Claude-Étienne Borduas
Senior Counsel,
CIBC Legal Department
La Tour CIBC
1155 René-Lévesque Blvd. West
Suite 1020
Montréal (Québec)
H3B 3Z4
tel.: (514) 876-2139
fax: (514) 876-4735
e-mail: claude-etienne.borduas@cibc.com

February 16, 2009

BY E-MAIL

BRITISH COLUMBIA SECURITIES COMMISSION
ALBERTA SECURITIES COMMISSION
ONTARIO SECURITIES COMMISSION
AUTORITÉ DES MARCHÉS FINANCIERS

c/o John Stevenson, Secretary
ONTARIO SECURITIES COMMISSION
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario, M5H 3S8
e-mail: jstevenson@osc.gov.on.ca

Me Anne-Marie Beaudoin
Secrétaire de l'Autorité
AUTORITÉ DES MARCHÉS FINANCIERS
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal (Québec) H4Z 1G3
e-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs, Mesdames:

Subject: 11-405 Securities Regulatory Proposals Stemming from the 2007-08 Credit Market Turmoil and its Effect on the ABCP Market in Canada

---

We are submitting this letter on behalf of Canadian Imperial Bank of Commerce and its affiliates, (collectively, "**CIBC**"), in response to the 11-405 Securities Regulatory Proposals Stemming from the 2007-08 Credit Market Turmoil and its Effect on the ABCP Market in Canada (the "**Proposals**") published by the Canadian Securities Administrators (the "**CSA**") on October 6, 2008. CIBC is the sponsor of acts as financial services agent and provides backstock-style liquidity support to three multi-seller and one single-seller conduit that offers asset-backed commercial paper ("**ABCP**") to investors. These conduits provide access to funding to a number of originators of consumer and commercial loans, and presently have in excess of $7.5 billion in ABCP outstanding. CIBC Asset Management Inc. ("**CAMI**") and CIBC Global Asset Management Inc. are wholly-owned subsidiaries of Canadian Imperial Bank of Commerce providing investors with access to a wide range of investment services through mutual funds, pooled funds and segregated portfolios.

Despite the dramatic impact of he seizure of the non-bank sponsored ABCP market on capital markets and their participants, we believe that that the CSA should take all necessary time and caution to ensure that the root cause of this crisis is duly identified and fully understood. This, in our view, is the only way to ensure that any regulatory action is targeted precisely at it and we respectfully submit that any less focused regulatory action may unduly disturb certain segments of the market to the detriment of investors, while imposing additional costs and compliance burden on market participants without tangibly increasing investor protection against similar incidents.

In light of this general remark, we have provided our comments in response to certain of the Proposals described in the CSA's consultation paper, which are reproduced below in bold using the CSA's own numbering for convenience of reference. Capitalized terms used but not defined in this letter have the meaning ascribed to them in the consultation paper.

<u>Proposal 1</u>: 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 CRA's practices and procedures.

Also considering whether to require public disclosure of all information provided by an issuer that is used by a CRA in rating an asset-backed security.

<u>Regulatory Framework</u>:

CRAs play a key role within the Canadian credit markets, partly because of the depth of their knowledge and credit analysis capabilities. CRAs review a very significant number of transactions, which allows them to compare each transaction against a much broader range of similar transactions than any investor ever could. The CRAs' ratings thus serve as an objective benchmark that can be applied to competing investment products by investors and investment managers to compare available investments between themselves. Without ratings, it would often be extremely difficult for prospective investors to differentiate between different securities that appear to be equivalent or, at least, similar in concept or structure, despite having materially different inherent risk profiles. We are concerned that virtually no investors or investment managers could afford to review as broad a range of transactions as CRAs or duplicate their models or the depth of review and analysis. Without the benefit of the CRAs' significant research and analysis capability and without the ability to use ratings to benchmark competing investment products, investors may end up buying into a given investment under the impression it is equivalent to another, without realizing that the risk associated with it is, in fact, significantly greater compared to the other available products.

On that basis, we submit that the CSA should make every effort to ensure that any additional requirements they impose on CRAs do not act as a deterrent to them continuing to assume their important role within Canadian credit markets and do not increase the compliance burden and the associated costs to a point where only the largest issuers could afford to retain CRAs' to rate their products. This would ultimately be detrimental to investors and smaller issuers by effectively reducing the range of available investment products that prospective investors and investment managers could consider. Accordingly, we concur with the CSA's assessment that a Canadian registration regime for CRAs that is similar to the American model would offer little or no additional benefit. Furthermore, while we are generally supportive of IOSCO's initiatives relating to enhancements of its Code of Conduct as it applies to CRAs, we are of the view that any regulatory changes relating to CRAS would need to apply globally across all major markets in order to be effective and to avoid fragmentation of the CRAs' role across different markets.

<u>Disclosure of Information Provided to CRAs</u>:

The CSA questions whether CRAs should be required to disclose all information provided by an issuer and that is used in determining credit ratings. We are not in favor of a requirement for CRAs to disclose all information provided to them. As mentioned above, CRAs have their own models; a lot of the information required by CRAs from issuers is intended as input to these specific models. Without the CRAs specific expertise, a lot of the information provided to them would be useless and, perhaps, misleading for investors. We believe that the onus and ultimate responsibility for ensuring that material information (as opposed to all information) regarding an investment product is made publicly available should lie with the product's issuer and sponsor.

While we believe that there would be merit to issuers being required to publicly disclose, or at least make available, all material information relating to a given investment product, the CSA should carefully think through what specific information would be relevant and beneficial to investors. Among various things to consider, we would remind the CSA that originators in securitization transactions have confidentiality obligations toward certain parties, including debtors under consumer loans. The CSA should carefully consider such confidentiality obligations and any impacts of applicable privacy protection legislation in addition to making a determination about the usefulness and relevance of any information to be disclosed to investors.

***Proposal 2*: Amending the current short-term debt exemptions to make it unavailable to distributions of asset-backed short-term debt.**

The policy principle underlying the short-term debt prospectus exemption is that investors purchasing this kind of investment product are sophisticated and able to fend for themselves, thus not requiring the protection afforded by a prospectus or the participation of a dealer. While we would not question this, we are of the view that without at least a certain level of transparency regarding an investment – in this case, the product's structure and underlying portfolio - even significant investment expertise will be of little assistance to a prospective investor. We consider that a lack of transparency regarding the portfolios underlying the securities issued by non-bank sponsored ABCP conduits was the leading cause of the problems experienced with the ABCP market.

Carving out ABCP from the short-term debt exemption to put it under a separate class of exemption has been touted by some as beneficial, in that this would draw the attention of prospective investors on the increased complexity of ABCP conduits, as opposed to other instruments such as commercial paper. Supporters of this approach believe that this would reassure prospective investors who contemplate a purchase of commercial paper under the existing short-term debt exemptions by dissociating ABCP and other types of short-term debt instruments. We believe that eliminating the possibility of selling ABCP under a prospectus exemption is not a solution that would prevent another crisis. Regardless of whether ABCP is sold under the current short-term debt exemption, a new exemption or any other currently available exemption, we believe that, as discussed in response to Proposal 1 above and further addressed below, the key to preventing such a crisis from recurring is to allow prospective investors to make a reasonable risk assessment relating to the investment product by providing them with all relevant material information relating to its structure and underlying portfolio composition. In our view, there would be significantly greater benefit to establishing mechanisms to ensure that new products are appropriately reviewed prior to their release from a risk and suitability standpoint than in preventing the sale of ABCP at large pursuant to prospectus exemptions.

We note that while the CSA's consultation paper reviews in detail the role played by non-bank sponsored ABCP in the credit market turmoil in Canada, the Proposals and, in particular, this proposal to carve out ABCP from the short-term debt exemption, do not differentiate between bank sponsored and non-bank sponsored ABCP. Due, in part, to the increased effective liquidity support from sponsoring banks, the disruption to the roll-over of bank sponsored ABCP remained minimal despite the extremely challenging credit market conditions that have prevailed since the latter months of 2007. In our view, this illustrates that, whichever option stance the CSA adopt in regard to the ability to sell ABCP on the exempt market, it would be appropriate for the CSA to consider differentiating between different kinds and classes of products, including bank sponsored and non-bank sponsored ABCP, as opposed to simply treating all ABCP as representing one and the same thing.

We would also like to reiterate our concern that, as expressed in our comment letter dated May 29, 2008 relating to proposed National Instrument 31-103 – *Registration Requirements*, taking away, even partly, the short-term debt exemption would undermine the CSA's stated goal of achieving greater harmonization throughout all provinces and territories, since federally-regulated institutions would be treated differently in Ontario and in the other Canadian jurisdictions. We would also urge the CSA to consider the potential impacts of any new regulatory initiative relating to the short-term debt exemption on the relief referred to on page 39 of the above-mentioned comment letter.

On a technical note, we would point out that the resale restrictions that attaches to securities distributed pursuant to other available exemptions, such as the accredited investor exemption or the $150,000 minimum amount exemption, might adversely affect the liquidity of shot-term debt instruments, which is an inherent feature of these products that would normally form part of the investor's rationale for purchasing them in the first place.

***Proposal 3*: Undertaking a separate policy review to consider the appropriateness of (i) the income and net financial asset thresholds in the accredited investor definition, and (ii) the $150,000 exemption.**

We submit that revising the minimum assets or minimum investment thresholds, or rendering these exemptions inapplicable to a distribution of ABCP is unlikely to prevent a crisis of the nature we have been experiencing. For example, most, if not all of the investors that we have dealt with who had purchased ABCP and were later affected by the crisis had purchased amounts several times greater than $150,000 in ABCP or would have been captured under any higher threshold that could conceivably be imposed under a revised accredited investor definition.

This illustrates that, as submitted above, addressing the issue at the heart of the ABCP crisis requires, in our opinion, that the market address the issue of product quality and transparency, as opposed to restricting the range of investors who have the ability to purchase any prospectus-exempt investment product, including any potentially flawed product. Whether this is best accomplished by way of introducing additional disclosure requirements or by regulating the practices of issuers and sponsors relating to the development and creation of a new investment product, we would leave up to the CSA to further consider, but we submit that such an avenue would probably be of greater benefit to investors than altering the scope of these prospectus exemptions.

***Proposal 4*: Considering whether to reduce the reliance on credit ratings in Canadian securities legislation.**

While often a criterion under securities legislation, the existence of a credit rating in respect of a security is not a be-all-end-all in a risk analysis but, rather, one of several elements considered by investment professional in making investment decisions.

Anyhow, the importance of ratings should not be underestimated, since it would often be almost for investors or investment managers to duplicate the models of, and analysis performed by, CRAs leading to the issuance of a rating. As noted in response to Proposal 1 above, CRAs bring considerable expertise, as well as economies of scale, to the investment community. Ratings prove to be an extremely valuable benchmarking tool for prospective purchasers of financial instruments to use in making their own credit analysis and risk assessments, one without which there would be little in terms of tangible mechanisms for comparing the respective risk profile of otherwise investment products. Credit ratings currently serve as a clear and objective minimum threshold that is well understood by investors. Case in point, many clients specifically incorporate minimum credit ratings as part of their investment policy guidelines for this very reason. We believe that there is currently no viable alternative to replace credit ratings under applicable securities legislation.

***Proposal 5*: CSA coordinating with IIROC the various regulatory initiatives focused on addressing the role of intermediaries that are registrants with respect to asset-backed securities such as ABCP.**

As mentioned previously, while a certain level of emphasis on the duties of intermediaries in connection with the sale of asset-backed securities, we believe that the CSA's primary emphasis should be on containing potential problems at the source by reinforcing the obligations of issuers and sponsors relating to the creation and issuance of structured investment products, as opposed to prescribing the manner in which structured products may be offered to various classes of investors. We would encourage the CSA, IIROC and the Mutual Fund Dealers' Association to work hand-in-hand to ensure that any new regulatory measures are carefully elaborated and applied consistently across the industry.

As an example of an SRO initiative that, in our view, should assist the CSA in reaching their goal, as stated in the present consultation paper, we commend IIROC for its "Best practices for product due diligence", as published on October 17, 2008 (the "**IIROC Best Practices**"). CIBC, as well as certain other major financial institutions, has put together a product review committee whose mandate is to carefully review and approve new investment products prior to sale to ensure that they are suitable for sale to their clients, whether retail or accredited investors, as the case may be, based on standards that, in certain cases, even exceed those provided under the IIROC Best Practices. We believe that taking focused measures to prevent flawed or inappropriate products from reaching the market are far more susceptible to prevent a crisis like the one we have been experiencing since the end of 2007 than simply reducing the range of available investments or potential purchasers for an investment product.

***Question 7*: Reviewing whether: (i) a concentration restriction in Regulation 81-102 for money market funds is appropriate and, if so, whether the current 10% concentration restriction is appropriate; (ii) to further restrict the types of investments (such as asset-backed short-term debt) a money market fund can make; (iii) assets such as asset-backed short-term debt are appropriate as eligible assets in the definition of "cash cover" and "qualified security"; and (iv) short-term debt investments, including ABCP with a specified credit rating, should be permitted to be aggregated in a statement of investment portfolio.**

Lowering the Concentration Restriction:

The Canadian short-term debt market differs from other markets, including the American market, where stricter concentration limits exist. Notably, there is a more limited supply of quality short-term debt instruments available for Canadian investment managers to invest in because, first, there are fewer issuers overall here than in the United States and, second, because many of these issuers are not frequent issuers of short-term debt. We believe that the current 10% restriction adequately reflects the particularities of the Canadian market and that further reducing this concentration limit would likely have a negative impact on the ability of funds to hold quality investments in their portfolio. Restricting the ability of a fund to invest in a particular issue may have the unintended consequence of forcing the fund to hold securities of inferior quality instead of a larger percentage of premium quality securities, which would ultimately be detrimental to investors.

Restricting Permitted Investments:

Further restricting the types of investments a money market fund can make would likely have similar negative impacts and bring similar unintended consequences as lowering the concentration limits. ABCP represents a significant percentage of money market instruments available in Canada and, when used properly, is a worthwhile investment vehicle. We believe that, provided the necessary information is made available by issuers, professional investment managers are able to assess the risk associated with ABCP. Restricting the ability of funds to invest is such a high proportion of overall available short-term debt instruments would, in our view, unnecessarily harm the funds by impeding their ability to diversify their portfolios.

Cash Cover and Collateral:

Professional investment managers normally manage cash cover as they would other tranches of fund's portfolio, by carefully diversifying holdings and balancing credit risk and quality. It is important to note that certain structured products, including bank sponsored ABCP, have inherently greater credit quality and lower liquidity risk than other types of products typically regarded as "cash cover" or "permitted securities". Therefore, we see only downsides to eliminating ABCP altogether as an available form of cash cover or collateral for professionally managed mutual funds.

Aggregation of Short-term Investments in Statement Portfolio:

We do not have a strong view regarding this proposal and note that CAMI currently presents these investments on an itemized basis.

Additional Specific Requests for Comment:

The CSA question whether it would be appropriate to replace current "minimum credit rating" requirement with a "minimum credit risk" test. We submit that we would not recommend such an approach. There is, at present, not enough clarity regarding what such a test would consist of and to demonstrate its reliability from an objective standpoint. Credit ratings currently provide, at least, a minimum common denominator and an objective benchmark to compare available investments with one another. Without these, it would become increasingly difficult for investors and investment managers to compare funds with fewer common investment constraints between them. Credit ratings currently provide a clear and well understood basis for market participants to compare available investment products and carry the additional benefit of not being subject to any possible interpretation by a board of directors or otherwise. There is also a risk that, in the absence of such an objective benchmark, funds could take on additional risks without this being reflected in the form of a rating, which may raise unintended accounting and audit issues.

We would also point out that replacing minimum credit ratings by a minimum credit test would impose additional liability on fund managers, as opposed to a an objective investment constraint that a fund's portfolio manager or sub-advisor is required to follow. Fund managers, who often rely on sub-advisors to perform credit reviews and related assessments, would be required to develop in-house expertise or rely, at considerable cost, on an independent third party to perform such a credit risk analysis, which would be inefficient and more costly, to the ultimate detriment of investors, who would end up paying more to replace a consistently applied minimum objective criterion with an inherently more inconsistent discretionary criterion.

We would like to thank you for this opportunity to provide our comments. Please do not hesitate to communicate with the undersigned at the number appearing above should you have any questions regarding the foregoing or wish to discuss it further.

Yours truly,

(signed) *Claude-Étienne Borduas*

Claude-Étienne Borduas
Senior Counsel, CIBC Legal Department