NATIONAL BANK
FINANCIAL MARKETS

BY ELECTRONIC MAIL
British Columbia Securities Commission
Alberta Securities Commission
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New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
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Re: Notice and Request for Comments on the Proposed Securitized Product Rules

Dear Sirs/Mesdames,

National Bank Financial Inc. ("NBF") appreciates the significant effort the Canadian Securities Administrators ("CSA") has put forth in drafting the Proposed Securitized Products Rules (the "Proposed Rules"), and for the opportunity to comment on such Proposed Rules. In addition to providing our comments directly, NBF has also been working with the Investment Industry Association of Canada and supports their submission.

NBF has been involved in the Canadian securitization market for many years and continued its commitment and support of this market throughout the events in 2007-8. NBF is supportive of regulatory reform that will further strengthen and promote growth of the securitization market for both investors and issuers through either additional disclosure and/or transparency while ensuring that such increased legislation is not unnecessarily burdensome and does not unfairly stigmatize the securitization market.

Linda Roy
Managing Director & Head,
Securitization

Francois Bourassa
Senior Vice-President
Specialized Transactions and Products, Legal

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FINANCIAL MARKETS

Request for comments

Proposed NI 41-103 Supplementary Prospectus Disclosure Requirements for Securitized Products, Proposed NI 51-106 Continuous Disclosure Requirements for Securitized Products, Proposed Amendments to NI 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, Proposed Amendments to NI 45-106 Prospectus and Registration Exemptions and NI 45-102 Resale of Securities, and Proposed Consequential Amendments

NOTICE AND REQUEST FOR COMMENTS

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 INSTRUMENT 52-109
CERTIFICATION OF DISCLOSURE IN ISSUERS' ANNUAL AND INTERIM FILINGS

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 45-106
***PROSPECTUS AND REGISTRATION EXEMPTIONS* AND**
NATIONAL INSTRUMENT 45-102 *RESALE OF SECURITIES*

PROPOSED CONSEQUENTIAL AMENDMENTS

Table of Contents

Today, the bank-sponsored ABCP market performs well with outstanding ABCP stabilizing in the $24 billion area. This market enjoys strong demand supported by spreads at below pre-crisis levels. Furthermore, these programs provide investors with global style liquidity, the highest credit ratings from at least two major credit rating agencies and robust disclosure through Information Memorandum and detailed monthly reporting.

On the ABS term side, new issuances continued in Canada despite the market turmoil in 2007 to 2009 with over $9 billion of issuance in both 2007 and 2008. While new issuance volume dropped below $5 billion in 2009, it has rebounded strongly with over $12 billion in 2010 and almost $7 billion in the first half of 2011. The first CMBS deal since 2007 in Canada was completed earlier this year, and was oversubscribed and highly successful. The lack of new CMBS issuance in Canada to date has been mainly a result of the relative spreads of CMBS versus the underlying commercial mortgages and not a lack of demand. The excellent collateral performance in Canadian CMBS pools bodes well for this market to also fully re-establish itself. For example, in stark contrast to the U.S., DBRS reports that delinquency rates in Canada continue to be well below 1%, while they have been increasing in the U.S. and are now above 10%.

In the CSA Proposed Rules, there is often reference to the U.S. securitization market, but such market is very different when compared to the Canadian securitization market. For example, the CSA specifically references the “originate-to-distribute” model in many of its questions. However, this model is a prevalent feature of the securitization market in the U.S., not Canada. Furthermore, the significant U.S. residential sub prime mortgage products, which greatly impacted the securitization market, does not exist in Canada in any significant way.

With the exception of the non-bank sponsored ABCP segment, the Canadian Securitization market has performed very well with no significant losses to investors: it provides issuers with an important financing option, while providing investors with a well-structured, highly rated and well performing security for investment.

Given the performance and state of the market, we do not believe a major regulatory overhaul is required. The industry has evolved with stronger liquidity lines, multiple ratings for ABCP conduits, improved disclosure and the elimination of non-traditional asset classes and non-bank sponsored ABCP conduits. As detailed in our answers provided herein, NBF believes continued incremental efforts to improve market efficiency should be looked at including some of the disclosure recommendations that have been put forward. However, major changes such as the creation of specific market exemptions for securitized products are not only unnecessary, but would unfairly stigmatize the securitization market and potentially negatively impact its liquidity.

(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?

While we agree with the stated principles, the proposed rules seem to disregard the 3rd principle which states: 'Rules should be proportionate to the risks associated with particular types of securitized products available in Canada, and should not unduly restrict investor access to securitized product.' There comes a point where additional transparency or transaction details simply encroach on funding/market efficiency.

The Canadian ABCP market today is very different from the U.S. ABCP market that existed prior to the 2007 crisis. The sub prime mortgage market, which was at the core of this crisis, simply never existed in Canada in any significant way. Credit quality of assets in bank sponsored Canadian ABCP conduits was never an issue. Furthermore, the 'market disruption liquidity line' that did not permit a draw in the ABCP market in August 2007 is no longer accepted in the market place.

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?

The retention of risk has always been present in the Canadian securitization market. Sellers typically retain risk through excess spread and / or a sub tranche, and as such have first loss exposure and remain economically motivated in terms of asset performance. Most Schedule I Banks that issue credit card ABS have recently retained sub note tranches as they didn't find it financially viable to sell it at levels required by investors.

The Canadian CMBS market operated slightly differently having multiple tranches backed by commercial mortgages and sold to investors. First loss positions were sold to sophisticated third party investors (called "B-piece buyers") which performed an important role in these transactions. These B-piece buyers performed their own due diligence and had the ability to "kick-out" loans from the transaction. While the originators did not retain first loss, the success of this approach is demonstrated by the consistently outstanding performance of the Canadian CMBS market.

The efficiency of the Canadian ABS/ABCP securitization market has been and remains best served by sellers having the ability to price and sell or retain different tranches of risk in the structure. The ABS market has been through the 2007/2008 credit turmoil with no losses to investors, while the CMBS market losses have been less than six (6) basis points.

The strong performance of the Canadian securitization market does not support the implementation of any risk retention rules similar to the U.S. where such market has distinctive features, such as the 'originate to distribute' model which was never a common practice in Canada.

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?

While the U.S. has had instances where one subsidiary would sell credit protection on corporate names with another subsidiary buying such protection through a securitized product, Canada did not have such conflicts. Any participation of subsidiaries is listed in the prospectus and disclosure is sufficient for the Canadian market.

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?

The current prospectus disclosure rules require the issuer, among other things, to list the roles of the parties involved in the transaction. Given the foregoing, NBF sees no need to limit such roles on the basis that investors can make an independent assessment of any potential conflicts provided to them via the prospectus. In addition, participation in the securitization market should not be held to a different standard vis-à-vis any other debt issue (where such limitations do not exist).

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?

The definition should exclude other products such as NHA MBS and Canada Mortgage bonds which are fully guaranteed by CMHC, an agent of her Majesty in right of Canada. The definition also seems to capture unintended products such as a bank's tier I capital trust notes, derivatives and structured notes (such as, but not limited to, credit linked notes), which should also be excluded.

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?

Carve-outs for covered bonds are appropriate since covered bonds are primarily obligations of issuers, further supported by a claim on specific assets. Moreover, NBF does not recommend additional conditions in order for the carve-out to be available.

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?

The carve out for non debt securities of MIEs is appropriate (without any further conditions) considering the specific regulations for this product.

(b) The Proposed Prospectus Disclosure Rule

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)?

NBF does not recommend regulatory restrictions on the kinds of ABS that are eligible for the shelf registration system. Notwithstanding the foregoing, NBF does understand the need for more detailed disclosure as it relates to ABS backed by non-homogeneous assets (i.e., CMBS) as opposed to ABS backed by homogeneous assets. However, this is an already well established practice in the Canadian market place.

NBF does not recommend similar restrictions to those contained in Reg AB. Moreover, NBF is not aware of any Canadian transactions where, at inception, there were non-performing assets and, except for fast revolving pools (like credit cards), delinquent assets are generally excluded from sold pools – the presence of delinquent assets in fast revolving pools simplifies the pooling process and has a negligible effect on the performance since, by definition, assets are constantly replaced by other assets. The proposed restrictions cannot replace the benefit of disclosure and investor due diligence, but could very well limit issuance and cause unnecessary burden on issuers.

The shelf system is the preferred medium for many programs supported by asset classes, such as auto loans and credit cards and these programs provide regular information to investors, such as monthly pool performance data. Issuers, whether of securitized assets or corporate debt, should be free to decide which form of disclosure document to utilize depending on their objectives. In other words, the asset class itself should not be the determining factor.

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?

We note that the general practice in Canadian securitization transactions utilizing the shelf system is that potential investors are provided with a preliminary form of supplement prior to pricing. Furthermore, the legal and credit structure is described in the base shelf document and salient data is available in the monthly pool report. In the case of securitization programs that utilize the MTN shelf system there is a quarterly portfolio report filed in addition to the monthly pool report.

NBF does not believe additional time is required. Accordingly, NBF is of the view that a requirement to file a supplement on SEDAR prior to the first sale provides no additional benefit to investors, and therefore superfluous.

10	Should the approved rating eligibility criterion for the short form and shelf prospectus systems be replaced with alternative criteria? In the alternative, if the approved rating eligibility criterion is maintained, should the issuer also satisfy one or more additional criteria such as those in the SEC April 2010 Proposals: (i) 5% vertical slice risk retention; (ii) third party review of repurchase or replacement obligations in connection with alleged breaches of representations and warranties; (iii) a certificate from the CEO of a sponsor and an issuer that at the time of each offering off a shelf prospectus that the assets in the pool have characteristics that provide a reasonable basis to believe that they will produce, taking into account internal credit enhancements, sufficient cash flows to service any payments due and payable on the securities as described in the prospectus?

NBF does not believe there is any reason to change the rating eligibility criteria for the short form and shelf prospectus. As discussed in our response to question #2 above, in Canada, sellers already retain the first loss protection (except for CMBS transactions). Moreover, to mandate a specific percentage provides little to no utility since necessary credit enhancement varies a great deal depending on, among other things, the quality of the assets, the competence and experience of the servicer, the concentration of obligors, the structure, etc. NBF does not support the implementation of third party review of repurchase or replacement obligations in connection with alleged breaches of representations and warranties. Issuers are strongly motivated to respect all representations and warranties in order to maintain access to this funding and avoid any negative implications on other capital market access and NBF is not aware of any transactions in Canada where this has been an issue. Finally, NBF does not support the introduction of a certificate from the CEO of a sponsor or of an issuer as described above. The suggested language goes beyond the required full, true and plain disclosure standard. In NBF's view, existing representation and warranty requirements are sufficient.

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?

NBF does not think that any additional time to review is necessary. In support of this position, NBF has not received any notifications from investors requesting additional time to review the disclosure documents to date.

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?

Asset- or loan-level data disclosure, or grouped asset disclosure is not necessary and many issuers have expressed privacy and competitive concerns with regards thereto. Furthermore, ABS assets are typically homogeneous and investors rely on the summarized data provided in the prospectus and pool reporting by the issuer.

For asset classes that have more concentrated pools, such as CMBS, there has been more detailed disclosure provided in the prospectus. For larger loans in CMBS transactions, information about the property, borrower, property manager and the larger leases is typically provided. Furthermore, a summary of lease maturities on a yearly basis is also provided. However, many of the proposed data requirements (for both large and small loans) could prove to be problematic for borrowers and tenants due to confidentiality or competitive reasons. Requiring this information may lead many borrowers to avoid financing with CMBS lenders.

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?

Creating and providing such a computer waterfall payment program, which addresses all assumptions, scenarios and risk would appear to be a monumental task that could potentially steer issuers away from the securitization market. Beyond the feasibility of creating such a model, it raises significant legal liability issues for the creators of the model.

Investors are provided with summarized data in the prospectus and, for some asset classes such as CMBS, are provided with certain modelling results – for example, in some CMBS prospectuses, modelling results are provided indicating the constant default rate that each investment certificate could withstand without incurring a loss. Furthermore, the prospectus also contains waterfall payment details. Again, the requirement to provide a computer waterfall payment program to investors in the securitization space seems to be prejudicial when compared to other debt issues that do not have a similar requirement. Investors should rely on the asset and structure description, including the payment waterfall details contained in the disclosure documentation to conduct their own assessment.

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?

When filing a Canadian prospectus offering for a securitized product, an independent audit firm is engaged to confirm financial data included in the prospectus and affiliated documents. This third party review is necessary for the issuer to certify that the prospectus contains full, true and plain disclosure. Therefore, NBF does not see any need for changes to the current process.

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?

While there will be common risk factors across certain asset classes and pools, NBF believes that asset classes should be evaluated on a pool-by-pool basis – each pool may be different and risk factors may change over time. NBF does not think that there is a need for standardized risk factor disclosure; it should be left to the responsibility of each issuer and the other parties involved in the applicable transaction.

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?

Form 51-106F1 and 51-106F2 are available to investors but only item 4 of Form 41-103F1 would be typically relevant for incorporation by reference, as it covers a particular pool for a prescribed period. NBF is not aware of any situation where this particular proposal would alleviate any potential concerns and believes that the current system in this regard is sufficient. Similarly, NBF does not believe that there are any public policy reasons to create a different “playing field” in respect of issuers in the securitization space on the one hand, and issuers of other types of securities on the other.

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?

NBF does not believe that the existing registration categories and exemptions need to be changed.

(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?

NBF believes that audited annual financial statements, as well as interim financial statements, provide little, if any, value to investors of securitized products. The cost and time involved in preparing financial statements and auditing annual financial statements are significantly more than any value they can bring to investors. Furthermore, the nature of any derivatives transactions is detailed in the prospectus, together with the payment waterfalls.

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?

Yes, there should be a "grandfathering" or transitional provision put in place as there would be time and costs associated with implementing disclosure changes for existing transactions.

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?

The continuous disclosure requirements for issuers of securitized products should not be any different than for any other type of reporting issuer. The current practice should remain whereby it is the responsibility of the issuer to determine the material information to be disclosed.

Transactions in the exempt market are completed with sophisticated investors who have the knowledge and expertise to determine the level of disclosure required. Moreover, many conduit transactions, such as securitized notes purchased by an ABCP conduit, are held to maturity or never become freely tradable. Accordingly, NBF does not believe that there is any public policy reason to have a different set of rules in respect of securitized products. Please also see NBF's answer to Question 45 in this regard.

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

No, NBF does not support a legending or notice requirement as most short-term securitized products are booked through CDS (i.e., book entry), which is impractical to include such a legending or notice requirement.

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?

The required filing should be within 2 business days for the news release and 10 business days for the prescribed form with the delay counting as of the issuer becoming aware of the "significant event", and not from the occurrence of the event itself since not all of the criteria are followed on a daily basis.

In regards to the suggested events, please consider the following:

a) A change of trustee should not be considered a significant event. It can simply be a realignment of business whereby the existing trustee is exiting that business.

b) A difference of 5% or more occurring in a material pool characteristic of an asset pool is rather frequent. Delinquencies or even losses can easily vary by 5% and many pools have seasonal fluctuations above the 5% threshold.

c) No level of sponsor's interest should be forced, therefore this should not apply.

d) A significant obligor is not defined but it is very unlikely applicable. Most term transactions are with consumer related assets such as auto loans and credit card receivables. Should there be corporate exposures, the structure will limit the concentration and investors should be aware that downgrades of such obligors are possible and supervised by rating agencies.

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?

The new documents to be filed for securitized transactions should not be viewed as core documents for secondary market civil liability. The core document should remain the same as for other issuers. There is no rationale to subject issuers in the securitization space to a different standard than that held for issuers of other types of securities.

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?

As discussed in NBF's answer to question 18, reporting issuers of securitized products should be exempt from financial reporting and therefore it follows that reporting issuers should also be exempt from Part 2 of NI 52-109. The servicing reporting, which is catered to securitized transactions, is more appropriately dealt with by the proposed 51-106.

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?

On the basis of NBF's responses to questions 18 and 24, the note to reader proposal should logically fall away.

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.

The disclosure requirement of repurchase or replacement obligations in respect of pool assets collateralizing securitized products is the result of the "originate-to-distribute" model that is more prevalent in the U.S.

With respect to Form 51-106F1, NBF is of the view that the repurchase or replacement disclosure required pursuant to Section 2(3)(m) thereof is not necessary since investors would become aware of any such repurchases or replacements from other disclosure items and will obtain information on underwriting quality of originators from normal reporting of portfolio loss and delinquency information.

These situations have been very rare in Canada and do not justify specific reporting. It is unclear what benefits such reporting would bring as underwriting deficiencies can be monitored through the pool performance report.

(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?

NBF believes that creating a specific exemption for securitized product, or a specific class of securitized product investor will unfairly stigmatize this product which could deter investment. Furthermore, excluding

certain investors who could otherwise purchase other prospectus-exempt products seems unduly prejudicial to the securitization market.

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

NBF strongly believes that securitized products should be allowed to be sold in the exempt market. Sophisticated parties (e.g. banks, bank-sponsored conduits) should be able to continue with private placements based on negotiated terms (no mandatory information memorandum). This has been an essential component of the market for securitized products and provides important liquidity to many market participants. Many current issuers may face impediments in accessing the public markets including large costs for relatively small issuers. For investors who want public-level disclosure, they can restrict investment activities to the public market.

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?

Securitized products should continue to be sold under the existing exemptions and should not be treated differently than other securities sold in the exempt market. Limiting the exemptions under which these products can be sold, would unjustly exclude certain investors and could impact liquidity of this market. NBF recommends implementing some of the suggested rules with respect to disclosure (as provided herein) as opposed to limiting existing prospectus exemptions.

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.

Consistent with NBF's responses throughout this commentary, NBF does not believe that a specific Securitized Product Exemption is necessary and securitized products should not be treated any differently than other securities that are sold in the exempt market.

31	If our proposed approach to restrict access to securitized products to "highly-sophisticated" investors is appropriate, is the proposed list of eligible securitized product investors the right one? If not, how should it be modified? In particular, we would appreciate feedback on the following: *A. Expanded list of who would qualify as an eligible securitized product investor* 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?*

The exempt market should neither be different for securitized products nor should it be product centric. Investors that qualify for the exempt market are viewed as sophisticated enough to decide in which product they should invest.

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?

The exempt market already includes a minimum amount as suggested in (A) and should continue to do so without any differentiation for securitized products as suggested in (B). Furthermore, an information memorandum should not be mandatory as suggested in (A). Sophisticated investors (i.e., ABCP conduits) do not require such a document and such a requirement would only cause unnecessary cost and burden on issuers and may hamper issuance in the market for no valid reason. Investors that qualify for the exempt market are sophisticated enough to negotiate and determine the level of disclosure they require from issuers. The suggested language in (C) is too product centric, and the exempt market qualifications should not be different for securitized products.

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

No. The traditional securitization market in Canada has performed very well and is still a relatively small market that could be negatively impacted by an overly restrictive regulatory access.

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?

With respect to Form 45-106F8 *Periodic Disclosure Report for Short-Term Securitized Products distributed under an Exemption from the Prospectus Requirement*, the CSA is proposing that the issuer post this standardized report no later than 15 days after the end of each calendar month. Note that the 15 days needs to begin one month after the reporting month. NBF currently publishes a monthly report substantially similar to the proposed forms and investors have provided positive feedback on the information covered.

NBF supports the implementation of a standardized report such as Form 45-106F8 and provides comments on the content in response #39 below.

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?

It is a common practice for financial institutions and bank-sponsored ABCP conduits to purchase a series of notes issued by a special purpose vehicle established by an originator. Since the purchasers in these instances are involved in structuring these transactions, such transactions should be permitted on a prospectus-exempt basis without the need for some form of disclosure.

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?

NBF is not aware of any.

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?

NBF agrees with the approach to not prescribe specific disclosure for prospectus-exempt distributions of securitized products. Requiring an information memorandum could cause significant impediments for smaller issuers in terms of costs and timing of a transaction. Furthermore, where the purchaser is a sophisticated party (e.g. bank or bank-sponsored conduit), a specific disclosure requirement would add significant costs to issuers with little benefit to the purchaser. Investors are always free to limit their purchases to the public market if they do not agree with the issuer disclosure in the exempt market.

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?

NBF supports prescribed disclosure for short-term securitized products. However, the format and form of this report should be left to issuers; what is important is that the relevant information is available. NBF notes that in general, existing Information Memorandum already provide most of the required information to investors: i.e., parties involved, eligible assets, liquidity support, structure, etc. NBF supports the comments on the proposed F45-106F7 submitted by the IIAC.

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?

NBF supports minimum prescribed data such as Form 45-106F8 (for short term) and Form 51-106F1 (for non short term), which can assist investors by increasing the uniformity in monthly reporting. In regards to the contents of such reports, NBF supports the recommendation of IIAC.

As stated in response to question no. 38, the format and form of the reports should be left to issuers. What is important is that the relevant information is available to investors.

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?

NBF believes that the current practice of providing investors with ongoing disclosure via an issuer's or sponsor's website works very well and, accordingly, does not require any changes thereto.

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?

Considering that all disclosure is available on NBF's web site, which the securities regulators can have access to, NBF believes that such access should suffice for purposes of disclosure to securities regulators.

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?

We have combined our answers to 42 and 43.

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?

The excellent performance of the Canadian securitization market does not support any increased statutory liability versus other products offered in the market place and would unfairly stigmatize this particular market.

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?

NBF is of the view that the statutory provisions which provide investors with a right of withdrawal should not be extended beyond the current regime. By doing so, it would create a different playing field for securitized products when compared against any other security in the marketplace. The foregoing is also incongruous with the CSA's stated guiding principle, among others, that the Proposed Rules be proportionate to the risks associated with particular types of securitized products available in Canada. Similarly, any right of withdrawal is impractical in the short-term securitized products space given the short-term nature of such products. With respect to non-short-term securitized products, NBF does not believe that a right of withdrawal is necessary given that this space has been operating normally and efficiently without such a right.

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?

Securitized products should not be held to a different standard than other securities in the marketplace and any resale restrictions should be consistent with those that apply to other securities. Any differentiation in this regard could potentially harm efficiency, liquidity and innovation in the securitization space.

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?

We have combined our answers to 46 and 47 below.

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?

Consistent with our answers above, NBF considers the current regulatory regime for the exempt market to be sufficient. NBF feels that the introduction of the Securitized Product Exemption in section 2.44 invites potential uncertainty and may unduly restrict investor access to securitized products.