EMDA
Exempt Market Dealers Association of Canada

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August 31, 2011

BY E-MAIL

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Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
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 Ontario Securities Commission 20 Queen Street West, Suite 1903, Box 55 Toronto, ON M5H 3S8	c/o Autorité des marchés financiers 800, square Victoria, 22e étage C.P. 246, tour de la Bourse Montréal (Québec) H4Z 1G3
Attention: John Stevenson, Secretary	*Attention*: Anne-Marie Beaudoin, Corporate Secretary
E-mail: jstevenson@osc.gov.on.ca	*E-mail*: consultation-en-cours@lautorite.qc.ca

Dear Sirs and Mesdames:

Re: Notice of and Request for Comments on Proposed National Instrument 41-103 Supplementary Prospectus Disclosure Requirements for Securitized Products, Proposed National Instrument 51-106 Continuous Disclosure Requirements for Securitized Products and Proposed Amendments to National Instruments 52-109 Certification of Disclosure in Issuer's Annual and Interim Filings and Proposed Amendments to National Instrument 45-106 Prospectus and Registration Exemptions and National Instrument 45-102 Resale of Securities (the "Proposed Amendments")

This submission is made by the Exempt Market Dealers Association of Canada (the "**EMDA**") in response to the request for comments published by the Canadian Securities Administrators ("**CSA**") on June 25, 2010 in connection with the Proposed Amendments.

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WHO IS THE EMDA?

The EMDA (previously, the Limited Market Dealers Association of Canada) is a not-for-profit association founded in 2002 to be the national voice of dealers and participants in the exempt market. The EMDA plays a critical role in the new national exempt market dealer ("**EMD**") registration regime by:

- assisting its hundreds of member firms/individuals to understand and implement their regulatory responsibilities;
- ensuring the highest standards of business conduct amongst its membership across Canada;
- increasing public and industry awareness of the exempt market and its role;
- being the voice of the exempt market dealers locally and nationally to securities regulators, government agencies, other industry associations and the capital markets;
- providing valuable services and cost-saving opportunities to its member firms and individual dealing representatives; and
- connecting its members across Canada for business networking.

Additional information about the EMDA is located on our web site at: http://www.emdacanada.com.

WHO ARE EXEMPT MARKET DEALERS?

EMDs are fully registered dealers who engage in the business of trading in exempt securities, or any securities to qualified exempt market clients. EMDs are subject to full dealer registration and compliance requirements and are directly regulated by the provincial securities commissions. The regulatory framework for EMDs is set out in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**") which applies in every jurisdiction across Canada.

An EMD may: (a) act as a dealer by trading a security that is distributed under an exemption from the prospectus requirement, whether or not a prospectus was filed in respect of the distribution; (b) act as a dealer by trading a security that, if the trade were a distribution, would be exempt from the prospectus requirement; (c) receive an order from a client to sell a security that was acquired by the client in a circumstance described in subparagraph (a) or (b), and may act or solicit in furtherance of receiving such an order; and (d) act as an underwriter in respect of a distribution of securities that is made under an exemption from the prospectus requirement.

EMDs must satisfy the same "Know Your Client", "Know Your Product" and client "Suitability" obligations as other registered dealers which are IIROC or MFDA members. NI 31-103 sets out a comprehensive dealer regulatory framework (substantially similar for all categories of dealer, including investment dealers) which requires EMDs to satisfy a number of regulatory obligations including:

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- educational proficiency;
- capital and solvency standards;
- insurance;
- audited financial statements;
- know your client;
- know your product;
- trade suitability;
- compliance policies and procedures;
- books and records;
- client statements;
- trade confirmations;
- disclosure of conflicts of interest and referral arrangements;
- maintenance of internal controls and supervision sufficient to manage risks associated with its business;
- prudent business practices requirements;
- registration obligations; and
- submission to CSA oversight and dealer compliance reviews.

EMDs may focus on certain market sectors (*e.g.,* oil and gas, real estate, mining or minerals, technology, venture financing, etc.) or may have a broad cross sector business model. EMD clients may be companies, institutional investors, accredited investors (sophisticated or high net worth individuals who are eligible to trade securities in the exempt market), or eligible investors who are qualified to purchase exempt securities pursuant to an offering memorandum.

EMDs provide many valuable services to small, medium and large businesses, investment funds, merchant banks, financiers, entrepreneurs and individual investors, through their ability to participate in the promotion, distribution and trading of securities, as either a principal or agent.

EMDA COMMENTS TO THE PROPOSED AMENDMENTS

The following is the EMDA's response to the questions posed by the CSA with respect to the Proposed Amendments. We have not replied to all of the CSA's questions. Our comments largely focus on the proposed exempt distribution rules of the Proposed Amendments.

(a) GENERAL

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?*

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EMDA Response:

The EMDA agrees with the three principles which generally involve investor protection, dealing with systemic risk and providing a proportionate made-in-Canada response that does not unduly restrict investor access to securitized products.

The EMDA believes the CSA should not treat all securitized products the same and should distinguish between asset-backed securitized products (*e.g.,* automobile loans and leases) and complex, synthetic or derivatives-based securitized products which merit different treatments. This would adequately protect investors, reduce systemic risk and be a proportionate response.

The EMDA is not aware of any substantial concerns about the performance of conventional asset-backed securitized products during the recent markets crises and does not believe a one-size-fits-all solution is warranted to address concerns primarily focussed on complex, synthetic or derivatives-based securitized products.

The ABCP crisis was a very specific problem which required a very specific solution which has been self corrected by market participants which should not taint the entire securitized product market. The Proposed Amendments do not provide a made-in-Canada solution but rather attempt to import U.S. concepts and approaches that are inappropriate and unwarranted based on our unique Canadian experience.

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?*

EMDA Response:

We believe NI 31-103 and National Instrument 33-105 – *Underwriting Conflicts* together provide an adequate regulation of conflict of interest matters involving dealers (such as EMDs) as placement agents in exempt distributions of securitized products.

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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?*

EMDA Response:

The EMDA believes the definition of securitized product is overly broad and unclear. The references to many other separately defined terms (such as collateralized debt obligation, collateralized bond obligation, synthetic collateralized debt obligation and synthetic collateralized bond obligation) add layers of complexity and makes the definition uncertain.

The EMDA believes the definition of the term "securitized product" should be simplified with separate guidance provided in the Companion Policy as to what is meant to be included and excluded from the definition. This is very important for registered dealers, such as EMDs, who fulfil a critical gate-keeper function in the marketplace and who need to understand whether a product is caught by the securitized product regime or not.

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 carve-out to be available and if so, what should these be?*

EMDA Response:

It is not clear why the CSA is distinguishing between debt and non-debt securities of MIEs as the basis of a carve-out from the Proposed Amendments. Please provide the policy rationale.

The definition of MIE states, among other things, that it directly or indirectly invests substantially all of its assets in debts owing to it that are secured mortgages, hypothecs or in any other manner on real property. It is not clear whether the CSA intends that mortgage investment corporations as defined under Section 130.1(6) of the *Income Tax Act* (Canada) ("**MIC**") to be carved out of the Proposed Amendments. We request the CSA to provide additional guidance since not all MICs are necessarily MIEs.

It is not clear whether the CSA intends syndicated mortgages to be included or excluded from the definition of MIE. Additional guidance is requested.

The EMDA believes the CSA should provide additional guidance on what is included and excluded from the definition of MIE since the interpretation will turn on whether the MIE rules or the Proposed Amendments apply to a given transaction.

Reference should also be made to collateralized mortgage obligations and synthetic mortgage obligations and why these are not MIEs.

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(d) THE PROPOSED EXEMPT DISTRIBUTION RULES

General approach

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?*

EMDA Response:

The EMDA does not agree with the CSA's product-centred approach to the regulation of exempt distributions. The CSA needs to develop a uniform approach involving private placements generally that can be considered by all stakeholders in the exempt market.

The EMDA does not believe a new securitized product exemption is necessary nor helpful to the overall governance of the exempt market.

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

EMDA Response:

The EMDA sees no reason why securitized products cannot be sold in the exempt market and advocates for the continuation of the status quo.

If the CSA is of the view that greater proficiency is required to sell complex, synthetic or derivative-based securitized products, such proficiency requirements should apply equally to all registrants, (*e.g.*, investment dealers and EMDs) who share common "Know Your Product" requirements under NI 31-103.

Requiring prospectus-only sales of securitized products would: (a) add to the time, money and effort involved in such offerings; (b) act as a potential barrier to new entrants gaining access to the marketplace; and (c) in the absence of any economic study by the CSA that considers the economic impact on capital raising, could have significant negative consequences for this important marketplace.

The absence of any market failure in significant market sectors such as conventional asset-backed lease financing or credit card receivables financing suggests that radical changes to the offering process are unwarranted.

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Who can buy

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?*

EMDA Response:

The EMDA does not support the removal of existing prospectus exemptions through which securitized products can be sold. We believe it is unnecessary and advocate for retaining the status quo. Securitized products should not be treated differently than other securities sold on a private placement basis.

30.	*The proposed Securitized Product Exemption in 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.*

EMDA Response:

The EMDA disagrees with the CSA's approach as outlined above in this question.

The EMDA supports the mandatory inclusion of a registrant (which may include an EMD) in the sale of securitized products to address the CSA's investor protection concerns. A registrant, such as an EMD, has both "Know-Your-Client" and "Know-Your-Product" obligations, which are set out in NI 31-103; as have other registrants, such as investment dealers.

Many EMDs have relationships with wealthy individuals as clients who will be carved-out of the definition of "eligible securitized product investor" under the Proposed Amendments. The EMDA strongly disagrees with any change that would eliminate this type of accredited investor from acquiring securitized 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*

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	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?*

EMDA Response:

The EMDA disagrees with the CSA's proposal to restrict access to securitized products to highly sophisticated investors.

The questions above indicate that changes will largely be a subjective determination that is difficult to reconcile with the various possible answers/views that could be provided. We believe this attempt to

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regulate the exempt market using a product-centred approach is problematic and undermines the "Know Your Product" and "Know Your Client" standards established in NI 31-103.

A stated in Question 27 above, the CSA should deal with these questions in its review of the exempt market as a whole and allow all stakeholders to respond accordingly.

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;*

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	• *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?*

EMDA Response:

A. Enhanced accredited investor or minimum amount investment prospectus exemption

The EMDA would support this approach with the additional conditions you have referenced in your question.

The EMDA does not object to requiring a prescribed form of information memorandum for the sale of securitized products. The CSA should prescribe the content of the form.

The EMDA supports the view that securitized products should only be purchased through registrants, including EMDs.

B. Minimum amount investment prospectus exemption specifically for securitized products

The EMDA believes the existing minimum amount prospectus exemption for the sale of securitized products is sufficient and no change is required.

C. Specified ABCP prospectus exemption

The EMDA supports this approach that involves the sale of securitized products to non-accredited investors with the imposition of additional risk-mitigating conditions as outlined above subject to the following comments:

(i) it has not been clearly articulated why two credit ratings are required; arguably, one should be sufficient, especially from a cost perspective. Moreover, there are only a few credit rating agencies in Canada and this requirement could add to the creation of a monopolistic situation which invariably could permit credit rating agencies to charge higher fees which increases the costs of an offering. We believe a credit rating should not be a mandatory condition for this exemption and if none is provided, relevant disclosure could be provided, if appropriate;

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(ii) the EMDA supports the view that such products should exclude sales of complex, synthetic or derivative-based securitized products along the lines you have discussed above;

(iii) the EMDA supports the requirement to include an information memorandum but disagrees with the ongoing disclosure requirement which should remain a commercial matter between the buyers and sellers of securitized products; and

(iv) the EMDA supports the requirement that these types of securitized products can only be sold to non-accredited or accredited investors through a registrant such as an EMD.

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

EMDA Response:

No. As discussed above, the EMDA believes the existing private placement exempt offering regime is more than adequate to deal with the sale of securitized products and more limited access is not merited.

Disclosure

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?*

EMDA Response:

The EMDA agrees with the above objectives for requiring an information memorandum in connection with the sale of securitized products in the exempt market with the right of institutional investors (*i.e.*, investors who are eligible securitized product investors) to contract out of such a requirement.

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?*

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EMDA Response:

The EMDA understands that institutional investors (*i.e.*, eligible securitized product investors) of securitized products conduct their own due diligence process and should be able to determine what form of offering document, if any, they require in connection with the purchase and sale of a securitized product. For example, multiple tranches of a security from the same securitized product issuer and constating document (*e.g.*, declaration of trust that includes, for example, multiple classes of trust units issuable in series), should not require an information memorandum disclosure document each time.

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?*

EMDA Response:

The CSA defines an "**information memorandum**" as requiring, among other things, "the disclosure of sufficient information about the securitized product and securitized product transaction to enable a prospective purchaser to make an informed investment decision" (the "**Sufficiency of Information Requirement**"). It also includes a requirement that the information memorandum cannot include a misrepresentation (the "**No Misrepresentation Requirement**").

The EMDA believes:

(a) the No Misrepresentation Requirement, which is similar to Section 130.1 of the *Securities Act* (Ontario) and comparable provisions in the securities laws of other provinces and territories of Canada, is the appropriate disclosure standard; and

(b) the Sufficiency of Information Requirement: (i) is a new and unknown concept that will result in issuers of securitized products either having different disclosure or generally adhering to the form requirements for short-term securitized products which adds to the time, money and effort in any securitized product offering; and (ii) will not allow issuers to use short form offering documents, such as PowerPoint presentations or green sheets, that may be sufficient for certain types of securitized product investors.

It is our understanding that these types of offering documents (that do not necessarily contain full, true and plain disclosure) can be used in Ontario provided that they do not contain a misrepresentation. The EMDA believes the Sufficiency of Information Requirement would preclude the use of these types of documents and thereby increase the time, money and effort in completing a securitized product transaction pursuant to a prospectus exemption.

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*

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	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?

EMDA Response:

The EMDA does not support mandatory continuous disclosure for exempt distributions of securitized products. This is a commercial matter to be negotiated between the buyers and sellers of securitized products which reflect their unique characteristics.

The EMDA believes that any continuous disclosure requirements should continue to be based on whether an issuer of securitized products is a reporting issuer or non-reporting issuer and not based on whether a securitized product offering was undertaken on an exempt basis or pursuant to a public offering.

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?*

EMDA Response:

Please see our response to Question 39.

The EMDA submits that password protected website disclosure for non-reporting issuers would unduly and unnecessarily increase the ongoing costs to issuers that do not seek to access the public markets and is unnecessary for sophisticated parties. This is a matter to be privately negotiated between the parties.

If the CSA is considering requiring non-reporting issuers to publicly post ongoing disclosure documents on SEDAR, this would be a fundamental policy shift in the exempt market that should be reviewed as a whole with input from all stakeholders rather than in isolation involving securitized products only. See also the EMDA's response to Question 27 above.

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?*

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EMDA Response:

In Ontario, for example, an offering memorandum must be delivered to the Ontario Securities Commission in connection with certain prospectus exemptions on or before the 10th day of the distribution pursuant to Section 6.1 of Ontario Securities Commission Rule 45-501 – *Ontario Prospectus and Registration Exemptions.* The approach in this Question would be consistent with this requirement with the exception of the proposed requirement to provide all other disclosure provided to investors (the "**All Other Disclosure Requirement**").

The EMDA believes the All Other Disclosure Requirement is new and an added burden that discriminates against issuers of securitized products. The EMDA believes the CSA has not made a clear case for such a requirement.

Statutory civil liability

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?*

EMDA Response:

The EMDA supports imposing statutory rights of action against issuers and others involving a securitized product offering that includes an information memorandum.

The EMDA notes that the parties identified by the CSA go beyond the issuer which contrast with, for example, Section 130.1 of the *Securities Act* (Ontario) which imposes statutory rights of action against the issuer only for a misrepresentation in an offering memorandum.

The EMDA notes that liability is only imposed for a misrepresentation and not in connection with any Sufficiency of Information Requirement. The EMDA is not sure if this was intentional, and if so, how is this included/excluded from the definition of a misrepresentation as contemplated under the Proposed Amendments.

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?*

EMDA Response:

The EMDA does not support the proposal for any prescribed or mandated continuous disclosure nor do we support a statutory civil liability for misrepresentations in the continuous disclosure provided by a

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non-reporting issuer of securitized products. Investors in securitized products of non-reporting issuers should have the same rights of action as they have involving any other exempt market transaction as, for example, under the common law or pursuant to any contractual arrangement private with a non-reporting issuer. As stated in response to other questions herein, the EMDA does not support the creation of a statutory civil liability regime for misrepresentations in the continuous disclosure provided by a non-reporting issuer of securitized products since it is a product-specific approach.

Reporting issuers will automatically be subject to such requirements under, for example, Part XXIII.1 of the *Securities Act* (Ontario), that sets out the civil liability regime for secondary market disclosure violations for responsible issuers (*e.g.*, reporting issuers).

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?*

EMDA Response:

The EMDA does not believe withdrawal rights should apply to exempt distributions of securitized products. No such rights exist in National Instrument 45-106 Prospectus and Registration Exemptions ("**NI 45-106**") except in connection with the offering memorandum exemption (s. 2.9).

If in fact the CSA established a new class of eligible securitized product investor under the Proposed Amendments, it is not clear why such a sophisticated class of investor requires withdrawal rights more commonly afforded as protection for less sophisticated investors.

Resale

45.	*We propose 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?*

EMDA Response:

As previously stated, the EMDA does not support the creation of a securitized product exemption. However, we will comment on this question.

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The CSA proposes to make a first trade of securitized product distributed under the Securitized Product Exemption a "**distribution**"[1] thereby creating a closed-system for securitized products.

The definition of distribution under the *Securities Act* (Ontario) generally (except for control persons) does not include a trade of previously issued securities (*i.e.,* secondary market trades).

Accordingly, the EMDA believes that a reference to a distribution would not result in a truly closed system for securitized products that are not issued under a prospectus as desired by the CSA.

As the CSA is aware, the resale rules under National Instrument 45-102 – *Resale of Securities* link certain prospectus exemptions to either a restricted period or seasoning period. The EMDA suggests that to truly create a closed system for resale of securitized products that are not issued under a prospectus, it is necessary to either:

(a) amend the definition of "distribution" so that any trade in a securitized product is a distribution; or

(b) close off all exemption in NI 45-106, not just a few prospectus exemptions that you have determined to be unavailable (i.e., the accredited investor exemption under s. 2.3 of NI 45-106, the private issuer exemption under s. 2.34 of NI 45-106, the offering memorandum exemption under s. 2.9 of NI 45-106, the minimum amount investment exemption (or $150,000 exemption) under s. 2.3 of NI 45-106, the financial institution or Schedule III bank specified debt exemption under s. 2.34(d) and (d.1) of NI 45-106; and the short term debt exemption under s. 2.35 of NI 45-106).

Reference would more appropriately be made to include all sales of any securitized product (whether or not undertaken by issuers, control persons, underwriters or in the secondary market) rather than only those linked to the securitized product exemption. For example, if a securitized product was sold outside of Canada and subsequently resold into Canada, there would now be a break in the specialized "closed system" that has not been caught by your intended design by referencing the resale of securitized products to distributions. Similarly, if a securitized product were distributed through a statutory reorganization or by a reporting issuer to its employees, it would also not be caught by the closed-system since these are not one of the prospectus exemptions that the CSA has made unavailable under the Proposed Amendments.

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[1] Section 1(1) of the *Securities Act* (Ontario) defines a "**distribution**", where used in relation to trading in securities, as, (a) a trade in securities of an issuer that have not been previously issued, (b) a trade by or on behalf of an issuer in previously issued securities of that issuer that have been redeemed or purchased by or donated to that issuer, (c) a trade in previously issued securities of an issuer from the holdings of any control person, (d) a trade by or on behalf of an underwriter in securities which were acquired by that underwriter, acting as underwriter, prior to the 15th day of September, 1979 if those securities continued on that date to be owned by or for that underwriter, so acting, (e) a trade by or on behalf of an underwriter in securities which were acquired by that underwriter, acting as underwriter, within eighteen months after the 15th day of September, 1979, if the trade took place during that eighteen months, and (f) any trade that is a distribution under the regulations, and on and after the 15th day of March, 1981, includes a distribution as referred to in subsections 72 (4), (5), (6) and (7), and also includes any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution and "distribute", "distributed" and "distributing" have a corresponding meaning.

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Registration

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?*

EMDA Response:

No.

The EMDA does not believe any changes are required to any prospectus exemptions involving securitized products.

It is not clear why the CSA has not made all prospective exemptions unavailable in connection with the Securitized Product Exemption and only select prospectus exemptions. The EMDA believes that to be a truly closed system all exemptions would have to be made unavailable.

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?*

EMDA Response:

The EMDA strongly supports the inclusion of EMDs in the sale of securitized products and that EMDS should not be restricted in any way from dealing in securitized products. The CSA has not provided any evidence that suggests why EMDs should be excluded. (See "Who Are Exempt Market Dealers" herein.) In fact, according to media reports, many of the problems in the asset-backed commercial paper crisis involved IIROC members.

If the CSA is of the view that greater proficiency of required to sell certain types of securitized products such as complex, synthetic or derivative-based securitized products, then this should be a requirement imposed on all registrants (including IIROC dealers) which would be in addition to their Know Your Product requirement under NI 31-103.

* * *

The above comments are respectfully submitted by the Board of Directors of the Exempt Market Dealers Association of Canada on behalf of its membership.

We respectfully request that any summary of the comment letters submitted to the CSA involving the Proposed Amendments attribute any comments to the applicable commentator. This would assist

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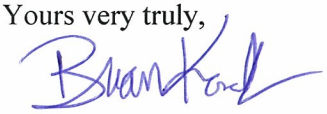
interested persons in reading a particular comment letter in connection with any comment of interest as set out in your summary.

We thank you for the opportunity to provide you with our comments on the Proposed Amendments. If you have any questions or concerns, we ask that you direct them to Brian Koscak, Chairman of the EMDA at bkoscak@emdacanada.com or 416-860-2955.

Yours very truly,



Brian Koscak, Chairman

** This letter does not represents the comments of any director and/or officer of the EMDA where the individual is employed and is submitted without prejudice to any position taken or that may be taken by that individual's firm on its own behalf or on behalf of any client.*

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