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Scotia Capital

August 31, 2011

Mr. John Stevenson, Secretary
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Dear Sirs/Mesdames:

Canadian Securities Administrators Notice and Request for Comments on the Proposed Securitized Products Rules (the Notice)

We appreciate the opportunity to provide the Canadian Securities Administrators (the CSA or you) with our comments on the Notice and Request for Comments on the Proposed Securitized Products Rules (the Proposed Rules)[1] that were published for comment on April 1, 2011.

Scotia Capital Inc. (SCI or we) is a subsidiary of The Bank of Nova Scotia. SCI is registered as an investment dealer and is a member of the Investment Industry Regulatory Organization of Canada (IIROC). In addition, SCI is a member of the Investment Industry Association of Canada (IIAC).

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[1] 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.

In response to the issuance of the Notice, IIAC formed a Securitized Products Working Group (the Working Group). We participated in the Working Group and support the comment letter submitted by IIAC. In addition, we would like to make the following general comments. We have focused our remarks on the proposed rules in respect of exempt market distributions.

General comments

In the Notice, the CSA states that the Proposed Rules set out a new framework for the regulation of securitized products in Canada that has two main features:

- enhanced disclosure requirements for securitized products issued by reporting issuers; and
- new rules that narrow the class of investors who can buy securitized products on a prospectus-exempt basis (in the "exempt market"), and require that issuers of securitized products provide disclosure at the time of distribution, as well as on an on-going basis.

While we strive to provide our clients with the information that they need to make an informed investment decision, in our view the Proposed Rules put too much emphasis on disclosure to the detriment of market efficiency. As a result, we believe that the balance between market efficiency and transparency has been lost.

In our view, the current principles based regulatory framework that applies to securitized products has provided effective regulation in the Canadian marketplace. Moreover, as there is no evidence that securitized products have unique risks when compared to other debt products offered in the Canadian market, it is not clear why a new framework for the regulation of securitized products in Canada is being proposed. We are concerned that both the cost of complying with the proposed disclosure rules and the cost of bearing the proposed statutory risk could severely affect the use of securitization as a funding alternative.

In our view there is no evidence that there is insufficient disclosure on securitized products. A possible explanation for the CSA's disproportionate focus on disclosure (and the related liability) is to address the systemic risk which existed in the U.S. securitized product marketplace and thus safeguard the Canadian marketplace from similar risks. The difficulty with this approach is that regulation that may be appropriate to address the inherent risks involved in the "originate-to-distribute" model which was prevalent in the U.S. mortgage market or in transactions providing synthetic exposure to financial assets, such as collateralized debt obligations (CDOs) is unnecessarily onerous in the Canadian marketplace where these risks aren't prevalent.

We note that in the Canadian securitization market the interests of originators and investors are aligned as Canadian originators generally retain a significant amount of credit risk (i.e., "skin-in-the-game"), either through overcollateralization, subordinated classes of notes or retained excess spread. Moreover, in Canada a significant portion of the securitization market involves direct exposure to conventional or "plain vanilla" asset classes (such as credit card receivables and auto and equipment loans and leases). As a result, we believe that the current principles based regulatory framework would protect investors.

Although the Proposed Rules will increase disclosure and transparency, they will also create barriers for market participants (particularly sellers and issuers) that ultimately could materially and adversely affect the Canadian securitization market. In other words, creating a new regime for regulating securitized products could damage a securities market that is performing well and restrict investor access to securitized products.

Proposed exempt distribution rules

The CSA is proposing new rules that narrow the class of investors who can buy securitized products on a prospectus-exempt basis (in the "exempt market"), and require that issuers of securitized products provide disclosure at the time of distribution, as well as on an on-going basis. We believe that the proposed exemption for an eligible securitized product investor is inappropriate as it imposes an unduly burdensome and restrictive system on the exempt distribution of securitized products that is disproportionate to the risk involved.

What disclosure does the issuer have to provide to the purchaser of a securitized product?
In respect to disclosure, the proposed exemption provides that an exemption from the prospectus requirement is only available if the issuer delivers an information memorandum (IM) on the initial sale of the securitized product. In addition, the CSA is proposing to create a completely novel continuous disclosure regime. We will comment on each proposal separately.

Requirement to provide IM at time of initial sale
We note that currently if an issuer delivers a selling document to a potential purchaser under certain prospectus exemptions, the document is by definition an offering memorandum (OM) and becomes subject to regulatory requirements. However, currently an issuer is not required to deliver a selling document to every prospective securitized product purchaser. As a result, an issuer may create an OM in the context of a marketed transaction but is not required to create an OM in a bespoke or non-marketed transaction. In a bespoke transaction, the transaction would be negotiated between the parties and would be documented as required by the parties. Notes sold to sophisticated investors such as a conduit sponsored by a bank, or a securitization vehicle, do not need a prescribed disclosure document or OM. In other words, under the current rules the level of disclosure is dictated by the needs of the parties or by whether the transaction is marketed or not.

The proposed rules do not distinguish between marketed and non-marketed transactions or the needs of the parties. Instead, a one-size-fits-all solution is proposed. As noted above, the focus is disproportionately on transparency to the detriment of market efficiency.

Arguably, a prescribed selling document may be appropriate when securitized products other than short term debt are sold to a retail investor. However, as noted above, the definition of "eligible securitized product investor" does not include a retail investor. As a result we would contend that the proposal to enhance disclosure at the time of the initial sale would not enhance investor protection as retail investors are no longer included in this market, investors in marketed deals already receive an OM and investors in bespoke transactions receive what they have negotiated.

Requirement to provide continuous disclosure in respect to exempt market purchases
The CSA is proposing to create a completely novel continuous disclosure regime. It is novel both in that currently no continuous disclosure is required in respect to exempt market transactions and that new disclosure documents are being proposed.

Again, we are concerned that a one-size-fits-all solution is being proposed. Again, we are concerned that the balance between transparency and market efficiency has been lost. In our view, the industry already provides the continuous disclosure that purchasers need in order to have confidence in the market. As a result, we do not believe that it is necessary to codify the continuous disclosure requirements.

Conclusion
For the reasons outlined above, we believe that issuers and dealers may find the proposed exempt market distribution rules too onerous. As a result, they may choose to cease offering securitized products in the exempt market. Due to the higher cost of financing in the public market, we do not believe that issuers that currently seek financing in the exempt market would move to the public market. Instead, we believe that they may seek alternate financing vehicles such as medium term notes or bank lending. If issuers exit the exempt market, issuers will have less efficient financing options and investors will have reduced investment options.

Thank you for considering our submission. Should you require any further information, please do not hesitate to call Doug Noe at (416) 945-4060 or Iva Vranic at (416) 863-7101.

Yours truly,

Doug Noe
Managing Director and Head of Securitization and Structured Finance
Scotia Capital Inc.