August 31, 2011

BY 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: Notice and Request for Comments on the Proposed Securitized Product Rules

The American Securitization Forum ("**ASF**") appreciates the opportunity to submit this letter in response to the request of the Canadian Securities Administrators (the "**CSA**") for comments regarding proposed securities rules and rule amendments relating to securitized products (the "**CSA Proposals**")[1].

[1] Consisting of (a) proposed National Instrument 41-103 Supplementary Prospectus Disclosure Requirements for Securitized Products and Form 41-103F1 Supplementary Information Required in a Securitized Products Prospectus ("**Form 41-103F1**") (collectively, the "**Proposed Prospectus Disclosure Rule**"); (b) proposed National Instrument 51-106 Continuous Disclosure Requirements for Securitized Products, Form 51-106F1 Payment and Performance Report for Securitized Products and Form 51-106F2 Report of Significant Events Relating to Securitized Products (collectively, the "**Proposed CD Rule**"); (c) proposed amendments to National Instrument 52-109 Certification of

The CSA Proposals represent an ambitious undertaking by the CSA to update and harmonize the Canadian framework for securitization disclosure, both at the time of distribution and for purposes of ongoing reporting. We value the CSA's efforts in proposing rules designed to improve investor protection and to promote more efficient securitization markets in the wake of the financial crisis. We commend the CSA for seeking industry input and facilitating ongoing dialogue regarding reforms in these markets. Capitalized terms used in this letter and not defined herein have the meanings given to them in the CSA's Notice and Request for Comments published April 1, 2011 (the "**RFC**").

PRELIMINARY COMMENTS

About ASF

ASF is a broad-based professional forum through which participants in the securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members[2] include over 330 firms representing the securitization industry across all of our constituencies, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, our members and activities, please go to www.americansecuritization.com.

ASF members have been at the forefront of changes and developments affecting the securitization industry over the last decade. Accordingly, ASF is very well-positioned to provide the CSA with comprehensive, balanced and practical recommendations reflecting the views of a broad cross-section of market participants. We are committed to the development of a functional, vital securitization marketplace, and believe that securitization may ultimately provide an antidote to current global liquidity issues.

Disclosure in Issuers' Annual and Interim Filings, including proposed Form 52-109FS1 Certification of Annual Filings – Securitized Product Issuer, proposed Form 52-109FS1R Certification of Refiled Annual Filings – Securitized Product Issuer, proposed Form 52-109FS1 AIF Certification of Annual Filings in Connection with Voluntarily Filed AIF – Securitized Product Issuer, proposed Form 52-109FS2 Certification of Interim Filings – Securitized Product Issuer and proposed Form 52-109FS2R Certification of Refiled Interim Filings – Securitized Product Issuer (collectively, the "**Proposed Certification Amendments**"); (d) proposed amendments to National Instrument 45-106 Prospectus and Registration Exemptions, including proposed Form 45-106F7 Information Memorandum for Short-Term Securitized Products and proposed Form 45-106F8 Periodic Disclosure Report for Short-Term Securitized Products Distributed under an Exemption from the Prospectus Requirement and National Instrument 45-102 Resale of Securities (collectively, the "**Proposed Exempt Distribution Rules**"); and (e) proposed consequential amendments to National Instrument 41-101 General Prospectus Requirements, National Instrument 44-101 Short Form Prospectus Distributions and National Instrument 51-102 Continuous Disclosure Obligations.

[2] A list of ASF's membership is available at www.americansecuritization.com/uploadedFiles/ASFMemberList.pdf.

Relevance of ASF's U.S. Experience

Over the past decade, ASF has become the pre-eminent forum for securitization market participants to express their views and ideas. ASF was founded as a means to provide industry consensus on market and regulatory issues, and we have established an extensive track record of providing meaningful comment on matters of importance to our members, including to the U.S. Securities and Exchange Commission (the "**SEC**") on issues and initiatives affecting the U.S. securitization market. For example, in May 2004 when the SEC proposed its original rules for asset-backed securities, ASF facilitated an unprecedented effort by the securitization industry to respond to what would ultimately be the first regulatory framework for participation in the asset-backed securities market – Regulation AB[3] ("**Reg AB**"). Another important ASF initiative has been "Project RESTART,"[4] which is a broad-based industry-developed initiative to help rebuild investor confidence in mortgage-backed securities, restore capital flows to the mortgage securitization markets, enhance market lending discipline and, ultimately, increase the availability of affordable credit in residential mortgages. Project RESTART has sought to identify areas of improvement in the process of securitization and refashion, in a comprehensive and integrated format, the critical aspects of securitization with market-based solutions and expectations. It has been recognized by senior U.S. policymakers and market participants as a necessary industry initiative to improve the securitization process by developing commonly accepted and detailed standards for transparency, disclosure and diligence, particularly for residential mortgage-backed securities. As discussed below under "Features of U.S. Securitization Initiatives That Are Not Incorporated Into CSA Proposals Are Still In Flux And May Be Unwarranted in Canada", ASF is also actively engaged with U.S. legislators, the SEC and other policymakers in considering the implications of other ongoing securitization developments, including commenting on the SEC's proposals relating to offering, disclosure and reporting requirements for asset-backed securities that were issued in April 2010 and re-issued, in part, in July 2011 ("**Reg AB II**") and securitization-related initiatives under the *Dodd-Frank Wall Street Reform and Consumer Protection Act* enacted by the U.S. Congress in July 2010 ("**Dodd-Frank**") (the foregoing are collectively referred to as "**U.S. Securitization Initiatives**").

The RFC recognizes the benefits arising from commonality between the U.S. and Canadian disclosure regimes. Consistency and comparability are recurring themes in the CSA Proposals, and there is specific recognition that parts of the CSA Proposals are largely derived from counterpart U.S. securities law provisions. With that in mind, ASF has undertaken a review of the specific disclosure requirements contemplated in the CSA Proposals with a view to highlighting material items where ASF's U.S. experience may provide beneficial background to the CSA as it deliberates over the scope and substance of the proposed Canadian regulatory framework.

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[3] Reg AB sets out a comprehensive set of disclosure and reporting rules for asset-backed securities filings under the Securities Act of 1933, as amended (the "**Securities Act**"), and the Securities Exchange Act of 1934, as amended. ASF's comment letter in response to the SEC's request for comment on the original Reg AB (Release Nos. 33-8419, 34-49644) is located at http://sec.gov/rules/proposed/s72104/vhcwright071204.pdf, with a supplement located at http://www.sec.gov/rules/proposed/s72104/asf073004.pdf.

[4] For more information on ASF Project RESTART, see http://www.americansecuritization.com/restart.

Canada's Importance

Cross-border finance is integral to the businesses of many of our members. Several of our members have established securitization programs for their Canadian and U.S. businesses that are uniform and functionally integrated, and therefore benefit from consistent disclosure standards and a harmonized approach to regulation. With recent reductions in cross-border barriers, such as the virtual removal of non-resident withholding tax on interest-bearing debt obligations, our Canadian members are increasingly able to access the U.S. debt-capital markets efficiently and cost-effectively, while Canada's capital markets have opened up to U.S. issuers and investors for northbound offerings and investments. U.S. service providers to securitization market participants increasingly focus on the North American capital markets as an integrated, interdependent marketplace. ASF therefore recognizes the benefits to our members of a freer, more efficient cross-border capital marketplace. Reducing barriers, striving for consistency and comparability and avoiding regulatory arbitrage opportunities are some of our goals in this regard.

While ASF has to date focused primarily on issues of importance to the domestic U.S. securitization marketplace, developments impacting the Canadian securitization marketplace are of importance to many of our members – including members with Canadian-based businesses and U.S.-based members with significant Canadian operations or who may seek to benefit from greater access to Canada's debt capital markets.

The Canadian economy is an important and leading part of the North American market. Canada is the U.S.'s largest overall trading partner, with $560 billion of goods and services traded between the two countries each year.[5] The U.S. is also the largest foreign source of investment in Canada. Many leading businesses straddle the Canada/U.S. border to achieve a near-seamless flow of commerce between the two countries. It therefore follows naturally that many of ASF's members may in the future establish or expand their businesses in Canada. ASF members which currently finance Canadian business operations through Canadian securitization markets are eager to ensure that this important financing source remains available on a cost-efficient and commercially-practical terms.

While harmonization may foster greater efficiencies, ASF also recognizes that the Canadian securitization market has distinctive features that may justify a different approach to regulation. ASF is also mindful that our knowledge of Canadian securities laws and our experience in the Canadian securitization marketplace is limited. For these reasons, we offer our comments in the spirit of providing you with (i) information relating to U.S. securities laws and the U.S. Securitization Initiatives, which have a substantial legislative and regulatory history and are currently quite dynamic; (ii) the observations and views of our working group members[6] as to

[5] 2010 trade information derived from "Imports, exports and trade balance of goods on a balance-of-payments basis, by country or country grouping", summary table published by Statistics Canada current as of June 9, 2011 available at http://www40.statcan.gc.ca/l01/cst01/gblec02a-eng.htm.

[6] Each of our Canadian working group members chose to participate in the preparation of this comment letter because of an interest in the Canadian securitization market.

notable misalignments between the CSA Proposals and the U.S. securitization regime and their potential consequences; and (iii) our overall sense as to the need for prudential regulatory policy in adopting final securitization rules for Canada, having regard for the U.S. experience to date.

Further Review

ASF values our interactions with policy makers and regulators on matters of importance to our members. The topics covered in the CSA Proposals are important to our members and we will stand ready to assist the CSA in its deliberations and analysis.

We have not attempted to comment on every provision in the CSA Proposals that has raised questions among our members, nor have we set out to identify every point of divergence between the CSA Proposals and current and proposed U.S. securities laws. Further, our comments in this letter are not responsive to all of the questions in the RFC. Indeed, because regulatory and legislative initiatives in the U.S. regarding securitizations are currently so unsettled, there are certain observations made, or questions asked, in the CSA Proposals with respect to features of the U.S. Securitization Initiatives that have changed since the CSA Proposals were issued.

While we have not provided you with complete or definitive responses to your proposals or questions, our staff is prepared to make itself available to the CSA staff for ongoing discussions. If appropriate, we welcome the opportunity to meet with the CSA's staff to review our comments on the CSA Proposals and to discuss issues and developments with you as the CSA progresses towards the adoption of final rules. If such a meeting would be useful or if you otherwise have any questions concerning our views or comments, please do not hesitate to contact Tom Deutsch, ASF Executive Director, at 212.412.7107 or at tdeutsch@americansecuritization.com. In addition, ASF's extensive securitization-related resource materials, including comments letters on various legislative and regulatory matters (including the U.S. Securitization Initiatives)[7], are available to the CSA staff.

[7] For the **ASF Reg AB II Broad Comment Letter**, see
http://www.americansecuritization.com/uploadedFiles/ASFRegABIICommentLetter8.2.10.pdf.
For the **ASF Reg AB II Supplemental Comment Letter Regarding the Waterfall Computer Program**, see
http://asf.informz.net/ASF/data/images/emailattachments/advocacy/asf_reg_ab_ii_waterfall_comment_letter_8.31.10.pdf.
For the **ASF Reg AB II ABCP Comment Letter**, see
http://www.americansecuritization.com/uploadedFiles/ASFRegABIIABCPCommentLetter8.2.10.pdf.
For the **ASF Reg AB II Supplemental Comment Letter Regarding Auto ABS disclosure**, see
http://asf.informz.net/ASF/data/images/emailattachments/advocacy/asf_reg_ab_ii_auto_abs_comment_letter_8.31.10.pdf.
For the **ASF Comment Letter Regarding Conflicts of Interest**, see
http://www.americansecuritization.com/uploadedFiles/ASFCommentLetterreConflictsofInterest10.21.10.pdf.
For the **ASF Risk Retention Broad Comment Letter**, see
http://www.americansecuritization.com/uploadedFiles/ASF_Risk_Retention_Comment_Letter.pdf.
For the **ASF Risk Retention Supplemental Comment Letter Regarding the "qualifying auto loan",** see
http://www.americansecuritization.com/uploadedFiles/ASF_Auto_QAL_Comment_Letter_8_1_11.pdf.

Organization of Letter

We have organized our comments in this letter into the following five sections:

I. Underlying Principles

II. The Role of Regulation in Private Market Transactions Among Highly Sophisticated Parties

III. Scope of the CSA Proposals and Key Components

IV. Significant Differences Between U.S. Regulations and the CSA Proposals

V. Features of U.S. Securitization Initiatives That Are Not Incorporated Into CSA Proposals Are Still In Flux And May Be Unwarranted in Canada

COMMENTS REGARDING THE CSA PROPOSALS

I. UNDERLYING PRINCIPLES

The three basic underpinnings of the CSA Proposals are identified in the RFC under "Substance and Purpose of the Proposed Securitized Product Rules". ASF generally endorses these as a sound basis for securities regulation. In this regard, we offer the following general observations about each of these principles:

A. Fostering Market Efficiency

In the RFC, the CSA recognizes that the informational objectives of the particular disclosure proposals are meant to have due regard to market efficiency considerations. We agree with this concept and suggest that achieving an appropriate balance in this regard should be considered to be the true measure of sound regulation: achieving useful, high quality and timely information for investors while not over-burdening issuers and other suppliers of products and services into the securitization marketplace.

The market is the ultimate arbiter of whether an appropriate balance is achieved, as participants in the securitization markets will determine whether the additional cost of creating prescribed disclosure is justified, having regard to its utility to investors. If the aggregate burden for issuers is ultimately too great, they may significantly reduce or cease their securitization activities and rely on alternative sources of funding. This would lead to a contraction of available credit for

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For the **ASF Comment Letter in Response to the SEC's Proposed Rules Implementing Section 945 of Dodd-Frank**, see
http://www.americansecuritization.com/uploadedFiles/asf_due_diligence_comment_letter_11_15_10.pdf.

consumer finance and businesses, for which securitization has provided a significant source of funding, including mortgage loans, auto loans and leases, small business loans and credit cards. An appropriate balance will be struck only when the producers of information are able to assess and respond to the users of information in a particular context, having regard to the particular treasury, investment and management goals of the relevant market participants.

A recurring theme of our comments is that regulation for regulation's sake (including merely to harmonize Canada's disclosure regime with that of the U.S.) is inappropriate. Additional regulation may be unnecessary in Canada's particular circumstances and costly to market participants, without attendant benefits. With the exception of third-party sponsored ABCP, Canada's securitization market has been comparatively stable throughout the financial crisis with no ultimate principal losses having been borne by investors.

With this backdrop, ASF notes that the CSA currently is not proposing to introduce, but instead seeks comment on, certain features of the U.S. Securitization Initiatives. ASF appreciates the efforts of the CSA to formulate an enhanced framework for the regulation of securitized products in Canada in a manner that fosters market efficiency and that is otherwise appropriate for the Canadian context. The features of the U.S. proposals that are not specifically included in the CSA Proposals have been the subject of considerable market commentary. We refer the CSA to ASF comment letters on the various U.S. Securitization Initiatives for a comprehensive response by participants in the U.S. securitization market. Many of the comments in the ASF comment letters would apply equally if those features of the U.S. proposals were incorporated into the CSA Proposals. A list of relevant ASF comment letters is included in footnote 7 to this letter.

B. Facilitating Transparency to Reduce Systemic Risk

Facilitating transparency in the securitization market for the purpose of minimizing systemic risk adds a "public interest" gloss to the conventional orientation of securities regulation. Assuming that the reduction of systemic risk is an appropriate purpose of Canadian securities regulation[8], we respectfully submit that its weight in the overall balance of achieving sound regulation should not be exaggerated.

Paradoxically, unless the CSA's approach here is measured and balanced, the related regulatory response may substantially dampen the incentives for issuers to pursue securitization and thereby reduce its viability as a funding source, rendering it systemically unimportant.

The first goal, we suggest, should be to seek regulation that allows the securitization market to flourish, while still protecting investors and advancing the public interest. The CSA's purposes would clearly be undermined if, as a consequence of implementing the CSA Proposals, the marketplace became burdened with unnecessary and overly protective disclosure requirements

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[8] In Ontario, for example, the *Securities Act* (Ontario) does not expressly include mitigating systemic risk as one of its purposes. We assume that the CSA believes that the mitigation of systemic risk is, broadly, within its purview in relation to fostering fair and efficient capital markets and confidence in capital markets.

that reduced the use of securitization in Canada. That outcome would be directly contrary to the express purpose of securities regulation – to foster fair and efficient capital markets.

As discussed in detail below, ASF respectfully submits that the proposed disclosure, ongoing reporting and certification requirements related to exempt distributions of securitized products, particularly relating to short-term securitized products, will work against fostering securitization as a viable funding strategy. On that basis, ASF encourages the CSA to resist the temptation to let the public interest rationale for transparency overwhelm the basic goal of fostering private market transactions among highly sophisticated market participants.

C. Reflecting Local Considerations

In the RFC, the CSA recognizes that local considerations should factor prominently in the development of the CSA's securitization rules and states that "rules should be proportionate to the risks associated with particular types of securitized products available in Canada, and should not unduly restrict investor access to securitized products".

Canada's securitization markets have proven to be durable and reliable, despite the global financial crisis. As noted in the CSA Proposals, Canada experienced significant turmoil in the ABCP market in August 2007 but, for a number of reasons, the Canadian securitization market did not experience a sub-prime mortgage securitization bubble. In the aftermath of Canada's third-party sponsored ABCP problem, the structural weaknesses in the applicable conduits (in particular, the use of "market disruption" liquidity by ABCP conduits and general opacity) were corrected so those same troubled securitized products would not again be received or promoted in the same manner. Other than in relation to third-party sponsored ABCP, Canada's securitization markets did not witness the widespread proliferation of more esoteric, highly leveraged and structured transactions (such as CDOs, credit-linked notes and SIVs), which were contributors to the global financial crisis. Instead, Canada's securitization market has predominantly focused on traditional asset classes.[9] Further, our understanding is that there is currently no exposure in Canadian ABCP conduits to CDOs or the other non-traditional structured finance products that were primarily responsible for the third-party sponsored ABCP market failure.

Based on the limited scope of the problems experienced in the securitization market in Canada and the regulatory responses to those problems that have already taken place, ASF respectfully urges the CSA to proceed with caution in implementing further regulation, balancing the principles sought to be achieved with the particular risks applicable to Canada's securitization market. In this regard, ASF endorses the CSA's reserved and careful consideration of some of the more far-reaching and controversial aspects of the U.S. Securitization Initiatives and

[9] In 2011, new issuances in the longer term ABS market consist of credit cards (47%), commercial mortgages (29%), and auto and equipment loans and leases (18%). The current composition of the assets held by ABCP conduits is as follows: residential mortgages (35%), auto and equipment (26%) and personal lines of credit and HELOCs (21%). See "*Asset-Backed Mid-Year Review: Canadian ABS, ABCP and Covered Bond Markets*", DBRS Limited, August 2011.

encourages the CSA to take a "wait and see" approach to formulating new rules for securitized products.

II. The Role of Regulation in Private Market Transactions Among Highly Sophisticated Parties

A. Principles and Traditions Underlying the Exempt Market

Like the U.S., Canada has a long tradition of allowing sophisticated market participants to arrange for private market transactions in a largely unregulated context. The approach of allowing accredited investors (in particular) to purchase and resell securities within the closed system recognizes the basic principle that sophisticated investors ought to be permitted to seek out and contract for investments (both in the primary and the secondary markets) that are suitable in light of their individual investment objectives and capabilities and that have terms (including information reporting) acceptable to them.

As described in more detail below under "Scope of the CSA Proposals and Key Components", mandating the use of an information memorandum, which essentially imports public disclosure and certification requirements, and prescribing ongoing disclosure akin to the disclosure that would be required by a reporting issuer, would severely undercut the essential role and efficiency of the private, prospectus-exempt market. Indeed, the Proposed Exempt Distribution Rules would, if adopted in their current form, represent the high water mark of regulating prospectus-exempt transactions. Today, with very few exceptions, Canada's exempt market allows sophisticated investors a free hand to invest in instruments that they determine to be suitable, including instruments that are neither sold nor supported with primary or secondary disclosure.

We understand the motivation behind restricting access to highly complex structured finance products and concur that certain securitized products may not be suitable for unsophisticated investors. Ironically, structured finance techniques enable the creation of low-risk investments. The by-product of complex structuring, however, has been structures predicated on an understanding of sophisticated mathematical models and empirical assessments that require a level of understanding and know-how that is beyond the reach of many investors. Those structures and that complexity do not, however, justify a regulatory treatment for these securities that is more limiting and inflexible than truly risky investments such as highly leveraged and risky equity-based instruments.

We are concerned that the CSA Proposals, as currently drafted, would jeopardize the viability of large segments of the Canadian securitization market. Many issuers operate in the private, prospectus-exempt market for good and valid reasons. An issuer's issuances may not be on a sufficient scale or the market for a particular product may be sufficiently limited that the costs and difficulties of compliance with the disclosure and ongoing reporting requirements contained in the Proposed Exempt Distribution Rules for a prospectus-exempt offering may result in such transactions no longer being cost-effective. Issuers may have concerns relating to confidentiality and competition that might arise from making details of their transactions and businesses more widely available. As a consequence, certain types of products that have flourished in the prospectus-exempt market could become less viable. This result seems contrary to the CSA's

recognition of the importance of securitization as a source of credit for the Canadian economy and for its goal of promoting innovation in the Canadian market.

ASF firmly believes that the CSA should preserve the flexibility inherent in the prospectus-exempt market to allow investors who have a sufficient level of knowledge and experience in the purchase and surveillance of securities to determine for themselves and demand the disclosure (both primary and ongoing) they need to make informed investment decisions. To do otherwise would represent an unprecedented and unjustified incursion into the private markets and could severely curtail the use of the private markets for securitized products.

B. Implementing a Measured Response to the Third-Party Sponsored ABCP Problem

ASF does not wish to diminish the significance of the failure of the third-party sponsored ABCP market in Canada. However, we observe that the essential elements of that market no longer exist and the likelihood of a recurrence of the issues leading to that problem is remote. In Canada, the bank-sponsored ABCP market performed as expected throughout the financial crisis, with Canada's Schedule I chartered banks supporting their sponsored ABCP programs. As a result, to our knowledge, investors in the bank-sponsored ABCP market have not suffered principal losses.

The extensive disclosure requirements contemplated in the CSA Proposals in relation to standard ABCP appear to be an over-reaction to the third-party sponsored ABCP problem. The prescribed form of ABCP documentation is likely to produce volumes of unimportant information relating to underlying assets and underlying conduit transactions, rather than focusing on the essential items material to ABCP performance, such as the core credit enhancement and liquidity arrangements.[10] It is anomalous, in particular, that the CSA Proposals single out short-term securitized products for specific and detailed disclosure, given that it is the very short-term nature of ABCP that has historically allowed it to proceed on a fully prospectus-exempt basis for distribution.

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[10] In contrast, in the CSA Proposals the CSA does not prescribe a form of disclosure for prospectus-exempt long-term securitized products. Instead, the CSA endorses flexibility in, and a principles-based approach to, disclosure for such products, directing issuers to provide sufficient information about the securitized products and the transactions to enable the purchasers to understand the features and risks of the products they are buying and the suitability of those products for their investment decisions. Similarly, the CSA recognizes that it is inappropriate to apply a rigid approach to the supplementary disclosure requirements for prospectus-delivery securitized products, observing that not every item set out in Form 43-103F1 will be applicable to every securitized product offered, and that the same standard of sufficiency of information should apply to the securitized product offered. We endorse the approach that provides that, if mandatory disclosure is appropriate (a subject-matter dealt with in detail later in the letter), a flexible, principles-based approach to disclosure is preferable. Such an approach recognizes, and allows for, diversity of product (both existing and to be developed), and differences between both issuers and investors. While we understand that ABCP is a more homogeneous product and market, we urge the CSA to consider treating ABCP on the same basis from a disclosure perspective as longer-term securitized products as you work toward final disclosure rules for ABCP.

III. SCOPE OF THE CSA PROPOSALS AND KEY COMPONENTS

A. Eligible Securitized Product Investors and the Specialized Closed System

The definition of "eligible securitized product investor" ("**ESPI**") is used in the CSA Proposals to narrow the class of investors who can invest in securitized products without the protections afforded by the legislative and regulatory regimes governing offerings under prospectus. We note that this proposed definition has a counterpart concept in the U.S. (i.e., qualified institutional buyer, referred to as a "**QIB**"). ASF supports the view that complex securitized products offered without all of the protections of the prospectus-delivery regime should be limited to investors who have the knowledge and experience to evaluate the securities they are considering for purchase and the ability to ascertain what disclosures, reports and other contractual features they require in connection with a prospective purchase.[11]

There is, however, one feature of the proposed definition of ESPI that ASF believes is worthy of comment. Section 2.44(5) of the Proposed Exempt Distribution Rules seems designed to advance the appropriate principle of preventing an issuer from doing indirectly what it cannot do directly. However, it could perhaps be read to preclude certain prospectus-exempt offerings that should be permissible. For example, it is possible to read that section to preclude a bank-sponsored ABCP conduit (because arguably it was formed or used solely for the purpose of purchasing or holding securitized products) from qualifying as an ESPI, which would therefore preclude its acquisition of a securitized product in a prospectus-exempt offering. We suggest that section 2.44(5) be reworded to achieve only its intended result.

B. Adding Rather than Replacing; Comprehensive Continuing Disclosure Framework

The Proposed CD Rule supplements rather than replaces the financial and other continuous reporting obligations generally applicable to a reporting issuer. While ASF endorses the move toward continuous disclosure based on and tailored to the assets underlying a securitized product and to the underlying legal structure, ASF believes that financial statements and other disclosure meant to apply to an operating entity should not apply to a special purpose issuer of securitized products. From a cost-benefit perspective, the limited value of information provided by financial statements and such other operating entity disclosure prepared by special purpose issuers (as described below) is far out-weighed by the out-of-pocket costs[12] and internal resources required to meet financial statement and other document preparation and filing obligations.

[11] A minimum assets under management test is a condition, either directly or indirectly, of eligibility for all entities that satisfy the QIB definition. In the ASF Reg AB II Broad Comment Letter, we proposed a refinement of that concept – the "SQIB" – to define better those investors who would properly be considered sophisticated as to investment in structured finance products. See footnote 14 below.

[12] In this regard, we note that one of our members has said that the annual out-of-pocket expenses (including filing fees) associated with preparing and filing of financial statements has reached $200,000 for a single master trust securitization program.

Unlike for operating entities, for which financial statements and related management discussion and analysis provide a useful, standardized format for valuing assets and liabilities and determining the financial condition of the entity, those same valuations and determinations are largely irrelevant to special purpose issuers of securitized products. Those issuers are structured so that the cash flows from specified pools of assets are dedicated to service just the related securitized products. Indeed, emphasizing financial statements in connection with certain types of securitization entities may not only be unhelpful, but could be misleading to investors since not all of the amounts or assets reflected in those financial statements would in fact be available to investors (e.g., as a result of siloing, payment waterfalls and fair value accounting for related hedges)[13].

From the inception of the U.S. securitization market, financial statement and other operating entity disclosure was determined to be far less relevant to investors than asset-based servicer reporting and Form 8-K reporting. SEC "no action letters" routinely allowed issuers to replace conventional financial statement-based disclosure with customized asset-backed disclosure. Reg AB codified that result in 2004 and called for enhanced servicer reporting.

Reg AB's modified reporting system does not require that audited financial statements for the issuing entity be included in the annual report on Form 10-K. Instead, the U.S. approach focuses on a servicer's compliance with the applicable servicing criteria. The SEC generally requires an assessment and certification by the servicer as to its compliance with those servicing criteria and an attestation by an independent public accountant regarding such servicer's compliance. This longstanding framework was developed based on the recognition that one of the most important elements affecting an investor's assessment of a particular asset-backed security is the performance of the servicer. Further, review by an independent third party of the servicer's performance of its servicing functions provides investors an enhanced level of assurance and transparency.

ASF believes that Reg AB's modified reporting system, which includes current distribution and pool performance information, current reports for ABS-specific reportable events and reports on servicer performance, including an assessment and attestation regarding servicing compliance, provides material information necessary for investors to properly monitor securitization transactions and their related investments. Further, this collection of ongoing reports provides far better disclosure than entity-level financial statement reporting. Such modified reporting ought

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[13] With respect to financial statement reporting relating to derivative obligations, we suggest that the match-funding, cash-based approach adopted in relation to ABS makes a traditional financial accounting overlay incongruent. In fact, given the requirement to quantify the fair value of hedge transactions, such an approach may confuse investors. The inclusion of fair value calculations may leave investors with a false impression that there is in fact a surplus or deficit asset position within a special purpose issuer. Also, since financial statements do not differentiate between the assets servicing particular ABS series within a master trust, entity-level asset aggregation creates a false impression that series investors could have recourse to the master trust's entire asset pool, rather than only to the applicable series assets. With respect to disclosure regarding priority cash flow entitlements, offering disclosure and monthly servicer reports should be sufficient to describe these items. Typically, a prospectus and the related servicer reports will contain extensive discussion regarding payment waterfalls and other arrangements. The recital of these arrangements in financial statements (typically in the notes to financial statements) may be simplified, and therefore legally imprecise or incomplete.

to be sufficient and efficient, and should replace requirements to prepare and deliver financial statements, management discussion and analysis and annual information forms, and should eliminate the need to report on internal controls over related financial reporting functions.

C. Mandatory Delivery of Information Memorandum and Ongoing Reporting Requirements in Prospectus-Exempt Offerings

Mandating the delivery of an "information memorandum" and ongoing reporting is perhaps the most troublesome aspect of the CSA Proposals.

While ASF understands that the CSA is motivated to promote good primary disclosure and ongoing information, mandating the delivery and filing of an information memorandum and ongoing reports in the context of prospectus-exempt issues does not appropriately account for the role of sophisticated investors in the fixed income marketplace. As noted above, the imposition of mandated information-delivery requirements in this context would be unprecedented and, we respectfully submit, an unwarranted incursion into private transactions undertaken among issuers and highly sophisticated investors.

By comparison, the U.S. Securitization Initiatives would, if implemented, condition the availability of the safe harbors for privately-issued structured finance products on an issuer's *undertaking* to deliver an information memorandum and ongoing disclosure *if specifically requested* by an investor or prospective investor. If the issuer does not include the undertaking, it would have failed to satisfy the safe harbor and may not be entitled to the exemption from registration under section 4(1) or 4(2) of the Securities Act, as applicable.[14] If, on the other hand, the issuer includes the undertaking but then fails to provide some of the information to an investor or prospective investor upon their request, that failure, in and of itself, would not mean that the conditions of the safe harbor would not have been met. Investors would be able to take action regarding the issuer's failure to provide the information pursuant to the undertaking, and

[14] Although we support the SEC's goal of ensuring that sophisticated investors are able to consider and understand the risks of their investments, in the ASF Reg AB II Broad Comment Letter, we expressed a number of specific concerns with the SEC's proposal to condition the availability of safe harbors for privately-issued structured finance products on an issuer's undertaking to provide investors the same information as would be required in a registered transaction. To address these concerns, ASF proposed to the SEC an alternative approach designed to align better the knowledge and experience of investors with regard to the products they are considering for purchase. In the ASF Reg AB II Broad Comment Letter, we called a certain highly sophisticated type of investor a "qualified institutional buyer of structured finance products" or "SQIB". A core feature of that definition is a more tailored invested-assets test. To qualify as a SQIB, an investor would have to satisfy a quantitative test as to structured finance products under management as well as certain qualitative standards relating to such investor's knowledge and experience in the purchase and surveillance of structured finance products. Under our proposal, private placements of structured finance products would not be subject to the requirement to make any undertaking to disclose equivalent information. We acknowledge that this proposal was not supported without reservation by all of our members. Indeed, some of our investor members questioned whether this proposal would adequately address their concern that issuers might seek to arbitrage the differing information delivery standards between publicly-offered and privately-marketed structured finance products, thereby undercutting the enhanced disclosure and reporting requirements proposed in Reg AB II. ASF continues to work with its members and the SEC to craft a proposal that achieves the dual purposes of improving transparency in the structured finance marketplace and promoting a healthy and risk-appropriate private securitization market.

the SEC could also bring an action based on that failure. We encourage the CSA to work towards final regulations in the prospectus-exempt market in a manner that is mindful of regulatory developments in the U.S. and coordinated with those developments.

D. Continuous Disclosure for Reporting Issuers' Prospectus-Exempt Securities

The Proposed CD Rule imposes its annual and interim reporting requirements on all Canadian reporting issuers with respect to their outstanding securitized products, whether such securitized products were issued under a prospectus or in a prospectus-exempt offering. Moreover, those annual and interim reporting requirements would continue with respect to outstanding securitized products issued in a prospectus-exempt offering *even at such times as all of the issuer's securitized products issued under a prospectus were no longer outstanding*.[15] This differs markedly from current and proposed U.S. reporting requirements, which permit an issuer of registered structured finance products to cease reporting in respect of such products when the registered structured finance products are no longer outstanding.

ASF does not support prescribing specific continuous disclosure requirements for prospectus-exempt offerings (regardless of whether the issuer is a reporting issuer). Transactions entered into by sophisticated parties will typically include customized provisions for ongoing disclosure and related covenants, which are considered by those parties to be appropriate and sufficient in the context of their private transaction.

In considering whether continuous disclosure for prospectus-exempt offerings made by reporting issuers is warranted, ASF observes that the specialized closed system created by the Proposed Exempt Distribution Rules around securitized products (including the proposed amendments to NI 45-102, which treat first trades under new section 2.44 of NI 45-106 as a distribution) appears to effectively limit the possibility of leakage out of the ESPI trading arena. Given that limited possibility, ASF respectfully suggests that mandating continuous disclosure in the private market in order to provide a base of information available in the rare case that an unsophisticated investor is in fact able to acquire a securitized product is not justified given the cost and efficiency concerns that would be associated with mandating continuous disclosure in the entire private market for securitized products. Sophisticated investors who acquire securitized products under secondary market trades will be entitled to the same rights of disclosure as their transferors (i.e., the buyer will assume the seller's negotiated position, including any limitations), and accordingly mandating continuous disclosure in that circumstance is unwarranted. Again, ASF believes that privately-placed securitized products should be treated in a manner similar to other privately-placed securities and that mandating public offering-like disclosure in relation to privately-placed securities may undermine the valid motivations of issuers in pursuing prospectus-exempt offerings. In our view, in effectively merging the public and private disclosure regimes, the CSA fails to give proper regard to the basic principle that sophisticated

[15] These annual and interim reporting requirements would likely continue because exemptive relief would be required to discontinue reporting-issuer status and provincial securities regulators in some provinces might not be willing to grant such exemptive relief.

parties (and their transferees in accordance with ordinary closed system requirements) are capable of fending for themselves.

E. Grandfathering

The CSA is not proposing to "grandfather" existing securitized products issued under a prospectus or using a prospectus exemption from the application of the proposed disclosure requirements applicable to all securitized products. ASF believes it is critical that the CSA Proposals apply only to future issuances (i.e., after the CSA Proposals take effect).

Hundreds of issuances of securitized products have been completed over a period of many years and are currently outstanding. The issuers completed those issuances on the basis of the existing regulatory framework. For a significant number of such issuances, the issuer will not have been required to prepare ongoing disclosure or to deliver periodic reports. The documentation for these transactions would have been established at the outset and would not have been intended to be reopened during the life of the issued securities. Transaction documents generally would not contain provisions necessary to support an ongoing reporting obligation or provide for the funds necessary to cover the costs of such additional reporting. Also, as a practical limitation, it should be anticipated that in many cases issuers and other transaction parties will not have maintained the required information to comply with a backward-looking disclosure requirement and, in any event, may not have a contractual entitlement to compel third parties to grant access to or to compile such information.

We strongly recommend that any new or amended rules should apply only prospectively and, conversely, that securitized products issued prior to the effective date should be grandfathered and should not be subject to the new and amended rules.

Furthermore, we recommend that the CSA Proposals should specifically recognize that in the case of any resecuritizations conducted after the effective date, where the issuance of the underlying securities subject to resecuritization predates the effective date, new issuances through resecuritization should be grandfathered and should not be subject to the new and amended rules, at least to the extent that information called for under those rules with respect to legacy assets is unknown and not available to the issuer without unreasonable effort or expense.

It is noteworthy that Reg AB was applied, and Reg AB II is proposed to be applied, prospectively.

IV. Significant Differences Between U.S. Regulations and the CSA Proposals

ASF believes that there are significant benefits from achieving an appropriate degree of commonality between the U.S. and Canadian disclosure regimes. As a guiding principle (but subject to local considerations), ASF agrees with the CSA's desire to achieve consistency and comparability with counterpart U.S. securities law provisions.

To assist in this regard, we undertook a review[16] of the specific disclosure requirements contemplated in the CSA Proposals with a view to understanding how the proposed Canadian approach compared to the counterpart rules and practices (both existing and proposed) applicable in the U.S. Based on that review, we make the following observations:

A. Proposed Prospectus Disclosure Rule

The enhanced disclosures contemplated by the Proposed Prospectus Disclosure Rule are generally comparable to the disclosure requirements in Reg AB and make significant progress in aligning the securities rules applicable to the U.S. and Canadian securitization markets.

Although Form 41-103F1 of the Proposed Prospectus Disclosure Rule is generally consistent with Reg AB, in reviewing that Form, we identified several places where the provisions differ. As to those differences, we respectfully request that the CSA staff consider better aligning the Canadian and U.S. disclosure guidelines where appropriate to achieve market efficiencies. By way of illustration, we point out the following apparent inconsistencies:

1. Item 1.10(d) – Disclosure of material conflicts of interest

Item 1.10(d) would require an issuer to describe whether any person or company for which disclosure has been provided pursuant to Items 1.2 to 1.9 of the Proposed Prospectus Disclosure Rule, or any affiliate of such person or company, is engaged in, or has in the prior 12 months been engaged in, any transaction that would involve or result in any material conflict of interest with respect to any investor in the securitized products being distributed.

ASF observes that this standard, while cast as a disclosure requirement, closely parallels the standard set forth in Section 621 of Dodd-Frank, which directs the SEC to implement rules to prohibit sponsors, underwriters or placement agents of asset-backed securities from engaging in transactions that would result in material conflicts of interest with respect to investors in those asset-backed securities. As discussed later in this letter, to date, the SEC has not published proposed rules under Section 621 of Dodd-Frank, but has solicited industry input prior to proposing Section 621 implementing rules. On October 21, 2010, ASF submitted a comment letter generally outlining its support for the intent of Section 621 – to eliminate incentives for market participants to intentionally design asset-backed securities to fail or default – but also emphasizing that any rules implemented by the SEC for this purpose must be crafted in a manner that avoids unnecessary adverse impacts on the markets for asset-backed securities.[17] To that end, ASF identified a number of issues that could result from a conflicts standard that is too broad or ambiguous in its scope and, consequently, proposed the following definition of "material conflict of interest":

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[16] Neither our review nor our observations should be considered to be comprehensive. Our staff is available to the CSA regulators to discuss specific differences between U.S. and Canadian disclosure rules and proposed rules and to explain the history of the U.S. disclosure features.

[17] See footnote 7 for a link to the ASF Comment Letter Regarding Conflicts of Interest.

> "A "material conflict of interest" shall exist if, other than for hedging purposes or as permitted by Section 27B(c) of the Securities Act of 1933, (i) a [restricted party] participates in the issuance of an asset-backed security that is created primarily to enable such [restricted party] to profit from a related or subsequent transaction as a direct consequence of the adverse credit performance of such asset-backed security and (ii) within one year following the issuance of such asset-backed security, the [restricted party] enters into such related or subsequent transaction."

ASF encourages the CSA to defer the adoption of a conflict of interest disclosure requirement predicated on substantially the same standard as is set forth in Section 621 of Dodd-Frank to enable the CSA to consider the outcome to be reached by the SEC in respect of its Section 621 implementing rules. In the event the CSA nevertheless determines to proceed sooner to adopt this conflict of interest disclosure standard, ASF respectfully proposes that the CSA adopt a definition of "material conflict of interest" based on the one set forth above.

2. Item 2(1)(c) – Disclosure of adverse financial developments for a significant obligor since the date of its most recent financial statements

Item 2 is generally comparable to the corresponding disclosure requirements in Reg AB, except for Item 2(1)(c), which is not part of Reg AB and would require the asset-backed issuer to describe any adverse financial developments for a significant obligor since the date of its most recent financial statements.[18]

A fundamental principle underlying the SEC's disclosure standards as they relate to significant obligors is to obligate the asset-backed issuer to disclose the same financial information as the obligor itself would be obligated to disclose if it were distributing securities under a prospectus.[19] Conversely, the asset-backed issuer is not obligated to disclose financial information that the obligor itself would not be obligated to disclose. This disclosure standard reflects the practical reality that, in the normal course, neither the asset-backed issuer nor any of its affiliates has any direct or indirect agreement, arrangement, relationship or understanding with any significant obligor relating to the asset-backed securities transaction (the significant obligor is, in effect, a stranger to the asset-backed securities transaction) and, therefore, that the asset-backed issuer has

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[18] ASF observes that the existing disclosure requirements in Form 41-101F1, Item 10.3(1) regarding disclosure of material originators is based on a 33 1/3% concentration threshold (as described in 41-101CP, section 4.5). Item 2 adopts the Reg AB standard for determining whether an obligor or related group is a "significant obligor", based on a 10% threshold. The higher threshold under the current prospectus requirements appears to recognize the possibility of concentrations in the Canadian market for certain asset types and issuers and the substantial burden of providing for obligor disclosure for those issuers experiencing higher concentration levels. If the CSA adopts the lower 10% threshold in defining significant obligors, issuers that have historically offered ABS without obligor concentration disclosure could now exceed the threshold. This could raise significant disclosure issues for sponsors of those transactions. ASF respectfully suggests that the CSA should work closely with affected issuers before promulgating rules that could create significant incremental disclosure burdens.

[19] This principle is also embodied in Item 2(3) of Form 41-103F1.

no means to know of the financial condition of the significant obligor other than through financial reporting that the obligor itself has made available to the marketplace, either through periodic or significant events filings.

Accordingly, ASF respectfully requests that the CSA consider the disclosure standard adopted under Reg AB, which suggests that Item 2(1)(c) ought to be removed.

3. Items 3.1(h) and (i) – Third party review of pool assets

Items 3.1(h) and (i) require the asset-backed issuer to describe whether the pool assets have been reviewed for compliance with selection criteria or are the subject of a report by a third party to verify the accuracy of the loan or other asset information disclosed in the prospectus and, if so, to identify the reviewer or third party, the scope of the review or report, and the results or findings of the review or report.

Items 3.1(h) and (i) are generally comparable to corresponding Reg AB disclosure standards added by the SEC pursuant to final regulations implementing Section 945 of Dodd-Frank, which requires issuers registering the offer and sale of asset-backed securities to perform a review of the assets underlying those securities and disclose the nature, findings and conclusions of that review.

Item 3.1(i), however, deviates from the Reg AB disclosure standards in its requirement to identify the reviewer or third party. Under Reg AB, similar to Canada's prospectus liability regime, if the findings and conclusions of any third party review are attributed to the third party, then the third party must be named in the prospectus and must consent to being named as an expert (thereby exposing the third party to liability as an expert under the Securities Act). If, on the other hand, an issuer engages a third party to conduct a review but adopts the findings and conclusions of such review as its own, then the third party need not be named in the prospectus, thereby avoiding the issue of third-party consent and expert liability.

In commenting on the SEC's proposed rules implementing Section 945 of Dodd-Frank[20], ASF expressed significant concerns over the proposal to impose expert liability on third parties performing pool asset reviews, citing concerns that such third parties would simply withhold consent to being named as experts. This, in turn, would likely drive issuers to forego reviews or to perform the reviews themselves, which would be an unfortunate consequence considering the potential value to investors of independent third-party reviews. The SEC responded to these concerns by permitting the issuer to adopt the findings and conclusions of a third-party review as its own, as discussed above.

ASF respectfully submits that, to the extent any such third party reviewer is considered an "expert"[21] under Canadian securities laws, these same concerns would arise under Items 3.1(h)

[20] See footnote 7 for a link to the ASF Comment Letter in Response to the SEC's Proposed Rules Implementing Section 945 of Dodd-Frank.

[21] ASF questions whether a third party reviewer in these circumstances should even be considered an "expert". Section 11(a)(4) of the Securities Act describes an expert as a person "whose profession gives authority to a

and (i). We believe, therefore, that Item 3.1(i) should be revised to provide issuers the option of either identifying the third party reviewer or adopting the findings and conclusions of any such review as its own (as contemplated in Question 14 of the RFC).

4. Item 3.5(2) – Repurchase history for breaches of representations and warranties

Item 3.5(2) requires disclosure of fulfilled and unfulfilled repurchase requests for breaches of representations and warranties for each of the three years prior to the date of the prospectus. Item 3.5(2) is generally comparable to corresponding Reg AB disclosure standards added by the SEC pursuant to final regulations implementing Section 943 of Dodd-Frank, except that Reg AB gives effect to commenters' concerns about the inability to produce historical data to meet the new disclosure requirements for periods prior to the compliance date for the new disclosure regulations. Specifically, Reg AB includes phase-in provisions that permit an issuer to include only one year of repurchase history in prospectuses filed in the first year after the compliance date, two years of repurchase history in prospectuses filed in the second year after the compliance date and three years of repurchase history in prospectuses filed in the third and subsequent years after the compliance date.

ASF respectfully submits that the CSA should revise Item 3.5(2) to incorporate a similar phase-in provision.

B. Proposed CD Rule

The Proposed CD Rule generally brings the ongoing reporting requirements for issuers of securitized products into conformity with reporting requirements under the U.S. securities laws for issuers of registered asset-backed securities. A few notable differences between the U.S. reports and those contained in the Proposed CD Rule include:

1. Annual Servicer Report – Conform to U.S. platform level reporting; clarification of application to vendor activities

We are unclear as to whether the annual servicer report under the Proposed CD Rule is contemplated to be prepared on a platform level or on a transaction level. In Reg AB, it is clear that this annual servicer reporting can be done on a "platform" basis, rather than for specific securitization transactions.[22] ASF recommends that the CSA Proposals clarify that annual servicer reporting be similarly accepted on a "platform", rather than a "transactional", level.

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statement made by him". In most cases, the third parties performing these reviews are not licensed or regulated by any formal industry association, are not part of a recognized profession and are not providing a judgment about the risk or appropriateness of any pool asset. Stated another way, the value of the third party's review is not that it is an expert, but rather that it is independent.

[22] Under Reg AB, an annual servicer report is prepared on a platform basis. In particular, an annual report on Form 10-K must include from each party participating in the servicing function a report regarding its assessment of compliance with the servicing criteria specified in paragraph (d) of Item 1122 of Regulation AB, with respect to

A platform approach substantially limits the operational burden associated with preparing an annual servicer report and engaging auditors for required attestations. Separate assessments would be considerably more costly and administratively burdensome.

Assuming a platform approach is adopted, conforming changes should be made to Item 8(c), which contemplates that specific assets or securitized products must be identified, a requirement that would be inconsistent with a platform-based approach.

It is also commonplace for a servicer to engage third-party vendors to perform activities that address all or a portion of one or more servicing criteria applicable to that servicer. Inasmuch as the Proposed CD Rule contemplates that each servicer whose servicing activities relate to more than five percent of the pool assets must assess its compliance with each applicable servicing standard, it is unclear whether a vendor's activities are even subject to the annual servicer reporting requirement (since the vendor is not itself a "servicer").

If a vendor's activities are subject to the annual servicer reporting requirement, we believe the related servicer should have the option of either (i) taking responsibility for assessing compliance with the servicing criteria applicable to its vendor's activities, in which case the vendor would not prepare its own annual compliance report, or (ii) requiring the vendor itself to assess its compliance with the servicing criteria applicable to its activities, in which case the vendor would prepare its own annual report for filing by the related issuer. This result is consistent with Reg AB, as set forth in the SEC staff's official Compliance and Disclosure Interpretations.[23]

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asset-backed securities transactions taken as a whole involving the party participating in the servicing function and that are backed by the same asset type backing the class of asset-backed securities. This "platform" level assessment permits a single assessment and assertion regarding compliance for entities involved in multiple securitization transactions, as compared to requiring separate assessments for each individual transaction.

[23] Reg AB Interpretation 17.06 provides that a vendor engaged by a servicer to perform specific and limited activities or to perform activities scripted by the servicer would not be viewed as participating in the servicing function separate and apart from the servicer engaging such vendor, and would not need to submit separate assessment and attestation reports for inclusion in the related asset-backed issuer's annual report if:

- The vendor is not a "servicer" as defined in Item 1101(j) of Reg AB;
- The servicer engaging and monitoring the vendor elects to take responsibility for assessing compliance with the servicing criteria applicable to that vendor in the servicer's report regarding assessment of compliance with servicing criteria;
- The servicer engaging the vendor has policies and procedures in place designed to provide reasonable assurance that the vendor's activities comply in all material respects with the servicing criteria applicable to the vendor; and
- The servicer's report on assessment of compliance discloses:
    - the servicing criteria or portion of servicing criteria applicable to the vendor's activities for which the servicer is assuming responsibility;
    - any material instance of noncompliance by the vendor that the servicer identifies or of which it is aware; and
    - any material deficiency that is identified in the servicer's policies and procedures to monitor the vendor's compliance.

In this situation, consistent with Item 1122(d)(1)(ii) of Reg AB and Instruction 2 to Item 1122 of Reg AB, the requirement to assess compliance with the servicing criteria applicable to a vendor's activities is satisfied if the servicer has instituted policies and procedures to monitor whether such vendor's activities comply in all material respects with such criteria. Compliance with the applicable servicing criteria is achieved if those policies and

Further, it would be beneficial to recognize that a reasonable transition period would be needed to enable compliance with these requirements, including in order to put appropriate controls and processes in place.

There are also certain notable differences between Form 8-K and Form 51-106F2, such as the number of days within which to report a significant event[24] and a general lack of flexibility in reporting under Form 51-106F2, particularly in respect of events where information responsive to the reporting requirement rests uniquely within the knowledge and control of a third party or is unavailable.[25] ASF supports a general approach that conforms the timing and substance of timely disclosure where possible to eliminate unnecessary differences in approach. Commonality will benefit cross-border issuers and create consistent standards and expectations among investors in the cross-border context.

C. Proposed Prospectus-Exempt Distribution Rules

As discussed above under "The Role of Regulation in Private Market Transactions Among Highly Sophisticated Parties – Principles and Traditions Underlying the Exempt Market", ASF questions, as it did in the ASF Reg AB II Broad Comment Letter, whether enhanced and prescribed disclosure and ongoing reporting, similar to the requirements in the public offering market, is an appropriate way to regulate the prospectus-exempt securitized product market. Further, ASF questions whether there is a sound basis for imposing higher and more specific disclosure standards on short-term prospectus-exempt securitized products such as ABCP, as compared to other prospectus-exempt offerings of securitized products. On the same basis as we have commented in our ASF Reg AB II Broad Comment Letter, if the private placement

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procedures are designed to provide reasonable assurance that such vendor's activities comply with such criteria and those policies and procedures are operating effectively.

[24] Item 5(1) to Schedule B requires an issuer to report the occurrence of an enumerated significant event as soon as practicable, and in any event no later than two business days after the date on which the event occurs. By comparison, SEC regulations, including Reg AB, generally require an issuer to report the occurrence of enumerated reportable events within four business days after the date on which the event occurs. In addition, whereas issuers in Canada would be required to report in Form 51-106F2 "any event that affects payment or pool performance that would be material to an investor" within 2 business days of the occurrence of such event, U.S. issuers are not required to file Form 8-Ks following the occurrence of such an event. U.S. issuers would, however, be required to describe in their monthly reports on Form 10-D "any material information relating to distribution and pool performance which would be material to investors".

[25] Several reportable events in Form 8-K recognize that information responsive to the reporting requirement may rest uniquely within the knowledge and control of a third party or is unavailable. For example, an instruction to each of Item 6.02 and Item 6.03 of Form 8-K (which relate to, respectively, a change of servicer or trustee and a change in credit enhancement or other external support) provides that "[t]o the extent that any information called for by this Item…is not determined or is unavailable at the time of the required filing, the registrant shall include a statement to this effect in the filing and then must file an amendment to its Form 8-K filing…containing such information within four business days after the information is determined or becomes available." As another example, an instruction to Item 1.03 of Form 8-K (which relates to bankruptcy or receivership matters) provides that an asset-backed issuer only need report under this item at such time as it "becomes aware" of any reportable bankruptcy or receivership event.

exemptions are to be based upon the sophistication of investors, we do not understand the basis on which the CSA will single out securitized products for enhanced disclosure and reporting. This differentiation is further exacerbated under the CSA Proposals, which require that reports be filed and delivered whether or not the sophisticated investors request the information.

If, despite the foregoing, the CSA proceeds to implement the foregoing distinction between prospectus-exempt securitized products and other prospectus-exempt securities as contemplated by the Proposed Exempt Distribution Rules in their current form, it is again worth noting that there are differences between the Proposed Exempt Distribution Rules and the counterpart provisions of U.S. securities laws applicable to privately-placed structured finance products that ought to be eliminated to the extent that a meaningful justification based on local laws cannot be identified. ASF suggests that the following items are worth considering from this perspective.

1. Mandatory Disclosure Rather Than Upon Request

The most significant difference between the Proposed Exempt Distribution Rules, on the one hand, and the current U.S. private placement rules and Reg AB II, on the other, is the requirement that the issuer deliver an information memorandum with certain content to investors.

As previously noted, current U.S. securities laws condition, and the Reg AB II private placement proposals would condition, the safe-harbor exemptions on an issuer's undertaking to deliver, upon request, to investors prescribed information, rather than conditioning the safe-harbor exemptions on delivery of the information memorandum itself. In contrast, under the Proposed Exempt Distribution Rules, the availability of the prospectus exemption would be conditioned on mandatory delivery of an information memorandum in all circumstances. This is clearly a place where consistency between the U.S. and Canadian securities law requirements would be beneficial.

2. Delivery Requirements and Access

The Proposed Exempt Distribution Rules include an obligation on the part of issuers who are not reporting issuers to (i) deliver information memoranda to securities regulators, (ii) post information memoranda on websites (which may be password-protected) and maintain them on such site for one year past the maturity date of the applicable securitized product, and (iii) file with the securities regulators a distribution report for each offering of prospectus-exempt securities. These filings are due within a specified number of days after the distribution of the securitized products (except that in the case of ABCP, the distribution report is due annually no later than 30 days after the end of the calendar year).

Under Rule 144A of the Securities Act, non-reporting issuers are not required to deliver offering materials to, or make any filings with, the regulators or to post any information on websites, nor are such deliveries, filings or postings proposed to be required by Reg AB II. Furthermore, while Reg AB II would, as originally proposed, require that investors in private placements be entitled to receive the same information and continuous reports that a holder of a registered security would be entitled to receive, such information and reports would not be posted or filed, but rather would be made available to investors only upon their request.

Again, these are important differences that would make compliance in Canada comparatively more difficult. This could have a chilling effect on the offering of securitized products in Canada.

3. Liability Provisions

The CSA asks, in its questions regarding the Proposed Exempt Distribution Rules, whether investors should have the right to sue the issuer, the sponsor and each underwriter of prospectus-exempt securitized products, for damages, if the information memoranda contain misrepresentations and without the burden of proving reliance on such misrepresentations. As a means to implement this provision, the Proposed Exempt Distribution Rules would require that issuers, sponsors and underwriters certify (in the case of underwriters, limited by "to the best of knowledge, information and belief") that such memoranda contain no misrepresentations. The CSA also asks whether investors should have rescission rights in the event of misrepresentations in information memoranda and whether investors in prospectus-exempt securitized products transactions ought to have the right to withdraw from their purchases for two days following delivery of the information memoranda (citing a parallel right in the prospectus regime).

These potential provisions, which would give additional rights of action as well as rescission and withdrawal rights, are without parallel in the U.S. securities laws. Indeed, even in the aftermath of the crisis in the U.S. securitization market, neither the U.S. regulators nor the U.S. Congress made any such proposal. We also point out that if the potential liabilities and risks of offering securitized products in Canada are far greater than they are in the U.S., then cross-border transactions could be severely curtailed. We encourage the CSA regulators to ultimately decide that these provisions are unnecessary because, as they observe, "all investors [of securitized products] will be relatively sophisticated."

4. Short-Term/ABCP Securitized Products

While the disclosure requirements for securitized products with a term of longer than one year are primarily principles-based (i.e., a requirement to disclose sufficient information about the securitized product and the securitized product transaction to enable a prospective purchase to make an informed investment decision), the information proposed to be included in an ABCP information memorandum is prescribed and fairly specific.

In the ASF Reg AB II ABCP Comment Letter[26], we noted that information memoranda disclosure relating to ABCP has developed over 30 years by issuer and investor collaboration. In that letter, we described generally the content of an appropriate ABCP information memorandum, and we would suggest that, if addressed at all in the CSA's final regulations, the content of such disclosure documents should be treated in a similarly broad manner. As mentioned above, the Proposed Exempt Distribution Rules include more specific requirements for ABCP disclosure, and contain certain required disclosures that are not featured in the ASF Reg AB II ABCP Comment Letter, such as, "Summary of Pool Assets" (actual data, not program

[26] See footnote 7 for a link to the ASF Reg AB II ABCP Comment Letter.

requirements) (Item 4.2), "Conflicts of Interest" (Item 7), "Risk Factors" (Item 8), "Fees and Expenses" (Item 11) and "Purchasers' Rights" (Item 14). Given the extensive and diverse group of contributors to the ASF Reg AB II ABCP Comment Letter, it is reasonable to conclude that the proposals in the ASF Reg AB II ABCP Comment Letter are appropriate to that market – whether it be in the United States or in Canada. Accordingly, ASF suggests that the CSA should have due regard for the ASF Reg AB II ABCP Comment Letter and that the disclosure provisions for ABCP in the Proposed Exempt Disclosure Rules should conform to the proposals in the ASF Reg AB II ABCP Comment Letter.

We understand that the ABCP liquidity crisis starting in 2007 caused major turmoil in the Canadian ABCP market and we agree that the information delivery in that marketplace was an area that caused concern. Without diminishing the significance of that experience, ASF suggests that, going forward, information delivery requirements applicable to ABCP need to be informed by (i) the nature and characteristics of the existing ABCP programs, (ii) what issuers can reasonably be expected to produce and (iii) what investors would find material in making informed ABCP investment decisions. The ASF Reg AB II ABCP Comment Letter reflects that these matters have been considered very seriously by a taskforce of diverse ABCP market participants and that proposals have been made to address many of the same goals as are expressed in the CSA Proposals – that is, uniform, high-quality information and reporting on ABCP programs. We therefore respectfully encourage the CSA staff to be guided by the proposals set forth in the ASF Reg AB II ABCP Comment Letter. We believe that this will best achieve the goals of improving the proper functioning of the ABCP market in Canada, while not unnecessarily stifling its growth. Finally, we encourage the CSA to consider whether the expansive proposals contained in the Proposed Exempt Distribution Rules would have in fact prevented the problems that caused the third-party sponsored ABCP problem and, on the other hand, whether any possible salutary effect they might have going forward is disproportionate to the burden created and the potential unintended consequences that may result from them.

Finally, we note that the Proposed Exempt Disclosure Rules applicable to Canadian ABCP offerings would require certifications by the issuer, sponsor, promoter and underwriters as to no misrepresentations and also would require compliance with the information memorandum delivery, filing and posting requirements described above. These certifications and information delivery requirements are not features of the current U.S. securities laws and, in some instances, are beyond the proposals contained in Reg AB II or the ASF Reg AB II ABCP Comment Letter. ASF encourages the CSA to coordinate its disclosure and reporting requirements applicable to ABCP with the rules that are promulgated to govern the offering of ABCP in the U.S. If the Canadian securities laws governing the offering of ABCP are viewed by issuers to be far more onerous than those in effect in the U.S., and based on the ASF Reg AB II ABCP Comment Letter, more onerous than those proposed by the broad cross section of the ABCP marketplace represented in the ASF Reg AB II ABCP Comment Letter, then the issuance of ABCP in Canada could be significantly curtailed.

V. FEATURES OF U.S. SECURITIZATION INITIATIVES THAT ARE NOT INCORPORATED INTO CSA PROPOSALS ARE STILL IN FLUX AND MAY BE UNWARRANTED IN CANADA

As noted in the RFC, the CSA currently is not proposing to incorporate, but instead seeks comment on, certain requirements that are features of the U.S. Securitization Initiatives. In considering any such comment, the CSA indicates that it would determine whether those features would achieve the CSA's goals and whether they are appropriate for the Canadian context.

As noted above, while harmonization between the Canadian and U.S. regulatory frameworks may foster greater efficiencies across the North American capital markets, "consistency and comparability" does not necessitate that the two frameworks be coterminous in the extent of their regulation. ASF recognizes that the Canadian securitization market has distinctive features that may justify a different approach to regulation, including a Canadian framework that does not embody all of the features of the U.S. Securitization Initiatives.[27] ASF also recognizes that prudential regulatory policy may dictate that Canadian regulators defer action on the unincorporated features of the U.S. Securitization Initiatives because those U.S. proposals are among the most contentious and pose the greatest threat to the continued viability of securitization as a meaningful source of capital to fund, among other things, mortgage, consumer and business finance.

As discussed above, ASF is actively engaged with U.S. legislators, the SEC and other policymakers in considering the implications of the U.S. Securitization Initiatives. ASF has commented extensively on those initiatives and has repeatedly emphasized the importance of fashioning regulations that appropriately balance the relative benefits to investors and burdens to issuers because the continued viability of securitization rests in that balance. As illustrated below, the rule-making process associated with many of those initiatives is itself dynamic and ongoing and, consequently, the timing for, and ultimate form and content of, many of the related regulations remain uncertain at this time.

Risk Retention Requirements; Shelf Eligibility for Asset-Backed Securities: The SEC's April 2010 Reg AB II initiatives included a narrowly-drawn risk retention requirement as one of the proposed conditions of shelf-eligibility for asset-backed securities. Market participants, including ASF, commented extensively on the proposal during the related comment period, citing the need for a coordinated approach to risk retention, the importance of flexible regulations that account for the various ways in which issuers retain risk and the importance of calibrating risk retention requirements with practical asset quality standards. [28]

Since the time the SEC published its April 2010 Reg AB II initiatives, Dodd-Frank was adopted by the U.S. Congress and signed into law by President Obama. Section 941 of Dodd-Frank requires the SEC and certain other U.S. Federal regulators to jointly prescribe regulations to

[27] As noted in the CSA Proposals, Canada experienced significant turmoil in the ABCP market in August 2007 but, for a number of reasons, the Canadian securitization market did not experience a sub-prime mortgage securitization bubble.

[28] A link to the ASF Reg AB II Broad Comment Letter is included in footnote 7 to this letter.

require risk retention in ABS transactions. On March 29, 2011, those regulators jointly proposed a set of rules to implement the risk retention requirements. In light of those legislative developments, and in response to comments received on its original proposals, the SEC has recently re-proposed several of its Reg AB II initiatives, including a proposal to eliminate a risk retention requirement from its conditions for shelf registration. ASF has commented extensively on the risk retention requirements jointly proposed by the U.S. Federal regulators, citing serious concerns with several aspects of the proposed regulations and including a request that the regulators re-propose the risk retention requirements prior to implementing final regulations.[29] ASF is also in the process of formulating its comments on the SEC's re-proposed Reg AB II initiatives.

Asset-Level Information Requirements: The April 2010 Reg AB II initiatives also included asset-level information requirements that would require extensive data about each pool asset, including information relating to the terms of the asset, the characteristics of the obligor and the underwriting of the asset. ASF commented extensively on this proposal, generally endorsing the SEC's objectives but emphasizing the importance of formulating disclosure standards that would be both beneficial to investors, and feasible and appropriate for issuers to satisfy without compelling the disclosure of commercially-sensitive proprietary information about origination, underwriting and pricing models.[30] Issuers expressed justifiable concern that certain disclosures could jeopardize their competitive position and also raised privacy law considerations. ASF encouraged the SEC to incorporate the spirit and substance of the asset-level information packages being developed by market participants through ASF's Project RESTART initiatives, and to phase in these requirements in stages by asset sector, beginning with those sectors that had already developed market-based information packages.

As part of its current, re-proposed Reg AB II initiatives, the SEC is broadly soliciting additional comment on its proposal to require asset-level information about pool assets, including comment on (i) whether there are alternatives to the SEC's asset-level information proposals that would address the concerns of commenters and (ii) whether there should be limitations on the scope of the asset-level information requirements as applied to certain types of privately-issued structured finance products. As noted above, ASF is in the process of formulating its comments on the SEC's re-proposed Reg AB II initiatives.

Waterfall Computer Program Requirements: The April 2010 Reg AB II initiatives also included a requirement that ABS issuers file a computer program giving effect to the "waterfall" provisions of the transaction agreements. ASF prepared a separate comment letter[31] devoted exclusively to this proposal in recognition of the fact that the proposal raised significant issues that required considerable, focused attention by its membership. While ASF's investor members generally supported the proposal, its issuer members expressed grave concerns about the scale

[29] A link to the ASF Risk Retention Broad Comment Letter is included in footnote 7 to this letter.

[30] A link to the ASF Reg AB II Broad Comment Letter is included in footnote 7 to this letter.

[31] A link to the ASF Reg AB II Supplemental Comment Letter Regarding the Waterfall Computer Program is included in footnote 7 to this letter.

and complexity of the proposal and the magnitude of the costs issuers would incur in their efforts to comply. Indeed, issuers indicated that the challenges, costs and risks associated with the proposal would be so burdensome and costly that securitization would likely no longer represent a rational or cost-effective alternative for many, if not most, issuers.

In the wake of overwhelming opposition to its proposal, the SEC now indicates that it plans to re-propose the waterfall computer program requirement separately at a to-be-determined later date.

Disclosure Standards for Privately-Issued Structured Finance Products: As discussed earlier in this letter, the April 2010 Reg AB II initiatives also included a proposal to condition the availability of safe harbors for privately-issued structured finance products on an issuer's undertaking to provide to investors, upon request, the same information as would be required in a registered transaction. ASF also commented extensively on this proposal, supporting the SEC's goal of ensuring that sophisticated investors are able to consider and understand the risks of their investments, but highlighting a number of significant concerns with the SEC's one-size-fits-all information-delivery standard and offering a more balanced approach in furtherance of the SEC's goal.

Recently, SEC Chairman Mary Schapiro publicly acknowledged market concerns over the SEC's proposal, particularly with respect to privately-issued structured finance products supported by asset classes that have not historically been offered on a registered basis (since there are no explicit disclosure requirements for these more esoteric products against which to benchmark the proposed disclosure standards).[32] Chairman Schapiro also expressed an interest in a constructive dialogue with market participants in an effort to craft a regulatory solution that appropriately balances the competing concerns presented. ASF has engaged the SEC staff in preliminary discussions relating to the SEC's proposed information-delivery requirements in an effort to advance this issue.

Prohibited Conflicts of Interest: To date, the SEC has not published proposed rules under Section 621 of Dodd-Frank. That Section directs the SEC to implement rules to prohibit sponsors, underwriters or placement agents of asset-backed securities from engaging in transactions that would result in material conflicts of interest with respect to investors in those asset-backed securities. As previously noted, the SEC solicited industry input prior to proposing Section 621 implementing rules and, on October 21, 2010, ASF submitted a comment letter generally outlining its support for the intent of Section 621 – to eliminate incentives for market participants to intentionally design asset-backed securities to fail or default – but also emphasizing that any rules implemented by the SEC for this purpose must be crafted in a manner that avoids unnecessary adverse impacts on the markets for asset-backed securities.[33]

[32] For SEC Chairman Mary Schapiro's keynote address at ASF's 2011 Annual Meeting on June 22, 2011, see http://sec.gov/news/speech/2011/spch062211mls.htm.

[33] A link to the ASF Comment Letter Regarding Conflicts of Interest is included in footnote 7 to this letter.

These examples illustrate the important competing interests and concerns associated with certain features of the U.S. Securitization Initiatives that have not been incorporated into the CSA Proposals, as well as the fact that, for many of the more contentious U.S. Securitization Initiatives, there is uncertainty about their timing and ultimate form and content. We refer the CSA to the ASF's comment letters on the various U.S. Securitization Initiatives for a comprehensive response by participants in the U.S. securitization market. Many of the comments in the ASF comment letters would apply equally if the unincorporated U.S. proposals were ultimately included in the CSA Proposals. In the event the CSA were to introduce one or more of these features of the U.S. proposals into the CSA Proposals, we encourage the CSA, wherever possible, to do so in a coordinated fashion with U.S. regulators. We remain very concerned that the revitalization of the fragile securitization markets will be significantly impeded if reform occurs at several levels and in different forms as between the U.S. and Canadian regulatory frameworks.

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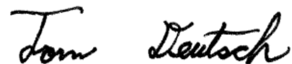
ASF appreciates the opportunity to provide the foregoing comments in response to the CSA Proposals. If you have any questions or desire any clarification regarding the matters addressed in this letter, please do not hesitate to contact me via telephone at 212.412.7107 or via e-mail at tdeutsch@americansecuritization.com, or ASF's outside counsel on these matters, Stephen Ashbourne of Blake, Cassels & Graydon LLP, via telephone at 416.863.3086 or via e-mail at stephen.ashbourne@blakes.com, or Michael Mitchell of Orrick, Herrington & Sutcliffe LLP, via telephone at 202.339.8479 or via e-mail at mhmitchell@orrick.com.

Sincerely,



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