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VIA EMAIL (jstevenson@osc.gov.on.ca)

Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8

Attention: John Stevenson

Dear All CSA Member Commissions:

Re: CSA Notice/Request for Comments (the "CSA Notice") - Proposed National Instrument 41-103 ("41-103")
Comment Letter
File No.: 5580.001

We have reviewed 41-103 and the CSA Notice. We act for exempt market dealers, exempt issuers and groups that finance exempt issuers. We believe we have a strong understanding as to how the exempt market operates and how certain organizations may be negatively affected as a result of 41-103.

Our responses are below and numbered in accordance with the proposed questions in the CSA Notice regarding 41-103 and we have limited our responses to the "Proposed Exempt Distribution Rules" questions.

General approach

Question #27

- As it relates to the exempt market, the approach, in our opinion, should first be to review the existing regulations/protections already in place, and decide if suitable protections already exist. We believe the appropriate approach to protecting investors already exists (possibly with minor modifications) through the utilization of NI 31-103 as it relates to these types of securities. Exempt market dealers and dealing representatives are already required to conduct appropriate due diligence as it relates to all securities sold to their clients and are required to assess the merits, risks and suitability. It seems appropriate that, given the attributes of this securitized product, a reasonable modification might be to require that these products only be sold through registered and exempt market dealers. As noted in the responses below, the proposed 41-103 instrument and amendments to existing regulations would eliminate most of the investors in the exempt market (as they would not likely qualify as "permitted clients"). This would greatly prejudice both those exempt issuers currently operating in this securitized products market along with any exempt investors (who are not "permitted clients") who may be interested in investing in this type of security (as they would be limited to prospectus-only investments).

Question #28

- We are of the strong view that this product should be allowed to be sold in the exempt market. If you permitted it to be sold in the exempt market, but only through registered exempt market dealers, we believe sufficient protections are in place to protect investors (product due diligence, suitability analysis, risk assessments etc.). There are many sophisticated persons involved in the exempt market and it would be prejudicial to limit this type of product to a prospectus-only distribution. Just because a product is

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complicated, does not mean it should be limited only to those individuals that qualify as "permitted clients".

Who can buy

Question #29

- In our opinion, the removal of sections 2.3, 2.4, 2.9 and 2.10 of NI 45-106 will effectively eliminate any exempt market capital fundraising efforts of current issuers selling this type of security or any future issuer wanting to enter this securitized product market with a goal of primarily utilizing the exempt market. The proposed business plan of this type/size of issuer does not include or usually permit access to a prospectus-type offering. It is usually not a business that: (i) requires the size of capital usually raised in prospectus offerings; or (ii) can attract the interest of those persons involved in prospectus offerings (i.e. registered dealers/brokers). Usually the proposed business plan does not require that the issuer achieve its proposed maximum offering in a short period of time and if it did, it may not be able to properly place such cash resources to the benefit of its investors. Most issuers selling this product in the exempt market operate under the belief that they can raise a target amount each month and gradually grow the business of invested funds. Although there are many prospectus exemptions in NI 45-106, in the exempt market, most funds are raised under sections 2.3, 2.4, 2.5, 2.9 and 2.10 of NI 45-106. To eliminate access to these would very likely eliminate any securitized product issuers in the exempt market.

Question #30

- We do not believe the proposed approach is appropriate. We believe the right approach for these types of securities is to permit such products to be sold in the exempt market, but only through registered dealers or registered exempt market dealers. We believe sufficient protections are already in place to protect investors (product due diligence, suitability analysis, risk assessments etc.) purchasing these types of securities under the current market regulations.

Question #31

- Firstly, as noted in #30 above, we do not agree the approach is appropriate. But if we were to assume it was appropriate we would adjust/expand the list of eligible securitized product investors to include, at a minimum, those persons/individuals that qualify as "accredited investors" or "eligible investors" (when utilizing an offering memorandum) under NI 45-106. The current proposed list (or even the proposed adjustments in Question #31) is not a reflection of those active investors in the exempt market and, without including accredited investors or eligible investors, any further discussions regarding "Exempt Distribution Rules" are moot. In our opinion, without adjusting the qualifications to a more reasonable level, there will be no need for "Exempt Distribution Rules" as there will be no exempt market activity.

Question #32

- We are of the opinion that sections 2.3, 2.4, 2.5, 2.9 and 2.10 should all remain available as prospectus exemptions as it relates to these securities. We do not believe an adjustment is required to the threshold levels (relating to income, net assets or $150,000 minimum investment amount). As it relates to sections 2.3 and 2.10, we believe those persons/individuals currently utilizing these exemptions are sophisticated and able to assess (with the assistance of the exempt market dealer/dealing representative as being proposed herein) the risks and merits of these types of products.

- We do acknowledge that a specific form of information memorandum may be appropriate in certain circumstances, but provided the issuer complies with the offering memorandum form requirements and any additional information memorandum requirements, the availability to sell to investors who receive a copy of such disclosure documents should remain available. There are many complicated and/or risky products in the market (both prospectus level products and exempt products), but if (i) proper disclosure is available (in the form of an offering memorandum and information memorandum, if applicable); (ii) a registered

exempt market dealer is involved (who conducts proper due diligence); and (iii) a dealing representative conducts the proper analysis of the merits of the product, the risks associated and client suitability, we are of the view that any investor will have received sufficient protections against the risks associated with the sale of such products in the exempt market.

- As it relates to continuous disclosure obligations, we would accept that a higher level of ongoing financial disclosure is possibly warranted, along with an obligation to disclose any material non-performance of ABCP/Securitized Products, and the specifics of such non-performance. In many cases CUSIP numbers are associated with the Securitized Products and perhaps this information should be shared with investors and the regulators on a periodic basis. Annual Audited financial statements would also be fair, and the notes to such financials should comment on the portfolio of ABCP acquired and its performance.

- We submit that relying on/requiring outside credit agencies in order to sell certain products is a very slippery slope. Over time, this requirement may affect both the exempt market and the credit rating agencies in a negative fashion as certain biases and costs with be affected by such requirement. Our submission is that a level of independence between the rating agencies and the issuers etc. is required to be maintained. We submit that if a recognized credit agency has provided a rating, such rating must be disclosed. We do not agree that it is a requirement for these products that an issuer must have obtained at least two ratings for ABCP products. Requiring the ratings may place increased power and emphasis in the hands of such credit agencies. If an issuer does not have credit ratings – that also must be disclosed accordingly and the persons reviewing the product can come to their own conclusions/risk assessments regarding the lack thereof of such ratings. A group could be put together a higher risk ABCP or securitized products fund whereby ratings are difficult to achieve (because of time constraints on the acquisition of such products, but provided such omission of ratings is properly disclosed, this product should not be excluded from selling to a group of qualified buyers under sections 2.3, 2.4, 2.5, 2.9 and 2.10.

Question #33

- Subject to requiring the involvement of a registered dealer or registered exempt market dealer and other changes (possibly a specific form of additional disclosure document/information memorandum and continuous disclosure requirements), we believe these types of products should be available to the entire exempt market, as it currently stands. The proposed regulations, unless reduced to include sections 2.3, 2.4, 2.5, 2.9 and 2.10 of NI 45-106, will, in our opinion, eliminate the need for specific exempt market rules, as there will be little or no participants involved after the proposed regulations come in force.

Disclosure

Question #34

- We acknowledge that additional disclosure will further your proposed objectives.

Question #35

- Yes. The current approach taken to accredited investors and those persons that invest greater than $150,000 should apply, unmodified, to this type of investment.

Question #36

- No. All material information on a product should be disclosed as currently required under securities laws. If a rating has been received it must be disclosed. If no rating has been received on such ABCP, that fact must also be disclosed accordingly. The market itself will begin to dictate which products sell over time as certain investors or exempt market dealers may only be attracted to those funds that have the applicable ratings and other investor groups may not be swayed away from those funds that don't have certain ratings because of other factors in the investment.

Question #37

- We tend to agree that not prescribing specific disclosure for initial distribution other than short-term products is a reasonable approach. Longer term products have ongoing performance results that cannot be well predicted in advance and would be better covered by continuous disclosure.

Question #38

- We are in favour with the current securities rules in place concerning the initial sale of these products (i.e. full, true and plain disclosure), along with the concepts noted herein that would require the sale of these products through exempt market dealers. As it relates to post-issuance/ongoing disclosure we submit that the issuer and/or fund manager should be monitoring the performance of the ACBP and so it would not be much onus to have that summarized accordingly and shared with the applicable parties. If everyone is required to submit in a similar format, those persons reviewing the disclosure are able to better differentiate the products and assess the ongoing merits/risks.

Question #39

- See answer #38.

Question #40

- We believe that any ongoing disclosure requirements should be provided via an issuer's website as opposed to SEDAR. Private issuers are not normally familiar with SEDAR. Websites of issuers are already the popular forum for information and should continue to host updated information.

Question #41

- We agree with the proposed approach.

Statutory civil liability

Question #42

- The proposed liability is appropriate and identifies the proper groups/persons.

Question #43

- As we have previously stated herein, there are many complicated and/or risky products in the market (both prospectus level products and exempt products), and to create special rules regarding civil liability as it relates to ongoing disclosure for certain products and not others is both unfair and dangerous. I believe that if the regulators are considering such regulations, a much broader discussion on such rules must be considered as it should be discussed in the context of all ongoing disclosure for all products.

Question #44

- In reality, these provisions, in our experience, are not frequently exercised so the decision to impose these rights is of no great consequence either way.

Resale

Question #45

- We feel that the first trade of this specialized security should be treated the same as any issuance made under sections 2.3, 2.4, 2.5, 2.9, 2.10 or the proposed 2.44 of NI 45-106 such that the first trade could occur if again the trade was made in reliance of one of this exemptions again and not be limited only to the proposed section 2.44. The reality is that purchasers of private exempt market issuers are effectively buying a security that they may never be able to sell and providing only section 2.44 effectively restricts any future trade (finding a "permitted client" and would often be very difficult). A few more limited options to sell their securities under sections 2.3, 2.4, 2.5, 2.10 of NI 45-106 is the more appropriate approach to allow for trades.

Registration

Question #46

- We feel that any registered exempt market dealer should be able to sell this type of product under sections 2.3, 2.4, 2.5, 2.9, 2.10 or the proposed 2.44 of NI 45-106. As previously noted, in our opinion, the existing regulations/protections already in place are suitable for exempt products, including this specialized product. Exempt market dealers and dealing representatives are already required to have conducted the appropriate due diligence as it relates to all securities sold to their clients and are required to assess the merits, risks and suitability. It seems appropriate, given the attributes of this securitized product, that a reasonable modification might be to require that these products only be sold through registered dealers or registered exempt market dealers.

Question #47

- We feel strongly that this specialized product should be permitted to be sold through any exempt market dealer and that sections 2.3, 2.4, 2.5, 2.9, 2.10 of NI 45-106 should also be valid exemptions. Under 31-103, exempt market dealers and dealing representatives are already required to have conducted the appropriate due diligence as it relates to all securities sold to their clients and are required to assess the merits, risks and suitability. We feel that any restrictions that do not allow for distribution under sections 2.3, 2.4, 2.5, 2.9, 2.10 of NI 45-106 by all exempt market dealers will eliminate any exempt market capital fundraising efforts of current issuers selling this type of security or any future issuer wanting to enter exempt market. As we previously noted, the proposed business plan of this type/size of issuer does not include or usually permit access to a prospectus-type offering. Although there are many exemptions in NI 45-106, in the exempt market, most funds are raised under of sections 2.3, 2.4, 2.5, 2.9 and 2.10 of NI 45-106. To eliminate access to these options and to restrict certain exempt market dealers from selling this product would very likely eliminate any securitized product issuers in the exempt market.

Please feel free to contact the undersigned should you require anything further.

Yours truly,

Chris Croteau