INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

Ian Russell
President & CEO

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Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8
e-mail: jstevenson@osc.gov.on.ca

Ms. Anne-Marie Beaudoin
Directrice du secretariat
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22e étage
Montréal, QC H4Z1G3
e-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: Canadian Securities Administrators ("CSA") Notice and Request for Comments on the Proposed Securitized Products Rules (the "Notice")

The Investment Industry Association of Canada ("IIAC" or the "Association") appreciates the opportunity to comment on the Proposed Securitized Products Rules (the "Proposed Rules").[1]

[1] Proposed National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products*, Proposed National Instrument 51-106 *Continuous Disclosure Requirements for Securitized Products*, 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* and Proposed Consequential Amendments.

11 King Street West, Suite 1600, Toronto, ON M5H 4C7
Tel: (416) 865-3036 Fax: (416) 364-4861 irussell@iiac.ca / www.iiac.ca

In response to the issuance of the Notice, IIAC formed a Securitized Products Working Group (the "Working Group"). This submission was drafted based on the input of the Working Group, which represents a cross-section of IIAC member firms from across the country. The industry professionals serving on the Working Group are some of the most knowledgeable and experienced professionals working in the securitization and structured finance industry in Canada.

IIAC welcomes the opportunity to provide our input on the Proposed Rules, including questions regarding the Proposed Rules. We have carefully considered our responses from the perspective of our industry participants and the capital markets as a whole.

I. OVERVIEW

The Working Group has some general comments on the Proposed Rules. Although we have provided specific answers to a number of the questions posed by the CSA, there are many similar themes that run through the questions that we feel need to be addressed at the outset.

The Working Group recognizes the three principles that the CSA has taken into account in developing the Proposed Rules:

- providing adequate information to investors to understand whether such investments are appropriate for their investment objectives, at the time of purchase and on an ongoing basis, while fostering market efficiency;
- facilitating transparency in the securitization market, reducing systemic risk and ensuring that it can continue to function in times of financial stress; and
- ensuring that the rules take into account the particular features of the Canadian securitization market, are proportionate to the risks associated with particular types of securitized products and do not unduly restrict investor access to securitized products.

While the Working Group agrees in general with the three principles set out above, it is concerned that the Proposed Rules ultimately create a separate system of regulation for securitized products layered on top of the existing regulatory system. The resulting impact of the Proposed Rules would be to severely affect the use of securitization as a funding alternative, be unnecessarily burdensome and unjustly stigmatize securitized products as an investment option. In our view, the result is a disproportionate response by the CSA to any perceived deficiencies in the existing system.

Although the Working Group believes the three principles set out above are laudable, the Proposed Rules do not further these objectives and, in some cases, arguably work against them. In our opinion, the balance between market efficiency and transparency has been lost as a result of the CSA's seemingly primary focus on transparency. This theme, in the view of the Working Group, runs throughout the Proposed Rules and the responses of the Working Group provided to the questions posed by the CSA express our concern for the need to balance transparency and market efficiency more appropriately. In fact, there is no evidence that securitized products are any more risky, thereby requiring a greater level of disclosure, than other debt products offered in the Canadian market.

The Working Group has also expressed concern that it appears as though the Proposed Rules focus on regulating risks that do not exist in the Canadian securitized product marketplace. The CSA specifically mentions the "originate-to-distribute" model as an influence in drafting the Proposed Rules. However, this model is a feature of the securitization market in the U.S. and not Canada. Accordingly, drafting rules to address concerns over this model in Canada is not appropriate. It is not reasonable to negatively impact the existing Canadian market to address a non-existent concern. In addition, numerous commentators and industry participants in the U.S. have been extremely critical of the U.S. regulatory approach of enacting overreaching legislation over all asset classes to deal with what is in effect an "originate-to-distribute" issue prevalent in the U.S. mortgage market. Furthermore, Canadian originators generally retain a significant amount of credit risk (i.e., "skin-in-the-game"), either through overcollateralization, purchases of subordinated classes of notes, retained excess spread, deferred consideration or a combination of the foregoing, and this maintains an alignment of interest with investors.[2]

It is also the Working Group's opinion that the Proposed Rules focus unnecessarily on risks more inherent to transactions providing synthetic exposure to financial assets, such as collateralized debt obligations ("CDOs"), as opposed to the direct exposure to conventional or "plain vanilla" asset classes (such as credit card receivables and auto and equipment loans and leases) which comprise the vast majority of the Canadian securitization market.

As a securitization asset class, the volume of CDO securitization transactions in Canada grew significantly from 2000 to 2006 (although nowhere near the levels seen in the U.S. or the U.K). The interconnectedness of the counterparties and debt involved in the CDOs, especially the synthetic debt that was utilized in CDOs, were widely recognized to have contributed to the collapse of liquidity during the financial crisis in the U.S. This, together with structural deficiencies in the liquidity facilities used in Canadian CDO securitization transactions are generally thought of as the primary causes of the demise of this market in Canada in 2007. It should be noted that bank-sponsored securitization conduits were largely unaffected by these events, except for some spillover effect as the adverse press on the CDO conduits caused decreasing demand for all asset-backed securities.

It can be argued that the Canadian securitization market has largely regulated itself following the events of 2007. The market has responded with increased and enhanced disclosure. For example, during and subsequent to the credit crisis, conduit sponsors met

2 To further differentiate the Canadian market from the "originate-to-distribute" model in the U.S., in addition to the seller usually having some form of retained interest, issuers in Canada tend to be repeat issuers and thus reputational risk is an important factor. Further, most originators in the Canadian securitization market will typically hold comparable assets on their balance sheets.

11 King Street West, Suite 1600, Toronto, ON M5H 4C7
Tel: (416) 865-3036 Fax: (416) 364-4861 irussell@iiac.ca / www.iiac.ca

with many investors to discuss their disclosure concerns and, to the extent that any existed, have addressed them in a satisfactory manner. Investor demand for securitized products in Canada, especially asset-backed commercial paper ("ABCP"), currently far outstrips supply, leading one to conclude that investors are comfortable with the current level and quality of disclosure for securitized products in Canada. If the CDO market ever returns, or a similar market develops in Canada, the increased and enhanced disclosure that is now standard in the Canadian securitization market will result in such market being more stable, efficient and transparent.

It is also important to note that the securitization market in Canada, other than the non-bank sponsored ABCP market, which represented only 10% of the Canadian securitization market at the end of 2007 and no longer exists[3], continued to function without disruption through the worst periods of 2007 through to 2009 and did not incur any material losses for investors.

Other than perhaps with respect to the small portion of the non-bank sponsored ABCP market that was backed, directly or indirectly, by U.S. subprime residential mortgages, the financial crisis as it pertained to the Canadian securitization market was purely a liquidity crisis and did not reflect the quality or performance of the Canadian assets or Canadian securitization structures. The assets backing securities issued in the Canadian securitization market continued to perform well and did not experience any material losses. Furthermore, the crisis that affected the securitization market also impacted the broader fixed income market. In the end, the existing securities law regime was sufficient to protect investor interests and while the Working Group agrees improvements can be made, the Proposed Rules are disproportionate to the improvements that are reasonably appropriate. Creating a whole new regime will only damage a securities market that is performing well.

Despite the market turmoil in 2007 to 2009, new issuances of term asset-backed securities continued in Canada. Over $9 billion was issued in both 2007 and 2008. While new issuance volume dropped below $5 billion in 2009, it rebounded strongly in 2010 with over $12 billion of new issuances. This strong performance has continued in 2011 despite difficult markets with almost $7 billion of issuances in the first half of the year. The first commercial mortgage-backed securities ("CMBS") deal in Canada since 2007 was completed earlier this year, and was oversubscribed and highly successful. The excellent collateral performance in Canadian CMBS pools bodes well for this market to fully re-establish itself. In addition, the ABCP market continues to perform well, with outstanding ABCP stabilizing in the $24 billion area and ABCP spreads now below pre-crisis levels.

The Working Group believes it is important to emphasize the principle of not unduly restricting investor access to securitized products. Although the Proposed Rules will

[3] IIROC Regulatory Study, Review and Recommendations concerning the manufacture and distribution by IIROC member firms of Third Party ABCP in Canada and Bank of Canada Financial System Review, June 2008.

increase disclosure and transparency, they will also create barriers for market participants (particularly sellers and issuers) that ultimately could materially and adversely affect the Canadian securitization market.

The primary question raised by the eligible securitized product investor concept is whether it is appropriate for securitized products to be regulated differently from other products – is the CSA drawing an artificial, or worse, unfair, distinction between securitized products and other securities? We believe that a separate regime for securitized products is unnecessary and unfair, will severely undermine the stated goal of efficiency and will stigmatize the market for securitized products. In addition, by proposing rules that would leave retail investors out of this market, the CSA is adversely altering the balance between investor protection and its additional stated goal of not unduly restricting investor access.

In conclusion, the Working Group contends that the Proposed Rules are a disproportionate response by the CSA in light of the increased and enhanced disclosure that currently exists in the Canadian securitized products market. In addition, the Proposed Rules address risks that did not and do not exist in the Canadian securitization market. Lastly, the creation of an additional securities law regime for securitized products will unjustly stigmatize a securities product that is not any riskier and has not experienced any more defaults or losses than any other securities product in Canada.

II. QUESTIONS

Set out below are specific responses to a number of the questions posed by the CSA. If we have not answered a question posed by the CSA, we do not have a comment on that question. Attached to this letter are several appendices which, despite our responses below that outline why the Working Group believes these various forms are not appropriate, contain specific comments on several of the forms set out in the Proposed Rules.

(a) General

Questions 5 and 6. Definition of "securitized product"

While the Working Group understands that the CSA intends that the definition triggering the application of the Proposed Rules to be broad, we believe that the definition of "securitized product" under the Proposed Rules is overly inclusive, potentially capturing products that should be excluded.

The CSA has indicated that as covered bonds are primarily obligations of the financial institution with the cover or collateral pool serving as credit enhancement, they do not raise the same policy concerns as standard securitized products. We are supportive of this approach.

Based on that analysis, the Working Group would argue that all securities issued or guaranteed by Canada Mortgage and Housing Corporation ("CMHC"), which includes Canada Mortgage Bonds ("CMB") and National Housing Act Mortgage Backed Securities ("NHA MBS"), are backed by the full faith and credit of the Government of Canada and carry the same "AAA" credit rating as covered bonds. As such, these securities should be exempt from the definition of "securitized product".

Furthermore, the Working Group is concerned that the definition could unintentionally capture banking products such as: (a) over-the-counter derivatives, (b) corporate loans secured by pools of assets, and (c) innovative Tier 1 capital structures.

The Working Group doubts that the CSA intended to include these types of products in the definition of "securitized product". Nevertheless, a strict and literal interpretation of such definition could lead one to conclude that such products are captured therein, which in turn subjects them to the new disclosure requirements set out in the Proposed Rules. As a result, we would recommend explicitly excluding these products and narrowing the definition to be more specific.

(b) The Proposed Prospectus Disclosure Rule

Question 8. Restrictions on the kinds of asset-backed securities distributions that are eligible for the shelf system

Rather than two sets of rules based on whether a security is a securitized product or not, the Working Group is of the view that a single shelf system should exist in Canada.

The Working Group does not believe there should be restrictions on the kinds of asset-backed securities that are eligible for the shelf system. Prescribing restrictions by asset type could restrict innovation as well as the current securitized products being sold under shelf prospectuses. These restrictions will adversely affect market efficiency.

Any restrictions that exist in the U.S. may be useful for that particular market, however, the securitization programs in Canada utilizing the shelf rules are relatively straight-forward programs involving asset classes in which there is a high degree of consistency and uniformity between each program (for example, credit card and auto and equipment loan programs). In addition, in the U.S., the shelf system is primarily utilized for revolving assets, whereas in Canada the shelf system is utilized for both revolving and amortizing assets. Thus, it will not increase market efficiency in Canada to impose restrictions that may have been useful in the U.S. market and are not warranted in Canada. It also bears considering that many of the regulatory reforms in the U.S. are now being re-examined due to their unintended negative consequences. The Working Group contends that it is not prudent to simply follow U.S. changes that are now under review.

The Working Group is of the view that investors currently have sufficient information to evaluate asset-backed securities and decide whether the investment risks are acceptable to them since all shelf programs in Canada, including medium term notes and other continuous distribution programs, provide investors with pool information that is at least 90 days current and, in the case of medium term notes programs, the pool information is kept 90 days current throughout the life of the shelf prospectus. The Working Group believes that an issuer's obligation to provide full, true and plain disclosure of all material facts results in an issuer disclosing in a base shelf prospectus and the relevant supplement all the information an investor requires to evaluate an asset-backed security being offered under the base shelf prospectus and the relevant supplement.

Thus, the shelf system does not provide less disclosure to investors. If anything, the shelf system provides information earlier than short or long form prospectuses, especially since the legal and deal structure of the program is set out in the base shelf prospectus.

Questions 9 and 11. Shelf supplements and sufficient time to review

The Working Group notes that the general practice in Canadian securitization transactions utilizing the shelf system is that potential investors are provided with a preliminary form of supplement, as referred to in Section 1.3 of the Companion Policy to National Instrument 44-102 *Shelf Distributions*, which is similar to a preliminary prospectus. If potential investors indicate the desire for further information, it would be subsequently provided. Investors currently receive such preliminary supplements prior to the pricing of the transaction and committing to the purchase. Consequently, the Working Group does not believe any changes are necessary to this approach.

As a result, there is no need to codify that such preliminary supplements be filed prior to the first sale since all potential investors would have already received the relevant preliminary supplement, including any amendments thereto. In addition, the Working Group does not see a need, nor does it think it is appropriate, for the CSA to single out securitized products and impose such a filing requirement in respect of the preliminary supplements of securitized products.

It should be noted that the preliminary pricing supplements in securitization programs that utilize the MTN shelf system are of extremely limited value since they are essentially term sheets without any significant or material information. The Working Group is of the view that the key disclosure for investors is the pool data which is filed on a quarterly basis in these MTN programs in order to ensure that the pool data is always 90-day current.

Question 10. Rating eligibility criterion

The Working Group contends that the approved rating eligibility criterion for the short form and shelf prospectus systems should be maintained since such criterion has worked well to date in Canada, and such criterion forms part of the eligibility for investment criteria of many institutional investors in Canada. While the Working Group recognizes that ratings are not a perfect proxy for eligibility, they are nonetheless, another tool that is useful for investors.

In addition, based upon the manner in which the Canadian securitization market has functioned, the Working Group does not believe 5% vertical slice risk retention, or any other form of risk retention, should be mandated. In all securitization structures in Canada, other than certain CMBS transactions, the seller maintains some "skin in the game", either through overcollateralization, purchases of subordinated classes of notes, retained excess spread, deferred consideration or a combination of the foregoing, and thus, there is a maintained alignment of interest with investors. In CMBS structures in Canada, a "controlling class representative" exists, which is the purchaser of the lowest ranking securities in the transaction, and the controlling class representative is provided with certain control rights, which it can use to protect its interests and investment. These investors are paid a premium for these investment risks. In addition, issuers in Canada tend to be repeat issuers and reputational risk cannot be underestimated as a significant factor.

Further, the U.S. Securities Industry and Financial Markets Association ("SIFMA") has recently stated that they are concerned that certain elements of the recently proposed rules on risk retention as prescribed by the Dodd-Frank Act could "negatively impact the market going forward. In particular, we believe the premium capture provisions have the potential to eliminate securitization as a source of funding in many markets by effectively regulating, and diminishing, the profitability of securitization transactions, in a manner well beyond what is economical for securitization sponsors." Again, the CSA should be cautious in utilizing U.S. regulatory initiatives as a precedent for Canadian reforms as many reforms in the U.S. are being subsequently reviewed due to their unintended negative consequences.

The concept of mandated risk retention is viewed by some as being a useful tool to impose discipline on "originate-to-distribute" securitization models. As mentioned above, these models were prevalent in the U.S. mortgage industry and are regarded as a significant source of the current U.S. housing turmoil, but this type of origination model is essentially non-existent in Canada. The vast majority of issuers in the Canadian securitization market continue to hold comparable assets on their balance sheets.

We also note that underwriting standards in Canada have been, and continue to be, significantly higher than those in the U.S., as evidenced by the significantly lower delinquency and defaults rates in Canada as compared to the rates in the U.S. across a broad spectrum of asset classes.

Consequently, the Working Group contends that there is no need to codify risk retention in Canada. Securitization transactions in Canada already contain an alignment of interest with investors or in CMBS structures certain investors receive certain control rights, which they negotiate, and an appropriate risk premium to protect their interests.

The assumption of much of the regulatory reform relating to risk retention appears to be that originators are inclined to create programs without concern about ABS investors or pool performance. However, originators choose ABS for funding their assets because ABS funding offers them a favourable cost of funds and diversification of funding sources. This funding importance, coupled with the existing "skin-in-the-game" by originators, already provides strong incentive to originators to appropriately manage their securitization process, and protect this source of funding and their reputation with investors.

The Working Group does not see the benefit of the use of a third party review of repurchase and replacement obligations in connection with alleged breaches of representations and warranties. To the knowledge of the Working Group, repurchase and replacement obligations for breaches of certain representations and warranties are part of every securitization transaction in Canada. The Working Group is not aware of any such repurchases or replacements actually occurring in the Canadian securitization market. This is due to the fact that the breaches of representations and warranties that require a repurchase or a replacement primarily relate to the eligibility criteria of the assets at the time they are initially securitized, and sellers in Canada have been diligent and successful in ensuring there are no such breaches at that time.

Questions 12 and 13. Pool asset and payment disclosure

The Working Group believes that investors are not seeking asset- or loan-level data, and further, there will likely be privacy issues in Canada, from both a contractual and legislative perspective, in obtaining and disclosing such data. Notwithstanding, the Working Group believes that investors receive all appropriate pool and asset disclosure and that investors are satisfied with such disclosure. In addition, we are of the view that a requirement for asset- or loan-level data would create a significant barrier to participation in the Canadian securitization market. Furthermore, the Working Group is aware of concerns expressed by certain issuers that such disclosure may impact their competitive advantage by enabling their competitors to reverse engineer their underwriting models.

With respect to a computer waterfall payment program, the Working Group notes that such a program is typically a simulated cash flow stress model. The Working Group is concerned with expanded liability in providing such models since by their nature they are unable to address all contingencies and possible scenarios. Furthermore, pre- and post-default waterfalls are disclosed to investors, who are then able to create their own models using such disclosure, based upon their own needs and requirements, and given the institutional nature of the Canadian securitization market, many investors already have their own models.

As a result, we agree with the CSA that this type of disclosure is not necessary, and further, is likely to be problematic in terms of the time and cost burden on issuers.

Question 15. Risk factor disclosure

The Working Group supports the CSA's decision to not prescribe risk factor disclosure. The Working Group believes that because it is an issuer's duty to determine the risk factors, and is concerned that itemized and standardized risk factors may convey wrongly that the listed risks are the only ones impacting that asset class. Further, issuers are the best entities to determine risk, especially in light of their "full, true and plain disclosure" liability standard, and the changing nature of risks over time. As a result, investors are better protected when receiving risk factor disclosure determined by the issuer. Thus, the Working Group contends that the current market standard regarding disclosing material risks is sufficient and appropriate.

Question 16. Incorporation by reference of Form 51-106F1 and Form 51-106F2

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

For CMBS issuers that are exempt from filing financial statements, but file monthly distribution date statements ("DDSs"), the monthly DDSs are not incorporated by reference into short form prospectuses. The CSA has exempted the incorporation by reference of DDSs through the issuance of a receipt for the final prospectus evidencing such exemption. The monthly DDS information is captured on a quarterly basis in the interim Management Discussion and Analysis ("MD&A") and on an annual basis in the annual MD&A of CMBS issuers. Thus, the Working Group is of the view that as the CSA has not required the incorporation by reference of monthly information for CMBS issuers, the same approach should be applied to all issuers of securitized products. Just as CMBS issuers post their DDSs on SEDAR and a specified website, issuers of other securitized products also make their monthly reports available to investors on a specified website, and in some cases, the monthly reports are also posted on SEDAR for even more convenience for investors. In addition, the Working Group does not see any reason why issuers of securitized products should be required to incorporate by reference monthly information when issuers of other types of securities with similar or even more risk attributed to them are not subject to this requirement.

Furthermore, there is no reason to deviate from the requirement to incorporate by reference Material Change Reports and expand this requirement to Significant Event forms as suggested in the Proposed Rules under proposed National Instrument 51-106. The focus should be on material facts for prospectus disclosure, and not a concept of significance based on a list of events the CSA deem to be significant, unrelated to the concept of full, true and plain disclosure of all material facts in a prospectus, which is the commonly understood concept of disclosure in Canadian securities offerings. If a "significant event" is also considered by the issuer to be a "material change", a Material Change Report is required to be filed and the Material Change Report will be incorporated by reference. The concept of a "material change" is related to the "material facts" concept and a "material change" is also a concept that is commonly understood in the Canadian securities market. Since other securities offerings do not have a concept of significance related to a list of "significant events", the Working Group believes that this will cause confusion amongst investors and issuers trying to satisfy the requirement, and investors may view securitized products to be more risky as a result of this confusion and lead to different treatment which is disproportionately unfair to securitized products.

(c) <u>The Proposed CD Rule and Proposed Certification Amendments</u>

Question 18. Audited financial statements

The Working Group strongly 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. The Working Group 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.

The Working Group 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 securitized product disclosure requirements proposed in National Instrument 51-106 provide more relevant information to investors than financial statements.

Question 19. Grandfathering

While not detracting from our comments on the proposed continuous disclosure rules, the Working Group believes that if any of the proposed continuous disclosure rules are adopted, "grandfathering" should be permitted since there have not been any issues with the securitized products that are currently outstanding, or the asset pools underlying such securitized products. Not allowing grandfathering with respect to transactions that have already been completed would impose an unreasonable burden on reporting issuers. In addition, the investors who purchased such securitized products purchased these products on the basis of the current continuous disclosure regime. The Proposed Rules should only apply to new transactions, unless the reporting issuer decides otherwise.

Question 20. **Application of continuous disclosure requirements**

The Working Group is of the view that continuous disclosure requirements should not be mandatory for securitized products distributed by a reporting issuer on a prospectus-exempt basis. Issuers of securitized products should have the right to decide between utilizing the public or private system for an offering – just like any other issuer. In addition, investors are aware of the two systems and their differences and through the pricing of the securities, pay for the continuous disclosure that exists in the public system. Thus, the separation of the two systems should be maintained since the flexibility and cost-effectiveness benefits both issuers and investors.

There are many prospectus-exempt distributions in which the reporting issuer distributes securitized products to a single or small number of sophisticated purchasers, such as financial institutions or multi-seller asset-backed commercial paper conduits, who negotiate the terms of the transaction, including the ongoing disclosure that will be provided to them. These sorts of bespoke transactions with sophisticated purchasers who often perform the majority of the structuring of the transaction should be exempt from the continuous disclosure requirements. In addition, the terms of these transactions often contain restrictions on the transferability of the securitized products and confidentiality provisions regarding the information that may be disclosed. Thus, including disclosure on such transactions in the continuous disclosure documents of the reporting issuer would not provide investors in the related securitized products with any additional benefits or disclosure, and may result in making these transactions unworkable. In addition, if disclosure on such transactions is not material, the Working Group does not see a need for the reporting issuer to be required to provide such disclosure to other investors.

There are also many prospectus-exempt transactions in which the reporting issuer and investment dealers or initial purchaser(s) in the transaction decide not to make the securitized product freely tradable, and accordingly, will not satisfy the relevant criteria in National Instrument 45-102 *Resale of Securities*, either because the intention of the initial purchaser(s) is to hold the securitized product until maturity, or the parties recognize that there is no need for the securitized product to become freely tradable, given that all the potential investors for such securitized product are institutional investors who are able to purchase on a prospectus-exempt basis or the purchase price of any resale of such securitized product would be well in excess of $150,000.

The Working Group also notes that many prospectus-exempt distributions of securitized products by reporting issuers are completed without an offering memorandum. Thus, the Working Group finds it unfair to impose liability in respect of continuous disclosure for such securitized products when these securitized products were not subject to any disclosure liability when they were initially sold.

Question 21. Legending or notice requirement to explain resale restrictions

As noted in the response to Question 20 above, there are many prospectus-exempt transactions in which the reporting issuer and investment dealers or initial purchaser(s) in the transaction do not intend to make the securitized product freely tradable. The primary manner in which reporting issuers accomplish this is by not placing a legend regarding the "hold period" on the certificate representing the security or not providing written notice of such legend. Thus, a legend or notice requirement may undermine the intention of the parties in a prospectus-exempt transaction, and accordingly, may reduce the flexibility of such parties in structuring such transactions.

The Working Group notes that in prospectus-exempt transactions for securitized products, it is common practice to notify investors of the prospectus-exempt nature of the transaction and the general resale restrictions that exist for such securitized products, including in transactions in which the securitized products will not become freely tradable. However, despite such practice, the Working Group is of the view that the inclusion of a legend or notice regarding resale restrictions, such as the "hold period" legend in National Instrument 45-102 *Resale of Securities*, in prospectus-exempt transactions should not be a requirement. The Working Group is not aware of any confusion or uncertainty of purchasers of securitized products in a prospectus-exempt transaction regarding the resale restrictions in respect of such securitized products. The Working Group contends that this would be another manner in which the different treatment of the securitization market is unwarranted, and accordingly, unfair.

Question 22. Timely disclosure

The Working Group has reviewed the criteria in Form 51-106F2.

The Working Group generally believes that the current regime of filing material change reports is sufficient and appropriate and that this is another area where the Proposed Rules differentiates issuers of securitized products in an unfair and burdensome manner. Beyond this, in reviewing section 5 of NI 51-106, the Working Group has certain practical concerns with the proposed disclosure of "significant events", such as the requirement that the filing must occur no later than two business days after the date on which an event occurs. The Working Group is of the view that if section 5 of NI 51-106 becomes applicable, the requirement to disclose the "significant event" should only arise after the reporting issuer becomes aware of the "significant event". In some securitization structures, such as commercial mortgage securitization structures, the servicer of the assets is not the reporting issuer or the administrative agent or financial services agent of the reporting issuer, and accordingly, the reporting issuer may not be aware of the occurrence of a "significant event" when it arises, but at a later date, such as when it receives the servicer's report, which is generally on a monthly basis.

Thus, in order to comply with this disclosure requirement in these circumstances, the reporting issuer would either be required to monitor the servicer on a daily basis with respect to the list of "significant events" or rely on the servicer's judgment of the occurrence of a "significant event". The Working Group is of the view that these options are either too onerous, if not impossible, to implement for reporting issuers or unacceptable to reporting issuers, and consequently, would result in securitization becoming a less attractive funding source for issuers.

11 King Street West, Suite 1600, Toronto, ON M5H 4C7
Tel: (416) 865-3036 Fax: (416) 364-4861 irussell@iiac.ca / www.iiac.ca

In addition, the servicer of the assets may not be aware of the occurrence of a "significant event" when it arises, but only become aware of such event during the course of the preparation of its reports. Thus, again, the proposed disclosure requirement may require disclosure of a "significant event" prior to actual knowledge of the event. The Working Group contends that this may place an issuer in an untenable position and may also result in some investor confusion since investors may be informed of a "significant event" without the benefit of all monthly disclosure.

The Working Group is also of the view that the definition of "material change" in National Instrument 51-102 *Continuous Disclosure Obligations* refers to changes which the reporting issuer would be aware. Thus, the Working Group believes that its proposal that the "significant event" disclosure requirement arise when the reporting issuer becomes aware of the occurrence of such event is consistent with the current approach in Canadian securities legislation with respect to a "material change". Again though, the Working Group believes that the regime for securitized products should remain a "material change" regime consistent with the regime for other securities.

In addition, the Working Group believes that the two days should be consistent with the 10 day time frame as set out in the material change report. Additionally, the two day time frame in securities legislation is currently only used in respect of early warning and reporting. Admittedly, this is an onerous time frame, but extremely important to a well-functioning capital market. We query whether the same significance can be place on significant events relating to securitized products?

The Working Group's more detailed comments on Form 51-106F2 and the list of events considered to be "significant events" in section 5 of NI 51-106 are set out in Appendix E on page 29 of this letter. We believe that events should be those that are identified as significant to specific transactions and they should be communicated when and as received pursuant to the deal documents.

Question 23. Statutory civil liability

The Working Group strongly believes that any new continuous disclosure documents that are required to be filed under the Proposed Rules should not be prescribed as core documents. The Working Group's position, which has been noted in our responses to previous questions, is that such new continuous disclosure documents 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 the Working Group believes attract potentially greater liability than non-core documents, the stigmatization of securitized products is significantly, and unfairly, increased.

Question 26. Report of fulfilled and unfulfilled repurchase/replacement requests

The Working Group 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, the Working Group believes that such disclosure is not required in Canada. This view is reinforced by the fact that, as noted above, the Working Group is not aware of any such repurchases or replacements actually occurring in the Canadian securitization market.

With respect to Form 51-106F1, the Working Group is of the view that the repurchase or replacement disclosure required pursuant to Section 2(3)(m) 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). In addition, the Working Group 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.

(d) <u>The Proposed Exempt Distribution Rules</u>

Questions 27 to 41. The proposed exempt distribution rules

The Working Group has serious concerns with the product-centric approach that the CSA has taken in developing the proposed exempt distribution rules for securitized products. By only permitting eligible securitized product investors to invest in securitized products on an exempt basis, the CSA is precluding almost all retail investors from participating in this market, thereby unduly restricting investor access to securitized products and imposing an unduly burdensome system on issuers that is disproportionate to the risk involved.

If the CSA limits who may purchase in the exempt securitized product market, the Working Group believes that such limits may affect the capital raising efforts of issuers and sellers that rely on either the exempt or public securitization markets for financing. Not only will there be fewer investors who can purchase in the exempt securitized product market, but investors that are eligible may generally view securitized products to be inherently riskier than other securities due to their completely different treatment in the exempt market which is an unfair differentiation. Issuers and sellers that participate exclusively in the exempt securitized product market for financing may not be able to move to the public securitization market for their financing needs due to the higher costs to participate in that market. Thus, these issuers and sellers may be required to find alternative, and likely, more costly, funding sources. Again, we feel that a separate system for securitized products is unwarranted and that reducing access to the exempt market to prospective issuers and investors is inappropriate and contrary to what we think the CSA is trying to achieve.

The Working Group also finds it concerning that the CSA is contemplating creating a totally new set of prospectus exemption rules for a relatively small portion of the overall Canadian capital markets. The cost, time and effort, including the possible need for legislative amendments, on all parties involved in the Canadian securitization market is unwarranted given the fact that, other than in connection with non-bank sponsored conduits, which the Working Group contends was an isolated incident that occurred in a segment of the market that no longer exists, the Canadian securitization market has operated, and continues to operate, effectively and efficiently.

The Working Group notes that the requirement for an information memorandum in all exempt securitized product transactions is extremely burdensome and unnecessary given that a significant number of exempt securitized product transactions involve a single or small number of large and sophisticated purchasers, such as banks, multi-seller asset-backed commercial paper conduits and other regulated financial institutions. These purchasers negotiate the exempt transaction directly with the seller, and accordingly, do not require or need the protection afforded by the disclosure contained in an information memorandum. The Working Group is of the view that the costs and time involved in preparing an information memorandum in these circumstances is completely unwarranted and will create a barrier to entry for many entities that currently use, or may wish to use, securitization as a funding source.

The Working Group is of the view that even in the limited number of exempt transactions involving securitized products other than ABCP that are marketed to investors, the parties involved in the transaction, including investors, should be able to decide if an information memorandum is required in the transaction. For widely distributed private deals, the practice is to use an offering memorandum with prospectus level disclosure. However, many exempt transactions are not marketed. In these circumstances there are a limited number of large, institutional investors, both in the primary and secondary markets, which do not require or need an information memorandum prior to their purchase.

The Working Group is therefore of the view that the current exempt market regulatory regime should remain in place. As such, the Working Group contends that the accredited investor exemption should remain for securitized products (especially since the difference between this definition and the definition of "eligible securitized product investor" is arguably insignificant), as should the minimum amount investment exemption, short-term debt exemption, and all other current prospectus exemptions. The Working Group believes that investors and all other parties in the Canadian securitization market understand the current prospectus exemptions and would want the prospectus exemptions in the securitization market to be consistent with the prospectus exemptions for all other exempt securities in Canada. The Working Group is of the view that any prospectus exemptions designed specifically for the securitization market would result in an unfair stigmatization of securitized products as inherently riskier than other securities.

In addition, the Working Group does not believe that paragraph (q) in the definition of "eligible securitized product investor" would encompass a "two-step" securitization transaction in which a special purpose entity ("SPE 2") purchases a security from a seller or a special purpose entity administered by a seller ("SPE 1") and then SPE 2 enters into a loan agreement or transfers a security to an ABCP issuing conduit. Since SPE 2 would not be a person that distributes securities of its own issue in Canada only to persons referred to in paragraphs (a) to (p) of the definition of "eligible securitized product investor", SPE 2 would not be an "eligible securitized product investor", and accordingly, the transfer of the security by the seller or SPE 1 to SPE 2 will need to be qualified by a prospectus or the seller or SPE 1 will need to apply for and receive discretionary relief from the prospectus requirement.

Despite the foregoing, the Working Group has provided in Appendix B on page 20 of this letter some comments on the proposed form of information memorandum for securitized products sold under the short-term debt exemption. The Working Group has also provided in Appendix C on page 23 of this letter some comments on proposed Form 45-106F8.

Question 42. Statutory civil liability

The CSA indicated that one of the three general principles that guided the development of the Proposed Rules is that they should be proportionate to the risks associated with the particular types of securitized products available in Canada. The Working Group is of the opinion that short-term securitized products sold under an information memorandum are not any riskier than any other short-term security sold in Canada under an information memorandum. Thus, the Working Group contends that short-term securitized products should not be treated differently than any other short-term securities in Canada.

The Working Group is not opposed to increased disclosure in the Canadian securitization market. However, the Working Group is genuinely concerned that 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, will cause investors to view securitized products, including short-term securitized products, as being inherently riskier than other securities due to this categorization, and in the Working Group's opinion, unwarranted treatment, in the Canadian capital markets.

The Canadian securitization market is now showing signs of recovery. The Working Group feels strongly that differential treatment of this market will not only cause this recovery to stall, but will cause investors to either invest elsewhere or demand such high rates of return that securitization, which has been an important and cost-effective source of funding for many entities in Canada, will become unavailable to such entities for their financing needs.

The IIAC and the Working Group would be more than pleased to respond to any questions that you may have regarding this submission.

Yours sincerely,

Appendix A

Definition of "Asset-Backed Security"

Although the definition of "asset-backed security" set out in the Proposed Rules is the same as the definition set out in NI 51-102 *Continuous Disclosure Obligations*, the Working Group suggests that the definition of "asset-backed security" in proposed National Instrument 41-103 be amended to delete the references to "mortgages" and "other financial assets" since the term "receivables" in this definition includes both of these items. Thus, it is redundant to include these items in the definition of "asset-backed security".

FORM 41-103F1 *Supplementary Information Required in a Securitized Products Prospectus*

The Working Group contends that a form setting out specific disclosure requirements relating to securitized products that are in addition to the requirements in Form 41-101F1 and Form 44-101F1 is not necessary. The Working Group strongly believes that an issuer's obligation under securities legislation to provide full, true and plain disclosure of all material facts relating to the securities being distributed results in an issuer of asset-backed securities disclosing all material facts relating to such securities, especially in light of the specific disclosure requirements for asset-backed securities that exist in Section 10.3 of Form 41-101F1, Section 4.5 of Companion Policy 41-101CP, Section 7.3 of Form 44-101F1 and Section 4.5 of Companion Policy 44-101CP.

Since Item 10 of Form 41-101F1 and Item 7 of Form 44-101F1 set out specific disclosure requirements for various classes of securities, the Working Group is of the view that any specific disclosure requirements for securitized products that extend beyond the specific disclosure requirements in these Items is an unfair stigmatization of securitized products and is unwarranted given that securitized products are not any riskier than any of the other classes of securities referred to in Item 10 of Form 41-101F1 and Item 7 of Form 44-101F1. In addition, the Working Group is not aware of any prospectus disclosure deficiencies, or failure by an issuer to meet the full, true and plain disclosure of all material facts requirement, in a public offering of securitized products in Canada that would warrant the additional disclosure requirements set out in Form 41-103F1.

Although the Working Group is opposed to Form 41-103F1 and any other specific disclosure requirements for securitized products beyond Section 10.3 of Form 41-101F1 and Section 7.3 of Form 44-101F1, the Working Group has several specific concerns with the requirements within Form 41-103F1, including, without limitation:

> (a) the disclosure of financial statements or certain financial information of significant obligors should only be required to the extent that such financial statements and financial information have been filed by a significant obligor. Financial statements and financial information of a significant obligor provide little additional value to investors compared to the significant increase in potential liability to issuers;

(b) prospectus disclosure should be limited to material facts, and not to disclosure that can be classified as legal opinions, such as the disclosure required pursuant to Sections 1.6(i) and (j) and Section 1.7(2)(m) of Form 41-103F1. Issuers of securitized products currently disclose material legal risks in the risk factors section of a prospectus and the Working Group believes that this approach is more appropriate and meaningful to investors; and

(c) given that third parties, such as accounting firms, will avoid any involvement with prospectus disclosure for liability and other reasons, it will be impossible for issuers to comply with any sections in Form 41-103F1 that require such involvement or cooperation from third parties, such as Sections 3.1(h) and (i) of Form 41-103F1.

The Working Group has not noted all of its concerns with the requirements within Form 41-103F1 since its position is that Form 41-103F1 should not be implemented given that it is unnecessary and is another manner in which the Proposed Rules unjustly stigmatize securitized products.

11 King Street West, Suite 1600, Toronto, ON M5H 4C7
Tel: (416) 865-3036 Fax: (416) 364-4861 irussell@iiac.ca / www.iiac.ca

Appendix B

Form 45-106F7 *Information Memorandum for Short-Term Securitized Products*

The Working Group's primary concern with the requirements in Form 45-106F7 is that they are too transaction specific. Most ABCP conduits are multi-seller conduits, and accordingly, are comprised of multiple assets and transactions. The Working Group believes that the transaction specific disclosure requirements in Form 45-106F7 will require an issuer to update the disclosure in its information memorandum (an "IM") on an on-going basis with information that may not be material to investors or is more appropriate for disclosure in an issuer's on-going periodic disclosure. The Working Group contends that this on-going updating may occur as frequently as monthly, or even several times within a month, depending on transactions entered into or amended or any other changes, and accordingly, is overly burdensome. The Working Group believes that an IM should focus on program-level disclosure, such as the structure and operation of the program, and material transaction specific information that may vary from period to period should be disclosed in an issuer's periodic disclosure. Transaction level disclosure is currently obtained by an investor in any event.

Thus, many of the Working Group's comments on Form 45-106F7 below are to restrict the disclosure to program-level information as opposed to transaction specific information.

Instructions

The Working Group believes that another instruction should be added clarifying that negative answers to prescribed items or inapplicable items need not be included in an IM.

Further, as suggested in the discussion above, an additional instruction should be included to clarify that the information outlined in the prescribed items is on a program-level basis rather than a transaction-by-transaction basis.

Item 1 – Parties

Item 1.1 – The words "program wide" should be inserted before the words "credit enhancement providers".

Item 1.1(c) – This Item should be deleted as it will likely result in disclosure that is overly transaction specific.

Item 1.2(c) – The stated credit rating should be in the monthly report.

Item 1.3 – This information is too transaction specific and may violate confidentiality arrangements in place with the sellers of assets into the program.

Item 3 – Description of program

Item 3.3 – This information should clarify that it is at the program level and not transaction specific.

Item 4 – Summary of pool assets

Item 4.1 – The information for Items 4.1(a), (b) and (c) should be general disclosure on the operation of the program, and accordingly, should be moved to the description of the program section in Item 3. In addition, transaction specific information regarding asset types as contemplated in Item 4.1(a) would be contained in an issuer's on-going disclosure.

Item 4.2 – This Item is similarly too transaction specific.

Item 4.3(h) – The Working Group is unclear on the determination of "sub-prime assets" since there is no recognized or consistent standard in Canada on what constitutes a sub-prime asset.

Item 5 – Description of short-term securitized product and offering

Item 5.1(d) – This information should be deleted since it is not relevant to the Canadian securitization market. The Working Group is not aware of any issuer that is subject to a limit on its outstanding short-term securitized products.

Item 6 – Flow of funds

Items 6.1 and 6.2 – These Items should be revised to clarify that the disclosure required in these Items is on the overall program. After such clarification, they should be moved to the description of the program section in Item 3.

Item 7 – Conflicts of interest

Items 7.1 and 7.2 – Short-term securitized products should not be treated differently from other types of securities with respect to conflicts of interest disclosure. Since Section 2.1(1) of National Instrument 33-105 – Underwriting Conflicts applies to IMs, Item 7 should be deleted.

Item 8 – **Fees and expenses**

This Item should be revised so that it refers to the fees and expenses of the program, and accordingly, moved to the description of the program section in Item 3. Some transaction fees, such as those charged by trustees, are relatively nominal and often subordinate to payments to investors, and accordingly, not material to investors.

Item 10 – Program documents and transaction agreements

For the reasons noted above, the words "and transaction agreements" should be deleted.

Item 12 – Credit rating of securitized product

Items 12(c) and 12(d) – The information listed in these Items should not be required disclosure in the exempt market. This information should be provided by the relevant rating agencies. Investors in the exempt market are aware of the availability of this information and where this information may be obtained.

Item 13 – Resale restrictions

Item 13.1 – The words "unless the issuer becomes a reporting issuer" should be deleted from the statement since the Section 2.44 of National Instrument 45-106 – *Prospectus and Registration Exemptions*, as proposed, does not require an issuer to be a reporting issuer in connection with the exempt distribution of a securitized product.

Regarding the proposed Section 2.44 of National Instrument 45-106, the Working Group questions whether the exemption in this section should also apply to the registration requirement in addition to the prospectus requirement.

11 King Street West, Suite 1600, Toronto, ON M5H 4C7
Tel: (416) 865-3036 Fax: (416) 364-4861 irussell@iiac.ca / www.iiac.ca

Appendix C

Form 45-106F8 *Periodic Disclosure Report for Short-Term Securitized Products Distributed under an Exemption from the Prospectus Requirement*

The Working Group's primary concern with Form 45-106F8 is that it repeats relatively static program-level disclosure that would already be disclosed in an issuer's IM. As noted above, the Working Group contends that Form 45-106F8 should contain transaction specific information that may vary from period to period while Form 45-106F7 should contain the relatively static program-level information.

In addition, the Working Group maintains that in order to comply with the disclosure requirements in Form 45-106F8, especially since an issuer will be obtaining most of the information from third-party servicers, the requirement to deliver and post each Form 45-106F8 within 15 days from the end of each month should be extended to 45 days from the end of each month.

This Form resulted in a great deal of discussion within the Working Group and as a result, the comments set forth below on Form 45-106F8 reflects the majority position of the Working Group.

Instructions

The Instructions should be amended to state that an issuer is not required to repeat required disclosure that is disclosed in an IM. In addition, the Instructions should also include a statement that only information that an investor would reasonably require in making an informed investment decision in respect of the short-term securitized product is required to be disclosed.

Item 1 – Parties

This Item should be deleted since it is program-level disclosure, and accordingly, would be more appropriately disclosed in an IM and is not needed to be repeated in each periodic report.

Item 2 – Program Information

Item 2(a) – This Item should be deleted because this information provides little value to investors since committed amounts may not necessarily be funded and a commitment level can fluctuate on a daily basis as a pool amortizes.

Items 2(c), (d) and (e) – These Items should be deleted since the information required in each of these Items is program-level disclosure, and accordingly, would be more appropriately disclosed in an IM and does not need to be repeated in each periodic report.

Item 2(f) – If this Item is requiring credit enhancement disclosure on each transaction, it should be amended to specifically refer to transaction level disclosure. If it is requiring additional credit enhancement disclosure at the program level, it should be consolidated with Item 2(e) and revised to prevent any duplication with the disclosure requirements in Item 2(e).

Item 2(g) – This Item should be deleted as it provides little, if any, value to investors since the amount of ABCP outstanding changes on a daily basis. In addition, the Working Group is not aware of any investors requesting this information. The Working Group contends that investors are concerned with the maturity of the ABCP that they have purchased, as opposed to the average maturity date or maturity dates of other ABCP issued by the issuer.

Item 4 – Composition of Series

The first line of this Item should be amended so that the disclosure in this Item may be provided in either a diagram or a table.

Item 4(b) – This information would be of little value to investors since a vast majority of the sellers would be considered to be part of the "financial services" industry.

Item 4(c) – This information would be of less value to investors than the information in Item 4(b) since seller names are not disclosed in periodic reports as a result of confidentiality restrictions in the program agreements. In any event, the Working Group questions the relevance of seller disclosure since the assets have been sold by the seller, and accordingly, the risk to investors arises from the performance of the assets. In addition, seller disclosure may be misleading to some investors since these investors may incorrectly focus more on the identity of the sellers than the performance of the assets.

In each of Items 4(b) and (c), clarification is required as to whether the references to "seller" include originators since there may be a single seller but multiple originators or *vice versa*.

Item 5 – Transaction summary

The first line of this Item should be amended so that the disclosure in this Item may be provided in either a diagram or a table.

Item 5(b) – Since the Introduction to Form 45-106F8 is to be amended to clarify that the entire Form 45-106F8 is to include only information that an investor would reasonably require in making an informed investment decision in respect of the short-term securitized product, the inclusion of the words "if material" in this Item are unnecessary and may result in confusion if they are included only in this Item and Item 5(g)(viii). The inclusion of these words may suggest to issuers and investors that this Item and Item 5(g)(viii) are subject to a different disclosure standard than the other Items in Form 45-106F8. Thus, the words "if material" should be deleted in this Item and the reference to "material" should be deleted in Item 5(g)(viii). In addition, since the information referred to in this Item is provided to issuers by the various servicers in the program, the Working Group believes there may be value in requiring issuers to disclose if the information has been obtained by the issuer from third parties.

Items 5(b)(i) and (v) – These Items should be deleted since the value to investors would be minimal given that the calculations would be based on several assumptions. In addition, given the various assumptions involved, it would be difficult for investors to compare these calculations amongst programs as the assumptions may vary amongst issuers. The Working Group also questions the difference between Item 5(b)(i) and Item 5(b)(v) as these Items appear to be duplicative.

Item 5(b)(iv) – Given that a program may have a large number of obligors and this number can change on a daily basis, if this Item is included in Form 45-106F8 it should refer to an approximate number of obligors.

Item 5(c) – As noted in comment on Item 4(b) above, this information would be of little value to investors since a vast majority of the sellers would be considered to be part of the "financial services" industry.

Item 5(d) – The Working Group questions the relevance of disclosing the credit ratings of each seller since, as noted in the comment on Item 4(c), short-term securitized products are backed by the assets sold by each seller and not the seller itself. In addition, disclosing specific credit ratings of a seller, in addition to the industry of such seller and other information on such seller, may allow investors and other participants in the securitization market to determine the identity of each seller. Consequently, this may result in a violation of confidentiality provisions in the program agreements and the preference of the parties to keep the identity of each seller confidential. If the CSA insists that the credit ratings of each seller be disclosed, the Working Group suggests that the non-identifying credit rating categories of "investment grade" and "non-investment grade" be used instead of the specific ratings.

Item 5(e) - The Working Group questions the value of requiring this disclosure given that transactions in an ABCP program are rarely rated. It should be noted that while an issuer may not seek an explicit rating for a transaction, the rating of the conduit means that an evaluation process is nonetheless being conducted.

Item 5(f) – The words "if any" should be inserted at the end of this since financial leverage is primarily a feature of CDO transactions which, as previously noted, are no longer a component of the Canadian securitization market.

Item 5(g) – Since different asset classes can have different performance metrics, the disclosure requirement in this Item should be simplified to "the assets' performance, including asset balances, losses, credit enhancement, and any other performance ratios that an investor would reasonably require in making an informed investment decision in respect of the short-term securitized product". This simplification is also helpful since some of the sub-items listed in this Item, such as Item 5(g)(i), are subject to various interpretations by the members of the Working Group.

Item 5(h) – This Item should be deleted since this information, if necessary, is more appropriately disclosed in an IM. However, the Working Group views this information to be of little value to investors since the only hedges typically entered into in a transaction involving an ABCP issuer are standard interest rate and currency hedges. As a result, disclosure on hedges is not typically included in the monthly reports of ABCP programs administered by members of the Working Group.

Item 6 – Second-level Assets

This Item should be deleted since any disclosure on second-level assets would be captured in Item 5. In addition, having a separate category for second-level assets suggests that these assets are riskier than other assets, which is not necessarily accurate, especially with respect to conventional asset classes. For example, the Working Group contends that there is no greater risk to investors if an ABCP issuer purchases a note backed by certain assets, such as credit card receivables or auto loan receivables, than if that ABCP issuer purchased the assets directly.

Item 7 – Program Activity

This Item should be deleted in its entirety since investors can determine if assets have been added to the pool or no longer form part of the pool by comparing the current report to the previous report, and accordingly, the Working Group does not see the need to create additional disclosure for information that would be readily apparent to investors.

In addition, the Working Group contends that disclosure on assets that no longer form part of the pool and the reason assets were added or are no longer part of a pool is irrelevant to investors as investors are interested in the assets that currently comprise the pool and are supporting the short-term securitized product they own.

As noted in the comment on Item 2(a), information on commitment levels provides little value to investors since committed amounts may not necessarily be funded and a commitment level can fluctuate on a daily basis as a pool amortizes.

Appendix D

Form 51-106F1 *Payment and Performance Report for Securitized Products*

The Working Group's primary concern with Form 51-106F1 is that it requires disclosure on all prospectus-exempt transactions by a reporting issuer, even those in which the distribution was made to a single or small number of sophisticated purchasers, such as financial institutions or multi-seller asset-backed commercial paper conduits. These purchasers negotiate the terms of the transaction, including the ongoing disclosure that will be provided to them. Thus, including disclosure on such transactions in Form 51-106F1 would not provide investors in the related securitized products with any additional benefits or disclosure and, as noted in the response to Question 20 above, may result in a violation of certain confidentiality provisions of the transaction. With respect to investors in other securitized products issued by the reporting issuer, disclosure on such transactions should only be included in Form 51-106F1. Thus, the General Provisions section of Form 51-106F1 should state that only material information is to be disclosed in Form 51-106F1, which would be consistent with the materiality instructions contained in the General Provisions of Form 51-102F1 – *Management's Discussion & Analysis* and Form 51-102F2 – *Annual Information Form*. The General Provisions section should also state that an issuer is not required to respond to any item in Form 51-106F1 that is inapplicable.

In addition, legal proceedings and defaults would not be unique to securitized products. The Working Group contends that securitized products should not be treated differently from other securities by specifying monthly disclosure on legal proceedings and defaults in Form 51-106F1. To the extent there are is a material change in a legal proceeding or a default that would be a material change, such change will be disclosed through the material change disclosure requirements, as such changes would be disclosed for securities that are not securitized products.

The Working Group's other comments on Form 51-106F1 are set forth below.

Item 2 – Payment and pool performance

Item 2(2)(b) - The reference to trends should be deleted since issuers should only be required to disclose material facts in Form 51-106F1. Disclosure on trends can be highly subjective as different issuers and different individuals can interpret trends completely differently. Thus, disclosure on trends can be of minimal value to investors.

Item 2(3)(c)(i) – This Item should be deleted since monthly fees and expenses disclosure will not be material to investors given the nominal nature of these amounts, and/or the fact that they are often subordinate to the payments to investors. The Working Group notes that only other issuers will be interested in this fees and expenses disclosure.

Item 2(3)(c)(iv) – The words "disposed of" should be replaced with the word "applied".

Item 2(3)(e) – This Item should be deleted since comparable information for investors is provided for in Item 2(3)(h)(i). In pools consisting of thousands of accounts with fluctuating interest rates, it is difficult and time consuming for servicers to assemble on a monthly basis the interest rates applicable to such pools, especially when the relevance of this disclosure in the Canadian market is highly questionable. The Working Group is of the view that this disclosure would be more appropriate if an "originate-to-distribute" model existed in Canada in which issuers manipulate the quality of pools by placing higher interest rate accounts in a pool to allow for the securitization of lower or adjustable rate accounts as the higher interest rate accounts would offset the lower or adjustable rate accounts, and thus, give the appearance of a more stable and higher quality pool.

Item 2(3)(h) - The word "dollar" should be inserted before the word "amount" in the first line. Also, the words "if applicable" should be inserted after the word "including" in the second line since some of the sub-items are not applicable to all asset classes. For example, weighted average life, weighted average remaining term and prepayment amounts are not relevant for revolving assets.

Item 2(3)(k) – Replace the words "material over time" with the word "material" since the words "material over time" may imply a different disclosure standard than materiality.

Items 2(3)(l) and (m) – Insert the words "if material" before the word "breaches" in Item 2(3)(1) and the word "demands" in the first line of Item 2(3)(m) for consistency with Item 3.5 of Form 41-103F1 and greater clarity that the disclosure required by these Items is subject to a materiality standard, even with the General Provisions stating that only material information is to be disclosed in Form 51-106F1. In addition, insert the words "if not cured in accordance with the applicable transaction agreement" after the word "covenants" in Item 2(3)(l). Lastly, the Working Group believes that Item 2(3)(m) should be deleted in its entirety or, at minimum, combined with Item 2(3)(l) since the disclosure required by Item 2(3)(m) would be captured in the disclosure required in Item 2(3)(l) and is more relevant to an "originate-to-distribute" model.

Item 4 – Subject to the Working Group's comment in the second paragraph in this Appendix D, the words "within 30 days" should be replaced with the words "in accordance with the applicable transaction agreement".

Item 5 – This Item should be deleted since most significant obligors do not prepare monthly financial statements or much of the financial information required in this Item on a monthly basis. The Working Group contends that any requirement for significant obligors to prepare monthly financial statements or such financial information on a monthly basis will cause originators to look elsewhere for funding if it is unable to lend to obligors who prepare, or will agree to prepare, monthly financial statements or such financial information on a monthly basis, especially since a significant obligor's disclosure obligations pursuant to this Item may increase as it moves from one significant obligor category to another as the pool amortizes.

Appendix E

Form 51-106F2 *Report of Significant Events Relating to Securitized Products*

Item 6 – Contact information

Replace the words "who is signing this form" with the words "who is knowledgeable about the significant event and the Report, or the name business telephone number of an officer through whom such authorized officer may be contacted" for consistency with Form 51-102F3 – *Material Change Report*.

Item 7 – Signature and date

Delete the references to "signature" and "sign" for consistency with Form 51-102F3 – *Material Change Report*. If a Material Change Report is not signed, Form 51-106F2, which may report on events that the reporting issuer does not consider to be material, should also not be signed. Although securitized products are being treated differently from other securities through the Form 51-106F2 filing requirement, this inconsistency should not extend to requirements that are beyond the requirements in a Material Change Report.

Section 5 of NI 51-106 *Report of Significant Events Relating to Securitized Products*

As noted in the response to Question 22 above, the Working Group has concerns with some of the events listed as "significant events". These concerns are as follows:

Section 5(2)(b) – Given that the trustee of a reporting issuer in a securitization program is not actively involved in the operation of the reporting issuer or in the program, the Working Group believes that a change in the trustee of the reporting issuer would never be classified as a "significant event", and accordingly, the words "trustee of the reporting issuer" should be deleted from Section 5(2)(b).

Section 5(2)(f) – This information would not be known until after the monthly performance reports have been prepared, and accordingly, a two business day filing requirement is only possible after the reports have been received by the reporting issuer and the reporting issuer is aware of the events listed in Section 5(2)(f).

Section 5(2)(g) – The comment on Section 5(2)(f) also applies to Section 5(2)(g). In addition, the 5% threshold is not appropriate for all assets classes. For example, seasonal or other changes may result in differences greater than 5%, but the Working Group would classify these differences as expected or normal course differences as opposed to "significant events". In addition, the Working Group noted that calculating differences on a relative versus absolute basis will result in different percentages, and accordingly, different determinations of whether an event is a "significant event". Thus, the Working Group suggests that the words "difference of 5% or more" be replaced with the words "material difference".

Section 5(2)(h) – The Working Group does not believe a change in a sponsor's interest in outstanding securitized products would ever be material to an investor, especially since pool performance reports are available to all investors. Accordingly, Section 5(2)(h) should be deleted.

Section 5(2)(j) – A reporting issuer may not be aware of a change in the rating of a significant obligor within two business days of such change. This is another example of why the two business day filing requirement must be after the reporting issuer obtains knowledge of the particular event.

Section 5(2)(m) – Section 5(2)(m) should be deleted since all material events that affect payment or pool performance would already be disclosed in the monthly performance reports. The Working Group considers it unnecessary to repeat this disclosure in Form 51-106F2, especially since the more appropriate location for this disclosure is in the monthly performance reports.

11 King Street West, Suite 1600, Toronto, ON M5H 4C7
Tel: (416) 865-3036 Fax: (416) 364-4861 irussell@iiac.ca / www.iiac.ca