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August 31, 2011

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Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Registrar of Securities, Legal Registries Division,
Department of Justice, Government of Nunavut

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Dear Sirs/Mesdames:

Re: Comments on Proposed National Instrument 41-103; Proposed National Instrument 55-106; Proposed Amendments to National Instrument 52-109; and Proposed Amendments to National Instrument 45-106 and National Instrument 45-102 (collectively, the "Proposals")

We appreciate the opportunity to submit this letter in response to your request for comments on the Proposals. We commend the CSA for seeking industry input regarding proposed reforms in the Canadian securitization market. Part A of this letter consists of our response to the specific questions in section 7 of the Notice and Request for Comments released on April 1, 2011 (the "Notice"). Part B of this letter consists of additional comments that we have.

Ally Credit Canada Limited ("Ally Canada", formerly General Motors Acceptance Corporation of Canada, Limited) is one of the major sponsors of term asset-backed securities ("ABS"), issued both publicly and privately, and sellers of receivables to bank-administered asset-backed commercial paper ("ABCP") conduits in Canada. Ally Canada securitizes three types of assets in Canada: (i) retail auto loan receivables, (ii) wholesale dealer loans, and (iii) retail lease receivables. The first two asset classes have been securitized both in the ABCP market and the term ABS market in Canada. The third asset class has only been securitized by Ally Canada in the ABCP market in Canada. It is interesting to note that Ally Canada and its U.S. affiliates currently structure their syndicated secured lending facilities by transferring financial assets to special purpose bankruptcy-remote entities which then either borrow money by way of loans from a syndicate of banks or issue variable funding notes to a syndicate of banks and their sponsored ABCP conduits. These variable funding notes would likely fall within the definition of securitized products (and the current Proposed Securitized Product Exemption would prevent these funding transactions from taking place in Canada because the ABCP conduits would not be Eligible Securitized Product Investors). For Ally Canada, the secured lending market and the exempt securitized product market are rapidly converging.

Ally Canada recognizes that the collapse of the third party (non-bank sponsored) ABCP market in Canada and the mortgage-backed securities ("MBS") market in the United States and elsewhere and the ensuing financial crisis reveal the necessity for further reform in the securitization market. Ally Canada supports reforms in the securitization market that are narrowly tailored to further the intent of the Proposals while preserving a robust market in Canada. We appreciate that many of the more controversial components of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") in the United States as well as the Securities and Exchange Commission's 2010 proposals to amend Regulation AB are not being adopted in the Proposals. The U.S. regulations are being put in place to address conditions in the U.S. market that differ greatly from those in the Canadian market. Not only was the collapse of the securitization market in Canada not as severe as that which was experienced in the U.S. market but the model of "originate to distribute" which was very popular in the U.S. and arguably lends itself to more of the abuses that the Proposals seek to regulate, is not utilized as often in Canada. That model was most commonly employed with MBS which were mostly responsible for the collapse in financial markets. Auto ABS both in the U.S. and Canada remained significantly more stable than MBS.

The burden of additional regulation inevitably imposes additional costs. Where these costs are necessary for investors to have confidence in the transparency of their investments these costs can be worthwhile, since a lack of investor confidence could lead to even higher

financing costs. Ally Canada believes that updating the regulation of publicly distributed ABS so as to reflect best market practices in other jurisdictions is a worthwhile endeavor. Ally Canada believes that, in general terms, the new prospectus disclosure requirements in Form 41-103F1 and continuous disclosure requirements in Forms 51-106F1 and 51-106F2 accomplish this. However, Ally Canada believes that it would be a mistake to single out securitized products and create a completely separate "closed system" specifically for them under the new Securitized Product Exemption. Ally Canada believes that there are many other kinds of investment products that are distributed on an exempt basis that are far riskier to investors than securitized products and it would be anomalous to single out securitized products for a costlier exempt distribution regime.

Given that the Canadian securitization market is much shallower than the U.S. securitization market, the burden of more intense regulation may have a deeper economic impact on the Canadian market than it would in the U.S. One of the perennial problems with the Canadian securitization market is its illiquidity; that is, there is not enough securitized product being issued in Canada to attract the number of investors needed to create a liquid market. Imposing additional burdens on securitized product issuers in the exempt market will add costs thereby inevitably shrinking the market and making it less liquid. New sellers of financial assets to securitized product issuers often use the ABCP market or the exempt ABS market to test out new products or their own servicing systems before proceeding with a public distribution of ABS. The exempt market provides an important "incubation" stage for new issuers. By making the exempt securitization market so much more burdensome the CSA will be choking off this trial stage for new issuers thereby putting at risk the long-term viability of the Canadian securitization market.

Finally, as the CSA notes, securitization represents an important source of credit to the economy. By singling out the exempt market for securitized products for special treatment, the CSA will be burdening issuers with higher costs. This higher cost of financing will ultimately be passed on to the consumer in the form of higher financing charges.

Part A – <u>Specific Requests for Comment</u>

In preparing these comments each of the paragraphs below correspond to the respective question numbers in section 7 of the Notice.

1. *We welcome any comments on the three principles we have taken into account in developing the Proposed Securitized Products Rules, which are set out under Substance and Purpose of the Proposed Securitized Products Rules. Are these the right principles? Are there additional principles we should take into account and if so, what should these be?*

   The three principles set out in the Proposals adequately reflect what Ally Canada believes the goals of any regulation in the securitization market should endeavor to accomplish. Ally Canada acknowledges that access to complete and appropriate information, greater transparency and crafting such regulations so that they do not impose a regulatory burden disproportionate to the actual risk inherent in securitized products will be beneficial to all parties in the Canadian securitization market. It is also important to balance these principles with the desire to not stifle the growth of the securitization market. All regulation should be crafted to sufficiently protect the investor and foster a competitive and innovative market that creates growth in the economy.

2. *The Dodd-Frank Act requires federal banking agencies and the SEC to jointly prescribe rules that will require a "securitizer" (generally the issuer, sponsor or depositor) to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of securitized products, transfers, sells or conveys to a third party, subject to certain mandatory exemptions and discretionary exemptions. The SEC recently published proposed risk retention rules. The SEC April 2010 Proposals also contain a risk retention requirement as one of the proposed conditions of shelf-eligibility for asset-backed securities, which are intended to replace the current credit rating eligibility criteria. Is it necessary or appropriate for us to make rules prescribing mandatory risk retention for securitized products in order to mitigate some of the risks associated with securitization? If so, what are the appropriate types of levels of risk retention for particular types of securitized products?*

   Ally Canada agrees that that when a party maintains an economic interest in the transaction its interests are less likely to conflict with those of the investor and thus the investor receives greater protection. Because of the nature of auto ABS transactions, a seller's retained interest is typically built into such transactions. Such a retained interest is expected by the market and investors such that we feel that additional regulatory requirements are not necessary. It is important to note that because the auto ABS market does not generally employ an "originate to distribute" model, the sponsor already maintains an economic interest in the transaction as its reputation and thus its ability to execute future securitizations is at stake. This is in contrast to MBS transactions where the originator originates securitizable assets with the intent to immediately sell into a securitization; while sometimes the originator is also the sponsor of the MBS transaction this is more commonly not the case. Further, the originator in an auto ABS transaction often also retains the servicing of the securitized receivables which creates an additional level of involvement in the transaction. Most importantly, the seller typically retains a "horizontal slice" of the transaction which places the seller in the first loss position thus minimizing losses for the investor. Ally Canada believes this subordinate residual interest is a sufficient form of retained risk, one which is expected by the investor and is dictated by the market.

3. *The Dodd-Frank Act amends the Securities Act of 1933 to prohibit sponsors, underwriters or placement agents of securitized products, or affiliates of such entities, from engaging in any transaction that would involve or result in any material conflict of interest with respect to any investor in a sale of securitized products. The prohibition against such activity will apply for one year after the closing date of the sale and provides for certain exceptions that relate to risk-mitigating hedging activities intended to enhance liquidity. Should there be a similar prohibition in our rules? If so, what practical conflicts would this rule prevent that are seen in Canada today?*

   Ally supports the intent of this provision of the Dodd-Frank Act - to eliminate incentives for market participants to intentionally design ABS to default - but in practice these kinds of prohibitions are difficult to implement. To prohibit any sponsor, underwriter etc. from participating in a conflicting transaction for one year preceding any securitization transaction may inadvertently cast the net too broadly. For instance, such a restriction may preclude an affiliate of an underwriter from issuing a swap for the same transaction even though such an arrangement may be an unobjectionable one executed on market terms. Ally Canada feels that disclosure of any potential conflict is much more useful.

4. *Are there circumstances where we should require that certain material parties be independent from each other and if so, what are they? For example, should we require that an underwriter in a securitization be independent from the sponsor by proposing amendments to National Instrument 33-105 Underwriting Conflicts? Should we require that auditors who audit the annual servicer report be independent from the sponsor?*

   Ally Canada believes that rules regarding the independence of underwriters and auditors should be no different for ABS transactions than they are for the distribution of other types of securities.

5. *Is the definition of "securitized product" sufficiently clear, particularly for those persons who will be involved in selling these products to investors? Do elements of the definition, e.g., "collateralized mortgage obligation", "collateralized debt obligation", "synthetic", need to be defined?*

   While we understand that the proposed definition of "securitized products" was drafted intentionally broadly, we believe that definition requires more specificity in certain areas to avoid confusion and to further the intended objective. Paragraph (a) of the definition states that a securitized product is "(a) a security that entitles the security holder to receive payments that primarily depend on the cash flow from self-liquidating financial assets collateralizing the security, such as loans, leases, mortgages and secured or unsecured receivables". The list of examples that follows paragraph (a) includes CDO's, CMO's, CBO's as well as "asset backed securities". Although the definition of "asset backed securities" is very similar to that contained in Regulation AB, being "a security that is primarily serviced by the cash flows of a discrete pool of mortgages, receivables or other financial assets, fixed or revolving, that by their terms convert into cash within a finite period and any rights or other assets designed to assure the servicing or the final distribution of proceeds to security holders", the problem with the definition, unlike in Regulation AB, is that there is no clarification of the term "discrete pool of financial assets" particularly in the context of master trusts, co-ownership interests, pre-funding periods and revolving periods. This can cause some ambiguity, particularly in the case of auto lease deals where the automobile underlying the lease does not necessarily convert to cash within a finite period. We suggest that leased equipment be expressly included in the definition of "discrete pool of financial assets". Another issue in the examples to paragraph (a) is the lack of specificity related to CDO's (collateralized debt obligation). A broad interpretation of such a vague term may include other instruments such as credit default swaps.

   Also under paragraph (a) the term "collateralizing the security" presents an additional area of ambiguity that may inadvertently exclude transactions that were clearly meant to be included in the definition simply because of user interpretation of the word "collateralize". If the term is interpreted strictly and literally it would exclude CMBS transactions where the offered security is actually an ownership interest in the underlying asset. Most notably, with respect to the definition of securitized product set forth in paragraph (a), there is an absence of the concept of "pooling". The concept of pooling of assets is a fundamental element of securitization transaction and one that separates those transaction from other financial instruments. Its absence ignores an integral structural element of securitization transactions.

6. *Is the proposed carve-out for covered bonds from the Proposed Securities Products Rules appropriate? Should there be additional conditions imposed in order for the carve-out to be available and if so, what should these be?*

   We are in agreement with the proposed carve-out for covered bonds under the Proposals.

7. *Is the proposed carve-out for non-debt securities of MIEs from the Proposed Securitized Products Rules appropriate? Should there be additional conditions imposed in order for the crave-out to be available and if so, what should these be?*

   We have no comment on the proposed carve out for non-debt securities of MIEs.

8. *Should there be restrictions on the kinds of asset-backed securities distributions that are eligible for the shelf system and if so, what should those be and why? Should there be similar restrictions to those in Reg AB, such as prescribed time limits on revolving periods for transactions backed by non-revolving assets, caps on prefunding amounts, and restrictions on pool assets (e.g., no non-revolving assets in a master trust, caps on the proportion of delinquent assets in the pool, and prohibitions against non-performing assets)?*

   It is our belief that restrictions on the kinds of ABS distributions that are eligible for the shelf system would be detrimental to both the Canadian securitization market and the Canadian investor. Restrictions such as prescribed time limits on revolving periods for transactions backed by non-revolving assets would prove detrimental to the investor who has a significant interest in these transactions. A transaction containing a revolving period for non-revolving products, such as auto loans, creates a longer maturity date than would otherwise exist for transaction of this asset class. Investors have demonstrated a demand for products having a longer duration and restricting them would mean that the investor would only be able to invest in this type of structure in an exempt market where they would not have the benefit of enhanced liquidity that the shelf prospectus system would provide. We respectfully disagree with imposing regulatory restrictions on pool assets on the basis that any decision on pool assets should be the domain of the investors who, as market participants, will determine what risk exposure and yields that they wish to absorb.

9. *Do investors need additional time to review shelf supplements prior to sale? Should we require the supplement (without price-related information) to be filed on SEDAR prior to first sale? What would be an appropriate amount of time, and would it change if loan- or asset-level disclosure was mandated?*

   While adequate time to review shelf supplements is critical to investors, Ally Canada believes that the current industry practices provide an appropriate amount of time for such review to be conducted by investors. The investors for ABS transactions are generally sophisticated institutional investors with significant resources to conduct the necessary review in the time frame currently provided. Where a transaction is more complex or novel, such investors can and often do request more time to review disclosure material. Many securitization transactions are recurring and involve very little changes to the documents making the review process a brief one. To mandate a specific time frame for review would not take into account the variations in transactions whereby some transaction require a longer review period and some a significantly

shorter period. Further, any time period longer than two days can significantly alter the outcome of the transaction as shelf registrations are designed to minimize the length of time for the transaction enabling issuers to take advantage of favorable market conditions. A review period that is too long may be detrimental to the transaction as market conditions may change quickly. In the event that such a review period is mandated, it should be no longer than 2 business days. Furthermore, any requirement that such disclosure be posted on SEDAR prior to filing not only places a substantial burden on the sponsor but also provides an advantage to competitors to capitalize on market conditions during that interim period.

10. *Should the approved rating eligibility criterion for the short form and shelf prospectus systems be replaced with alternative criteria? In the alternative, if the approved rating eligibility criterion is maintained, should the issuer also satisfy one or more additional criteria such as those in the SEC April 2010 Proposals:*

    (a) *5% vertical slice risk retention;*

    (b) *third party review of repurchase or replacement obligations in connection with alleged breaches of representations and warranties;*

    (c) *a certificate from the CEO of a sponsor and an issuer that at the time of each offering off a shelf prospectus that the assets in the pool have characteristics that provide a reasonable basis to believe that they will produce, taking into account internal credit enhancements, sufficient cash flows to service any payments due and payable on the securities as described in the prospectus?*

Ally Canada believes that the ratings eligibility criteria have worked well in the Canadian market and are better than any other proposed criteria. Although Ally understands the desire of regulatory authorities to develop eligibility criteria that are not based on credit ratings, Ally Canada disagrees with the specific additional criteria for eligibility for short form and shelf prospectus systems for the following reasons:

(i) 5% vertical slice risk retention: As we indicated in our response to Q.2 above we agree that it is desirable for the sponsor to retain an economic interest in a securitization transaction to ensure that the sponsor's interests are aligned with those of the investor. However, there are several ways, including both vertical and horizontal slice risk retention, that such risk retention can be obtained and it should not be up to regulations to dictate how transactions should be structured. Also, there is no good reason to impose an arbitrary amount, such as 5%, as the required level of risk retention. The current industry practice of horizontal risk retention at a level required by rating agencies and investors is an effective way to align the economic interests of the sponsor and investors. The sponsor has an economic interest in having the transaction succeed by retaining the first loss position and the risk of loss to the investor is thus minimized. As this is the current market standard and it is important to investors that the sponsor retain the first loss position, investors would likely continue to demand it in addition to the 5% vertical slice if such a criteria were mandated. The combination of both horizontal slice and vertical slice may make the economic terms

of such a securitization transaction undesirable to sponsors. The implementation of an across the board 5% vertical slice retention does not recognize the different market needs across asset classes nor does it recognize that different structures are more economically beneficial to all parties using varied forms of risk retention.

(ii) Third party review of replacement or repurchase obligations: In contrast to the MBS market, the ABS market has experienced very few breaches of representations or warranties by an originator or sponsor of the securitization transaction. One possible reason for this is that unlike in MBS transactions where the "originate to distribute" model is more prevalent, the originator in auto ABS transactions is most often the sponsor as well. In the event that such a breach does occur it is usually uncovered by the servicer, who again, is usually the originator. Any proposal for periodic third party review would create a burden on the system and would provide very little benefit to the investor as violations in replacement and repurchase obligation are rare in the ABS market.

(iii) Certificate from CEO of sponsor: Ally Canada disagrees with the requirement of certification from the CEO of the sponsor as to the future performance of the assets. Such certification could be viewed as speculative in nature rather than a statement of fact. The certification would be similar to a guarantee from the CEO. The CEO can certify as to the accuracy of the disclosure but cannot guarantee the future performance of the transaction.

11. *Do offerings of asset-backed securities through the MTN/continuous distributions prospectus supplement provisions under Part 8 of National Instrument 44-102 Shelf Distributions give investors enough time to review the information or provide the public disclosure of the offering on a sufficiently timely basis?*

The current system provides investors sufficient time to review the disclosure information. This is self-evident by the fact the investors continue to invest in these products. As the majority of investors in securitization transactions are financially adept institutional investors, to the extent the investors felt the time period for review was insufficient, this sentiment would have been voiced and/or they would not have continued to invest in such transactions.

12. *The SEC April 2010 Proposals require disclosure of asset- or loan-level data in some cases, and grouped asset disclosure in others (e.g. for credit card receivables). We are not proposing to require asset- or loan-level disclosure or grouped asset disclosure. Is this level of disclosure necessary and if so, what are appropriate standardized data points?*

Ally Canada agrees with the importance of providing sufficient and adequate information to allow investors to properly assess the assets. Although the SEC April 2010 Proposals were correctly aimed at addressing this goal, Ally Canada believes that the implementation of loan-level disclosure for auto ABS transactions may give rise to several problems. First, the disclosure of loan-level data including FICO scores may provide access to competitors to our proprietary scoring model. By including FICO scores and all the other data points competitors may be able to extrapolate the

process through which we score borrowers, thus diluting any competitive advantage and diminishing the value of such competitive scoring process developed through years of research and resources. In addition, disclosure of loan-level data will also compromise sensitive consumer data. Disclosure of such data may be used to identify the consumer or, in the case of wholesale floorplan transactions, the dealer. Further, such disclosure poses great risk to the consumer and can very plausibly lead to identity theft. Loan level disclosure can include identifying information about the borrower that savvy individuals can compile to identify sensitive borrower information thus leading to potential fraud perpetrated against the consumer. The disclosure of such data may also violate confidentiality agreements already in place with the dealers. Finally, compliance will require putting new systems in place that could prove costly and burdensome.

13. *The SEC April 2010 Proposals require that issuers provide a computer waterfall payment program to investors. We currently are not proposing to impose a similar requirement. Is this type of program necessary and if so, why?*

The software that is being envisioned in the SEC proposal not only does not exist, industry experts are not even certain that such software can be designed. The development of such software presents a level of complexity and cost such that to develop such software would essentially cause sponsors to engage in the industry of software development. The models currently in place do not lend themselves to integration in the way the proposed regulation requires. Further, to the extent the software would enable the investor to input different variables to track the outcome, not only would the sponsors have the burden of designing such software but also maintaining, updating and provide customer service as to its use. While it is possible for the sponsors to hire a third party software developer, the expense would be unascertainable as there currently is no estimate as to a time frame for developing such software, provided that such software can even be engineered. In addition, to the extent that such a program is incorporated by reference into transaction documents, the issuer may become legally responsible for the output of such program. This would create an entire new level of liability for the industry when taking into account software glitches, errors in modeling with such novel software as well as user error. Requiring sponsors to develop novel software (a) that to-date no other market participant has been able to design and (b) for which there exists no certainty as to the ability to design such a program, would create an undue burden in the ABS market.

14. *In connection with the requirements of the Dodd-Frank Act, the SEC has made a rule requiring that issuers who offer asset-backed securities pursuant to a registration statement must perform a review of the pool assets underlying the asset-backed securities. The issuer may conduct the review or an issuer may employ a third party engaged for purposes of performing the review provided the third party is named in the registration statement and consents to being named as an expert, or alternatively, the issuer adopts the findings and conclusions of the third party as its own. Should we introduce a similar requirement for prospectus offerings of securitized products?*

Given the differences in size and variety of asset classes for transactions it is difficult to prescribe a specific standard of review for the pool assets. The level of such review, consistent with what was adopted in Dodd-Frank, would leave the scope and scrutiny of such review to the issuer. Historically, unlike in MBS transactions, pool quality has not been an issue in auto ABS transactions, thus making any such review burdensome

and unnecessary. Such review also presents several issues in that investors will prefer that a third party perform such review rather than the sponsor, but the experience to date in the U.S. is that third party reviewers will not want the liability associated with being treated as an expert. The review will thus have to be certified by the issuer. Without standards governing the review or third parties conducting and certifying such reviews, the investor will receive no added benefit or comfort. Currently, Ally Canada engages an outside auditing firm to perform agreed upon procedures on a statistically significant portion of assets in all of its Canadian public ABS transactions. Consequently, imposing an additional requirement for third party review would not provide any greater level of transparency for the investor but instead would impose a greater burden on the sponsor and, if the third party reviewer must consent to having its review summarized in a prospectus, the costs could become prohibitive.

15. *We are not proposing to prescribe risk factor disclosure. Should Form 41-103F1 contain prescribed risk factor disclosure and if so, what disclosure should be prescribed? For example, are there standard risk factors associated with particular underlying asset classes that should always be included in a prospectus?*

    Ally Canada believes that it should continue to be left to the issuer and the sponsor to prepare disclosure concerning all risk factors they believe are material. There ought not to be a universal standard.

16. *Should Form 51-106F1 and Form 51-106F2 filings previously filed by a reporting issuer be required to be incorporated by reference in other short form prospectus offerings by the same issuer? What types of filings are appropriate or necessary for incorporation, and which are not? Would the requirements regarding static pool disclosure in Item 4 of the proposed From 41 103F1 be sufficient?*

    Ally Canada understands and agrees with the Proposals' efforts to provide sufficient information for Investors to ascertain their risks and benefits. The most appropriate way to further this goal is by providing information to investors that is sufficiently narrow in scope so as to be directly relevant to their investment. The information that is to be provided to investors should specifically relate to the transaction in which they have invested or at most, transactions very similar in asset class and structure. Providing information (as would be required in form 51-106F1) about payment distribution and pool performance for a securitization of a different asset class will not be helpful to an investor as it will not necessarily reflect pool performance of the asset class that they are investing in and will, instead, create a greater burden on the investor to sift through information to find that which is relevant. The requirements in Form 41-103F1 item 4 regarding static pool information where such information is material would serve as a sufficient means through which to communicate relevant information to investors to the extent that it pertains, again, to the relevant asset class. This format would provide a concise overview of the pertinent information which the investor can then use to make an informed decision, without forcing the investor to extract the relevant details from a multitude of documents.

17. *Are there any existing registration categories or registration exemptions that should be modified or made unavailable for the distribution of securitized products under a prospectus, or their subsequent resale?*

No. There is no reason why the prospectus and registration exemptions for securitized products should be any different than for those of any other types of securities.

18. *The Proposed CD Rule requires reporting issuers that issue securitized products to make several new filings in addition to the filings required by NI 51-102. In light of these new proposed filings, should reporting issuers be exempt in whole or in part from the requirements of NI 102 and related forms? For example, do the costs associated with preparing and filing audited financial statements of the issuer outweigh the benefits to investors? We believe there may be circumstances where financial information about the issuer may be important to investors, such as information relating to derivative transactions to which the issuer is a party, or information relating to other liabilities of the issuer that may rank higher to or equally with the notes held by investors, and thereby reduce the potential recovery of investors in the case of an insolvency of the issuer. If we propose an exemption from the requirement to prepare and file audited financial statements, how should we address these concerns? What conditions should we include?*

In complying with the Proposed CD Rule, issuers of securities would have to make certain filings such as disclosure of pool performance, payment distribution, timely disclosure of significant events, annual servicer report, annual servicer certificate and disclosure of servicer non-compliance. As such, it is our assertion that any such issuer of securities be exempt from all the requirements of NI 51-102. Compliance with the Proposed CD Rule provides the transparency needed by an investor without placing an undue burden on the sponsor. The current requirement for issuers of ABS to provide interim and audited annual financial statements is not only of no value to investors; in many cases it may actually be misleading. Many issuers of asset-backed securities use the same reporting issuer to issue different series of ABS backed by separate discrete pools of liquidating assets where investors in one series of notes have no recourse to any assets of the reporting issuer other than the assets backing their specific series of notes. By requiring reporting issuers to present audited financial statements which indicate all assets and all liabilities of the reporting issuer together, investors may be misled as to the extent of asset coverage that exists for their particular series of notes.

19. *The proposed continuous disclosure requirements apply in respect of all securitized products issued by the reporting issuer, regardless of whether they were distributed under a prospectus or on a prospectus-exempt basis. For example, a reporting issuer must file a Form 51-106F1 in respect of each outstanding series or class of securitized products it has issued, regardless of whether it was issued under a prospectus or on a prospectus-exempt basis. Should there be a "grandfathering" or transitional provision put in place?*

We recommend both a "grandfathering" provision as well as a lengthy transitional period. For transactions originating after the effective date of the Proposals, systems will have to be developed to enable the process of continuous disclosure. However, for transactions that have been active prior to the effective date of the Proposals where no such system has been in place, such disclosure becomes burdensome due the number of outstanding deals and the backlog it would present. Since those transactions were not formulated to comply with the Proposals, the information may not be readily available. In addition, a transitional period is imperative to the success

of such continuous disclosure to allow for the creation and implementation of systems, personnel and documentation.

20. *Should the proposed continuous disclosure requirements only apply in respect of securitized products that the reporting issuer distributed via prospectus? If yes, how should we address the concern that other securitized products issued by the same issuer on an exempt basis may become freely tradeable but without the reporting issuer being required to provide any ongoing disclosure about these other securities.*

    It is our assertion that the proposed continuous disclosure requirements should only apply to securitization transactions distributed via prospectus. The CSA has expressed concern over exempt securities becoming freely tradable where the issuer will not be required to provide ongoing disclosure. Ally Canada would prefer that such securities not become freely tradable by removing the exemption in section 2.5 of NI 45-102 for such securities rather than require securitized products issued pursuant to a prospectus exemption to comply with the new continuous disclosure regime. We suggest that reporting issuers be given the option of either complying with the continuous disclosure requirements, thereby enabling the related securities to become freely tradable, or not complying with these requirements, thereby keeping such securities within a closed system in the exempt market.

21. *Should there be a legending or notice requirement to explain resale restrictions for securitized products that have been distributed on an exempt basis?*

    A legending or notice requirement to explain resale restrictions for securitized products distributed on an exempt basis is not an appropriate measure as the book-entry system most commonly used in securitization transactions does not properly accommodate legending.

22. *Section 5 of NI 51-106 requires timely disclosure of a range of enumerated "significant" events largely derived from Form 8-K. Would adding, modifying or deleting any of the criteria on this list make it better regime for timely disclosure? If so, what changes should be made?*

    We believe that most of the enumerated events listed in section 5(2) of proposed NI 51-106 are appropriate. However, there are a couple of exceptions. Clause (g) requires that a report must be filed whenever there is a difference of 5% or more occurring in a material pool characteristic from the time of issuance of the securitized product. This seems to be an unnecessary requirement since investors expect that as an amortizing pool pays down there could be numerous instances where a particular pool characteristic will differ by 5% or more from the time of issuance. We believe that the monthly continuous reporting requirements in Form 51-106F1 should be sufficient to report on these differences. Also, while not particularly relevant in the auto ABS market, the requirement in clause (j) for an issuer to report on any change in the credit rating of a significant obligor could become problematic as servicers may not become immediately aware of any such change in credit rating, nor would such a change in credit rating be particularly significant if the underlying obligation of such significant obligor is secured by collateral.

23. *Should the new documents that are required to be filed under the proposed CD Rule be prescribed as core documents for secondary market civil liability?*

Ally Canada has no view on this question.

24. *Is it appropriate to exempt reporting issuers that issue securitized products and that are subject to the Proposed CD Rule from the requirements to establish and maintain disclosure controls and procedures and internal control over financial reporting in Part 2 of NI 51-109?*

Providing issuers who are subject to the Proposed CD Rule with an exemption from the requirements of Part 2 of NI 52-109 is an appropriate measure and furthers the underlying principles of the Proposals. The Proposals seek to create greater transparency in the issuance of ABS and provide investors with a greater depth of information. The Proposed CD Rule furthers that goal by requiring issuers to provide continuous disclosure of payment distribution, pool performance, significant events and servicer information. Issuers who are subject to the Proposed CD Rule will already have to maintain disclosure controls and procedures in order to provide such disclosure, thus making it unnecessary and burdensome to further impose the requirements pursuant to NI 52-109. To the extent that any issuer is complying with the Proposed CD Rule disclosure controls and procedures and internal controls over financial reporting are being utilized and scrutinized on a continuous basis. Ally Canada believes that certain other aspects of disclosure controls and procedures, such as those relating to the preparation of financial statements, are irrelevant to ABS investors.

25. *The proposed forms of certification for reporting issuers that issue securitized products does not contain a note to reader similar to the note to reader required for venture issuer forms of certification. Should there be a note to reader required for the certifications and if so, what information should the note to reader contain?*

We assume that you are referring to the note to reader regarding the absence of representations relating to the establishment and maintenance of disclosure controls and procedures and internal control over financial reporting. We believe that for all reporting issuers of ABS who are venture issuers (which we believe constitutes most of such reporting issuers since ABS is typically not listed on any of the markets named in the venture issuer definition), a note similar to the one currently used by venture issuers would be appropriate, but we do not feel strongly about this point.

26. *We are proposing that if an originator, sponsor or other party has repurchase or replacement obligations in respect of pool assets collateralizing securitized products distributed under a prospectus, the prospectus must provide historical demand, repurchase and replacement information for those parties in respect of other securitizations where those parties had similar obligations, where the same class of assets was securitized, and where the securitized products were distributed under a prospectus. Subsequently, demand, repurchase and replacement information must be provided in Form 51-106F1. Is this type of disclosure adequate, or is it necessary to have this type of information provided by originators and sponsors for all securitizations in which they have been involved (including those in the exempt market)? For example, in connection with the requirements of the Dodd-Frank Act, the SEC has made a rule requiring any securitizer to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer, so that investors may identify asset originators with clear underwriting deficiencies. The securitizer*

must file an initial "look-back" report, and subsequently update the information on a quarterly basis.

The requirement for disclosure of historical demand, repurchase, and replacement information in the prospectus addresses the issue of providing investors with adequate historical data in an appropriate manner. Ally Canada supports the intention of the Dodd-Frank provision - helping investors identify originators with clear underwriting deficiencies - however, in practice this provision in Dodd-Frank requiring that data be aggregated across all trusts issued by the sponsor could present an inaccurate portrait of such historical data and thus be of limited use to the investor. Ally Canada believes that the correct approach, and that which is under consideration in the Proposals, is to provide historical data as it relates to a specific asset class in a comparable transaction. In that manner, the investor receives the most accurate and probative information as it relates to the particular securitization transaction.

27. *We are proposing a new Securitized Product Exemption which focuses on a specific product that has unique features and risks. Is this product-centred approach appropriate? Should we instead be focusing on reforming the exempt market as a whole?*

We refer to our answer to Q.17. We believe that further restrictions in the exempt market should be focused on that market as a whole.

28. *Should securitized products be allowed to be sold in the exempt market, or should they only be sold under a prospectus?*

Ally Canada strongly asserts the importance of maintaining the ability to issue securities in the exempt market. The exempt market provides an important source of funds for issuers of ABS as well as a valuable investment tool for highly sophisticated investors. Because of the nature of these securities investors have a greater ability to shape the transaction to suit their needs. Exempt securities may provide a lower cost of funding for the sponsor and greater yields for the investor. This market enables economic growth for companies who are sponsors of these securitizations and thus by extension for the economy as a whole. Their role in the marketplace differs from those sold under a prospectus in that they provide an alternative for investors who are highly educated in the market to invest without some of the burdens associated with the public market. Further, elimination of this market will restrict innovation in securities, which commonly occurs in the exempt market, and thus slow down economic growth and recovery.

29. *We are proposing to remove a number of existing prospectus exemptions through which securitized products can be sold. Should we permit securitized products to continue to be sold through some existing exemptions and if so, which exemptions?*

We refer to our answers to Q.17 and Q.27.

30. *The proposed Securitized Product Exemption is section 2.44 only permits certain "highly-sophisticated" investors (i.e., eligible securitized product investors) to buy securitized products on a prospectus-exempt basis. Other investors generally would only be able to buy securitized products that are distributed through a prospectus. Is this the right approach? If not, what approach should we take? In particular, should*

we permit other investors to purchase securitized products in the exempt market through a registrant subject to suitability obligations in respect of the purchaser? Would having a registrant involved adequately address our investor protection concerns? Please refer to Question 32 for additional related questions.

Limiting the investor for exempt securities to "eligible securitized product investors" as defined in the Proposals would be a detriment to both would-be investors and sponsors of exempt securitizations. While we agree that an investor in exempt securities should be a financially sophisticated investor with requisite knowledge about the merits and risks of owning such securities so as to make a highly educated decision, it is our assertion that the definition of "eligible securitized product investors" that is being proposed is too narrow and unnecessarily excludes potential investors with the requisite knowledge to invest in exempt securities. Investors falling outside the definition of eligible securitized product investor would be limited to only those securitized products offered through a prospectus irrespective of the investor's financial sophistication or due diligence. A more favorable approach would be, as was suggested in the question, to allow any accredited investor to purchase securitized products in the exempt market through a registrant who must be satisfied as to their suitability to purchase such products.

31. *If our proposed approach to restrict access to securitized products to "highly-sophisticated" investors is appropriate, is the proposed list of eligible securitized product investors the right one? If not, how should it be modified? In particular, we would appreciate feedback on the following:*

A. Expanded list of who would qualify as an eligible securitized product investor

Should we expand the list of eligible securitized product investors? For example:

Individuals (paragraph (n) of the definition)

- Should we include high-income individuals and if so, at what level of income, e.g. $1 million?
- Should we permit inclusion of spousal income or assets when calculating applicable income or asset thresholds for individuals?
- Should other types of assets be included when calculating asset thresholds for individuals, not just net realizable financial assets and if so, what types of assets should be permitted?

Persons or companies who are not individuals (paragraph (p) of the definition)

- *Should we lower the net asset threshold of $25 million for persons or companies (other than individuals or investment funds)? If so,* what *is the appropriate net asset threshold for these entities?*

Other investors

- *Are there other categories of investors who should be included in the list of eligible securitized product investors and if so, what should those be? For example, should we include an individual registered or formerly registered under securities legislation?*

B. *Should we require that each beneficiary of the managed account in paragraph (k) of the proposed definition meet the criteria set out in the other paragraphs of the definition of eligible securitized product investor?*

C. *Should the list of eligible securitized product investors be narrowed? For example, should the financial thresholds under the proposed definition of eligible securitized product investor be raised? Are there entities in the proposed definition who should not qualify as eligible securitized product investors?*

Ally Canada believes that any accredited investor that purchases through a registrant and that satisfies suitability requirements as suggested in our answer to Q.30 should be entitled to purchase securitized products issued in the exempt market.

32. *We continue to consider other possible prospectus exemptions for securitized products, along with appropriate conditions to such prospectus exemptions. We would appreciate your feedback on the following possible exemptions and conditions, and whether they should be in lieu of, or in addition to, the proposed Securitized Product Exemption:*

A. *Enhanced accredited investor or minimum amount investment prospectus exemption*

Should we maintain availability of the accredited investor and minimum investment amount prospectus exemptions? Should their continued availability require additional conditions and if so, what should those be? For example, should we require either or both of the following additional conditions:

(a) the issuer must provide an information memorandum and possibly ongoing disclosure; and

(b) the investor must buy the securitized product from a registrant?

B. *Minimum amount investment prospectus exemption specifically for securitized products*

Should we have a prospectus exemption that would permit an investor to purchase securitized products provided the minimum amount invested is relatively high? If so, what would be an appropriate minimum amount threshold?

C. *Specified ABCP prospectus exemption*

Should investors who are neither eligible securitized product investors nor accredited investors be permitted to invest in ABCP provided certain risk-mitigating conditions are met? If so, what conditions should we impose on

these distributions? Would ABCP that satisfies the following conditions be appropriate for non-accredited investors:

- *the ABCP has received a minimum of two prescribed credit ratings;*
- *the ABCP is backed by a committed global-style liquidity facility that represents at least 100% of the outstanding face value of the ABCP and is provided by an entity with a minimum prescribed credit rating;*
- *the sponsor is federally or provincially regulated and has a minimum prescribed credit rating;*
- *the ABCP does not have direct or indirect actual or potential exposure to highly structured products such as collateralized debt obligations or credit derivatives (except for obtaining asset-specific protection for the ABCP program);*
- *the ABCP program does not use leveraged credit derivatives that could subject the program to collateral calls; and*
- *the issuer must provide an information memorandum and ongoing disclosure?*

If the ABCP satisfies the above conditions, should we also require that an investor, or certain types of investors (for example, a "retail" investor) must buy the securitized product from a registrant? If so, what types of investors would benefit from this requirement?

As noted above, Ally Canada believes that it is not necessary to eliminate the existing registration and prospectus exemptions for securitized products. These exemptions should be the same for securitized products as they are for other investments. Requiring purchasers in the exempt market to purchase through a registrant subject to satisfying suitability requirements in respect of the purchaser would strike the right balance between investor protection and allowing investors freedom to invest in securities of their choice.

33. *Should we provide for more limited access to securitized products than has been proposed?*

No, for reasons discussed above.

34. *The objectives of requiring disclosure for prospectus-exempt distributions of securitized products are to:*

- *create incentives for enhanced due diligence by sponsors and underwriters who must prepare the disclosure, and investors who will be expected to take the disclosure into account in making their investment decision;*
- *improve the quality and consistency of disclosure;*

- *facilitate a transparent, and thus stable, securitization market.*

Will our proposed requirements for disclosure in the exempt market achieve or further these objectives?

While the proposed requirements for disclosure in the exempt market may achieve these objectives, they will do so at a cost. The cost of preparing this disclosure will not be welcome by issuers and may not be required by certain sophisticated investors. These costs may do more than introduce inefficiencies; they may prevent financings from occurring that would otherwise take place. Ultimately, these unnecessary increased costs would be passed on the consumers in the form of higher financing costs. If the CSA decides to proceed with these disclosure requirements in the exempt market, Ally Canada strongly recommends that investors have the ability to opt out of these requirements in order to avoid inefficiencies that they do not wish to pay for.

35. *Is there a class of investor for whom it is not necessary to require that some form of disclosure be provided in connection with the purchase of securitized products on a prospectus-exempt basis? If so, what type of investor?*

Ally Canada believes that any exempt securitized product investor should be capable of waiving the disclosure requirements associated with that exemption and, instead, negotiate for the disclosure requirements that it desires.

36. *Is there a type of "private-label" (as opposed to government-issued or guaranteed) securitized product for which disclosure is not necessary? If so, what type of securitized product?*

Please see responses above. The exemptions ought not to depend upon the type of product.

37. *We are not prescribing specific disclosure for the initial distribution of securitized products, other than short-term securitized products such as ABCP. Is this an appropriate approach? What impact would requiring an information memorandum for distributions of non short-term securitized products have on costs, timing and market access?*

Requiring an information memorandum for distributions of non-short-term securitized products would increase costs, slow down timing and limit market access. The extent of the cost and delay of such a requirement would be such as to prevent certain transactions from occurring that would otherwise likely occur in the absence of such requirements.

38. *We are prescribing certain disclosure for short-term securitized products such as ABCP (proposed Form 45-106F7 information Memorandum for Short-Term Securitized Products). Is this an appropriate approach? Would adding, modifying, or deleting any of the prescribed disclosure improve the requirements? Should we mandate the format in which any of the disclosure is provided, for example, XML? What impact will requiring prescribed disclosure for distributions of short-term securitized products have on costs, timing and market access?*

Ally Canada uses ABCP conduits in Canada on a regular basis. Much of the information that an ABCP conduit sponsor would have to provide according to Form 45-106F7 would have to be provided at first instance by the servicers of the various pools of assets financed through the ABCP conduit. Ally Canada expects that once Form 45-106F7 becomes mandatory, the sponsors of the ABCP conduits used by Ally Canada would require Ally Canada to indemnify the sponsors for any claims that are made against the sponsors as a result of information provided by Ally Canada. Like most sellers of receivables to ABCP conduits in Canada who are not banks, Ally Canada does not currently have an investment grade credit rating. Consequently, ABCP conduit sponsors may be unwilling to accept Ally Canada's indemnity in respect of potential misrepresentations in its servicer reports to the conduits in light of the sponsor's increased exposure to liability for misrepresentations. If this were to happen, Ally Canada could find itself shut out of the Canadian ABCP conduit market thereby increasing its cost of financing.

39. *We are requiring that ongoing disclosure be made available to investors in securitized products. Is this an appropriate approach? Are the prescribed forms (Form 51-106F1 in the case of non short-term securitized products, and Form 45-106F8 Periodic Disclosure Report for Short-Term Securitized Products Distributed under an Exemption from the Prospectus Requirement) appropriate? Would adding, modifying or deleting any of the prescribed disclosure improve the requirements? Should we mandate the form in which any of the disclosure is provided, for example, XML? What impact will requiring ongoing disclosure for securitized products have on costs, timing and market access?*

Since Ally Canada does not distribute Short-Term Securitized Products, it has no comments on Form 45-106F8. We have the following comments on Form 51-106F1:

(i) Item 1: We question the need to provide an address and telephone number for an issuer that is a special purpose entity with no employees.

(ii) Item 2(b): We believe that this type of disclosure would be more appropriate for MD&A.

(iii) Item 2 – para. 3(h)(v): Ally Canada does not currently track its turn in rates and residual value realization rates at the transaction level.

(iv) Item 2 – para. 3(j): Normally the information sought here is dictated by the transaction documents and would not be reported upon on a regular basis.

(v) Item 2 – para. 3(p)(iv): We believe that this type of disclosure would be more appropriate for MD&A.

40. *We have proposed that certain ongoing disclosure be made available to investors in securitized products via the issuer's website. We propose that the issuer be required to provide access to prospective investors who request access. Is there a better method of making disclosure available to prospective investors and if so, what? Should the disclosure be generally publicly available via the issuer's website or SEDAR?*

Ally Canada agrees with the importance of post-issuance reporting and has no objections to providing access to ongoing disclosures via an issuer website. We respectfully disagree, however, with making that information publicly available through SEDAR. Given the volume of securitizations by a single issuer and the ongoing disclosure, filing such disclosure on SEDAR would prove to be costly and an inappropriate way to allocate the resources of the issuer, especially in light of the alternatives available. The most preferable alternative is an issuer website where the investor can easily access the necessary information.

41. *We have proposed that the information memoranda and all disclosure required to be provided to investors be delivered to securities regulators. We expect that, subject to requests under freedom of information legislation, these documents will not be generally available to the public. We thought this appropriate given that the securitized products are not generally available to the public. Is this an appropriate approach?*

Ally Canada has no objection to providing securities regulators on a confidential basis copies of information memoranda and all disclosure required to be provided to investors. However, Ally Canada urges that investors have the right to opt out of the information memorandum and continuous disclosure requirements for exempt distributions.

42. *We propose that there should be statutory civil rights of action against issuers, sponsors and underwriters for misrepresentations in an information memorandum provided in connection with a distribution of securitized products in the exempt market. Have we identified the appropriate parties whom an investor should be able to sue? If not, should any parties be added or removed?*

Where an issuer is required to provide an information memorandum in connection with a distribution of securitized products in the exempt market, Ally Canada believes that it would be logical for both issuers and sponsors to have the same level of statutory liability for misrepresentations as issuers have in respect of information memoranda used on exempt distributions of other securities. Ally Canada believes that it would be a mistake to impose statutory rights of action against underwriters in connection with securitized products since there is no statutory right of action against underwriters in connection with the exempt distribution of other types of securities. As a result of the additional statutory liability that could be imposed upon underwriters, they may simply refuse to participate as underwriters in exempt distributions of securitized products or else they will increase their underwriting fees to reflect the additional level of risk. The investors and the issuer will bear the cost of these higher fees and ultimately it will be the consumer who bears this cost as a result of more expensive financing costs. As noted above, Ally Canada believes that most of the investors that it deals with on an exempt basis would opt not to have an information memorandum prepared if they were given that option.

43. *Should there be statutory civil liability for misrepresentations in the continuous disclosure provided by an issuer of securitized product? If so, who should the investor be able to sue and why?*

Since there is no statutory civil liability for misrepresentation in continuous disclosure provided by an issuer of non-securitized products in the exempt market, Ally Canada believes that there should not be statutory civil liability for misrepresentation in the

continuous disclosure provided by an issuer of securitized products in the exempt market.

44. *In certain jurisdictions, there are statutory provisions which also provide an investor with a right to withdraw from the purchase within two days of receiving a prescribed offering document. Should these rights of withdrawal apply to information memoranda used for the distribution of short-term securitized products? Should these rights of withdrawal apply to information memoranda used for the distribution of securitized products that are not short-term?*

These withdrawal rights, analogous to those associated with prospectus distributions, would add time and uncertainly to a transaction. Such rights are not appropriate when sophisticated investors are purchasing securities in the exempt market unless the deal was widely marketed, which rarely happens with the private placement of ABS. For ABCP, which is distributed on the basis of same day settlement, withdrawal rights cannot be provided.

45. *We proposed that the first trade of a securitized product distributed under the Proposed Securitized Product Exemption is a distribution, creating a specialized "closed-system" for securitized products that are not issued under a prospectus. Is the proposed resale treatment appropriate?*

We refer to our answer to Q.20. Since virtually all trading of exempt asset-backed securities takes place between highly sophisticated investors, Ally Canada sees no problem in maintaining ABS that are issued pursuant to registration and prospectus exemptions within a closed system where the "securitized product exemption" is not used. Ally Canada believes that initial investors in an exempt securitized product distribution should be entitled to opt out of the information memoranda and continuous disclosure requirements with the result that resales by such investors would be limited to other eligible securitized product investors who would not be depending upon the existence of an information memorandum and continuous disclosure but would continue to rely on the disclosure called for in the transaction documents.

46. *Are there any existing registration categories or registration exemptions that should be modified or made unavailable for the distribution and resale of securitized products in the exempt market?*

We refer to our answers to Q.17 and Q.27.

47. *In order to qualify for the proposed Securitized Product Exemption in section 2.44, registered firms and individuals will need to be able to identify which products are securitized products. Are there categories of registrants that will not have the appropriate proficiency to identify securitized products and understand their risks? For example, should exempt market dealers be restricted in any way from dealing in securitized products?*

We refer to our answers to Q.17 and Q.27.

Part B - <u>Other Issues</u>

Ally Canada wishes to make the following additional comments on the Proposals.

48. The Proposals would define an “arranger” to include the underwriter for a distribution of securitized products in the absence of evidence to the contrary. In practice, in the public term ABS market in Canada the sponsor is almost always also the arranger and the underwriters do not play the role of an arranger. While there may be exceptions where bank-owned lead underwriters are involved in the securitization of bank originated assets, in that personnel from the underwriter may provide assistance to the parent bank in structuring the transaction on behalf of the parent bank, there would be nothing accomplished by deeming the underwriter to be an arranger where the parent bank is the sponsor. It is also highly unlikely that a member of an underwriting syndicate that is not the lead underwriter would ever be an arranger. Ally Canada believes that the presumption that underwriters are arrangers is simply incorrect and should be deleted.

49. As noted at Q.14, Ally Canada engages an outside auditing firm to perform agreed upon procedures on a statistically significant portion of its assets in all of its public ABS transactions. The Proposals would require that the results of such agreed upon procedures be set out in a prospectus and that such outside auditing firm would have to consent to the use of its name as an expert in the prospectus. Based on Ally Canada’s experience in the United States, such an arrangement would result in Ally Canada taking over the due diligence itself as outside audit firms are reluctant to allow their due diligence reports to be referred to in prospectuses. The ultimate result does not serve the best interests of investors and Ally Canada recommends that the requirement to disclose the result of any third party review of the assets in an ABS transaction be removed from the Proposals.

50. The Proposals require disclosure of information regarding the financial condition of any person with a repurchase obligation. However, no guidance is given as to what level of financial disclosure is required. Ally Canada believes that the risks to an investor of a sponsor defaulting on its repurchase obligations in Canada is remote and does not merit extensive disclosure regarding the financial condition of the sponsor.

51. The Proposals impose an obligation upon an issuer of securitized products in the exempt market to provide reasonable access to any information memorandum to each person who reasonably demonstrates that it is a prospective purchaser and meets the definition of an eligible securitized product investor. This means that a competitor of Ally Canada that satisfies the requirements to be an eligible securitized product investor could require Ally Canada to provide it with copies of all of its information memoranda for exempt ABS distributions, and vice versa. Although Ally Canada may require such a competitor to agree to a confidentiality undertaking, the proprietary information that such a competitor could obtain would cause sufficient damage to Ally Canada even if the competitor does not disclose such information to a third party. The CSA must recognize that one of the primary reasons that issuers elect not to distribute securities by means of a prospectus is to preserve the confidentiality of information that may be disclosed to investors and to ensure that it does not become available to competitors.

52. The Proposals require prospectus disclosure describing “minimum standards, restrictions or suitability requirements” regarding ownership of the ABS being distributed. Ally Canada does not see why securitized products should be singled out for this mandated disclosure. It is normally the duty of the registrant distributing the

securities to determine the suitability of prospective investors for every type of security being distributed. This should not be a disclosure obligation of the issuer.

Yours very truly,

Ally Credit Canada Limited
Thomas E. Dickerson
President