August 31, 2011

BY ELECTRONIC MAIL

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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 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 *Attention*: John Stevenson, Secretary *E-mail*: jstevenson@osc.gov.on.ca	c/o Autorité des marchés financiers 800, square Victoria, 22e étage C.P. 246, tour de la Bourse Montréal (Québec) H4Z 1G3 *Attention*: Anne-Marie Beaudoin, Corporate Secretary *E-mail*: consultation-en-cours@lautorite.qc.ca

Dear Sirs / Mesdames:

Re: 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, Proposed Amendments to National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, Proposed Amendments to National Instrument 45-106 Prospectus and Registration Exemptions and National Instrument 45-102 Resale of Securities, and Proposed Consequential Amendments (collectively, the "Proposed Rules")

Canadian Imperial Bank of Commerce ("**CIBC**") is grateful for this opportunity to provide comments on the Proposed Rules that set out a new framework for regulation of securitized products in Canada. Securitization is a large segment of Canadian debt capital markets and a key source of funding and liquidity for a number of organizations, which in turn helps facilitate availability of credit to commercial and retail consumers. CIBC is fully supportive of a transparent, efficient and well-functioning securitization market that balances the interests of investors and issuers. CIBC has been a leader in the Canadian securitization market since its inception and has drawn on those experiences in preparing this comment letter.

At the outset, we wish to highlight three key themes that are reflected throughout our comments:

(1) We believe that it is important that the CSA consider the unique experiences, opportunities and limitations of the Canadian securitization market and avoid adopting regulations that are aimed at responding to adverse experiences in other jurisdictions;
(2) We believe that a disclosure-based approach, whereby sufficient and appropriate information is provided to investors, is preferable to a prescriptive minimum standard approach. We feel that this disclosure-based approach, which is consistent with the regulatory approach taken with respect to securities offerings in general, has served, and continues to serve, the Canadian securitization market well; and
(3) We do not see any compelling reason for the CSA to create different or more stringent standards for securitized products as compared to other securities products.

Prior to 2007, the Canadian securitization market could have been broadly segmented into two markets, (i) the non-bank-sponsored ABCP market that was involved in the restructuring that was referred to as the "**Montreal Accord**"; and (ii) the "**Traditional Securitization Market**," which includes bank-sponsored ABCP and term ABS transactions backed by retail or commercial assets, such as credit cards, auto finance loans/leases, equipment finance loans/leases, consumer loans, fleet leases, trade receivables, residential mortgages, and commercial mortgages. The non-bank-sponsored ABCP market has ceased to exist in Canada and the Traditional Securitization Market does not include complex or synthetic products such as credit derivatives, re-securitizations, or leveraged structures. It also generally excludes products created under an "originate-to-distribute" model where the motivation behind asset origination and securitization is different than in the Traditional Securitization Market, and this difference leads to increased risks.

In the Traditional Securitization Market, assets are originated as part of an on-going business and securitization is just one of the funding tools available to originators. Originators have a vested interest in maintaining the availability of securitization as a funding source and often retain servicing rights as well as first loss credit enhancement in those structures. The one exception to this classification is commercial mortgage-backed securities ("**CMBS**"), which we also classify as part of the Traditional Securitization Market even though it often possesses similar characteristics to the originate-to-distribute model. We feel that the presence of a sophisticated real estate investor, with controlling class rights, that acquires the first loss portion of enhancement mitigates the risks associated with any similarities to the originate-to-distribute model for these transactions.

The non-bank-sponsored ABCP market had a number of features that differentiated it from the Traditional Securitization Market, particularly the prevalence of structured credit products as opposed to the retail and commercial assets found in the Traditional Securitization Market. In addition, the motivation for completing many of the transactions in the non-bank-sponsored ABCP market was centered around an arbitrage opportunity that existed based on the form of liquidity that was available in Canada at the time, as opposed to the creation of an alternative financing source for an operating business, as is the case in the Traditional Securitization Market. The non-bank-sponsored ABCP segment of the market failed to operate during the credit crisis and had to be restructured as part of the Montreal Accord. The Traditional Securitization Market, on the other hand, largely operated normally through the credit crisis.

Based on the foregoing, CIBC submits that the focus of any new regulations should be on higher risk securitization products. These would include synthetic structures where there is exposure to credit derivatives and products originated under an “originate-to-distribute” model or any other construct that takes advantage of certain arbitrage scenarios. A number of the new regulations in the U.S. are in response to the prevalence of these types of products in the U.S. marketplace and the investor losses that ultimately resulted from some of those products. Similar products in Canada either did not exist, or were limited to a niche of the market (i.e., those products that were the subject of the Montreal Accord) that no longer exists (other than the run-off of those transactions as part of the Montreal Accord).

We feel that a broad approach whereby regulations aimed at mitigating the risks produced by higher risk products are also applied to the lower risk products found in the Traditional Securitization Market could have a significant adverse effect on the Traditional Securitization Market. Put colloquially, we think that a one-size fits all approach runs the risk of throwing out the proverbial baby with the bathwater. There is nothing inherently risky about securitized products as an asset class and, in our view, there is no compelling policy reason for the CSA to create a new complex set of substantive regulations that would treat securitized products very differently from other debt securities and equities. We believe that the Proposed Rules could adversely impact the timeliness, costs and ability of certain issuers to access funding through the securitization markets, thereby limiting the volume of securitization product available and ultimately limiting the availability of credit to retail and commercial consumers and reducing the amount of highly rated yield product available to Canadian investors. At the same time, we are concerned that the Proposed Rules would produce limited secondary market liquidity or pricing benefits. In our view, because the Proposed Rules do not distinguish between the securitization market's risk segments, they do not strike an appropriate balance between the costs and benefits of regulation. These potential consequences are discussed in greater detail in our responses to the questions posed by the securities commission found in the body of our comment letter.

CIBC also advocates a disclosure-based approach as opposed to prescribed restrictions. We believe that the key to a well functioning securitization market is transparent disclosure of material information to investors (both initial and on-going) so that informed investment decisions can be made. A disclosure-based approach in the exempt market should take into account the sophistication of investors in the exempt market and the ability of investors to determine with issuers the appropriate level of required disclosure. There is an alignment of interests between issuers and investors with respect to the disclosure for asset-backed securities in the Traditional Securitized Market (“**Traditional ABS Products**”) in Canada. To the extent that disclosure is limited or does not meet the needs of investors, demand for the product will suffer, which will adversely impact the size and price at which issuers can complete transactions. On the other hand, if extraneous disclosure is provided or is not in a form that is meaningful to investors, there will be no corresponding benefit on demand and price but an adverse impact to issuers in the form of increased cost and time to produce such information. We believe that the market can largely determine the appropriate form and amount of information that should be provided based on the disclosure standards that currently exist in Canadian securities legislation.

In developing this view, we took into account the importance of securitization as a funding source to issuers accessing the Traditional Securitization Market. Many of these issuers view securitization as an important funding source for their on-going business, and hence, have a compelling interest in maintaining access to that market. This perspective is further supported by the presence of some form of first loss risk retention in all but one asset class

(CMBS) in the Traditional Securitization Market in Canada (and in CMBS, investors are protected through certain control rights which they negotiate).

The events that occurred in the bank-sponsored ABCP market after the non-bank-sponsored ABCP market ceased to operate illustrate the effectiveness of market forces in the Traditional Securitization Market. In response to the spillover effect from the freeze in the non-bank-sponsored ABCP market and concerns over the liquidity and/or disclosure of the types of assets contained in the bank-sponsored ABCP conduits, investor demand for bank-sponsored ABCP diminished starting in August 2007. In response, the CIBC-sponsored ABCP conduits made several changes, including: (i) adding a second independent rating to the paper issued by those conduits, (ii) converting the liquidity lines from a "general market disruption" standard to a "global liquidity" standard and (iii) following consultations with investors, enhancing the disclosure provided in the monthly investor reports. In response to these changes, investor demand quickly returned. We see this as a good example of the benefits of a disclosure-based approach in which issuers and investors determine the appropriate level and type of disclosure for traditional securitized products based on the disclosure standards that currently exist in Canadian securities legislation.

CIBC World Markets Inc. has also participated in the Securitized Products Working Group formed by IIAC and had input into the letter prepared and submitted by IIAC regarding the Proposed Rules.

Please note that, unless indicated otherwise, our responses to the questions are only in respect of the Traditional Securitization Market in Canada and not higher risk securitization products.

CIBC looks forward to the next steps in the development of the Proposed Rules and would be pleased to respond to any questions that you may have regarding our submission.

Yours sincerely,

Andrew J. Kriegler
Senior Vice-President and Treasurer
CIBC

Andrew Stuart
Managing Director, Head of Securitization
CIBC World Markets Inc.

<u>Question 1</u>

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?

CIBC Response:

We support the principles behind the Proposed Rules.

In particular, we appreciate the Canadian Securities Administrators ("**CSA**") consideration of differences in risk between securitization products in Canada as compared to other jurisdictions. Consistent with this principle, we believe that the Proposed Rules should take into account the differences between Traditional ABS Products that are predominant in the Canadian marketplace versus the higher risk securitization products (e.g., those originated under an originate-to-distribute model or synthetic structures) that either did not exist, or no longer exist in Canada, other than the run-off of legacy transactions as part of the Montreal Accord.

Traditional ABS Products are relatively straightforward securities which are based on familiar retail and commercial obligations and do not contain leverage, re-securitization or credit derivative exposure seen in higher risk securitization products. Although asset performance deteriorated in some Traditional ABS Product asset classes during the recent recession, we are not aware of any situation where credit losses on the underlying assets exceeded the level of structural protections in place. The credit enhancement proved sufficient in all of these transactions and we are not aware of any circumstance where the senior note investors (or any of the investment grade note investors) incurred a loss as a result of credit losses on the assets.

In general, we believe that the disclosure for Traditional ABS Products is robust. It is our view that any reduced demand for these Traditional ABS Products during the credit crisis was principally due to a spillover effect from investor concerns over higher risk securitization products and a general flight to quality that saw poor market liquidity for all debt securities except for government or government-guaranteed securities.

As a result, we believe that any new regulations should focus on the higher risk securitization products that were responsible for much of the market turmoil in Canada and other jurisdictions and avoid applying regulations principally derived from the experience with those higher risks products to the Traditional Securitization Market. Such a broad approach could result in restricted volumes and access to securitization markets for a number of issuers and originators, and the availability of product for investors.

Question 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 and levels of risk retention for particular types of securitized products?

CIBC Response:

The Dodd-Frank Act requirement for mandatory risk retention is largely the result of losses experienced as a result of the originate-to-distribute model that was prevalent in the United States. Under the originate-to-distribute model, sellers originate assets with the primary motivation of securitizing those assets. The sellers retain no continuing economic interest in those assets post securitization. This included selling off all of the credit enhancement, including any excess spread, as well as, in some circumstances, selling the servicing rights. This resulted in a lack of alignment of interests with investors as there was no impact of deterioration in asset performance on those sellers.

This contrasts with the Canadian experience in the Traditional Securitization Market, in which sellers always retain the first loss piece of credit enhancement (except for CMBS which are discussed below). In Canada, sellers almost always retain the servicing rights on the assets. The retention of servicing rights is important to sellers as it enables them to maintain on-going relationships with their customers. Since there is a value attached to servicing rights, its retention by sellers should also be considered as part of the overall risk retention analysis.

In Canada, securitization is viewed as one of the key sources of funding for originators. As a result, they are motivated to originate and service the assets properly so that they will retain access to this key funding source. Combined with risk retention through servicing rights and first loss credit enhancement, this results in a strong alignment of interests between originators and investors in Canadian transactions. We feel that this alignment is a contributing factor to the relatively strong asset performance in Canadian transactions.

CMBS transactions are the only Traditional ABS Product in Canada where there may be no originator risk retention, there may be no on-going involvement of the originator in servicing and certain originators may have originated commercial mortgages with the primary motivation of securitizing them at a future date. Notwithstanding this, we believe that there is a mitigating factor in the Canadian CMBS structures. The non-investment grade notes ("**B-Pieces**") are purchased by investors ("**B-Piece Buyers**") that tend to be sophisticated real estate investors. The B-Piece Buyers acquire the first loss piece and conduct an independent verification of the assets. In effect, they re-underwrite the commercial mortgages and can reject assets deemed too risky from inclusion in the pool. The B-Piece Buyer effectively accomplishes a similar objective as mandatory risk retention, since the B-Piece Buyer (who has verified the assets included in the final pool) retains the first loss piece of enhancement and has the ability to, among other things, (i) influence the work-out and enforcement process for any non-performing loans in special servicing, and (ii) replace the special servicer.

For bank-sponsored, multi-seller ABCP conduits, sellers have risk retention in each of the respective deals funded through the ABCP conduits. In addition, the sponsors have an on-going interest in the ABCP conduit through the various roles they perform, in particular through their role as provider of liquidity support to the conduit. If transactions were to deteriorate substantially, this would likely affect both the rating of the conduit's commercial paper and investor demand for the paper, thereby triggering the liquidity backstop. We are of the view that these features appropriately address any risk retention concerns for those vehicles.

In summary, we believe that Traditional ABS Products in the Canadian marketplace do not have the same features as the originate-to-distribute transactions that gave rise to the risk retention requirements in the U.S. In the interest of developing regulations that address the risks and features of the Canadian marketplace, we contend that mandatory risk retention requirements are not needed in Canada. Although we think that current market practice is sufficient, we would not be opposed to a disclosure-based approach if the CSA feels that risk retention is a material enough feature of securitized products that its disclosure should be mandated. Under this approach, risk retention features would be described in offering and continuous disclosure documentation provided to investors. This would be consistent with our view that material information be provided to investors such that they can make informed investment decisions taking into account that information.

<u>Question 3</u>

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?

CIBC Response:

The sorts of transactions giving rise to this provision in the Dodd-Frank Act have not been a feature of the Canadian marketplace. The concern was around certain U.S. transactions, often higher risk synthetic securitization products, whereby an asset-backed security was created primarily for the purposes of entering into another transaction which provides a material financial reward upon the failure or default of the asset-backed security.

While we fully support restricting such transactions, we caution against putting forward regulations to address risks and situations that do not exist in Canada. As these transactions do not occur in the Canadian marketplace, and likely will not occur in the Canadian marketplace, it is our view that there would be little value to such a prohibition. We also have reservations about whether there may be unintended negative consequences should this regulation be applied to Traditional ABS Products. There are various conflicts of interest that exist in the securities market that are understood by and acceptable to investors. As an example, investment banks perform market making functions for securities which may result in them having an interest in the securities for a period of time. This situation should not be captured under any conflict of interest rules, otherwise it would significantly hamper secondary market liquidity for such securities which would negatively impact both investors and issuers. Another example, which you have identified above, involves banks acting as counterparties in hedging arrangements put in place to protect investors. The value of the hedge to the provider is often negatively correlated with that of the issuer, but this conflict exists in a structure for the benefit of investors.

To avoid these unintended consequences, we suggest that a disclosure-based approach for Traditional ABS Products be used, whereby material conflicts of interest are disclosed to investors who can then make an informed investment decision. This is the current approach with respect to any underwriting conflicts that may exist, which are addressed in National Instrument 33-105 Underwriting Conflicts. As the specific type of transaction giving rise to this provision in the Dodd-Frank Act is associated with higher risk synthetic structures, we are not opposed to targeted prohibitions to address this risk for those types of structures only.

Question 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?

CIBC Response:

We believe that conflict of interest rules should be consistent across all securities products and there should not be a different standard for securitized products.

Investment dealers, auditors and lawyers are all self-regulated professions that have their own codes of conduct and mechanisms to regulate conflicts of interest. In addition, offering documents describe the roles of the various parties in securitization transactions. Thus, investors are able to evaluate any potential conflicts of interest and factor any such conflict into their investment decisions.

We are not aware of any issues that have occurred in Canada that would necessitate changes to the existing National Instrument 33-105. Since bank-owned investment dealers are permitted to lead both debt and equity offerings for their parent bank, different standards should not be in place for securitization offerings involving parent bank assets.

We do not believe that the auditors of the annual servicer report should be required to be independent from the sponsor's auditors. Often, there are efficiencies obtained in using the same auditor, as the auditor is familiar with the operations and systems of the sponsor and may be able to leverage off of some of the audit work performed on the sponsor to produce cost and timing efficiencies. Mandating separate auditors will likely increase both the cost and time of the servicer report audits, which may ultimately increase the cost of securitization to sellers and servicers.

We would also like to note that for bank-sponsored multi-seller ABCP conduits, the auditor of the servicer report is, in many cases, different than the sponsor's (i.e., the bank's) auditors.

Question 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?

CIBC Response:

The definition appears to be overly broad and may unintentionally capture additional products.

Clause (b) of the definition of securitized products includes "a security that entitles the security holder to receive payments that substantially reference or replicate the payments made on one or more securities of the type described in paragraph (a)". While we appreciate that the intention is to capture synthetic securitizations, we are concerned that it could also capture OTC derivatives. Given that the stated intention of the CSA is to regulate OTC derivatives through separate provincial securities laws, we think the definition should be clarified so that they are also not captured under the Proposed Rules. In addition, we believe that the definition could also be unintentionally capturing other items, such as syndicated secured loan facilities, Tier 1 Capital securities, federally regulated structured notes and other deposit products.

Our understanding is that securities issued under CMHC securitization programs (i.e., NHA MBS and Canada Mortgage Bonds) are not intended to be captured under the Proposed Rules, but these also appear to be unintentionally captured in the definition of securitized products. We suggest that the definition be amended or an explicit carve-out (similar to covered bonds and non-debt securities of MIEs) be put in place to clarify that the CMHC programs are exempt from the Proposed Rules.

It is relatively common in the Canadian Traditional Securitization Market for an originator to establish a special purpose vehicle ("**SPV**") that, (i) buys a pool of assets from the originator, and then (ii) issues a note or enters into a transaction with a bank-sponsored ABCP conduit to fund the purchase of the assets by the SPV. This structure is established for a number of reasons including, (i) ensuring legal isolation of assets, (ii) operational convenience, and (iii) maintaining structural consistency with a U.S. parent's securitization structures. Our concern is that the Proposed Rules could consider both the sale of the ABCP as well as the intermediary step of the sale of the note to the SPV as securitized products, which will cause repetition in the amount of upfront and on-going disclosure required for the transaction. Often the sponsor of the conduit is actively involved in the structuring of the transaction itself and would not gain any benefit from an Information Memorandum. The sponsors are able to determine what on-going disclosure is required to meet the reporting needs of the ABCP conduits for external investors. In addition, there could be substantial increases in the cost, time and effort to produce the Information Memorandum and continuous disclosure to the ABCP conduit, with no related benefits. As a result, we believe that such transactions should also be exempt from the scope of the Proposed Rules.

Finally, we note that the definition of asset-backed security is defined as a "…security that is <u>primarily</u> (emphasis added) serviced by the cash flows of a discrete pool of mortgages, receivables or other financial assets…". Similarly, securitized product is defined as "…a security that entitles the security holder to receive payments that <u>primarily</u> (emphasis added) depend on the cash flow from self-liquidating financial assets collateralizing the security…". While these definitions would appear to capture term ABS, we are not certain that they capture ABCP. While financial assets do secure ABCP, they are not necessarily the primary source of repayment. ABCP is a short-term debt instrument that usually funds longer term financial assets. As a result, repayment of the ABCP on maturity is primarily due to the issuance of new ABCP, or potentially by drawing on the backstop liquidity facilities. Although cash flows generated on the financial assets are responsible for some of the repayment, they would not be the primary source of repayment for maturing ABCP. Consequently, one can argue that ABCP is not captured in the current definition of asset-backed security or securitized product. If the intention is to capture ABCP, we suggest that refinements to these definitions may be necessary.

If the CSA does adopt an approach of differentiating Traditional ABS Products from higher risk securitization products, you may wish to consider creating separate definitions for each.

Question 6

Is the proposed carve-out for covered bonds 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?

CIBC Response:

We support the proposed carve-out for covered bonds.

Although covered bonds have only been issued by financial institutions to date, you may wish to consider whether the carve-out should extend to covered bonds issued by non-financial institutions as well, should that product develop in the future.

Question 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?

CIBC Response:

We are of the view that this carve out is appropriate.

Question 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)?

CIBC Response:

We do not believe that there should be regulatory restrictions on the kinds of ABS distributions eligible for the shelf system. The decision as to the form of offering document, including whether the shelf prospectus system is used, is conducted on an issuer-by-issuer basis and, in some cases, a transaction-by-transaction basis. This flexibility allows the unique characteristics of each issuer and transaction to be taken into account when selecting the form of offering document.

Over the past several years, the majority of public ABS issuance in Canada has been conducted via a base shelf prospectus and supplement (either pricing or prospectus). We are not aware of any issues or concerns expressed as to the form of offering documentation in Canada that would warrant restricting access to the shelf system.

All issuances under a shelf prospectus require current disclosure of asset information to investors. This will include information on delinquencies and losses. With this information, investors can make a decision about whether to invest or not, for what size, and at what price. Transactions with revolving periods (including those involving non-revolving assets), will often include performance triggers, such as loss or delinquency ratios, which when breached will trigger the end of the revolving period and the commencement of an amortization period. The types of performance triggers and threshold levels are determined on a transaction-by-transaction basis and would be disclosed in the prospectus. As a result, we do not believe that regulatory restrictions or caps are appropriate. We are supportive of the current practice, which is to provide disclosure to investors of the items described above.

Question 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?

CIBC Response:

We are not aware of situations where investors have not had sufficient time to review shelf supplements. As a matter of course, prospective investors are typically provided with a preliminary prospectus supplement with asset information during the marketing of a transaction. Following pricing, and in response to investors' rescission rights, investors are provided a final prospectus supplement at least 48 hours prior to settlement. This final prospectus supplement is filed.

We believe there is an alignment of interests between issuers and investors in this regard. Issuers want to achieve the best possible price and execution for a transaction and, market volatility and market traffic considerations aside, this is accomplished by providing material information to investors with enough lead time to maximize investor demand and achieve an appropriate price for the securities offered.

In situations where loan-level disclosure is appropriate, such as CMBS transactions, we believe that market forces will determine the appropriate level of review time given the alignment of interests discussed in the previous paragraph. For example, in CMBS transactions, which are not completed under a shelf prospectus, marketing periods tend to be longer than for ABS transactions with grouped asset information.

If investors are not given sufficient review time, demand for the security will be negatively impacted which will adversely affect the size and/or price at which the offering can be completed.

<u>Question 10</u>

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

CIBC Response:

We believe that the present approved rating criterion has served the Canadian market well and do not believe that there is any need to change this criterion. Furthermore, we do not believe that different criteria should be in place for different types of products in the marketplace.

The additional criteria contained in the SEC April 2010 Proposals are the result of circumstances in the U.S. market that did not exist in the Canadian public ABS market, predominately losses resulting from the use of the originate-to-distribute model. Thus, taking into account the risks and features of securitized products in the Canadian market, we do not believe it would be appropriate for these additional criteria to be required in Canada. We believe that disclosure of material information, including risk retention or other material features that would allow investors to ascertain whether the risks found in the originate-to-distribute model are present in the transaction, is preferred to a more prescriptive approach which would impose incremental costs for issuers of Traditional ABS Products.

We are of the view that the current form of prospectus certification is sufficient. The certification proposed by the SEC Proposals are problematic as it could be deemed to signify that sponsors are guaranteeing the repayment of the securities. We believe that as long as there is full, true and plain disclosure of all material facts, including risk factors, there should be sufficient transparency to enable market participants to determine the market clearing price for a particular offering.

Question 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?

CIBC Response:

We believe that ABS investors are provided sufficient time to review information for offerings completed under the provisions of Part 8 of National Instrument 44-102 Shelf Distributions. The MTN/continuous distribution ABS transactions that we have been involved in, either as a lead underwriter/dealer or issuer, have been restricted to credit card securitizations. The nature of these assets fits well within the MTN shelf framework. In these programs, the issuer posts updated portfolio information to SEDAR on a quarterly basis. It has been our experience that the issuers in these programs post information each quarter and not just immediately prior to an offering. As such, we believe that investors have sufficient time to review the portfolio information and all of the non-pricing features of the offering which are described in the base shelf prospectus.

We are not aware of any issues with timeliness of public disclosure based on the form of offering. Similar to prospectus supplement transactions, it is typical that a preliminary pricing supplement or term sheet containing similar information is provided to investors as part of the marketing process. Once pricing is completed and the outstanding pricing information is available, the pricing supplement is provided to investors at least 48 hours in advance of closing in response to investors' rescission rights and is subsequently filed on SEDAR.

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?

CIBC Response:

We believe that asset information in Canada is currently disclosed in the form that is most relevant and useful to investors. For transactions with a small number of assets that each comprise a relatively large percentage of the dollar amount of the total pool, loan level detail is provided. In these transactions, each individual loan can have a tangible contribution to the risk of the pool as a whole and any losses on that loan could have a negative impact on overall enhancement levels. An example of this type of transaction is a CMBS deal, where a $400MM pool could consist of less than 100 commercial mortgages.

In transactions where there are a large number of assets and each asset comprises a relatively small percentage of the dollar amount of the total pool, grouped asset disclosure is more appropriate. In these transactions, the risk and/or potential loss on each individual loan by itself will have a negligible impact on the transaction as a whole. In addition, there are a substantial number of loans in these types of transactions making it unwieldy to analyze the transaction at a loan level. For example, a $400MM auto loan securitization could consist of approximately 20,000 different auto loans. In order to present the information in a form that is most useful to investors, the information is currently grouped together and presented in stratification tables across a number of metrics (e.g., loan-to-value ratio, annual percentage rate, credit score, etc). Additionally, many of the transactions that present grouped asset information are comprised of retail assets. There could potentially be privacy or other confidentiality concerns limiting the ability of issuers in these transactions to disclose loan level information.

We do not believe that the level of disclosure (loan level or grouped) should be mandated via regulation. We believe that the Canadian market has demonstrated an ability to determine the appropriate level of detail in the disclosure based on the assets and circumstances for each transaction.

Question 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?

CIBC Response:

For a number of reasons, we do not believe that providing a computer waterfall payment program should be required. Firstly, many of the waterfall programs used by underwriters are proprietary or licensed products, so it may not be possible to share these with investors. Secondly, even if a program were developed that could be shared, the cost to do so could be prohibitive since the program must be robust enough to accommodate any of the varying assumptions different investors may have (some of which may not be even known at the time of development) for stress testing a given transaction. Thirdly, all waterfalls are described in detail in the prospectus, so the information is available for investors to create their own waterfall program, which meets their specific needs, to analyze the securities. Finally, there are concerns that the programs could unfairly expose the issuer to additional liability. The programs are, by their nature, predictive tools that are used to speculate on the future performance of ABS. To the extent that actual performance deviates from the output of the waterfall payment program for scenarios run by investors, either due to additional variables not factored into the program or differing interactions/relationships between variables, or for some other reason, it might expose the issuer to incremental legal liability which is not proportionate to any potential benefits investors may receive from the program.

Question 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?

CIBC Response:

As part of all Canadian prospectus offerings of securitized products, an accounting firm is engaged to provide an Agreed-Upon-Procedures Letter or Comfort Letter. These procedures include verification of all numbers presented in the prospectus on the assets back to information obtained from the originator's source systems. We are not aware of any issues arising in the Canadian public ABS market that would lead us to believe that this procedure or the scope of this review is insufficient and, as a result, we do not believe that additional third-party review of the pool assets is required. In addition, putting these additional provisions in place will be costly. Third parties will likely price in a risk premium designed to compensate them for bearing the risk of being sued by the parties to any related transaction.

We have no comment with respect to the question of whether third party verifiers should be named as experts in a prospectus.

In Canadian securitization transactions, there are representations and warranties in place as to the eligibility of the pool assets. A significant motivation to the inclusion of these provisions as part of the Dodd-Frank Act were issues arising out of the originate-to-distribute model, including the substantive amount of alleged breaches of representation and warranty provisions and potential insufficient financial wherewithal of some of the parties providing the representations and warranties in those transactions. Since similar circumstances do not exist in the Traditional Securitization Market in Canada, we do not believe that additional regulations should be put in place to address risks that do not exist in the Canadian marketplace. Notwithstanding the U.S. experience, we contend that the CSA should acknowledge the representations, warranties and covenants given by sellers and issuers.

We support transparency and believe that it is imperative that the information provided to investors on the pool assets is accurate and complete. However, to the extent that the CSA is considering expanding the scope of the third-party review of pool assets, we query whether it would result in any incremental benefits over the current approach, especially in light of the resulting increase in cost to issuers or originators to access the market. Since these procedures appear to address risks arising out of the assets generated under an originate-to-distribute model, which we contend should not be considered as Traditional ABS Products, we would suggest that any such review requirements should be focused on those originate-to-distribute assets and not on all securitized products.

<u>Question 15</u>

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?

CIBC Response:

We do not believe that risk factor disclosure should be prescribed or standardized. Disclosure of risk factors in a securitized product prospectus are generally detailed to limit the risk of liability for a misrepresentation in the risk factor disclosure. Although risk factor disclosure may be similar for different transactions under an asset class, the risks, and hence disclosure, may and can vary from transaction to transaction and over time. Care is taken to identify the relevant risks for each transaction and to disclose those risks to prospective investors. We believe that retaining the flexibility to take into account transaction specific factors is appropriate. In our opinion, the current standard of full, true and plain disclosure of all material facts, including risk factors, continues to be the right standard.

Question 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 Form 41-103F1 be sufficient?

CIBC Response:

We are of the view that the requirements regarding static pool disclosure in Item 4 of Form 41-103F1 are sufficient. This information provides investors with performance information on previous pools (or vintage of originations) from the same issuer. To the extent investors would like to review Forms 51-106F1 and 51-106F2 as they relate to previous offerings these Forms would be publicly available on SEDAR.

We do not believe that changes are required to the types of filings incorporated by reference. Doing so would create different standards for securitized products from other product offerings, which we do not believe is appropriate. Many sellers in the Canadian public securitization markets use securitization as one of their funding options. Broadening the universe of documents incorporated by reference for securitized products could present additional liability for issuers, and ultimately for such sellers, relative to other sources of funding, particularly other capital markets sources of funding. This could, in turn, dissuade them from utilizing securitization for their funding needs.

In addition, all numerical or financial information incorporated by reference in a prospectus will have been reviewed by accountants prior to its incorporation by reference. The continuous disclosure required in Forms 51-106F1 and 51-106F2 will not have been reviewed by accountants prior to its incorporation by reference, thus additional work by accountants, and accordingly costs will result if the scope of filings incorporated by reference is expanded to such Forms.

Question 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?

CIBC Response:

In our view, the existing registration categories and exemptions are appropriate and should not be modified or made unavailable.

Additional Comments on Proposed Prospectus Disclosure Rule

In addition to our responses to the questions posed by the CSA, we have reviewed proposed Form 41-103F1 and have the following additional comments which do not detract in any way from our responses to the questions posed by the securities regulators.

(1) Item 1.2 (f) – disclosure of defaults or events triggering early amortization on previous securitized products transactions by that sponsor. We believe that this disclosure should have a prescribed time limit (for example, in the last 3 or 5 years). Over time, the relevance of this information diminishes, especially since origination and servicing practices can change over time. In addition, we are not certain whether disclosure of the occurrence of early amortization events is material in every transaction. Transactions are backed by separate and distinct pools of assets and the structure of these transactions can vary. For these transactions, the breach of an early amortization event on a previous transaction is not necessarily indicative of the risk of a similar event occurring on subsequent transactions.

(2) Item 2 – significant obligor disclosure. We believe that some of the details required to be disclosed will be problematic for issuers. The information will identify obligors and, in certain cases, detailed financial information about those obligors. There may be privacy issues and/or contractual restrictions regarding disclosing this information, or competitive reasons why obligors cannot be identified. In addition, if obligors are not public entities, they may be very resistant to having their financial information disclosed publicly, especially with the potential liability arising from such disclosure. These obligors would have entered into a contractual business relationship with the seller that is completely unrelated to the securitization funding transaction that is triggering these reporting requirements. As a result, it may be difficult to obtain their consent to disclose this information in the prospectus for the securitization transaction. We would suggest the level of disclosure of significant obligors be generally limited to what is currently disclosed in the Canadian marketplace, which typically includes information about exposures, the industry and the credit rating of significant obligors, but does not contain information that allows those obligors to be readily identified or require detailed financial information on those obligors. We understand that there may be circumstances where the exposure to significant obligors could be substantive enough to warrant additional disclosure, including identifiable information. However, we would suggest that the materiality thresholds at which that disclosure is required should be higher than those currently contained in the Proposed Rules.

(3) There are several references to “Master Trust” in the Proposed Rules. Although the Master Trust structure is used in Canada, the predominant structure for revolving assets in Canada are Co-Ownership Structures. The CSA should also include references to these types of structures in the Proposed Rules.

(4) Item 7.7 (a) – material models used to identify cash flows, including assumptions and limitations. It may be difficult to describe the models used in this process, and in many cases, those models may be proprietary. The tables produced from these models are generally verified by the auditors, so some comfort should be taken that the information is accurate. However, we support identifying the material assumptions used in preparing the information.

(5) Item 9 (g) – provision of significant percentage for derivative instruments. This measure is based on the financial significance of the derivative instrument using a reasonable good faith estimate of the maximum probable exposure of the derivative counterparty that is made in substantially the same manner as that used in the sponsor's internal risk management process in respect of similar instruments. Our concern is that the internal risk management calculations are often proprietary and hence parties may be hesitant to provide this disclosure. This could, in turn, limit the number of derivative counterparties available to act as hedge counterparties.

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? 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?

CIBC Response:

We think that auditing of Trust information is important and something in which investors take comfort. For a securitization, we are of the view that the information that is fundamental to understanding the risk of Traditional ABS Products are those that describe the eligibility criteria, comparable historical asset performance, structural details and compliance with servicing standards. Under proposed NI 51-106, there is a requirement that an audit firm opine on the servicer's assessment of compliance with applicable servicing standards set out in Appendix A to that National Instrument and audit the servicer's assessment of compliance with such servicing standards. While there would be additional costs associated with an opinion and audit, we are supportive of these audit requirements and believe they will be beneficial for the market.

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?

CIBC Response:

We are not aware of any circumstances in which investors purchasing securities from a reporting issuer on an exempt basis have expressed concerns with the level of disclosure received, including any on-going disclosure. In the exempt transactions that we have been involved in, the investors were large, sophisticated institutional investors capable of determining the appropriate level of on-going disclosure they require and informing the issuer of their requirements. As a result, we are of the view that continuous disclosure requirements should not be the same for prospectus distributions as prospectus-exempt distributions.

Similar to the previous paragraph, there are transactions in which a reporting issuer sells notes to an ABCP conduit. In these transactions, the sponsor of the conduit is sophisticated and capable of determining the necessary reporting requirements for any notes purchased so that the ABCP conduit can ultimately meet its disclosure requirements to external investors. Imposing the same continuous disclosure requirements on the notes acquired by these ABCP conduits would add unnecessary costs to these transactions.

Notwithstanding the foregoing, if the CSA proceeds with the proposal to apply the continuous disclosure requirements across all securitized products issued by a reporting issuer, we believe there should be a grandfathering of existing transactions since (i) we are not aware of any concerns expressed by investors in those transactions about the amount of disclosure they are currently receiving; and (ii) those transactions were not conducted with these requirements in mind (and, in particular, the issuance spreads would not have factored in this disclosure requirement), and as a result, we are not in favour of imposing unanticipated reporting requirements on those reporting issuers post-closing.

Question 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 tradable but without the reporting issuer being required to provide any ongoing disclosure about these other securities?

CIBC Response:

As set out in our response to Question 19, we believe that the on-going disclosure requirements for prospectus-exempt issuances by a reporting issuer should not be prescribed in any manner. Given the sophistication of investors in the exempt market, we are of the view that these investors should be free to determine their required level of disclosure with issuers.

Although securities distributed on an exempt basis may become freely tradable, in our experience, secondary market trades rarely occur. The offering memorandum is generally not publicly available and, depending on the exempt transaction, there may be limited to no on-going performance information that is readily available to the public. This lack of public information limits the ability to find investors to purchase the securities in the secondary market. One notable exception are trades between investors who already own securities in that transaction, in which case they already have the required information. In other circumstances, the information is provided to a prospective investor prior to purchase in the secondary market (subject to satisfaction of any contractual obligations the selling investor may have to the issuer). As a result, even though the securities are freely tradeable under securities law, the ability to do so is limited by available information constraints. There is usually an illiquidity premium included in the price of securitized products sold in Canada on an exempt basis, so investors are aware of and seek compensation for the limited secondary market liquidity of these securities. Even if the continuous disclosure requirements were applied to exempt distributions by a reporting issuer, this would not significantly improve the secondary market liquidity since the offering documents would still not be publicly available. In our view, secondary market liquidity could only be improved if both the offering document and continuous disclosure were publicly available. However, this approach would significantly diminish the distinction between public and exempt transactions for reporting issuers, which we do not believe is appropriate.

Since a lack of liquidity is typically factored into the pricing and, in the rare situations where secondary market trades occur, ABS purchasers in the secondary market generally receive the same information that was provided to the initial purchasers, we do not believe that there are any issues with the current approach that would warrant changes to that approach.

Question 21

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

CIBC Response:

We have no objection to this requirement. To our knowledge, this is current market practice in situations where the issuer intends the security to be freely tradable.

Question 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 a better regime for timely disclosure? If so, what changes should be made?

CIBC Response:

Our principle concern is that the time period for disclosure is too short, and consequently may not be feasible. Section 5 of NI 51-106 proposes that, upon the occurrence of a significant event enumerated in that instrument, (i) a press release be immediately issued and filed disclosing the event; and (ii) Form 51-106F2 be filed within 2 business days after the event has occurred.

Firstly, we believe that the time period should commence at the time the issuer becomes aware of the event, not from the event itself occurring. There are circumstances in which there may be a time lag between the two. For example, there may be a time lag between when the event occurred or when the servicer determined that an event occurred and when this information has been passed on to the issuer. In addition, changes in pool characteristics will generally only become known once the monthly portfolio reporting is completed and received by the issuer. The issuer should not be responsible for reporting on events that they are not yet aware of, nor should the period of time in which they are to meet these requirements start prior to when they are aware of the event.

Secondly, there should be a reasonable period of time following the issuer becoming aware of the event to allow the issuer to investigate the event prior to publishing a press release and completing a Form 51-106F2 about the event. This time is necessary to gather information about the event, and even to verify whether the event has actually occurred. We agree that the time required should be defined so that this process is not unduly delayed, but believe that the 2 business day period is too short. We propose that the 10 day period set out for material change reports under NI 51-102 is more appropriate.

Thirdly, we are unclear why the current material change standard and corresponding material change report requirement are not considered to be sufficient and appropriate for securitized products. We are not in favour of creating different standards for different types of securities. The material change standard, which is based on changes that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer is an appropriate and sufficient standard in this regard.

Notwithstanding our commentary above, we have reviewed each of the significant events and have the comments set out below on such events. One general comment that we have is that Section 5 of NI 51-106 should expressly state that significant events be subject to any applicable cure periods set out in the transaction documentation. To the extent that an event has occurred and is then cured/remedied within the applicable cure periods, we submit that the event is no longer significant, and accordingly Section 5 of NI 51-106 should expressly state that such an event would not require disclosure.

Our commentary on the significant events are as follows:

(a) a failure to make payment to holders of outstanding securitized products on a payment date specified by a transaction agreement.

Appropriate.

(b) a change of servicer, trustee of the reporting issuer or trustee for outstanding securitized products.

Appropriate, except we query whether changes of trustees is significant enough to warrant inclusion in a list of significant events, or whether this can be disclosed through some other form of continuous disclosure.

(c) a termination of, or change to, any existing credit enhancement or other support relating to outstanding securitized products, that would be material to an investor, other than by expiration of the agreement on its stated termination date or as a result of all parties completing their obligations under such agreement.

Appropriate.

(d) the addition of any material credit enhancement or support relating to outstanding securitized products.

Appropriate.

(e) the bankruptcy or receivership of a sponsor, a depositor, a servicer, a trustee of the reporting issuer, a trustee for outstanding securitized products, a significant obligor, a provider of any material credit enhancement or other support relating to outstanding securitized products, or any other material party to a securitized product transaction under which outstanding securitized products were issued.

Appropriate, with the following two comments: (1) for providers of material credit enhancement, the CSA may wish to clarify that this is limited to circumstances where the enhancement is in an unfunded form (and hence, there is a risk that the enhancement may not be available). If the enhancement is already funded, the bankruptcy of the provider should not impact the availability of that enhancement for the structure, and (2) we do not believe that significant obligors should be included here for the reasons identified in our comment to (j) below.

(f) an early amortization, performance trigger or other event, including an event of default, as specified in a transaction agreement, that would materially alter the payment priority or distribution of cash flows relating to outstanding securitized products or the amortization schedule for the securitized products.

Appropriate, with the caveat that the time period for disclosing this item should start only when the issuer has received a portfolio report that indicates that such event has occurred. Reports are prepared subsequent to the end of *a period and then there is a defined delivery date for when it is to be sent to the issuer. If this report determined that there was an amortization event as of the end of a month, but the report was only received by the issuer mid-month, the event could only be disclosed by the issuer after receipt of this report (i.e., which is when they would have found out about the event).*

(g) a difference of 5% or more occurring in a material pool characteristic of an asset pool for outstanding securitized products from the time of issuance of the securitized products, other than as a result of the pool assets converting into cash in accordance with terms.

We believe that this may not be an appropriate threshold in certain circumstances. Performance ratios (e.g. losses, delinquencies) will almost always vary by more than 5% from the levels seen at issuance since at issuance there are generally no assets which are more than 30 days delinquent or no losses. Rather than a prescriptive fixed percentage, we suggest that this significant event should be based on a material change in a material pool characteristic of an asset pool that is reasonably expected to have a significant impact on the market price or value of the outstanding securitized products.

(h) a change in the sponsor's interest in outstanding securitized products that would be material to an investor.

We concur with the intention of this event, but believe that the specific wording is vague.

We were unclear whether the sponsor's interest in outstanding securitized products was intended to only capture the outstanding securitized product securities that the sponsored owned, or whether it included any other credit enhancement that the sponsor had in those transactions. If it is the latter, these amounts will change over time, pursuant to the terms of the transaction documentation, so this will need to be factored into any significant event determination.

Additionally, we were unclear whether the sponsor's interest also included any securities held by affiliates of the sponsor. Specifically, we were concerned about the positions of bank-owned broker-dealers being included as part of the sponsor's interest in situations where the bank acts as the sponsor. Those dealers will have market making functions and can increase and decrease their interest in the securities in that role. Furthermore, on closing, there are circumstances where the underwriters, including the bank-owned dealer, may purchase a portion of the securities with an intention to resell those in the secondary market. We do not believe that these should be included in determining a change in a sponsor's interest.

(i) a change in the credit rating of outstanding securitized products.

Appropriate.

(j) a change in the credit rating of significant obligor.

We are concerned that disclosure of credit rating changes for significant obligors will effectively allow for those obligors to be specifically identified. There may be privacy, confidentiality or competitive reasons why significant obligor details cannot be disclosed by a seller.

Structures that contain significant obligors (e.g., fleet lease securitizations) typically take into account the magnitude of the exposure to the significant obligors and the credit rating of those obligors, and adjust the enhancement accordingly. If there are changes to the ratings of significant obligors that exceed the structural protections in place, it could then affect the rating on the securities. As a result, we believe that disclosure of changes in credit ratings of significant obligors is not needed since this information is already factored into the structural protections for the transaction itself, and if those protections are insufficient, in the resultant impact on the rating of the securities.

(k) the entry into, or amendment or termination of, an agreement that is material to a securitized product transaction under which outstanding securitized products were issued.

Appropriate.

(l) any event that results in a material modification to the rights of holder of outstanding securitized products.

Appropriate.

(m) any other event that affects payment or pool performance that would be material to an investor.

Appropriate.

Question 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?

CIBC Response:

CIBC's view is that it is not appropriate to designate these documents as core documents for secondary market civil liability. It is our view that such an approach would subject issuers of securitized products to disproportionate potential liability compared to issuers of other securities.

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 52-109?

CIBC Response:

We have no comments on this question.

Question 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?

CIBC Response:

We have no comments on this question.

Question 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.

CIBC Response:

This requirement in the U.S. arose from issues with the originate-to-distribute model (for mortgages in particular) and instances where there were substantial repurchases of assets due to misrepresentations. A similar experience with respect to repurchases has not occurred in Canada, which we believe was due, in large part, to the fact that the originate-to-distribute model was not prevalent here. Since this requirement is a reaction to issues arising in securitized products created under the originate-to-distribute model and not from Traditional ABS Products seen in Canada, we contend that these requirements should be focused on those originate-to-distribute products and not on all securitized products.

Under the current securities law framework, if there was a breach in representations and warranties resulting in a repurchase or replacement of assets that would reasonably be expected to have a significant impact on the market price or value of the security, such breach would be a material change, and accordingly, would be disclosed in a press release and a material change report. We contend that this is still the appropriate disclosure approach.

However, if the CSA requires disclosure relating to repurchase or replacement information (including any historical information) for all securitized products, we support the "if material" position adopted by the CSA. We view this as positive relative to the standards in the U.S. where we do not believe that a materiality qualification exists. There will be occasional breaches of representations or warranties that will result in the repurchase of assets in Traditional ABS Products in Canada. In our experience, these are generally due to inadvertence or error and both the frequency of occurrence and the magnitude of assets affected are very limited. Although there will be costs and time incurred in doing a historical review, it is likely that inclusion of this information in Canada prospectuses would be limited to few, if any, transactions after the materiality threshold is taken into consideration.

The relevant threshold for disclosure should be based on materiality and we would suggest that a similar threshold be applied to the continuous disclosure requirement under Form 51-106F1. If no materiality threshold is applied to the continuous disclosure requirement, there could be substantive perceived reputational risks by issuers and sellers associated with the potential disclosure of breaches of representations and warranties, even if inadvertent and not material, which may, in turn, dissuade issuers and sellers from accessing the securitization markets.

Additional Comments on Proposed CD Rule and Proposed Certification Amendments

(1) Form 51-106F1, Part 2, Item 2 (l) – breaches of pool asset representations and warranties or transaction covenants. We believe that this disclosure should only be required if (i) the breach continues to exist after applicable cure periods in the transaction documents are taken into account, and (ii) such breach is reasonably expected to have a significant impact on the market price or value of the securities

Question 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?

CIBC Response:

Our preference is for the CSA to focus on the exempt market as a whole and not have a product-centred approach. This approach will, in our view, create a patch-work of different exemption criteria for different products. This could lead to a focus on the form of exemption as opposed to the risk inherent in the product or the suitability of the product for investors needs. In addition, this may encourage utilization and growth in the types of products that have less restrictive exemption standards, and accordingly, result in new forms of risk to the system.

In addition to the comment above, we have a few specific reservations with the Securitized Product Exemption. Firstly, the approach does not take into account the differences in risks that exist in the securitization market. There are two distinct categories of products – higher risk securitization products (which include synthetic products and products created under an originate-to-distribute model) and Traditional ABS Products found in the Traditional Securitization Market. Traditional ABS Products are relatively conventional securities that have demonstrated to be of extremely high credit quality. In fact, from a credit risk perspective, they have shown a high degree of resiliency under the stresses of the recent economic downturn. While we acknowledge the challenges faced by investors in the exempt market that purchased non-bank-sponsored ABCP (which we would characterize as a higher risk securitized product), the risks associated with those products was fundamentally different from those seen in the Traditional Securitization Market, including bank-sponsored ABCP.

One of the CSA's guiding principles is that the Proposed Rules should be proportionate to the risks associated with the particular types of securitized products available in Canada. We would argue that substantive changes to the exemption categories for all securitization products, without taking into account the differences that exist between the Traditional ABS Products and higher risk securitized products, is inconsistent with this principle.

Traditional ABS Products are not substantively different from other forms of debt financing. The proposed exempt distribution regime will create an unlevel playing field between securitization and other forms of debt financing.

Question 28

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

CIBC Response:

Eliminating the exempt market for securitized products would, in our view, have an unwarranted impact on the Traditional Securitization Market in Canada. Of the companies accessing the Traditional Securitization Market in Canada, only a portion participates in the public market. For others, the exempt market is more attractive because of its increased flexibility, the suitability of the market for the lower volumes that they are looking to securitize, and/or lower costs. Excluding the transactions completed under the Canadian Secured Credit Facility, the following is a breakdown of the volumes of securitizations in each of the public and exempt markets in the past few years.

	2009	2010	2011 YTD
Public	$600 MM	$6,200 MM	$6,750 MM
Private			
Term	$6,290 MM	$1,790 MM	$850 MM
ABCP[1]	$50,000 MM	$31,000 MM	$24,000 MM
Total	$56,290 MM	$32,790 MM	$24,850 MM

Source: CIBC World Markets Inc. and DBRS Canadian Securitization Market Overview report.

[1] For ABCP, since the product is short-term and rolled over multiple times in a year, we have used the opening balance of ABCP outstanding in each year from DBRS' Canadian Securitization Market Overview report.

As demonstrated in the table above, the exempt market for securitizations in Canada is substantially larger than the public market. Thus, activities that reduce the viability of the exempt market will directly impact the amount and availability of credit to companies accessing funding through this market and accordingly, the availability of credit to retail and commercial consumers. Although there were no public ABS (other than public credit card ABS issuances) completed between January 2008 and summer 2009, the exempt securitization market remained open. There were a number of issuers and sellers that were unable to access public markets for funding and liquidity (not just securitization markets, but public markets as a whole) that were able to raise funding through the exempt market for securitized products. The fact that the exempt securitization market was available to these issuers and sellers evidences the credit quality and structural benefits of Traditional ABS Products and the willingness of investors to continue to purchase these securities during a time when there was a general flight-to-quality amongst investors. To the extent that changes are made to the exempt market for securitized products, or in the extreme, eliminated altogether, this would reduce the availability of this funding source for companies specifically in the circumstances where they need it most, which will in turn produce greater funding and liquidity risk for those entities.

Furthermore, there are a number of mid-to-small size entities that do not have the volumes necessary to access the public securitization markets. These companies may have access to fewer funding sources. By eliminating the exempt market for securitized products, this will significantly impact the availability of funding for these entities.

Question 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?

CIBC Response:

We do not believe that there should be any changes to the existing exemptions for Traditional ABS Products. Specifically, we would suggest that the accredited investor, minimum investment amount and short-term debt exemptions be retained. To the extent that there are changes to the exemptions, we contend that it should be for the exempt market as a whole and not specific to securitized products. Please see our answers to Questions 30 and 31 for further discussion.

Question 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.

CIBC Response:

In our view, there should not be different exempt distributions rules for different securities in the market unless there are specific risks associated with a product that warrants special treatment. We believe that Traditional ABS Products are relatively straightforward securities that are not riskier than some other securities which are distributed in the exempt market. As such, we believe that the existing exemptions should be retained such that investors currently able to invest in Traditional ABS Products, continue to be able to do so.

Notwithstanding our comments above, we are not opposed to retail investors having to participate through a registrant that is subject to know-your-client and suitability requirements.

Question 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. 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 investors

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?

CIBC Response:

These changes appear to be in response to concerns about whether non-bank-sponsored ABCP was a suitable investment for some of the investors in those securities. Although CIBC did not offer non-bank-sponsored ABCP for sale to non-institutional investors, in our view, revising exempt criteria for all securitization products as a result of a situation that is isolated to higher risk securitization products is not appropriate.

In general, we believe that there should be a consistent set of exemptions across all products, unless there are specific incremental risks (such as those found in leveraged structured finance products, re-securitizations, synthetic credit products and other higher risk securitization products) that warrant more stringent criteria for a specific product. As a result, we do not believe that a different set of exemptions should be in place for Traditional ABS Products, as these are relatively straightforward, high credit quality, low risk products. We believe that this would inappropriately result in investors who could otherwise participate in the exempt market being precluded from purchasing Traditional ABS Products. Doing so, in our view, fails to differentiate the risks associated with higher risk securitization products and Traditional ABS Products by implying that all securitization products are riskier than any other securities that can be acquired in the exempt market.

We believe that the accredited investor, minimum investment amount and short-term debt exemptions should be retained for Traditional ABS Products. For individuals, we are not opposed to purchases being made through a registrant that is subject to know-your-client and suitability requirements. We are of the opinion that this is a better proxy for whether an investment is suitable for an investor than simply raising the minimum net worth or income thresholds. We believe there should be a consistent threshold for individuals at which they are deemed to have the sufficient sophistication to participate in the exempt market.

Finally, there may be multiple step structures in place which may not work within the current definition of eligible securitized product investor. These structures differ from complex structures such as re-securitizations of asset-backed securities that may have non-linear risk profiles and which we would categorize as higher risk securitized products. An example of a multiple step structure is a transaction in which SPV 1 sells a security to SPV 2, which in turns sells a security to SPV 3 and SPV 3 funds the transaction externally. In this example, SPV 3 would be captured under (q) in the definition, but SPV 2 may not be an eligible securitized product investor, and hence, precluded from purchasing the security on an exempt basis. We suggest that the eligible securitized product investor criteria only be applicable to the end step in a securitization structure to address this concern.

Question 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 the 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 follow 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 ratings;*
- *the sponsor is federally or provincially regulated and has a minimum prescribed credit ratings;*
- *the ABCP does not 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 satisfied the above conditions should we also require that an investor, or certain types of investors (for example, a "retail" investor) must buy he securitized product from a registrant? If so, what types of investors would benefit from this requirements?

CIBC Response:

As discussed in our response to the previous question, we believe that the accredited investor, minimum investment amount and short-term debt exemptions should be maintained in their current form for Traditional ABS Products.

Investors that could previously purchase products under the existing exemptions and may not be able to under the new eligible securitized product investor definition would primarily be retail investors. We are not opposed to requiring sales to retail investors, provided that the sale is made through a registrant.

We do not believe that mandatory information memorandum and disclosure requirements are necessary as market participants are in the best position to determine the information that should be disclosed. For traditional term ABS products sold in the exempt market, these transactions would generally be of two types. The first type is an exempt transaction sold to one or a few large institutional investors. In these transactions, the investors are likely to be engaged in the transaction for a period of time (perhaps even initiating the transaction itself through a reverse inquiry). The second type is a more broadly distributed private placement. In these transactions, there may be a few lead investors engaged early in the process. Later in the transaction, there is often a marketing stage prior to pricing that is similar to the marketing process that occurs for public offerings. The offering memorandum used in these transactions is usually very similar to a short-form prospectus and would be provided to all prospective investors. In this second type of exempt transaction, retail distribution is possible. However, in our opinion, the market is able to determine the appropriate level and form of disclosure for exempt transactions, taking into account the breadth and type of investors which may participate in the offering. We do not believe that the form of disclosure for exempt offerings of Traditional ABS Products needs to be mandated.

For ABCP, we believe that the requirements listed in paragraph C above are generally met by the bank-sponsored ABCP conduits in the Canadian market and do not need to be mandated. Following discussions with investors, the CIBC-sponsored ABCP conduits have amended their on-going disclosure. The fact that this market continues to be quite active demonstrates that ABCP market participants are capable of determining the appropriate level of disclosure without the need for regulatory intervention. We believe that investors that are not captured within the current definition of eligible securitized product investors, but were previously eligible to purchase ABCP, be able to continue to do so.

Question 33

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

CIBC Response:

If the securitization market, which the CSA has acknowledged represents an important source of credit to the economy, is to function efficiently, we do not believe that access to this market should be limited.

Question 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?

CIBC Response:

We have broken our response into two parts – one for short-term debt (i.e. ABCP) prospectus-exempt distributions and the other for term ABS prospectus-exempt distributions.

CIBC has conducted detailed due diligence on all transactions funded through CIBC's bank-sponsored ABCP conduits, and will continue to do so regardless of whether any new requirements are enacted. Ultimately, CIBC is associated with its programs as a conduit sponsor and is exposed to liquidity risks for its programs. As a result, each program undergoes extensive due diligence prior to being funded.

The disclosure in the ABCP market has expanded from what was in place pre-August 2007. The form and type of disclosure developed was prepared collaboratively with investors based on feedback received from them. Investor response to this disclosure has been positive and demand for the product has been robust. As such, we do not see substantial improvements in demand resulting from the Proposed Rules, but rather increased costs which must be absorbed by issuers and sellers. As will be discussed in more detail in our responses to subsequent questions, many aspects of the proposed disclosure requirements for ABCP are not feasible, and may eliminate that segment of the securitization market all together.

For term ABS, we believe that the prospectus-exempt market has been very resilient, and in fact, more accessible to some issuers and sellers than some other areas of capital markets during the recent economic downturn. The investors participating in this market tend to be sophisticated investors. A key benefit of this market is the flexibility it provides to market participants. During the economic downturn, this flexibility allowed for increased due diligence by investors interested in participating in transactions and lower execution risk relative to public transactions. Relative to other debt instruments, it also contains credit enhancement and specific assets as security to reduce credit risk, while offering comparatively attractive yields on a credit-risk adjusted basis. For these reasons, even when other segments of the capital markets may have been closed or unattractive, a number of issuers completed prospectus-exempt securitization transactions. As a result, we view this market as a stabilizing element in Canadian capital markets and have concerns that the proposed changes to this market will reduce its viability. Specifically, if the changes increase the cost, time, and legal exposure for prospectus-exempt issuances, it will deter and limit the ability of issuers and sellers to access this market, particularly in times of financial stress when limited alternatives are available.

We are not opposed to the objectives of having robust sponsor/underwriter due diligence, high quality and relevant disclosure and a transparent, and thus, stable securitization market, however, we believe that this currently exists in the Traditional Securitization Market. In our view, there will be substantial increases in costs and liability from the Proposed Rules which may reduce supply of securitized products with limited offsetting benefits in terms of increased demand or tighter spreads.

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?

CIBC Response:

We believe that ABCP conduits and banks do not require the prescribed disclosure in connection with the purchase of securitized products on a prospectus-exempt basis. In these transactions, there may be an intermediary SPV (as described in the response to Question 5) that acquires assets from the seller and subsequently funds the purchase of those assets through a transaction (e.g., the sale of a note) to either a bank-sponsored ABCP conduit or the bank itself. In these transactions, the bank-sponsor, the bank or their broker-dealer affiliate is actively involved in the structuring of the transaction, and as securitization professionals, are able to determine the level of initial and on-going disclosure necessary to evaluate the risks and complete the transaction. It is not necessary for these investors to require some prescribed form of disclosure as they are able to negotiate their required disclosure directly with the intermediary SPV and underlying seller of assets to the SPV.

Question 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?

CIBC Response:

In addition to the Canada Mortgage Bond and NHA MBS programs (which are CMHC-guaranteed) and covered bonds, we believe that the type of transaction described in the response to Question 35 should be exempt from the disclosure requirements. ABCP conduits and banks are capable of determining the appropriate disclosure requirements with the intermediary SPV and/or underlying seller of assets.

Question 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?

CIBC Response:

We support not having prescribed disclosure for non-short-term securitized products distributed in the exempt market. In our experience, a large portion of exempt term ABS transactions are distributed to a small group (or one) of institutional investors. These investors are typically engaged early in the transaction and have on-going dialogue with the issuer throughout the transaction. If a prescribed form of disclosure is required, there may be increased costs and time on issuers to prepare this information memorandum. We are uncertain if this would result in much offsetting benefits in the form of tighter spreads to compensate the issuer for the increased costs given the sophistication and involvement of the institutional investors in these transactions. From a funding choice perspective, if there is no offsetting spread benefit, the risk is that an increase in costs in these transactions may lead issuers and sellers to look to alternative forms of financing.

Question 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?

CIBC Response:

There are some elements to this approach that we see as potentially problematic, and in some instances, not feasible.

It is important to note that the disclosure and structural features of ABCP programs have developed and evolved over time in response to changing market conditions and investor requirements. ABCP is a short-term security that funds longer term assets. The liquidity risk for this asset-liability mismatch is taken by the liquidity lender, which for the bank-sponsored ABCP programs, is the bank sponsoring the conduit. As a result, there is a vested interest by the sponsor to ensure that the product meets investor requirements so that demand remains robust and this liquidity risk is minimized. Furthermore, because the securities mature on a short-term basis, investors are able to constantly re-evaluate their investment. Conduit sponsors must in turn continuously consider and adjust the sufficiency of their program features and the disclosure provided to investors. If ABCP investors are not satisfied with the features or disclosure, they will choose not to repurchase the ABCP.

During the months following August 2007, there was a substantial shift in the requirements of investors for this product and CIBC made a number of revisions, including:

(a) adding a second independent rating to the ABCP issued by its conduits;
(b) converting the liquidity backstop facilities from the "general market disruption" standard to the "global-style liquidity" standard; and
(c) updating the on-going ABCP disclosure in response to discussions with and feedback received from investors.

The motivation for these changes was largely a spill-over effect from the disruption in the market for non-bank-sponsored ABCP that subsequently formed part of the Montreal Accord, which in turn impacted demand for bank-sponsored ABCP. The increased liquidity risk spurred many of these changes, and following implementation of the revisions set out above, demand quickly returned for the product. We believe this illustrates both the effectiveness of the market participants in responding to changing market circumstances and the sufficiency of current disclosure practices in this market. As such, we do not feel that a prescribed information memorandum requirements (and as discussed in the response to Question 39, prescribed on-going disclosure requirements) are necessary.

Notwithstanding this view, we have reviewed Form 45-107F7 and have the following general comments. The program level information referred to in Items 1, 2, 3, 5, 11, 12, 13, 14 and 15 would not be overly problematic to include in an information memorandum. This information does not does not change frequently and describes some of the key program-related features. The other items in Form 45-107F7 relate to transaction specific disclosures or have transaction specific elements to them. In ABCP conduits, the transactions funded in the conduits change frequently, and potentially, on a daily basis. In addition, existing transactions that have been previously funded will have settlements that will be staggered throughout the month. It is not possible to aggregate and update this information on all transactions on a daily basis, insert it into an updated information memorandum and distribute the updated information memorandum to investors. In addition, if there is an additional certification requirement on the underwriters regarding this information, there will likely need to be third-party verification of this information, adding both time and cost to the process. Even if possible, all of these factors would add substantial costs to administering the conduit, which in turn would be passed on to issuers and sellers in the form of higher program fees.

The CIBC-sponsored ABCP conduits are not match funded. There is no ABCP that is specifically tied to any given transaction in a conduit. Rather, the ABCP is backed by all of the transactions and the cost-of-funds for any given transaction is its proportionate share of the total ABCP outstanding on that day. As a result, the relevant asset information included in the proposed form of Information Memorandum would require updated information for every transaction in that conduit. It is not feasible to update and conduct the necessary independent reviews and diligence on the required transaction level information on a timely basis such that information delivery requirements proposed by the CSA can be met. Updated transaction specific information is provided to investors on a monthly basis through the monthly investor reports. We believe that it is more suitable to disclose this transaction specific information through those monthly investor reports rather than through an information memorandum.

ABCP investors would take a number of items into consideration when making their investment decisions. These would include the identity of the conduit sponsor and its experience in the market, the form of liquidity and the creditworthiness of that liquidity provider, the conduit's investment guidelines, and the conduit's on-going disclosure practices, as well as transaction/asset related information. Although transaction/asset information is a consideration, it is not the primary source of repayment on the maturing ABCP.

The presence of liquidity support differentiates ABCP from public and private term ABS securities. If the ABCP cannot be rolled over with investors, the outstanding ABCP is generally repaid from the liquidity facility. For this reason, investors place a fair degree of emphasis on the sponsor and liquidity backstop for ABCP. Information on liquidity support is available to investors and described in the CIBC-sponsored ABCP conduits' Information Memoranda and monthly investor reports.

For the reasons specified above, we believe that the current level of disclosure is appropriate for the bank-sponsored ABCP market, especially since it was developed to reflect the changing investor requirements resulting from the recent credit crisis. To the extent that the CSA does prescribe some form of Information Memorandum for ABCP, we believe it is critical that the prescribed form contain program level information only, and not transaction specific details. Inclusion of transaction information will be too costly and difficult to disclose in an information memorandum. The costs and challenges in meeting the delivery requirements for updated transaction information in an information memorandum for each sale of ABCP could likely result in the ABCP market being eliminated.

<u>Question 39</u>

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?

CIBC Response:

As mentioned in our response to Question 38, the on-going disclosure provided by the CIBC-sponsored ABCP conduits has been developed in response to increased disclosure requirements from investors and in conjunction with discussions with those investors during the recent credit crisis. The disclosure has been well received and demand for the product has been strong. As a result, we do not believe that mandating a form of disclosure is necessary.

There is an alignment of interest between the sponsor and liquidity provider of the CIBC-sponsored conduits and investors, since CIBC, as liquidity provider wants to ensure that its reporting meets the requirements of investors to minimize any liquidity risk associated with the product. The short-term nature of the product results in investors often having the opportunity to evaluate the disclosure from various ABCP conduit issuers in the market and to request changes to any program. If changes are not made, demand for that paper will likely suffer. The flexibility of this process is an important feature of the market and we are concerned that it may be limited if a prescribed form of on-going disclosure is mandated. As such, we submit that the form of on-going disclosure should not be prescribed.

The proposed Form 45-106F8 appears to be substantially similar to what is already contained in the CIBC-sponsored conduit's monthly investor reports. Our specific comments relate to Items 5(d) and 5(e). Item 5(d), in conjunction with other information required about the seller, may allow market participants to identify the individual sellers in each conduit. We believe this should be limited to investment grade / non-investment grade status only. Item 5(e) does not appear to be applicable for a number of transactions. Ratings are assigned with respect to securities. In a number of transactions in the conduits, the conduit will purchase the assets directly from the seller and fund that transaction by issuing additional ABCP. However, the ABCP is not directly tied to the transaction itself. As a result, the ABCP issued by the conduit may have a rating, but the transaction itself will not have an explicit rating. A no downgrade or ratings confirmation on the ABCP issued by conduit is received from each of the rating agencies which rate the conduit's ABCP prior to each new transaction being added. This, however, is not an explicit rating on the transaction itself, but rather a confirmation of the rating of the ABCP issued by the conduit.

Question 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?

CIBC Response:

For any of the CIBC-sponsored ABCP conduits, we currently provide access to on-going disclosure through a password protected website accessible by investors. As such, we support the proposal to provide access to on-going disclosure via an issuer website. To the extent that a prospective investor requests access to our website, the request is typically granted (subject to execution of a confidentiality agreement, if necessary). As such, we are also not opposed to this requirement.

As these are exempt transactions, we do not believe that this information should be publicly available via SEDAR or the issuer's website on a non-password protected basis. This would blur the distinction between public and exempt transactions and we are unclear what benefits would be obtained. Investors in a specific exempt transaction backed by specific assets are provided with on-going disclosure from the issuer for that transaction. We do not see much benefit in making this information publicly available to individuals that are not investors in those specific securities.

As mentioned in our responses to previous questions, purchases in the exempt market have limited secondary market liquidity and an illiquidity premium is often factored into the pricing for the transaction. Even if this information was publicly available, we do not believe that it would, in itself, improve the secondary market liquidity of these securities. Without making the offering memorandum or other disclosure provided at the time of the initial investment publicly available, the on-going disclosure is unlikely to provide sufficient information to improve secondary market liquidity for those securities.

As a result, we do not believe that the posting of on-going disclosure on SEDAR for exempt securitization transactions is something that should be mandated. However, we would not be opposed to it being available on a voluntary basis. This flexibility, with the trade-off to incremental costs and liability and potential spread concessions, is something that we believe should be determined by the market participants in the exempt transaction. To the extent that an investor and issuer, at the time of purchase, agreed to make the relevant offering materials and on-going disclosure available on SEDAR, this would theoretically improve secondary market liquidity for those products. If investors were willing to offer a price concession for this benefit to make it attractive enough to issuers to compensate for the additional costs, then issuers would be more inclined to pursue this approach. However, if the parties wish to follow current practice and not make that information publicly available (but with a spread premium for secondary market illiquidity), then they should be able to choose that option as well.

Question 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?

CIBC Response:

Yes.

Question 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 for 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?

CIBC Response:

In most provinces, investors currently have the benefit of certain statutory civil remedies against an issuer for misrepresentations in an "offering memorandum" (as defined in securities legislation) but not for other documentation that may be provided to prospective investors in connection with a private placement. The Proposed Rules would extend the principles of prospectus liability to the contents of an "information memorandum" (as required and defined under the Proposed Rules) and would expand the universe of potential defendants under those new remedies beyond the existing liability regime applicable to an offering memorandum to include rights of action against the issuer's sponsor and underwriters. We believe that such an approach is unwarranted and would irreparably damage the private placement market for securitized products.

There is nothing inherently risky about securitized products as an asset class and, in our view, no need for the CSA to create a new civil liability regime that would treat private placements of securitized products differently from private placements of other debt securities and equities. The private placement regime in Canada (and in other jurisdictions) has always been designed to reflect an important underlying premise: prospective investors who satisfy the eligibility criteria for participation in a private placement, and who freely elect to avail themselves of statutory prospectus and registration exemptions, are presumed to have the sophistication and financial wherewithal to make investment decisions without receiving prospectus-level disclosure, prospectus-type civil remedies or close involvement by a registrant who might otherwise vet a proposed investment for suitability. We see no policy or other reason to create an entirely new and product-specific legislative "half-way house" for private placements of securitized products. If the statutory civil rights of action were extended, along with the proposed misrepresentation certification requirements, to underwriters of securitized products offered by private placement, as contemplated by the Proposed Rules, we believe that it would likely result in the demise of the private placement market for securitized products because it would largely eliminate the distinction between public and private offerings. In turn, this would lead to increased transaction costs (which are ultimately passed on to investors, even those sophisticated investors who would otherwise be satisfied with the disclosure and protections afforded under the existing private placement regime) and reduce the viability of private placements as an alternative funding source for issuers, and ultimately, sellers. Applying a higher standard to securitized products may result in a redirection of issuance volumes towards exempt products with lower liability risks or costs associated with them.

Question 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?

CIBC Response:

Our reservations with changes to the statutory civil liability to continuous disclosure for exempt distributions are the same as those expressed in Question 42. We believe that there should be consistency between the statutory civil liability for all products distributed in the exempt market and not greater liability associated with one product (securitized products) only. Additionally, the cost of compliance would revert to levels similar to those experienced for public transactions.

Question 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?

CIBC Response:

We do not believe that 2 day rescission rights should be available in respect of the distribution of short-term securitized products.

Money market instruments, including ABCP, operate on a same-day settlement basis. We are not in favour of creating a separate standard for ABCP compared to other money market instruments. Investors usually look to invest the cash balances in short-term investments. Building in a two day rescission right for ABCP would lead to a two day settlement (or longer depending on the information memorandum content requirements) which would differ from the rest of the money market instruments. Investors would be required to find another place to invest their cash, on a short-term basis, while waiting for their short-term investment in ABCP to settle. This is contrary to how money market instruments in Canada operate and could significantly reduce participation in ABCP.

The key differentiating features between ABCP and term ABS products (and specifically public term ABS transactions where rescission rights are applicable) is that in term ABS products, information about the transaction is only available to investors for a short period of time (marketing period), the asset-specific details are critical to the ultimate repayment of the securities, and the term to maturity on the securities can be several years out. ABCP on the other hand relies less on asset-specific details for repayment and the other features (including the liquidity backstop) of the programs are generally available to investors well in advance of the purchase decision. Additionally, the maturity of ABCP is fairly short providing ample opportunity for investors to re-evaluate their continued investment in the product when their original investment matures (which is typically one month out, although longer tenors are possible). For these reasons, we believe that withdrawal rights should not be applicable for ABCP.

In the non-short-term securitized product market, we do not feel that the withdrawal rights should be any different from those in place for other non-short-term exempt product distributions. In addition, a significant portion of term ABS exempt distributions are to one or a few institutional investors who are actively engaged in evaluating the transaction for a lengthy period of time. As a result of their on-going involvement in the transaction, we do not believe that withdrawal rights are necessary in these transactions.

Question 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?

CIBC Response:

We are not opposed to a closed-system for securitized products. Currently, securitized products distributed on an exempt basis have limited secondary market liquidity in any case and regardless of the 4-month hold period, are unlikely to be traded. Trades that do occur would generally be to other investors fitting under one of the existing prospectus exemptions. As a result, we do not see this as a substantive deviation from current market practice. Subject to our comments on the eligible securitized product investor definition in earlier questions, we do not have any issues restricting resales to those types of investors that were eligible to purchase securitized products in the first place.

Question 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?

CIBC Response:

No.

Question 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?

CIBC Response:

Dealers are required to both "know-your-client" and "know-your-product". We think the onus on meeting these standards should be on the dealers themselves and enforcement should rest with the regulator of those dealers (i.e., IIROC). We do not believe there should be a prescribed restriction on certain dealers from dealing in securitized products beyond the requirements outlined above. Doing so would create a different standard for securitized products compared to other products distributed in the exempt market, and potentially suggest to investors that securitized products are inherently riskier than other products distributed in the exempt market.