

Annex D
List of Commenters on 2011 Proposals

and

**Summary of Comments Received on 2011 Proposals Relevant
to the Proposed Securitized Products Amendments**

List of Commenters on 2011 Proposals

RBC Capital Markets
Desjardins
DBRS
TingleMerret LLP
American Automotive Leasing Association
Scott Venturo LLP
Stikeman Elliott, LLP
SecureCare Investments Inc.
Ally Credit Canada Limited
National Bank Financial Inc.
Canadian Foundation for Advancement of Investor Rights (FAIR)
Moody's Canada Inc.
Canadian Imperial Bank of Commerce
Osler, Hoskin & Harcourt LLP
Standard & Poor's
Business Development Bank of Canada
Canadian Finance & Leasing Association
TD Securities Inc.
Exempt Market Dealers Association of Canada (EMDA)
Siskinds
American Securitization Forum
BMO Capital Markets
Olympia Trust Company
Canadian Bankers Association
Investment Industry Association of Canada
Borden Ladner Gervais LLP
Scotia Capital Inc.
Merrill Lynch Canada Inc.
Manulife Bank
CNH Capital America LLC
Fleming LLP

Summary of Comments Received on 2011 Proposals Relevant to the Proposed Securitized Products Amendments

1. Prescribed information memorandum for short-term securitized products distributed in the exempt market

The 2011 Proposals would have required that an issuer of short-term securitized products prepare a prescribed form of information memorandum as a condition of the Eligible Securitized Products Investor Exemption.

We received a number of comments on this issue. Some of the views expressed included:

- Requiring and prescribing information memorandum disclosure for distributions of short-term securitized products may adversely affect the ABCP market. Sufficient information is provided in the information memorandum for short-term securitized products; the same information should be required for long-term securitized products.
- A prescribed information memorandum is necessary. Program level information would not be problematic to include in an information memorandum. Other items relating to transaction-specific disclosures change frequently and potentially on a daily basis. It is not possible to aggregate and update this information on all transactions on a daily basis, insert it in an updated information memorandum and distribute the information to investors. It is more suitable to disclose this transaction specific information through monthly investor reports rather than through an information memorandum.
- It should not be necessary to standardize the form of the information memorandum provided the required information is contained therein.
- The mandated disclosure for short-term securitized products should closely follow the requirements of the Bank of Canada eligibility criteria under the Standing Liquidity Facility.
- If everyone is required to submit in a similar format, those persons reviewing the disclosure are able to better differentiate the products and assess the ongoing merits/risk.
- The only issuers of ABCP remaining in Canada are bank-sponsored conduits. It is not necessary to prescribe certain disclosure for short-term securitized products such as ABCP.

We continue to think that a prescribed form of information memorandum is appropriate for short-term securitized products. It will help to improve transparency and comparability and thus enhance investor protection as well as reduce the risk of destabilizing market disruptions. In order to reduce unnecessary regulatory burden or duplication, we have tried to align our proposals with the disclosure required by the Bank of Canada for collateral under its Standing Liquidity Facility. We also do not require that an information memorandum contain transaction-specific disclosures, but instead have introduced a concept that the information memorandum and other continuous disclosure documents be made reasonably available prior to making an investment.

2. Prescribed continuous disclosure for short-term securitized products distributed in the exempt market

The 2011 Proposals would have required that an issuer of short-term securitized products prepare a prescribed monthly disclosure as a condition of the Eligible Securitized Products Investor Exemption.

We received comments that both supported and disagreed with prescribing continuous disclosure. Specific comments included:

- Prescribed data can assist investors by increasing the uniformity in monthly reporting.
- The cumulative effect of the proposed rules would seem to require ABCP conduits to maintain current disclosure on a virtually daily basis. The strain on resources and the effect on costs that would ultimately be passed onto originators may well be sufficient to effectively destroy an economic model that has been a crucial source of credit in the Canadian market. Disclosure of such items should only be required as elements of ongoing monthly disclosure.
- The proposed requirement to deliver and post monthly reports within 15 days from the end of each month should be extended to 45 days from the end of each month.

In order to reduce unnecessary regulatory burden or duplication we have tried to align our proposals with:

- the disclosure required by the Bank of Canada for collateral under its Standing Liquidity Facility; and
- the disclosure that ABCP conduits provide to DBRS for publication in DBRS's monthly ABCP reports.

We are also revising various timing requirements in respect of the continuous disclosure required for short-term securitized products under the Short-Term Securitized Products Prospectus Exemption. Furthermore, issuers would not be required to maintain an "evergreen" memorandum.

3. Delivery to securities regulators of disclosure documents prescribed for short-term securitized products and availability to the public

In the 2011 Proposals, we asked whether the continuous disclosure documents relating to short-term securitized products distributed under the Eligible Securitized Products Investor Exemption should be made available to the public. We also asked if these documents should be delivered to securities regulators.

One investor commented that even if securitized products are not generally available to the public, a broader provision of disclosure would promote transparency in the market and help other investors to better evaluate the risks. Continuous disclosure should be available to the public unless it concerns private placement agreements. One commenter indicated that having

non-reporting issuers provide the information to securities regulators would be an unnecessary administrative burden to issuers with no material benefits.

We think that the concept of making the information memorandum and continuous disclosure reasonably available to investors provides appropriate transparency without unnecessary administrative burden. We have revised our proposals so that issuers of short-term securitized products would have to deliver the monthly disclosure report and timely disclosure report to securities regulators on request, but not as a matter of course.

4. Civil liability for misrepresentations in the information memorandum and continuous disclosure documents; two-day withdrawal rights

In the 2011 Proposals, we indicated that we thought investors should have statutory or contractually equivalent rights to take legal action for misrepresentations in an information memorandum against issuers, sponsors of securitized products and underwriters.

We received comments for and against this concept. One commenter recommended adding promoters to the list. Other commenters disagreed and commented that securitized products distributed on a prospectus-exempt basis should not be treated differently from other debt and equity securities.

Specific comments included the following:

- The proposal is disproportionate to the risk of misrepresentation in the Canadian securitization market which is dominated by the major Canadian banks and finance companies.
- Mandating an information memorandum that includes statutory rights of action is unduly burdensome and would directly increase the costs of raising capital.
- Creating a separate private placement regime for securitized products, including statutory civil rights of action against issuers, sponsors and underwriters for a misrepresentation in an information memorandum, would cause investors to view securitized products, including short term securitized products as being inherently riskier, even if unwarranted.

We also indicated that we thought there should be statutory civil liability for misrepresentation in the continuous disclosure provided by an issuer of securitized products in the exempt market. We again received comments both for and against this concept.

We asked if there should be a right for an investor to withdraw within two days of investing in a securitization transaction. We received a comment that this would be impracticable for short-term securitized products, as money market instruments operate on a same-day settlement basis. In addition, such a right would create uncertainty that would affect the ability to fund an issuer's ongoing obligations with respect to its outstanding ABCP as well as its obligations pursuant to the various securitization transactions to which it is a party.

In light of the above comments, and the other conditions we are imposing on the prospectus-exempt issuance of ABCP, we do not think it is necessary to introduce additional statutory rights of action beyond those that may already exist in a jurisdiction for misrepresentations in the information memorandum or continuous disclosure documents. We also do not think a two-day right of withdrawal is necessary or practicable.