TD Securities

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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
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Registrar of Securities, Legal Registries Division,
Department of Justice, Government of Nunavut

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c/o Me Anne-Marie Beaudoin
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Dear Sirs/Mesdames:

**Re: Comments on Proposed National Instrument 41-103; Proposed National Instrument 55-106; Proposed Amendments to National Instrument 52-109; and Proposed**

**Amendments to National Instrument 45-106 and National Instrument 45-102 (collectively, the "Proposals")**

TD Securities Inc. ("TDSI") appreciates the opportunity to provide the Canadian Securities Administrators with our comments on the Proposals.

TDSI has been, and continues to be a leader in the Canadian securitization market. We assist our parent, The Toronto-Dominion Bank ("TD") and our key relationship clients access this important part of the Canadian capital markets. Securitization is an important funding tool that TD and our clients use as part of a diversified funding strategy. During the financial crisis in 2007 and 2008, our securitization programs, including asset-backed commercial paper ("ABCP"), were critical to the ongoing liquidity and funding needs of our clients and TD.

Please find below TDSI's high-level comments on the proposals, which is followed by our responses to the questions posed in the request for comment.

General

We agree that the CSAs three general principles are appropriate. However, we believe that those aspects of the Proposals relating to the Proposed Exempt Distribution Rules which create a new "closed system" exclusively for securitized products does not follow the general principal of not unduly restricting investor access to securitized products. TDSI fully agrees with the objective of improving and enhancing investor disclosure, but we believe that the rules should not limit the universe of investors who can participate in this market. Appropriate disclosure is required to allow investors in securitized products to make informed decisions based on their risk appetite

One of the distinguishing features of the Canadian securitization market is that it is relatively small as compared with the securitization market in certain other countries. Imposing additional restrictions on the distribution of securitized products in the exempt market will add cost and further limit the liquidity in an already relatively small market.

*Dodd-Frank Act*

During the most recent financial crisis, the Canadian term asset-backed securities ("ABS") and bank-sponsored ABCP markets functioned well. Unlike the "originate to distribute" model that dominated the United States securitized market, the Canadian market was and continues to be characterized by originators securitizing assets which continue to be important elements of their businesses. Risk retention is the norm for the Canadian securitization market.

Although risk retention is the norm in Canada, this does not mean that it should be mandated or that a specific level of risk retention should be imposed. TDSI believes that it should be left to the market, not regulation, to dictate the structure of transactions. However, disclosure

regarding the roles of each party should clearly outline the amount of risk retention by each party as well as potential conflicts of interest. So long as investors are provided with the disclosure necessary to make an informed decision concerning their investment, these aspects of the *Dodd-Frank Act* in the United States ought not to be adopted in Canada.

Shelf Eligibility

TDSI believes that the current eligibility criteria for access to the shelf prospectus system by issuers of ABS work well. Shelf eligibility should not be based upon the risk retention or any other structural aspect of the ABS. It would be difficult to maintain market efficiency and liquidity if shelf programs were to be subject to meeting generic standardized criteria.

In our experience, the current shelf system for ABS issuers has served all stakeholders very well. We are not aware of any investor concerns about the process or the related timing. The current requirement to have ratings for ABS issues should be continued as it provides useful information and independent third party views of the security being offered. The independent ratings, coupled with enhanced disclosure, will provide investors with what they require in order to make informed investment decisions.

Pool Asset and Payment Disclosure

We do not believe that loan level disclosure of pool assets is appropriate or required in Canada. Current disclosure provides "bucketed" information that allows investors and third party modeling firms (such as Trepp or Intex) to effectively value and price ABS. The absence of loan level asset information was never an important issue either in Canada or the United States. Bucketed, grouped or "rep line" information allows for very accurate valuation of an ABS without the onerous requirement for the issuer to provide asset or loan level information. It is quite common for asset pools to contain tens of thousands of assets and disclosure of loan level information would be difficult and expensive for issuers to provide and for investors to analyze. It could also introduce privacy issues if individual assets, such as mortgages, could be traced back to addresses and homeowners. By disclosing asset or loan level information, sellers may be indirectly showing competitors proprietary information about how they run their business and generate their assets.

We do not believe that issuers should have to provide computer waterfall programs. Waterfalls, payment priorities and cash flow distributions are always disclosed in offering documents. Requiring the issuer to provide a model or computer program would introduce a new level of liability to the issuer as it would have to ensure that the model runs accurately. More importantly, models are developed by the issuer based on certain assumptions and approaches, and the model is tailored to the specific requirements of the user, not a broad selection of diverse investors. Investors should be required to take their own responsibility for modeling the transactions themselves or else engage a third party modeling firm to do that for them.

Risk Factor Disclosure

Risk factor disclosure should not be prescribed or standardized. Securitization programs are too varied to permit standardization. A prescribed list of risk factors may confuse investors as only certain risk factors may be present in any particular transaction. The emphasis should continue to be on full, true and plain disclosure of all material facts in a prospectus.

Significant obligors of pool assets, credit enhancement and other support

Form 41-103F1 requires prospectus disclosure of significant obligors of pool of assets, including in some instances, financial information for such entities. If such obligors are public entities, we believe it is appropriate to allow issuers of securitized products to direct the reader to appropriate public sources of such information (e.g., SEDAR). If such obligors are private entities, imposing a requirement on issuers to obtain financial information for such entities may preclude sellers from accessing the market due to a refusal of the seller's underlying customers to provide such information. Our recommendation is to focus on the disclosure of the significant obligor of pool assets, direct the reader to available public information regarding those obligors, if any, and not require disclosure of private and/or confidential information. It would then be up to investors to decide whether they wish to participate in a transaction that involves a private obligor that is a significant obligor.

Similarly, we think that the same principle should apply to the proposed requirement to disclose information about credit enhancement and other support in Form 41-103F1. The requirement to provide full disclosure of the identity of the entities involved is supported, but we think that it would be appropriate to direct the reader to publicly available information, and allow investors to make the decision whether to invest if the transaction involves a private entity that is providing credit enhancement or other support.

The Proposed Exempt Distribution Rules

TDSI believes that the principles of market efficiency and not unduly restricting investor access to any market would dictate that the category of persons entitled to purchase securitized products in the exempt market should not be any different than the category of persons entitled to purchase any other type of securities in the exempt market.

TDSI believes that exempt market disclosure should take into account the particular features of the Canadian securitization market. For ABCP, disclosure should closely follow the requirements of the Bank of Canada for eligibility under its Standing Liquidity Facility. Under this level of disclosure, ABCP investors would have timely and comprehensive disclosure of the particular ABCP program, its attributes and the securitized assets.

With regard to disclosure documents for non-short term exempt distributions, TDSI believes that the level of disclosure should be determined between the issuer and the investors.

These transactions usually take place between various sophisticated parties and TDSI believes that investors should dictate the level of disclosure that they require.

The proposal to propose statutory civil liability on sponsors of ABCP programs could give rise to unintended results. If a sponsor of an ABCP program is to be strictly liable for misrepresentations in an information memorandum or monthly report it may subject the sponsor to liability that it is not in a position to effectively control. It must be remembered that the primary source of much information in the ABCP market is the seller of the assets which normally services its own assets and provides monthly servicing reports to the ABCP sponsor. While the sponsor normally conducts periodic reviews of the servicing practices for each servicer in its program, the sponsor is not in a position to audit each and every servicer report that it obtains on a monthly basis. Even if it were possible for sponsors to audit each and every servicer report that it receives from third parties (and we very much doubt that there are sufficient resources in Canada to do so), the cost of such review would be prohibitive. Therefore, at the very least, there should be prescribed "safe harbours" for sponsors of ABCP programs so long as they maintain reasonable practices in order to ensure the accuracy of reports that they receive from third parties.

TDSI strongly objects to the suggestion in the Proposals that underwriters should have statutory liability in connection with exempt distributions of non-short term securitized products. It would be inappropriate to single out securitized products for this treatment as no other form of security requires underwriters to assume statutory liability for marketed private placements in Ontario, Quebec and most other provinces.

Mandatory Review of Pool Assets

The current practice for issuances of ABS on a public transaction or marketed private transaction is for an independent auditor to perform specific agreed upon procedures on the assets to be securitized and for the auditors to tie out all prospectus data against the seller's data. Investors prefer that these procedures be performed by a third party audit firm; however, the suggestion in the Proposals that the audit firm performing such procedures would have to be named in a prospectus and consent to the use of its name in the prospectus may well lead to the current practice coming to an end. Experience to date in the United States is that third party reviewers will not want the liability associated with being treated as an expert. This results in the review having to be certified by the issuer. The current practice in the Canadian market appears to be working well.

Dissemination of Information

TDSI believes that the appropriate method for disseminating information about securitized products would be for information on public transactions to be posted on SEDAR and information on private transactions to be posted on a password-protected website or else as mutually agreed between the parties. With regard to website disclosure, issuers of securitized products should be

allowed to discharge their disclosure obligations by providing disclosure on such websites and investors should be responsible for accessing those websites to inform themselves about the performance of their investments. Issuers should not be required to ensure that investors actually receive the information that is posted to their websites.

**Part A – Specific Requests for Comment**

In preparing these comments each of the paragraphs below corresponds to the respective question numbers in section 7 of the Notice.

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?*

   TDSI believes that these are appropriate principles and each is equally important. However, we believe that not enough emphasis has been placed on the principle that the rules should not unduly restrict investor access to securitized products.

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 of levels of risk retention for particular types of securitized products?*

   As noted above, TDSI believes that it is inappropriate for regulation to impose any level of risk retention on any type of securitization transaction. However, it is appropriate that there be full disclosure concerning the level of risk retention in every transaction so that investors are able to make informed decisions. The absence of risk retention could also be dealt with as a risk factor if proper risk alignment is not present.

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?*

   It may be difficult to prevent market makers from taking contrary positions to investors. Normally, the role of market maker is assumed by the underwriters of a particular offering of ABS. The emphasis should be placed upon disclosing the roles and activities of the parties, not on prohibiting certain types of behavior.

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?*

   TDSI believes that rules regarding the independence of underwriters and auditors should be no different for the distribution of ABS than they are for any other type of product.

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 securities issued or guaranteed by Canada Mortgage and Housing Corporation. Examples include Canada Mortgage Bonds and National Housing Act Mortgage Backed Securities. The definition could unintentionally capture such banking products as (a) corporate loans secured by assets; (b) over the counter derivatives; and (c) innovative capital structures.

6. *Is the proposed carve-out for covered bonds from the Proposed Securities 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?*

   We are in agreement with the proposed carve-out for covered bonds under the Proposals.

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

We have no comment on the proposed carve out for non-debt securities of MIEs.

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)?*

TDSI believes that there should not be restrictions on the types of ABS that would be eligible for the shelf system. It would be too difficult to create a set of attributes that would deal with all of the unique characteristics of asset pools and structures. TDSI would not want to see such regulations stifling innovation or making transactions unduly burdensome for issuers. We believe that the focus of regulation should be on the disclosure of attributes rather than mandating certain types of structures and assets.

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?*

TDSI has not received comments from investors seeking additional time to review ABS prospectuses. TDSI is therefore of the view that current industry practice provides an appropriate amount of time to investors.

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:*

    *(a) 5% vertical slice risk retention;*

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

    *(c) 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?*

The Canadian market has become accustomed to eligibility being based on the existence of an investment grade rating. It is useful for investors to have ratings available to them and this practice should continue. TDSI believes that the ratings eligibility criteria for the short form and shelf prospectus systems have worked well in the Canadian market for ABS.

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?*

TDSI has not heard of any comments from investors voicing concerns over the amount of time to review continuous MTN supplement offerings. We therefore believe that the current system provides investors with sufficient time to review the disclosed information.

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?*

As noted above, TDSI believes that asset- or loan-level disclosure is not required.

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?*

For reasons outlined above, TDSI believes that a computer waterfall payment program need not be provided to investors. Prospectuses always include disclosure concerning the operation of the cash flow waterfalls.

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?*

As noted above, the current practice in Canada is for independent auditors to perform agreed upon procedures and TDSI believes that the Proposal should not impose any requirement that would make it more difficult or expensive for this current practice to continue.

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?*

As noted above, TDSI believes that it should continue to be left to the issuer and the sponsor to prepare disclosure concerning all risk factors they believe are material. There ought not to be standardized risk factor disclosure.

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 from 41 103F1 be sufficient?*

TDSI believes that the existing incorporation by reference provisions should be followed and maintained as TDSI is not aware of any issues or concerns with these provisions and their continued use.

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?*

No. We believe there is no reason why the prospectus and registration exemptions for securitized products should be any different than for those of any other types of securities.

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 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?*

TDSI believes that audited annual financial statements, as well as interim financial statements, provide little, if any, value in the securitization market. Investors in securitized products are focused on the performance of the asset pools and the cash flows generated from such pools. Thus, their focus is on the monthly performance reports and servicer reports which provide information on the performance of the asset pools and the servicing of those pools and not on the accounting principles applied in the financial statements of the reporting issuer. TDSI contends that the costs and time involved in preparing financial statements and auditing annual financial statements are significantly more than the value or usefulness investors derive from financial statements.

TDSI notes that in some structures, financial statements may in fact be misleading to investors since financial statements report on all of the assets of the reporting issuer, whereas in some securitization structures (i.e. "master trust" structures), investors only have recourse to a certain specified portion of such assets. As a result, investors in these structures may mistakenly believe after reviewing the financial statements that they have recourse to all of the assets of the issuer as opposed to the segregated pool that relates to the securities they purchased.

In addition, derivatives disclosure in financial statements may be misleading to investors. The value assigned to derivatives in financial statements may not necessarily reflect their value in a securitization transaction, which is primarily for cash flow related purposes, and possibly credit enhancement purposes. Thus, the dollar value assigned may not necessarily reflect these uses, and accordingly, the value of derivatives may be over or understated in financial statements.

Moreover, the proposed securitized product disclosure requirements under proposed National Instrument 51-106 provide more relevant information to investors than financial statements.

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?*

We recommend that there be a "grandfathering" provision for any adopted rules being proposed for existing transactions. Since those transactions were not formulated to comply

with the Proposals, the information required under the Proposals may not be readily available.

20. *Should the proposed continuous disclosure requirements only apply in respect of securitized products that the reporting issuer distributed via prospectus? If yes, how should we address the concern that other securitized products issued by the same issuer on an exempt basis may become freely tradable but without the reporting issuer being required to provide any ongoing disclosure about these other securities.*

TDSI believes that the proposed continuous disclosure requirements should only apply to securitization transactions distributed via prospectus. The CSA has expressed concern over exempt securities becoming freely tradable where the issuer will not be required to provide ongoing disclosure. TDSI believes that investors in private transactions should be free to determine the amount of disclosure that they require. If an investor wishes to permit the issuer not to comply with the continuous disclosure requirement under the Proposed Exempt Distribution Rules then that investor is likely to be willing to accept that it could only resell the ABS that it is purchasing pursuant to an exempt distribution as well.

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. We are not aware of any uncertainty of investors regarding resale restrictions of prospectus exempt securitization issues.

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

TDSI believes that the significant events that should be disclosed depend upon the triggers and thresholds that exist in the particular program. It is difficult to come up with a comprehensive set of standard events that should be deemed to be material enough to merit disclosure in a press release and material change report. Also, the list of events requiring urgent, nearly immediate, disclosure should be tempered by the fact that information will be reported on a monthly basis in the ordinary course.

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?*

TDSI believes that any new continuous disclosure documents that are required to be filed under the Proposed Rules should not be prescribed as core documents. Our position, which has been noted in our responses to previous questions, is that such new continuous

disclosure documents would treat ABS issuance differently from other securities and will suggest to investors that securitized products are inherently riskier than other securities, especially Form 51-106F2 which, through the concept of "significance", creates a novel and unique reporting standard in Canada to which other securities are not subject. If such new continuous disclosure documents are then prescribed as core documents, which TDSI believes attract potentially greater liability than non-core documents, the stigmatization of securitized products is significantly, and unfairly, increased.

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 51-109?*

We have no comment on this question.

25. *The proposed forms of certification for reporting issuers that issue securitized products does not contain a note to reader similar to the note to reader required for venture issuer forms of certification. Should there be a note to reader required for the certifications and if so, what information should the note to reader contain?*

We have no comment on this question.

26. *We are proposing that if an originator, sponsor or other party has repurchase or replacement obligations in respect of pool assets collateralizing securitized products distributed under a prospectus, the prospectus must provide historical demand, repurchase and replacement information for those parties in respect of other securitizations where those parties had similar obligations, where the same class of assets was securitized, and where the securitized products were distributed under a prospectus. Subsequently, demand, repurchase and replacement information must be provided in Form 51-106F1. Is this type of disclosure adequate, or is it necessary to have this type of information provided by originators and sponsors for all securitizations in which they have been involved (including those in the exempt market)? For example, in connection with the requirements of the Dodd-Frank Act, the SEC has made a rule requiring any securitizer to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer, so that investors may identify asset originators with clear underwriting deficiencies. The securitizer must file an initial "look-back" report, and subsequently update the information on a quarterly basis.*

TDSI is of the view that disclosure of repurchase or replacement obligations in respect of pool assets collateralizing securitized products is the result of the "originate-to-distribute" model that was utilized in the U.S. As noted above, the use of the U.S. "originate-to-distribute" model is essentially non-existent in Canada, and accordingly, U.S. reporting

initiatives with respect to repurchase obligations is not necessary in Canada. In the "originate to distribute" model, repurchase obligations are important since the buyer is relying on a third party originator that doesn't have any "skin in the game". This is fundamentally different than the model in Canada, where the seller/issuer has directly originated the asset and continues to have "skin in the game". Accordingly, repurchase obligations in Canadian securitization programs are commonly designed to address unusual situations where there was a mistake in asset eligibility or other unusual circumstances instead of being a means for a buyer to put back assets that it didn't originate and later determined were flawed.

With respect to Form 51-106F1, TDSI 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 in Form 51-106F1, such as Section 2(3)(l) thereof.). In addition, TDSI contends that Section 2(3)(l) of Form 51-106F1 should be expressly qualified by materiality, which would be consistent with the approach in Section 3.5 of the proposed Form 41-103F1.

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

We believe that further restrictions in the exempt market should be focused on that market as a whole and that securitized products should not be singled out for special treatment.

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

TDSI strongly asserts the importance of maintaining the ability to issue securitized products in the exempt market. For many issuers, this represents a cost efficient alternative to access the capital market. A public ABS issuance would be costly for many issuers.

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?*

We refer to our answers to Q.17 and Q.27.

30. *The proposed Securitized Product Exemption is 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 Q.32 for additional related questions.*

Limiting the investor for exempt securities to "eligible securitized product investors" as defined in the Proposals would be a detriment to would-be investors. We believe that any accredited investor should be free to invest in any type of security including securitized products.

TDSI is of the view that disclosure of repurchase or replacement obligations in respect of pool assets collateralizing securitized products is the result of the "originate-to-distribute" model that was utilized in the U.S. As noted above, the use of the U.S. "originate-to-distribute" model is essentially non-existent in Canada, and accordingly, U.S. reporting initiatives with respect to repurchase obligations is not necessary in Canada. In the "originate to distribute" model, repurchase obligations are important since the buyer is relying on a third party originator that doesn't have any "skin in the game". This is fundamentally different than the model in Canada, where the seller/issuer has directly originated the asset and continues to have "skin in the game". Accordingly, repurchase obligations in Canada securitization programs are commonly designed to address unusual situations where there was a mistake in asset eligibility or other unusual circumstances instead of being a means for a buyer to put back assets that it didn't originate and later determined were flawed.

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?*

TDSI believes that any accredited investor that purchases through a registrant and that satisfies suitability requirements of that registrant should be entitled to purchase securitized products issued in 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?*

As noted above, TDSI believes that it is not necessary to eliminate the existing registration and prospectus exemptions for securitized products. These exemptions should be the same for securitized products as they are for other securities.

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

No, for reasons discussed above.

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?*

Required disclosure for securitized products distributed in the exempt market should be a matter as between investors and issuers as it is with all other types of securities issued in the exempt market. Having said that, TDSI does believe that the level of disclosure required to satisfy the Bank of Canada's requirements for eligibility under the Standing Liquidity Facility is a suitable level of disclosure for ABCP, but since market practice has already caught up with and, in many cases, surpassed that standard, it is not necessary to impose a complex regulatory regime for bank-sponsored ABCP.

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?*

TDSI believes that a purchaser of a securitized product on a prospectus exempt basis should be able to waive the disclosure requirements.

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?*

Please see our response to Q.35.

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?*

Please see the discussion above under the heading "Proposed Exempt Distribution Rules".

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?*

TDSI would not object to mandating disclosure for short term securitized products so long as such disclosure closely followed the requirements of the Bank of Canada eligibility criteria under the Standing Liquidity Facility. However, requiring sponsors to be strictly liable for misrepresentations that arise from monthly servicing reports provided to them by sellers into their programs would be unfair to sponsors. Such increased liability would likely restrict market access to only the most experienced sellers and would also likely increase the fees that sponsors would charge for accessing the ABCP market to compensate them for the increased risk.

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?*

TDSI believes that Form 51-106F1 should be modeled after the Bank of Canada's ABCP reporting requirements for eligibility under its Standing Liquidity Facility.

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?*

Please see discussion above under the heading "Dissemination of Information".

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?*

TDSI has no objection to providing securities regulators on a confidential basis copies of information memoranda and all disclosure required to be provided to investors. However, TDSI believes that investors should have the right to opt out of the information memorandum and continuous disclosure requirements for exempt distributions.

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?*

TDSI does not agree with imposing statutory rights of action against underwriters in connection with the exempt distribution of securitized products since there is no statutory right of action against underwriters in connection with the exempt distribution of other types of securities in Ontario, Quebec and most other provinces.

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?*

Since there is no statutory civil liability for misrepresentation in continuous disclosure provided by an issuer of non-securitized products in the exempt market, TDSI believes that there should not be statutory civil liability for misrepresentation in the continuous disclosure provided by an issuer of securitized products in the exempt 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?*

A withdrawal right simply could not work for any securitized product that is distributed on a continuous basis, such as ABCP. Even for term ABS, the provision for statutory withdrawal rights would add time and uncertainty to transactions. Such rights are not appropriate when sophisticated investors are purchasing securities in the exempt market.

45. *We proposed 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?*

We refer to our answer to Q.20.

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 refer to our answers to Q.17 and Q.27.

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?*

We refer to our answers to Q.17 and Q.27.

Sincerely,

TD Securities

Jay Smales
Managing Director
Asset Securitization Group