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August 31, 2011

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British Columbia Securities Commission
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Nova Scotia Securities Commission
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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

c/o John Stevenson
Secretary
Ontario Securities Commission
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19th Floor, Box 55
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Fax: 416-593-2318

c/o Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800 square Victoria, 22e étage
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Montréal, Québec H4Z 1G3
Fax: 514-864-6381

Dear Sirs/Mesdames:

Re: Notice and Request for Comments on the Proposed Securitization Product Rules

We are writing 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**"). 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**").

OSLER'S SECURITIZATION EXPERTISE

Osler's Securitization and Structured Finance practice group has extensive knowledge and expertise in the securitization area, and has been involved in a significant portion of the securitization transactions that have been undertaken in Canada to date. This expertise extends to all asset classes that have been securitized in Canada. Osler represents many issuers and underwriters in public term securitizations, and is among the most experienced law firms providing advice to clients in this category. Osler also represents a large number of private issuers and asset-backed commercial paper conduits in securitization transactions undertaken in the exempt market. We are also principal counsel to certain asset-backed commercial paper ("**ABCP**") conduits sponsored by Schedule I banks and have been responsible for drafting their underlying structural documentation, and we provide advice with respect to transactions involving the acquisitions of assets supporting their ABCP, and with respect to their ongoing operations.

RESPONSE TO REQUEST FOR COMMENTS

Set out below are our responses to certain of the questions posed in the RFC with respect to the CSA Proposals. The questions have not been reproduced below, but rather we have specified the relevant heading and question number as set out in the RFC. We have not replied to each of the questions set out therein, but rather have responded to those with respect to which we feel our significant expertise would allow us to provide valuable input. We would welcome an opportunity to discuss the CSA Proposals further with CSA staff in an attempt to assist staff as it formulates the final rules.

(a) General

1. While we agree that the three principles listed are appropriate, we are concerned that the CSA Proposals are much too extensive and are not in any way commensurate with the level of risk and complexity associated with the securitization transactions that are undertaken in the Canadian term and asset-backed commercial paper markets.

The primary emphasis of the CSA Proposals appears to be a concern regarding the regulation of complex securitized products such as CDOs and other structured credit products, rather than the traditional asset classes which have been the subject of a large majority of securitization transactions in Canada. The more complex structured credit product securitizations undertaken in the United States were relatively rare in Canada, and at this time no such securitization transactions exist other than those executed prior to the financial crisis.

The securitization transactions in Canada involving traditional asset classes have all performed as expected notwithstanding the recent financial crisis, and Canadian investors have not been subject to losses due to defaults or the occurrence of amortization events within such transactions.

We are of the view that the disclosure requirements contained in the current regulations governing securitized products are generally sufficient to ensure that investors receive all information necessary to evaluate the securitized products being offered in Canada, and receive on an ongoing basis all information necessary to continue to adequately monitor the value of their investments.

We are concerned that an undue emphasis on the regulation of complex structured credit products as a result of the third-party ABCP crisis will result in an unduly complex regulatory regime, which in turn may significantly impair the ability to continue to securitize traditional asset classes as a cost-effective means of financing for Canadian businesses, notwithstanding the clear stability and efficacy of the traditional asset class securitization market, which market continued to function without issue throughout the recent financial crisis. We urge the CSA to place the appropriate emphasis on the third principal it has listed as being taken into account in formulating the CSA Proposals, and that they recognize the distinct features of the Canadian securitization market and its exceptional performance during the financial crisis, rather than follow an approach more suited to the particular issues that arose in the US securitization market during the crisis..

2. With respect to risk retention, we are of the view that the CSA Proposals should not prescribe mandatory risk retention, as Canadian securitizations are typically structured in a manner that results in the risk of first loss remaining with the securitizer through such means as subordinated loans or overcollateralization, and securitizers have not followed the originate-to-distribute model employed in the United States. As such, it is not necessary to mandate risk retention in order to ensure that the securitizer is not employing lower underwriting or credit standards when originating the relevant assets.

4. The current disclosure requirements with respect to the parties to securitization transactions, and their relationship to each other, are sufficient to provide investors with adequate information to make an investment decision. We do not believe that underwriters must be independent of the securitizer as this would preclude Canadian banks from including their related investment banking arms in the underwriting syndicate for their securitized products, which would be contrary to the requirements to other securities issued by such banks, a distinction that seems without merit. The current underwriter conflict rules and the disclosure requirements thereunder are sufficient to address this concern.

6. The proposed carve-out for covered bonds is appropriate, particularly in light of the federal government's current initiative with respect to the legislation of covered bonds issued by Canada federally-regulated financial institutions. Covered bonds issued by Canadian financial institutions to date have structural features which distinguish them sufficiently from asset-backed securities, including full recourse to the issuer and not just to the related collateral. And that they should be treated separately and apart from securitized products from a regulatory perspective**.**

(b) The Prospectus Disclosure Rules

Eligibility for the Shelf System

8. We do not believe that there should be restrictions placed on the kinds of asset-backed securities that are eligible for the shelf system. An attempt to place uniform restrictions on the various asset classes that are securitized in Canada would fail to recognize the significant differences amongst such classes. The current disclosure requirements with respect to the underlying assets and the other structural attributes of such asset-backed securities are, in our view, sufficiently expansive to ensure an investor is able to make an informed determination as to whether the quality of the underlying assets, and the related structural features of the transaction, are sufficient to support an investment decision.

9. Based on our experience as underwriters' counsel on numerous public term securitizations, we do not believe investors require additional time to review shelf supplements prior to the first sale, nor do we believe it is appropriate to require the filing of a shelf supplement on SEDAR prior to first sale. Investors in Canadian public term securitizations are generally limited to sophisticated investors with the requisite knowledge to make investment decisions within the current time frames. To the extent they require clarification or additional information with respect to the securities in question, it has been our experience that the underwriters will respond to such requests promptly and well within the current time frames. We have never been informed by any of our originator or underwriter clients that investors have indicated that they would require additional time for such a review.

10. The current approved rating eligibility criteria for the short form and shelf prospectus systems should not be replaced with an alternative criteria. As previously noted, asset-backed securities issued in the public term market have performed as expected throughout the financial crisis and there is no reason to conclude that the current approved rating eligibility criteria, which ratings follow from a highly structured review of the securitized product and the related transaction documentation by the rating

agencies, is not sufficient act as the primary threshold to determine which asset-backed securities may issued under the short form or shelf prospectus systems.

11. Having been involved in a large majority of the MTN/continuous distribution securitization programmes established by Canadian issuers, we are of the view that the offerings of asset-backed securities through the MTN/continuous distributions prospectus supplement provisions give investors sufficient time to review the information and do provide the public disclosure of the offering on a sufficiently timely basis. The most significant attributes of asset-backed securities issued under such programmes are described in sufficient detail in the shelf prospectus, and it is generally only pricing information that is contained in the related pricing supplement. As such, investors will have had sufficient opportunity to review the disclosure prior to making an investment decision.

Pool asset & payment disclosure

12. We do not believe that asset- or loan-level disclosure is necessary. The summary information currently provided to investors is sufficient.

Mandatory review of pool assets

14. The standard practice in Canadian public term transactions is to require that a pool audit be conducted by an independent party, typically the securitizer's audit firm. Underwriters have insisted on these audits in part to support their due diligence defence and ensure there is no misrepresentation contained in the related prospectus, and we would not expect this practice to change. Accordingly, we do not agree that a pool audit should be mandated.

Risk Factor Disclosure

15. We agree with the CSA's decision to refrain from prescribing risk factor disclosure. The current risk factor disclosure requirements are sufficient, in our view, to ensure that all material risk factors are disclosed. Having been responsible for, or having participated in, the drafting of many public term securitization prospectuses, we believe that securitizers and underwriters give due consideration to such risk factors and work to ensure all material risk factors have been disclosed notwithstanding the absence of prescribed risk factors.

Incorporation by reference of Form 51-106F1 and Form 51-106F2

16. We do not believe it is necessary to incorporate such disclosure by reference. The obligation to provide full, true and plain disclosure combined with the obligation to

provide relevant performance data with respect to the assets underlying particular securities are sufficient to ensure that any relevant information contained in such disclosure will be contained in the prospectus.

(c) The Proposed CD Rule and Proposed Certificate Requirements

Interaction with NI 51-102

18. In our view, the continuous disclosure required of reporting issuers under NI 51-102 is of little assistance to investors in asset-backed securities issued under a prospectus, as the financial statements and related MD&A requirements provide little relevant information to investors. Investors in asset-backed securities are interested in the performance of the underlying pool of assets and the related cash flows, as these are the relevant factors in determining whether the assets will perform as expected and result in full repayment of the asset-backed securities when due. A significant cost is associated with the preparation of financial statements, which costs far outweigh the benefits of such statements to investors. The proposed continuous disclosure rules under National Instrument 51-106 will require disclosure of the events of concern specified in Question 18 of the RFC.

Application to all outstanding series or class of securitized products by a reporting issuer

19. A grandfathering provision should be put into place. All currently outstanding public term securitizations relate to traditional assets classes, and these transactions have performed as expected and investors have not suffered losses. The cost and time associated with producing the required information, if such information is even available, on a prospective basis seems unwarranted considering the stable performance of these transactions and the lack of investor concern over the disclosure standards to date.

20. The proposed continuous disclosure requirements should only apply to securitized products that have been distributed via prospectus. It is our understanding that securitized products that have been issued in the exempt market trade infrequently, if at all, and that it is unlikely that a non-sophisticated investor would purchase such a securitized product in the secondary market. Sophisticated investors can make decisions to purchase such securities without access to additional disclosure. Accordingly, the cost and time associated with such additional disclosure would outweigh any benefit to be gained by requiring additional disclosure for such securitized product.

21. We do not believe that it is necessary to require a legend or explanation of resale restrictions for securitized products that have been distributed on an exempt basis, as investors in these products are highly sophisticated and able to understand these

requirements without having them specified directly on the securitized products. In addition, we note that the majority of these securities are issued through the book-based system and the leg ending requirements have caused significant issues historically.

Timely disclosure

22. Certain of the enumerated significant events may not be significant in the context of particular securitization transactions. We would propose that disclosure of any of the enumerated events be required only if, as a result of such occurrence, the performance of the pool assets or the ability of the issuer to repay the asset-backed securities will likely be materially impaired as well. For example, the 5% variance specified in (g) may be a common occurrence for particular pools of assets due to seasonality factors, which factors have likely been considered in determining the appropriate level of credit enhancement for the related transaction, and are not likely to have a material impact on the related securitized products. An obligation to disclose such a common variance as a significant event notwithstanding the lack of such an impact would be unduly detrimental to the issuer.

The time frames for disclosure specified in Section 5 of NI 51-106 should commence at the time the issuer becomes aware of the significant event, as opposed to at the time of the occurrence of the event, since several of the specified significant events are not likely to be discovered until such time as the issuer is preparing its monthly reports. Also, the two-day standard should be extended to 10 days, as this is the standard for material changes in NI 51-102 and we see no policy reason for a distinction between the two standards.

23. We believe that expanding the scope of secondary market civil liability for securitized products beyond the current scope for all other investment products is unwarranted and makes an unnecessary distinction between these products.

Certification

24. As noted in our response to Question 18, we are of the view that issuers of securitized products should be exempt from the requirement to prepare and file financial statements. On the same basis, we would argue that it is appropriate to exempt such issuers from the requirement to establish and maintain disclosure controls and procedures and internal control over financial reporting in Part 2 of NI 52-109. The proposed disclosure and related certifications under NI 51-106 will result in a need for issuers to maintain sufficient internal controls and procedures to produce the requisite information on an ongoing basis.

Report of fulfilled and unfulfilled repurchase/replacement requests

26. It is our understanding that repurchase/replacement requests are relatively rare in Canadian securitizations and that unfulfilled repurchase/replacement requests should not be of concern. The obligation to report the performance of the underlying assets on a monthly basis will demonstrate any inadequacies in the underwriting standards of the securitizer. Accordingly, we do not believe any such disclosure is required.

(d) The Proposed Exempt Distribution Rules

General Approach

27. We are of the view that it is inappropriate to use the proposed product-centred approach. As noted above, we are concerned that the CSA Proposals are not commensurate with the level of risk associated with the securitization transactions that are undertaken in the Canadian term and asset-backed commercial paper markets. For the reasons cited above in our introductory comments, we are concerned that this proposed product-centred approach will limit access to financing for securitizers, notwithstanding the strong historical performance of all Canadian asset-backed securitizations involving traditional asset classes.

28. Issuers of securitized products should continue to be able to access the exempt market. The costs involved in establishing a reporting issuer, filing a prospectus and maintaining ongoing continuous disclosure obligations are prohibitive for smaller issuers who have typically accessed the exempt market. In addition, investors who purchase securitized products are typically highly sophisticated investors, such as asset-backed commercial paper conduits sponsored by Schedule I or Schedule II banks (referred to herein as "**Bank Purchasers**") or other highly sophisticated institutional investors, and as such are capable of making investment decisions without the benefit of prospectus disclosure.

Who can buy

29. We do not believe it is necessary to remove any of the prospectus exemptions under which securitized products may be sold, as the thresholds set out in these exemptions are sufficient to ensure that investors have the appropriate level of sophistication to make investment decisions of this kind. We fear that making a distinction between the prospectus exemptions for securitized products and those for all other investment products would unfairly prejudice issuers of securitized products, which as noted above have performed as expected notwithstanding the financial crisis.

As a technical matter, please note that the proposed definition of "Eligible Securitized Product Investor" as currently formulated would not include asset-backed commercial paper conduits. Such entities are charitable trusts whose net assets are minimal since the obligations under their related ABCP are directly proportional to the assets underlying such ABCP, and there is no applicable classification under the current proposed definition. If the CSA does conclude that it will proceed with this change, we would propose that the definition of "Eligible Securitized Product Investor" be amended to include "an asset-backed commercial paper trust that is sponsored by, or administered by, an Eligible Securitized Product Investor or an affiliate of an "Eligible Securitized Product Investor".

30. As noted in the previous responses, we do not believe it is necessary to distinguish between securitized products and other investment products in this regard.

31. See our response to Question 29.

32. See our response to Question 29.

33. As noted above, we believe the proposed limits to access to securitized products are unnecessary, and accordingly we do not believe that any further limitations are appropriate.

Disclosure

34. We believe that the current disclosure regime, together with the changes made to the disclosure provided by asset-backed commercial paper conduits in response to rating agency requirements and regulatory changes, are currently sufficient to meet the listed objectives. Investors in short-term securitized products are currently receiving a significant amount of information and would not likely further benefit from receiving an information memorandum in the prescribed form.

Investors in non-short term securitized products issued in the exempt market are primarily (i) Bank Purchasers, and (ii) highly sophisticated investors with significant investment portfolios and investment experience, and in each case are purchasing such securitized products pursuant to documentation negotiated between the securitizer and such purchaser, along with their respective legal counsel. The individuals responsible for negotiating such documentation on behalf of these purchasers are highly sophisticated professionals who are extremely knowledgeable with respect to securitization transactions and capable of negotiating such purchases without having received an information memorandum.

To the extent the CSA determines that it will require an information memorandum in the prescribed form for issuances of non-short term securitized products, we would propose that investors be entitled to waive this requirement, or in the alternative include an exemption from this requirement where the purchaser is a Bank Purchaser.

35. As noted in our response to Question 34, we believe Bank Purchasers constitute a class of investors 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.

37. We agree with the CSA's determination that it will not prescribe specific disclosure for the initial distribution of securitized products. As noted in our response to Question 34 above, the large majority of purchasers of non-short term asset-backed securities are Bank Purchasers, and the remainder are principally highly sophisticated institutional investors, all of whom are able to make informed investment decisions without needing to receive an information memorandum. In our experience, such investors are able to obtain any necessary information from the securitizer in the context of the negotiation of the legal documentation and the transaction terms. The cost associated with preparing an information memorandum in such circumstances would fair outweigh any potential benefit, would cause undue timing delays in execution and could preclude certain smaller issuers from accessing the exempt market, thereby denying them an important source of financing.

38. We do not believe it is necessary to prescribe certain disclosure for short-term securitized products such as ABCP. In our view, as counsel to certain ABCP conduits sponsored by Schedule I or Schedule II banks, the current disclosure regime is satisfactory and provides all necessary information for investors in short-term securitized products to understand such products and make informed investment decisions. The regulatory changes (in particular, the Bank of Canada's disclosure requirements for ABCP to qualify as collateral for bank liquidity facilities) and enhanced rating agency requirements following the financial crisis have resulted in further improvements in the level of disclosure provided to investors, and it is our understanding that investors in ABCP have generally not been requesting additional disclosure. Since the financial crisis and the reorganization of the third-party ABCP conduit transactions pursuant to the "Montreal Accord", the only issuers of ABCP remaining in Canada are bank-sponsored conduits whose ABCP is now rated by at least two credit rating agencies, and is backed by "global style liquidity". The assets underlying such ABCP principally consist of traditional assets and, as noted above, such assets have continued to perform as expected notwithstanding the financial crisis. We would argue that the low risk associated with such ABCP, and the current state of the market standards for disclosure, negate the need for further regulation in this regard.

If the CSA should determine that it will prescribe such disclosure, we note that the proposed disclosure requirements fail to recognize the ongoing operational features of ABCP conduits, as certain of the prescribed disclosure items would require frequent updating when a monthly report of such items would suffice. We would argue that the disclosure should relate to the overall structural features of the ABCP and a general discussion of the underlying assets and their composition, rather than focus on pool-specific information or individual transaction program documents. It is our understanding that investors in ABCP have not been requesting such information and any potential benefit in providing such information would be outweighed by the cost associated therewith.

39. We are of the view that, subject to the changes we support in respect of the removal of the application of NI 51-102 to such products and the adoption of certain aspects of NI 51-106 in their stead, the current continuous disclosure regime for issuers of securitized products, together with accepted market practice with respect to monthly reporting, is sufficient, and we do not believe that additional continuous disclosure standards should be imposed.

40. Currently, it is market practice for issuers of securitized products to make ongoing disclosure documentation available to investors on their website. We believe this is sufficient, and do not believe it is necessary to require such documentation to be posted on SEDAR.

41. We concur with the proposal to refrain from making the required disclosure generally available to the public.

Statutory civil liability

42. In light of the sophistication of investors in securitized products purchased in the exempt market, and the high quality and performance of traditional asset class securitizations in Canada, in each case as discussed above, we would argue that it is unnecessary to introduce the proposed liability provisions since they are an attempt to address a risk that has not proven to be one of concern in Canadian securitizations. We see no reason why information memoranda used in the sale of securitized products should be distinguished from those used in the distribution of other investment products in the exempt market.

43. For the same reasons as those cited in our response to Question 42, we do not believe it is necessary to extend statutory civil liability for misrepresentation to the continuous disclosure provided by issuers of securitized products.

44. As noted above in our response to Question 38, we do not agree that information memoranda in a prescribed form should be required in connection with the distribution of non-short term securitized products in the exempt market. Should the CSA nevertheless impose such restrictions, we do not believe it is appropriate to provide for a right of withdrawal as transactions of this type are generally negotiated transactions between the securitizer and a highly sophisticated purchaser, and the investor protection meant to be achieved through a right of withdrawal is inappropriate in this context.

We also do not agree that a right of withdrawal should be extended to purchasers of short-term securitized products since the issuances of such products are done on a daily basis and the inability of the related issuer to be certain as to the finality of the sale of such securitized product would greatly hinder its ability to fund its ongoing obligations with respect to its outstanding ABCP as well as its funding obligations pursuant to the various securitization transactions to which it is a party.

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We are grateful for having been given an opportunity to provide our response to the Proposed Rules. Should CSA staff wish to discuss any of our comments, please feel free to contact the undersigned at 416-862-4604.

Yours very truly

"Rick Fullerton"

Rick Fullerton
Osler, Hoskin & Harcourt LLP