Scotia Capital Inc.
40 King Street West
Scotia Plaza,
P.O. Box 4085, Station "A"
Toronto, Ontario
Canada M5W 2X6

GLOBAL BANKING AND MARKETS

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Via E-Mail: denise.weeres@asc.ca, comments@osc.gov.on.ca, consultation-en-cours@lautorite.qc.ca

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

c/o

Denise Weeres
Manager, Legal, Corporate Finance
Alberta Securities Commission
250-5th Street S.W.
Calgary, Alberta, T2P 0R4

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Dear Sirs/Mesdames:

Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* Relating to the Short-Term Debt Prospectus Exemption and Proposed Securitized Products Amendments (the Proposed Amendments)

Scotia Capital Inc. appreciates the opportunity to provide comments in response to the Proposed Amendments as outlined in the *Notice of Publication and Request for Comment* dated January 23, 2014, and published by the Canadian Securities Administrators (CSA). We are a member of the Investment Industry Association of Canada (IIAC) and the Structured Finance Industry Group (SFIG) and assisted with the preparation of their comment letters regarding the Proposed Amendments. As such, we support their positions and write to add some additional comments.

General Comments

We are pleased that several industry stakeholders' comments were reflected in the latest round of the Proposed Amendments. We remain concerned, however, that the revised proposal singles out Asset-Backed Commercial Paper (ABCP) as being riskier than corporate commercial paper. We believe that due to the bankruptcy remote and secured nature of ABCP, and the liquidity support provided to these products by highly-rated entities, ABCP can be a *less* risky security. As such, we wish to reemphasize certain issues raised in our August 31, 2011, comment letter, specifically:

1. There is no need for separate rules for short-term securitized products such as ABCP. The current principles-based regulatory framework provides effective regulation and there is no evidence that securitized products have unique risks when compared to other debt products offered in the Canadian market. That being the case, it is unclear as to why a new framework for such products is being proposed.

   We agree with the CSA's view that mandatory credit risk retention need not be introduced into the Canadian securitization market. As described in the *Notice of Publication and Request for Comment*, "securitization structures typically contain credit enhancements that are intended to align the incentives and interests of securitizers with investors by exposing the originator to the risk of expected loss on the assets," through over-collateralization, subordinated classes of notes, cash reserve accounts or retained excess spread. These forms of credit enhancement ensure that originators generally retain a significant amount of credit risk, or in other words, "skin-in-the-game." Moreover, a significant portion of the securitization market in Canada involves direct exposure to conventional or "plain vanilla" asset classes (such as credit card receivables and auto and equipment loans and leases). As a result, we believe that the current principles-based regulatory framework sufficiently protects investors.

2. The current disclosure regime allows the ABCP market to operate efficiently while meeting investor needs. Moreover, the Proposed Amendments require issuers to disclose information that may put them in breach of confidentiality agreements to which they are subject. While issuers strive to provide clients with the information that they need to make an informed investment decision, the Proposed Amendments place too much emphasis on disclosure at the expense of market efficiency, and therefore frustrate the CSA's mission of fostering fair, efficient and vibrant capital markets.

   In our view, there is little to no evidence that the current regime provides insufficient disclosure with respect to securitized products. The fact that ABCP is successfully issued on a daily basis suggests that investors are not actively demanding additional disclosure than that which is provided under the current regulatory regime, nor is there any indication that the additional disclosure required under the Proposed Amendments would provide a significant benefit to investors commensurate with the costs of additional disclosure. To the extent that investors feel that additional disclosure is necessary, issuers have been able to adapt and provide the information requested.

3. The cost of compliance will impede market access to ABCP. Although the Proposed Amendments may increase disclosure and transparency, they will also create barriers for market participants (particularly originators and issuers) that could materially and adversely affect the Canadian securitization market. In other words, the cost of creating a new regulatory regime for securitized products could damage a market that is performing well, and restrict investor access to securitized products.

   The Proposed Amendments, if implemented, will also significantly increase the administrative burden and cost to issuers and originators in complying with the level of disclosure and proposed frequency. We are of the view that the related costs associated with increased disclosure far outweigh any potential benefit to investors, and may well lead to participants exiting the market, which will reduce the availability of this important financing tool.

Specific Comments

Question 2: *Are the credit rating requirements (two credit ratings at a prescribed minimum level) for short-term securitized products sold under the Short-Term Securitized Products Exemption appropriate?*

While we generally support the two-rating requirement and the comments submitted under the IIAC and SFIG comment letters, we question whether there is a need to prescribe such a standard. Following the 2007 liquidity crisis, the ABCP market migrated to a two-rating standard without regulatory intervention. As such, we are of the view that such matters can be addressed by market participants without the need for a prescribed requirement. We are not convinced that putting unnecessary restrictions on the issuance of ABCP will benefit the market as a whole.

Question 5: *Are there assets in addition to those listed in section 2.35.2(c) of the proposed Short-Term Securitized Products Exemption that a conduit should be allowed to hold? Are these assets currently found in the Canadian ABCP market?*

The assets listed under 2.35.2(c) are not exhaustive as they do not take into consideration the related rights attached to the assets, the related lease assets, and physical vehicles or other equipment that are currently included in certain Canadian securitization transactions. Rather than prescribing a list of eligible assets and potentially inadvertently excluding certain assets not listed, it is our view that a negative pledge restricting the conduits from funding non-traditional assets, derivatives or highly structured products would be more meaningful.

Annex A – Proposed Amendments to National Instrument 45-106 Prospectus and Registration Exemptions. Section 8 –Exceptions relating to liquidity providers 2.35.3(2).

We believe that it is unnecessary to codify ABCP liquidity arrangements. The relevant rating agencies have published detailed criteria outlining the rating principles they apply to all issuers. These materials are available to all investors. An attempt to simplify these requirements into a couple of paragraphs could result in unnecessarily restrictive rules that do not reflect current standards. For example, the proposed funding formula under 2.35.3(2) does not encompass the mechanics of the different liquidity arrangements for all liquidity providers as some banks have liquidity arrangements where liquidity is provided for each individual deal or pool and not on the overall program as is assumed by the calculations in the Proposed Amendments. Furthermore, the proposed formula suggests that all securitization transactions in a specific conduit may be cross-collateralized, which is not the case.

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For the reasons outlined above, we believe that the Proposed Amendments will have an unduly negative impact on the Canadian short-term securitized product market without a commensurate benefit to investors. The disclosure requirements will be costly to implement and potentially unpalatable for originators. Based on our experience, investors are not seeking the enhanced disclosure that is proposed by the CSA. As a result, we fear that implementing the Proposed Amendments may cause originators to exit the ABCP market, resulting in less efficient financing options for issuers and reduced investment options for investors.

Thank you for considering our submission. Should you require any further information, please do not hesitate to call me at (416) 945-4060.

Yours truly,

"Doug Noe"

Doug Noe
Managing Director and Head of Securitization and Structured Finance