry (as well as other industries) in Canada.

DBRS notes the January 12, 2009 report from the "Expert Panel on Securities Regulation" which central recommendation is a single Canadian securities regulator (referred to as the "Canadian Securities Commission"). A single national securities regulator would assist in coordination of international regulatory communication and responses especially in times of crisis.

DBRS also recommends that the CRA Framework coordinate to the extent possible with the Office of the Superintendent of Financial Institutions Canada ("OSFI") regarding the External Credit Assessment Institution ("ECAI") recognition process[4] and ongoing oversight. Many of the requirements and areas of interest are the same. Such coordination would ensure there is appropriate exchange of information and support a more integrated Canadian regulatory system.

DBRS suggests that a truly harmonized international approach would support a comprehensive mutual recognition system that not only permits reliance on well established regulatory regimes as a legitimate basis for registration but also for oversight and compliance inspection purposes.

The CRA Framework currently envisions that a CRA which is an NRSRO would be an "approved credit rating organization". DBRS strongly recommends that the Canadian legislative regime provide for reliance on the SEC's oversight and examination mechanisms as well, rather than duplicate requirements and compliance reviews. Provincial powers or a national securities authority would not be necessary where such activities are conducted by another recognized regulator such as the SEC.

Finally, DBRS encourages the Committee to closely monitor and dialogue with its European counterparts as they amend and finalize their proposed regulatory framework for CRAs to assist in ensuring the final solution is globally harmonized as much as possible and accommodates all CRAs to encourage competition and ensure safety and soundness of the markets. All regulatory bodies having supervision over CRAs strive for the same high standards of independence, integrity and transparency such that the regulatory requirements for CRAs in all jurisdictions should be measurably similar and support mutual reliance regimes.

Features and Provisions

DBRS believes that the proposed approach to require compliance with the "comply or explain" provision of the IOSCO Code is an appropriate regulatory platform. The amended IOSCO Code continues to require high standards and incorporates a broad number of new measures in response to regulatory authorities and market participants.

[4] DBRS has ECAI recognition from OSFI under the Capital Adequacy Guidelines/Basel II requirements. In Europe, ECAI was informally received through the Committee of European Banking Supervisors joint assessment process under the Capital Requirements Directive/Basel II, and officially received in a number of countries and from the European Central Bank. NRSRO registration serves as ECAI in the U.S.

However, DBRS suggests that as proposed the scope of individual provincial powers is too broad. These powers range from: the ability by any provincial securities regulator to revoke, amend or modify a CRA's designation as an approved credit rating organization, to provide, on request, a broad range of information about its business as a CRA and any other documents, books and records related to its credit rating business, and to also be required to make any changes to practices and procedures relating to its business as a CRA. Such authority needs to be clarified, limited and available only as a last resort. Moreover, CRAs should be subject to appropriate due process of notice, dialogue and participation regarding the areas that affect them.

DBRS suggests that individual provincial (or a national securities) powers regarding changes to a CRA's practices and procedures should not be unfettered and should only be available " …in the event that a CRA ceases to comply with the IOSCO Code of Conduct "comply and explain" regime." Moreover, similar to the U.S., the CRA Framework should include a statement to prohibit the ability to "…regulate the substance of credit ratings or the procedures and methodologies by which any (CRA) determines credit ratings."[5]

Disclosure Requirement

DBRS encourages and supports a comprehensive information disclosure regime. DBRS has been very vocal about the need for increased public disclosure regarding Structured Finance products to assist investors to conduct their own analysis.

The CSA specifically seeks comment regarding the following questions:

- *Is a requirement to disclose all information provided by an issuer and used by a CRA in determining and monitoring a credit rating an appropriate way to address the lack of transparency of asset-backed securities? Should the CSA impose a disclosure obligation directly on issuers of asset-backed securities? Should a disclosure obligation apply regardless of whether such securities have a rating?*

- *The SEC's proposed disclosure requirement applies to a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction if the rating for the security or money market instrument was paid for by the issuer, sponsor or underwriter of the security or money market instrument. Is the scope of the SEC's proposed disclosure requirement appropriate? Does it include any transactions that should not require disclosure? Does it omit any transactions that should require disclosure?*

- *If the CRA disclosure obligation is adopted, should approved credit rating organizations be exempt from complying with such obligation if information has*

[5] The Credit Rating Agency Reform Act of 2006, Section 15E of the U.S. Securities Exchange Act of 1934.

already been disclosed on a specific security in accordance with the SEC's requirements?

The Committee disclosure proposal is limited to an asset-backed security and would require that information be publicly disclosed when the securities being rated are initially issued, and thereafter, the information would have to be publicly disclosed as soon as possible after the information is provided to the CRA. The CRA would be prohibited from issuing an asset-backed security rating unless it reasonably concludes that the information has been publicly disclosed and would have to withdraw a rating if the relevant information is no longer publicly disclosed.

DBRS appreciates and supports the outlined disclosure objectives to achieve more market transparency but respectively submits that the proposed approach is neither a practical nor an effective means to achieve these objectives.

To ensure timely and consistent disclosure of useful information in the market, it is critical that disclosure be conducted by the party who is in the best position to determine that the information serves the purpose for which the disclosure is intended. DBRS suggests that the appropriate party for the proposed disclosure requirement would be the originator or the issuer of the information. Similarly, it is not an appropriate role for CRAs to monitor issuers to ensure that other parties meet their responsibilities in respect of the investing public.

As proposed, there may be an inconsistency in the information disclosed if the requirement is crafted in such a way that the information is geared to CRAs for their purposes only. Different CRAs have different information requirements. Moreover, what CRAs receive from issuers and need for rating purposes may be different from what investors require for their purposes. A credit rating is only one factor and not the sole determinant in risk measurement and investment decision making.

DBRS suggests that a disclosure obligation (by an "issuer or arranger") be encouraged regardless of whether a security has a rating and should be expanded to other asset classes beyond asset-backed securities. Given its successful efforts in achieving very high standards of disclosure for Canadian ABCP and ABS, DBRS would be pleased to assist in developing a comprehensive and standardized information disclosure framework for all Structured Finance products. Broad regulatory support/sponsorship would be a critical success factor.

DBRS notes that the Committee proposes an exemption for compliance with the SEC equivalent disclosure obligation. DBRS supports such an exemption which is consistent with its view regarding mutual regulatory reliance. The SEC rule proposal regarding the disclosure requirements in respect of Structured Finance products was not adopted and was

recently re-proposed, with significant revisions for public comment due late March 2009 [6]. There were a variety of concerns regarding the initial proposal including that it effectively placed the initial and ongoing onus upon CRAs to disclose information received from issuers, arrangers and other third parties.

The Committee has identified a number of issues regarding its proposed disclosure requirement with which DBRS agrees. The following provides summarizes DBRS arguments against a CRA disclosure obligation:

- Disclosure of information about the legal structure and underlying assets of a structured finance product should be the function of the issuers and arrangers pursuant to the current disclosure regime under securities legislation.

- The information is not created nor owned by the CRA and imposing such a burden exposes a CRA to the liability of others and may improperly jeopardize private or offshore offerings exemptions.

- It is inappropriate and impractical for CRAs to monitor an issuer disclosure at the time of the rating and on an on-going basis.

- Forcing CRAs to disclose information received from issuers may discourage issuers and arrangers from sharing information with those CRAs who are known to have more conservative rating styles.

DBRS suggests that the Committee reconsider their disclosure proposal until the SEC disclosure requirement is clear. DBRS would very much appreciate dialogue with the Committee as they re-consider their approach.

Proposal 2 – Short-Term Debt Exemption

"The Committee proposes amending the current short-term debt exemption to make it unavailable to distributions of asset-backed short-term debt."

The CSA seeks comments regarding a number of questions. DBRS has focused on the following questions:

[6] The SEC is re-proposing for comment an amendment to its conflict of interest rule that would prohibit an NRSRO to rate a structured finance product whose rating is being paid for by the product's issuer, sponsor or underwriter, unless information about the product provided to the NRSRO to determine and monitor the rating is made available to the NRSROs not retained to issue a credit rating. Additionally, the re-proposal includes an amendment to Regulation FD to permit disclosure of material non-public information to NRSROs, whether or not the NRSROs make their ratings publicly available.

• Should the CSA create a separate exemption for asset-backed short-term debt? If so, for what purpose? What should the terms of that exemption be? Should a requirement for an approved credit rating be included as a condition to exempt distributions of asset-backed short-term debt?

• One of the goals of the Committee is to prevent the use of the short-term debt exemption for distributions of complex products such as ABCP. Is the proposed definition of "asset-backed short-term debt" appropriate for defining the scope of the amended short-term debt exemption? If not, what is a more appropriate definition? Should the definition be tied only to multi-seller ABCP conduits or only to those that contain actual or potential exposure to previously securitized assets?

DBRS does not believe that current exemption from the registration and prospectus requirements needs to be modified to exclude asset-backed products nor that a separate exemption for asset-backed short-term debt is necessary at this point. There are a number of successful measures that have been implemented including a comprehensive move on the part of all ABCP issuers to be GLS-compliant and through increased information disclosure regarding asset-backed short-term debt.

With market cooperation, DBRS was instrumental in achieving a high level of transparency regarding the metrics and underlying assets of ABCP. As discussed in proposal 1 – Disclosure Requirement, DBRS suggests that an "issuer or arranger" disclosure requirement based on comprehensive and standardized information should be encouraged for all asset classes including asset-backed short-term debt to assist investors in their decision-making. IIROC has also issued a very comprehensive report regarding ABCP and recommendations with respect to product due diligence, product transparency, conflicts of interest and credit ratings.

Given the proposed CRA Framework to implement formal oversight of CRAs in Canada, DBRS suggest that an approved credit rating should remain as a condition for exempt distributions including that of asset-backed short-term debt. DBRS views on removal of credit rating references are also discussed in its response to proposal 4.

Proposal 4 - Credit Rating References

"The Committee is considering whether to reduce the reliance on credit ratings in Canadian securities legislation."

The CSA seeks comments regarding the following questions:

• Should the CSA reduce its reliance on credit ratings in Canadian securities rules and policies?

• Do you think that any of the alternatives to credit rating uses identified above would be a better substitute for a credit rating?

Consistent with DBRS public views regarding a similar rule proposal by the SEC, DBRS suggests that the implementation of a CRA Framework as per proposal 1 to bolster oversight of CRAs is fundamentally at odds with proposal 4 to consider reducing reliance on credit ratings in Canadian securities legislation. DBRS would argue that concerns regarding undue reliance on ratings should lessen with formal and additional oversight of CRAs.

DBRS does not believe that references to credit ratings should be removed from Canadian securities legislation as proposed by the Committee in short-form and self prospectus eligibility (NI 44-101 and NI 44 -102), guaranteed debt exemptions (NI 45-106) and for alternative credit support (NI 51 -102), among others.

In July 2008, the SEC proposed a similar rule for public comment regarding the removal of credit ratings references in U.S securities legislation. A large variety of market participants voiced their concern against this proposal particularly regarding the lack of well-defined and tested alternatives to credit ratings. At the time of writing, the SEC rule proposal has not been tabled for adoption nor for re-proposal. Moreover, there appears to be increased reliance and usage of credit ratings in the current economic crisis. In the U.S., credit ratings are one of the conditions in the Federal Reserve Board's emergency funding facilities[7]. In Canada, the Canadian Lenders Assurance Facility, introduced by the Department of Finance in November 2008 as part of Canada's response to stabilize the financial markets, also uses credit ratings.[8] In addition, there are new programs under the Extraordinary Financing Framework introduced with the January 27, 2009 Federal Budget that will also include the use of credit ratings.

DBRS believes that credit ratings continue to serve as useful purpose and reference point in Canadian securities legislation and that none of the suggested alternatives would be a better or sole substitute for a credit rating.

The Committee proposes to limit the availability of the guaranteed debt exemption to debt securities issued or guaranteed by governments of countries whose risk of default in payment is comparable to that of the Canadian government. In these volatile financial markets, DBRS would suggest that a comprehensive risk assessment which includes a credit rating on all relevant issuing governments - foreign and domestic - would be critical.

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[7] The Federal Reserve programs include the Commercial Paper Funding Facility, Money Market Investor Funding Facility, Term Asset - Backed Securities Loan Facility as well as the Primary Dealer Credit Facility and Term Securities Lending Facility.

[8] The guarantee fee under Canadian Lenders Assurance Facility is calculated based on minimum acceptable rating thresholds.

Under the alternative credit support, the purpose of the credit rating provides a basis upon which issuers can conclude that the credit risk of a security for which alternative credit support has been provided is the same as that under a full and unconditional guarantee. The proposed alternative would be to require the relative credit risk to be determined by the issuer. A credit rating agency's primary role and expertise is credit risk assessment which is not an issuer's primary role nor focus.

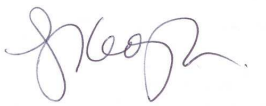
DBRS respectfully submits that should the Committee conclude to reduce reliance on credit ratings in Canadian securities rules and policies, the burden and potential cost that the Committee seeks to impose on CRAs through the CRA Framework, particularly under current provincial authority, would not be justified.

Concluding Remarks

CRAs continue to perform an important capital markets and regulatory function. DBRS suggests that ratings will remain a significant point of reference for investors and other market participants especially given the global regulatory initiatives to bolster CRA independence, integrity and transparency. As such, DBRS suggests that the Committee needs to take a measured approach to regulating CRAs in Canada.

DBRS appreciates the opportunity to comment on this important set of regulatory proposals. Please do not hesitate to contact me should you have any questions and/or wish to discuss DBRS views.

Very truly yours,



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