

April 23, 2014

BY EMAIL

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

Re: Proposed Amendments (the “Proposed Amendments”) to National Instrument 45-106 *Prospectus and Registration Exemptions* relating to Short-Term Debt Prospectus Exemption and Proposed Securitized Products Amendments (the “Proposed Securitized Amendments”)

We are writing in response to the request of the Canadian Securities Administrators (the “CSA”) for comments regarding the Proposed Amendments. In particular, we are writing to provide our comments on certain of the Proposed Securitized Amendments and to express our general support for the positions taken by the Investment Industry Association of Canada and the Structured Finance Industry Group (“SFIG”) in their respective response letters to the Proposed Amendments of even date herewith (the “Industry Response Letters”).

General Comments

The starting point for our response is to assert that the Canadian securitization market, and in particular the Canadian short-term asset-backed commercial paper market (the “ABCP Market”) has self-corrected the issues that came to a head mid-2007, with market participants gaining a tremendous amount of experience from those issues. In Canada, the 2007 issues were largely a function of non-bank conduit sponsors in the market without the resources or regulatory oversight to independently support or manage their

conduits' outstanding obligations and risks, inconsistent liquidity support facilities based on varying definitions of "market disruption" that, in the case of the non-bank sponsored conduits that tried to draw on their liquidity support, proved deficient and, finally, the purchase or entering into of highly structured derivative or synthetic assets. As noted by the CSA in its request for comment on the Proposed Amendments (the "RFC"), each of these issues has been effectively eliminated from the ABCP Market as part of the market self-correction. Currently, there are no non-bank sponsored conduits in the market and market disruption liquidity has been replaced by "global style" liquidity support that eliminates the uncertainty around draw rights based on a market disruption. In addition, industry participants have worked together to improve the disclosure to, and understanding of, investors participating in the ABCP Market.

Along with having a greater amount of information and understanding about the individual transactions within a conduit program, investors also have a greater understanding of the underlying structure of the conduits, including how the liquidity support operates, with conduit sponsors now providing access to the conduits' principal documents. As recognized by the CSA, investors now have far greater access to information and a better understanding of the ABCP they are buying. We also believe that investors are now satisfied with the disclosure that they are receiving. Through the latter half of 2007 and through 2008 and into 2009, we would have frequent calls with investors to answer questions about our conduits and the underlying liquidity support. Since 2009, these calls have become very infrequent as a result of the self-correction noted above.

Despite the self-correction described above, the ABCP Market has plateaued at slightly less than \$30 billion in the last few years. With the potential impact of proposed regulatory and banking rule changes still being determined, together with a still precarious economic recovery, the ABCP Market also remains soft. While we support many of the changes made relative to the original proposals released in 2011, we believe additional changes can be made that would strike a more appropriate balance between allowing for the smooth function of the ABCP Market and investor protection and would also recognize the dynamic nature of the transactions in, and funding mechanics of, the conduits that are necessary to the ABCP Market.

While we recognize and support the CSA's attempt to find the appropriate balance between investor protection and enabling an efficient running ABCP Market, we feel the Proposed Securitization Amendments are largely aimed towards protecting retail investors whose participation in the ABCP Market is limited. While we share the CSA's desire to provide an appropriate level of protection for retail investors, we are concerned that the Proposed Securitization Amendments in their current form risk creating a significant negative impact on the participation of institutional investors in the ABCP Market.

For this reason, before discussing the Proposed Securitized Amendments themselves, we want to express our support for the position taken in the SFIG response letter that suggests the Proposed Securitized Amendments should add an additional, separate prospectus exemption targeted towards the institutional investors that make up a large portion of the current investors in the ABCP Market. This proposed alternative exemption, or “Sophisticated Exemption”, would allow the current efficient running ABCP Market to remain in place for sophisticated, institutional investors producing little to no negative impact on the ABCP Market and its participants, while at the same time codifying the key investor protections that the CSA is looking for in respect of the ABCP Market. In this regard, we support the Sophisticated Exemption requiring: a minimum purchase amount to ensure use of the exemption only in respect of sophisticated investors and both the same prescribed minimum ratings on the ABCP being purchased pursuant to the exemption and the same prescribed liquidity support requirements for such ABCP as may ultimately be put in place pursuant to the Proposed Securitized Amendments. We feel these protections, together with the sophistication of the investors that would buy pursuant to this alternative exemption, would achieve the CSA’s investor protection objectives in respect of this group of investors, while the Proposed Securitized Amendments, with appropriate amendments, would then be in place to protect all other investors that do not meet the requirements of the “Sophisticated Exemption”.

Comments on Proposed Securitized Amendments

We are generally in agreement with the responses of the Industry Response Letters to the specific questions raised by the CSA and, accordingly, do not go through each of those questions again in this letter. Instead, our comments will address our more general concerns with the Proposed Securitized Amendments. In reading our comments below, it is important to take into account the inherent investor protections in place that distinguish ABCP issued in Canada from other debt securities: the level of disclosure available to investors with respect to each conduit program; the liquidity support for the ABCP currently required by rating agencies rating the ABCP; the investor requirement for a minimum of two credit ratings on ABCP; the ABCP is backed by an ownership interest or security interest in an underlying asset pool, and, finally, in addition to the aforementioned liquidity support, the level of credit enhancement supporting the ABCP necessary to achieve the minimum two credit ratings on the ABCP (collectively, the “ABCP Protections”). These inherent protections in ABCP have led to a stable, efficient ABCP Market and we believe should be considered along with our comments below.

Minimum ABCP Ratings

Generally, we are in agreement with the CSA's proposed codifying of certain of the key protections in the ABCP Market that developed as part of the market self-correction discussed above. In this regard, we are in agreement with the proposed requirement for at least two credit ratings on ABCP issued pursuant to the proposed prospectus exemption and the need for liquidity support that meets certain prescribed minimum requirements. We do, however, question setting the rating requirements at the levels set out in the Proposed Securitization Amendments.

Although there is not currently a market in Canada for lower rated ABCP, a market did exist previously and may return in the future providing additional funding alternatives for sellers and thereby adding to the incentives for sellers to utilize the ABCP Market. In addition, investors would be presented with additional investment alternatives that they could choose between. For these reasons, we believe the Proposed Securitization Amendments should be prospective and should permit lower rated ABCP to be issued pursuant to the proposed prospectus exemption, or at least pursuant to the "Sophisticated Exemption" discussed above. We do not feel allowing the issuance of lower rated ABCP would pose a significant investor or systemic risk as: the market for lower rated ABCP is likely to be small; the number of investors that would consider this type of investment is limited and these investors are capable of making investment decisions that are appropriate for themselves, and the ABCP Protections would be in place. To the extent that the CSA considers modifying the minimum ABCP rating thresholds, corresponding changes to other areas of the Proposed Securitization Amendments will be needed, such as section 2.35.2(b).

Liquidity Requirements

We are also in agreement with codifying certain minimum requirements for the liquidity support for ABCP issued pursuant to the proposed prospectus exemption, including the need for each liquidity provider to a conduit to be a regulated, deposit-taking institution with a prescribed minimum rating. We do, however, feel that the CSA should consider the following modifications to its proposals:

- the minimum rating requirements for a liquidity provider should include the short-term equivalents and it should be sufficient for the liquidity provider to have one or the other; and
- consider deleting or simplifying the detailed liquidity requirements set out in section 2.35.3. We believe that the investor protection that the CSA is targeting will be provided by the rating requirements for the ABCP being issued pursuant

the prospectus exemption, together with the other contemplated liquidity requirements.

Ratings Under Review

We feel that proposed sections 2.35.2(a)(ii) and (iv)(D) should be removed from the Proposed Securitized Amendments. While a similar provision may be appropriate to restrict investments by a mutual fund where investments are blind to the ultimate investors and the fund can choose to invest in another permitted investment, we do not feel it is appropriate in the context of an ABCP conduit as the potential consequences to the continuous issuances characteristic of the ABCP Market are significantly disproportionate to any investor protection.

Rating agencies may put an issuer's rating under review for any number of reasons with no action ultimately being taken. The proposed provisions will force a conduit sponsor to make a subjective decision because it is difficult to determine what the ultimate result of a review will be. In the face of that uncertainty the only sure approach would be for the conduit to cease its activities. A conduit generally issues ABCP on a daily basis and, to the extent that it fails to issue ABCP or has to draw on liquidity to meet its obligations, investors will move to other investments and are unlikely to return. In addition, because of the need for daily issuance and the binary nature of these proposed provisions, the conduit will have insufficient time to consider issuance under any other provision of securities law.

As a result, while we recognize that the CSA has sourced these proposed provisions from other areas of securities law, the situations are not comparable and the provisions are overly punitive in the ABCP context. We feel the CSA's concerns should be mitigated by the fact that any ratings action taken by a rating agency will be a public event and investors can make their own informed decision and by the inherent ABCP Protections.

Permitted Asset Classes

We are in agreement with the Industry Response Letters that rather than try to list acceptable assets, the CSA would be better to list the asset classes that it is specifically interested in excluding: the derivative and leveraged assets that were central to the 2007 issues.

Disclosure

Our final general area of concern with the Proposed Securitized Amendments is with certain aspects of the proposed disclosure requirements. As the CSA notes in the RFC, conduit disclosure has greatly improved since 2007 and based on feedback that we have

received from investors, currently meets investor needs. As a result, as with other areas of the proposed amendments, we do not disagree with the codification of certain disclosure requirements to ensure continued, adequate disclosure to investors consistent with current practice, however, the proposed disclosure requirements seem to go well beyond this and does not take into account certain aspects and workings of the ABCP Market, particularly the dynamic nature of conduit programs with daily funding requirements and near daily transaction changes and, again, the presence of the ABCP Protections.

We are in agreement with the Industry Response Letters that the proposed disclosure requirements would place an excessive administrative and costly burden on conduits and their sponsors. In addition, certain of the proposed disclosure items are likely to discourage sellers from utilizing the ABCP Market. The culmination of these factors will be to hurt the ABCP Market rather than to enhance it.

Our principal concerns are:

- we feel the CSA needs to better delineate between the information to be included in the proposed information memorandum (“IM”) and the proposed monthly disclosure report (“Monthly Report”). We agree with the Industry Response Letters that the IM should contain a general description of the conduit program, the principal, underlying conduit agreements and the perametes governing the operation of the conduit business. Whereas the Monthly Report should contain all transaction specific information. In this way, the IM would only require infrequent updating to the extent of material changes to the conduit program itself, while the Monthly Report would be updated and released monthly to reflect changes in the transactions and related asset pools. This delineation would be consistent with current practice and would recognize the dynamic nature of conduit transactions. In addition, such delineation would eliminate the overly burdensome and duplicative aspects of the Proposed Securitized Amendments regarding the IM and Monthly Report. As well, the proposed 30 day delivery limit for the Monthly Report is too short and does not reflect the reality of reporting in the ABCP Market. We recommend that the time period for delivery be at least 45 days.
- we also feel that the proposed timely disclosure report (“Timely Report”) does not recognize the dynamic nature of conduit transactions and would place an excessive administrative and costly burden on conduit sponsors that is disproportionate to any investor benefit. In fact, we think that the potential number of Timely Reports that may be required under the proposals would actually undermine confidence in the ABCP Market due to the volume of Timely

Reports overwhelming and creating confusion amongst investors. We believe Timely Reports should be limited to material events that would reasonably be expected to negatively impact the events contemplated by section 2.35.4(6)(b)(i) and that the timeframe for reporting should be longer than two days; and

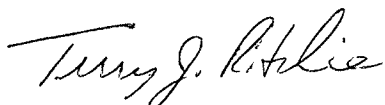
- finally, we are concerned with the proposed disclosure of certain transaction participants. The non-disclosure of the identities of sellers (in whatever capacity they may have under a transaction), obligors and third party credit enhancers has been a principal component of the ABCP Market and, to our knowledge, is consistent with market practice outside of Canada. We feel the required disclosure of these identities will: unnecessarily distinguish Canada from other markets in a negative way; potentially conflict with sellers' and conduits' responsibilities relating to obligors' privacy; and undermine a seller's negotiating position with different conduits. As investors are not requesting this information (we recognize they would not say no to it), we feel the potential negative impact on the ABCP Market is disproportionate to any investor protection that the disclosure may provide.

Summary

We have only referred to our general, principal concerns with the Proposed Securitised Amendments and to the extent that the CSA agrees with our concerns and determines to make consequential changes to its proposals, we believe other conforming changes will be required. Many of these additional changes are set out in the Industry Response Letters.

We are appreciative of having the opportunity to provide our comments on the Proposed Securitised Amendments and hope that the CSA finds our comments helpful and informative. To the extent that the CSA has any questions about, or would like to discuss any of, our comments, we would be pleased to speak with the CSA at any time. Thank you for your time and consideration.

Your very truly,



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