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

Via email to:
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consultation-en-cours@lautorite.qc.ca

Re: Proposed National Instrument 41-103 Supplementary Disclosure Requirements for Securitized Products, related proposed rules and rule amendments[1] (Proposed Securitized Products Rules)

Dear CSA:

DBRS[2] very much appreciates the opportunity to provide the CSA with its comments on the Proposed Securitized Products Rules (PSPR).

DBRS is the only Canadian based global credit rating agency (CRA). With headquarters in Toronto and offices in Chicago, London and New York, DBRS' credit ratings, research and financial analysis help investors make informed financial decisions. DBRS' role in Canada is of particular significance, with comprehensive ratings coverage for asset-backed securities, all provinces, virtually all corporate entities, major banks and insurance companies. DBRS is the primary CRA for term securities, commercial paper, and preferred shares, and is the only CRA that focuses on emerging Canadian companies.

As the only Canadian based CRA, DBRS believes it plays a unique and critical role in the Canadian capital market. It is on this basis that DBRS offers its comments on the PSPR.

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[1] Proposed Securitized Products Rules includes: Proposed NI 41-103 Supplementary Prospectus Disclosure Requirements for Securitized Products, Proposed NI 51-106 Continuous Disclosure Requirements for Securitized Products, Proposed Amendments to NI 52-109, Certification of Disclosure in Issuers' Annual and Interim Filings, Proposed Amendments to NI 45-106 Prospectus and Registration Exemptions and NI 45-102 Resale of Securities, and Proposed Consequential Amendments issued April 1, 2011.

[2] DBRS operates its ratings business through DBRS Limited, DBRS, Inc. and DBRS Ratings Limited.

Support for additional transparency and investor protection

The CSA recognizes that securitization plays an important role in the capital markets. It notes that "Securitization can have a positive impact on the supply of credit, and thus provide important economic benefits."

The PSPR sets out a new framework for the regulation of securitized products in Canada focused on two main features:

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

DBRS is fully supportive of greater transparency and disclosure in the Canadian securitization market. Indeed, DBRS has worked consistently on improving ratings transparency in the Canadian and global capital markets before and after the financial crisis of 2007-2008 (financial crisis) as outlined in a number of commentaries it has published over the past several years[3].

However as proposed, DBRS sees the PSPR as having a significant and potentially negative impact on the form and continued existence of the securitization market in Canada.

Distinct and separate Canadian securitization market

DBRS appreciates that the PSPR is intended to take into account the particular features and risks of the Canadian securitization market. However, many of the CSA's proposals reflect developments and rules in the U.S market[4], and do not reflect the uniquely different Canadian market.

DBRS suggests that the CSA should focus on issues that have arisen specifically in the Canadian securitization market, not the very different U.S. securitization market. DBRS would respectfully request that the CSA consider the actions taken by Canadian market participants (including CRAs) over the last several years to address the market conditions and weaknesses demonstrated during the financial crisis before imposing additional and potentially unworkable requirements and costs on the Canadian market.

DBRS concurs with the comment that, "...if not properly regulated, the securitization markets can be a source of systemic risk." This comment is appropriately reflective of the period prior to the

[3] These commentaries can be found under Regulatory Affairs on www.dbrs.com . Commentaries on transparency include: http://www.dbrs.com/research/240065/strengthening-transparency.pdf, http://www.dbrs.com/research/236188/dbrs-s-global-commitment-to-high-standards-and-market-communication.pdf. http://www.dbrs.com/research/230767/how-dbrs-maintains-independence-and-ratings-quality.pdf , http://www.dbrs.com/research/229488/dbrs-commitment-to-high-standards-and-continuous-improvement.pdf, http://www.dbrs.com/research/227113/dbrs-initiatives-to-enhance-the-quality-and-transparency-of-its-ratings-process.pdf

[4] In July 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted in the U.S. (the Dodd-Frank Act) which included a number of provisions dealing with securitization. The Securities and Exchange Commission (SEC) has made rules to implement certain provisions of the Dodd-Frank Act including disclosures regarding representations and warranties, issuer review of underlying securitized product assets and rules regarding risk retention (U.S. Securitization Initiatives).

financial crisis. However, the reference to an "Originate-to distribute-model", which has been prevalent in the U.S. market, is incorrect in the Canadian context. Most originators in Canada use securitization as one of several methods of funding operations, and the vast majority of Canadian securitization structures used since 2007 have required that the asset originator maintain "skin in the game" which is at risk if the assets securitized do not perform within expected parameters. Furthermore, the "Alteration of credit risk through structured finance techniques" may be relevant to some of the more esoteric structures found in the Collateralized Debt Obligation (CDO) segment of the Canadian securitization market but it is not applicable to the traditional (self-amortizing) segment of the market. Therefore, these two very different segments should not be considered in the same grouping for review and regulation.

Conditions of the financial crisis have been remedied

In terms of the problems experienced in the Canadian securitization market, DBRS draws attention to three features of this market prior to August, 2007, each of which contributed to the resulting market conditions:

1. Canadian ABCP market exposure to non-Canadian and non-traditional securitization assets through the use of CDO technology;

2. The use of "market disruption" liquidity which was the norm in the Canadian securitization market prior to September, 2007; and

3. A limited amount of transaction structure transparency and asset performance disclosure within the Canadian securitization market.

These three features, more than any other aspect of the Canadian securitization market, contributed to the liquidity crisis experienced during the late summer and fall of 2007. However, each of these features has since been addressed and the related systemic risk has been mitigated. More specifically:

1. There is no exposure to CDO transactions in any current Canadian ABCP market transactions rated by DBRS;

2. In September and October 2007, initiated by DBRS, all Canadian bank sponsored conduits converted from market disruption to a global liquidity standard (GLS). All current DBRS-rated Canadian ABCP meets the GLS liquidity standard; and

3. The amount of transaction structure transparency and asset performance disclosure provided by asset originators, securities issuers and rating agencies has been significantly increased to support Canadian securitization investors making informed initial and ongoing investment decisions[5].

To ensure the proper functioning of the Canadian securitization market, DBRS is supportive of codifying these market practices as part of the PSPR. DBRS is also supportive of restrictions on investors to sophisticated (and likely institutional) investors who have the resources to perform adequate initial and ongoing investment analysis to make informed investment decisions regarding Canadian market securities.

[5] http://www.dbrs.com/research/229488/dbrs-commitment-to-high-standards-and-continuous-improvement.pdf.

To expand the scope of the PSPR beyond codifying what is now practice would negatively impact the continued functioning of the Canadian securitization market. A specific example of this concern is the additional administrative burden and costs associated with the proposed guidelines on the preparation and maintenance of offering documents related to short-term securitized products. The proposed amendments may be unworkable, and may discourage or prevent both asset originators and issuers from continued participation in the Canadian securitization market.

DBRS is of the view that the purpose and requirements of an offering document should be differentiated from that of ongoing reporting. Market participants currently provide substantively detailed monthly reporting on both incremental (new) and ongoing ABS transactions and asset performance. The maintenance of these reporting practices would assist in ensuring there is adequate disclosure of information for investors without the costly and unnecessary burden of amending and distributing new offering documents every time a new transaction is entered into by the issuer.

Disproportionate focus on the short-term securitization market

DBRS suggests there is a disproportionate focus on the short-term securitization market that is unnecessary especially given the considerably enhanced issuer and ratings information transparency in the Canadian market. The CSA asks whether the short-term exemption under which securitized products can be sold should be eliminated. DBRS believes that all securitized products should continue to be sold under the existing exemptions. The short-term prospectus debt exemption does not need to be singled out. The Canadian market offers conventional, low risk products. Many small issuers would not be able to go to public market due to the cost.

DBRS does not disagree with the proposed conditions for the ABCP prospectus exemptions as they provide a good match with current best practices in the Canadian market. These conditions include among other things: the ABCP includes a minimum of two credit ratings; the ABCP is backed by GLS and the ABCP does not have exposure to CDOs or credit derivatives (other than for obtaining asset-specific protection).

Section 3 Requirements

In response to request for comments on particular types of requirements in Section 3, DBRS offers the following:

1. Requirements for securitizations to be structured in a particular manner:

DBRS notes that a prescriptive approach to structuring, beyond establishing minimum standards to address systemic risks, is likely to constrain market evolution required to meet changing market conditions and presumes that all future market conditions can be projected at the current point in time. Consistent with its rating methodologies, DBRS outlines general requirements to meet designated credit rating levels and reviews these methodologies on a regular basis to maintain currency with market evolution.

2. Requirements for due diligence:

DBRS is of the view that codification of current market practice would be sufficient to avoid the systemic risk experienced in the U.S. securitization market.

3. Requiring or restricting the involvement of particular parties in a securitization:

DBRS recognizes the potential risk posed by conflicts of interest if they exist in Canadian securitization transactions but would caution that either requirements or restrictions imposed on other than a case by case basis may result in unintended consequences. For example, the over reliance on a transaction counterparty or the inability of a transaction participant to act may lead to a higher probability of default in the securitized transaction.

4. Requirements for new disclosure:

DBRS reiterates its position that significant progress has been made in transparency and that disclosures that are working, and hence, would caution action beyond codification of current Canadian securitization market practices.

Credit ratings disclosure

Section 10 of the proposed Prospectus Disclosure Rule requires issuers to disclose a variety of information regarding credit ratings. Among such disclosures is the requirement to include "any preliminary credit rating obtained by a sponsor or arranger for any class of the securitized products being distributed." The PSPR also requires the disclosure of "the minimum rating that must be assigned as a condition of the securitized product transaction" and the final rating provided by each CRA. Given these required disclosures, it is not clear what purpose disclosure of preliminary ratings would serve. Moreover, DBRS would be concerned that disclosure of preliminary ratings by CRAs would promote the inappropriate practice of ratings shopping among issuers and as such, potentially and unnecessarily introduce issues regarding conflicts of interest.

The PSPR also requires disclosure of "whether any credit rating agency has refused to assign a credit rating to a class of securitized products being distributed, and the reasons for refusal if it is related to the structure or the financial viability of the securitized product transaction." There are a variety of reasons why a CRA may refuse to assign a credit rating to a particular class apart from the structure or non-financial viability of the securitized product. A CRA may have refused to rate the preliminary structure of a deal but is subsequently able to rate the final structure. In these circumstances, disclosure of the refusal to rate the preliminary structure might confuse the market and not add any useful information for investment decision-making. DBRS suggests that this proposed disclosure be dropped.

Removal of credit rating references

The CSA has requested comment on a number of initiatives that are being considered in the U.S. to determine if they are appropriate in the Canadian context. One of these areas regards whether to replace approved credit rating criterion for the short-form and shelf prospectus systems.

In the U.S., the Dodd-Frank Act has mandated the removal of credit ratings in U.S. Federal securities legislation which the SEC is now obliged to propose related rules. U.S. Federal regulators have acknowledged the difficult task of removing credit rating references in the face of no viable, tested alternatives. In addition, the U.S. face the conundrum of implementing the Basel capital rules which call for a balanced use of ratings. In contrast, Canadian securities legislation requires the use of ratings where a rating is available. Moreover, the CSA proposes to introduce a regulatory regime for designating and overseeing credit rating agencies (designated rating

organizations or the DRO proposal)[6]. The CSA's DRO proposal is premised on regulating CRAs who wish to have their ratings eligible for use in Canadian securities legislation[7].

DBRS believes credit ratings continue to be an important tool to bondholders and other capital market participants in conveying an opinion of credit risk. Although only one tool among many available to investors in their decision making, the tool is an important one. CRAs contribute to capital market efficiency by providing an informed third party view about issuers and securities and changes in the larger economy which may affect industries and individual companies. In addition to enhancing investor understanding of risk, ratings provide a common language to communicate credit risk to the market. In the absence of viable, tested alternatives, using non-credit rating agency opinions would simply shift the burden of providing independent credit assessments to a less regulated market and may introduce untested and highly volatile swings in the capitalization of companies in the financial sector[8].

For these various reasons, DBRS suggests that it would be inappropriate to replace the approved credit rating criterion in the Canadian short-form and shelf prospectus systems.

DBRS appreciates this opportunity to provide its comments on the PSPR. We would be pleased to further discuss any of the matters raised herein and/or provide additional information. Please do not hesitate to contact us.

Very truly yours,

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[6] Refer to the revised version of the Proposed National Instrument 25-101 Designated Rating Organizations (the Proposed Instrument), Related Policies and Consequential Amendments.

[7] The Bank of Canada's Standing Liquidity Facility (SLF) includes credit-rating requirements for assets acceptable as collateral. DBRS' credit ratings are cited as eligible for collateral purposes.

[8] As an example alternate model, having asset managers assign credit ratings, credit quality standards or expected losses would merely shift the accountability to an unregulated entity, which may also have a conflict of interest.