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August 31, 2011

BY FAX AND EMAIL

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

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Dear Sirs/Mesdames:

Re: Proposed Securitized Products Rules (NI 41-103)

Thank you for the opportunity to respond to your notice and request for comments dated April 1, 2011 (the "**Notice**"). We have set out our comments below on the Proposed Securitized Products Rules.

Under the Canadian Government's economic stimulus plan to help resolve the economic crisis, the 2009 Federal Budget named Business Development Bank of Canada ("BDC") as the institution that would be responsible for managing the $12 billion Canadian Secured Credit Facility. Under the facility, BDC helped provide credit to the auto and equipment sector in order to provide credit to businesses and consumers to maintain economic growth. The mechanism for the provision of credit was by the direct acquisition of term asset-backed securities ("Term ABS") issued under prospectus. Under the facility, BDC acquired a portfolio of $3.6 billion of Term ABS, which helped establish benchmark pricing for the

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Canadian securitization market in the third quarter of 2009, a market which had seen almost no public activity for two years.

Also under the Canadian Government's economic stimulus plan, as part of the 2010 Federal Budget, BDC was mandated to extend financing to small and medium-sized finance and leasing companies with the creation of the Vehicle and Equipment Financing Partnership under the Business Credit Availability Program. Under this program, BDC has established the Multi-Seller Platform for Small Originators and pursuant to which, BDC purchases Term ABS that is backed by vehicle and equipment loans and leases originated by small and medium-sized originators. BDC purchases the Term ABS under a prospectus market exemption. Currently, BDC has authorized $350 million of Term ABS investments.

As employees of BDC, a large investor in Term ABS in the Canadian capital markets, both in the public market and exempt market, we are very interested in the current proposals regarding the Proposed Securitized Products Rules, and in the impact of regulation on this important source of financing for Canadian consumers and businesses.

Please note however that this letter contains the personal comments and opinions of the undersigned and not those of BDC, its directors, officers or other employees.

General Comments

We have set out our general comments below and when considered appropriate, we have responded to the specific questions set out in Section 7 of the Notice. While we have not responded to every question posed in the Notice, we do not intend that such non-response to specific questions should be taken as acquiescence. While we are neutral on some issues, the nature of the comments below will indicate our views in regard to certain of the questions asked by the Canadian Securities Administrators.

As context for our concerns, we wish to express our opinion regarding the 2008/09 global financial crisis and the "Made in Canada" Montreal Accord experience. From our perspective, the global financial crisis was triggered by falling U.S. home sale prices and its effect on the U.S. sub-prime residential mortgage market. The failing U.S. sub-prime residential mortgage market was accelerated by the securitization of these assets and by the restructuring of these assets and securitization transactions into the collateralized loan and debt obligations markets and credit default swap market that purchased or referenced these transactions (these types of structured or restructured products will be referred to as "**Structured and Synthetic Finance Products**"). The contagion from the U.S. sub-prime residential mortgage market to the global markets was fuelled by the lack of disclosure mainly in the Structured and Synthetic Finance Products market. This contagion ultimately led to the global freezing of credit.

Granted, disclosure was not the only factor to fuel the panic. Many other factors – including U.S. banks' and dealers' structuring practices, U.S. rating agency due diligence and methodology, regulatory oversight, investor due diligence, mark-to-market accounting, short-selling and debt price spread compression – converged to create the "perfect storm" of the worst global financial crisis since the Great Depression. Nonetheless, much of the panic was created by the lack of knowledge about what assets were securitized in these Structured and Synthetic Finance Products. It is a safe assumption that if the appropriate disclosure had been in place prior to the start of the 2008/09 global financial crisis,

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then the extent of crisis would have been mitigated. That being stated, the Canadian experience had its own "Made in Canada" complication with regard to the asset-backed commercial paper ("**ABCP**") market and the type of liquidity most often used for ABCP in Canada ("**Canadian-style Liquidity**"). In August 2007, non-bank-sponsored ABCP ("**Third-Party ABCP**") ceased to trade and ultimately most of the ABCP market froze.

While Third-Party ABCP funded some traditional asset-backed securitization deals, a substantial amount of the deals funded were Structured and Synthetic Finance Products. Most the synthetic structures in the Third-Party ABCP market were merely moving risk from one balance sheet to an ABCP conduit by arbitraging: (1) the high public debt rating of the Third-Party ABCP and accordingly the collateral requirements for such conduits counterparty risk; and (2) Canadian-style Liquidity. These deals were not "assets" in the traditional sense like credit card, mortgages or loans but were insurance policies sold by the ABCP conduit to parties in the form of credit default swaps that paid a premium to the ABCP conduit.

When Third-Party ABCP ceased to trade and accordingly the Third-Party ABCP conduits defaulted under the insurance policies as the conduits could not meet their collateral obligations, these "assets" disappeared. The liquidity provider, who was also the insurance purchaser under these deals, invoked that it was not legally required to provide liquidity for the Third-Party ABCP. The insurance purchaser could stop paying any premiums and take any collateral under the insurance policies, leaving Third-Party ABCP holders without any "asset" to liquidate. Ultimately, the negotiated settlement under the Montreal Accord maintained the "asset" so that a premium would continue to be paid for the Third-Party ABCP holder.

Undoubtedly, the debate of culpability will continue to be studied for years, but we think that it is reasonable to conclude that the problems with the ABCP market and the $32 billion Third-Party ABCP market were directly related to the combination of: (1) disclosure, (2) Structured and Synthetic Finance Products, and Canadian-style Liquidity. The lesson learned from our "Made in Canada" ABCP credit seizure is that: (1) disclosure should be improved, (2) Structured and Synthetic Finance Products should not have been in ABCP transactions and accordingly, in the exempt market; and (3) liquidity back-stop facilities should move to a global standard. The response should be to address these three issues that contributed to the problem but not at the expense of investor liquidity and the efficiency of the securitization market as a whole.

The third point regarding Canadian-style Liquidity has been resolved now that investors demand that global-style liquidity be used for ABCP in Canada and that Term ABS does not require liquidity back-stop facilities. Accordingly, the issues of disclosure and Structured and Synthetic Finance Products need to be addressed.

Substance and Purpose of the Proposed Securitized Products Rules

In general terms, we agree with the approach and purpose of the Proposed Securitized Products Rules that have been outlined in the Notice. We have outlined below our views and specific concerns about the substance of the Proposed Securitized Products Rules.

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New Definition of Securitized Products

The definition of Securitized Products is too broad and does not appropriately consider the three guiding principles outlined under section 3, *Substance and purpose of the Proposed Securitized Products Rules* in the Notice – market efficiency, transparency and consideration of Canadian features. As discussed earlier, in our view, the global financial crisis and the "Made in Canada" experience were largely due to Structured and Synthetic Finance Products and the lack of disclosure with respect to these assets. As we discuss below, we think that applying the Proposed Securitized Products Rules to Asset-Backed Securities (as currently defined in the rules) will significantly reduce the investor liquidity for Asset-Backed Securities particularly in the exempt investor market and not substantially improve the transparency of the Asset-Backed Securities market such that it may withstand another market crisis. The experience and features of the Term ABS market are robust and the structures withstood the economic recession.

While traditional securitized product stopped trading, as did Structured and Synthetic Finance Products, in Canada, this effect was because of the general panic and lack of understanding between the different products or in other words, "guilt by association". Since the global financial crisis was triggered by failing U.S. sub-prime mortgages, any Term ABS or ABCP with mortgages, whether prime or not, ceased to trade. Canada did not have a sub-prime mortgage market similar to the U.S. and Canada did not have the "originate to distribute" model to the same extent as the U.S. As discussed below, the Canadian securitization market had a substantial component of "originator skin-in-the-game" – this cannot be stated for Structured and Synthetic Finance Products since most of these products did not have the originator involved in the deal.

The subsequent effect of the freezing of commercial and consumer credit and therefore the lagging effect on the performance of automobile industry and automobile securitization deals caused Term ABS with automobile-related assets to cease trading. While investors stopped purchasing Term ABS because these securitization transactions did show deterioration in performance, or investors were merely concerned about the potential poor performance, we are not aware of any of these traditional Term ABS products where the performance of the underlying assets caused investors to suffer actual losses. The structures themselves, despite their market valuations, were robust.

As discussed above, a substantial amount of the problems with the Canadian securitization market during the financial crisis was due to Structured and Synthetic Finance Products as described in clauses (a)(ii)-(vi) and (b) of the definition of "Securitized Product" in Proposed National Instrument 41-103. The definition of Securitized Products should be separated from the definition of "Asset-Backed Securities" as defined in the current rules.

Specifically, clauses (a)(i) of the definition of "Securitized Product" in Proposed National Instrument 41-103 should be deleted. Accordingly, the Proposed Securitized Products Rules could use two definitions, "Asset-Backed Securities" as currently defined in the rules, and "Securitized Products" which would not encompass Asset-Backed Securities. This proposed change of using definitions – Securitized Products and Asset-Backed Securities – will facilitate applying the proposed disclosure rules and exempt market rules differently for each defined term. For the purposes of this submission and consistent to what we suggest should be done for the proposed rules, we will refer to our modified definition of "Securitized Products" as more appropriately, "Structured Products".

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Proposed Exempt Distribution Rules

The Proposed Exempt Market Distribution Rules over reach two of the three general principles outlined under section 3, *Substance and purpose of the Proposed Securitized Products Rules* in the Notice, namely Appropriate and Timely Disclosure that Foster Market Efficiency and Consideration of Features of the Canadian Securitization Market. Using the proposed definition of Securitized Products may curtail the private exempt market that provides funding to asset-backed originators that cannot access the public market. The increased cost of administration of the Proposed Securitized Products Rules on Asset-Backed Securities financings in the exempt market will place an undue cost burden on originators who may not be able to pass on these costs to their commercial and consumers accounts due to the competition from originators that can access the public markets. Exempt investors are sophisticated and can negotiate the form and amount of disclosure required for their transactions.

There should be a distinction made between the exempt Term ABS market and the exempt ABCP market. The ABCP market by its nature of being a short-term market does not lend itself well to investor due diligence since investments are liquid and temporary in nature and the underlying assets are ever-changing. Accordingly, the exempt Term ABS market and the ABCP market should be treated differently.

For the Term ABS market, the existing exempt market rules worked. Arguably, these rules could have worked for the ABCP market but for the presence of Structured and Synthetic Securitized Finance Products. Under normal circumstances, if any Term ABS or ABCP investor took a loss or suffered damages due to misrepresentation, negligence or fraud, then such investors could claim against or sue the issuer or sponsor. In many cases, these situations may not reach the litigation stage and the parties may settle. The anomaly of the financial crisis and the Montreal Accord is that an entire sector of the ABCP market needed to be remedied for many different parties and with assets that would have vanished unless a negotiated resolution was found.

The complication regarding the effectiveness of the existing exempt market rules comes from the resolution of the $32 billion of Third-Party ABCP. Under the negotiated Montreal Accord, there was a requirement for releases of all parties involved in the Montreal Accord, specifically, rating agencies, banks and investment dealers. Other than the truly "retail individuals" that did not have the sophistication, or at a minimum, the resources, to be purchasing ABCP, Term ABS or Structured Products, other exempt purchasers were sufficiently sophisticated had Structured and Synthetic Financial Products not been part of the equation. By separating the definitions of Asset-Backed Securities and Structured Products, the existing exempt market rules can remain as is for Term ABS and the Proposed Exempt Distribution Rules for Securitized Products may be applied to Structured Products and ABCP. Currently exempt investors can continue to provide liquidity to consumer and commercial originators without incurring additional cost and expenses imposed by the Proposed Securitized Products Rules that an exempt investor should be able to choose to waive.

Alternatively, if the definition of Securitized Products is not changed as we have suggested above by removing the reference to Asset-Backed Securities, then a minimum amount investment exemption should be maintained. Also, the investor which is qualified as an "Eligible Securitized Product Investor" under the rules should have the right to opt out of any disclosure requirements, whether in the form of an information memorandum or continuous disclosure, and opt out of any requirement to purchase

investments through a registrant. As we have commented above, the Term ABS market has weathered the credit crisis well and the issues discussed with regards to the failures in the ABCP market have now been resolved through improved disclosure and liquidity agreements. In the past, some retail investors were part of the exempted market but we think this was an exception and was addressed through the Montreal Accord. In the vast majority of cases private exempt market investors are, and have been, sufficiently sophisticated and knowledgeable to protect their interests.

Prospectus Disclosure

Subject to our comments, we agree with the prospectus disclosure rules proposed in the Notice and should be applied to Asset-Backed Securities and Structured Products. In light of our general comments, short form and shelf prospectus eligibility should remain restricted to Asset-Backed Securities and not be available to Structured Products.

Time to Review Offering Information

Specifically in respect of whether investors have sufficient time to review shelf supplements, there should be a mandatory time period for review prior to the first sale. During the financial crisis when BDC was managing the Canadian Secured Credit Facility, investors commented to BDC that leading up to the financial crisis, the demand for Canadian Term ABS was very high and consequently, offerings were filled in less than a day and, often, in a few hours. Accordingly, to be able to place an order in time to buy Term ABS, investors did not have sufficient time to make an investment decision. At a minimum, investors should be permitted one to three business days to review a shelf supplement.

In regard to MTN/continuous distribution prospectus supplement provisions, consistent with our comments above about shelf supplements, there should be a mandatory time period for investors to review any available continuous disclosure information. While the information is available on continuous basis, time should be provided to investors to retrieve and analyse it. Market liquidity will improve since affording investors the time to review the offering information will bring to the market any investors that did not participate due to the lack of time to make an investment decision.

Pool Asset and Payment Disclosure

We concur with the proposed rules that asset- or loan-level disclosure or grouped asset disclosure is not necessary. As alluded to in your question, it would be cumbersome to determine appropriate standardized data points for disclosure for all the various asset classes and potentially new asset classes. In many cases for Structured and Synthetic Finances Products, there is no asset- or loan level data to disclose as there is for traditional asset classes. Traditional asset classes like automobile and equipment leases and loans, credit card, residential mortgages, or accounts receivables are fairly consistent and comprise a large and diverse number of assets such that disclosure of asset- or loan-level details would not provide any significantly better information for investors to make a risk analysis. CMBS is the exception in that pools comprise a limited number of assets that are not significantly consistent or diverse, which is why greater asset-level due diligence is generally conducted by the third-party first loss provider.

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Such a requirement would add a significant administrative burden and expense on originators with a correspondingly small incremental benefit, if any, to investors. Additionally, depending upon the extent of the asset- or loan-level detail that may be required to be disclosed, such information may be considered proprietary by originators. Accordingly, such requirement would be an obstacle for some originators to complete a transaction.

Mandatory Review of Pool Assets

A standardized, mandatory review of pool assets is generally part of the due diligence that is conducted by the issuer/originator and underwriters to make full, true and plain disclosure. Requiring the issuer or third party to conduct a review of the pool assets that will be disclosed in the prospectus will increase the cost of issuances for originators since the increased liability to a third party will require that significant fees be charged to compensate the party for taking such prospectus liability. If a standardized review is established, then the review should continue to be conducted by a third party as part of the due diligence process and not expose such third-party to prospectus liabilities.

Originator "Skin-in-the-Game"

We believe that one of the fundamental tenets of securitization is risk retention by the originator of assets. The concept of "skin-in-the-game" aligns the economic interests of the various parties to a securitization transaction. Canadian Asset-Backed Securities originators had "skin-in-the-game"; the same cannot be said of Structured Products. The Structured Products client or counterparty was not an originator in the traditional sense and its "skin-in-the-game" was misaligned to the economic interest of the ABCP conduit. This misalignment required the need for the Montreal Accord to negotiate a settlement to "maintain the asset".

There should not be mandatory *amounts* of risk retention but mandatory *disclosure* of risk retention, if any, for Asset-Backed Securities and Structured Products under the principle of Appropriate and Timely Disclosure that Fosters Market Efficiency. The rule should be that originators need to clearly disclose to investors if there is any or no risk retention. Mandating actual amounts or percentages and types of risk retention will create inefficiencies in the market. Many asset classes will achieve this requirement in a number of different ways that are appropriate to the asset classes in question. In other words, "one size does not fit all" asset classes, originators or structures. This principle-based approach will provide the market with the efficiency to appropriately structure a transaction and disclose the information that will meet the requirements of all stakeholders in the transaction, namely investors, rating agencies, accountants, lawyers and regulators.

We trust that our comments will be constructive and helpful. If you require any clarification or have any additional questions, please do not hesitate to contact the undersigned.

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Yours truly,

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