CANADIAN FINANCE & LEASING ASSOCIATION
ASSOCIATION CANADIENNE DE FINANCEMENT ET DE LOCATION

BY E-MAIL

August 31, 2011

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

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 and Mesdames:

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

Thank you for this opportunity to respond to the questions raised in the request for comments published by the Canadian Securities Administrators ("CSA") on April 1, 2011 in connection with the Proposed Amendments.

In addition to this cover letter, the submission of the Canadian Finance and Leasing Association (CFLA) to the CSA consists of three appendices:

Appendix 1: What is asset-based financing? How is it funded?
Appendix 2: Industry profile of the asset-based financing, equipment & vehicle leasing in Canada
Appendix 3: Profile of the Canadian Finance & Leasing Association and its membership
Appendix 4: Canadian Market Overview 2010-2011
Appendix 5: Responses to the 47 questions posed by the CSA

The asset-based financing and leasing industry is an important provider of financing for hard assets - equipment and vehicles - by Canadian consumers and business customers. The bulk of the industry's funding came from the commercial markets, notably securitization. With the global financial crisis, access to stable funding at reasonable cost has been severely hampered.

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There are no published statistics as to how large the aggregate size of the securitization market involving public offerings, but Dominion Bond Rating Service reported $12.8 billion of rated ABS in June of 2011. This amount was down from $26.5 Billion in December 2008. Of this $12.8 billion, approximately 10% is estimated to be sold to non-institutional investors.

The current global credit environment continues to threaten to reduce available bank credit further reducing the supply of capital. The importance of a well managed securitization market is imperative to sustaining the economic recovery. It is critical that any regulatory changes maintain the confidence of the market without causing a long period of market uncertainty and/or material increases to costs.

Both Appendix 2 (*Industry profile of the asset-based financing, equipment & vehicle leasing in Canada*) and Appendix 4 to this submission (*Canadian Market Overview 2010-2011)* report on recent growth in demand for financing and forecast further growth.

CFLA supports reasonable proportionate regulation where the marketplace need is evident. Disproportionate regulation will simply undermine this industry's capacity to contribute to the growth of the Canadian economy and reduce competition in the marketplace of available financing.

INTRODUCTION

CFLA is a not-for profit business association that represents the interests of the asset-based financing, vehicle and equipment leasing industry in Canada.

The asset-based financing, vehicle and equipment leasing industry is the largest provider of debt financing to consumers and business customers in Canada after the traditional lenders (i.e., the banks and credit unions).

CFLA Members play a key role in the Canadian economy through financing the acquisition of all types of equipment, from passenger vehicles to computers, rail cars, aircraft, buses and large trucks, to construction equipment and cranes, to manufacturing equipment, equipment for the agricultural, petroleum and mining sectors, to office equipment such as photocopiers and communications systems, and medical and dental technology.

According to the most recent survey of the industry (see Appendix 2 *Industry profile of the asset-based financing, equipment & vehicle leasing in Canada* and Appendix 4 *Canadian Market Overview 2010-2011)*, CFLA members were financing assets in Canada exceeding $79,7 billion as at December 31, 2010.

At its peak in 2007, the value of assets financed by the asset-based finance industry had risen to $105.4 billion (up from $50 billion in 1998). But, with the worldwide economic crisis and the collapse of credit markets of 2008-2009, as noted above total assets financed in Canada declined by December 31, 2010 to $79.7 billion. The positive news was that demand is growing with new business at $33.8 billion in 2010.

The drastic and sudden decline of securitization as an available source of capital to our members is a direct cause of the greater than 20% decline in the size of our industryThis industry is capital intensive; capital is its inventory**. Stable and reliable access to capital at a reasonable cost is essential to the capacity of this industry to flow credit to the Canadian economy.**

The negative consequences of the unprecedented disruption in capital markets over the last few years has left finance companies with inadequate funding, causing the exit of foreign industry participants and the sale of a number of independent domestic finance companies to Canadian Banks. Banks were not as dependent on securitization market and were able to take advantage of the vulnerability of the independent finance community. The result is a diminished capacity and a decrease in competition and choice for Canadians.

Once gone, their financing products, services and expertise cannot be easily replaced. By way of example, according to a post-budget presentation prepared by the Department of Finance, $1.125 Trillion of business credit was outstanding in 2007:

Non-equity Financial Markets	$458 Billion	(41%)
Equity	$306 Billion	(27%)
Chartered Banks	$271 Billion	(24%)
Other	$ 90 Billion	(8%)

It is the Non-equity Financial Markets (where most CFLA members can be found) that have been the most severely impacted in the current liquidity crisis. All reports suggest that the banks have increased available credit but it is not possible to expect them to fill the very substantial vacuum left by Non-equity Financial Markets. If liquidity remains constricted, many of those financial service providers will disappear from the Canadian marketplace. Canadian consumers and businesses will be the losers because there will be fewer financial providers and fewer financial product alternatives available.

The loss of available securitization funding for equipment and vehicle finance companies was not caused by the credit performance of the paper originated but by a fear that took over the public market and exposed the unique weakness of the Canadian liquidity provision. Subsequently, it has been demonstrated that public market securitizations originated by CFLA member companies have performed well within expectation of all investors.

This industry has had a long and healthy relationship with public and private market securitizations. **The securitized product generated from leases and loans financed by CFLA members performed extremely well during the most recent recession and investors there is no data which indicates a correlation between practices in our industry and the causes of the global securitization crisis. In addition we are not aware of any significant defaults in securitization involving asset backed securities (ABS) originated by our industry.** Our members feel strongly that existing regulation and business practices adequately protect investors from any risks related to ABS backed by assets originated by CFLA members.

CFLA acknowledges and supports the need for a regulatory structure for Securitized Products that would successfully expose weakness and potential poor performance. We believe that successful regulation should assist in communicating to potential buyers that this product is safe and enhance demand for securitization. It is the opinion of the CFLA that for this type of regulation to be successful it must achieve the goals of the regulator without materially changing the cost of accessing the market, cost of compliance or negatively impact demand for securitized product. Investors in ABS from our industry were and remain well protected from poor quality assets.

One final point of general introduction, federal government policy over the last three decades has sought to expand and diversify the number of financial service providers in the Canadian marketplace. This policy has been based on the view that users of financial services, both individuals and businesses, stand to benefit most if the financial services marketplace:

- Assures an expanding diversity of choice of providers;
- Increases the pool of credit and capital;
- Improves access to credit and capital;
- Ensures access to innovative services and products; and,
- Increases available specialized technical expertise.

Ensuring that a diversity of financial providers exists assures Canadian consumers and businesses of a range of available alternative financing solutions.

This asset-based financing, vehicle and equipment industry plays an important role in assuring that diversity of financing solutions. The important role played by the industry was confirmed by *Asset-based financing,*

investment and economic growth in Canada[1], a 2004 groundbreaking study prepared by The Centre for Spatial Economics. This study found that:

> ***"the rise in asset-based financing from 1992 to 2002 improved living standards in Canada by 2.3% (or about 8% of the 26.8% increase in Canada's living standards over that period).[2]"***

This study was positively peer-reviewed by Jack Mintz, then Professor of Taxation at the Rotman School of Management at the University of Toronto, and the-then CEO of the C.D. Howe Institute, and by Jim Stanford, Economist in the Research Department of the Canadian Auto Workers (CAW).

> *"This unique study overwhelmingly demonstrates the importance of asset-based financing to Canada's economic growth by supporting greater financial product choice and innovation. The industry contributes a disproportionate share to higher living standards that has been experienced during the decade, 1992-2002."*
>
> Dr. Jack Mintz

Commercial investment in machinery, equipment and vehicles directly contributes to labour productivity gains by increasing the amount of productive capital available for workers to use. Enhanced productivity is a critical driver of long-term economic growth. Canadian living standard gains rely primarily on labour productivity growth. Over the last decade, the asset-based financing and leasing industry has financed between 20% and 25% of annual new business investment in machinery, equipment and commercial vehicles. Support from this industry fuels long-term growth and enhances the living standards of all Canadians.

CFLA MEMBER CONSULTATION

CFLA solicited input from its members in making this submission through a variety of interactive forums. Shortly after the Proposed Amendments were released, the CFLA provided its members with a brief summary of the issues and asked its members for feedback to specific questions. The summary was followed by a conference call open to all members to solicit comments and concerns. Following this conference call, an all-day session was held to review each of the questions in detail, determining the impact on the industry and which questions required a response. A first draft submission was prepared and circulated to members for comment at the end of June 2011. The first draft was then modified based on member comments and additional information provided. This submission is a result of that process.

SUMMARY

CFLA supports the concept that some sectors of the financing industry dealing in "securitized products" could benefit from improved regulation. The CFLA is concerned, however, that any additional securities regulations consider not only the uniqueness of the Canadian market but also the different segments of the asset-based financing, vehicle and equipment leasing industry in Canada. Canada has neither had the same history nor does it share the same experience or practice with other jurisdictions. Canada's existing regulatory environment and market discipline make Canada distinct. As described in more detail below, the issues that specifically triggered the credit contraction and related systemic issues in Canada were different than in other global markets.

Appendix 1 to this submission (*What is asset-based financing? How is it funded?*) describes asset-based financing and how it is funded; Appendix 2 (*Industry profile of the asset-based financing, equipment & vehicle leasing in Canada*) describes the types of markets supported by CFLA members; and Appendix 3 (*Profile of the Canadian Finance & Leasing Association and its membership*) describes the participants in the industry. As noted above, Appendix 4 (*Canadian Market Overview 2010-2011)* reports on recent growth in demand for financing and forecasts further growth.

The products of the asset-based financing and leasing industry differ from other securitized products in that there is a direct and transparent path to the underlying asset and the securities offerings are of a size or nature

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[1] *Asset-based financing, investment and economic growth,* The Centre for Spatial Economics, Milton, Ontario, December 15, 2004 http://www.cfla-acfl.ca/files/public/CFLA-Final_Economic_Report-PDF-Dec04.pdf
[2] *Asset-based financing, investment and economic growth* at p. 62

which do not contribute to systemic risk. For years, this industry in Canada has used securitization structures for its various types of financing. The use of these structures permits equipment acquisition to consumer and commercial end-users, on a payment over time basis and to finance equipment dealers in their purchase of floorplan equipment. Absent an active lease and finance industry, many personal and commercial end-users may be unable to obtain the financing required to acquire assets.

CFLA strongly recommends that the CSA be cautious in adopting the United States ("U.S.") approach to regulating securitized products. The U.S. faces different issues than those that exist in Canada. The nature of how U.S. financial institutions are regulated and the influence of the securitization market in the U.S. are significantly different from those in Canada. As described below, the credit crises in the U.S. arose from distinctly different reasons and the structures used in the U.S. were not replicated in Canada.

CFLA stresses that adopting a U.S. approach, with its different underpinnings, may adversely impact a Canadian market that is currently operating in an efficient, relatively low-cost manner. Coupled with this is the possibility that the U.S. approach is a rushed reaction that is bogging down as it enters into the detail of the regulatory process. We urge the CSA to consider its differences, enhance its strengths, deal only with the relative weaknesses which were identified, and learn from problems that are now emerging as the details of the requirements of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the "Dodd-Frank Act") and related regulatory reform are truly beginning to be understood.

CFLA strongly supports the concept of a "Made in Canada" approach. We believe that it is suitable to recognize the existing market discipline which Canadians imposed upon themselves. Financial institutions in Canada were mindful of the risk in securitized products and imposed their own regulatory guidelines based on the assets and credit quality. It is highly desirable to avoid unintended adverse consequences that undue securities regulation can have on liquidity, the available volume of corporate and commercial financing for-end user acquisition of equipment, pricing, entry into the market and the enhancement of increased competition. There is also the potential of stifling innovation. The concern is that regulating for problems that did not exist, in a fragile economic environment and a relatively small economy, can lead to disastrous results, further choking off access to credit for equipment finance in a market which is already suffering from a significant reduction in available funding sources.

As described below, CFLA believes it is important to recognize that there is in fact a matrix of securitized products and investors in the Canadian market. Each of these pose different risks, contributes very differently to the potential for systemic and correlative risk, has different needs and supplies different markets. While CFLA recognizes that it is necessary for Canada to satisfy its fundamental commitments to the G20, including transparency, discipline and access to information, we believe that this can be achieved in a manner that recognizes the uniqueness and fundamental successes of the Canadian market.

We agree that the underlying concept which should be used as the base for the development of securities regulation is the fundamental underpinning of the G20 commitments that investors need to understand the features and risk of the securitized product which they are acquiring.

CFLA respectfully submits, however, that some of the concepts which are being developed in other jurisdictions, primarily in the U.S., do not appropriately enhance the ability to understand the features and risks of securitized products. Asset specific information is not going to assist the majority of investors in securitized products to understand the specific investment, when compiled, pooled and structured. We do not support the view that with this information every investor wants to be, or can be, his, her or its own credit rating agency. By way of comparison, when an equity investor undertakes a transaction, rarely do investors drill down to the day-to-day operations of the company in which they are undertaking the equity investment.

CFLA suggests that an effective approach to securitized product regulation would result in the regulated market:

- promoting continued smooth operation, without intervention, where the securitized products offered are consistent with investors risk profile and performance expectation and the securitized products did not fail in the most recent credit crisis;; and
- providing reduced cost and increased volume.

Matrix Analysis of the Types of Securitized Products and Investors

CFLA believes that there must be specific recognition of different securitized product sectors in the Canadian market – in considering solutions for very different economic markets, a "one size fits all" approach, will not be appropriate.

(a) Types of Securitized Products

CFLA submits that there are two fundamental types of products in the securitized product industry:

- simple pools of direct revenue producing assets with a direct distribution of the revenue generated (referred to in this submission as "Direct Securitized Products") which may include certain limited currency and interest rates swaps. In essence, there are real assets underlying the obligations; and

- two, a more structured, frequently derivative based, complex offering structure removed from the revenue producing asset which are tied to synthetic contracts like leveraged credit default swaps and are subject to significant counter party risk (referred to in this submission as "Synthetic Securitized Products").

(b) Types of Securitized Products Investors

CFLA submits that there are also four types of investors in the securitized product market.

1. A sophisticated institutional investor who participates directly in the securitized product world, pooling and offering similar types of securities (referred to in this submission as "Institutional Participating Accredited Investors"). Often this is a regulated financial institution.
2. An institutional investor who has direct access to sophisticated investment management support well capable of understanding the product and the specific offering presented (referred to in this submission as "Institutional Accredited Investors"). These tend to be large institutional investors such as pension funds, crown or quasi-crown corporations and sovereign funds.
3. An investor who may require certain protections under applicable securities regulation, such as prescribed product attributes, information disclosure, or the assistance of a registrant such as a dealer (referred to in this submission as "Non-Institutional Accredited Investors"). These are typically non-institutional "accredited investors" as defined by National Instrument 45-106 which include the treasury departments of Canadian companies. Non-Institutional Accredited Investors, however, are a very small portion of the investor market for securitized product in Canada, and an even smaller proportion of those are interested in securitized products based upon equipment leased assets.
4. An investor who needs the full protections afforded under securities legislation (referred to in this submission as "Retail Investors"). Retail Investors are generally members of the public.

CFLA supports the principles which have been put forward by the CSA in the Proposed Amendments, but cautions that these be applied in a manner that recognizes the different types of securitized products and investors particularly in those involving Direct Securitized Products.

This matrix of different product and investor profiles needs to be considered when developing the securities regulatory environment. As CFLA's responses to the CSA's 47 questions set out in Appendix 5 to this submission more fully describe, it is submitted that certain quadrants of this matrix should not be changed as contemplated by the Proposed Amendments and/or appropriate exemptions should be provided for the asset-based financing and leasing industry. The CFLA also suggests that certain of the exemptions which are being provided to certain products such as covered bonds be extended to short term ABS products.

CFLA supports the existing policy rationale underpinning the current exempt market for securities in Canada - certain types of products and investors do not require the same regulatory protections under securities laws based upon:

- the nature or type of security being offered;
- an investor's level of sophistication and ability to access and understand information about the securities offered and the business of the issuer; and
- an investor's ability to withstand a potential loss.

CFLA submits that the degree of regulation should vary depending on the nature of the product and the type of investor. The matrix below sets out the different types of securitized products and investors and indicates the level of required investor protection as follows:

- "Low" – means little investor protection is required;
- "Medium" – means some investor protection is required; and
- "High" – means a great deal of investor protection is required.

The matrix sets out what we believe to be the level of required investor protection required for each type of investor described above based on the two types of securitized products – Direct Securitized Products and Synthetic Securitized Products.

	Direct Securitized Products	**Synthetic Securitized Products**
Retail Investors	High	High
Non-Institutional Accredited Investors	Low/Medium	Medium
Institutional Accredited Investors	Low	Low
Institutional Participating Accredited Investors	Low	Low

Based on the foregoing, the CFLA's comments and responses to questions posed by the CSA in connection with the Proposed Amendments are largely focused on Direct Securitized Products that are sold to Non-Institutional Accredited Investors, Institutional Accredited Investors and Institutional Participating Accredited Investors.

Credit Crisis in Canada

The CFLA submits that the recent credit crisis that occurred in the Canadian market was generally not attributed to the asset-based financing and leasing industry. The most recent credit crisis in Canada was a result of the inability to access continued funding for commercial asset-backed paper due to the crisis in general and not due to the performance of the securitized product asset class specifically. **The direct hands-on experience of the equipment leasing operators, and the strength of the investment capabilities of its primary investment base, resulted in a sector which did not experience the credit issues for which securities regulation is widely being touted as a necessary response as contemplated by the Proposed Amendments**.

When reviewing the need for regulation in the securitized product market, it is necessary to understand why the credit crisis in Canada occurred. The failure of the non-bank Asset-backed Commercial Paper (ABCP) market was due to the "General Market Disruption" ("GMD") liquidity protocol. The GMD liquidity is available to cover any "market interruption" in the commercial paper market. The definition of market disruption had been debated by individuals in the industry. When the securitization market first began in Canada, and it was comprised of the six large Canadian banks, the definition of GMD, over simplified was the inability of all six banks being unable to "roll" their commercial paper. With the development of the non-bank ABCP market, however, there was a recognition that this definition needed to evolve and the definition began to change. The definition of GMD was negotiated between ABCP issuers and banks and morphed into different versions such as "50% of banks and 50% of non-banks are unable to issue commercial paper." On August 13, 2007, there was a mass exodus of non-bank ABCP investors due to

fear arising from the subprime mortgage market. When non-bank issuers requested liquidity, the banks determined that this did not constitute a GMD, as banks were still rolling commercial paper.

The crisis was a liquidity crisis and not an asset crisis.

Following the credit crises, there was wide recognition that the GMD liquidity protocol was flawed. In response, Dominion Bond Rating Service ("DBRS") changed its criteria to Global Market Disruption protocols, which now requires an irrevocable draw on liquidity from the banks in the event that commercial paper does not roll for any reason other than credit deterioration of the assets. Since then, most securitization conduits have also adopted at least two ratings, so DBRS no longer has a monopoly on the ABCP market in Canada. Most private securitization deals are longer term to match the maturity of the assets and are not subject to the same liquidity risk experienced by ABCP.

It is CFLA's understanding that the direct securitized products in the Montreal Accord have largely paid out with no losses to investors. MAV 1 and MAV2 Notes are trading closer and closer to par and expected to perform within expected tolerances at maturity. While this remains to be seen, the payment of the notes will prove that the assets underlying were money good, and the ABCP crisis was purely a liquidity issue. Simply, the issue was not an asset failure rather a failure of liquidity.

As described above, the liquidity failure arose principally from the primary liquidity providers refusing to honour the liquidity commitments which had been provided. This refusal was based on the "market disruption" language in the documentation which allegedly limited the provider's obligation to only market disruptions in Canada and not "globally". At the time of the U.S. market disruption, the Canadian Commercial Paper ("CP") market was intact, and when Canadian CP investors cautiously reacted and conduits were unable to roll the CP, the liquidity providers claimed that this did not constitute a Canadian market disruption. As mentioned, this ambiguity in the documentation has been cured by requiring "global-style" liquidity to be provided in the event of market disruptions in Canada as well as other countries throughout the world. This inability to provide liquidity for the commercial paper markets resulted in a sequence of failures, ultimately freezing the commercial paper, and then the bond markets.

Again, this was a failure of liquidity and not a failure of assets.

A consequence of the liquidity failure was a solution that requires bank sponsored ABS to have banks allocate increased internal capital to support securitization activities. Banks have increased pricing to reflect greater capital requirements and greater costs of additional ratings and other enhancement. Bank Sponsored ABCP declined $40 Billion between August 2007 and August 2009.

The Non-Institutional Accredited Investor issues that arose from the failure of the commercial paper market in Canada and the ABCP Montreal Accord programs, was an investor's inability to understand the fundamental product, as to its liquidity features, and not a failure to understand other aspects of the programs. Reference was made in the media that these investors were Retail Investors when in fact, it is our understanding, they were Non-Institutional Accredited Investors including treasury departments of certain companies. **A common complaint which arose was that investors did not understand that if there was a failure of the liquidity provider, then their short term investments would be frozen into a longer term recovery. This was a fundamental failure to understand the specifics of the commercial paper programs and its associated risks, and not a failure to understand the nature of the underlying securitized products.**

Based on the Canadian experience where there was no asset failure, "skin in the game" or prescribed asset based disclosure (initial and ongoing disclosure) in the exempt market will not address any issue that occurred. The failure in Canada was not that the assets were flawed, but that the small commercial paper holder could not cash in. This was a liquidity issue. The real failure was that investors did not understand that what they believed to be a short term, equivalent to cash investment, in fact could end up being a longer term investment if the liquidity support failed. A need for liquidity disclosure has merit, but the liquidity providers are changing in any event and regulation within the financial services sector where qualifying liquidity is to be found, will largely address the issues in a more effective, focused, manner.

Based on the foregoing, the CFLA is of the view that the CSA should not make the suggested changes as contemplated in the Proposed Amendments as they impact the Asset-based Financing and Leasing Industry. The CSA's concerns are best focused on the Synthetic Securitized Products industry and not the asset-based financing and leasing industry. The negative impacts of potential changes would include but not be limited to; increased compliance costs, increased transaction costs with a smaller market of investors and reduced liquidity. These negative consequences would damage an industry that did not breach investor trust and had strong investment performance throughout the recession.

CFLA believes the enhanced disclosure required by reporting issuers, as set out in the Proposed Amendments, are suitable for Retail Investors who require the added protections under securities legislation. The CFLA does not believe the proposed eligible securitized product exemption is required for the asset-based financing and leasing industry and strongly supports retaining the existing prospectus exemption regime for Direct Securitized Products. Additionally, CFLA believes that the imposition of a mandatory form of information memorandum and continuous disclosure requirements for sales of securities in the exempt market is unnecessary and not warranted in the asset-based financing and leasing industry when there was no crisis. We strongly suggest that such an approach would be inappropriate and over-reaching since it would treat all securitized products as if they are the same, which they are not for the reasons discussed above.

Current State

The Canadian market for securitized products is significantly comprised of large institutional investors *(i.e.,* Institutional Participating Accredited Investors and Institutional Accredited Investors (collectively referred to herein as "Institutional Investors")) who hold the securitized assets on their own books. To the extent that investors were not Institutional Investors, the securitized product offering was made pursuant to a prospectus.

Institutional Investors who hold securitized products on their own account are either regulated financial institutions or other types of Institutional Investors. These Institutional Investors have either a dedicated team of internal professionals who are focused on the asset-based financing and leasing industry and the inherent risks or have access to such a team. As noted, during the credit crises no abnormal losses were suffered by this group. With such expertise, these Institutional Investors know what information to request, how to analyze the information including, asset concentrations, default characteristics and over-collateralization requirements. Institutional Investors in the asset-based financing and leasing industry have sufficient knowledge and experience to understand these types of securitized product transactions including, the nature of the assets, the pooling methodology and any other information they require to support the initial investment and subsequent ongoing disclosure requirements as privately negotiated between the parties.

Certain CFLA member companies provide a private securitization product often referred to as bulk funding. The funding sources for bulk funding are very sophisticated investors (insurance companies, Schedule 1 banks). Providers of bulk funding have staff dedicated to evaluating finance companies and their finance paper. In addition to initial due diligence these funding sources track and monitor the portfolio performance of their clients. These transactions have not been rated in the past – the bulk funding providers essentially provide their own ratings and tracking. **These providers are highly sophisticated and continue to fund existing and new transactions.**

The smaller finance companies require continued access to the exempt market. If the Proposed Amendments are adopted as contemplated in their present form, the CFLA submits that costs will become a barrier and competition will be reduced for the smaller ticket program transactions. There are significant costs associated with the information memorandum and the continuous disclosure requirements contemplated for exempt transactions. As the investor is sophisticated and is able to understand the risk, the CFLA submits that there should be no requirement for the information memorandum, as these types of

investors are more than capable of assessing risk based upon the information which they require in purchasing or funding assets on a routine basis and as privately negotiated by sophisticated parties.

CONCLUSION

As described in Appendix 1 to this submission,(*What is asset-based financing? How is it funded?*), the interconnection of the players in the equipment finance market requires a smooth running, efficient, and low cost funding environment. Small regional companies who provide equipment and vehicle acquisition capital to growing Canadian business require funding mechanisms to allow them to have a low cost of funds and a diversification of funding sources. These companies assemble relatively small portfolios that are sold to larger Institutional Investors. If the prospectus and registration exemptions are not available, then these costs will be borne by the small regional finance company raising the cost of funds or eliminating this sector in its entirety. Competition would be reduced, increasing the cost of acquisitions and reducing productivity. To the extent the securitized products are sold outside the exempt market, regulation could enhance transparency for the investor. Care must be taken that the regulation solves the issues that occurred as opposed to regulating a perceived problem.

CFLA firmly believes that the marketplace for securitized products in Canada should be free to develop its own practices in response to the requirements of investors and others. This occurred in the Canadian asset-back commercial paper market, which moved from a single rating and market disruption liquidity format to one that features at least two ratings (and in some cases four) as well as U.S.-style global liquidity facilities. These changes came about as a result of investor demand, rather than being mandated by regulation. This approach has worked particularly well in that part of the exempt market which is the focus of these responses, namely the securitization of motor vehicle and equipment loans and leases. Canadian investors in the related asset-backed securities receive the information they require to make their investment decisions, and their investments have performed well. This aspect of the Canadian securitization marketplace is working well and we do not believe that mandated disclosure is warranted.

Again thank you for this opportunity to respond to submit the comments of the asset-based financing and leasing industry on the Proposed Amendments.

Should you have any questions or require further information, please do not hesitate to contact the undersigned.

Yours very truly,

David Powell
President & Chief Executive Officer

Copy: CFLA Members

Attachments
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CANADIAN FINANCE & LEASING ASSOCIATION
ASSOCIATION CANADIENNE DE FINANCEMENT ET DE LOCATION

Submission to the Canadian Securities Commission

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

Appendix 1

What is asset-based financing?
How is it funded?

August 31, 2011

WHAT IS ASSET-BASED FINANCING?

Asset-based financing is the priority financing of equipment, vehicles and related assets primarily by way of lease, but also by secured loan or conditional sales contract.

The specific assets financed are the principal security for the borrower's unconditional obligation to make payments over the term of the agreement. In this way, users of equipment and vehicles can use the value of the asset as security to finance its acquisition. This form of financing relies on cash-flow-based credit analysis. Because the financing company retains legal ownership of the asset until the lease end, it allows a business or individual to qualify on generated cash flow rather than on a net worth lending formula basis as typically offered by traditional lenders.

The services of the leasing industry are complementary to traditional banking and other financial lending in providing incremental capital to increase the pool of available credit in Canada and provide a vital competitive alternative in the financial services sector.

CFLA members are active in providing corporations and individuals financing for their acquisition of all forms of personal property whether as equipment or inventory. The types of assets financed by the industry is unlimited and range from computers, automobiles to large aircraft. Transaction size also varies from micro ticket transactions in the hundreds of dollars to the hundreds of millions. The type of transaction varies from lease, conditional sales and loan and security arrangements and inventory and receivable finance.

Funding for this industry generally comes from commercial markets, notably from pension funds, insurance companies and banks. In addition, well-capitalised manufacturing and servicing companies with substantial earnings have decided to leverage their own equity base and core competencies rather than using third parties. This has led to many manufacturers establishing their own financing arms or partnering with those who manage it for them.

INDUSTRY PARTICIPANTS

The asset-based finance industry is typified by the interconnection amongst the various participants in the market. The market can best be defined by the roles of the various participants.

1. Originators of Asset Finance Contracts

Originators range from small regional companies, finance arms of product manufacturers to large multi-national banks. Originators either hold the transaction assets on its own books (as in the case of institutional investors) or assign the transaction to third parties. In cases where the originator is a small finance company who holds the transaction assets on its own books, it often obtains debt financing from larger institutions. As will be set out in more detail below, each of these participants while competitors also work together to provide financing to the industry.

2. Vendor Finance

Vendor finance is typified by the seller of equipment arranging financing for its clients. The best known vendor finance is in the automotive industry whereby car dealers arrange through either their own affiliates or third party finance companies the financing of the acquisition of the automotive products. Vendor finance can either be through a referral arrangement whereby the vendor refers the client to a finance source or originates the transaction and then sells the transaction to a third party finance source. While automobiles are the best known assets that used vendor finance, the industry is very broad to include such diverse items as software, green technology, airplanes and all forms of manufacturing, construction and agriculture equipment.

3. Institutional Investors

Institutional investors which include banks, insurance companies, pension funds and governmental branches, either originate transactions in their own right (such as banks) or finance other originators including small vendor finance companies either directly through loans or through the purchase of transaction assets from the originators. Often the financial institutions that provide financing to a third party originator will syndicate the loan to other institutional investors to be held on their own books. The absence of institutional investors being able to finance originators in a timely and cost effective manner would materially adversely impact the asset finance business.

4. Securitization Vehicles

In order to obtain financing for larger pools of assets, special purpose vehicles ("SPVs") are created to purchase asset contracts from originators and then issue notes based on the anticipated cash flow of these contracts. The notes are issued to either the public or other institutional investors. As noted above, the size of the issuance to non-institutional investors is not known but it is estimated to be about 10% of the market.

FUNDING OF THE INDUSTRY

There are no published statistics as to how large the aggregate size of the securitization market involving public offerings, but Dominion Bond Rating Service reported $12.8 billion of rated ABS in June 2011 (see the June 2011 DBRS ABS report on the following pages). This amount was down from $26.5 Billion in December 2008. Of this $12.8 billion, approximately 10% is estimated to be sold to non-institutional investors. The balance of the industry is financed through private transactions whereby institutional investors finance smaller regional players through loans or purchases of transactions. Some non-institutional finance companies keep transactions on their own books but the majority obtain third party finance.

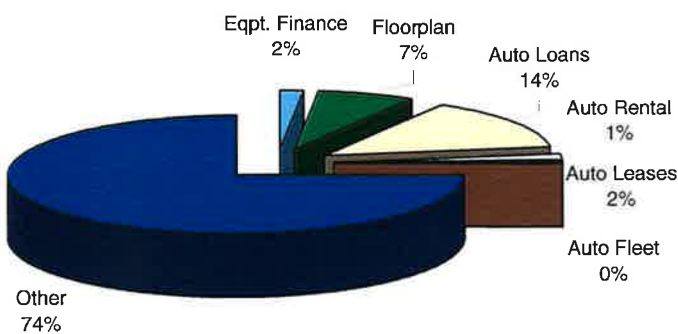
There is a direct interconnection of how the industry is financed. The small regional lease company and vendor finance company obtains liquidity through institutional investors and to a lesser extent, the public. While some of the finance techniques used by the industry are not a form of security (direct loans and purchase transactions) others are (issuance of notes by an SPV and syndicated loans). Larger finance companies use a variety of techniques to fund their operation typically direct and syndicated bank loans, private and public securitization, asset sales and the commercial paper. Due to this interconnection among the participants, regulation that may impact one segment of the market will also impact other segments of the market. By way of example, if a small regional finance company originates a lease and then sells this lease to a third party institutional investor who in turn sells the lease to an SPV, any regulation impacting the SPV will in turn be felt downstream by the small regional finance company. If for instance, there are required forms of disclosure, then the small regional originator needs to implement systems that will allow the SPV to provide the information required under the regulation. The consequence of which is that a small regional company may either be required to implement new technology and procedures or lose a form of liquidity. The small regional company may become either uncompetitive or cease to exist.

On the other end of the asset-based financing and leasing industry is the method that the small regional entities obtain their start-up capital. Typically, institutional investors will not purchase asset contracts until a certain size is obtained (approximately $10-15 million). The small regional entities often look to wealthy sophisticated private individuals to provide their initial capital. These individuals may or may not be directors or officers of the small regional entities but generally they have an intimate knowledge of the entity and the principals behind the entity. The same logic also applies to small vendor finance companies where the entity they are associated with is in the venture or start-up state of growth and the ability to raise capital from larger institutional investors is limited. While this section is small in dollar amounts taken as against the industry, it does provide for the future growth for the industry and from which future leaders are founded. Care must be taken that existing liquidity for this market segment is not so constrained as to eliminate these participants from the market.

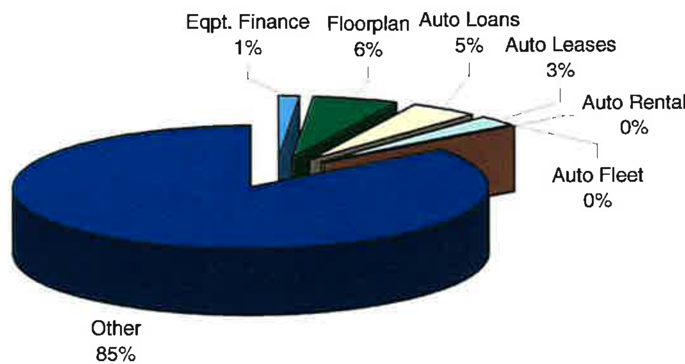
Term ABS Market

Segments	Jun-11	Dec-08
Auto Loans	$4.7 billion	$1.5 billion
Auto Leases	$0.5 billion	$1.0 billion
Equipment Finance	$0.5 billion	$0.5 billion
Floorplan	$2.3 billion	$2.0 billion
Total	**$8.1 billion**	**$5.0 billion**

Term ABS Asset Breakdown (Auto, Equipment and Floorplan)
Total $32.9 billion as at Jun, 2011



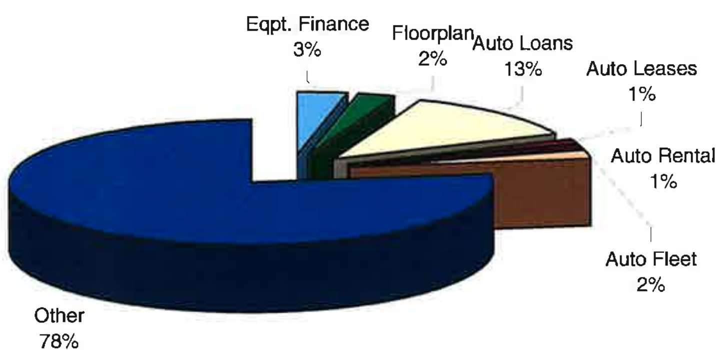
Term ABS Asset Breakdown (Auto, Equipment and Floorplan)
Total $33.5 billion as at Dec, 2008



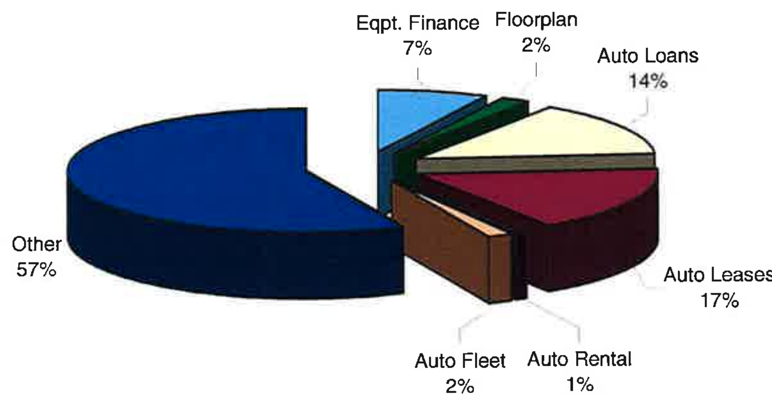
ABCP Market

Segments	Jun-11	Dec-08
Auto Loans	$3.0 billion	$7.6 billion
Auto Leases	$0.3 billion	$9.0 billion
Equipment Finance	$0.8 billion	$3.9 billion
Floorplan	$0.5 billion	$1.1 billion
Total	**$4.7 billion**	**$21.5 billion**

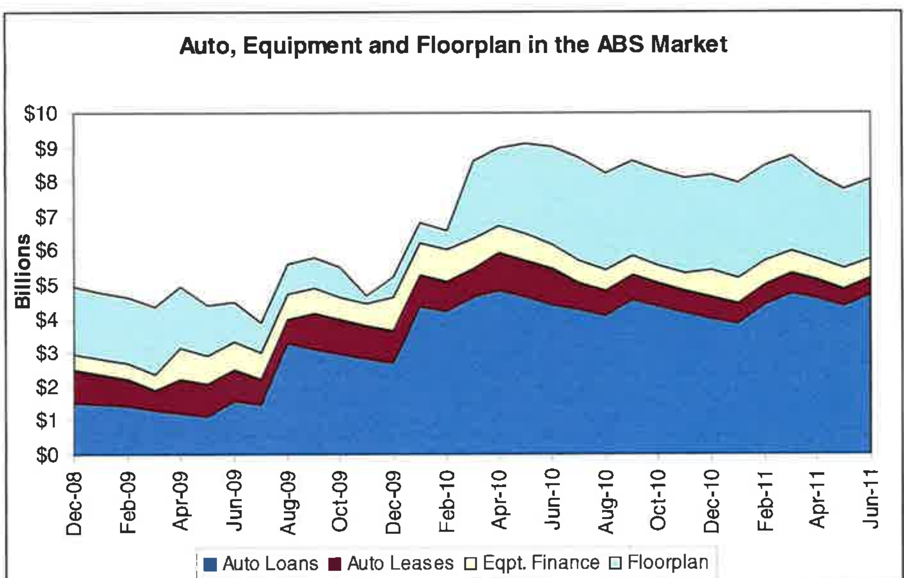
ABCP Asset Breakdown (Auto, Equipment and Floorplan)
Total $23.8 billion as at Jun, 2011

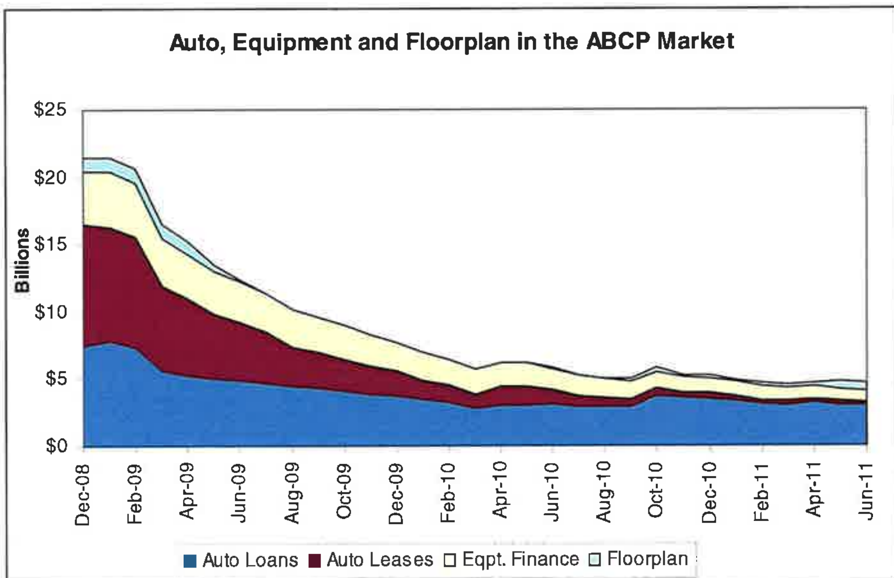


ABCP Asset Breakdown (Auto, Equipment and Floorplan)
Total $52.8 billion as at Dec, 2008



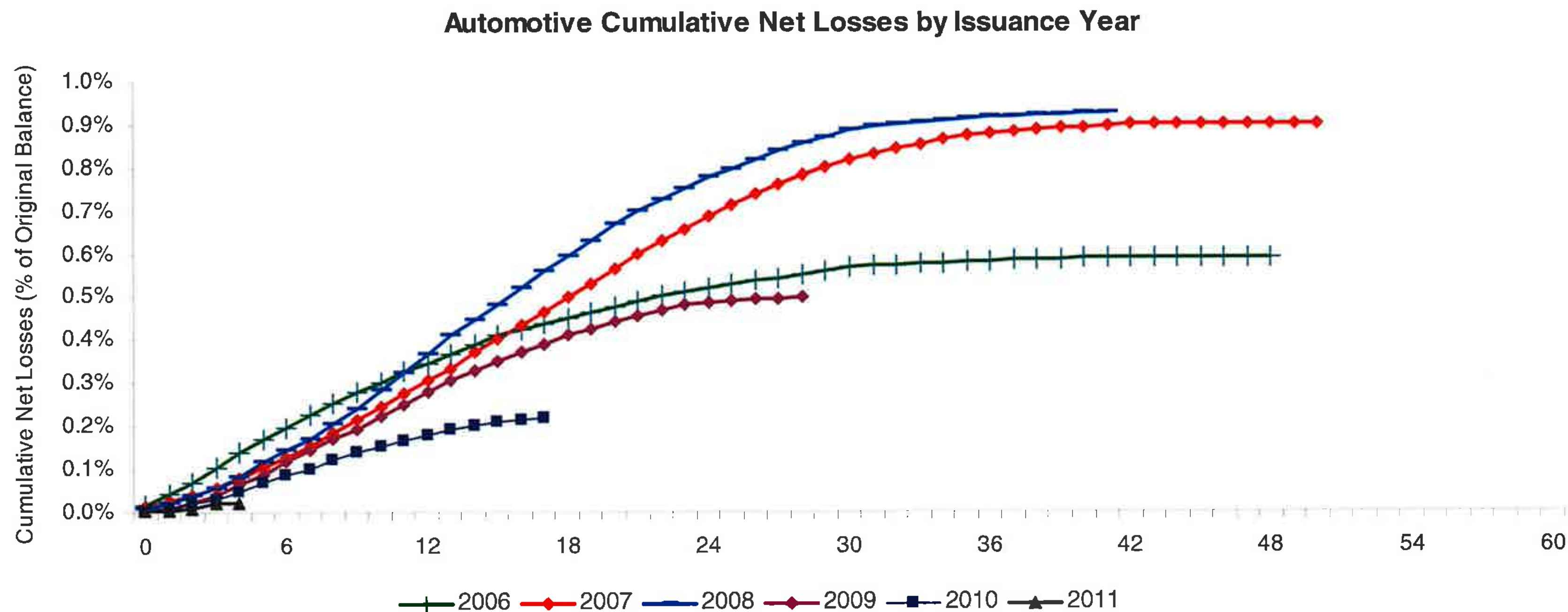
Auto, Equipment and Floorplan Exposures





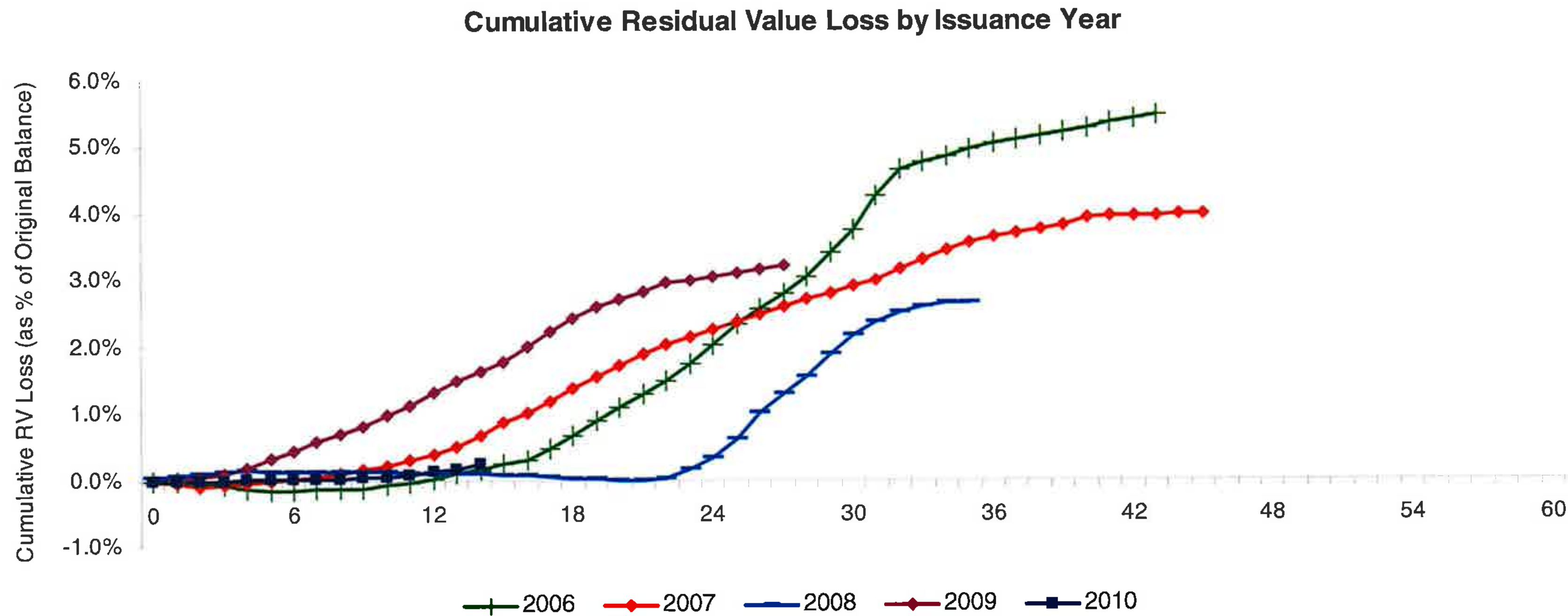
Canadian Credit Loss Performance

Cumulative credit losses for loan and lease pools by year of origination weighted by volume:



Canadian Auto Residual Value Performance

Cumulative residual value performance by year of issuance as a percentage of original pool balance:



CANADIAN FINANCE & LEASING ASSOCIATION
ASSOCIATION CANADIENNE DE FINANCEMENT ET DE LOCATION

Submission to the Canadian Securities Commission

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

Appendix 2

Industry profile of the asset-based financing, equipment & vehicle leasing in Canada

August 31, 2011

The 200 members of the Canadian Finance & Leasing Association (CFLA) are active in the asset-based financing, equipment and vehicle leasing industry in Canada. Members range from large multinationals to national and regional domestic companies, crossing the financial services spectrum from manufacturers' finance companies and independent leasing companies, to banks, insurance companies, and suppliers to the industry.

The asset-based financing and leasing industry is the largest provider of debt financing to business customers and consumers in Canada after the traditional lenders (banks and credit unions).

In 1998, the federal (MacKay) Task Force on the Future of the Canadian Financial Services Sector reported that the assets of the asset-based financing and leasing industry in 1997 totaled $50 billion1[1]. By 2007, the value of assets financed had risen to $105.4 billion. But, with the worldwide economic crisis of 2008-2009, total assets financed in Canada declined to $79.7 billion in 2010.

THE INDUSTRY … AT A GLANCE

According to Statistics Canada, total public and private sector spending on machinery and equipment in 2011 was expected to rise 2.4% to $108.5 billion. Significant capital spending increases from the private sector in manufacturing; transportation and warehousing; arts, entertainment and recreation; and the mining and oil and gas extraction were behind that anticipated increase.[2]

The market size estimates generated based on the *2011 CFLA Survey of Industry Activity* (industry data as at December 31, 2010) indicate that the value of finance assets shrunk 9% from $87.1 billion in 2009 to $79.7 billion while new business rose 11% to $33.8 billion in 2010.[3]

Asset-based Financing Market in Canada

	2010	2009	09-10 %ch
New Business Total ($billions)	**33.8**	**30.4**	**11%**
Commercial Equipment	13.0	10.8	20%
Commercial Vehicles	3.1	2.7	14%
Retail Vehicles	17.8	16.9	5%
Assets ($billions)	**79.7**	**87.1**	**-9%**
Commercial Equipment	31.8	32.2	-1%
Commercial Vehicles	7.0	8.5	-17%
Retail Vehicles	40.9	46.5	-12%

Note: figures may not add perfectly due to rounding

The recovery led to a strong increase in business activity with equipment and commercial vehicles new business growth of 20% and 14% respectively in 2010. Activity in the consumer sector was, however, more modest with retail vehicle leasing sector new business growth of 5% in 2010. Commercial equipment finance assets fell 1% while commercial vehicles fell 17% and retail vehicle finance assets slipped 12% in 2010.

The current market estimates indicate that about 15% of new business equipment purchased in Canada is financed by the industry; up from 13.3% in 2009. This ratio is expected to rise again slightly in 2011. Vehicle leasing made a modest comeback in 2010, recovering to 14.7% of the retail new vehicle market up from 7.1% the year before.

[1] *Report of the Task Force on the Future of the Canadian Financial Services Sector*, September 1998, at page 43
[2] *Private and Public Investment in Canada, Intentions 2011*, Statistics Canada, February 2011
[3] Readers are cautioned that the true market for leasing is larger than these estimates because marine, rail and other equipment that is financed offshore has not been included. These figures do, however, include an estimate from Ascend's CASE database of the value of fixed wing aircraft assets in Canada financed by foreign leasing companies.

Survey respondents' expectations for 2011 are mixed, with equipment lessors new business growing 12% but vehicle lessors sliding 5%. While business may not be 'normal', the industry has survived the financial crisis – albeit with fewer participants – and is poised for renewed growth.

Public and Private Machinery and Equipment Investment Spending

	Millions of Dollars		% Growth	
	2011F	2010	2011F	2010
Canada	108,538	105,948	2.4%	4.7%
Atlantic	6,438	5,528	16.4%	3.9%
Quebec	19,762	18,662	5.9%	0.3%
Ontario	40,788	41,068	-0.7%	7.2%
Manitoba/Saskatchewan	8,702	7,737	12.5%	8.8%
Alberta	20,935	21,834	-4.1%	4.0%
British Columbia	11,297	10,540	7.2%	1.0%

Source: Statistics Canada

Leasing activity by equipment type

The table below highlights the distribution of assets by equipment type for the equipment lessors.

Distribution of Reported Equipment Assets by Type
(excludes independent & manufacturer vehicle lessors)

Equipment Type:	2010	2009
Total Finance Assets ($millions)	17,149	17,363
% change	-1.2%	
Share of Finance Assets:		
Hotels, Restaurants, Apartments	18%	13%
Construction	16%	16%
Automotive Total	15%	15%
Trucks	*8%*	*10%*
Passenger	*1%*	*1%*
Trailers	*5%*	*4%*
Buses	*1%*	*1%*
Office Equipment	8%	9%
Aircraft & Related	7%	8%
Mining & Petroleum	5%	6%
Manufacturing & Processing	5%	6%
Materials Handling	3%	4%
Computers (hardware & software)	3%	3%
Medical, Health Services	3%	3%
Agricultural	3%	2%
Railway Rolling Stock	2%	2%
Forestry	2%	2%
Store Furniture, Fixtures, Equipment	1%	2%
Telecommunications	1%	1%
Office Furniture, Fixtures	0%	0%
Water Vessels	0%	0%
Other	8%	8%

Source: The Centre for Spatial Economics. Note: Total finance assets include all owned and managed loans and leases held by the reporting companies.

THREE DECADES OF FEDERAL POLICY
An efficient and sound financial system assuring a diversity of choice

Federal policy over the last three decades has actively sought to expand and diversify the number of financial service providers in the Canadian marketplace. This policy has been based on the view that users of financial services, both individuals and businesses, stand to benefit most if the financial services marketplace:

- assures an expanding diversity of choice of providers;
- increases the pool of credit and capital;
- improves access to credit and capital;
- ensures access to innovative services and products; and,
- increases available specialized technical expertise.

By ensuring that a wide diversity of financial providers exists to offer Canadian consumers and businesses a range of financing solutions, the asset-based financing, vehicle and equipment industry plays an important role in Canada's financing sector. It has been active in Canada since the 1960s. The fundamental business model is proven effective and in demand by both business and consumer customers.

Impact of the credit crisis

With the current crisis in the credit markets, if liquidity is not restored, many of those financial service providers will disappear from the Canadian marketplace. Once gone, their financing products, services and expertise cannot be easily replaced. By way of example, according to a post-budget presentation prepared by the Department of Finance, $1.125 Trillion of business credit was outstanding in 2007:

Non-equity Financial Markets	$458 Billion	(41%)
Equity	$306 Billion	(27%)
Chartered Banks	$271 Billion	(24%)
Other	$ 90 Billion	(8%)

It is the Non-equity Financial Markets (where most CFLA members can be found) that have been the most severely impacted in the current liquidity crisis. All reports suggest that the banks have increased available credit but it is not possible to expect them to fill the very substantial vacuum left by Non-equity Financial Markets. Canadian consumers and businesses will be the losers because there will be fewer financial providers and fewer financial product alternatives available.

Following extensive lobbying efforts by the CFLA, the Canadian Secured Credit Facility (CSCF) was created in 2009 by the Government of Canada to purchase up to $12 billion of asset-backed securities (ABS) backed by loans and leases on vehicles and equipment. Its objectives were (i) to stimulate economic activity by helping businesses and consumers access financing for these products and (ii) to rebuild confidence in the Canadian ABS market.

The Business Development Bank of Canada (BDC) was assigned responsibility for establishing and managing the CSCF on behalf of the federal government. The program was criticized for primarily serving large companies with smaller leasing companies unable to benefit directly from the program. The program was terminated on March 31, 2010 with about $3.4 billion of the $12 billion of available funds utilized.

Although the CSCF was not widely accessed, it did contribute to establishing a pricing benchmark and thus to the stability of the Canadian ABS market during a challenging period. To address concerns advanced by CFLA over access to funding for smaller finance companies, the 2010 federal budget established the Vehicle and Equipment Finance Partnership (VEFP) program to expand financing options for small- and medium-sized finance and leasing companies. The VEFP is again administered by the BDC and is part of the Business Credit Availability Program (BCAP). Its initial allocation of $500 million is to be disbursed and administered in partnership with experienced lenders and investors in the private market for asset-backed financing.

To date, we understand that, although not yet publicly announced, one or two transactions have been completed under the VEFP.

ASSET-BASED FINANCING, PRODUCTIVITY AND ECONOMIC GROWTH IN CANADA

Asset-based financing, investment and economic growth in Canada[4], a 2004 groundbreaking study prepared by The Centre for Spatial Economics, a respected, independent group of economists who are also retained by the federal Department of Finance, has found that::

> ***"the rise in asset-based financing from 1992 to 2002 improved living standards in Canada by 2.3% (or about 8% of the 26.8% increase in Canada's living standards over that period).[5]"***

This study was positively peer-reviewed by Jack Mintz, then Professor of Taxation at the Rotman School of Management at the University of Toronto, and then CEO of the C.D. Howe Institute, and by Jim Stanford, Economist in the Research Department of the Canadian Auto Workers(CAW).

> *"This unique study overwhelmingly demonstrates the importance of asset-based financing to Canada's economic growth by supporting greater financial product choice and innovation. The industry contributes a disproportionate share to higher living standards that has been experienced during the decade, 1992-2002."*
>
> Dr. Jack Mintz

Key findings

Investment drives productivity – economic research states that machinery and equipment investment directly contributes to labour productivity gains by increasing the amount of productive capital available for workers to use. Research also suggests that machinery and equipment investment is either directly the agent of technological change, or else an important facilitator in the diffusion of new technology.

Productivity raises living standards – in order to boost living standards either labour productivity needs to rise, or people need to work harder, or more people need to become employed, or more people of working age need to enter society relative to total population. Canadian living standard gains rely primarily on labour productivity growth.

Financial system development promotes investment – research conducted by the OECD supports the notion that financial system development promotes capital spending and that countries with weaker financial systems are unable to effectively channel domestic or global savings towards new investment opportunities.

Asset-based financing adds significantly to the financial system – the analysis in this report finds that asset-based financing was responsible for a 2.3% increase in Canada's living standards over the decade 1992 to 2002 (or about 8% of the total increase in Canada's living standards over that decade). Asset-based financing makes a significant positive contribution to increasing national living standards.

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[4] *Asset-based financing, investment and economic growth,* The Centre for Spatial Economics, Milton, Ontario, December 15, 2004 http://www.cfla-acfl.ca/files/public/CFLA-Final_Economic_Report-PDF-Dec04.pdf

[5] *Asset-based financing, investment and economic growth (s*ee footnote #6), at p. 62

CANADIAN FINANCE & LEASING ASSOCIATION
ASSOCIATION CANADIENNE DE FINANCEMENT ET DE LOCATION

Submission to the Canadian Securities Commission

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

Appendix 3

Profile of the Canadian Finance & Leasing Association and its membership

August 31, 2011

ASSOCIATION PROFILE

The Canadian Finance & Leasing Association (CFLA) is the only organization advocating the interests of the asset-based financing, vehicle and equipment leasing industry in Canada. Through CFLA, members are able to influence the shape of the industry's future within the competitive financial services sector.

Established in September 1993 through the merger of the Canadian Automotive Leasing Association (CALA) and the Equipment Lessors Association of Canada (ELAC), the Association has grown from an initial membership of 61 companies to over 200 today.

Members range from large multinationals to national and smaller regional domestic companies, crossing the financial services spectrum from manufacturers' finance companies and independent leasing companies, to banks, insurance companies, and suppliers to the industry.

The Association has four key responsibilities:

- ***Industry Advocacy*** - to key publics including governments, media, other associations in the financial services sector, and the general public.
- ***Professional Education*** – providing member employees with sessions on the basics of asset-based financing and leasing as well as seminars and workshops on specific industry topics.
- ***Member Information*** – providing timely information to members to alert them of changes that may directly impact their businesses.
- ***Networking*** – providing a forum and creating opportunities for industry leaders and their employees to meet, exchange information on issues of common interest, and learn best practices from each other.

CFLA's **annual national conference** (held in the fall) is the leading event of the CFLA calendar bringing together approximately 300 industry leaders. An annual golf tournament is held in Toronto in May.

CFLA publishes online an **annual survey** of the asset-based financing, equipment and vehicle leasing business activity carried on by reporting members.

CFLA's website has become the industry's electronic information resource centre with a growing archive of information focused on the business of asset-based financing and leasing in Canada. The site provides a range of **"member-only"** value added services. Changes in government policy, new legislation and regulation, the latest court decisions, legal, accounting and tax commentaries by CFLA professional members are regularly e-mailed on a timely basis to members located across the country. The delivery of timely information to members is further augmented by the regular CFLA ***eBulletin***, an e-mail newsletter.

The Association also offers an education program called **Canadian Lease Education On-demand** or **"CLEO"** which consists of eleven pre-taped webinars designed to enhance one's general understanding of the asset-based financing, equipment, and vehicle leasing business in Canada.

MEMBERSHIP PROFILE

There are **three classes of membership:** Regular Members, Associate Members and Non-resident Members. *Regular Members* are enterprises in the active business of asset-based financing and leasing. *Associate Members* are enterprises that provide services to the industry (such as law and accounting firms, funders, software developers, auction houses, etc.) *Non-resident Members* are interested in the asset-based financing and leasing industry in Canada but are not resident in this country.

As of June 30, 2011, CFLA had 204 members: 65% were regular members, 33% were associate members and the remaining 2% of membership were non-residents. A list of members of is set out on pages 4-5 of this Appendix.

GOVERNANCE

CFLA is a federal non-profit corporation with its head office located in Toronto, Ontario.

A **Board of Directors**, nominated from the Association membership and elected to serve two-year terms, determines CFLA's policies. It is composed of business leaders representing a cross-section of the industry in terms of market size, area of business and geographical location (The members of the Board of Directors (as of September 22, 2011) is set out on page 3 of this Appendix).

There is an **Executive Committee** composed of a Chairman, Vice-Chairmen, a Secretary-Treasurer with one or more members at large, plus the President. The Executive Committee is appointed by the Board.

COMMITTEES

Much of the active work of the Association is conducted within six volunteer committees:

Accounting
Automotive Finance Working Group
Fleet
Small Ticket Funders
Tax
Education & Program

In their relevant area of expertise, committees:

- are CFLA's radar – being proactive – bringing forward intelligence, issues, challenges and opportunities affecting the industry;
- are CFLA sounding boards – reacting to issues and advising on policy options;
- exchange information, experience and expertise; and
- disseminate information relevant to the industry.

ASSOCIATION STAFF

A full-time professional staff of four people manages the Association.

CFLA Board of Directors 2011-2013

(as of September 22, 2011)

Peter Andrew [3]
Ally Credit Canada Ltd.
Toronto, Ontario

Angela Armstrong [3]
Forest Leasing
Edmonton, Alberta

Jennifer Babe [3]
Miller Thomson LLP
Toronto, Ontario

Larry Baldesarra
Toyota Credit Canada Inc.
Markham, Ontario

Eugene Basolini [1,3]
RCAP Leasing
Burlington, Ontario

Angelo Caglioti [4]
Cisco Systems Capital Canada
Toronto, Ontario

Michael Collins [3]
DealerTrack Canada, Inc.
Mississauga, Ontario

Moe Danis
Pacific & Western Bank of Canada
London, Ontario

Roy Gaysek [4]
ARI Financial Services
Mississauga, Ontario

Jim Halliday [3]
PHH Arval
Mississauga, Ontario

Brad Hart [3]
Manheim Canada
Milton, Ontario

Jeffrey Hartley [1,3]
Foss National Leasing
Thornhill, Ontario

Peter Horan [3]
De Lage Landen Financial Services Canada Inc.
Oakville, Ontario

Steven Hudson
Element Financial Corporation
Toronto, Ontario

Joe Laleggia [2,3]
Roynat Lease Finance
Vancouver, British Columbia

Katherine Lee [4]
GE Capital Canada
Montréal (Québec)

Patrick Lefebvre [3]
VW Credit Canada Inc.
St-Laurent, Québec

Daryl MacLellan [3]
CIT Financial Ltd.
Toronto, Ontario

Serge Mâsse [1,3]
FinTaxi, sec/lp
Anjou (Québec)

Richard McAuliffe [3]
Key Equipment Finance Canada
Burlington, Ontario

Loraine McIntosh [3]
Deloitte & Touche LLP
Toronto, Ontario

Douglas McKenzie [3]
BAL Global Finance Canada Corporation
Toronto, Ontario

Larry Mlynowski [3]
Equirex Leasing Corp.
Oakville, Ontario

Paul Monjanel
Ford Credit Canada Ltd.
Oakville, Ontario

Thomas Edward Pundyk [1,3]
National Leasing
Winnipeg, Manitoba

Dave Ralph
ADD Capital Corp.
Burlington, Ontario

Ron Rubinoff [1,3]
Lease-Win Automotive Group
Toronto, Ontario

Tom Simmons [2,3]
Jim Pattison Lease
Scarborough, Ontario

Hugh Swandel [3]
The Alta Group
Winnipeg, Manitoba

John Tobin
Torys LLP
Toronto, Ontario

[1] Executive Committee Member 2009-11
[2] Former Chairman
[3] Served on the 2009-11 Board of Directors
[4] Appointed to fill a vacancy during the 2009-11 term

Canadian Finance & Leasing Association
Association canadienne de financement et de location

The Members of CFLA ♦ Les membres de l'ACFL
August 2011

3 Step IT, Inc.
Accurate Leasing Ltd.
ADD Capital Corp.
Addison Leasing
ADESA Canada
Admiralty Leasing Inc.
Advant Leasing Limited
Aird & Berlis LLP, Barristers & Solicitors
ALL WEST INSURANCE SERVICES INC
Alliance Inspection Management Canada Inc.
Ally Credit Canada Limited/Ally Cr?dit Canada Limit?
Alta Group
Arbutus Leasing Group
ARI Financial Services Inc.
Asset Appraisal Services, Inc
Asset Inc.
Atticus Financial Group
AutoVin Canada Corp.
BAL Global Finance Canada Corporation
Bank of Montreal
Battrick Business Law
Baylore Acceptance Corporation
BDO Canada LLP
Bennett Jones LLP
Blake, Cassels & Graydon LLP
Blaney McMurtry LLP
Blue Chip Leasing Corporation
BMW Group Financial Services Canada, a Division of BMW Canada Inc.
Bob Leighton & Associates
Bodkin Leasing Corporation
Brome Capital
CAG Vancouver
Cameron Capital Corporation
Canadian Automotive Fleet Magazine
Canadian Black Book (Wm. Ward Publishing Ltd.)
Canadian Dealer Lease Services Inc.
Canadian Equipment Finance & Leasing Inc.
Capmor Financial Services Corp.
CarCap Auto Finance Inc.
Cardel Leasing Limited
Cars on Credit .ca Inc.
Cars4u.com
Casitron Limited
Cassels Brock & Blackwell LLP
CATALYST FINANCE PARTNERS INC.
Caterpillar Financial Services Ltd.
Central Technology Services Corporation
Checker Flag Leasing Inc.
CHP Consulting Ltd.
CIBC World Markets Inc.
Cisco Systems Capital Canada Co.
CIT Financial Ltd.
CLE Canadian Leasing Enterprise - Crédit-Bail Clé
CLI Leasing Corporation
Clubb Finance Corporation
CoActiv Capital Partners Canada Inc.
Coast Capital Equipment Finance LTD
Commercial Leasing Group Inc.
Concentra Financial, Commercial Leasing Services
Constellation Financing Systems Corp.
Corpfinance International Limited
Crelogix Credit Group Inc.
CSI Leasing Canada Ltd.
D&D Leasing
D+H
DataScan Field Services
Davis LLP
De Lage Landen Financial Services Canada Inc.
DealerTrack Canada, Inc.
Dell Financial Services (Canada)
Deloitte & Touche Chartered Accountants LLP
DEUTSCHE LEASING CANADA, CORP
Don Valley North Automotive Inc.
DRIVING FORCE INC.
DSM Leasing Ltd.
EASYLEASE CORP.
Element Financial Corporation
Enable Capital Corporation
Envision Leasing LTD.
A division of First West Credit Union
Equifax Canada
Equirex Leasing Corp.
Essex Capital Leasing Corp.
Eugene E. Macchi Personal Law Corporation
Excel Leasing Inc.
Execucor Financial Limited
Finloc 2000 Inc.
FinTaxi, sec/lp
First Capital Leasing Ltd.
First Union Rail Corporation
Ford Credit Canada Ltd.
Foss National Leasing
FSS Financial Services
GE Capital
General Motors Financial of Canada Ltd.
Globale FC
Gold Key Sales and Lease LTD.
Gowling Lafleur Henderson LLP/s.r.l.
Great American Insurance Company
Greybrook Credit Corporation
Harrison Pensa
Hav-A-Kar Leasing Ltd.
HKMB HUB International
Honda Canada Finance Inc.
Howson Auto Leasing
IndCom Leasing Inc.
Infinity Leasing Inc.

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Jim Pattison Lease
Jim Peplinski's
John Deere Credit - Canada
JPL Vehicle Management Services
Kamsel Leasing Inc.
Key Equipment Finance Canada Ltd.
Knightsbridge Capital Group
KPMG LLP
Kropschot Financial Services, a member of The Alta Group.
Landmark Vehicle Leasing
Lapointe Rosenstien Marchand Melançon S.E.N.C./L.L.P
Lavery, de Billy S.E.N.C.R.L. Avocats
Lease Administration Corporation
Lease Corp Capital Inc.
Lease Link Canada Corp.
Lease-Win Limited
LeaseDirect Canada Corporation
Leasepath.com
LeaseTeam, Inc.
Liftcapital Corporation
Lionhart Capital Ltd.
LMG Finance Inc
London Leasing, division of 3413331 Canada Inc.
M+I Equipment Finance Co.
Manheim Canada
MapelLease Financial Services Ltd.
Maxium Financial Services Inc.
McCarthy Tétrault LLP
McLean & Kerr LLP
Mercedes-Benz Financial Services Canada Corporation
Miller Thomson LLP
Money in Motion Inc.
Morrison Acceptance Corporation
National Leasing
Newroads Automotive Group Ltd o/a New Roads National Leasing
Nexcap Finance Corporation
Nisco National Leasing
Nissan Canada Finance, a Division of Nissan Canada Inc.
North Shore Leasing LTD
Northstar Leasing Corporation
O'Regan's National Leasing
Odessa Technologies Inc.
Ogilvy Renault LLP
Oracle Financing Division
Osler, Hoskin & Harcourt LLP
Pacific and Western Bank of Canada
Patron West
PayNet Inc.
Pfaff Leasing
PHH Arval
Pitney Bowes Global Credit Services
Platinum Asset Services
PNC Equipment Finance, a division of PNC Bank Canada Branch
Polaris Leasing Ltd.
Porsche Financial Services Canada
Power Leasing
PPSA Canada Inc.
Preferred Credit Resources (a subsidiary of) Squaretwo Financial Canada
PricewaterhouseCoopers LLP
Prime Capital Consulting and Forest Leasing (2008) Inc.
QUESTOR FINANCIAL
RBC Equipment Finance Group
RCAP Leasing
Roderick H. McCloy Law Corp/Shapiro Hankinson & Knutson
Roynat Lease Finance
RSM Richter, LLP
Ryzn Enterprise Systems Inc.
Savoie Joubert, g.p.
Scotia Leasing
Scott Capital Group Inc.
Securcor Corporation
Securefact
Shaw Lease & Truck Rentals
Somerville National Leasing & Rentals Ltd.
Sovereign Leasing Corporation
Stonebridge Financial Corporation
Summit-Northlake Canadian Leasing Corp.
Sun Life Financial
TAO Asset Management
Tax Plan Leasing
TD Bank Commercial Finance
Technicost Inc.
The Leasing Group Inc.
TIP Capital
TLS Fleet Management
Torkin Manes LLP
Torys LLP
Toyota Credit Canada Inc.
Trademark Capital Finance Corporation
Travelers Financial Corporation
Tricor Lease & Finance Corporation
Turf Care Financial
Turnford Systems Inc.
Ubequity Specialty Finance Corp
VantageOne Leasing Inc.
Varion Capital Corp.
Vista Credit Corp
Volvo Financial Services
VW Credit Canada Inc.
Wells Fargo Equipment Finance Company
Westport Leasing Corporation
Wheels Leasing Canada Ltd.
White Clarke North America
Williamson Leasing
Wilson Vukelich LLP
WONGA CANADA INC
WS Leasing Ltd.

CANADIAN FINANCE & LEASING ASSOCIATION
ASSOCIATION CANADIENNE DE FINANCEMENT ET DE LOCATION

Submission to the Canadian Securities Commission

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

Appendix 4

Canadian Market Overview 2010-2011

Prepared for CFLA by

The Centre for Spatial Economics
336 Bronte Street South, Unit 221
Milton ON L9T 7W6

August 31, 2011

INTRODUCTION

The asset-based financing industry benefited from the rebound in economic activity. In 2010, equipment lessors new business grew by 20% while vehicle lessors new business rose 6%.

The outlook for 2011 is positive. Growth in investment spending will slow as government stimulus spending ends. Further cuts in government spending to address budget deficits will have a noticeable impact on the economy beginning in 2012. For now, however, lessors are looking forward to another year of growth as public and private spending on machinery and equipment is expected to grow 2.4%.

Prepared for CFLA by *The Centre for Spatial Economics*, this article provides a review of recent trends along with the outlook for and highlights of major directions in the leasing sector.

REVIEW OF RECENT TRENDS

The Canadian economy left the recession behind in 2010, growing 3.2% in the year following the 2.8% decline in 2009. Public and private investment spending grew at double digit rates, export growth rebounded and the household sector put in a solid performance growing 3.3% in the year.

This year's survey of industry activity reveals that equipment lessors demand for financing in 2010 recovered following two years of falling activity. Public and private spending on capital equipment rose 4.7% or $4.7 billion in 2010 to $105.9 billion while equipment lessors new business rose 20% to an estimated $13.0 billion.

The number of new vehicles sold in 2010 rose to 1.56 million units from 1.46 million the year before. Retail vehicle leasing new business rose 5% to $17.8 billion in 2010 while new business for commercial vehicles was stronger rising 14% in 2010 to $3.1 billion.

ECONOMIC AND CAPITAL INVESTMENT OUTLOOK

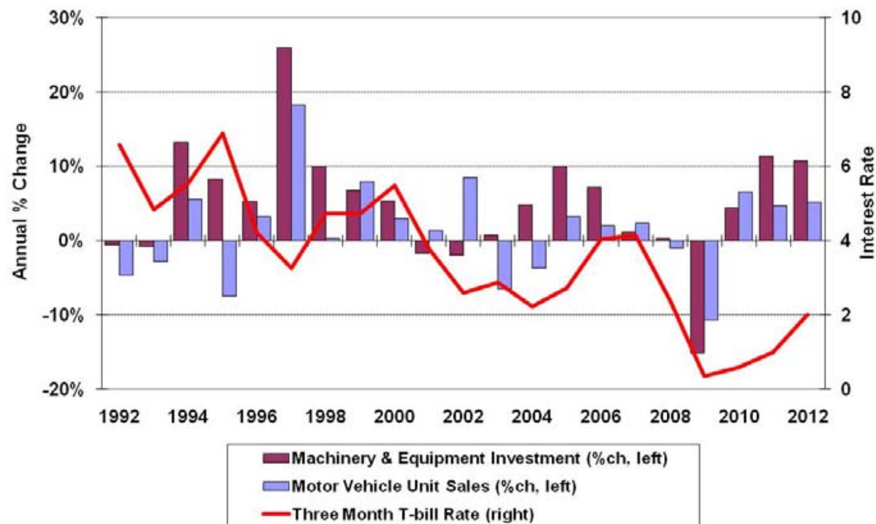
Looking forward, the Canadian economy is expected to grow by 2.9% in 2011 and by a further 2.8% in 2012. Growth across sectors of the economy will be very uneven with nonresidential business investment in structures and machinery and equipment expected to remain very strong this year while residential and government investment are both expected to contract.

Business investment in Canada is expected to rise 11% in 2011 which is a significant improvement on the 4% increase in 2010 and the 15% decline in 2009. Despite the announced end of the recession and record low interest rates, economic uncertainty is encouraging corporations to accumulate cash reserves rather than purchase new equipment. Fiscal austerity in this country is matched with potential fiscal chaos across our trading partners in the U.S. and Europe and the threat of another recession in those markets. High levels of consumer debt leave that sector vulnerable to loss of income from another recession or to the threat of rising interest rates.

Following the ravages of 2009, all provinces experienced positive economic growth in 2010 ranging from a high of 4% in British Columbia to a low of 2.7% in Quebec. Although growth is expected to continue in 2011 it will be a little slower and a little more uneven across the regions. Alberta is expected to lead the country at 4% in 2011 followed by the prairie provinces at 3.3%. Growth will be slowest in the east, with Atlantic Canada growing just 2.3% and Quebec by 2.4%.

The chart shows the C_4SE's forecast for growth in business spending on new machinery and equipment[1] rising 3% in 2011 and another 5% in 2012. The infrastructure projects funded by government stimulus spending are winding down in 2011 and will be replaced with private sector activity in 2012.

1 This data excludes the public sector spending which is included in Statistics Canada's public and private investment intentions data.



The Statistics Canada survey of public and private investment intentions for 2011 anticipates a rise in capital spending over 2010. Public and private spending on new machinery and equipment was expected to rise 2.4% or C$2.6 billion this year following a 4.7% increase in 2010. CFLA survey respondents are, however, significantly more optimistic about new business in 2011, anticipating an increase in new equipment and commercial vehicle leasing business of 11%.

Statistics Canada's survey reported that the private sector is expected to account for nearly 90% of the increase in capital spending in 2010, up from just 60% the year before. In the private sector, spending by manufacturing sector is expected to grow by 15%; transportation and warehousing by 14%; arts, entertainment and recreation by 13%; and in the mining and oil and gas extraction sector by 11% largely powered by the development of several metal ore mining projects and new projects in Alberta's oil sands.

Spending on new machinery and equipment is expected to rise in all provinces but Alberta and Ontario in 2011 led by the provinces in Atlantic Canada and on the Prairies, particularly Saskatchewan and Newfoundland and Labrador which are experiencing strong resource-sector driven investment.

FINANCIAL MARKET DEVELOPMENTS

Low short and long-term interest rates are persisting for most of 2011 reflecting the fragile nature of the economic recovery in North America. Rates will rise - the question is when. The C_4SE expects rates to start rising towards the end of the year and to continue rising over the medium term as the Federal Reserve Board and the Bank of Canada react to stronger economic growth and the threat of rising inflation. Short term rates, as measured by the 3 month treasury bill rate, will still only average 2% in 2012 and the gap between short and long term rates will remain wide as the yield on 10-Year Government of Canada bonds is expected to average 3.4 percent in 2011 and 4.0 percent in 2012.

The Canada-U.S. exchange rate appreciated from $US 0.97 in 2010 to above parity in 2011. The Canadian dollar could continue to strengthen over the next couple of years reflecting the influence of high commodity prices and limited confidence in the performance of the United States economy or it could weaken to reflect its purchasing power parity value which is determined by matching the cost of goods and services bought here versus the cost of purchasing the same commodities in the United States or elsewhere. The C_4SE expects these two forces to roughly offset each other and for the Canadian dollar to gradually depreciate over the next few years. Continued appreciation of the Canadian dollar would slow export growth – and the whole economy – relative to our expectations.

The extensive lobbying efforts of the CFLA led to a series of government programs intended to rebuild confidence in the Canadian ABS market and to stimulate economic activity by helping businesses and consumers access financing. The Government of Canada's support of the ABS market continues through the Vehicle and Equipment Finance Partnership (VEFP) program to expand financing options for small- and medium-sized finance and leasing companies. The VEFP is administered by the federal Business Development Bank of Canada (BDC) and is part of the Business Credit Availability Program (BCAP).

ASSET-BASED FINANCE MARKET IN CANADA

The market size estimates generated based on the 2010 Survey of Industry Activity indicate that the value of finance assets shrunk 9% to $79.7 billion but new business rose 11% to $33.8 billion in 2010.[2]

The recovery led to a strong increase in business activity with equipment and commercial vehicles new business growth of 20% and 14% respectively in 2010. Activity in the consumer sector was, however, more modest with retail vehicle leasing sector new business growth of 5% in 2010. Commercial equipment finance assets fell 1% while commercial vehicles fell 17% and retail vehicle finance assets slipped 12% in 2010.

The current market estimates indicate that about 15% of new business equipment purchased in Canada is financed by the industry; up from 13.3% in 2009. This ratio is expected to rise again slightly in 2011. Vehicle leasing made a modest comeback in 2010, recovering to 14.7% of the retail new vehicle market up from 7.1% the year before.

Asset-based Financing Market in Canada

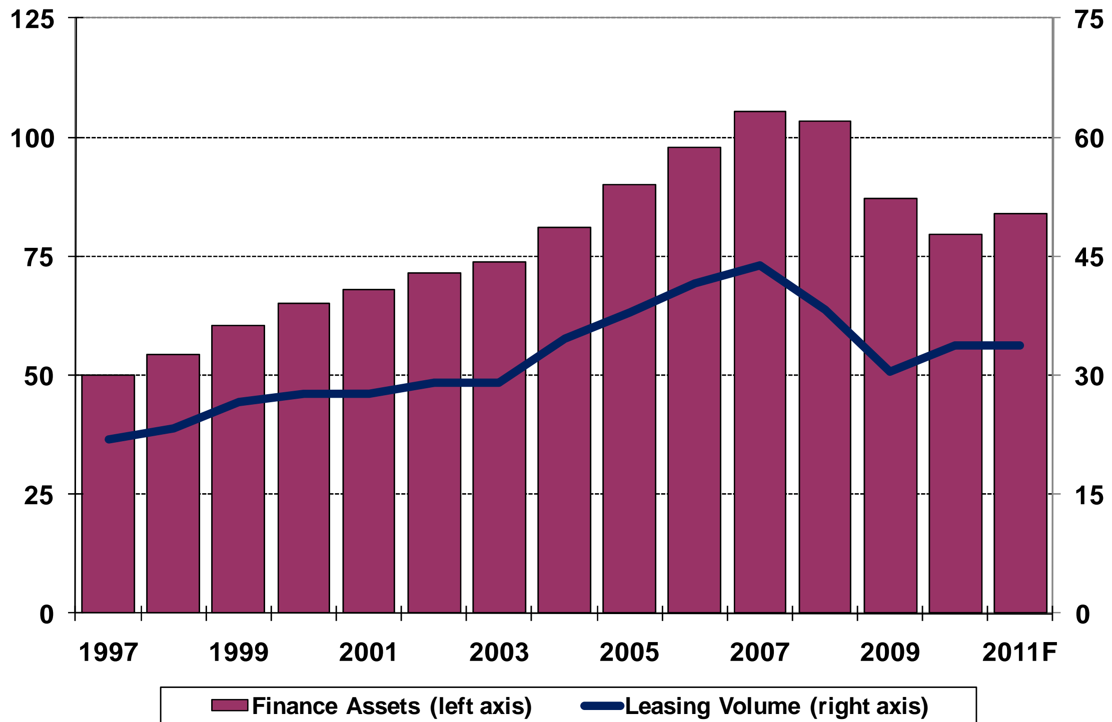
	2010	2009	09-10 %ch
New Business Total ($billions)	**33.8**	**30.4**	**11%**
Commercial Equipment	13.0	10.8	20%
Commercial Vehicles	3.1	2.7	14%
Retail Vehicles	17.8	16.9	5%
Assets ($billions)	**79.7**	**87.1**	**-9%**
Commercial Equipment	31.8	32.2	-1%
Commercial Vehicles	7.0	8.5	-17%
Retail Vehicles	40.9	46.5	-12%

Note: figures may not add perfectly due to rounding

Survey respondents' expectations for 2011 are mixed, with equipment lessors new business growing 12% but vehicle lessors sliding 5%. While business may not be 'normal', the industry has survived the financial crisis – albeit with fewer participants – and is poised for renewed growth.

The following chart provides a summary of the evolution of the industry since 1997. By 2007, the value of assets owned and managed by the industry had more than doubled from the $50 billion in 1997 reported by the federal (MacKay, 1998) Task Force on the Future of the Canadian Financial Services Sector. The value of finance assets in 2010 have continued their slide but are expected to rise again in 2011. New business also stumbled in 2008 and 2009 but growth resumed in 2010.

[2] The reader is cautioned that the true market for leasing is larger than these estimates because marine, rail and other equipment that is financed offshore has not been included. These figures do, however, include an estimate from Ascend's CASE database of the value of fixed wing aircraft assets in Canada financed by foreign leasing companies.



The Centre for Spatial Economics

CANADIAN FINANCE & LEASING ASSOCIATION
ASSOCIATION CANADIENNE DE FINANCEMENT ET DE LOCATION

Submission to the Canadian Securities Administrators

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

Appendix 5

CFLA responses to the 47 questions posed by the CSA

PLEASE NOTE: A number of the capitalized terms contained in this Appendix were defined in the CFLA covering letter accompanying this Appendix, all forming a part of the Association submission.

August 31, 2011

(a) General

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

Response:

As noted in the covering letter forming a part of this submission, CFLA believes that there must be specific recognition of the different types of securitized products sectors in the Canadian market (*i.e.,* those involving Direct Securitized Products and those involving Synthetic Securitized Products). A one size fits all approach, particularly if attempting to adopt solutions for very different economic markets, is not an appropriate approach. The principles should also recognize that there are different types of investors – Institutional Investors, Non-Institutional Accredited Investors and Retail Investors as discussed above under "*Matrix Analysis of the Types of Securitized Products and Investors*". This is consistent with the third principal enunciated by the CSA in the Proposed Amendments which states that the "rules should take into account the particular features of the Canadian securitization market" and be "proportionate to the risks associated with particular types of securitized products available in Canada and should not unduly restrict investor access to securitized products."

Accordingly, CFLA submits that the Proposed Amendments should be focussed on Synthetic Securitized Products and not Direct Securitized Products and the principles should be revised to recognize this important distinction. Just as covered bonds and non-debt securities of mortgage investment entities are carved-out of the Proposed Amendments, we believe that no further securities regulation, other than existing securities regulation, should regulate Direct Securitized Products. These types of products are no different than other indirect offering structures involving real estate or similar types of investment vehicles that provide regular distributions to securityholders and any further regulation, in the absence of any crises in the asset-based financing and leasing industry, is in our view over-regulation, unnecessary, intrusive and will directly impact the viability of this industry in Canada which is a vital part of our economy.

The CSA should also focus on creating a stable evolution of the asset backed market in Canada, provide market participants with time and opportunity to adapt to change without damaging the economics and attractions of the securitized markets. There is significant costs included in establishing a securitization structure and an early termination of existing structures would have a material adverse effect. To the extent that changes are made, it is being recommended that any changes be "grandfathered" in over a period of twenty four to thirty six months.

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?

Response:

The Dodd-Frank requirement that securitizers retain an economic interest in the credit risk of securitized assets arose out of the perception that the "originate-to-sell" model utilized in the U.S. residential mortgage market fostered a misalignment of the interests of securitizers and investors, led to deficient underwriting standards, and eventually resulted in massive defaults in securitized assets and correspondingly massive losses to investors in mortgaged-backed securities. Further, mandated retention requirements do not take into account the particular quality of underlying assets. Some assets will have stronger records than others and retention requirements need to reflect these differences.

It is generally recognized that these phenomena were not reflected in Canada's securitization market. (This response does not address issues relating to asset-backed commercial paper.) Defaults in the assets that back Canadian term securitizations have remained consistently low and to our knowledge, no Canadian asset-backed securities with an original rating by DBRS of triple BBB or higher have suffered any losses.

The imposition of risk retention requirements, particularly in the absence of any demonstrated need, may cause significant harm to the still fragile Canadian securitization marketplace without any compensating benefit. The consequence will be a further reduction of competition. The additional cost to originators and issuers would be passed on to consumers and commercial entities in the form of increased cost of credit, including the cost of otherwise unnecessary revisions to securitization structures and documents that have withstood the pressures of the recent financial crisis. As well, some securitizers, particularly smaller entities, may find it uneconomic to finance and hold capital against any additional retained positions, leading to a reduction in the availability of business and consumer credit across Canada. Investors will also be negatively affected by the reduction in the size and liquidity of the ABS market.

The structures and practices underlying the Canadian securitization market have produced an appropriate alignment between the interests of originators and investors, as shown by the strong performance of both securitized assets and asset-backed securities. When warranted by the nature of particular assets or by investor demand, originators or issuers have retained the type and quantum of risk required by the marketplace, such as through overcollateralization, representations and warranties, the retention (or acquisition by a third party) of a subordinated position, or the retention on balance sheet of assets similar to those being securitized. This aspect of Canadian securitization has not been shown to be deficient and does not need to be “fixed”. The CSA should not dictate the nature of risk retention and instead allow it to take the various forms appropriate to the financed assets and financing structure. In these circumstances, imposing a general risk retention requirement can only harm both the Canadian securitization market and the Canadian economy. In cases where disclosure is required that simply the quantum of the risk retention be set out but there should be no mandate of what this amount should be.

3.	The Dodd-Frank Act amends the Securities Act of 1933 to prohibit sponsors, underwriters or placement agents of securitized products, or affiliates of such entities, from engaging in any transaction that would involve or result in any material conflict of interest with respect to any investor in a sale of securitized products. The prohibition against such activity will apply for one year after the closing date of the sale and provides for certain exceptions that relate to risk mitigating hedging activities intended to enhance liquidity. Should there be a similar prohibition in our rules? If so, what practical conflicts would this rule prevent that are seen in Canada today?

Response:

The Congressional hearings which led to the Dodd-Frank provision that mandates a prohibition of certain material conflicts of interest were clearly concerned about preventing investment bankers or other securitization participants from creating complex asset-backed securities that are designed to fail and then profiting by betting against them. Due to the tremendous volume of assets needed to sustain this method of operation, this practice has not been a feature of the Canadian marketplace and, while CFLA would not be concerned if such practice was expressly prohibited; there is no evidence that this is required now or in the future. More importantly, a general prohibition of conflicts of interest would be both inappropriate and disruptive. Various other inherent conflicts do exist in the Canadian securitization market. They are both generally understood by investors and have not been shown to have resulted in investor losses. Thus, an originator that acts as servicer and that also holds a subordinate interest may have a conflict with the investor in a senior interest as to the manner in which defaulted loans are dealt with. As well, an originator may be the counterparty under hedging arrangements that protect investors against interest or currency risk. CFLA is not aware of any issues that have arisen as a result of these types of conflicts, and prohibiting them would both disrupt and add costs to securitization structures without any practical benefit to investors. While CFLA does not believe these prohibitions should be instituted, the CSA should be cautious that if they do institute these changes that the definitions they utilize are uniform and consistent with other regulatory agencies in Canada and particularly OFSI.

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?

Response:

CFLA does not believe that any benefit would be achieved by requiring material parties in securitization transactions to be independent. The Canadian securitization market is, particularly when compared to its U.S. counterpart, extremely concentrated, with relatively few investment banks, accounting firms, trustees and other market participants. It would be impractical to prohibit a bank's investment dealer affiliate from participating in the underwriting syndicate for the bank's credit card securitization, or to forbid an accounting firm that audits an annual servicer report from supplying other services to the applicable originator. Most participants, such as auditors and underwriters, are currently regulated regarding potential conflicts of interest. Conflict of interests within the Canadian securitization marketplace are understood by its participants, including investors, and CFLA is not aware of any related concerns or complaints.

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?

Response:

CFLA's larger issue with regard to the definition of "securitized product" is not necessarily its clarity, or the elements included, but the fact that the definition is creating a homogenous product and market, out of two entirely different types of products. Asset-based finance, whether using special purpose bankruptcy remote vehicles and pooling concepts, or not, is a relatively simple product, readily susceptible to explanation and understanding. It is quite simply a gathering of assets with revenue producing capabilities, and delivering that revenue stream to its investors in a better structure and has been utilized for almost 30 years. The use of the special purpose vehicle, and the structuring of the securitization, enhances safety for the investor; it does not increase its complexity for understanding or for operation.

As discussed above, a distinction needs to be made as to the type of securitized product. The Synthetic Securitized Products are more complex products and were the source of the issues that racked the U.S. markets and flowed over into the Canadian markets. These are the products where it is difficult, without enhanced information, to understand what underpins the product, and to make appropriate investment decisions. In regulating the securitized products, care must be taken that too wide a net is not cast over standard ABS products.

The definition of securitized products should exclude many types of transactions which do not give rise to the issues and concerns that have been identified as underpinning the requirement for enhanced securities regulation. Direct loans, syndicated and participatory loans among institutional investors based on the security of an issuer against a direct asset, with the issuance of instruments directly deriving the revenue stream from those assets, should not be included with the complex products that generally underlie collateralized debt obligations, synthetics, and similar types of securities.

The purpose for the segregation of securitized products into the two basic types (*i.e.,* Direct Securitized Products and Synthetic Securitized Products) would be to allow better focusing of regulation, and a much broader regulatory intervention in the complex securitized products market, and a much lighter hand, preserving the exempt market, for the simple direct asset backed products.

Notwithstanding the foregoing, CFLA also submits that the current definition of securitized products, as defined in securities legislation that cross references other definitions, does not provide a clear, easy-to-understand definition. For example, in the proposed risk retention exemptions in Dodd-Frank, it is unclear whether "commercial loans" would include loans to corporations for the purpose of financing the acquisition of equipment, which has always been viewed as a separate asset class distinct from products such as CLOs. The ASF has recommended in a comment letter on Dodd-Frank that equipment ABS be specifically defined as a separate asset-class. The CSA should consider providing a clearer definition with various examples in its Companion Policy.

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?

Response:

CFLA has no comment involving the carve-out for covered bonds. CFLA submits, however, that the CSA should carve-out Direct Securitized Products and short term ABS products from the Proposed Amendments for the reasons discussed herein.

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?

Response:

It is not clear why the CSA is distinguishing between non-debt and debt securities of mortgage investment entities ("MIEs"). We acknowledge the CSA has recently published registration guidelines involving MIEs but are not clear what other regulations the CSA proposes will regulate MIEs. Notwithstanding the foregoing, the CFLA submits that the CSA should carve-out Direct Securitized Products and short term ABS products from the Proposed Amendments for the reasons discussed herein.

(b) <u>The Proposed Prospectus Disclosure Rule</u>

Eligibility for the shelf system

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)?

Response:

The CFLA believes that current disclosure regulations are adequate for investors to sufficiently perform their risk analysis. Any additional restrictions would actually be detrimental to investors who have an apparent interest in investing in transactions with longer maturity dates than otherwise possible. Such restrictions would serve to create less liquidity in a market that already suffers from problems of illiquidity.

In Canada, master trusts are commonly used for non-revolving assets with a specified pool of accounts receivable supporting each series of the trust and as such the Reg AB registration would not work.

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?

Response:

CFLA believes that no additional time is needed. Furthermore, the CSA should consider the fact that the longer the time an issue is "in the market", the higher the interest rate exposure taken by the issuer and investors. The current time frame for review allows issuers and investors to take advantage of favourable market conditions. ABS Investors are active market participants that have the ability to request a longer time frame for review in the event that they felt the complexity or novelty of a transaction merited such a longer review period. For many issuers and investors this additional risk would cause undue stress. Any requirement that the supplement be filed with SEDAR would provide competitors with an unfair advantage.

10.	Should the approved rating eligibility criterion for the short form and shelf prospectus systems be replaced with alternative criteria? In the alternative, if the approved rating eligibility criterion is maintained, should the issuer also satisfy one or more additional criteria such as those in the SEC April 2010 Proposals:

Response:

The Canadian ABS market has not experienced major flaws in the rating agency approaches to standard public ABS transactions, and overall, their analysis and capabilities are superior to most individual investors. Even so, Canadian investors have not put undue reliance on ratings as the sole source of risk determination, as was seen in the U.S.

10.(i)	5% vertical slice risk retention;

Response:

As no credit quality problems have existed in the Canadian ABS marketplace, the need for this feature is unnecessary. In addition, the 5% number is not appropriate to apply across all asset types. The vertical slice risk retention feature was proposed in order to address two specific concerns found only in U.S. mortgage-related assets. These concerns: (1) the misalignment of origination incentives when utilizing the "originate-to-sell" model and (2) the misalignment of servicing and collection activities, do not exist in the non-mortgage ABS market and thus, no risk retention is required.

10.(ii)	third party review of repurchase or replacement obligations in connection with alleged breaches of representations and warranties;

Response:

Again, no specifics concerns have arisen, or are likely to arise, in the Canadian market which would justify the need for this regulation.

10.(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?

Response:

Requiring any officer of a company to make a future projection will expose the company, and possibility the individual officer, to undue legal risk, and is unnecessary for Canadian ABS issuance.

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?

Response:

CFLA believes this timing is sufficient.

Pool asset and payment disclosure

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?

Response:

CFLA does not believe that asset or loan level data, or grouped asset disclosure, addresses any of the issues which have faced the securitized product markets, nor the issues which led to investor loss and market failures in connection with the asset-based financing and leasing industry. Investors need to understand the basic concepts of the product, its liquidity, its fundamental risks, the general nature of the assets, and the manner in which the revenue flow will be supported. This is not enhanced by asset level

disclosure and the associated cost and time requirement since asset level disclosure would not provide sufficient additional information to effectively permit an investor to assess the risks. The average investor, while capable of understanding the product and the specifics of an issuance, will simply not have the time to devote to the understanding of the individual underlying assets. The CFLA does not support the view, as in the U.S. under the Dodd-Frank Act, that every investor should be capable of being their own credit rating agency and have access to all data to undertake their own analysis. We believe the only investors who would likely benefit from this additional information are the current exempt market investors who, if they have the time and interest, may be capable of requesting, analyzing and understanding this information from an issuer since they are largely Institutional Investors involved in the asset-based financing and leasing industry. The end result is to generate extensive amounts of data that is meaningless to an unsophisticated investor (the groups that the Proposed Amendments seek to protect). The current information provided to Institutional Investors has been sufficient for their purposes in analyzing risk. Mandated information would only add to costs and complexity without the corresponding benefit.

Further, to require asset or loan level disclosure raises issues with privacy laws as they pertain to the disclosure of personal information. For example, to disclose a specific individual's payment history violates certain laws that do not allow such disclosure. In addition to potential consumer law violations, several issuers, especially captive finance companies, provide financing to corporate borrowers. The terms of these financings are highly negotiated and strictly confidential. Given the small number of obligors in a pool (as compared to a consumer loan backed pool), it may be very easy to identify the borrower and their specific loan terms, especially when the ABS is backed by dealer floorplan loans. Mandating this type of disclosure may force many large ABS equipment and auto issuers to exit the ABS market, rather than disclose such highly competitive data.

From a confidentiality perspective, there is also a risk that it is possible for competitors to re-engineer the credit model that was used to structure the transaction which raises significant business and proprietary issues among issuers and market participants in the asset-based financing and leasing industry. Inherent in a competitive market is the ability for participants to create a model, identify the risk factors and assess them. By eliminating this component, the market will become inefficient and there will be less incentives to keep participants in check.

CFLA believes that asset-level disclosure, or group asset disclosure, is not appropriate for the type of transactions in which its membership is involved - the securitization of automobile and equipment loans and leases. U.S. regulators have proposed such disclosure as a result of complaints from certain investors that they have insufficient information on which to base investment decisions, as well as for the purpose of enabling investors to conduct their own due diligence rather than relying solely on credit ratings. Similar issues are not evident in the Canadian securitization market. Investors have been able, through discussions with originators and through currently required disclosures by issuers, to obtain the information they require with respect to a proposed securitization, and the strong performance of Canadian asset-backed term securities indicates that a lack of information has not been detrimental to investors.

The proposed requirement for additional disclosure of "significant obligor" information is especially troubling for many issuers, especially for dealer floorplan issuers where the number of obligors within a pool is fairly limited and concentrations over 10% are not uncommon. The ABS market (investors, issuers and rating agencies) understands this concentration risk and in most cases, has required additional credit enhancement to compensate for any significant obligor risk. Thus, having to disclose private information about the specific obligor is unnecessary. In addition, the type of information suggested in the proposal is far too broad for any issuer to be in full compliance (e.g., "general character, history and development of its business" and "any adverse financial developments since the date of its most recent financial statements").

Item 6 of Form 41-103F1 requires the issuer to disclose whether any parties with significant functions or responsibilities, or any affiliate of such, has retained a portion of the security. Rarely will the issuer have information about investment portfolios of entities (and their affiliates) such as the trustee, custodian, etc. and would not be able to legally comply with this requirement.

Item 10 of Form 41-103F1 requires the issuer to disclose information about the rating and rating agencies, including if the rating agency "has undertaken an analysis of market risks". Issuers cannot legally disclose (not may be aware of) what actions the rating agencies might have taken in their analysis. Any disclosure about the rating process must be provided by the rating agency.

In summary, mandating loan-level disclosure will result in significant costs to originators and issuers, which costs will be passed on to consumers and/or investors, and will necessarily delay the execution of securitization transactions. As well, making such information in respect to loans and leases generally available would pose privacy concerns and would result in proprietary information becoming available to competitors. These issues could cause a number of originators to decide against pursuing securitization as a financing alternative, thus reducing the amount of credit available to businesses and consumers, all without any discernable benefit to investors. It is for these reasons that CFLA believes that mandating asset-level disclosure is not appropriate in the context of the Canadian securitization marketplace.

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?

Response:

The computer waterfall payment program proposed by the SEC was prompted by a desire to enable investors with a tool to conduct their own due diligence and surveillance with respect to securitized assets. As noted in our response to Question 12, Canadian investors have not indicated that available information, including the required disclosure of the waterfall payments in the documentation, regarding a proposed investment in asset-back securities is insufficient to permit them to make informed investment decisions. Apart from this, the American Securitization Forum, the trade association for the U.S. securitization industry, which counts among its membership both issuers and investors, has concluded that the proposed computer program would cause originators and issuers to incur significant costs and may in any event be impractical or impossible to create given the virtually unlimited number of investor assumptions it would have to accommodate and the unknowable needs of different investors. Concerns have also been expressed that errors or omissions in the computer program may be construed as material misstatements or omissions and result in significant issuer liability under securities legislation. For these reasons, CFLA believes it would be inappropriate to require Canadian issuers to provide a computer waterfall program to investors.

Mandatory review of pool assets

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?

Response:

As has been noted in the CFLA letter contained in this submission, failures in the Canadian market were largely a result of Synthetic Securitized Products encountering liquidity difficulties in the commercial paper market and not a failure of asset quality, pooling or structuring. While one of the causes of the U.S. market failure has been identified as a lack of due diligence, this was not the case in Canada. Quite simply, there was no similar failure in the Canadian market involving the asset-based financing and leasing industry.

The current industry practices are for issuers to review and conduct due diligence in a manner that is sufficient to provide reasonable assurances. We support a general due diligence requirement; however, it is not useful to set specific rules as the due diligence conducted varies by asset class, transactions and

parties involved. Part of the review of due diligence can be implemented by the regulation and oversight of the rating agencies.

The Dodd-Frank requirement that issuers of asset-back securities perform a review of the underlying securitized assets appears to have been prompted by significant defaults in U.S. residential mortgage loans and the related asset-backed securities. The requirement addresses a perception that originators participating in the "originate-to-sell" model cared little about the quality of the assets they originated, that underwriting standards were lax, and that representations and warranties had little teeth. As noted throughout our responses to these Questions, these issues did not arise in the Canadian securitization marketplace. The CFLA believes that it would be inappropriate to mandate rules which do not address any demonstrated failure in the marketplace. The increased cost that would result from compliance with the mandatory review would create an unnecessary burden on a slowly recovering Canadian securitization industry, without any discernible benefits to investors.

Risk factor disclosure

15.	We are not proposing to prescribe risk factor disclosure. Should Form 41-103F1 contain prescribed risk factor disclosure and if so, what disclosure should be prescribed? For example, are there standard risk factors associated with particular underlying asset classes that should always be included in a prospectus?

Response:

The proposed Form 41-103F1 is highly prescriptive in its sections 2 and 3. In proposing to adopt more standardized risk factors, the CSA should enable the specific tailoring of risk factors to the asset class being financed. Specifically, the norms for defining concentrations of obligors, delinquency, pool performance characteristics should be nuanced to the specific asset classes not as currently proposed in the draft of 41-103F1. Examples may better illustrate the complexity created by the current sections 2 and 3.

The CSA proposes to define a “significant obligor” (41-103F1 – item 2) as representing more than 10% of the pool assets, and proposes to attach to that trigger a significant amount of reporting by the issuer on the underlying lessee. In contrast to retail financing, the typical equipment and commercial vehicle financing client is a corporation, municipal or governmental agency where multiple individual leases are created during the course of a working relationship leading to higher concentrations across a pool.

The proposed definition creates two issuer concerns:

a) the proposed reporting triggered by identification of a “significant obligor” requires the issuer to comment on credit quality and history involving the use of input from third parties (e.g. rating agencies and auditors) which it may not be able to verify. In light of the proposed civil liabilities on mis-representation, this adds a significant and asymmetrical burden of risk to the issuer;

b) where the financing is that of a static pool of amortizing leases, the issuer does not have the ability to maintain the relative concentrations of the portfolio, and a “significant obligor” may arise through different lease amortization arising from early lease terminations (e.g. resulting from a corporate restructure) or different asset mix (e.g. longer lived equipment versus passenger cars) which are not within the control of the issuer.

If the issuer in this example is allowed to tailor the definition of concentration, they would likely adopt a more dynamic approach based on the pool of assets. Different pools will have different characteristics which would require different disclosures. For example, where there is a prospective concentration of an underlying obligor equal to or in excess of ten (10)% at inception (and for the duration) of the financing to provide the prospective investor with a disclosure on how the concentration risk is being mitigated within the structure of the transaction would be different than the typical disclosure concentration limits (e.g. top 5 less than X%, top 10 less than Y% in total).

While CFLA supports some conformity to risk disclosure for the reasons set out above, it cannot be fully standardized.

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

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?

Response:

Such requirements would be of little benefit to the investor as it may not necessarily relate to the specific transaction and will create an additional burden on the issuer to prepare such data and on the investor to review such data that ultimately will not be relevant to the transaction..

Registration

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?

Response:

CFLA represents asset finance companies of varying scale. CFLA members support the acquisition of equipment required for the effective functioning of the Canadian economy, across a broad class of industries. CFLA members provide lease financing into essentially all consumer and industrial sectors. Cost effective execution necessitates rapid and cost effective access to funding.

As described in Appendix 1 to this submission (*What is asset-based financing? How is it funded?*), there is significant interconnection amongst the participants. Smaller finance companies pool assets on a regular basis to be funded by larger sophisticated Institutional Investors. The size of the pools and the timing is dependent on the needs of the smaller finance company and the operation of the larger entity. As the smaller company grows the number and size of the transaction increases in order for the smaller company to maintain its liquidity. These transactions are done on a repeated and continuous basis with the time-frames ranging from once a week to once a quarter.

It would add no value to the system, and not reduce risks, to introduce registration requirements for finance and leasing companies who engage in these types of activities; these activities do not involve the direct issuance of larger scale securitized product offerings to the general public, and rarely if ever involve larger scale retail offerings. It would not add any safety or soundness to the financial system to require registration for the persons acting on behalf of these finance and leasing companies as they seek financing by pool sale or pool financing. We therefore suggest that registration exemptions extend to finance and leasing companies, and the employees and representatives of the finance and leasing companies, who do not engage in the public solicitation of retail investment in the securitized products which they offer, primarily to regulated financial institutions.

(c) The Proposed CD Rule and Proposed Certification Amendments

Interaction with NI 51-102

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?

Response:

CFLA does not believe that the costs associated with preparing and filing audited financial statements of a special purpose vehicle issuer provides any value as to information provided to the investors. In

circumstances where disclosure is prescribed for reporting issuers, information is better provided tailored to the risks of the investment, and the structure of the product offered. Securitized products, particularly in the format most frequently used by CFLA members, is designed to reduce risks, not to add risk to the product, the investor, or the system. Much of the simplified structuring of the types of products used by CFLA members is to isolate the pool of revenue producing assets away from extraneous risks such as operating expenses, and to have limited, if any, risk added as counterparty or correlative risk as a consequence of credit support and liquidity enhancement features. Where these features are included in the product structuring, these can better be explained in general disclosure, and risk factors, than by the addition of audited financial statements whose notes are generally of limited explanatory value for the issues which should be of concern. Audited financial statements do not provide meaningful information to investors of securitized products who are generally concerned about cash flow and securitized pool performance, not the accounting principles applied in audited financial statements. Needless to say, there would also be additional costs associated with the audit that would increase of cost of funds and reduce productivity. In addition, to the extent that there is a requirement to file financial statements, the time period should be expanded from the 15 day proposed time period to an expanded 15-20 business days. This also applies to the suggested time period in Question 19.

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

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?

Response:

As noted in the response to question 18, the disclosure requirements should not apply to those products which are offered under a fully exempt basis, given the ability of such participants to have access to information and the ability to understand such information. If the Proposed Amendments are changed to reflect this, it is irrelevant whether there is a “grandfathering” or transitional provision if the disclosure rules (initial and continuous) apply only to reporting issuers that issued under a prospectus requirement. The choice of whether existing transactions are grandfathered should be the choice of the reporting issuer.

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

Response:

As has been indicated previously, CFLA is not of the view that asset level disclosure is of any assistance to the investor. For the reasons noted previously, description of pool composition and methodology, together with appropriately enunciated risk factors, where merited, provides, in our view, far better and more focused disclosure of the matters which should be of concern to the investor. If this is the case, then continuous disclosure and detailed pool composition, provides no value to the investor. Continuous disclosure should be confined to exception and pool performance reporting, no differently than the reporting which is required of reporting issuers in any other sector. Once pool level disclosure is understood to provide the most effective informational base for investors, there is no need for continuous disclosure that differs from the requirements of the general markets. Modified continuous disclosure would only have merit where asset level disclosure has been mandated.

The CSA should maintain a solid separation between the two modes of issuance. Two perspectives: Firstly, ABS issues are defined by unique asset pools, cash flows and maturities. Several financings may share the same issuer name, but the securitized debt is non recourse in nature. Consequently, the same issuer is unlikely to have issued the same “debt profile” financing in the two different markets. Secondly,

the financings are further differentiated by their various terms and conditions, including levels of disclosure, as negotiated at the outset of the transaction. The negotiated terms typically result in pricing differentials for execution in the respective markets. It seems that the subsequent holder gains the power to change the terms of a transaction unilaterally based on an option they have created for themselves by purchasing a similar transaction elsewhere. Were this rule as proposed to come into force, the market would anticipate the higher level of disclosure at the outset with the net impact of raising operational cost for the issuer in the exempt market.

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

Response:

CFLA agrees there should be a legending or notice requirement to explain the resale restrictions for securitized products that have been distributed on an exempt basis if the CSA adopts the eligible securitized product exemption and this is the only exemption pursuant to which these securities can be traded. However, we also believe that the CSA should take into consideration the fact that most ABS utilize a book-entry system, and the cost implications of requiring legending.

Timely disclosure

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?

Response:

Schedule B of 51-106F2, item 5 requires reporting on several items which are not considered as "standard" in the industry and would cause a financial burden on issuers to provide. These include (g), (h) and (j). In addition the timing requirement for the entire section is two days after the event occurrence, which should be changed to three to five business days after the issuer is aware of the event. Two business days does not provide the issuer sufficient time to react.

Overriding these concerns, however, is CFLA's belief that the CSA is substituting a significant event report for a material change report. There are obviously differences in these disclosure regimes where the former is based on a U.S. Form 8-K approach while the later involves a qualitative assessment of materiality. CFLA believes the CSA should allow all reporting issuers to deal with material changes based on current practices, interpretations and experiences among Canadian reporting issuers and if there is an impetus to substitute the requirement to provide material change reports for a Canadian version of a U.S. Form 8-K, this be done outside of the Proposed Amendments in a manner that deals with this involving all reporting issuers.

Statutory Civil Liability

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?

Response:

CFLA submits that the new documents required to be filed under the Proposed CD Rule should not be prescribed as core documents for secondary market civil liability under securities legislation. Although these rules only apply to responsible issuers (which includes reporting issuers) and not private issuers, the CFLA submits that the imposition of this type of liability is not addressing any market failure which has occurred in the asset-based financing and leasing industry in Canada, and will unnecessarily add to the costs of compliance that outweigh the benefit to investors.

Certification

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?

Response:

No comment.

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?

Response:
No comment.

Report of fulfilled and unfulfilled repurchase/replacement requests

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.

Response:

CFLA believes that this has not been an issue in Canada and thus, no regulatory changes are necessary.

(d) The Proposed Exempt Distribution Rules

General approach

27.	We are proposing a new Securitized Product Exemption which focuses on a specific product that has unique features and risks. Is this product-centred approach appropriate? Should we instead be focusing on reforming the exempt market as a whole?

Response:

CFLA strongly supports maintaining the status quo and not the product-centered approach contemplated by the Proposed Amendments. There are certain fundamental issues that affect the exempt market as a whole that are not specific to securitized products. A piece-meal approach will lead to ad hoc decisions and lead to differences what should be considered by all stakeholders in the exempt market.

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

Response:

CFLA strongly supports the view that Direct Securitized Products should continue to be sold in the exempt market. Much of the securitized product which is used by the equipment finance industry is a very basic, simply understood, often small scale products. It involves the flow of revenue produced from identified pools of assets into the hands of investors on a structured basis.

The fundamentals of a simple Direct Securitized Product are to isolate the stream of revenue and the related assets from extraneous risks, liabilities and obligations which could attack the asset and the revenue stream which is to flow to the investor. Securitization by diversifying risk amongst a pool of assets as opposed to a single asset simply lowers risk; this should be recognized. Simple direct asset backed investment product is readily understood, readily explained, and is frequently issued into the market without the need for complicated credit enhancements. As noted previously the primary failure of the market in Canada was a failure of liquidity not assets.

Quite simply, CFLA is of the view that the exempt market has not failed; it provides a valuable source of funding to Canada's primary economic engine, consumer consumption and smaller commercial enterprise. Restricting ABS from being sold in the exempt market would cause severe restrictions on availability of credit, and would fundamentally raise the ABS market to a stricter, unprecedented issuance standard. The ability to access the exempt market is an essential right of both issuers and investors under our capital system, and to impair that basic ideal could have far-reaching, unintended implications.

Who can buy

29.	We are proposing to remove a number of existing prospectus exemptions through which securitized products can be sold. Should we permit securitized products to continue to be sold through some existing exemptions and if so, which exemptions?

Response:

All existing exemptions should remain for issuers who offer Direct Securitized Products.

The asset-based financing and leasing industry in Canada is generally dominated by smaller players who initially pool, finance, and provide equipment to their end-user customers. As pools accumulate, the smaller player turns to the larger players. The industry has been effective largely as a consequence of the ease of entry, regular competition and effective pricing available for even the smallest of the players. Access to the market by the investors who permit start-up funding is needed to continue to have the market operate in an efficient and dynamic manner. As a consequence the prospectus exemptions which are built around smaller entrants to the market, and initial funding for start-up operations should be retained.

Investments in securities of start-up private issuers of securitized products to accredited investment, family, friends and business associates, investment club basis is no riskier and no different than investments made in the debt and/or equity securities of any start-up venture issuer or smaller equity player. There has been no market failure which dictates a need to restrict access of the smaller equipment leasing companies to its needed start-up capital. Accordingly, exemptions built around start-up, and entry, should be retained. This should also include trades to employees, executive officers, directors and consultants since the issuance of these types of securities can be a valuable tool as payment for past services or as part of a compensation arrangement.

In addition, larger issuers utilize the exempt market when they have a need for confidentiality of non-public information or extensive data is not available. The ability to negotiate a transaction directly with investors, who take these factors into account when evaluating the issue, provides an essential resource for funding.

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.

Response:

CFLA does not believe that the CSA should create the proposed Securitized Product Exemption in section 2.44 for Direct Securitized Products. We do not believe this is necessary nor as previously stated required to address any crisis in the market involving Direct Securitized Products in Canada. Although many investors in Direct Securitized Products in Canada are Institutional Investors, CFLA strongly believes that any change to the current prospectus exemptions (including the accredited investor exemption, offering memorandum exemption and $150,000 minimum investment exemption) would stifle start-up entities in the Direct Securitized Products industry. CFLA continues to support Retail Investors purchasing Direct Securitized Products from dealer registrants in connection with prospectus offerings.

<table>
<tr><td>31.</td><td>If our proposed approach to restrict access to securitized products to “highly-sophisticated” investors is appropriate, is the proposed list of eligible securitized product investors the right one? If not, how should it be modified? In particular, we would appreciate feedback on the following:

A. Expanded list of who would qualify as an eligible securitized product investor

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?</td></tr>
</table>

Response:

CFLA submits that the CSA’s proposed approach to restrict access to securitized products to “highly-sophisticated” investors is not appropriate for the reasons discuss below.

As noted above, CFLA submits that the market failures, if any, in Canada, were not asset failures. The failure in Canada was a failure of investors to recognize that short term, AAA rated, commercial paper, issued to investors without direct access to assets, on a complex structured basis, using liquidity support from a narrow pool of liquidity providers, could freeze up leaving them holding the investment for a longer period of time than their cash needs might dictate. This was essentially the failure in Canada. This arose as a consequence of extreme correlation in the liquidity providers, on a global basis, which resulted in the necessity of those liquidity providers refusing to honour their obligations or face financial failure on their own part. This was a fundamental underpinning to any failures in the Canadian market.

This is better resolved by an approach of better disclosure where complex securitized products dependent upon the supporting derivative products are being offered, which is rarely the case in the asset-based financing and leasing industry in Canada.

As set out in its covering letter, CFLA believes that the securitized products market should be divided into two types or classes - Direct Securitized Products and Synthetic Securitized Products. If the securitized product market is divided, recognizing these two types of products, then the exempt market should remain open to a much broader range of individuals. Many individuals can fairly readily understand the explanation of a simple direct asset based securitization product. The complex Synthetic Securitized Products market may necessarily be further restricted to ensure true sophistication in the development and understanding of the product.

Direct Securitized Products are no more complex to understand than the securities of a typical corporation. Therefore, all existing prospectus exemptions should remain available for sales of Direct Securitized Products. There was no market failure involving Direct Securitized Products which indicates there is no need to change this aspect of the exempt market.

32. We continue to consider other possible prospectus exemptions for securitized products, along with appropriate conditions to such prospectus exemptions. We would appreciate your feedback on the following possible exemptions and conditions, and whether they should be in lieu of, or in addition to, the proposed Securitized Product Exemption:

A. Enhanced accredited investor or minimum amount investment prospectus exemption

Should we maintain availability of the accredited investor and minimum investment amount prospectus exemptions? Should their continued availability require additional conditions and if so, what should those be? For example, should we require either or both of the following additional conditions:

(a) the issuer must provide an information memorandum and possibly ongoing disclosure; and
(b) the investor must buy the securitized product from a registrant?

B. Minimum amount investment prospectus exemption specifically for securitized products

Should we have a prospectus exemption that would permit an investor to purchase securitized products provided the minimum amount invested is relatively high? If so, what would be an appropriate minimum amount threshold?

C. Specified ABCP prospectus exemption

Should investors who are neither eligible securitized product investors nor accredited investors be permitted to invest in ABCP provided certain risk-mitigating conditions are met? If so, what conditions should we impose on these distributions? Would ABCP that satisfies the following conditions be appropriate for non-accredited investors:

- the ABCP has received a minimum of two prescribed credit ratings;
- the ABCP is backed by a committed global-style liquidity facility that represents at least 100% of the outstanding face value of the ABCP and is provided by an entity with a minimum prescribed credit rating;
- the sponsor is federally or provincially regulated and has a minimum prescribed credit rating;
- the ABCP does not have direct or indirect actual or potential exposure to highly structured products such as collateralized debt obligations or credit derivatives (except for obtaining asset-specific protection for the ABCP program);
- the ABCP program does not use leveraged credit derivatives that could subject the program to collateral calls; and
- the issuer must provide an information memorandum and ongoing disclosure?

If the ABCP satisfies the above conditions, should we also require that an investor, or certain types of investors (for example, a “retail” investor) must buy the securitized product from a registrant? If so, what types of investors would benefit from this requirement?

Response:

Through enhanced discussion earlier, without repetition, CFLA responds to the specific questions raised in #32 as follows.

For accredited investors, or the $150,000 minimum investment amount, CFLA believes that this type of exempt offering could be made without the requirement of an information memorandum, continuous disclosure, registrant intervention for Direct Securitized Product. CFLA also, however, has not identified significant participation in the equipment lease finance market by retail investors of this type, with the potential exception of the smaller investment pools operating in western Canada, and does not believe that the imposition of these types of requirements would be a significant reduction in access or increase in pricing of financing in the equipment lease finance markets. If an information memorandum is to be required, then the concerns expressed previously as to the level and nature of disclosure needs to be taken into account. The use of a registrant could assist in ensuring dictated levels of disclosure as to product aspects.

Minimum amount of investment exemptions, does not address any of the specific issues which are identified for this market. If minimum investment exemptions are to remain, these should be no different than any other investment as and investment in much of the securitized product market is no different than the investment in equities, often in a smaller scale or start up enterprises which is the hallmark of the exempt market.

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

Response:

ABCP supported with specified risk mitigating aspects, can be a suitable investment. This is given with the caveat that there needs to be very clear disclosure of the basis upon which the ABCP may not function as an equivalent to money, which was the belief of many investors, or at least the espoused belief of many investors, at the time of the freezing up of the ABCP market. Many of the features which are being described were features of the Montreal Accord ABCP, which none the less failed as a consequence of liquidity support. The CFLA believes that reopening of the commercial paper market in Canada is beneficial to the consumer and commercial financing markets, including equipment finance. The types of product support which are outlined in the Request for Commentary are those which have been designed to provide appropriate product support for some time, both before and after the failure of the market in Canada. Focus would need to be made on the appropriate types of liquidity, and the nature of the liquidity providers. While some of the liquidity failure in Canada arose as a consequence of documentation errors, that is the use of a triggering event which tied to markets easily manipulated by certain of the participants, most of the failure was as a consequence of the extreme correlation in the liquidity market which resulted in too few liquidity providers providing too much of the liquidity on a global scale. As a consequence, cascading of liquidity calls, resulted in failure of these financial institutions and the inability to satisfy the liquidity demands on a global basis. This, unique, issue to the market, at a point in time, and arising out of a very different financial institutions regulatory environment is unlikely to occur again. It is suggested that regulation in the financial services sector is more than addressing the issues that led to the fundamental failures of the liquidity providers in Canada, and for that matter globally.

CFLA does not believe that access to Direct Securitized Products should be limited. For all of the reasons noted, the CFLA is of the view that much of the securitized product industry is effectively and safely offered to investors as an exempt product offering. More limited access is not merited; there has been no market or asset failure which would indicate a need for greater restrictions in the asset-based financing and leasing industry in Canada.

Disclosure

34.	The objectives of requiring disclosure for prospectus-exempt distributions of securitized products are to: • create incentives for enhanced due diligence by sponsors and underwriters who must prepare the disclosure, and investors who will be expected to take the disclosure into account in making their investment decision; • improve the quality and consistency of disclosure; • facilitate a transparent, and thus stable, securitization market. Will our proposed requirements for disclosure in the exempt market achieve or further these objectives?

Response:

In these responses, CFLA has not addressed issues relating to complex synthetic securitizations, but has rather focussed on how the proposed changes would affect the more straight-forward securitization of loans and leases of motor vehicles and equipment. As we have noted above, we do not believe that additional disclosure, whether initially or on a continuous basis, is required beyond that which is currently available as a result of market-driven forces, particularly the requirements of the relatively sophisticated investors that purchase these securities. The additional cost and delays that would result from compliance with a mandatory disclosure scheme would not be balanced by significant benefits to investors which, as noted elsewhere in these responses, have not incurred significant defaults under the asset-back securities they have purchased in the Canadian exempt marketplace.

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?

Response:

CFLA firmly believes that the marketplace for securitized products in Canada should be free to develop its own practices in response to the requirements of investors and others. This occurred in the Canadian asset-back commercial paper market, which moved from a single rating and market disruption liquidity format to one that features at least two ratings (and in some cases four) as well as U.S.-style global liquidity facilities. These changes came about as a result of investor demand, rather than being mandated by regulation. This approach has worked particularly well in that part of the exempt market which is the focus of these responses, namely the securitization of motor vehicle and equipment loans and leases. Canadian investors in the related asset-backed securities receive the information they require to make their investment decisions, and their investments have performed well. This aspect of the Canadian securitization marketplace is working well and we do not believe that mandated disclosure is warranted.

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?

Response:

No comment.

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?

Response:

This response addresses the impact that mandating information memoranda would have on the exempt market for asset-back securities. We note that, although the Proposals do not require a prescribed form of disclosure for the initial distribution of non-short term securitized products, they do require that an information memorandum be delivered for such transactions.

Mandating an information memorandum in connection with the distribution of non-short term securitized products would have a negative effect on the Canadian securitization market. Experience in preparing and negotiating offering memoranda and prospectuses lead us to conclude that mandating information memoranda would significantly increase the cost of issuing asset-back securities in the exempt market. As well, while it is currently possible to quickly prepare program documentation for several types of asset-back transactions, a requirement to prepare an information memorandum would prevent issuers from being able to access the market without delay at a time when interest rates and other conditions are appropriate. CFLA is concerned that these issues of additional cost and delayed execution will render securitization less unattractive or even unavailable, and may consequently reduce the amount of credit that would otherwise be available to both business and consumers. The current absence of information memoranda in the exempt market for asset-backed securities has not been shown to have prejudiced

investors, and CFLA does not believe that introducing such a requirement would be justified in light of the resultant costs and delayed access to the market it would entail.

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?

Response:

No comment as CFLA members do not generally sell short-term securitized products. To the extent that they sell short terms securitized products, the concerns raised above would apply.

39.	We are requiring that ongoing disclosure be made available to investors in securitized products. Is this an appropriate approach? Are the prescribed forms (Form 51-106F1 in the case of non short-term securitized products, and Form 45-106F8 Periodic Disclosure Report 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?

Response:

CFLA believes the CSA should not impose prescribed ongoing continuous disclosure requirements on private issuers undertaking exempt market distributions of Direct Securitized Products. We are of the view that the parties to the transaction are in the best commercial position to determine what information they require on an ongoing basis while being sensitive to time, money and effort involved.

CFLA is of the view that the continuous disclosure requirements should not turn on whether a securitized product was issued under a prospectus exemption or pursuant to a prospectus. We believe that the disclosure regime should continue to turn on whether an issuer is a reporting issuer or a non-reporting issuer. In addition, if disclosure is required, it should be expanded from two business days to three to five business days.

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?

Response:

As stated in our response to Question 39, CFLA does not believe the CSA should prescribe the form of disclosure by non-reporting issuers involving exempt distributions of securitized products. This would be a radical departure from the current regime where no such disclosure is required.

CFLA submits that password protected website disclosure for non-reporting issuers would unduly and unnecessarily increase the ongoing costs to issuers that do not seek to access the public markets and is unnecessary for sophisticated parties. However, if the CSA does require online posting, utilizing an issuer's website would be preferred to SEDAR. If the CSA is considering requiring non-reporting issuers to publicly post ongoing disclosure documents on SEDAR, this would be a fundamental policy shift in the exempt market that should be reviewed as a whole with input from all stakeholders rather than in isolation involving securitized products only. The time period should also be expanded as set out in Question 39 above.

41.	We have proposed that the information memoranda and all disclosure required to be provided to investors be delivered to securities regulators. We expect that, subject to requests under freedom of information legislation, these documents will not be generally available to the public. We thought this appropriate given that the securitized products are not generally available to the public. Is this an appropriate approach?

Response:

We are not clear what added benefit there would be for a non-reporting issuer to provide an information memorandum (an "OM") and all other mandated continuous disclosure to securities regulators. We understand in Ontario, for example, OMs prepared and delivered to investors in connection with certain prospectus exemptions (*e.g.,* the accredited investor exemption) are required to be delivered to the Ontario Securities Commission. CFLA submits, however, that this would be an unnecessary administrative burden to issuers with no material benefit especially since they are not generally available to the public.

Statutory civil liability

42.	We propose that there should be statutory civil rights of action against issuers, sponsors and underwriters for misrepresentations in an information memorandum provided in connection with a distribution of securitized products in the exempt market. Have we identified the appropriate parties whom an investor should be able to sue? If not, should any parties be added or removed?

Response:

CFLA understands that any document that is an OM under, for example, Ontario law, that is delivered by an issuer to, for example, investors in Ontario, provides investors with a statutory right of action against the issuer. However many CFLA members complete securitized product transactions using only a term sheet and/or in the absence of a term sheet enter into definitive legal agreements without providing any form of OM to investors. Accordingly, any rights of action are commercially negotiated between these sophisticated parties or they rely on their rights under the common law. Mandating an information memorandum that includes statutory rights of action is essentially imposing an OM requirement in all securitized product transactions which CFLA believes is unduly burdensome and will directly increase the costs of raising capital. Accordingly, we are concerned that these extra costs may cause participants to withdraw from the marketplace and/or hinder their entrance.

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?

Response:

CFLA believes there should be no statutory civil liability for misrepresentations in continuous disclosure documents of securitized products for non-reporting issuers. Reporting issuers will automatically be subject to such requirements under, for example, Part XXIII.1 of the *Securities Act* (Ontario), that sets out the civil liability regime for secondary market disclosure violations for responsible issuers (*e.g.,* reporting issuers).

Investors in securities of non-reporting issuers should have the same rights of action as they have in connection with any existing rights they have under the common law or in connection with any other type of private agreement with the issuer.

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?

Response:

CFLA does not believe withdrawal rights should apply to exempt distributions of securitized products. No such rights exist in National Instrument 45-106 except in connection with the OM exemption (s. 2.9). Assuming a new class of eligible securitized product investors is created under the Proposal, it is also not clear why such withdrawal rights are required for such a sophisticated class of investor. Clearly, these withdrawal rights would be inapplicable for very short term securitized products as the withdrawal date may be after the commercial paper expired.

Resale

45.	We propose that the first trade of a securitized product distributed under the Proposed Securitized Product Exemption is a distribution, creating a specialized "closed-system" for securitized products that are not issued under a prospectus. Is the proposed resale treatment appropriate?

Response:

The CSA proposes to make a securitized product distributed under the Securitized Product Exemption a distribution thereby creating a closed-system for securitized products. We understand that the definition of "distribution"[1] under Section 1(1) of the *Securities Act* (Ontario) does not include the concept of a previously issued security in the context desired by the CSA.

CFLA believes that the CSA should adopt the appropriate resale rules set out in National Instrument 45-102 for distributions involving the Proposed Securitized Product Exemption if it is adopted in its present form. Again, we believe such an exemption is not required for Direct Structure Products. However, we do note that if securitized products are sold outside of Canada and flow-back into Canada, we are not clear if there is now a break in the specialized "closed system" that has not been caught by your intended design.

Registration

46.	Are there any existing registration categories or registration exemptions that should be modified or made unavailable for the distribution and resale of securitized products in the exempt market?

Response:

CFLA does not believe any changes are required to any prospectus exemptions involving Direct Securitized Products. However, it is not clear why the CSA has not made all prospective exemptions unavailable in connection with the Securitized Product Exemption and only select prospectus exemptions. We believe that to be a truly closed systems all exemptions would have to be made unavailable.

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

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?

Response:

Exempt market dealers ("EMDs") should not be restricted in any way from dealing in securitized products. There is a general need for greater proficiency when it comes to Synthetic Securitized Products. We do not support any ban on EMDs from selling Direct Securitized Products since no special knowledge is required to understand these products unlike Synthetic Securitized Products.