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August 31, 2011

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

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Dear Sirs/Mesdames:

Re: Response to the Canadian Securities Administrators (“CSA”) request for comments regarding the proposed rules and rule amendments relating to securitized products

Manulife Bank of Canada (“Manulife Bank”) is a Schedule 1 bank, chartered under the laws of Canada. This letter is delivered on behalf of Manulife Bank in response to the CSA’s request for comments regarding the proposed rules and rule amendments relating to securitized products (“Proposed Securitized Product Rules”).

The CSA’s request for comments sets out a number of specific questions with respect to which it is seeking feedback. For ease of review, we have organized our comments by reference to such questions. Please note that the order of our responses reflect the order of the questions in the request for comments and are not necessarily in priority of importance.

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

Manulife Bank is in agreement with the three principles that have guided the development of the Proposed Securitized Product Rules. The principles call for enhanced disclosure and transparency in the securitized product market, to the end that the market will operate more efficiently even in times of financial stress. At the same time, there is a stated recognition that the Proposed Securitized Product Rules ought to be proportionate to the risks associated with particular types of securitized products available in the Canadian marketplace. These are commendable objectives.

However, Manulife Bank is concerned that the specific rules and rule amendments do not always strike the right balance between the stated principles. In some instances, the Proposed Securitized Product Rules appear to adopt a position that is too heavily weighted towards enhanced disclosure and investor protection. For example, some of the disclosure requirements, as will be set out in further detail below, are onerous and do not seem appropriate for every type of securitization transaction.

A more effective distinction between high-risk and low-risk securitized products is recommended. In this manner, the more onerous requirements of the Proposed Securitized Product Rules can be applied to products that pose the greatest risk, as opposed to all products in general. The danger, if such a distinction is not made, is that issuers could be restricted in terms of liquidity options and investors may find that the number of quality securitized products available in the market is reduced. Ensuring that the rules are proportionate to the risks associated with a particular securitized product should improve market efficiency, even in times of financial stress, without exposing investors to undue risk.

Enhanced disclosure is appropriate as a guiding principle, but in order to foster an efficient market, the disclosure guidelines need to be appropriate for the risks involved. If an appropriate level of enhanced disclosure is enforced, there is no additional need to limit investors who can invest in securitized products beyond the current restrictions.

Question 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: (i) 5% vertical slice risk retention ... ?

The Proposed Securitized Product Rules propose a 5% vertical slice risk retention for issuers as an additional eligibility criterion for the short form and shelf prospectus systems. It is Manulife Bank's view that a 5% vertical slice risk retention is not required when the assets are of extremely high quality (such as CMHC insured mortgages), or when the issuer already retains a material interest in similar or equivalent assets on its books. Examples would be when the issuer maintains a co-ownership interest in the securitized pool, or holds identical assets that are core products within the issuer's business model.

Moreover, when considering that some assets are of a very high quality, such as CMHC insured mortgages, a 5% vertical slice risk retention model would not provide an added benefit to investors. Requiring a 5% vertical slice risk retention in such circumstances will not materially improve market efficiency, safeguard investors or promote transparency and would, therefore, be disproportionate to the risk it is intended to address.

Question 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?

It is Manulife Bank's view that disclosure of loan-level data is not necessary. Stratifications and 'bucketed' data have proven effective in the past for the purpose of modelling risks and exposure. Provided that the appropriate level of bucketing is used, there is no need to disclose details at the loan level. Providing loan level details in the thousands would take a considerable amount of time and be administratively exhaustive while providing little added benefit to investors. Loan level details would also create client level privacy concerns, and opens up the potential for proprietary and/or competitive information to be disclosed.

Question 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 the particular underlying asset classes that should always be included in a prospectus?

Form 41-103F1 sets out specific disclosure requirements relating to securitized products that are in addition to those requirements prescribed under securities legislation generally. In many instances, the requirements are extensive and may be difficult for issuers to fulfill.

One example is contained in Item 1.10(d) of Form 41-103F1, which requires issuers of securitized products to make the following disclosure by way of prospectus:

whether any person or company for which disclosure has been provided under Items 1.2 to 1.9, or any affiliate of the person or company, is engaged in, or has in the 12 months before the date of the prospectus been engaged in, any transaction that would involve or result in any material conflict of interest with respect to any investor in the securitized products being distributed.

The number of parties captured by the description in Item 1.10(d) is potentially large. It includes sponsors, arrangers, depositors, originators, issuers, servicers, trustees on a securitization transaction and their respective affiliates. While the limitation of the requirement to material conflicts of interest is helpful, it nevertheless seems impractical, and potentially impossible, for bank issuers that are part of a sizeable corporate structure to comply.

In the opinion of Manulife Bank, it would be advisable to limit the number of parties captured at Item 1.10(d) or provide other means to limit liability by, for example, allowing disclosure to be made to the best of a party's knowledge and belief.

Question 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 51-102 and related forms? For example, do the costs associated with preparing and filing audited financial statements of the issuer outweigh the benefits to investors? ...

It is Manulife Bank's position that the costs associated with an issuer preparing and filing audited financial statements outweigh the benefits to investors. Audited financial statements do not typically provide information or disclosure that is useful to investors in terms of assisting them with decisions regarding securitized products. Information that is meaningful and material can be made available to investors more effectively through other continuous disclosure requirements such as the Monthly Investor Report which would report on key pool and series information such as payment rates, pool losses, finance charge collections, and series interest.

Question 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?

Manulife Bank's view is that the proposed continuous disclosure requirements imposed on reporting issuers in respect of all securitized products should be "grandfathered" for products that were distributed on a prospectus-exempt basis. To impose this requirement on prospectus-exempt distributions retroactively would substantially alter the terms of the issuance as originally negotiated by the parties. It could result in a significant and unanticipated increase in cost and effort to issuers, which could, in turn, make it difficult for them to continue with outstanding securitized programmes. Such a development would not be positive in terms of market efficiency.

Further, but on a related note, Manulife Bank would suggest that a general exemption from the proposed continuous disclosure requirements be made for issuers to asset backed commercial paper ("ABCP") bank conduits. ABCP bank conduits are sophisticated and specifically negotiate the transaction with issuers. There is therefore little policy reason to provide protection to ABCP bank conduits, particularly where the securitized product was originally distributed on a prospectus-exempt basis.

Question 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?

Manulife Bank submits that there should be a general exemption from all applicable proposed disclosure requirements, including those relating to the information memorandum, continuous disclosure and information dissemination, for issuers to ABCP bank conduits. As noted above, ABCP bank conduits are sophisticated purchasers whose business it is to understand securitized products. Further, they specifically negotiate the terms of each securitization transaction. ABCP bank conduits are fully aware of their own disclosure requirements and those of investors and can obtain such disclosure through contractual negotiation.

Concluding Remarks

Manulife Bank appreciates the opportunity to comment on the CSA's Proposed Securitized Product Rules and would be pleased to provide further clarification if required.

Yours truly,

A handwritten signature in black ink, appearing to read 'William Henry', with a long horizontal flourish extending to the right.

William Henry
Vice-President, Treasury