

Chapter 6

Request for Comments

- 6.1.1 **Proposed NI 41-103 Supplementary Prospectus Disclosure Requirements for Securitized Products, Proposed NI 51-106 Continuous Disclosure Requirements for Securitized Products, Proposed Amendments to NI 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, Proposed Amendments to NI 45-106 Prospectus and Registration Exemptions and NI 45-102 Resale of Securities, and Proposed Consequential Amendments**

NOTICE AND REQUEST FOR COMMENTS

PROPOSED NATIONAL INSTRUMENT 41-103 *SUPPLEMENTARY PROSPECTUS DISCLOSURE REQUIREMENTS FOR SECURITIZED PRODUCTS*

PROPOSED NATIONAL INSTRUMENT 51-106 *CONTINUOUS DISCLOSURE REQUIREMENTS FOR SECURITIZED PRODUCTS AND 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*

PROPOSED CONSEQUENTIAL AMENDMENTS

April 1, 2011

1. Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for comment proposed rules and rule amendments relating to securitized products (the **Proposed Securitized Products Rules**). The Proposed Securitized Product Rules set out a new framework for the regulation of securitized products in Canada. There are two main features of the Proposed Securitized Products Rules:

1. Enhanced disclosure requirements for securitized products issued by reporting issuers; and
2. New rules that narrow the class of investors who can buy securitized products on a prospectus-exempt basis (in the "exempt market"), and require that issuers of securitized products provide disclosure at the time of distribution, as well as on an on-going basis.

The Proposed Securitized Products Rules consist of the following materials, which we are publishing for a 90-day comment period:

- Proposed National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products (NI 41-103)* and Form 41-103F1 *Supplementary Information Required in a Securitized Products Prospectus (Form 41-103F1)* (collectively, the **Proposed Prospectus Disclosure Rule**);
- Proposed National Instrument 51-106 *Continuous Disclosure Requirements for Securitized Products (NI 51-106)*, Form 51-106F1 *Payment and Performance Report for Securitized Products (Form 51-106F1)* and Form 51-106F2 *Report of Significant Events Relating to Securitized Products (Form 51-106F2)* (collectively, the **Proposed CD Rule**);
- Proposed amendments to National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings (NI 52-109)*, including
 - proposed Form 52-109FS1 *Certification of Annual Filings – Securitized Product Issuer*;
 - proposed Form 52-109FS1R *Certification of Refiled Annual Filings – Securitized Product Issuer*;

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- proposed Form 52-109FS1 *AIF Certification of Annual Filings in Connection with Voluntarily Filed AIF – Securitized Product Issuer*;
 - proposed Form 52-109FS2 *Certification of Interim Filings – Securitized Product Issuer*;
 - proposed Form 52-109FS2R *Certification of Refiled Interim Filings – Securitized Product Issuer*;
- (collectively, the **Proposed Certification Amendments**);
- Proposed amendments to
 - National Instrument 45-106 *Prospectus and Registration Exemptions (NI 45-106)*, including
 - proposed Form 45-106F7 *Information Memorandum for Short-Term Securitized Products*; and
 - proposed Form 45-106F8 *Periodic Disclosure Report for Short-Term Securitized Products Distributed under an Exemption from the Prospectus Requirement*; and
 - National Instrument 45-102 *Resale of Securities*;
- (collectively, the **Proposed Exempt Distribution Rules**); and
- Proposed consequential amendments to
 - National Instrument 41-101 *General Prospectus Requirements (NI 41-101)*;
 - National Instrument 44-101 *Short Form Prospectus Distributions (NI 44-101)*;
 - National Instrument 51-102 *Continuous Disclosure Obligations (NI 51-102)* (collectively, the **Proposed Consequential Amendments**).

We are not, at this time, publishing any companion policy guidance. We will consider the comments we receive and will draft proposed guidance at that time.

The text of the Proposed Securitized Products Rules is contained in the following Schedules A to D. Certain jurisdictions may include additional information in Annex I.

Schedule A:	Proposed Prospectus Disclosure Rule
Schedule B:	Proposed CD Rule and Proposed Certification Amendments
Schedule C:	Proposed Exempt Distribution Rules
Schedule D:	Proposed Consequential Amendments
Annex I	Local Information

The above documents will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.nbsc-cvmnb.ca
www.osc.gov.on.ca
www.sfsc.gov.sk.ca
www.msc.gov.mb.ca

For more information on the comment process, see below under “How To Provide Your Comments”.

2. Background – The benefits and risks of securitization

(a) What is securitization and why is it important?

Securitization refers to the process by which a special purpose vehicle (**SPV**) is used to create securities (which we refer to as securitized products) that entitle holders to payments that are supported by the cash flows from a pool of financial assets held by the SPV. In Canada, common types of financial assets include credit card receivables, automobile leases and residential mortgages. Less frequently, the assets may themselves be securitized products, such as residential mortgage-backed securities (in this case, the process is often referred to as a resecuritization) or may be “synthetic assets” created through the use of derivatives.

Securitization can have a positive impact on the supply of credit, and thus provide important economic benefits. As noted in a recent article,

Securitization represents an important source of credit to the economy. By converting non-tradable financial assets into tradable instruments, securitization has the potential to expand the supply of credit beyond what would be available solely through banks and other financial intermediaries.¹

However, as the recent global financial crisis demonstrated, if not properly regulated, the securitization markets can be a source of systemic risk. The collapse of sub-prime securitizations in the United States had major spillover effects into other markets and into the wider U.S and global economy, and was a major contributing factor to the financial crisis.

Securitized products share certain basic features that distinguish them from standard debt securities, including:

- *Originate-to-distribute model* – Under this model, a loan originator (such as a bank) packages the loans into pools and sells them into special purpose off-balance sheet vehicles, thus no longer bearing the contractual risk of default. This model, which is fundamental to securitized products, is particularly prone to conflicts of interest, because the various parties in the securitization chain have different incentives. For example, originators are incentivized to maximize loan creation rather than to carefully screen borrowers, and arrangers are incentivized to maximize short-term underwriting and structuring revenue rather than mitigate product risk.
- *Alteration of credit risk through structured finance techniques* – Another feature of securitized products is use of structured finance techniques (such as pooling and tranching) to alter the credit risk associated with underlying assets. The risks associated with some of these techniques can be difficult to assess, even by highly sophisticated investors. For example, not all investors may have appreciated how sensitive the expected performance of securitized products could be to changes in the assumptions used to model credit risk, specifically (i) default probability and recovery value; (ii) correlation of defaults between tranches; and (iii) declines in aggregate economic conditions.

(b) International proposals on the regulation of securitization

International bodies and other jurisdictions have put forward a number of proposals on how to improve regulation of securitization. These include:

- the International Organization of Securities Commissions’ (**IOSCO**) “Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities” (the **IOSCO ABS Disclosure Principles**);
- the IOSCO’s Technical Committee’s Task Force’s “Unregulated Financial Markets and Products – Final Report”; and
- the United States Securities and Exchange Commission’s (**SEC**) April 2010 notice of proposed rule-making relating to ABS and other structured finance products (the **SEC April 2010 Proposals**).

Furthermore, in July 2010, the *Dodd-Frank Wall Street Reform and Consumer Protection Act* was enacted in the U.S. (the **Dodd-Frank Act**), which included a number of provisions dealing with securitization. The SEC also has made rules implementing certain provisions of the Dodd-Frank Act relating to enhanced disclosure regarding representations and warranties, and issuer review of assets underlying securitized product assets, as well as published proposed rules regarding risk retention (together with the SEC April 2010 Proposals and the Dodd-Frank Act collectively, the **U.S. Securitization Initiatives**).

¹ Scott Hendry, Stéphane Lavoie, and Carolyn Wilkins. 2010. “Securitized Products, Disclosure, and the Reduction of Systemic Risk.” Bank of Canada *Financial System Review* (June): 47-55.

(c) CSA Initiatives Relating to the Financial Crisis

The Canadian economy has not been immune to the effects of the global financial crisis. Canada experienced significant turmoil in the market for asset-backed commercial paper (**ABCP**), specifically the freezing of \$32 billion of non-bank or third-party sponsored ABCP in August 2007. In the October 2008 CSA Consultation Paper 11-405 *Securities Regulatory Proposals Stemming from the 2007-08 Credit Market Turmoil and its Effect on the ABCP Market in Canada* (the **October 2008 ABCP Concept Proposal**), the CSA explored, among other things, securities regulatory proposals in connection with the sale of ABCP. Since that time, the CSA's focus has broadened to encompass all securitized products and their distribution both publicly under a prospectus and in the exempt market under exemptions from the prospectus requirements.

In the last year, as part of the CSA's work relating to the financial crisis, the CSA has also published for comment:

- proposed National Instrument 25-101 *Designated Rating Organizations* with respect to oversight of credit rating organizations (**NI 25-101**); and
- Consultation Paper 91-401 *Over-the-Counter Derivatives Regulation in Canada* setting out high-level proposals for regulating derivatives trading in Canada.

3. Substance and purpose of the Proposed Securitized Products Rules

The Proposed Securitized Products Rules set out a new framework for the regulation of securitized products in Canada. There are two main features of the Proposed Securitized Products Rules:

1. Enhanced disclosure requirements for securitized products issued by reporting issuers; and
2. New rules that narrow the class of investors who can buy securitized products on a prospectus-exempt basis in the exempt market, and require that issuers of securitized products provide disclosure at the time of distribution, as well as on an on-going basis.

The Proposed Exempt Distribution Rules in particular are a significant departure from the current exempt market regulatory regime.

We have been guided by three general principles in developing the proposed rules:

1. The rules should seek to achieve the following objectives, in a manner that fosters market efficiency:
 - Investors who buy securitized products should have the information to understand the features and risks of the products and whether such securities are appropriate for their investment objectives; and
 - Investors should have access to information when they need it to value the products at the time of investment and on an ongoing basis.
2. The rules should facilitate transparency in the securitization market so that it can continue to function even in times of financial stress. This will reduce the risk that problems in the securitization market will spill over to other markets and the wider economy, thus contributing to systemic risk. Systemic risk is an area where regulation is particularly important, as private arrangements among market participants may not adequately address the issue.
3. The rules should take into account the particular features of the Canadian securitization markets. In particular, rules should be proportionate to the risks associated with particular types of securitized products available in Canada, and should not unduly restrict investor access to securitized products. Canada experienced significant turmoil in the ABCP market in August 2007. However, for a number of reasons, the Canadian securitization market did not experience a sub-prime mortgage securitization bubble.

In general, we currently are not proposing to introduce, but instead to seek comment on, certain requirements that are features of the U.S. Securitization Initiatives. We have done so where we think that further feedback and analysis is required to determine (a) whether the proposed requirement will achieve its intended aims and if so, how to appropriately design the requirement; or (b) whether it is appropriate for the Canadian context. In particular, we are seeking comment on the following types of requirements:

- requirements that securitizations be structured in a particular manner, such as requiring that sponsors or other transaction parties retain a minimum tranche or tranches of the securitization (a "skin-in-the-game requirement");

- requirements for due diligence, such as requiring the issuer to review the pool assets;
- requiring or restricting the involvement of particular parties in a securitization, such as imposing independence requirements or restrictions on conflicts of interest; and
- requirements for new disclosure that we think would be a major departure from what is already being provided pursuant to transaction agreements, such as asset- or loan-level disclosure, provision of a computer waterfall payment program, and requiring sponsors or originators to file reports on fulfilled and unfulfilled repurchase requests across all securitizations.

At this time, we are not proposing to eliminate credit ratings as an eligibility criterion to access the short form or shelf prospectus systems.

Please refer to the section **Questions on the Proposed Securitized Products Rules** for specific questions on the above issues.

Finally, the regulation of credit rating organizations, and their role in securities markets generally, will be addressed by other initiatives such as proposed NI 25-101, which addresses oversight of credit rating organizations. We also are reviewing the prospectus exemptions more broadly, particularly the accredited investor exemption and the minimum investment amount exemption.

4. Summary of the Proposed Securitized Products Rules

(a) Application – new definition of securitized products

We are proposing a new definition for a “securitized product,” which is found in proposed NI 41-103 and which triggers the application of the Proposed Securitized Products Rules (subject to the exemptions described below). This definition is intended to be broad. It includes securities where the payments are derived from cash-generating financial assets, such as loans, leases and receivables. It includes securities backed by assets that are themselves securities, such as bonds and other securitized products such as residential mortgage-backed securities. It also includes securities where payments are derived from “synthetic assets” such as credit default swaps or other derivatives.

The definition of asset-backed security remains the same as the current definition in NI 51-102.

However, the Proposed Securitized Products Rules will not apply to the following securities:

- covered bonds; and
- securities, other than debt securities, issued by a mortgage investment entity.

Covered bonds are debt securities issued by a financial institution. Payments on the debt are guaranteed by another entity, such as an SPV, that holds a pool of high-quality, cash-generating financial assets originated by the financial institution, for example, prime residential mortgages. Because covered bonds, at least as currently structured, are primarily obligations of the financial institution with the cover or collateral pool serving as a credit enhancement, they do not seem to raise the same policy concerns as standard securitized products.

We are also proposing to exclude non-debt securities issued by a “mortgage investment entity” (**MIE**) from these additional requirements for a variety of reasons. The CSA is currently considering the regulatory analysis of MIEs as part of a separate initiative.

Please refer to the section **Questions on the Proposed Securitized Products Rules** for specific questions on these issues.

(b) Summary of the Proposed Prospectus Disclosure Rule

The Proposed Prospectus Disclosure Rule requires that a prospectus used to qualify a distribution of securitized products contain specific disclosure relating to securitized products. The disclosure requirements are intended to be consistent with the IOSCO ABS Disclosure Principles, as well as the current disclosure required for registration of asset-backed securities by the SEC’s Regulation AB (**Reg AB**). Where we have considered it appropriate, we have also included elements from the U.S. Securitization Initiatives. Our intent is to improve the consistency and comparability of prospectus disclosure.

We are not currently proposing to change the eligibility criteria for short form and shelf prospectuses. We note, however, that eligibility is restricted to asset-backed securities, and securitized products that are not asset-backed securities would continue to be ineligible for the short form or shelf prospectus systems.

The required disclosure for all prospectuses used to distribute securitized products is set out in Form 41-103F1. As most prospectus offerings of securitized products are of asset-backed securities, we have drafted the disclosure based on these types of offerings. However, we expect issuers of all types of securitized products to consider each of the disclosure items in the Form and conduct a meaningful analysis of whether a particular item is relevant to the securitized product or securitized products transaction.

The following is a summary of the disclosure required by Form 41-103F1.

Item 1 – Parties with significant functions and responsibilities

The prospectus must identify and describe the functions and responsibilities performed by each of the following parties involved in the securitized product transaction:

- sponsor;
- arranger;
- depositor;
- originator;
- issuer;
- servicer;
- trustee; and
- any other party with a material role in the securitized product transaction, such as a custodian, intermediate transferor or liquidity provider in the secondary market.

If certain enumerated relationships exist amongst the above parties, the prospectus must provide disclosure about those relationships.

The prospectus must also disclose whether any of the above parties is or has been engaged in the 12 months before the date of the prospectus in a transaction that would involve in or result in any material conflict of interest with respect to an investor in the securitized products being distributed.

Item 2 – Significant obligors of pool assets

The prospectus must identify significant obligors, and provide selected financial information or financial statements in respect of the significant obligor, depending on the significance of the obligor to the pool assets. If a significant obligor is itself an issuer of securitized products, and the applicable pool assets are securitized products, the prospectus must provide disclosure regarding the pool assets required by Items 1 to 10 of Form 41-103F1.

Item 3 – Pool assets

The prospectus must provide information regarding the pool assets, including:

- selection criteria;
- material pool characteristics;
- delinquent and non-performing assets;
- sources of pool cash flow;
- representations and warranties regarding the pool assets, and information relating to repurchase or replacement obligations in connection with such representations and warranties;
- claims on pool assets;
- information on prefunding or revolving periods; and
- transaction agreement terms governing the modification of pool asset terms.

Item 4 – Static pool information

The prospectus must provide static pool information if it would be material. If no static pool information is provided, the prospectus must explain why such disclosure is omitted.

Item 5 – Description of the securitized products

The prospectus must describe each securitized product being distributed.

Item 6 – Retention of securitized products

The prospectus must disclose whether a party described in Item 1 is retaining a portion of a tranche or tranches, the amount retained, and whether it has been hedged.

At this time, we are not proposing to require that any party to a securitization transaction retain an economic interest in the securitization, but only that any such retention is disclosed.

Item 7 – Structure of the transaction

The prospectus must provide information about the following:

- the flow of funds for the securitized product transaction;
- the distribution frequency and cash maintenance in respect of the securitized product;
- fees and expenses;
- excess cash flow;
- issuances of additional series or classes of securitized products by master trusts;
- any optional or mandatory redemption or termination feature; and
- prepayment, maturity and yield considerations.

Items 8 and 9 – Credit enhancement and other support, and certain derivative instruments

The prospectus must describe material external and internal credit enhancements or support, as well as each derivative instrument used to alter the payment characteristics of the payments on the securitized product. It must identify the providers of significant credit support and derivative counterparties. Depending on the significance of the support or derivative instrument, selected financial information or financial statements must be provided for the credit supporter or derivative counterparty.

Item 10 – Credit ratings

The prospectus must provide certain information related to the credit rating of the securitized product being distributed.

Item 11 – Reports

The prospectus must describe reports or documents that will be provided to the holders of the securitized products being distributed and how they are made available, and any other report or document to be filed with a securities regulatory authority.

Item 12 – Legal proceedings and regulatory actions

The prospectus must provide disclosure of legal proceedings and regulatory actions in respect of parties described in Item 1.

(c) Summary of the Proposed CD Rule and the Proposed Certification Amendments

The Proposed CD Rule requires that reporting issuers with issued and outstanding securitized products file specific continuous disclosure in addition to complying with the general continuous disclosure obligations in NI 51-102. However, the additional requirements do not apply where the securitized products are covered bonds or non-debt securities of MIEs. The disclosure requirements are largely based on the requirements of Reg AB. Where we have considered it appropriate, we have also included elements from the SEC April 2010 Proposals. Our intent is to improve the consistency and comparability of continuous disclosure.

The disclosure requirements apply to any securitized product issued by a reporting issuer regardless of whether the securitized product was issued through a prospectus or using a prospectus exemption. We are not proposing to “grandfather” current outstanding securitized products or implement a transition period. However, we are asking a specific question on this issue. Please refer to the section **Questions on the Proposed Securitized Products Rules**.

The following is a summary of several significant features of the Proposed CD Rule.

(i) Payment and performance report (section 4 and Form 51-106F1)

A reporting issuer must file a Form 51-106F1 within 15 days after each payment date for each series or class of securitized products it has issued. The report must contain information regarding payment distribution and pool performance reflecting the pool’s performance at the most recent payment distribution period. The disclosure required in Form 51-106F1 is largely derived from the SEC’s Form 10-D, and the issuer must provide the required disclosure to the extent applicable. If none of the disclosure in Form 51-106F1 is applicable due to the attributes of the securitized product or the structure of the securitized product, the reporting issuer can file an alternative report that contains all information that would be material to an investor regarding the payment distribution and performance of the series or class of securitized products.

(ii) Timely disclosure of significant events (section 5 and Form 51-106F2)

If an event enumerated in section 5 of proposed NI 51-106 occurs, a reporting issuer must immediately issue and file a news release disclosing the event, and file a Form 51-106F2 describing the event no later than two business days after the event. The enumerated events are largely derived from the SEC’s Form 8-K. In addition, we have also included a more general disclosure trigger in paragraph 5(2)(m), which requires disclosure of any other event that affects payment distribution or pool performance that an investor would consider material.

Reporting issuers will still be required to file material change reports under NI 51-102. A reporting issuer is not required to file Form 51-106F2 if it is filing a material change report in respect of the same event under NI 51-102.

(iii) Annual servicer report (section 6 and Appendix A)

Each servicer whose servicing activities relate to more than five percent of the pool assets must assess its compliance with each servicing standard set out in Appendix A of the Proposed CD Rule that it has identified as being applicable to it. The servicing standards in Appendix A of the Proposed CD Rule are not legal obligations under securities law, and are intended only as uniform measures against which the servicing of a particular asset pool can be assessed. Appendix A is largely drawn from provisions of Reg AB relating to servicers.

The servicer must prepare a report that states whether the servicer complied with each standard during the reporting issuer’s most recently-completed financial year. The servicer report must be audited.

The servicer must provide the report to the reporting issuer, who in turn must file it by the later of the date it files its AIF or its annual financial statements and annual MD&A.

(iv) Annual servicer certificate (section 7)

Each servicer enumerated in Items 1.7(1)(a), (b) or (c) of Form 41-103F1 must provide a reporting issuer with a certificate that discloses the extent of the servicer’s compliance with the applicable servicing agreement for the reporting issuer’s most recently completed financial year. There is no prescribed form of certificate. The reporting issuer must file the certificate by the later of the date it files its AIF or its annual financial statements and annual MD&A.

(v) Disclosure of servicer non-compliance (section 8)

A reporting issuer’s MD&A must include a discussion of any significant instance of non-compliance with the applicable servicing standards in Appendix A, or the relevant servicing agreement, that has been disclosed to it by a servicer through the servicer report or servicer certificate it has provided to the reporting issuer.

(vi) The Proposed Certification Amendments

We are proposing amendments to NI 52-109 that exempt reporting issuers that issue securitized products and that are subject to NI 51-106 from the requirements to establish and maintain disclosure controls and procedures and internal control over financial reporting in Part 3 of NI 52-109. The proposed amendments also provide for modified forms of certificate for reporting issuers who are subject to proposed NI 51-106.

(d) Summary of the Proposed Exempt Distribution Rules

The Proposed Exempt Distribution Rules create a new regulatory regime for distributions of securitized products on a prospectus-exempt basis. We propose to significantly narrow the class of investors who can invest in securitized products, and require disclosure at the time of issuance as well as on a continuous basis.

We also propose creating a modified regime for short-term securitized products that have a maturity of not more than one year from the date of issuance, which is intended to take into account their particular features and distribution methods. In Canada, short-term securitized products are primarily ABCP. We received a number of comments on the October 2008 ABCP Concept Proposal, which we have considered in developing the proposed short-term securitized products regime.

We recognize that the Proposed Exempt Distribution Rules are a significant departure from the current regulatory regime in the exempt market. We therefore have a number of questions with respect to our proposed approach of narrowing the class of investors who can invest in securitized products and imposing disclosure requirements. We also are asking whether there are other means to protect investors while permitting broader access to securitized products, for example, through requiring investors to purchase securitized products in the exempt market through a registrant subject to suitability obligations in respect of the purchaser. Please refer to the section **Questions on the Proposed Securitized Products Rules**.

The following is a summary of several significant features of the Proposed Exempt Distribution Rules.

(i) Removal of existing prospectus exemptions

We propose that the following prospectus exemptions in NI 45-106 be unavailable for distributions of securitized products that are not covered bonds or non-debt securities of MIEs:

- section 2.3 (the accredited investor exemption);
- section 2.4 (the private issuer exemption);
- section 2.9 (the offering memorandum exemption);
- section 2.10 (the minimum amount investment exemption);
- subsection 2.34(2)(d) and (d.1) (financial institution or Schedule III bank specified debt exemption);
- section 2.35 (the short-term debt exemption).

Instead, we propose to add a new prospectus exemption for the distribution of securitized products.

(ii) New Securitized Product Exemption (section 2.44)

Proposed section 2.44 contains the new prospectus exemption for distributions of securitized products to an “eligible securitized product investor” purchasing as principal (the **Securitized Product Exemption**). The definition of “eligible securitized product investor” essentially is the same as the definition of “permitted client” in National Instrument 31-103 *Registration Requirements and Exemptions*.

(iii) Information memorandum requirements (section 2.46)

A condition of the Securitized Product Exemption is that the issuer must deliver an information memorandum to each purchaser at the same time or before the purchase. Different disclosure requirements apply depending on whether the securitized product is a short-term securitized product.

A. Securitized products that are not short-term (paragraph 2.46(1)(b))

We do not prescribe a form of information memorandum where an issuer uses the Securitized Product Exemption to distribute securitized products that mature more than one year from the date of issue. However, the information memorandum must disclose sufficient information about the securitized product and securitized product transaction to enable a prospective purchaser to make an informed investment decision. We think that this general requirement, along with the items described in **C. General Requirements** below, constitute a base disclosure platform, while giving market participants flexibility to develop appropriate additional disclosure.

B. Short-term securitized products

We are prescribing Form 45-106F7 *Information Memorandum for Short-Term Securitized Products (Form 45-106F7)* as the form of information memorandum for distributions of short-term securitized products under the Securitized Product Exemption. A "short-term securitized product" is a securitized product that includes ABCP and matures not more than one year from the date of issue. We developed Form 45-106F7 by reviewing, among other things, existing ABCP information memoranda, the information that the Bank of Canada expects when reviewing whether to accept ABCP issued by an ABCP program as eligible collateral for its Standing Liquidity Facility, and comment letters on the October 2008 ABCP Concept Proposal.

The prescribed disclosure in Form 45-106F7 is in addition to the general requirement that the information memorandum disclose sufficient information about the securitized product and securitized product transaction to enable a prospective purchaser to make an informed investment decision.

We propose a prescribed form because we think that transparency and consistent disclosure are particularly important to the stability of the short-term securitized product markets. Investors in short-term instruments such as ABCP are extremely sensitive to delays in payment, and also expect repayment in full. During times of financial instability, investors who lack adequate information about the quality of the underlying ABCP program assets and any liquidity facility may indiscriminately refuse to buy new paper, which can in turn increase the risk that the market may freeze entirely and contribute to a liquidity crisis.

C. General requirements

In addition, all information memoranda must:

- describe statutory or contractual rights of action for misrepresentation;
- describe the resale restrictions that apply to the securitized product;
- contain a certificate signed by the issuer's CEO (or the equivalent), CFO (or the equivalent), promoter and sponsor (if the sponsor did not sign as a promoter) as to no misrepresentation; and
- contain a certificate signed by each underwriter as to no misrepresentation to the best of its knowledge, information and belief.

An information memorandum must not contain a misrepresentation.

An information memorandum must be posted on a website at the same time or before it is delivered to a purchaser. Issuers may password protect websites where such documents are posted if the issuer provides an undertaking to the securities regulatory authority to provide access to the website.

The issuer must also deliver a copy of the information memorandum to the securities regulatory authorities.

(iv) Periodic and timely disclosure (sections 6A.2 to 6A.5)

These proposed requirements only apply to non-reporting issuers who distribute securitized products under the Securitized Product Exemption (or other prospectus exemption prior to the Securitized Product Exemption being enacted).

A. Securitized products that are not short-term (sections 6A.2 and 6A.3)

We propose that the issuer must prepare a payment and performance report using Form 51-106F1 (as if the issuer were a reporting issuer, and subject to certain modifications) and post it on a website no later than 15 days after each payment date specified by the relevant transaction agreement.

The issuer must also prepare a timely disclosure report upon the occurrence of an event described in paragraphs 5(2)(a) to (m) of proposed NI 51-106 using Form 51-106F2 (as if the issuer were a reporting issuer). The issuer must post it on a website no later than two business days after the date on which the event occurs, and send a copy of the report to holders of securitized products, or otherwise advise holders that it has issued the report and describe the nature of the event.

Issuers may password protect websites where such documents are posted if the issuer provides an undertaking to the securities regulatory authority to provide access to the website.

The issuer must also deliver copies of the above reports to the securities regulatory authorities.

B. Short-term securitized products (sections 6A.4 and 6A.5)

For short-term securitized products, we propose that the issuer must prepare a monthly report using Form 45-106F8 *Periodic Disclosure Report for Short-Term Securitized Products Distributed under an Exemption from the Prospectus Requirement*. The issuer must post the report on a website no later than 15 days after the end of each calendar month. We developed this Form by reviewing, among other things, monthly reports prepared by ABCP dealers and credit rating organizations, comment letters on the SEC April 2010 Proposals and their impact on ABCP, and comment letters on the October 2008 ABCP Concept Proposal.

The issuer must also prepare a timely disclosure report disclosing the following information, if an investor would reasonably require the information to make an informed investment decision:

- a change to the information in the most recent monthly report or information memorandum; or
- an event that affects payment distribution or performance of the pool.

The issuer must post the timely disclosure report on a website no later than two business days after the date of the event.

Issuers may password protect websites where such documents are posted if the issuer provides an undertaking to the securities regulatory authority to provide access to the website.

The issuer must also deliver copies of the above reports to the securities regulatory authorities.

(v) Reasonable access to documents (sections 2.45 and 6A.6)

In order to maintain transparency in the exempt market, we propose that an issuer must provide each holder of securitized products who purchased securitized products under a prospectus exemption with continued reasonable access to the information memorandum and the various periodic and timely disclosure reports until one year from the date that the securitized product ceases to be outstanding.

We also propose that the issuer must provide reasonable access to the above documents to each person who requests access and is a prospective investor who meets the definition of eligible securitized product investor. Issuers may obtain confidentiality undertakings and take such steps as necessary to satisfy themselves that a prospective investor meets the definition of eligible securitized product investor.

Reasonable access includes making the document available on a password protected website if the issuer provides an undertaking to the securities regulatory authority to provide the regulator with access to the website.

(vi) Statutory civil liability and withdrawal rights

Statutory civil liability

We think that investors should have rights to sue the issuer, the sponsor and each underwriter for damages if the information memorandum required by the Securitized Product Exemption contains a misrepresentation. The right of action should be available without the investor being required to prove reliance on the misrepresentation.

Assuming that we proceed with this approach, in most jurisdictions, this outcome can be achieved by prescribing the information memorandum required under the proposed Securitized Product Exemption as an offering document to which statutory civil liability rights apply. In most jurisdictions, a statutory right of action for damages is available against the issuer, each of the individuals who were directors at the date of the prescribed document, and anyone else who signs the document (which would include sponsors and underwriters under our proposals). An action for rescission in lieu of damages would also be available against the issuer.

In Ontario, however, the statutory rights to sue for misrepresentation in a prescribed offering document would only apply against an issuer, and legislative amendments would be required for statutory rights of action to be available against sponsors and underwriters.

Withdrawal rights

In certain jurisdictions, there are also statutory provisions which provide an investor with a right to withdraw from the purchase within two days of receiving a prescribed offering document. This is similar to the two day right of withdrawal that exists in the prospectus regime. Staff of the commissions in the jurisdictions where that right applies are considering whether it is appropriate that the two day right of withdrawal apply to securitized products. We recognize that the two day right provides an

opportunity for sober second thought which could be useful when assessing complex products but also appreciate that under the proposed new Securitized Product Exemption, all investors will be relatively sophisticated. Please refer to the section **Questions on the Proposed Securitized Products Rules**.

(vii) **Reports of exempt distribution (sections 6.1 and 6.2)**

We propose that a Form 45-106F1 must be filed for a distribution under the Securitized Product Exemption. If the distribution is of a short-term securitized product, which tend to be offered on a continuous basis, the report need only be filed 30 days after the calendar year in which the distribution occurs.

(viii) **Resale**

We propose that the first trade of a securitized product distributed under the Securitized Product Exemption is a distribution. Therefore, the only prospectus exemption that would be available for resale of a securitized product would be section 2.44, thus creating a specialized “closed-system” for securitized products. Otherwise, the resale would require qualification by prospectus, or exemptive relief from the prospectus requirement.

(e) **Proposed consequential amendments**

We are proposing a number of consequential amendments to NI 41-101, NI 44-101 and NI 51-102 that flow from the Proposed Securitized Products Rules.

5. Cost Benefit Analysis

The focus of the Proposed Securitized Products Rules is to increase transparency in the securitization market and to limit access to securitized products in the exempt market to those investors best able to evaluate the features and risks of these products. We acknowledge that there will be costs associated with many of the changes being proposed. As part of the consultation process, we will work to assess the impact of the Proposed Securitized Products Rules. We encourage you to provide submissions on the costs and benefits associated with the proposals we are publishing for comment.

6. Legislative Amendments

CSA members may need to obtain legislative amendments in order to implement the Proposed Securitized Products Rules and statutory civil liability regime discussed in this Notice. These include obtaining rule-making authority to directly impose obligations on servicers and other parties that are not reporting issuers, as well as legislative amendments in respect of statutory civil liability for misrepresentations in offering documents and continuous disclosure relating to securitized products in the exempt market.

We have not initiated any steps toward obtaining legislative amendments at this time. We will consider doing so as part of our review of the comments on the Proposed Securitized Products Rules.

7. Questions on the Proposed Securitized Products Rules

We have a number of questions on the Proposed Securitized Products Rules and securitization where we would appreciate your feedback. We encourage you to provide detailed explanations in support of your answers. We also encourage you to provide submissions on the implications of any of the Proposed Securitized Products Rules on cost, timing and market access for issuers, investors and market intermediaries such as registrants.

(a) **General**

1. We welcome any comments on the three principles we have taken into account in developing the Proposed Securitized Products Rules, which are set out under **Substance and purpose of the Proposed Securitized Products Rules**. Are these the right principles? Are there additional principles we should take into account and if so, what should these be?
2. The Dodd-Frank Act requires federal banking agencies and the SEC to jointly prescribe rules that will require a “securitizer” (generally the issuer, sponsor or depositor) to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of securitized products, transfers, sells or conveys to a third party, subject to certain mandatory exemptions and discretionary exemptions. The SEC recently published proposed risk retention rules. The SEC April 2010 Proposals also contain a risk retention requirement as one of the proposed conditions of shelf-eligibility for asset-backed securities, which are intended to replace the current credit rating eligibility criteria. Is it necessary or appropriate for us to make rules prescribing mandatory risk retention for securitized products

in order to mitigate some of the risks associated with securitization? If so, what are the appropriate types and levels of risk retention for particular types of securitized products?

3. The Dodd-Frank Act amends the Securities Act of 1933 to prohibit sponsors, underwriters or placement agents of securitized products, or affiliates of such entities, from engaging in any transaction that would involve or result in any material conflict of interest with respect to any investor in a sale of securitized products. The prohibition against such activity will apply for one year after the closing date of the sale and provides for certain exceptions that relate to risk-mitigating hedging activities intended to enhance liquidity. Should there be a similar prohibition in our rules? If so, what practical conflicts would this rule prevent that are seen in Canada today?
4. Are there circumstances where we should require that certain material parties be independent from each other and if so, what are they? For example, should we require that an underwriter in a securitization be independent from the sponsor by proposing amendments to National Instrument 33-105 *Underwriting Conflicts*? Should we require that auditors who audit the annual servicer report be independent from the sponsor?
5. Is the definition of "securitized product" sufficiently clear, particularly for those persons who will be involved in selling these products to investors? Do elements of the definition, e.g., "collateralized mortgage obligation", "collateralized debt obligation", "synthetic", need to be defined?
6. Is the proposed carve-out for covered bonds from the Proposed Securitization Products Rules appropriate? Should there be additional conditions imposed in order for the carve-out to be available and if so, what should these be?
7. Is the proposed carve-out for non-debt securities of MIEs from the Proposed Securitization Products Rules appropriate? Should there be additional conditions imposed in order for the carve-out to be available and if so, what should these be?

(b) The Proposed Prospectus Disclosure Rule

Eligibility for the shelf system

8. Should there be restrictions on the kinds of asset-backed securities distributions that are eligible for the shelf system and if so, what should those be and why? Should there be similar restrictions to those in Reg AB, such as prescribed time limits on revolving periods for transactions backed by non-revolving assets, caps on prefunding amounts, and restrictions on pool assets (e.g., no non-revolving assets in a master trust, caps on the proportion of delinquent assets in the pool, and prohibitions against non-performing assets)?
9. Do investors need additional time to review shelf supplements prior to sale? Should we require the supplement (without price-related information) to be filed on SEDAR prior to first sale? What would be an appropriate amount of time, and would it change if loan- or asset-level disclosure was mandated?
10. Should the approved rating eligibility criterion for the short form and shelf prospectus systems be replaced with alternative criteria? In the alternative, if the approved rating eligibility criterion is maintained, should the issuer also satisfy one or more additional criteria such as those in the SEC April 2010 Proposals:
 - (i) 5% vertical slice risk retention;
 - (ii) third party review of repurchase or replacement obligations in connection with alleged breaches of representations and warranties;
 - (iii) a certificate from the CEO of a sponsor and an issuer that at the time of each offering off a shelf prospectus that the assets in the pool have characteristics that provide a reasonable basis to believe that they will produce, taking into account internal credit enhancements, sufficient cash flows to service any payments due and payable on the securities as described in the prospectus?
11. Do offerings of asset-backed securities through the MTN/continuous distributions prospectus supplement provisions under Part 8 of National Instrument 44-102 *Shelf Distributions* give investors enough time to review the information or provide the public disclosure of the offering on a sufficiently timely basis?

Pool asset and payment disclosure

12. The SEC April 2010 Proposals require disclosure of asset- or loan-level data in some cases, and grouped asset disclosure in others (e.g. for credit card receivables). We are not proposing to require asset- or loan-level disclosure or

grouped asset disclosure. Is this level of disclosure necessary and if so, what are appropriate standardized data points?

13. The SEC April 2010 Proposals require that issuers provide a computer waterfall payment program to investors. We currently are not proposing to impose a similar requirement. Is this type of program necessary and if so, why?

Mandatory review of pool assets

14. In connection with the requirements of the Dodd-Frank Act, the SEC has made a rule requiring that issuers who offer asset-backed securities pursuant to a registration statement must perform a review of the pool assets underlying the asset-backed securities. The issuer may conduct the review or an issuer may employ a third party engaged for purposes of performing the review provided the third party is named in the registration statement and consents to being named as an expert, or alternatively, the issuer adopts the findings and conclusions of the third party as its own. Should we introduce a similar requirement for prospectus offerings of securitized products?

Risk factor disclosure

15. We are not proposing to prescribe risk factor disclosure. Should Form 41-103F1 contain prescribed risk factor disclosure and if so, what disclosure should be prescribed? For example, are there standard risk factors associated with particular underlying asset classes that should always be included in a prospectus?

Incorporation by reference of Form 51-106F1 and Form 51-106F2

16. Should Form 51-106F1 and Form 51-106F2 filings previously filed by a reporting issuer be required to be incorporated by reference in other short form prospectus offerings by the same issuer? What types of filings are appropriate or necessary for incorporation, and which are not? Would the requirements regarding static pool disclosure in Item 4 of the proposed Form 41-103F1 be sufficient?

Registration

17. Are there any existing registration categories or registration exemptions that should be modified or made unavailable for the distribution of securitized products under a prospectus, or their subsequent resale?

(c) The Proposed CD Rule and Proposed Certification Amendments

Interaction with NI 51-102

18. The Proposed CD Rule requires reporting issuers that issue securitized products to make several new filings in addition to the filings required by NI 51-102. In light of these new proposed filings, should reporting issuers be exempt in whole or in part from the requirements of NI 51-102 and related forms? For example, do the costs associated with preparing and filing audited financial statements of the issuer outweigh the benefits to investors? We believe there may be circumstances where financial information about the issuer may be important to investors, such as information relating to derivative transactions to which the issuer is a party, or information relating to other liabilities of the issuer that may rank higher to or equally with the notes held by investors, and thereby reduce the potential recovery of investors in the case of an insolvency of the issuer. If we propose an exemption from the requirement to prepare and file audited financial statements, how should we address these concerns? What conditions should we include?

Application to all outstanding series or class of securitized products issued by a reporting issuer

19. The proposed continuous disclosure requirements apply in respect of all securitized products issued by the reporting issuer, regardless of whether they were distributed under a prospectus or on a prospectus-exempt basis. For example, a reporting issuer must file a Form 51-106F1 in respect of each outstanding series or class of securitized products it has issued, regardless of whether it was issued under a prospectus or on a prospectus-exempt basis. Should there be a "grandfathering" or transitional provision put in place?
20. Should the proposed continuous disclosure requirements only apply in respect of securitized products that the reporting issuer distributed via prospectus? If yes, how should we address the concern that other securitized products issued by the same issuer on an exempt basis may become freely tradeable but without the reporting issuer being required to provide any ongoing disclosure about these other securities?
21. Should there be a legending or notice requirement to explain resale restrictions for securitized products that have been distributed on an exempt basis?

Timely disclosure

22. Section 5 of NI 51-106 requires timely disclosure of a range of enumerated “significant” events largely derived from Form 8-K. Would adding, modifying or deleting any of the criteria on this list make it a better regime for timely disclosure? If so, what changes should be made?

Statutory Civil Liability

23. Should the new documents that are required to be filed under the Proposed CD Rule be prescribed as core documents for secondary market civil liability?

Certification

24. Is it appropriate to exempt reporting issuers that issue securitized products and that are subject to the Proposed CD Rule from the requirements to establish and maintain disclosure controls and procedures and internal control over financial reporting in Part 2 of NI 52-109?
25. The proposed forms of certification for reporting issuers that issue securitized products does not contain a note to reader similar to the note to reader required for venture issuer forms of certification. Should there be a note to reader required for the certifications and if so, what information should the note to reader contain?

Report of fulfilled and unfulfilled repurchase/replacement requests

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

(d) The Proposed Exempt Distribution Rules

General approach

27. We are proposing a new Securitized Product Exemption which focuses on a specific product that has unique features and risks. Is this product-centred approach appropriate? Should we instead be focusing on reforming the exempt market as a whole?
28. Should securitized products be allowed to be sold in the exempt market, or should they only be sold under a prospectus?

Who can buy

29. We are proposing to remove a number of existing prospectus exemptions through which securitized products can be sold. Should we permit securitized products to continue to be sold through some existing exemptions and if so, which exemptions?
30. The proposed Securitized Product Exemption in section 2.44 only permits certain “highly-sophisticated” investors (i.e., eligible securitized product investors) to buy securitized products on a prospectus-exempt basis. Other investors generally would only be able to buy securitized products that are distributed through a prospectus. Is this the right approach? If not, what approach should we take? In particular, should we permit other investors to purchase securitized products in the exempt market through a registrant subject to suitability obligations in respect of the purchaser? Would having a registrant involved adequately address our investor protection concerns? Please refer to Question 32 for additional related questions.
31. If our proposed approach to restrict access to securitized products to “highly-sophisticated” investors is appropriate, is the proposed list of eligible securitized product investors the right one? If not, how should it be modified? In particular, we would appreciate feedback on the following:

A. *Expanded list of who would qualify as an eligible securitized product investor*

Should we expand the list of eligible securitized product investors? For example:

Individuals (paragraph (n) of the definition)

- Should we include high-income individuals and if so, at what level of income, e.g. \$1 million?
- Should we permit inclusion of spousal income or assets when calculating applicable income or asset thresholds for individuals?
- Should other types of assets be included when calculating asset thresholds for individuals, not just net realizable financial assets and if so, what types of assets should be permitted?

Persons or companies who are not individuals (paragraph (p) of the definition)

- Should we lower the net asset threshold of \$25 million for persons or companies (other than individuals or investment funds)? If so, what is the appropriate net asset threshold for these entities?

Other investors

- Are there other categories of investors who should be included in the list of eligible securitized product investors and if so, what should those be? For example, should we include an individual registered or formerly registered under securities legislation?

B. Should we require that each beneficiary of the managed account in paragraph (k) of the proposed definition meet the criteria set out in the other paragraphs of the definition of eligible securitized product investor?

C. Should the list of eligible securitized product investors be narrowed? For example, should the financial thresholds under the proposed definition of eligible securitized product investor be raised? Are there entities in the proposed definition who should not qualify as eligible securitized product investors?

32. We continue to consider other possible prospectus exemptions for securitized products, along with appropriate conditions to such prospectus exemptions. We would appreciate your feedback on the following possible exemptions and conditions, and whether they should be in lieu of, or in addition to, the proposed Securitized Product Exemption:

A. *Enhanced accredited investor or minimum amount investment prospectus exemption*

Should we maintain availability of the accredited investor and minimum investment amount prospectus exemptions? Should their continued availability require additional conditions and if so, what should those be? For example, should we require either or both of the following additional conditions:

- (a) the issuer must provide an information memorandum and possibly ongoing disclosure; and
- (b) the investor must buy the securitized product from a registrant?

B. *Minimum amount investment prospectus exemption specifically for securitized products*

Should we have a prospectus exemption that would permit an investor to purchase securitized products provided the minimum amount invested is relatively high? If so, what would be an appropriate minimum amount threshold?

C. *Specified ABCP prospectus exemption*

Should investors who are neither eligible securitized product investors nor accredited investors be permitted to invest in ABCP provided certain risk-mitigating conditions are met? If so, what conditions should we impose on these distributions? Would ABCP that satisfies the following conditions be appropriate for non-accredited investors:

- the ABCP has received a minimum of two prescribed credit ratings;

- the ABCP is backed by a committed global-style liquidity facility that represents at least 100% of the outstanding face value of the ABCP and is provided by an entity with a minimum prescribed credit rating;
- the sponsor is federally or provincially regulated and has a minimum prescribed credit rating;
- the ABCP does not have direct or indirect actual or potential exposure to highly structured products such as collateralized debt obligations or credit derivatives (except for obtaining asset-specific protection for the ABCP program);
- the ABCP program does not use leveraged credit derivatives that could subject the program to collateral calls; and
- the issuer must provide an information memorandum and ongoing disclosure?

If the ABCP satisfies the above conditions, should we also require that an investor, or certain types of investors (for example, a “retail” investor) must buy the securitized product from a registrant? If so, what types of investors would benefit from this requirement?

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

Disclosure

34. The objectives of requiring disclosure for prospectus-exempt distributions of securitized products are to:

- create incentives for enhanced due diligence by sponsors and underwriters who must prepare the disclosure, and investors who will be expected to take the disclosure into account in making their investment decision;
- improve the quality and consistency of disclosure;
- facilitate a transparent, and thus stable, securitization market.

Will our proposed requirements for disclosure in the exempt market achieve or further these objectives?

35. Is there a class of investor for whom it is not necessary to require that some form of disclosure be provided in connection with the purchase of securitized products on a prospectus-exempt basis? If so, what type of investor?
36. Is there a type of “private-label” (as opposed to government-issued or -guaranteed) securitized product for which disclosure is not necessary? If so, what type of securitized product?
37. We are not prescribing specific disclosure for the initial distribution of securitized products, other than short-term securitized products such as ABCP. Is this an appropriate approach? What impact would requiring an information memorandum for distributions of non short-term securitized products have on costs, timing and market access?
38. We are prescribing certain disclosure for short-term securitized products such as ABCP (proposed Form 45-106F7 *Information Memorandum for Short-Term Securitized Products*). Is this an appropriate approach? Would adding, modifying, or deleting any of the prescribed disclosure improve the requirements? Should we mandate the format in which any of the disclosure is provided, for example, XML? What impact will requiring prescribed disclosure for distributions of short-term securitized products have on costs, timing and market access?
39. We are requiring that ongoing disclosure be made available to investors in securitized products. Is this an appropriate approach? Are the prescribed forms (Form 51-106F1 in the case of non short-term securitized products, and Form 45-106F8 *Periodic Disclosure Report for Short-Term Securitized Products Distributed under an Exemption from the Prospectus Requirement*) appropriate? Would adding, modifying or deleting any of the prescribed disclosure improve the requirements? Should we mandate the form in which any of the disclosure is provided, for example, XML? What impact will requiring ongoing disclosure for securitized products have on costs, timing and market access?
40. We have proposed that certain ongoing disclosure be made available to investors in securitized products via the issuer’s website. We propose that the issuer be required to provide access to prospective investors who request access. Is there a better method of making disclosure available to prospective investors and if so, what? Should the disclosure be generally publicly available via the issuer’s website or SEDAR?

Request for Comments

41. We have proposed that the information memoranda and all disclosure required to be provided to investors be delivered to securities regulators. We expect that, subject to requests under freedom of information legislation, these documents will not be generally available to the public. We thought this appropriate given that the securitized products are not generally available to the public. Is this an appropriate approach?

Statutory civil liability

42. We propose that there should be statutory civil rights of action against issuers, sponsors and underwriters for misrepresentations in an information memorandum provided in connection with a distribution of securitized products in the exempt market. Have we identified the appropriate parties whom an investor should be able to sue? If not, should any parties be added or removed?
43. Should there be statutory civil liability for misrepresentations in the continuous disclosure provided by an issuer of securitized product? If so, who should the investor be able to sue and why?
44. In certain jurisdictions, there are statutory provisions which also provide an investor with a right to withdraw from the purchase within two days of receiving a prescribed offering document. Should these rights of withdrawal apply to information memoranda used for the distribution of short-term securitized products? Should these rights of withdrawal apply to information memoranda used for the distribution of securitized products that are not short-term?

Resale

45. We propose that the first trade of a securitized product distributed under the Proposed Securitized Product Exemption is a distribution, creating a specialized "closed-system" for securitized products that are not issued under a prospectus. Is the proposed resale treatment appropriate?

Registration

46. Are there any existing registration categories or registration exemptions that should be modified or made unavailable for the distribution and resale of securitized products in the exempt market?
47. In order to qualify for the proposed Securitized Product Exemption in section 2.44, registered firms and individuals will need to be able to identify which products are securitized products. Are there categories of registrants that will not have the appropriate proficiency to identify securitized products and understand their risks? For example, should exempt market dealers be restricted in any way from dealing in securitized products?

How to provide your comments

You must submit your comments in writing by **July 1, 2011**. If you are sending your comments by email, you should also send an electronic file containing the submissions in Microsoft Word.

Please address your comments to all of the CSA member commissions as follows:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Government of Yukon
Superintendent of Securities, Department of Justice, Government of the Northwest Territories
Superintendent of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

Request for Comments

Please send your comments only to the addresses below. Your comments will be forwarded to the remaining CSA jurisdictions.

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Secretary

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Anne-Marie Beaudoin

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Please note that all comments received during the comment period will be made publicly available. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

We will post all comments received during the comment period to the OSC website at www.osc.gov.on.ca to improve the transparency of the policy-making process.

Questions

Please refer your questions to any of the following:

Ontario Securities Commission

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Request for Comments

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Manitoba Securities Commission

Chris Besko
Legal Counsel, Deputy Director
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chris.besko@gov.mb.ca

Request for Comments

New Brunswick Securities Commission

Susan Powell
Acting Director, Regulatory Affairs
506-643-7697
Susan.powell@nbsc-cvmnb.ca

Nova Scotia Securities Commission

Shirley P. Lee
Director, Policy and Market Regulation and Secretary to the Commission.
902-424-5441
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April 1, 2011

Schedule A
Proposed Prospectus Disclosure Rule

PROPOSED NATIONAL INSTRUMENT 41-103
SUPPLEMENTARY PROSPECTUS DISCLOSURE REQUIREMENTS FOR SECURITIZED PRODUCTS

PART 1 DEFINITIONS AND INTERPRETATION

1. Definitions – In this Instrument

“asset-backed security” means a security that is primarily serviced by the cash flows of a discrete pool of mortgages, receivables or other financial assets, fixed or revolving, that by their terms convert into cash within a finite period and any rights or other assets designed to assure the servicing or the timely distribution of proceeds to securityholders;

“mortgage investment entity” means a person or company

- (a) who invests substantially all of its assets in debts owing to it that are secured by one or more mortgages, hypothecs, or other instruments, on real property; and
- (b) whose primary purpose or business activity is originating and administering mortgage loans, with the intent of holding such mortgages for the entire term and of using the revenues generated by holding the mortgages to provide a return for its investors;

“securitized product” means any of the following:

- (a) a security that entitles the security holder to receive payments that primarily depend on the cash flow from self-liquidating financial assets collateralizing the security, such as loans, leases, mortgages, and secured or unsecured receivables, including:
 - (i) an asset-backed security;
 - (ii) a collateralized mortgage obligation;
 - (iii) a collateralized debt obligation;
 - (iv) a collateralized bond obligation;
 - (v) a collateralized debt obligation of asset-backed securities;
 - (vi) a collateralized debt obligation of collateralized debt obligations;
- (b) a security that entitles the security holder to receive payments that substantially reference or replicate the payments made on one or more securities of the type described in paragraph (a) but that do not primarily depend on the cash flow from self-liquidating financial assets that collateralize the security, including:
 - (i) a synthetic asset-backed security;
 - (ii) a synthetic collateralized mortgage obligation;
 - (iii) a synthetic collateralized debt obligation;
 - (iv) a synthetic collateralized bond obligation;
 - (v) a synthetic collateralized debt obligation of asset-backed securities;
 - (vi) a synthetic collateralized debt obligation of collateralized debt obligations;

“transaction agreement” means an agreement relating to a securitized product transaction that imposes an obligation on any party described in Item 1 (Parties with significant functions and responsibilities) of Form 41-103F1 or that provides a holder of a securitized product with rights or entitlements in respect of the securitized product.

2. Interpretation

- (1) Terms defined in the following Instruments and used in this Instrument have the respective meanings ascribed to those terms in those Instruments:
 - (a) National Instrument 41-101 *General Prospectus Requirements*;
 - (b) National Instrument 44-101 *Short Form Prospectus Distributions*;
 - (c) National Instrument 44-102 *Shelf Distributions*;
 - (d) National Instrument 51-102 *Continuous Disclosure Obligations*.
- (2) In this Instrument, other than in Part 3 or unless otherwise stated, a reference to a prospectus includes
 - (a) a preliminary prospectus;
 - (b) a preliminary short form prospectus and short form prospectus;
 - (c) a preliminary base shelf prospectus, base shelf prospectus and corresponding base shelf prospectus supplement;
 - (d) a preliminary base PREP prospectus, a base PREP prospectus and corresponding supplemented PREP prospectus;
 - (e) an amendment to any of the foregoing.

3. Application

- (1) This Instrument applies to an issuer that distributes a securitized product under a prospectus.
- (2) Despite subsection (1), this Instrument does not apply to a distribution under a prospectus of any of the following:
 - (a) a covered bond;
 - (b) a security, other than a debt security, that is issued by a mortgage investment entity.

PART 2 SUPPLEMENTARY PROSPECTUS DISCLOSURE FOR ISSUERS OF ASSET-BACKED SECURITIES AND OTHER SECURITIZED PRODUCTS

4. Supplementary prospectus disclosure for securitized products

- (1) An issuer that files a prospectus to distribute a securitized product must include in the prospectus the disclosure referred to in Form 41-103F1.
- (2) Despite subsection (1), an issuer is not required to complete a part of Form 41-103F1 that is inapplicable due to one or more attributes of the securitized product or the structure of the securitized product transaction under which the securitized product is issued.

PART 3 EXEMPTIONS

5. Exemptions

- (1) The regulator or, in Québec, the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.
- (3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.
- (4) Without limiting the manner in which an exemption under this Part may be evidenced, the granting under this

Part of an exemption may be evidenced by the issuance of a receipt for a prospectus, short form prospectus, base shelf prospectus, base PREP prospectus, or an amendment to any of the foregoing, as applicable.

- (5) The issuance of a receipt is not evidence that the exemption has been granted unless
 - (a) the person or company that sought the exemption sent to the regulator or, in Québec, the securities regulatory authority
 - (i) a letter or memorandum describing the matters relating to the exemption, and indicating why consideration should be given to the exemption, on or before the date of the filing of the preliminary prospectus, preliminary short form prospectus, preliminary base shelf prospectus, or preliminary base PREP prospectus, as applicable; or
 - (ii) a letter or memorandum referred to in subparagraph (i) after the date of the filing of the preliminary prospectus, preliminary short form prospectus, preliminary base shelf prospectus, or preliminary base PREP prospectus, as applicable, and the person or company received a written acknowledgement from the regulator or, in Québec, the securities regulatory authority that the exemption may be evidenced in the manner set out in subsection (1); and
 - (b) the regulator or, in Québec, the securities regulatory authority has not before, or concurrently with, the issuance of the receipt sent notice to the person or company that sought the exemption, that the exemption sought may not be evidenced in the manner set out in subsection (1).

PART 4 EFFECTIVE DATE

6. Effective date

- (1) This Instrument shall come into force on [*].

Form 41-103F1

Supplementary Information Required in a Securitized Products Prospectus

INSTRUCTIONS

- (1) This Form sets out specific disclosure requirements relating to securitized products that are in addition to the general requirement under securities legislation to provide full, true and plain disclosure of all material facts relating to the securities to be distributed. Issuers must comply with the specific instructions or requirements in this Form if the instruction or requirement is applicable. Issuers must also comply with the applicable instructions or requirements in Form 41-101F1 or Form 44-101F1 that address areas that are not otherwise covered by the instructions or requirements in this Form.
- (2) Write the disclosure so that a reasonable prospective investor in the securitized products is able to understand it. Consider both the level of detail provided and the language used in the document. Additional guidance relating to plain language principles may be available in the companion policy to National Instrument 41-101 *General Prospectus Requirements*.
- (3) Tables, graphs, flow charts or other graphic formats must be used if a reasonable prospective investor will be able to better understand the information being provided. Items 1 (Parties with significant functions and responsibilities), 3 (Pool assets), 4 (Static pool information) and 7 (Structure of the transaction) of this Form must be presented using tables, graphs, flow charts or other graphic formats unless a reasonable prospective investor would conclude that those formats do not provide him or her with a better understanding of the information provided.
- (4) Use headings and sub-headings to group information required by this Form, and include a detailed table of contents in the prospectus that clearly identifies the location of the information under each heading and sub-heading.

DEFINITIONS

“Cut-off date” means the date on and after which collections on the pool assets accrue for the benefit of a holder of a securitized product.

Item 1 – Parties with significant functions and responsibilities

1.1 General

If a person or company is performing more than one of the roles set out below, clearly identify each role and the specific functions and responsibilities being performed in connection with each role. It is not necessary to repeat disclosure that has already been provided. For example, it would not be necessary to repeat the disclosure about the sponsor’s form of organization and the general character of its business if disclosure is also provided about its role as an originator.

1.2 Sponsor

A “sponsor” is a person or company who organizes and initiates a securitized product transaction by selling or transferring assets, either directly or indirectly, to the issuer.

Identify each sponsor and describe the following:

- (a) the sponsor’s form of organization and the general character of its business;
- (b) the sponsor’s securitization program and its material functions and responsibilities in the program, including whether the sponsor or an affiliate is responsible for originating, acquiring, pooling or servicing the pool assets;
- (c) the sponsor’s participation in structuring the securitized product transaction;
- (d) the sponsor’s securitization experience and the period of time it has been engaged in securitizing assets of any type;
- (e) the sponsor’s experience in and procedures for originating or acquiring and securitizing assets of the type included in the securitized product transaction that is the subject of the current disclosure, including:
 - (i) the credit-granting or underwriting criteria for assets of the type being securitized;

- (ii) any material information regarding the size, type and growth of the sponsor's portfolio of those assets;
- (f) any prior securitized product transaction which was organized and initiated by the sponsor and that has defaulted or experienced an event that triggered an early amortization;
- (g) any other information related to the sponsor that may be material to an analysis of the origination or performance of the pool assets.

1.3 Arranger

An "arranger" is a person or company that arranges and structures a securitized product transaction, but does not sell or transfer assets, directly or indirectly, to the issuer of the securitized products, and in the absence of evidence to the contrary, includes the underwriter for a distribution of securitized products.

Identify each arranger and describe the following:

- (a) the arranger's form of organization and the general character of its business;
- (b) the arranger's functions and responsibilities as arranger in the securitized product transaction.

1.4 Depositor

A "depositor" is a person or company in a securitized product transaction who receives or purchases pool assets from the sponsor and transfers or sells the pool assets to an issuer of securitized products.

Identify each depositor that is not also a sponsor for whom disclosure has been provided under Item 1.2, and describe the following:

- (a) the depositor's form of organization and the general character of its business;
- (b) the depositor's ownership structure;
- (c) the reason for the depositor being used in the securitized product transaction;
- (d) the depositor's securitization experience and securitization program, including its functions and responsibilities in the program, if its securitization experience or securitization program are materially different from the sponsor's experience or program;
- (e) any continuing duties of the depositor in respect of the securitized products or the pool assets after issuance of the securitized products.

1.5 Originator

An "originator" is a person or company that originates receivables, loans or other financial assets that are pool assets.

- (1) Identify each originator that is not also a sponsor, or an affiliate of a sponsor, for which disclosure has been provided under Item 1.2, that satisfies either of the following criteria:
 - (a) the originator has originated as of the cut-off date, or is reasonably expected to originate, assets in respect of a pool in which a sponsor and its affiliates have cumulatively originated less than 10% of the pool assets;
 - (b) the originator has originated as of the cut-off date, or is reasonably expected to originate, 10% or more of the pool assets.
- (2) Identify each group of affiliated originators that satisfies either of the following criteria, unless a member of the group is a sponsor, or an affiliate of a sponsor, for which disclosure has been provided under Item 1.2:
 - (a) the group cumulatively has originated as of the cut-off date, or is reasonably expected to originate, assets in respect of a pool in which a sponsor and its affiliates have cumulatively originated less than 10% of the pool assets;

- (b) the group cumulatively has originated as of the cut-off date, or is reasonably expected to originate, 10% or more of the pool assets.
- (3) If an originator or group of affiliated originators described in subsection (1) or (2) has or is reasonably expected to originate 20% or more of the pool assets, describe the following for each originator:
- (a) the originator's form of organization and the general character of its business;
 - (b) the originator's origination program and the period of time it has been engaged in originating assets;
 - (c) the originator's experience in and procedures for originating assets of the type included in the securitized product transaction that is the subject of the current disclosure, including:
 - (i) the credit-granting or underwriting criteria for the assets of the type being securitized;
 - (ii) any material information regarding the size, type and growth of the originator's portfolio of those assets;
 - (d) the originator's financial condition to the extent that there is a significant risk that its financial condition could have a material impact on its ability to comply with any obligations to, or fulfill any reasonable expectations that it will, originate assets for the pool.

1.6 Issuer

Describe the following:

- (a) the permissible activities and restrictions on the activities of the issuer under its governing documents, including any restrictions on the ability to issue or invest in additional securities, to borrow money or to make loans to other persons;
- (b) any provisions in the issuer's governing documents, any transaction agreement or other material contract that would permit modification of the issuer's governing documents, including with respect to permissible activities and covenants;
- (c) the identity of any person or company authorized to exercise discretion with respect to any specific activity regarding the administration of the asset pool or the securitized products being distributed;
- (d) any asset owned or reasonably expected to be owned by the issuer other than pool assets, and any liability of the issuer other than the securitized products being distributed;
- (e) the amount and nature of any equity in or financial contribution to the issuer held or made by the arranger, sponsor, depositor or other party to the securitized product transaction;
- (f) the manner and timing by which the sale or transfer of the pool assets to the issuer occurs, the creation, perfection and priority status of any security interest in a pool asset, and each person or company who holds a security interest in a pool asset;
- (g) the nature and amount of any expenses incurred in connection with the selection and acquisition of the pool assets that will be paid out of the offering proceeds. Include the specific amounts paid to any person or company for which disclosure has been provided under Items 1.2 to 1.5, and 1.7 to 1.9, including any affiliates of the foregoing;
- (h) any material provision in a transaction agreement or arrangement that addresses whether a security interest granted in connection with the securitized product transaction is maintained and enforced;
- (i) whether a declaration of bankruptcy, receivership or similar proceeding with respect to the issuer can occur, and if so, whether the issuer's assets will become subject to the bankruptcy, receivership or similar control of a third party and any specific impact on the pool assets;
- (j) whether in the event of a bankruptcy, receivership or similar proceeding with respect to the sponsor, originator, depositor or other seller of pool assets, the issuer's assets will become part of the bankruptcy estate or subject to the bankruptcy, receivership or similar control of a third party;

- (k) if any pool assets are securities, the market price of the securities and the basis on which the market price was determined.

1.7 Servicer

A “servicer” is a person or company responsible for the management or collection of pool assets or making allocations or payments to a holder of a securitized product, but does not include a trustee of an issuer of securitized products or trustee for the securitized product that makes allocations or payments.

- (1) If multiple servicers service the pool assets, provide an introductory description of the roles, responsibilities and oversight requirements of the servicing structure and the parties involved, and identify the following:
 - (a) each master servicer;
 - (b) each servicer that is an affiliate of any person or company for which disclosure has been provided under Items 1.2 to 1.6, 1.8 and 1.9;
 - (c) each servicer that services 10% or more of the pool assets as of the cut-off date, or that is reasonably expected to service 10% or more of the pool assets;
 - (d) any other servicer responsible for calculating or making payments to holders of the securitized products or performing other aspects of the servicing of the pool assets or the securitized products upon which the performance of the pool assets or securitized products is materially dependent.
- (2) For each servicer described in paragraphs (1)(a), (b) or (d), and for each servicer that services 20% or more of the pool assets, describe the following:

Information and experience

- (a) the servicer’s form of organization;
- (b) the servicer’s general servicing experience and the period of time it has been engaged in servicing assets of any type;
- (c) the servicer’s experience in and procedures for servicing assets of the type included in the securitized product transaction that is the subject of the current disclosure, including:
 - (i) any material changes to the servicer’s policies or procedures during the three years before the date of the prospectus;
 - (ii) any material information regarding the size, type and growth of the servicer’s portfolio of those assets;
- (d) any other information related to the servicer that may be significant to an analysis of the servicing of the pool assets and the securitized products being distributed, as applicable;

Servicing agreements and servicing practices

- (e) the material terms of the servicing agreement and the servicer’s duties regarding the securitized product transaction, including without limitation any material trigger clauses related to the servicer. For example, describe any requirement that the servicer must fulfill to avoid termination;
- (f) any factors involved in servicing the type of assets included in the securitized product transaction that are particularly relevant to assets of that type. For example, describe the factors that are particularly relevant to subprime assets and loans with deferred payments, and the servicer’s processes and procedures designed to address those factors;
- (g) the manner in which collections made in respect of the assets will be maintained, including the extent of commingling of funds with other funds, serviced assets or other assets of the servicer, and the servicer’s process for handling delinquencies and losses;
- (h) the provisions or arrangements with respect to advances of funds regarding collections, cash flows or payments, including interest or other fees charged for, and terms of recovery of, those advances;

- (i) if the servicer has custodial responsibility for the pool assets, the material arrangements regarding the custodianship of the assets, or alternatively, identify the other entity that performs the custodian activity and describe its responsibilities;
- (j) any ability by the servicer to significantly waive or modify any terms, fees, penalties or payments on the pool assets;
- (k) any limitations on the servicer's liability under a transaction agreement;
- (l) the material terms of any relationship or arrangement with another party by which the servicer may subcontract or delegate some or all of its functions to that party;
- (m) whether in the event of a bankruptcy, receivership or similar proceeding with respect to the servicer any of the issuer's assets will become part of the bankruptcy estate or subject to the bankruptcy, receivership or similar control of a third party.

Back-up servicing

- (n) the material terms, including the procedures, regarding the servicer's removal, replacement, resignation or transfer, including arrangements regarding, and any qualifications required for, a successor servicer;
- (o) the process for transferring servicing to a successor servicer;
- (p) provisions for the payment of expenses associated with a servicing transfer or any additional fees that may be charged by a successor servicer;
- (q) any arrangements regarding a back-up servicer for the pool assets and the identity of such back-up servicer;

Loan modification

- (r) in the case of asset-backed securities being distributed that are backed by loans,
 - (i) whether or not, and on what basis, the servicer may be able to modify the terms of any of the loans, including a discussion of which loans would be eligible for modification;
 - (ii) any provisions that specify certain types of permitted modifications, or impose certain limitation or qualifications on the ability to modify loans that back asset-backed securities;
 - (iii) how any loan modification criteria would impact particular classes of asset-backed securities holders.
- (3) For each servicer described in subsection (1), provide information regarding the servicer's financial condition to the extent that there is a significant risk that the effect on one or more aspects of servicing resulting from such financial condition could have a material impact on pool performance or performance of the securitized product.

1.8 Trustees

If the issuer is structured as a trust, identify the trustee and describe the following:

- (a) the trustee's form of organization;
- (b) the trustee's prior experience in securitized product transactions involving assets of the type included in the securitized product transaction that is the subject of the current disclosure;
- (c) the trustee's duties and responsibilities regarding the securitized products under the applicable governing documents and under applicable law;
- (d) any actions that would be required by the trustee upon an event of default, potential event of default, or other breach of a covenant in a transaction agreement, including any required notice to investors, a rating agency, or other person or company;
- (e) how potential events of default are defined;

- (f) any required percentage of a class or classes of securitized products that is needed to require the trustee to take action upon an event of default, potential event of default, or other breach of a transaction covenant;
- (g) any limitations on the trustee's liability under a transaction agreement;
- (h) any indemnification provisions that entitle the trustee to be indemnified from the cash flow that would otherwise be used to pay the securitized products;
- (i) any contractual provision or understanding regarding the trustee's removal, replacement or resignation, as well as how the expenses associated with changing from one trustee to another trustee will be paid.

1.9 Any other party with a material role

If the securitized product transaction involves an additional party including, without limitation, a custodian, intermediate transferor or liquidity provider in the secondary market, identify that additional party if its role in the securitized product transaction that is the subject of the current disclosure or in respect of the pool assets is material.

For each material additional party, describe the following:

- (a) its role and function in the securitized product transaction;
- (b) its experience in relation to similar asset pools and securitized product transactions;
- (c) the material terms of any agreement with that party regarding the securitized product transaction or the securitized products being distributed.

1.10 Affiliates and certain relationships and related transactions

Describe the following:

- (a) whether, and how, any persons or companies for which disclosure has been provided under Items 1.2 to 1.9 are affiliated to one another;
- (b) the general character of any business relationship, agreement or understanding, other than the securitized product transaction itself, between two or more persons or companies for which disclosure has been provided under Items 1.2 to 1.9, or any affiliate of those persons or companies, if the business relationship, agreement or understanding satisfies all of the following:
 - (i) it is related to the securitized products being distributed or the pool assets;
 - (ii) it is currently existing or existed during the two years before the date of the prospectus;
 - (iii) it is entered into outside the ordinary course of business, or on terms other than would be obtained in an arm's length transaction with an unrelated party;
 - (iv) it is material to an investor's understanding of the securitized products being distributed.
- (c) any material relationship involving or relating to the securitized product transaction or the pool assets, including the material terms and approximate amount involved, between two or more persons or companies for which disclosure has been provided under Items 1.2 to 1.9, or any affiliate of those persons or companies, that currently exists or that existed during two years before the date of the prospectus, including any of the following:
 - (i) a loan agreement;
 - (ii) a repurchase agreement to finance the acquisition or origination of pool assets;
 - (iii) a servicing agreement;
- (d) whether any person or company for which disclosure has been provided under Items 1.2 to 1.9, or any affiliate of the person or company, is engaged in, or has in the 12 months before the date of the prospectus been engaged in, any transaction that would involve or result in any material conflict of interest with respect to any investor in the securitized products being distributed.

Item 2 – Significant obligors of pool assets

An “obligor” is a person or company who is directly or indirectly committed by contract or other arrangement to make payments on all or part of the obligations on a pool asset.

A “significant obligor” is any of the following:

- (a) An obligor or a group of affiliated obligors on any pool asset or group of pool assets that collateralizes one or more series or classes of securitized products, if such pool asset or group of pool assets represents 10% or more of the asset pool;
 - (b) A single property or group of related properties securing a pool asset or a group of pool assets that collateralizes one or more series or classes of securitized products, if such pool asset or group of pool assets represents 10% or more of the asset pool;
 - (c) A lessee or group of affiliated lessees if the related lease or group of leases represents 10% or more of an asset pool that collateralizes one or more series or classes of securitized products;
- (1) Identify each significant obligor as of the cut-off date of the securitized product transaction, and describe the following:
 - (a) its form of organization;
 - (b) the general character, history and development of its business;
 - (c) any adverse financial developments since the date of its most recent financial statements;
 - (d) the nature of the concentration of the pool assets with the obligor;
 - (e) the material terms of the pool assets and each agreement with the obligor involving the pool assets.
 - (2) If the pool assets relating to a significant obligor represent 10% or more, but less than 20% of the asset pool, provide the following information:
 - (a) for a significant obligor other than a significant obligor described in paragraph (b) of the definition of significant obligor, provide all of the following:
 - (i) the selected annual financial information required by Item 1.3 of Form 51-102F1;
 - (ii) the same selected financial information for any subsequent interim period that ended more than 60 days before the date of the prospectus.
 - (b) for a significant obligor described in paragraph (b) of the definition of significant obligor, provide all of the following:
 - (i) net operating income for the periods specified in Item 1.3 of Form 51-102F1;
 - (ii) net operating income for any subsequent interim period that ended more than 60 days before the date of the prospectus.
 - (3) If the pool assets relating to a significant obligor represent 20% or more of the asset pool, provide the financial statements of the significant obligor that would be prescribed under securities legislation and described in the form of prospectus that the significant obligor would be eligible to use at the date of the prospectus, if the significant obligor was distributing securities under a prospectus.
 - (4) Subsections (2) and (3) do not apply to a significant obligor whose obligations in respect of the pool assets are guaranteed by the Government of Canada.
 - (5) If a significant obligor is an issuer of securitized products, and the applicable pool assets are securitized products, provide the disclosure set out in Items 1 to 10 of this Form in respect of the significant obligor and the securitized products that are part of the pool assets as if the significant obligor were the issuer.

Item 3 – Pool assets

3.1 General information regarding pool asset types and selection criteria

Describe the following:

- (a) each type of pool asset that will be securitized, including a general description of the material terms of the pool assets;
- (b) the method and criteria used by each originator to originate the assets in the pool, or by each sponsor to select the pool assets to be purchased for the pool, and any changes to the method or criteria and whether the method or criteria can be modified or overridden;
- (c) any exceptions to the criteria in paragraph (b), including a quantification of such exceptions;
- (d) the origination channel and origination process for the pool assets, including:
 - (i) information about how the originator acquired the asset;
 - (ii) the level of origination documentation that was required;
- (e) the cut-off date or similar date for establishing pool compositions;
- (f) any specific due diligence performed on the selection of the pool assets, including verification and risk assurance practices that have been performed by the arranger, sponsor or originator;
- (g) the jurisdiction whose laws and regulations govern the pool assets and the effects of any relevant legal or regulatory provisions that may materially affect pool performance or payments or expected payments on the securitized products ;
- (h) whether the pool assets have been reviewed for compliance with selection criteria or are the subject of a report by a third party to verify the accuracy of the loan or other asset information disclosed in the prospectus;
- (i) if the pool assets have been reviewed for compliance or are the subject of a report by a third party, the identity of the reviewer or third party, the scope of the review or report, and the results or findings of the review or report.

3.2 Pool characteristics

- (1) Provide an introductory overview of the material pool characteristics that includes:
 - (a) the methodology used in determining or calculating the characteristics;
 - (b) a description of any terms or abbreviations used.
- (2) Describe the material characteristics of the pool assets, including, to the extent applicable:
 - (a) the legal nature of each type of pool asset;
 - (b) the number of each type of pool asset;
 - (c) the original balance and outstanding balance or other reasonable measurement of pool asset size, at date of origination, and as of the designated cut-off date;
 - (d) interest rate or rate of return;
 - (e) any cap or floor on interest rates;
 - (f) any significant instalment at loan maturity;
 - (g) any increased instalment rate;
 - (h) capitalized or uncapitalized accrued interest;

- (i) age, maturity, expiry date, remaining term, average life, current payment or prepayment speed, applicable payment grace periods and pool factors;
- (j) service distribution, if different servicers service different pool assets;
- (k) amortization period;
- (l) loan purpose;
- (m) loan status;
- (n) average payment rate of receivables;
- (o) for revolving financial assets, information about:
 - (i) the monthly payment rate;
 - (ii) maximum credit lines;
 - (iii) average account balance;
 - (iv) yield percentage;
 - (v) type of assets;
 - (vi) finance charges, fees and other income earned;
 - (vii) balance reductions granted for refunds, returns, fraudulent charges or other reasons;
 - (viii) percentage of full-balance and minimum payments made.
- (p) for an asset pool containing one or more commercial mortgages, the following information, to the extent material:
 - (i) For each commercial mortgage:
 - (A) The location and present use of each mortgaged property.
 - (B) Net operating income and net cash flow information, as well as the components of net operating income and net cash flow, for each mortgaged property.
 - (C) Current occupancy rates for each mortgaged property.
 - (D) The identity, area occupied by and lease expiration dates for the three largest tenants at each mortgaged property.
 - (E) The nature, amount and priority of all other material mortgages, liens or encumbrances against each mortgaged property.
 - (ii) For each commercial mortgage that represents, by dollar value, 10% or more of the asset pool, measured as of the cut-off date:
 - (A) Any proposed program for the renovation, improvement or development of the mortgaged properties, including the estimated cost of the program and the method of financing to be used.
 - (B) The general competitive conditions to which the properties are or may be subject.
 - (C) The management of the properties.

- (D) The occupancy rate expressed as a percentage for each of the five years before the date of the prospectus.
- (E) The principal business, occupations and professions carried on in, or from the properties.
- (F) The number of tenants occupying 10% or more of the total rentable square footage or meterage of such properties, the principal nature of business of each such tenant, and the principal provisions of the leases with those tenants including, but not limited to: rental per annum, expiration date, and renewal options.
- (G) The average effective annual rental per square foot, square meter or unit for each of the three years prior to the date of the prospectus and the year to date for the year in which the prospectus dated.
- (H) The lease expirations, in the form of a schedule, for each of the previous ten years starting with the year in which the prospectus dated, stating:
 - 1. The number of tenants whose leases will expire.
 - 2. The total area in square feet or square meters covered by such leases.
 - 3. The annual rental represented by such leases.
 - 4. The percentage of gross annual rental represented by such leases.
- (q) whether pool assets are secured or unsecured, and if secured, the type of collateral;
- (r) information about the collateral underlying the loans in the pool, including:
 - (i) the type or use of the underlying property, product or other collateral;
 - (ii) loan-to-value ratio;
 - (iii) the existence of insurance for real estate;
 - (iv) if a valuation has been performed on the collateral, who performed the valuation, when it was performed or updated, and the standard used in measuring the valuation;
- (s) credit score of obligors and other information regarding obligor credit quality;
- (t) billing and payment procedures, including frequency of payment, payment options, fees, charges and origination or payment incentives;
- (u) geographic distribution of the pool assets, including any economic or other factors specific to any jurisdiction, region or sector where a significant portion of the pool assets are or will be located that may materially impact the pool assets or cash flows from the pool assets;
- (v) priority on collateral in event of default.

3.3 Delinquency and loss information

“Delinquent”, for purposes of determining if an asset in a pool that collateralizes one or more series or classes of securitized products is delinquent, means a pool asset that is more than 30 or 31 days or a single payment cycle, as applicable, past due from the contractual due date, as determined in accordance with any of the following:

- (a) the transaction agreements for the securitized products;
- (b) the delinquency recognition policies of the sponsor, any affiliate of the sponsor that originated the pool asset, or the servicer of the pool asset;
- (c) the delinquency recognition policies applicable to that pool asset established by the regulator primarily responsible for supervising the financial condition of the sponsor, any affiliate of the sponsor that originates the pool asset, or the servicer of the pool asset, or established by the program or regulator that oversees the program under which the pool asset was originated;

“Non-performing”, for purposes of determining if a pool asset that backs one or more series or classes of securitized products is non-performing, means a pool asset if any of the following is true:

- (a) the pool asset would be treated as wholly or partially charged-off under the requirements in the transaction agreements for the securitized products;
- (b) the pool asset would be treated as wholly or partially charged-off under the charge-off policies of the sponsor, an affiliate of the sponsor that originates the pool asset, or a servicer that services the pool asset;
- (c) the pool asset would be treated as wholly or partially charged-off under the charge-off policies applicable to such pool asset established by the regulator primarily responsible for supervising the financial condition of the sponsor, an affiliate of the sponsor that originates the pool asset, or a servicer that services the pool asset, or established by the program or regulatory entity that oversees the program under which the pool asset was originated;

Provide the following information on delinquencies and losses on the asset pool for each pool asset type as of the cut-off date for the securitized product transaction, or in the case of a master trust, the date specified in the prospectus:

- (a) delinquency experience in 30 or 31 day increments, as applicable, beginning at least with assets that are 30 or 31 days delinquent, as applicable, through the point that assets are written off or charged off as uncollectable;
- (b) the total amount of delinquent and non-performing assets as a percentage of the aggregate asset pool;
- (c) other significant loss and cumulative loss information;
- (d) how delinquencies and non-performance are defined or determined, including whether the criteria used for such definition or determination can be modified or overridden, and whether they are consistent with market practice;
- (e) other material information regarding delinquencies, losses and non-performance particular to the pool asset type, including to the extent applicable information regarding:
 - (i) repossession;
 - (ii) foreclosure;
 - (iii) renegotiation or modification of terms.

3.4 Sources of pool cash flow

If the cash flows that support the securitized products come from more than one source, such as both lease payments and the sale of the residual asset at the end of a lease, describe:

- (a) the specific sources of funds and their uses, including the relative amount and percentage of funds that will be derived from each source;
- (b) any assumptions, data, models and methodology used to derive the amounts in paragraph (a).

3.5 Representations and warranties and repurchase obligations

- (1) Summarize any representation and warranty made concerning the pool assets by each sponsor, originator or any other party, including an affiliate of the foregoing, in connection with the securitized product transaction, and briefly describe the remedies available if a representation and warranty is breached. State whether there is any representation and warranty relating to fraud in the origination of the pool assets.
- (2) If material, for each originator and affiliate of the originator that is required to repurchase or replace a pool asset for breach of a representation and warranty pursuant to the transaction agreements, provide the following disclosure on a pool-by-pool basis for each of the three years prior the date of the prospectus, but only in respect of pool assets of the same class as those collateralizing the securitized products being distributed, and that were securitized in connection with a distribution of securitized products under a prospectus:

- (a) the amount of pool assets that the originator or an affiliate of the originator originated that were the subject of demands to repurchase or replace for a breach of a representation and warranty pursuant to the transaction agreements;
 - (b) the amount of pool assets described in paragraph (a) in respect of which the demands were resolved, and the nature of the resolution;
 - (c) the amount of pool assets described in paragraph (a) in respect of which the demands were not resolved, and the status of the demands as of a date that is not more than 60 days before the date of the prospectus;
 - (d) where the originator rejected a demand to repurchase or replace pool assets on the basis that the assets did not violate a representation and warranty concerning the pool assets, whether an opinion of a third party not affiliated with the originator had been furnished to the trustee or issuer that confirmed that the assets did not violate the representation and warranty.
- (3) If material, for each party that is required to repurchase or replace a pool asset for breach of a representation and warranty pursuant to the transaction agreements, provide the following disclosure on a pool-by-pool basis for each of the three years prior the date of the prospectus, but only in respect of pool assets of the same class as those collateralizing the securitized products being distributed, and that were securitized in connection with a distribution of securitized products under a prospectus:
- (a) the amount of pool assets that were the subject of demands to repurchase or replace for a breach of a representation and warranty pursuant to the transaction agreements;
 - (b) the amount of pool assets described in paragraph (a) in respect of which the demands were resolved, and the nature of the resolution;
 - (c) the amount of pool assets described in paragraph (a) in respect of which the demands were not resolved, and the status of the demands as of a date that is not more than 60 days before the date of the prospectus;
 - (d) where the party rejected a demand to repurchase or replace pool assets on the basis that the assets did not violate a representation and warranty concerning the pool assets, whether an opinion of a third party not affiliated with the originator had been furnished to the trustee or issuer that confirmed that the assets did not violate the representation and warranty.
- (4) Provide information regarding the financial condition of any party with a repurchase or replacement obligation, to the extent that there is a significant risk that the party's financial condition could have a material impact on its ability to comply with the provisions relating to the repurchase or replacement obligations

3.6 Claims on pool assets

- (1) Disclose if any parties other than the securitized products holders have a material direct or contingent claim on any pool assets.
- (2) Describe any material cross-collateralization or cross-default provisions relating to the pool assets.

3.7 Revolving periods and prefunding accounts

- (1) For a securitized product transaction that contemplates a prefunding or revolving period, describe the following:
 - (a) the term or duration;
 - (b) the aggregate amounts and percentages of the pool assets involved;
 - (c) the triggers that would limit or terminate such period.
 - (d) how pool assets may be added, removed or substituted;
 - (e) the acquisition or underwriting criteria for additional pool assets;
 - (f) the identity of any party that makes determinations in respect of changes to the asset pool;
 - (g) any minimum requirement to add or remove pool assets;

- (h) the procedures and standards for temporary investment of funds pending use;
- (i) whether and how an investor would be notified of any changes to the asset pool.

3.8 Modification of terms

Describe any provisions in the transaction agreements governing the modification of the terms of any pool asset, including how modification may affect cash flows from the pool assets or payments on the securitized products being distributed.

Item 4 – Static pool information

4.1 General

- (1) Provide static pool information if it would be material.
- (2) If static pool information is provided, provide an introductory overview of the information including:
 - (a) the methodology used in determining or calculating the characteristics of the static pool;
 - (b) a description of any terms or abbreviations used;
 - (c) a description of how the assets in the static pool differ from the pool assets underlying the securitized products;
 - (d) an explanation of material trends.
- (3) If no static pool information is provided, explain why no static pool disclosure is included. If alternative disclosure is included, explain why the alternative disclosure provides more useful information to a prospective investor in understanding and analyzing the securitized product.

4.2 Amortizing asset pools

- (1) For amortizing asset pools, if material, provide static pool information regarding delinquencies, cumulative losses and prepayments in respect of the following:
 - (a) for a sponsor with three or more years experience securitizing assets of the type included in the current securitized product transaction, each prior pool of such assets securitized within the last five years;
 - (b) for a sponsor with less than three years experience securitizing assets of the type included in the current securitized product transaction, such assets by vintage origination year for the period the sponsor has been originating or purchasing such assets.
- (2) Provide delinquency, cumulative loss and prepayment information for each prior pool or vintage origination year disclosed under paragraph (1) over the life of the prior pool or vintage origination year. Present delinquency and loss information in the manner set out in Item 3.3.
- (3) Provide the following summary information for the original characteristics of each prior pool or vintage origination year disclosed under paragraph (1), if material and applicable:
 - (a) debt-to-income ratio;
 - (b) number of pool assets;
 - (c) original pool balance;
 - (d) weighted average original pool balance;
 - (e) weighted average interest or note rate;
 - (f) weighted average original term;
 - (g) weighted average remaining term;

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- (h) weighted average and minimum and maximum standardized credit score or other applicable measure of obligor credit quality;
- (i) product type;
- (j) loan purpose;
- (k) loan-to-value information;
- (l) distribution of assets by loan or note rate;
- (m) geographic distribution of assets.

4.3 Revolving asset master trusts

For revolving asset master trusts, provide the following information in appropriate separate increments based on the date of origination of the pool assets, if material and applicable:

- (a) delinquencies;
- (b) cumulative losses;
- (c) prepayments;
- (d) payment rate;
- (e) yield;
- (f) standardized credit score or other applicable measure of obligor credit quality;
- (g) average payment term;
- (h) the percentage of assets originated by each obligor.

Item 5 – Description of the securitized products

Describe each securitized product being distributed, including:

- (a) its type and category;
- (b) how principal and interest on each class of securitized products is calculated and payable;
- (c) amortization;
- (d) performance or similar triggers or effects, and their effects on the securitized product transaction if triggered;
- (e) overcollateralization, cross-default or cross-collateralization provisions;
- (f) voting requirements to amend the transaction agreements or other relevant documents;
- (g) minimum standards, restrictions or suitability requirements regarding ownership of the securitized product.

Item 6 – Retention of the securitized products

Disclose whether any person or company for which disclosure has been provided under Items 2 to 1.9, including any affiliate of such person or company, is retaining a portion of a tranche or tranches, and if so, specify the amount retained for each tranche. State whether that person or company has directly or indirectly hedged, or taken any other action, that seeks to transfer in whole or in part the credit risk associated with a retained portion.

Item 7 – Structure of the transaction

7.1 Flow of funds

Describe the material features and assumptions of the flow of funds for the securitized product transaction, including:

- (a) payment allocations, rights and distribution priorities among all classes and within each class of securitized products, with respect to:
 - (i) cash flows;
 - (ii) credit enhancement;
 - (iii) any other structural features in the transaction;
- (b) any requirements directing cash flows, such as reserve accounts or cash collateral accounts, and the purpose and operation of those requirements.

7.2 Distribution frequency and cash maintenance

Disclose:

- (a) the frequency of the distribution dates for the securitized product;
- (b) the collection periods for the pool assets;
- (c) any arrangement for cash held pending use, including the length of time that cash will be held pending a distribution to a holder of a securitized product;
- (d) the identity of the parties with access to cash balances and the authority to make decisions regarding their investment and use.

7.3 Fees and expenses

- (1) Describe the following:
 - (a) all fees and expenses to be paid or payable out of the cash flows from the pool assets;
 - (b) each party that is receiving such fees or expenses, and the general reasons for the receipt;
 - (c) the source of funds for such fees or expenses, if different from other fees or expenses or if such fees or expenses are to be paid from a specified portion of the cash flows;
 - (d) the distribution priority of such fees or expenses;
 - (e) if the amount of fees or expenses is not fixed, the formula used to determine the amounts payable.
- (2) Provide any additional information necessary to help investors understand the timing and amount of the fees or expenses, including:
 - (a) any restrictions or limits;
 - (b) whether and how fees or expenses could change in certain circumstances;
 - (c) whether and how fees or expenses could be changed without notice to, or approval by, securitized products holders;
 - (d) any restrictions on the ability to change a fee or expense amount, such as due to a change in transaction party.

7.4 Excess cash flow

Describe the following:

- (a) the disposition of residual or excess cash flows;
- (b) the identity of any person or company who owns any residual or retained interests in the cash flows and who also satisfies either of the following:
 - (i) is affiliated with, any person or company for which disclosure has been provided under Items 1.2 to 1.9;
 - (ii) has rights that may alter the transaction structure beyond receipt of residual or excess cash flows;
- (c) any requirements to maintain a minimum amount of excess cash flow or spread from, or retained interest in, the transaction and the effects on the transaction if the requirements are not met;
- (d) if material, any arrangements to facilitate a securitization of the excess cash flow or retained interest from the securitized product transaction, including whether any material changes to the transaction structure may be made without the consent of the holders of the securitized products in connection with such securitization;
- (e) any conditions on the payment of excess cash flows, such as priority in payment to certain tranches;
- (f) any investment policies and restrictions in respect of residual or excess cash flows.

7.5 Master trusts

If one or more additional series or classes of securitized products have been or may be issued that are backed by the same asset pool backing the securitized products being distributed, describe the additional securities, providing all material information including the following:

- (a) the relative priority of the additional securities to the securities being distributed and their respective rights to the underlying pool assets and their cash flows;
- (b) the allocations of cash flow from the asset pool and any expenses or losses among the various series or classes;
- (c) the terms under which additional series or classes may be issued and pool assets increased or changed;
- (d) the terms of any required security holder approval or notification of such additional securities;
- (e) which party has the authority to determine whether such additional securities may be issued;
- (f) if there are conditions to an issuance of such additional securities, whether or not there will be an independent verification of the exercise of authority or determinations made by the party in paragraph (e).

7.6 Optional or mandatory redemption or termination

If any class of the securitized products includes an optional or mandatory redemption or termination feature, describe the following:

- (a) the terms for triggering the redemption or termination;
- (b) the identity of any person or company who holds the redemption or termination option or obligation, and whether that person or company is affiliated with any person or company for which disclosure has been provided under Items 1.2 to 1.9;
- (c) the amount of the redemption or repurchase price;
- (d) the redemption or termination procedures, including any notices required to be provided to holders of the securitized products.

7.7 Prepayment, maturity and yield considerations

Describe the following:

- (a) any material models used to identify cash flow characteristics with respect to the pool assets, including a description of material assumptions and limitations;
- (b) if material, the degree to which each class of securitized products is sensitive to changes in the rate of payment on the pool assets and the consequences of such changing rate of payment, including provision of statistical information about such consequences such as the effect of prepayments on yield and weighted average life.
- (c) any special allocations of prepayment risks among the classes of securities and whether any class protects other classes from the effects of the uncertain timing of cash flow with respect to the pool assets.

Item 8 – Credit enhancement and other support, excluding certain derivative instruments

- (1) Describe any material external credit enhancement or other support intended to ensure that the securitized products or pool assets will pay in accordance with their terms in the normal course, including:
 - (a) any bond insurance, letters of credit or guarantees;
 - (b) any liquidity facilities, lending facilities, guaranteed investment contracts or minimum principal payment agreements;
 - (c) any derivatives that provide insurance against losses on the assets in the pool.
- (2) Describe any material internal credit enhancement or other support that is a result of or is part of the structure of the transaction, and that is intended to increase the likelihood that payments will be made on one or more classes of the securitized products in accordance with their terms in the normal course, including:
 - (a) subordination provisions;
 - (b) overcollateralization;
 - (c) reserve accounts;
 - (d) cash collateral accounts or spread accounts;
 - (e) transactions in which receivables may be purchased at a discount or on a deferred basis.
- (3) For each credit enhancement or other support, describe the following:
 - (a) any limits on the timing or amount of the enhancement or support;
 - (b) any conditions that must be met before the enhancement or support can be used;
 - (c) any provisions regarding the substitution of the enhancement or support.
- (4) Identify each entity or group of affiliated entities that provides credit enhancement or other support and is liable or contingently liable to provide payments representing 10% or more of the cash flow supporting one or more classes of securitized products being distributed, and describe:
 - (a) its form of organization;
 - (b) the general character of its business.
- (5) If any entity or group of affiliated entities that provides credit enhancement or other support is liable or contingently liable to provide payments representing 10% or more, but less than 20%, of the cash flow supporting one or more classes of securitized products being distributed, provide all of the following:
 - (a) the selected annual financial information required by Item 1.3 of Form 51-102F1;

- (b) the same selected financial information for any subsequent interim period that ended more than 60 days before the date of the prospectus.
- (6) If any entity or group or affiliated entities that provide credit enhancement or other support is liable or contingently liable to provide payments representing 20% or more of the cash flow supporting a class or series of securitized products being distributed, provide the financial statements of the entity or group of affiliated entities that would be prescribed under securities legislation and described in the form of prospectus that the entity or group would be eligible to use at the date of the prospectus, if the entity or group was distributing securities under a prospectus.

Item 9 – Certain derivative instruments

- (1) For each derivative instrument used to alter the payment characteristics of the payments made on the securitized products, and the primary purpose of which is not to provide credit enhancement or other support as described in Item 8, provide the following information:
- (a) the identity of the derivative counterparty;
 - (b) its form of organization;
 - (c) the general character of its business;
 - (d) the operation and material terms of the derivative instrument, including any limits on the timing or amount of payments or any conditions to payments;
 - (e) the minimum requirements regarding the counterparty;
 - (f) any material provisions regarding termination or substitution of the derivative instrument;
 - (g) the significance percentage.
- (2) For purposes of paragraph (1)(g), the “significance percentage” is the percentage referred to in paragraph (b) calculated as follows:
- (a) determine the financial significance of the derivative instrument using a reasonable good faith estimate of the maximum probable exposure of the derivative counterparty that is made in substantially the same manner as that used in the sponsor’s internal risk management process in respect of similar instruments;
 - (b) determine the percentage that the amount in paragraph (a) represents of the aggregate principal balance of the pool assets, or, if the derivative instrument relates only to certain classes of securitized products, of the aggregate principal of those classes.
- (3) If the aggregate significance percentage for one or more derivative instruments for which any entity or group of affiliated entities is acting as a derivative counterparty is 10% or more, but less than 20%, provide all of the following:
- (a) the selected annual financial information specified by Item 1.3 of Form 51-102F1;
 - (b) the same selected financial data for any subsequent interim period that ended more than 60 days before the date of the prospectus.
- (4) If the aggregate significance percentage for one or more derivative instruments for which any entity or group of affiliated entities is acting as a derivative counterparty is 20% or more, provide the financial statements for that entity or group of affiliated entities that would be prescribed under securities legislation and described in the form of prospectus that the entity or group would be eligible to use at the date of the prospectus, if the entity or group was distributing securities under a prospectus.

Item 10 – Credit ratings

Disclose the following:

- (a) whether the issuance or sale of any securitized products being distributed is conditioned on the assignment of a credit rating by one or more credit rating agencies;

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- (b) the identity of each credit rating agency that will be used and the minimum rating that must be assigned as a condition of the securitized product transaction;
- (c) any arrangements to have the rating assigned be monitored while the securitized products are outstanding;
- (d) if a credit rating agency used in connection with the securitized product transaction has undertaken an analysis of market risks that may have an impact on the credit rating, such as changes in interest rates or prepayment risk, the nature of the market risk that the credit rating agency has identified;
- (e) the name of each credit rating agency whose rating is disclosed and the definition or description of the category in which the class of securities was rated;
- (f) any preliminary credit rating obtained by a sponsor or arranger for any class of the securitized products being distributed;
- (g) whether any credit rating agency has refused to assign a credit rating to a class of securitized products being distributed, and the reasons for refusal if it is related to the structure or the financial viability of the securitized product transaction.

Item 11 – Reports

Describe the following reports or documents that relate to the securitized products:

- (a) each report or other document to be provided to holders of the securitized products being distributed that is required under the transaction agreements, including provision of the following information:
 - (i) the information that will be contained in the report or other document;
 - (ii) the schedule and manner of distribution or other availability;
 - (iii) the entity or entities that will prepare and provide the report or other document;
 - (iv) whether the report or other document will be available to the public on a Web site, and if so, how to access the Web site and the report or other document;
 - (v) whether one or more parties to the securitized product transaction will provide electronic or paper copies of the reports or documents without charge upon request.
- (b) any report or other document to be filed with a securities regulatory authority, including an explanation of how the public can access the report or other document.

Item 12 – Legal proceedings and regulatory actions

Provide the disclosure required by Item 23 (Legal Proceedings and Regulatory Actions) of Form 41-101F1 for each party for which disclosure has been provided under Items 1.2 to 1.9.

Schedule B
Proposed CD Rule and Proposed Certification Amendments

PROPOSED NATIONAL INSTRUMENT 51-106
CONTINUOUS DISCLOSURE REQUIREMENTS FOR SECURITIZED PRODUCTS

PART 1 INTERPRETATION AND APPLICATION

1. Interpretation

Terms defined in the following Instruments and used in this Instrument have the respective meanings ascribed to those terms in those Instruments:

- (a) National Instrument 41-101 *General Prospectus Requirements*;
- (b) National Instrument 41-103 *Supplementary Prospectus Requirements for Securitized Products*;
- (c) National Instrument 44-101 *Short Form Prospectus Distributions*;
- (d) National Instrument 44-102 *Shelf Distributions*;
- (e) National Instrument 51-102 *Continuous Disclosure Obligations*;
- (f) National Instrument 52-108 *Auditor Oversight*.

2. Application

This Instrument applies to a reporting issuer that has issued a securitized product that is outstanding.

PART 2 CONTINUOUS DISCLOSURE FOR REPORTING ISSUERS OF SECURITIZED PRODUCTS

3. Application

- (1) This Part does not apply to a reporting issuer in respect of a covered bond that it has issued.
- (2) This Part does not apply to a mortgage investment entity in respect of a security that it has issued that is not a debt security.

4. Payment and performance report for securitized products – Form 51-106F1

- (1) A reporting issuer must file a report that contains the information required by Form 51-106F1 for securitized products of a series or class that are outstanding no later than 15 days after each payment date specified by a transaction agreement.
- (2) Despite subsection (1), a reporting issuer is not required to complete a part of Form 51-106F1 that is inapplicable due to one or more attributes of the securitized product or the structure of the securitized product transaction under which the securitized product is issued.
- (3) Subsection (1) does not apply in respect of a securitized product if all the following conditions are met:
 - (a) none of the disclosure required by Form 51-106F1 is applicable due to one or more attributes of the securitized product or the structure of the securitized product transaction under which the securitized product was issued;
 - (b) the reporting issuer complies with both of the following:
 - (i) the reporting issuer files a report that contains all information regarding the payment and performance of the securitized product that would be material to an investor;
 - (ii) the reporting issuer files the report described in subparagraph (b)(i) no later than 15 days after each payment date specified by a transaction agreement.

- (4) A report filed under subsection (1) must be signed by one of the following on behalf of the reporting issuer:
 - (a) an authorized officer of the servicer, or if multiple servicers are used, the master servicer;
 - (b) an individual who performs functions similar to a chief executive officer or a chief financial officer of the reporting issuer.

5. Report of significant events relating to securitized products – Form 51-106F2

- (1) If an event described in subsection (2) occurs in respect of a reporting issuer, the reporting issuer must do both of the following:
 - (a) immediately issue and file a news release authorized by an executive officer disclosing the event;
 - (b) as soon as practicable, and in any event no later than two business days after the date on which the event occurs, file a Form 51-106F2 with respect to the event.
- (2) For purposes of subsection (1), the events are:
 - (a) a failure to make payment to holders of outstanding securitized products on a payment date specified by a transaction agreement;
 - (b) a change of servicer, trustee of the reporting issuer or trustee for outstanding securitized products;
 - (c) a termination of, or change to, any existing credit enhancement or other support relating to outstanding securitized products, that would be material to an investor, other than by expiration of the agreement on its stated termination date or as a result of all parties completing their obligations under such agreement;
 - (d) the addition of any material credit enhancement or support relating to outstanding securitized products;
 - (e) the bankruptcy or receivership of a sponsor, a depositor, a servicer, a trustee of the reporting issuer, a trustee for outstanding securitized products, a significant obligor, a provider of any material credit enhancement or other support relating to outstanding securitized products, or any other material party to a securitized product transaction under which outstanding securitized products were issued;
 - (f) an early amortization, performance trigger or other event, including an event of default, as specified in a transaction agreement, that would materially alter the payment priority or distribution of cash flows relating to outstanding securitized products or the amortization schedule for the securitized products;
 - (g) a difference of 5% or more occurring in a material pool characteristic of an asset pool for outstanding securitized products from the time of issuance of the securitized products, other than as a result of the pool assets converting into cash in accordance with their terms;
 - (h) a change in the sponsor's interest in outstanding securitized products that would be material to an investor;
 - (i) a change in the credit rating of outstanding securitized products;
 - (j) a change in the credit rating of a significant obligor;
 - (k) the entry into, or amendment or termination of, an agreement that is material to a securitized product transaction under which outstanding securitized products were issued;
 - (l) any event that results in a material modification to the rights of holders of outstanding securitized products;
 - (m) any other event that affects payment or pool performance that would be material to an investor.

- (3) A report filed under paragraph (1)(b) must be signed by one of the following on behalf of the reporting issuer:
 - (a) an authorized officer of the servicer, or if multiple servicers are used, the master servicer;
 - (b) an individual who performs functions similar to a chief executive officer or a chief financial officer of the reporting issuer.

- (4) Despite subsection (1), a reporting issuer satisfies its obligations under subsection (1) if the reporting issuer issues a news release and files a material change report in respect of the event pursuant to subsection 7.1(1) of National Instrument 51-102 *Continuous Disclosure Obligations*, and the material change report complies with all of the following:
 - (a) the material change report contains the disclosure required by Form 51-106F2;
 - (b) the material change report is filed no later than two business days after the date of the event;
 - (c) the material change report is signed by one of the following on behalf of the reporting issuer:
 - (i) an authorized officer of the servicer, or if multiple servicers are used, the master servicer;
 - (ii) an individual who performs functions similar to a chief executive officer or chief financial officer of the reporting issuer.

6. Annual servicer report

- (1) This section applies to each servicer that engaged in servicing activities relating to more than 5% of the pool assets collateralizing securitized products of a series or class that are outstanding during the financial year covered by the annual financial statements and annual MD&A filed by the reporting issuer.

- (2) Each servicer must do all of the following:
 - (a) identify each servicing standard in Appendix A of this Instrument that, in the servicer's reasonable opinion, is applicable, or was previously applicable, to any servicing activities it undertook during the reporting issuer's most recently completed financial year;
 - (b) assess its compliance during the reporting issuer's most recently completed financial year with the applicable servicing standards it identified in paragraph (a);
 - (c) prepare a report containing the information required by subsection (3);
 - (d) provide the report in paragraph (c) to the reporting issuer for the reporting issuer to file in accordance with subsection (4).

- (3) Each report prepared by a servicer under paragraph (2)(c) must do all of the following:
 - (a) state that the servicer is required under this Instrument to assess its compliance with the servicing standards in Appendix A of this Instrument;
 - (b) state each applicable servicing standard in Appendix A of this Instrument that the servicer identified pursuant to paragraph (2)(a);
 - (c) for each applicable servicing standard, state whether the servicer complied with the standard during the reporting issuer's most recently-completed financial year, and describe any significant instance of non-compliance identified by the servicer, including any significant instance of non-compliance that occurred during the financial year that has been rectified at the time the report is prepared;
 - (d) identify the period covered by the report.

- (4) A reporting issuer must file each report provided to it pursuant to paragraph (2)(d) by the later of the dates on which it is required to file the following:
 - (a) its AIF if it is required to file an AIF under National Instrument 51-102 *Continuous Disclosure Obligations*;

- (b) its annual financial statements and annual MD&A.
- (5) Each report filed under subsection (4) must be accompanied by a report by a participating audit firm that does all of the following:
 - (a) expresses an opinion by the participating audit firm on the servicer's assessment of compliance with the applicable servicing standards in Appendix A of this Instrument, or states that an opinion cannot be expressed and if so, why it is unable to express such an opinion;
 - (b) indicates that the servicer's assessment of compliance with the applicable servicing standards in Appendix A of this Instrument has been audited in accordance with standards for assurance engagements set out in Canadian GAAS, or standards for attestation engagements issued or adopted by the Public Company Accounting Oversight Board;
 - (c) identifies the period covered by the report.

7. Annual servicer certificate

- (1) This section applies to any servicer described in Items 1.7(1)(a), (b) or (c) of Form 41-103F1 *Supplementary Information Required in a Securitized Products Prospectus* that engaged in servicing activities during the financial year covered by the annual financial statements and annual MD&A filed by the reporting issuer.
- (2) Each servicer must provide a reporting issuer with a certificate signed by an authorized officer of the servicer that states all of the following:
 - (a) the officer has supervised a review of the servicer's activities and performance under the applicable servicing agreement for the reporting issuer's most recently completed financial year;
 - (b) to the best of the officer's knowledge, based on such review, the servicer has fulfilled all of its obligations under the applicable servicing agreement in all material respects during the financial year, or if the servicer has failed to fulfil any of its obligations in any material respect, states the nature and status of each such failure.
- (3) A reporting issuer must file each certificate provided to it pursuant to subsection (2) by the later of the dates on which it is required to file the following:
 - (a) its AIF if it is required to file an AIF under National Instrument 51-102 *Continuous Disclosure Obligations*;
 - (b) its annual financial statements and annual MD&A.

8. Disclosure of breaches by servicer

The annual MD&A must include a discussion of all of the following:

- (a) any significant instance of non-compliance with an applicable servicing standard in Appendix A of this Instrument that a servicer has disclosed in a report filed under section 6;
- (b) any failure by a servicer to fulfil any of its obligations in any material respect that a servicer has disclosed in a certificate filed under section 7;
- (c) the specific pool assets or securitized product to which the disclosure in paragraphs (a) or (b) relates;
- (d) any steps taken or intended to be taken to address the non-compliance or non-fulfillment, and the timing of those steps.

PART 3 LANGUAGE OF DOCUMENTS

9. French or English

- (1) A person or company must file a document required to be filed under this Instrument in French or in English.
- (2) Despite subsection (1), if a person or company files a document only in French or only in English but delivers

to securityholders a version of the document in the other language, the person or company must file that other version not later than when it is first delivered to securityholders.

- (3) In Québec, a reporting issuer must comply with linguistic obligations and rights prescribed by Québec law.

PART 4 EXEMPTIONS

10. Exemptions

- (1) The regulator or, in Québec, the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.
- (3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 5 EFFECTIVE DATE

11. Effective date

This Instrument comes in to force on [*].

Appendix A
Servicing Standards

The following standards are the standards that a servicer must refer to for purposes of section 6 of this Instrument. These standards are not legal obligations under securities legislation, and are intended only to serve as uniform measures against which the servicing of a particular asset pool can be assessed.

A. General servicing considerations

- (i) Policies and procedures are instituted to monitor any performance or other triggers and events of default in accordance with the transaction agreements.
- (ii) If any material servicing activities are outsourced, policies and procedures are instituted to monitor the third party's performance and execution of such servicing activities in compliance with the transaction agreements.
- (iii) Any requirements in the transaction agreements to maintain a back-up servicer for the pool assets are complied with.
- (iv) A fidelity bond and errors and omissions policy is in effect for the servicer throughout the reporting period in the amount of coverage required by and otherwise in accordance with the terms of the transaction agreements.

B. Cash collection and administration

- (i) Payments on pool assets are deposited into the appropriate custodial bank accounts and related bank clearing accounts no more than two business days after receipt, or such other number of days specified in the transaction agreements.
- (ii) Payments made via wire transfer on behalf of an obligor or to an investor are made only by authorized personnel.
- (iii) Advances of funds or guarantees regarding collections, cash flows or payments, are made, reviewed and approved as specified in the transaction agreements. Any interest and fees charged for such advances are paid as specified in the transaction agreements.
- (iv) The related accounts for the transaction, such as cash reserve accounts or accounts established as a form of overcollateralization, are separately maintained as set forth in the transaction agreements.
- (v) Each custodial account is maintained at one of the following:
 - 1. a Canadian financial institution as defined in National Instrument 45-106 *Prospectus and Registration Exemptions*, as amended;
 - 2. a Schedule III bank;
 - 3. a financial institution that is regulated by the laws of a foreign jurisdiction as a bank and that is required by the laws of the foreign jurisdiction to insure its deposits or be subject to a deposit guarantee or protection scheme.
- (vi) Unissued checks are safeguarded so as to prevent unauthorized access.
- (vii) Reconciliations are prepared on a monthly basis for all securitized products related bank accounts, including custodial accounts and related bank clearing accounts. These reconciliations comply with all of the following:
 - 1. they are mathematically accurate;
 - 2. they are prepared within 30 days after the bank statement cut-off date, or such other number of days specified in the transaction agreements;
 - 3. they are reviewed and approved by someone other than the person or persons who prepared the reconciliations;
 - 4. they contain explanations for reconciling items, and these reconciling items are resolved within 90 days of their original identification, or such other number of days specified in the transaction agreements.

C. Investor remittances and reporting

- (i) Reports to investors, including those to be filed with securities regulatory authorities, are prepared and disseminated in accordance with the transaction agreements and applicable securities legislation requirements. Specifically, such reports:
 - 1. are prepared in accordance with timeframes and other terms set forth in the transaction agreements;
 - 2. provide quantitative information calculated in accordance with the terms specified in the transaction agreements;
 - 3. are filed with the securities regulatory authorities as required by applicable securities legislation;
 - 4. agree with investors' or the trustee's records as to the total unpaid principal balance and number of pool assets serviced by the servicer.
- (ii) Amounts due to investors are allocated and remitted in accordance with timeframes, payment priority and other terms set forth in the transaction agreements.
- (iii) Amounts remitted to an investor are posted within two business days to the servicer's investor records, or such other number of days specified in the transaction agreements.
- (iv) Amounts remitted to investors per the investor reports agree with cancelled checks, or other form of payment, or custodial bank statements.

D. Pool asset administration

- (i) Collateral or security on pool assets is maintained as required by the transaction agreements or related pool asset documents.
- (ii) Pool assets and related documents are safeguarded as required by the transaction agreements.
- (iii) Any additions, removals or substitutions to the asset pool are made, reviewed and approved in accordance with any conditions or requirements in the transaction agreements.
- (iv) Payments on pool assets, including any payoffs, made in accordance with the related pool asset documents are posted to the applicable servicer's obligor records no more than two business days after receipt, or such other number of days specified in the transaction agreements, and allocated to principal, interest or other items (e.g., escrow) in accordance with the related pool asset documents.
- (v) The servicer's records regarding the pool assets agree with the servicer's records with respect to an obligor's unpaid principal balance.
- (vi) Changes with respect to the terms or status of an obligor's pool asset (e.g., loan modifications or re-agings) are made, reviewed and approved by authorized personnel in accordance with the transaction agreements and related pool asset documents.
- (vii) Loss mitigation or recovery actions (e.g., forbearance plans, modifications and deeds in lieu of foreclosure, foreclosures and repossessions, as applicable) are initiated, conducted and concluded in accordance with the timeframes or other requirements established by the transaction agreements.
- (viii) Records documenting collection efforts are maintained during the period a pool asset is delinquent in accordance with the transaction agreements and are updated on at least a monthly basis, or such other period specified in the transaction agreements, and describe the servicer's activities in monitoring delinquent pool assets including phone calls, letters and payment rescheduling plans in cases where delinquency is deemed temporary (e.g., illness or unemployment).
- (ix) Adjustments to interest rates or rates of return for pool assets with variable rates are computed based on the related pool asset documents.
- (x) Any funds held in trust for an obligor (such as funds in escrow accounts) are subject to the following procedures:

Request for Comments

1. such funds are analyzed, in accordance with the obligor's pool asset documents, on at least an annual basis, or such other period specified in the transaction agreements;
 2. interest on such funds is paid, or credited, to the obligor in accordance with applicable pool asset documents and provincial and territorial laws;
 3. such funds are returned to the obligor within 30 days of full repayment of the related pool asset, or such other number of days specified in the transaction agreements.
- (xi) Payments on behalf of an obligor (such as tax or insurance payments) are made on or before the related penalty or expiration dates, as indicated on the appropriate bills or notices for such payments, provided that any required funds have been received by the servicer at least 30 days prior to these dates, or such other number of days specified in the transaction agreements.
- (xii) Any late payment penalties in connection with any payment to be made on behalf of an obligor are paid from the servicer's funds and not charged to the obligor, unless the late payment was due to the obligor's error or omission.
- (xiii) Payments made on behalf of an obligor are posted within two business days to the obligor's records maintained by the servicer, or such other number of days specified in the transaction agreements.
- (xiv) Delinquencies, charge-offs and uncollectable accounts are recognized and recorded in accordance with the transaction agreements.
- (xv) Any external credit enhancement or other support is maintained as set forth in the transaction agreements.
- (xvi) Quantitative information that has been aggregated is mathematically accurate and information conveyed by the servicer accurately reflects the information that was obtained by the servicer.

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

PART 1 GENERAL PROVISIONS

This is the Form required under section 4 of National Instrument 51-106 *Continuous Disclosure Requirements for Securitized Products* for a report on the payments to investors and performance of outstanding securitized products issued by a reporting issuer.

A single Form may be used to report the payment and performance of outstanding securitized products of different series and classes.

All information required by this Form must be presented in plain language, and tables, graphs, flow charts or other graphical formats must be used if a reasonable investor will be able to better understand the information being provided.

Information that has been provided in another document may be incorporated by reference into this Form so long as that other document is filed by the reporting issuer.

Write the disclosure so that a reasonable investor is able to understand it. Consider both the level of detail provided and the language used in the document. Additional guidance relating to plain language principles may be available in the companion policy to National Instrument 51-102 *Continuous Disclosure Obligations*. If you use technical terms, explain them in a clear and concise manner.

PART 2 CONTENT

Item 1 Issuer/servicer information

State the full name of the reporting issuer and the address and telephone number of its head office. Include the former name of the reporting issuer if its name has changed since the last report. If applicable, state the full name of the servicer or master servicer and the address and telephone number of the head office of the servicer.

Item 2 Payment and pool performance

- (1) Identify each series and class of securitized products covered by this report (the Reported Securities), and the payment period.
- (2) For each class and series of Reported Securities, provide all of the following:
 - (a) all information regarding payment to investors and pool performance for the payment period that would be material to an investor;
 - (b) information on any significant trends and risks that have affected or may affect pool performance or the performance of the Reported Securities.
- (3) Disclose, to the extent applicable, for each series and class of Reported Securities:
 - (a) applicable record dates, accrual dates, and determination dates for calculating payments to investors and actual payment dates for the payment period;
 - (b) cash flows received and the sources for payments to investors, fees and expenses, including if applicable, portfolio yield;
 - (c) calculated amounts and distribution of the flow of funds for the period itemized by type and priority of payment, including:
 - (i) fees or expenses with an identification of the general purpose of such fees and the party receiving such fees;
 - (ii) payments accrued or made with respect to credit enhancement or other support;
 - (iii) principal, interest and other payments accrued and paid on the Reported Securities by type and by class or series and any principal or interest shortfalls or carryovers;

- (iv) the amount of excess cash flow or excess spread with an identification of how the excess cash flow is disposed of;
- (d) beginning and ending principal balances of the Reported Securities;
- (e) interest rates applicable to the pool assets and the Reported Securities as applicable, in appropriate distributional groups or incremental ranges;
- (f) beginning and ending balances of transaction accounts such as reserve accounts, and significant account activity during the period;
- (g) amounts drawn on any credit enhancement or other support and the amount of coverage remaining under such enhancement;
- (h) number and amount of pool assets at beginning and end of each payment period, and updated pool composition information including
 - (i) weighted average coupon;
 - (ii) weighted average life;
 - (iii) weighted average remaining term;
 - (iv) pool factors and prepayment amounts;
 - (v) for asset-backed securities backed by leases, turn-in rates and residual value realization rates;
- (i) delinquency and loss information and any changes to how delinquencies and loss information are calculated or created;
- (j) information on the amount, terms and general purpose of any advances made or reimbursed during the period, including the general use of funds advanced and the general source of funds for reimbursements;
- (k) any modifications, extensions or waivers to pool asset terms, fees, penalties or payments during the payment period or that have cumulatively become material over time;
- (l) breaches of pool asset representations and warranties or transaction covenants;
- (m) demands made to a party with an obligation to repurchase or replace pool assets for breach of a representation and warranty concerning the pool assets, including the following information grouped by originator, including an affiliate of the originator:
 - (i) the amount of pool assets that were the subject of outstanding demands as at the end of the payment period, and the status of those demands;
 - (ii) the amount of pool assets that were the subject of demands that were resolved during the payment period, and the nature of the resolution;
 - (iii) where the party with the repurchase or replacement obligation rejected a demand to repurchase or replace pool assets on the basis that there was no breach of a representation and warranty concerning the pool assets, whether an opinion of a third party not affiliated with the party had been furnished to the trustee or issuer that confirmed that there was no breach of a representation and warranty;
- (n) information on
 - (i) ratio, including coverage ratio, or other tests used for determining any early amortization, liquidation or other performance trigger;
 - (ii) whether a performance trigger was set off;
- (o) any new issuance of securitized products backed by the same asset pool;
- (p) any pool asset changes, other than in connection with a pool asset converting into cash in accordance with its terms, including

- (i) additions or removals in connection with a prefunding or revolving period;
 - (ii) pool asset substitutions and repurchases, and purchase rates, if applicable;
 - (iii) cash flows available for future purchases, including the balance of any prefunding or revolving accounts, if applicable;
 - (iv) any changes in the solicitation, credit-granting, underwriting, origination, acquisition or pool asset selection criteria or procedures, as applicable, used to originate, acquire or select the new pool assets that would be material to an investor;
- (q) the disclosure required by Items 1.5 (Originator), 2 (Significant obligors of pool assets) and 3 (Pool assets) of Form 41-103F1 *Supplementary Information Required in a Securitized Products Prospectus*, if following a prefunding or revolving period or as a result of a new issuance of securitized products backed by the same pool under a master trust structure, there is any significant change in respect of such disclosure that has not already been disclosed in a previously-filed prospectus or in a previously-filed report using Form 51-106F1.

Item 3 Legal proceedings

For each party described in Item 1 (Parties with significant functions and responsibilities) of Form 41-103F1 *Supplementary Information Required in a Securitized Products Prospectus*, describe the following to the extent the information would be material to an investor:

- (1) Any legal proceedings which that party was party to, or that any of its property is or was the subject of, that arose during the payment period;
- (2) Any legal proceedings which are known to be contemplated;
- (3) Any penalties or sanctions imposed by a court relating to securities legislation or by a securities regulatory authority during the payment period;
- (4) Any other penalties or sanctions imposed by a court or a regulatory body;
- (5) Any settlement agreements entered into before a court relating to securities legislation or with a securities regulatory authority during the payment period.

For each proceeding, provide the name of the court or agency, the date the proceeding was instituted, the principal parties to the proceeding, the nature of the claim, the amount claimed, if any, whether the proceeding is being contested, and the present status of the proceeding.

Disclosure of a legal or regulatory proceeding that has previously been disclosed is not required unless there have been material developments during the payment period.

Item 4 Defaults

If there has been any material default in the payment of principal or interest, or any other material default not cured within 30 days, with respect to any class or series of Reported Securities, state the nature of the default, the amount of the default and the total arrearage on the date of filing this report.

Item 5 Significant obligors of pool assets

Provide the information required by Item 2 (Significant Obligors of Pool Assets) of Form 41-103F1 *Supplementary Information Required in a Securitized Products Prospectus*. You need not provide any information that has already been provided in a previously-filed prospectus or previously-filed report using Form 51-106F1.

Item 6 Significant enhancement provider information

Provide the information required by Items 8(4) and (5) (regarding credit enhancement and other support providers), and 9(3) and (4) (regarding derivative counterparties) of Form 41-103F1 *Supplementary Information Required in a Securitized Products Prospectus*. You need not provide any information that has already been provided in a previously-filed prospectus or previously-filed report using Form 51-106F1.

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

PART 1 GENERAL PROVISIONS

(a) Numbering and headings

Follow the numbering, headings and ordering of the items in this Form if to do so facilitates the readability of the disclosure for an investor. Disclosure provided in response to any item need not be repeated elsewhere.

(b) Plain language

Write the disclosure so that a reasonable investor is able to understand it. Consider both the level of detail provided and the language used in the document. Additional guidance relating to plain language principles may be available in the companion policy to National Instrument 51-102 *Continuous Disclosure Obligations*. If you use technical terms, explain them in a clear and concise manner.

PART 2 CONTENT

Item 1 – Name and address of issuer

State the full name of the reporting issuer and the address of its principal office in Canada.

Item 2 – Date of Event

State the date of the event that required filing of this Form (the Event).

Item 3 – News release

State the date and method(s) of dissemination of the news release issued under section 4 of National Instrument 51-106 *Continuous Disclosure Requirements for Securitized Products*.

Item 4 – Summary of the Event

Provide a brief but accurate summary of the nature and substance of the Event.

Item 5 – Full description of the Event

Supplement the summary required under Item 4 with sufficient disclosure to enable a reasonable investor to appreciate the significance and impact of the Event without having to refer to other material.

INSTRUCTIONS

If you incorporate information by reference to another document, clearly identify the referenced document or any excerpt from it. Unless you have already filed the referenced document or excerpt, you must file it with this form. You must also disclose that the document is on SEDAR at www.sedar.com.

Item 6 – Contact information

Give the name and business telephone number of the authorized officer of the servicer, master servicer or the reporting issuer, as applicable, who is signing this form.

Item 7 – Signature and date

Sign and date the form.

PROPOSED AMENDING INSTRUMENT

**PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 52-109
CERTIFICATION OF DISCLOSURE IN ISSUERS' ANNUAL AND INTERIM FILINGS**

1. ***This Instrument amends National Instrument 52-109 Certification of Disclosure of Issuers' Annual and Interim Filings***

2. ***Section 1.1 is amended by***

(a) ***repealing and replacing the definition of "certifying officer" with the following:***

"certifying officer" means:

- (a) for an issuer that is not a securitized product issuer, each chief executive officer and each chief financial officer, or in the case of an issuer that does not have a chief executive officer or a chief financial officer, each individual performing similar functions to those of a chief executive officer or chief financial officer;
- (b) for an issuer that is a securitized product issuer, either of the following:
 - (i) an authorized officer of the servicer, or if multiple servicers are used, the master servicer;
 - (ii) each individual performing similar functions to those of a chief executive officer or chief financial officer.

(b) ***adding the following definitions after the definition of "Sarbanes-Oxley Act":***

"securitized product" has the same meaning as in section 1 of National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products*;

"servicer" has the same meaning as in National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products*;

"securitized product issuer" means a reporting issuer that issued a securitized product that is outstanding, and that is subject to the reporting obligations in National Instrument 51-106 *Supplementary Continuous Disclosure for Securitized Products*;

3. ***Subsection 4.2 is repealed and replaced with the following:***

4.2 ***Required form of annual certificate*** – (1) The required form of annual certificate under subsection 4.1(1) is

- (a) Form 52-109F1, in the case of an issuer that is a non-venture issuer and that is not a securitized product issuer;
 - (b) Form 52-109FV1, in the case of an issuer that is a venture issuer and that is not a securitized product issuer; and
 - (c) Form 52-109FS1, in the case of an issuer that is a securitized product issuer.
- (2) Despite subsection (1)(b), a venture issuer that is not a securitized product issuer may file Form 52-109F1 in the wording prescribed by the Form instead of Form 52-109FV1 for a financial year.
- (3) The required form of annual certificate under subsection 4.1(3) is
- (a) Form 52-109F1 – AIF, in the case of a venture issuer that is not a securitized product issuer; and
 - (b) Form 52-109FS1 – AIF for a venture issuer that is a securitized product issuer.

4. **Section 4.3 is amended by replacing** “an issuer may file an annual certificate” **with** “an issuer that is not a securitized product issuer may file an annual certificate”.
5. **Section 4.4 is amended by replacing** “an issuer may file an annual certificate” **with** “an issuer that is not a securitized product issuer may file an annual certificate”.
6. **Section 4.5 is amended by replacing** “an issuer may file an annual certificate” **with** “an issuer that is not a securitized product issuer may file an annual certificate”.
7. **Section 5.2 is repealed and replaced with the following:**
 - 5.2 **Required form of interim certificate** – (1) The required form of interim certificate under subsection 5.1(1) is
 - (a) Form 52-109F2, in the case of an issuer that is a non-venture issuer and that is not a securitized product issuer;
 - (b) Form 52-109FV2, in the case of an issuer that is a venture issuer and that is not a securitized product issuer; and
 - (c) Form 52-109FS2, in the case of an issuer that is a securitized product issuer.
 - (2) Despite subsection (1)(b), a venture issuer that is not a securitized product issuer may file Form 52-109F2 in the wording prescribed by the Form instead of Form 52-109FV2 for an interim period.
8. **Section 5.3 is amended by replacing** “an issuer may file an interim certificate” **with** “an issuer that is not a securitized product issuer may file an interim certificate”.
9. **Section 5.4 is amended by replacing** “an issuer may file an interim certificate” **with** “an issuer that is not a securitized product issuer may file an interim certificate”.
10. **Section 5.5 is amended by replacing** “an issuer may file an interim certificate” **with** “an issuer that is not a securitized product issuer may file an interim certificate”.
11. **Section 6.1 is repealed and replaced with the following:**
 - 6.1 **Refiled annual financial statements, annual MD&A or AIF** – (1) If an issuer refiles its annual financial statements, annual MD&A or AIF for a financial year, it must file separate annual certificates in the wording prescribed by the required form for that financial year on the date that it refiles the annual financial statements, annual MD&A or AIF, as the case may be.
 - (2) The required form of annual certificate under subsection (1) is
 - (a) Form 52-109F1R, in the case of an issuer that is not a securitized product issuer; and
 - (b) Form 52-109FS1R, in the case of an issuer that is a securitized product issuer.
12. **Section 6.2 is repealed and replaced with the following:**
 - 6.2 **Refiled interim financial statements or interim MD&A** – (1) If an issuer refiles its interim financial statements or interim MD&A for an interim period, it must file separate interim certificates in the wording prescribed by the required form for that interim period on the date that it refiles the interim financial statements or interim MD&A, as the case may be.
 - (2) The required form of interim certificate under subsection (1) is
 - (a) Form 52-109F2R, in the case of an issuer that is not a securitized product issuer; and
 - (b) Form 52-109FS2R, in the case of an issuer that is a securitized product issuer.
13. **The following is added after section 8.5:**
 - 8.5.1 **Exemption for securitized product issuers** – Part 3 does not apply to a securitized product issuer.

14. *The following is added after Form 52-109FV1 – Certification of Annual Filings – Venture Issuer Basic Certificate:*

**FORM 52-109FS1
CERTIFICATION OF ANNUAL FILINGS
SECURITIZED PRODUCT ISSUER**

I, **<identify (i) the certifying officer, (ii) his or her title and function in relation to the issuer and (iii) the name of the issuer>**, certify the following:

1. *Review:* I have reviewed all of the following documents of **<identify the issuer>** (the “issuer”):
 - (a) each report filed on Form 51-106F1 in respect of a payment period during the financial year ended **<state the relevant date>** (the “servicer reports”);
 - (b) annual financial statements and annual MD&A for the financial year ended **<state the relevant date>** (the “annual financial statements and annual MD&A”);
 - (c) AIF for the financial year ended **<state the relevant date>** (the “AIF”) [if applicable], including for greater certainty, all documents and information that are incorporated by reference in the AIF;
 - (d) each annual servicer report filed pursuant to section 6 of National Instrument 51-106 *Continuous Disclosure Requirements for Securitized Products* (the “Instrument”) for the financial year ended **<state the relevant date>** (the “annual servicer report(s)”);
 - (e) each annual servicer certificate filed pursuant to section 7 of the Instrument for the financial year ended **<state the relevant date>** (the “annual servicer certificate(s)”),

(the servicer reports, the annual financial statements and annual MD&A, the AIF [if applicable], the annual servicer report(s) and the annual servicing certificate(s) are together the “annual filings”);

2. *No misrepresentations:* Based on my knowledge, having exercised reasonable diligence, the annual filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, for the period covered by the annual filings;
3. *Fair presentation:* Based on my knowledge, having exercised reasonable diligence, the annual financial statements together with the other financial information included in the annual filings fairly present in all material respects the financial condition, financial performance and cash flows of the issuer, as of the date of and for the periods presented in the annual filings;
4. Based on my knowledge, having exercised reasonable diligence, the annual filings contain all disclosure required by section 7 of the Instrument; and
5. **<Option #1: use this alternative if a servicer or master servicer is providing the certificate>**

I am responsible for reviewing the activities performed by the servicer(s) and based on my knowledge, having exercised reasonable diligence, and based on the compliance review(s) conducted in preparing the annual servicer certificate(s), the servicer(s) [has/have] fulfilled [its/their] obligations under the servicing agreement(s) except as disclosed in the annual filings.

<Option #2: use this alternative if a person acting in the capacity of a chief executive officer or chief financial officer is providing the certificate>

Based on my knowledge, having exercised reasonable diligence, and based on the annual servicer certificate(s), the servicer(s) [has/have] fulfilled [its/their] obligations under the servicing agreement(s) except as disclosed in the annual filings.

[In giving the certifications above, I have reasonably relied on information provided to me by the following parties that are not affiliates of **<insert name of servicer or master servicer if Option #1 is being used, or the name of the issuer if Option #2 is being used>**:

<insert names of all relevant parties and state their relationship to the issuer>.]

Date: <insert date of filing>

[Signature]

[Title]

< indicate the capacity in which the certifying officer is providing the certificate>

15. **The following is added after Form 52-109F1R:**

**FORM 52-109FS1R
CERTIFICATION OF REFILED ANNUAL FILINGS
SECURITIZED PRODUCT ISSUER**

This certificate is being filed on the same date that <identify the issuer> (the “issuer”) has refiled <identify the filing(s) that have been refiled>.

I, <identify (i) the certifying officer, (ii) his or her title and function in relation to the issuer and (iii) the name of the issuer>, certify the following:

<Insert all paragraphs included in the annual certificate originally filed with the annual filings.>

Date: <insert date of filing>

[Signature]

[Title]

< indicate the capacity in which the certifying officer is providing the certificate >

16. **The following is added after Form 52-109F1 – AIF – Certification of Annual Filings in Connection with Voluntarily Filed AIF:**

**FORM 52-109FS1 AIF
CERTIFICATION OF ANNUAL FILINGS IN CONNECTION WITH VOLUNTARILY FILED AIF
SECURITIZED PRODUCT ISSUER**

This certificate is being filed on the same date that <identify the issuer> (the “issuer”) has voluntarily filed an AIF.

1. *Review:* I have reviewed all of the following documents of <identify the issuer>:
 - (a) each report filed on Form 51-106F1 in respect of a payment period during the financial year ended <state the relevant date > (the “servicer reports”);
 - (b) annual financial statements and annual MD&A for the financial year ended <state the relevant date> (the “annual financial statements and annual MD&A”);
 - (c) AIF for the financial year ended <state the relevant date> (the “AIF”), including for greater certainty, all documents that are incorporated by reference in the AIF;
 - (d) each annual servicer report filed pursuant to section 6 of National Instrument 51-106 *Supplementary Continuous Disclosure Requirements for Securitized Products* (the “Instrument”) for the financial year ended <state the relevant date> (the “annual servicer report(s)”);
 - (e) each annual servicer certificate filed pursuant to section 7 of the Instrument for the financial year ended <state the relevant date> (the “annual servicer certificate(s)”);

(the servicer reports, the annual financial statements and annual MD&A, the AIF, the annual servicer report(s) and the annual servicer certificate(s) are together the “annual filings”);

<Insert all paragraphs included in the annual certificates originally filed with the annual filing, other than paragraph 1.>

Date: *<insert date of filing>*

[Signature]

[Title]

< indicate the capacity in which the certifying officer is providing the certificate >

17. **The following is added after Form 52-109FV2 – Certification of Interim Filings – Venture Issuer Basic Certificate:**

**FORM 52-109FS2
CERTIFICATION OF INTERIM FILINGS
SECURITIZED PRODUCT ISSUER**

I, *<identify (i) the certifying officer, (ii) his or her title and function in relation to the issuer and (iii) the name of the issuer>*, certify the following:

1. *Review:* I have reviewed all of the following documents of *<identify the issuer>* (the “issuer”):
 - (a) each report on Form 51-106F1 filed in respect of a payment period during the interim period ended *<state the relevant date>* (the “servicer reports”); and
 - (b) the interim financial report and interim MD&A for the interim period ended *<state the relevant date>* (the “interim financial report and interim MD&A”),

(the servicer reports and the interim financial statements and interim MD&A are together the “interim filings”);
2. *No misrepresentation:* Based on my knowledge, having exercised reasonable diligence, the interim filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the interim filings; and
3. *Fair presentation:* Based on my knowledge, having exercised reasonable diligence, the interim financial report together with the other financial information included in the interim filings fairly present in all material respects the financial condition, financial performance and cash flows of the issuer, as of the date of and for the periods presented in the interim filings.

[In giving the certifications above, I have reasonably relied on information provided to me by the following parties that are not affiliates of *<insert name of servicer or master servicer if Option #1 is being used, or the name of the issuer if Option #2 is being used>*:

<insert names of all relevant parties and state their relationship to the issuer >.]

Date: *<insert date of filing>*

[Signature]

[Title]

< indicate the capacity in which the certifying officer is providing the certificate >

18. **The following is added after Form 52-109F2R – Certification of Refiled Interim Filings:**

**FORM 52-109FS2R
CERTIFICATION OF REFILED INTERIM FILINGS
SECURITIZED PRODUCT ISSUER**

This certificate is being filed on the same date that *<identify the issuer>* (the “issuer”) has refiled *<identify the filing(s) that have been refiled>*.

I, *<identify (i) the certifying officer, (ii) his or her title and function in relation to the issuer and (iii) the name of the issuer>*, certify the following:

<Insert all paragraphs included in the interim certificate originally filed with the interim filing.>

Date: *<insert date of filing>*

[Signature]

[Title]

< indicate the capacity in which the certifying officer is providing the certificate >

19. *This Instrument is effective on [*].*

Schedule C
Proposed Exempt Distribution Rules

PROPOSED AMENDING INSTRUMENT

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 45-106 PROSPECTUS AND REGISTRATION EXEMPTIONS

1. National Instrument 45-106 Prospectus and Registration Exemptions is amended by this Instrument.

2. Section 1.1 Definitions is amended by adding the following definitions:

“eligible securitized product investor” means

- (a) a Canadian financial institution or a Schedule III bank;
- (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada);
- (c) a subsidiary of any person referred to in paragraph (a) or (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of the subsidiary;
- (d) a person registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer, other than as a scholarship plan dealer or a restricted dealer;
- (e) a pension fund that is regulated by either the federal Office of the Superintendent of Financial Institutions (Canada) or a pension commission or similar regulatory authority of a jurisdiction of Canada or a wholly-owned subsidiary of such a pension fund;
- (f) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (e);
- (g) the Government of Canada or a jurisdiction of Canada, or any Crown corporation, agency or wholly-owned entity of the Government of Canada or a jurisdiction of Canada;
- (h) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government;
- (i) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec;
- (j) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a managed account managed by the trust company or trust corporation, as the case may be;
- (k) a person acting on behalf of a fully managed account managed by the person, if the person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction;
- (l) an investment fund if it is one or both of the following:
 - (i) managed by a person registered as an investment fund manager under the securities legislation of a jurisdiction of Canada;
 - (ii) advised by a person authorized to act as an adviser under the securities legislation of a jurisdiction of Canada;
- (m) a registered charity under the *Income Tax Act* (Canada) that obtains advice from an eligibility adviser or an adviser registered under the securities legislation of the jurisdiction of the registered charity;
- (n) an individual who beneficially owns financial assets, as defined in section 1.1 having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$5 million;

- (o) a person that is entirely owned by an individual, or individuals referred to in paragraph (n), who holds the beneficial ownership interest in the person directly or through a trust, the trustee of which is a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction;
- (p) a person, other than an individual or an investment fund, that has net assets of at least \$25 million as shown on its most recently prepared financial statements;
- (q) a person that distributes securities of its own issue in Canada only to persons referred to in paragraphs (a) to (p);”

“**mortgage investment entity**” has the same meaning as in National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products*”;

“**second-level asset**” means a securitized product issued under another securitization program, including, without limitation, a security that has direct or indirect exposure to a credit-linked note, credit default swap or similar claim”:

“**short-term securitized product**” means a securitized product that is a negotiable promissory note or commercial paper, in either case maturing not more than one year from the date of issue, including without limitation, asset-backed commercial paper;”

“**securitized product**” has the same meaning as in National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products*;”

“**servicer**” means a person responsible for the management or collection of pool assets or making allocations or payments to a holder of a securitized product, but does not include a trustee of an issuer of securitized products or for the securitized product that makes allocations or payments.”

“**sponsor**” has the same meaning as in National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products*;

3. Section 2.3 Accredited Investor is amended by adding the following subsection after subsection (5):

- (6) This section does not apply to a distribution of a securitized product, other than either of the following:
 - (a) a covered bond;
 - (b) a security, other than a debt security, of a mortgage investment entity.

4. Section 2.4 Private Issuer is amended by adding the following subsection after subsection (3):

- (4) Subsection (2) does not apply to a distribution of a securitized product, other than either of the following:
 - (a) a covered bond;
 - (b) a security, other than a debt security, of a mortgage investment entity.

5. Section 2.9 Offering memorandum is amended by adding the following subsection after subsection (3):

- (3.1) This section does not apply to a distribution of a securitized product, other than either of the following:
 - (a) a covered bond;
 - (b) a security, other than a debt security, of a mortgage investment entity.

6. Section 2.10 Minimum amount investment is amended by adding the following subsection after subsection (2):

- (3) This section does not apply to a distribution of a securitized product, other than either of the following:
 - (a) a covered bond;
 - (b) a security, other than a debt security, of a mortgage investment entity.

7. Section 2.34 Specified debt is amended by adding the following subsection after subsection (3):

- (4) Paragraphs (2)(d) and (2)(d.1) do not apply to a distribution of a securitized product, other than either of the following:
 - (a) a covered bond;
 - (b) a security, other than a debt security, of a mortgage investment entity.

8. Subsections (a) and (b) of section 2.35 Short-term debt are replaced with the following:

- (a) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in this section,
- (b) has an approved credit rating from an approved credit rating organization, and
- (c) is not a securitized product, other than either of the following:
 - (i) a covered bond;
 - (ii) a security, other than a debt security, of a mortgage investment entity.

9. Part 2 of National Instrument 45-106 Prospectus and Registration Exemptions is amended by adding a new Division 6: Securitized Product Exemption, as follows:

Division 6: Securitized Product Exemption

2.44 Securitized product – (1) The prospectus requirement does not apply to a distribution of a securitized product if all of the following apply:

- (a) the purchaser purchases the securitized product as principal;
 - (b) the purchaser is an eligible securitized product investor;
 - (c) in the case of a distribution by the issuer of the securitized product, at the same time or before the purchaser purchases the securitized product, the issuer delivers an information memorandum to the purchaser that complies with section 2.46.
- (2) Subject to subsection (3), for the purpose of this section, a trust company or trust corporation described in paragraph (l) of the definition of “eligible securitized product investor” in section 1.1 is deemed to be purchasing as principal.
 - (3) Subsection (2) does not apply to a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered or authorized under the *Trust and Loan Companies Act (Canada)* or under comparable legislation in another jurisdiction of Canada.
 - (4) For the purpose of this section, a person described in paragraph (j) of the definition of “eligible securitized product investor” in section 1.1 is deemed to be purchasing as principal.
 - (5) This section does not apply to a distribution of a securitized product to a person if the person was created, or is used, solely to purchase or hold securitized products as an eligible securitized product investor described in paragraph (p) of the definition of “eligible securitized product investor” in section 1.1.

2.45 Securitized product holder and investor access to information memorandum

- (1) An issuer must provide a securitized product holder who purchased a securitized product of a particular series distributed under section 2.44 with reasonable access to the information memorandum required under section 2.44 for that series of securitized product.
- (2) An issuer must provide reasonable access to the information memorandum required under section 2.44 to each person who reasonably demonstrates to the issuer that the person is a prospective purchaser and who meets the definition of “eligible securitized product investor” in section 1.1.

- (3) For the purposes of subsections (1) and (2) if an issuer provides an undertaking to the securities regulatory authority to provide access to the website on which its information memorandum has been posted, an issuer may do either or both of the following:
 - (a) use a password to limit access to the website;
 - (b) before providing a person access to an information memorandum, require the person to provide a confidentiality undertaking, or enter into a confidentiality agreement, designed to reasonably restrict the person from providing others with access to the website.
- (4) Subsections (1) and (2) continue to apply until the date that is one year after the date that the last outstanding securitized product of the same series of securitized product ceases to be outstanding.

2.46 Information memorandum requirements

- (1) An information memorandum required under section 2.44 must comply with each of the following:
 - (a) in respect of a short-term securitized product, be in the required form;
 - (b) disclose sufficient information about the securitized product and securitized product transaction to enable a prospective purchaser to make an informed investment decision;
 - (c) describe the rights of action, whether statutory or contractual, that an investor will have against the issuer, the issuer's directors and officers, the sponsor and the underwriter in the event of a misrepresentation in the information memorandum;
 - (d) describe the resale restrictions that apply to the securitized product;
 - (e) not contain a misrepresentation.
- (2) The required form of information memorandum under paragraph (1)(a) is Form 45-106F7.
- (3) An information memorandum delivered under this section must contain a certificate that states the following:

"This information memorandum does not contain a misrepresentation."
- (4) A certificate under subsection (3) must be signed by the issuer's chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or chief financial officer, the individual or individuals acting in a similar capacity.
- (5) In addition to the requirements of subsection (4), a certificate referred to in subsection (3) must be signed by an authorized executive officer of each of the following:
 - (a) each promoter,
 - (b) the sponsor if the sponsor has not already signed the certificate as a promoter.
- (6) An information memorandum required under this section must contain a certificate signed by an authorized executive officer of each underwriter who, with respect to the securitized products offered by the information memorandum, is in a contractual relationship with the issuer, that states the following:

"To the best of our knowledge, information and belief, there is no misrepresentation in the information memorandum."
- (7) The issuer must ensure that the certificate under subsection (3) is true at both
 - (a) the date the certificate is signed,
 - (b) the date the information memorandum is delivered to the purchaser.
- (8) An issuer must deliver a copy of the information memorandum required to be delivered to a prospective purchaser under this section to the securities regulatory authority on or before the 10th day after a distribution under the information memorandum.

- (9) On or before the deadline for delivery of an information memorandum to a purchaser under paragraph 2.44(1)(c), the issuer must post a copy of the information memorandum on a website.

10. Section 6.1 [Report of exempt distribution] is amended by adding the following paragraph after paragraph (i):

- (i.1) section 2.44 [Securitized products];

11. Section 6.2 [When report not required] is amended by adding the following subsection after subsection (2):

- (3) An issuer or underwriter of a short-term securitized product is not required to file a report under section 6.1 for a distribution under section 2.44 if the issuer or underwriter files the report not later than 30 days after the calendar year in which the distribution occurs.

12. National Instrument 45-106 is amended by adding the following new Part after Part 6:

Part 6A – Ongoing Disclosure Requirements for Issuers of Securitized Products

6A.1 Application – (1) This Part does not apply to a reporting issuer.

- (2) This Part does not apply to a securitized product that is either of the following:
- (a) a covered bond;
 - (b) a security, other than a debt security, of a mortgage investment entity.
- (3) This Part applies only to an issuer in respect of a securitized product the issuer has distributed under one of the following exemptions from the prospectus requirement,
- (a) section 2.3 Accredited investor,
 - (b) section 2.4 Private issuer,
 - (c) section 2.9 Minimum amount investment,
 - (d) section 2.10 Offering memorandum,
 - (e) paragraphs 2(d) and 2(d.1) of section 2.34, Specified debt,
 - (f) section 2.35 Short-term debt,
 - (g) section 2.44, Securitized product.
- (4) This Part, other than section 6A.6, does not apply to an issuer in respect of a securitized product of a particular series distributed under an exemption from the prospectus requirement listed in subsection (3) if there is no securitized product in that series of securitized product outstanding.

6A.2 Periodic reporting for securitized products, other than short-term securitized products

- (1) No later than 15 days after each payment date specified by a transaction agreement in respect of a series of securitized product, other than a short-term securitized product, distributed by an issuer under one of the exemptions from the prospectus requirement listed in subsection 6A.1(3), an issuer must do each of the following
- (a) prepare a report that complies with Form 51-106F1 *Payment and Performance Report for Securitized Products* of National Instrument 51-106 *Continuous Disclosure Requirements for Securitized Products*, as if the issuer were a reporting issuer to which that instrument applies,
 - (b) deliver a copy of the report to the securities regulatory authority,
 - (c) post a copy of the report to a website.

- (2) For the purposes of subsection (1), an issuer is not required to disclose information in the report:
 - (a) unless the information relates to
 - (i) the series of securitized product referred to in subsection (1),
 - (ii) a series of securitized product collateralized by the same pool of assets as the series referred to in subsection (1);
 - (b) required by the following items of Form 51-106F1 *Payment and Performance Report for Securitized Products*
 - (i) Item 3 Legal Proceedings,
 - (ii) Item 5 Significant obligors of pool assets,
 - (iii) Item 6 Significant enhancement provider information.
- (3) The report required under subsection (1) must be signed by either of the following
 - (a) an authorized officer of the servicer, or if multiple servicers are used, the master servicer,
 - (b) the individual or individuals who perform functions for the issuer similar to those performed by a chief executive officer and a chief financial officer.

6A.3 Report of significant events for securitized products, other than short-term securitized products

- (1) If an event described in any of paragraphs 5(2)(a) to (m) of National Instrument 51-106 *Continuous Disclosure Requirements for Securitized Products* occurs in respect of a series of securitized product, other than a short-term securitized product, distributed under an exemption from the prospectus requirement listed in subsection 6A.1(3), the issuer must do each of the following:
 - (a) prepare a report that complies with Form 51-106F2 *Report of Significant Events Relating to Securitized Products*, as if the issuer were a reporting issuer to which that instrument applies,
 - (b) as soon as practicable, and in any event no later than two business days after the date on which the event occurs
 - (i) deliver a copy of the report to the securities regulatory authority,
 - (ii) post a copy of the report on a website,
 - (iii) send the report to each holder of a securitized product in that series of securitized product, or otherwise advise holders of that series of securitized product that a report of significant events has been issued, and briefly describe the nature of the event that requires the form to be prepared.
- (2) For the purposes of subsection (1), an issuer is only required to disclose in the report information that relates to:
 - (a) the series of securitized product referred to in subsection (1);
 - (b) a series of securitized product collateralized by the same pool of assets as the series referred to in subsection (1).
- (3) Despite subsection (1), an issuer is not required to disclose in the report the information required by item 3 of Form 51-106F2 *Report of Significant Events Relating to Securitized Products*.
- (4) The report required under subsection (1) must be signed by either of the following
 - (a) an authorized officer of the servicer, or if multiple servicers are used, the master servicer,

- (b) the individual or individuals who perform functions for the issuer similar to those performed by a chief executive officer and a chief financial officer.

6A.4 Periodic disclosure for short-term securitized products

- (1) An issuer that has distributed a short-term securitized product of a particular series under an exemption from the prospectus requirement listed in subsection 6A.1(3), must prepare a periodic disclosure report in the required form dated as of the end of the last business day of each month, for that series of short-term securitized product.
- (2) The required form for the periodic disclosure report required by subsection (1) is Form 45-106F8.
- (3) Within 15 days of the end of each month, an issuer must
 - (a) deliver a copy of the periodic disclosure report referred to in subsection (1) to the securities regulatory authority,
 - (b) post a copy of the periodic disclosure report referred to in subsection (1) to a website.
- (4) An issuer may prepare a report under subsection (1) for more than one series of short-term securitized product if the report identifies each series and discloses each series separately.
- (5) The report required under subsection (1) must be signed by either of the following:
 - (a) an authorized officer of the servicer or similar service provider, or if multiple servicers are used, the master servicer;
 - (b) the individual or individuals who perform functions for the issuer similar to those performed by a chief executive officer and a chief financial officer.

6A.5 Timely disclosure for short-term securitized products

- (1) An issuer that has distributed a short-term securitized product of a series under an exemption from the prospectus requirement listed in subsection 6A.1(3) must prepare a report disclosing each of the following if an investor would reasonably require the information to make an informed investment decision:
 - (a) a change to either of the following,
 - (i) any of the information required to be disclosed in the most recently delivered report required under section 6A.4,
 - (ii) the disclosure in the information memorandum required under section 2.44,
 - (b) an event that affects payments or pool performance.
- (2) As soon as practicable, and in any event no later than two business days after the date on which the change referred to in subsection (1) occurs, an issuer must
 - (a) deliver the report referred to in subsection (1) to the securities regulatory authority,
 - (b) post the report referred to in subsection (1) to a website.
- (3) The report required under subsection (1) must be signed by either of the following:
 - (a) an authorized officer of the servicer or similar service provider or if multiple servicers are used, the master servicer;
 - (b) the individual or individuals who perform functions for the issuer similar to those performed by a chief executive officer and a chief financial officer.

6A.6 Securitized product holder access to ongoing disclosure

- (1) An issuer must provide a securitized product holder who purchased a securitized product of a particular series distributed under an exemption from the prospectus requirement listed in subsection 6A.1(3), reasonable access to the documents required by this Part, applicable to that series of securitized product.
- (2) An issuer must provide reasonable access to each document required by this Part to each person who reasonably demonstrates to the issuer that the person is a prospective purchaser and who meets the definition of “eligible securitized product investor” in section 1.1.
- (3) For the purposes of subsections (1) and (2), if an issuer provides an undertaking to the securities regulatory authority to provide access to the website on which the documents required by this Part are posted, the issuer may do either or both of the following:
 - (a) use a password to limit access to the website;
 - (b) before providing a person access to the documents required under this Part, require the person to provide a confidentiality undertaking, or enter into a confidentiality agreement, designed to reasonably restrict the person from providing others with access to the website.
- (4) Subsections (1) and (2) continue to apply until the date that is one year after the date that the last outstanding securitized product of the same series of securitized product ceases to be outstanding.

13. Form 45-106F1 Report of Exempt Distribution is amended by this Instrument by inserting the following industry classifications after “ Real estate”:

- Securitized product (other than short-term securitized product)
- Short-term securitized product

14. National Instrument 45-106 Prospectus and Registration Exemptions is amended by adding the following form:

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

Instructions:

- (1) Using language that is plain and easy to understand by an investor, provide the information required by this form.
- (2) Supplement the information required by this form to provide sufficient information about the short-term securitized product and securitized product transaction for a prospective purchaser to make an informed investment decision.

Item 1 – Parties

- 1.1 Identify each of the parties (a “significant party”) with a significant role in the structuring of the securitization transaction, the creditworthiness and liquidity of the program, the selection, acquisition, analysis and management of the assets, the distribution of securitized products, and the payment to securitized product holders, including, for example, the issuer, sponsor, liquidity providers, credit enhancement providers, administrative agent or similar service provider, financial services agent and, if applicable, collateral manager. For each significant party
 - (a) identify its jurisdiction and form of organization,
 - (b) describe its role and function, and
 - (c) describe its experience generally and with respect to substantially similar pools of assets.
- 1.2 Disclose all of the following for the sponsor, each liquidity provider and each provider of material program credit enhancement,
 - (a) state whether or not it is a bank or Schedule III bank,

- (b) if it is not a financial institution referred to in subsection (a), identify the prudential or similar supervisory governing legislation that applies to the entity, if any,
 - (c) state its credit rating.
- 1.3 Disclose whether any significant party is retaining a tranche or a portion of a tranche, and if so, describe the tranche or portion of the tranche to be retained and specify the amount of each tranche or portion of a tranche retained.

Item 2 – Structure

Include diagrams that set out both

- (a) the basic structure of the securitization program,
- (b) in simplified form, the cash flows of the securitization program.

Item 3 – Description of program

- 3.1 Describe the investment guidelines applied to the pool assets which limit the types and credit quality of assets and asset originators that may be financed by the issuer and disclose the method of selecting the eligible assets.
- 3.2 If the issuer will or may participate in any leveraged transactions or transactions that will or may include direct or indirect exposure to any of the assets described in section 4.3, state that in bold.
- 3.3 Describe the circumstances under which pool asset performance or other risk events will result in short-term securitized products ceasing to be issued.
- 3.4 Disclose the anticipated amount and nature of liquidity support under liquidity facilities.
- 3.5 Disclose the anticipated amount and nature of program-wide credit enhancement.
- 3.6 Disclose any other protections provided to holders of securitized products.
- 3.7 Disclose whether or not holders of securitized products will have a security interest over the collateral
- 3.8 Disclose the priority on collateral in an event of default.
- 3.9 Disclose the program establishment date and the winding-up date, if applicable.

Item 4 Summary of pool assets

- 4.1 For each series of short-term securitized product to be distributed, disclose
- (a) the range of asset types that may be held by the pool including maximum or minimum proportion, if applicable,
 - (b) the manner in which the issuer will gain direct or indirect exposure to each of the underlying assets for example, exposure may be gained through a note, loan, or direct purchase,
 - (c) the due diligence or verification procedures that have been or will be applied in respect of the pool assets, if applicable.
- 4.2 If the issuer has acquired pool assets, provide, for each series of short-term securitized product to be distributed, the information required by Items 4, 5 and 6 of Form 45-106F8.
- 4.3 Disclose whether or not the pool assets include, will include or will otherwise have direct or indirect exposure (including through second-level assets) to any of the following:
- (a) collateralized debt obligations, or similar obligations, whether synthetic or cash flow;

- (b) securitized products that are secured against or represent interests in assets held in managed portfolios of multiple asset classes for which sequentially subordinated tranches of securitized product are issued with the lowest tranches absorbing the first dollar of credit losses;
 - (c) securitized products backed by assets described in paragraphs (a) or (b);
 - (d) credit-linked notes and other structured finance products;
 - (e) credit default swaps;
 - (f) other credit derivatives;
 - (g) synthetic assets or derivatives;
 - (h) sub-prime assets.
- 4.4 If pool assets will include or will otherwise have direct or indirect exposure (including through second-level assets) to any of the assets described in section 4.3:
- (a) describe those assets;
 - (b) disclose the process for obtaining the assets;
 - (c) disclose the internal rate of return to equity if that was a consideration in structuring the securitized product transaction.

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

- 5.1 Describe each series of short-term securitized product to be distributed, including each of the following in the description:
- (a) whether certificates will be in registered or bearer form and the delivery procedures;
 - (b) certificate denominations;
 - (c) term to maturity;
 - (d) maximum principal amount to be outstanding at any one time;
 - (e) the material terms of the trust indenture or similar agreement under which the short-term securitized products are issued.
- 5.2 Disclose the purpose of the net proceeds from the distribution of the short-term securitized products.
- 5.3 Describe the distribution process.

Item 6 - Flow of funds

- 6.1 Describe the flow of funds for the securitization program, including payment allocations, rights, payment dates, and payment priorities.
- 6.2 For second-level assets, disclose the ranking of the securitization program in priority of payments if it would reasonably be required by a prospective purchaser to make an informed investment decision.

Item 7 – Conflicts of interest

- 7.1 Describe each existing conflict of interest and each reasonably anticipated conflict of interest between or among a significant party (as defined in Item 1) and a securitized product holder.
- 7.2 Disclose relationships or affiliations between or among significant parties that a prospective purchaser would reasonably require to make an informed investment decision with respect to the short-term securitized product.

- 7.3 For each significant party, disclose material limitations of liability and indemnifications that have been negotiated with the issuer.

Item 8 – Fees and expenses

Describe all fees and expenses to be paid or payable out of the cash flows from the pool assets, and identify each party that is receiving those fees or expenses and the general reason for the fee or expense.

Item 9 – Risk factors

Describe in order of significance, starting with the most important, the risk factors required to be disclosed to enable a prospective purchaser to make an informed investment decision with respect to the short-term securitized product.

Guidance: Examples of risk factors, in no particular order, might include:

- (a) *credit risks, including*
 - *the extent of diversification of assets and conversely, any correlation risks*
 - *loan to value ratio, i.e., amount of loan to obligor compared to the value of collateralized assets,*
 - *collateral quality, including whether the assets are secured and the ability for the conduit or trustee to sell the collateral,*
 - *servicer quality, including experience, inspections to which it is subject, and valuation systems used,*
- (b) *liquidity risks, including limits on liquidity support, and conditions that may exist or arise that could prevent liquidity support from being provided,*
- (c) *counterparty risks, i.e., quality of credit enhancers such as originators or of swap counterparties,*
- (d) *legal risks, including*
 - *true sale issues,*
 - *bankruptcy remoteness issues,*
 - *other claims or contingent claims on pool assets,*
- (e) *tax risks,*
- (f) *cash flow risks such as the risk of delayed payments, prepayments, and collection, and commingling risks,*
- (g) *reinvestment risk or basis risk relating to cash available between payment dates,*
- (h) *disclosure risks,*
- (i) *default risks including*
 - *material or permanent impairment to pool assets,*
 - *writing down of rated notes,*
 - *paying in kind of notes,*
 - *material cross-default provisions,*
- (j) *modification risks, including the ability of a party to waive or modify the requirements, activities or standards that would otherwise apply under the issuer's constating documents or the transaction agreements or program documentation,*
- (k) *back-up risks relating to the appointment of a replacement party as one of the significant parties,*

- (l) *interest rate and currency risk and associated hedging,*
- (m) *risks associated with partial hedging strategies.*

Item 10 – Program documents and transaction agreements

Describe the material terms of the existing program documents and transaction agreements.

Item 11 – Financial Leverage

Describe all financial leverage used or reasonably anticipated to be used to fund the acquisition, origination or refinancing of the program's assets.

Item 12 – Credit rating of securitized product

If a significant party (as defined in Item 1) has asked for and received a credit rating, or if the issuer is aware that it has received any other kind of rating, from one or more credit rating organizations for the series of short-term securitized product to be distributed and the rating or ratings continue in effect, disclose each of the following:

- (a) each rating received from a credit rating organization;
- (b) for each rating disclosed under paragraph (a), the name of the credit rating organization that has assigned the rating;
- (c) any factors or considerations identified by the credit rating organization as giving rise to unusual risks associated with the series of short-term securitized product;
- (d) any announcement made by, or any proposed announcement known to the issuer that is to be made by, a credit rating organization to the effect that the organization is reviewing or intends to revise or withdraw a rating previously assigned and required to be disclosed under this section.

Item 13 – Resale restrictions

13.1 State the following:

“These securitized products will be subject to a number of resale restrictions, including a restriction on trading. Unless the issuer becomes a reporting issuer a purchaser will not be able to trade the securitized products unless it complies with an applicable exemption from the prospectus and registration requirements under securities legislation.”

13.2 Describe any other resale restrictions that will apply to the securitized products.

Item 14 – Purchasers' and securitized product holders' rights

- 14.1 Describe all statutory and, if applicable, contractual rights available to a purchaser in the event of a misrepresentation in the information memorandum.
- 14.2 Describe all statutory and contractual rights, if any, available to a securitized product holder in respect of any ongoing disclosure required to be provided by the issuer.

Item 15 – Ongoing reporting obligations

- 15.1 Disclose all documents that will be delivered to or made reasonably available to securitized product holders.
- 15.2 Indicate whether the documents referred to in section 15.1 will be sent to securitized product holders and if not, how they will be made reasonably available.
- 15.3 Disclose the frequency at which each of the documents referred to in section 15.1 will be provided or made reasonably available to securitized product holders.

Item 16 – Date and certificate of issuer and sponsor

State the following on the certificate page of the information memorandum:

“Dated [insert the date the certificate page of the information memorandum is signed].

This information memorandum does not contain a misrepresentation.”

Item 17 – Date and certificate of underwriter

State the following on the certificate page of the information memorandum:

“Dated [insert the date the certificate page of the information memorandum is signed].

To the best of our knowledge, information and belief, there is no misrepresentation in the information memorandum.

15. National Instrument 45-106 Prospectus and Registration Exemptions is amended by adding the following form:

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

Instructions:

- (1) Using language that is plain and easy to understand by an investor, provide the information required by this form.
- (2) An issuer is not required to repeat disclosure that has been made in a previously required periodic disclosure report if
 - (a) the previous report contains the disclosure required by this report,
 - (b) the issuer identifies the previous report in this report, including the date of that previous report and the location of the disclosure within that report,
 - (c) the issuer states that the prior disclosure is incorporated by reference into this report.

Item 1 – Parties

Provide a diagram with the identity and role of each party with a significant function or responsibility in relation to the issuer or the securitization transaction, including the sponsor, liquidity providers and credit enhancement providers.

Item 2 – Program Information

Provide the following disclosure of the short-term securitized product program:

- (a) the total level of commitments for purchases entered into;
- (b) the number of transactions, the amount of short-term securitized product issued in respect of each transaction and the total amount of short-term securitized product issued;
- (c) credit ratings of the program, known to the issuer, that have been issued by a credit rating organization, including the name of the credit rating organization that issued the credit rating,
- (d) in respect of liquidity facilities
 - (i) the name of each liquidity provider,
 - (ii) the total amount of liquidity available from each liquidity provider and the percent it represents of the total available liquidity support,
 - (iii) a description of the liquidity support, including whether full or partial,
 - (iv) the credit rating of each liquidity provider, including the name of the credit rating organization that issued the credit rating;

- (e) in respect of each program level credit enhancement,
 - (i) the form of credit enhancement,
 - (ii) the amount required and available,
 - (iii) the percent that the credit enhancement represents of the total level of commitments referred to in paragraph (a);
- (f) for each credit enhancement provider,
 - (i) the name of the credit enhancement provider,
 - (ii) the amount and form of credit enhancement provided,
 - (iii) the percent the credit enhancement represents of the total of short-term securitized product issued of that series,
 - (iv) the credit rating of the credit enhancement provider, including the name of the credit rating organization that issued the credit rating;
- (g) average maturity in days;
- (h) any other information that an investor would reasonably require in respect of payments or pool performance to make an informed investment decision in respect of the short-term securitized product.

Item 3 – Program compliance events

- (a) If any of the following events has occurred, disclose that fact and provide a description of the event and state its current status,
 - (i) bankruptcy of the issuer;
 - (ii) a significant amortization event or program event of default;
 - (iii) a program-wide credit enhancement draw;
 - (iv) a program-wide liquidity draw.
- (b) Disclose whether the sum of committed liquidity plus cash or cash equivalents available to pay maturing notes complies with the program's required liquidity support.
- (c) Disclose whether the credit enhancement that has been committed to the program is greater than or equal to the program's required credit enhancement.

Item 4 – Composition of series

Provide a diagram disclosing the aggregate composition of the series of short-term securitized product broken down to disclose each of the following:

- (a) each asset type, expressed as a dollar amount and a percent of the aggregate assets;
- (b) the industry of the seller of the assets, expressed as a dollar amount and a percent of the aggregate assets;
- (c) the percent of assets in the series acquired from each seller.

Item 5 – Transaction summary

For each transaction that remains outstanding, disclose all of the following, using to the extent practicable, one or more diagrams:

- (a) the transaction number;

- (b) a description of the assets, including, if material,
 - (i) average remaining term of assets,
 - (ii) the total dollar amount of outstanding short-term securitized product,
 - (iii) whether the assets are revolving or amortizing,
 - (iv) the number of obligors,
 - (v) weighted average life expressed in months;
- (c) the industry in which the seller does business;
- (d) each credit rating issued by a credit rating organization in respect of the seller of the assets;
- (e) each credit rating issued by a credit rating organization in respect of the transaction;
- (f) a brief description of financial leverage used;
- (g) the assets' performance, including
 - (i) measurement of collections, including applicable metric and method of measurement,
 - (ii) aggregate outstanding asset balance,
 - (iii) available credit enhancement, specified as a dollar amount and a percent of asset balance,
 - (iv) the most recently completed month's default ratio, including basis of presentation,
 - (v) 12 month average default ratio, including basis of presentation,
 - (vi) the most recently completed month's defaults relative to available credit enhancement,
 - (vii) the most recently completed month's delinquencies, including basis of presentation,
 - (viii) other performance ratios that would reasonably be expected to be material to an investor,
 - (ix) whether there has been a default or early amortization in the most recently completed month relating to payment, asset performance or bankruptcy and if so, a description and current status (e.g., waived, plan for resolution, wind-down),
- (h) hedges.

Item 6 – Second-level Assets

- (a) For any second-level assets held by the securitization program, disclose each of the following:
 - (i) a brief description of the second-level assets and the securitization program issuing them;
 - (ii) a summary of the performance of the second-level assets, including, to the extent significant, the information required by paragraph (f) of Item 5.
- (b) If the second-level assets are those of a reporting issuer or an issuer subject to ongoing or continuous reporting obligations in a foreign jurisdiction, state the identity of that issuer and the location at which such ongoing or continuous reporting can be found.

Item 7 – Program Activity – Disclose the program activity for the period, including each of the following:

- (a) assets that have been added to the pool, including types of assets and dollar amounts;
- (b) assets that no longer form part of the pool, including types of assets and dollar amounts;

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- (c) the reason for assets having been added to or no longer forming part of the pool, e.g., refinancing, liquidation, maturity, liquidity draw;
- (d) commitment reductions and increases.

Item 8 – Report Information –State each of the following:

- (a) date of the report;
- (b) period covered by the report;
- (c) contact information, including name, phone number and email address of a contact person for the issuer.

16. *This Instrument is effective on ●.*

PROPOSED AMENDING INSTRUMENT

**PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 45-102 RESALE OF SECURITIES**

1. ***National Instrument 45-102 Resale of Securities is amended by this Instrument.***
2. ***Part 1 – Definitions is amended by adding the following definition:***

“securitized product” has the same meaning as in NI 45-106;
3. ***Part 2 – First Trades is amended by adding the following section:***

2.15 **First Trade in a Securitized Product** – The first trade of a securitized product distributed under section 2.44 of NI 45-106 is a distribution.
4. ***Companion Policy 45-102CP – To National Instrument 45-102 Resale of Securities is amended by adding the following section:***

1.18 **First trades of securitized products** – The first trade of a securitized product distributed under section 2.44 of NI 45-106 is deemed to be a distribution to which the prospectus requirement would then apply. Consequently, an investor who acquires a securitized product under that exemption from the prospectus requirement may typically only resell the securitized product if the investor does one of the following:
 - (a) relies on section 2.44 of NI 45-106,
 - (b) qualifies the distribution of the securitized product by prospectus,
 - (c) applies for and obtains a discretionary exemption from the prospectus requirement.
It is not necessary for a certificate issued in respect of a securitized product to bear a legend stating the resale restrictions; however, the information memorandum used to distribute the securitized product is required to disclose these resale restrictions.
5. ***This Instrument is effective on ●.***

Schedule D
Proposed Consequential Amendments

PROPOSED AMENDING INSTRUMENT

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*

1. ***This Instrument amends National Instrument 41-101 General Prospectus Requirements.***
2. ***Subsection 1.1(1) is amended by adding the following definition after the definition of “SEC issuer”:***

“securitized product” has the same meaning as in section 1.1 of National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products*;
3. ***Form 41-101F1 – Information Required in a Prospectus is amended by repealing item 10.3 and replacing it with the following:***

Securitized products

10.3(1) This section applies only if securitized products are being distributed under the prospectus.

(2) Include in the prospectus the disclosure required by National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products*. For greater certainty, issuers distributing securitized products that are subject to National Instrument 41-103 must comply with the specific instructions or requirements in Form 41-103F1 *Supplementary Information Required in a Securitized Products Prospectus* if the instruction or requirement is applicable. However, issuers must also comply with the applicable instructions or requirements in this Form that address areas that are not otherwise covered by the instructions or requirements in Form 41-103F1.
4. ***This Instrument is effective on [*].***

PROPOSED AMENDING INSTRUMENT

**PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 44-101 SHORT FORM PROSPECTUS DISTRIBUTIONS**

1. ***This Instrument amends National Instrument 44-101 Short Form Prospectus Distributions.***
2. ***Section 1.1 is amended by adding the following definition after the definition of “permitted supranational agency”:***

“securitized product” has the same meaning as in section 1.1 of National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products*;
3. ***Form 44-101F1 is amended by repealing item 7.3 and replacing it with the following:***

7.3 *Securitized Products*
 - (1) This section applies only if securitized products are being distributed under the prospectus.
 - (2) Include in the prospectus the disclosure required by National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products*. For greater certainty, issuers distributing securitized products that are subject to National Instrument 41-103 must comply with the specific instructions or requirements in Form 41-103F1 *Supplementary Information Required in a Securitized Products Prospectus* if the instruction or requirement is applicable. However, issuers must also comply with the applicable instructions or requirements in this Form that address areas that are not otherwise covered by the instructions or requirements in Form 41-103F1.
4. ***This Instrument is effective on [*].***

PROPOSED AMENDING INSTRUMENT

**PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 51-102 CONTINUOUS DISCLOSURE OBLIGATIONS**

1. This Instrument amends National Instrument 51-102 Continuous Disclosure Obligations.

2. Subsection 1.1(1) is amended by

(a) repealing the definition of “principal obligor”;

(b) adding the following definition after the definition of “SEC issuer”:

“securitized product” has the same meaning as in section 1.1 of National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products*;

3. Form 51-102F2 – Annual Information Form is amended by repealing item 5.3 and replacing it with the following:

5.3 – Companies with Securitized Products Outstanding

If your company had securitized products outstanding, disclose the following information:

- (1) *Series and Class Information* – Identify each series and class of securitized products that was outstanding;
- (2) *Payment and Performance Reports (Form 51-106F1)* – List each payment and performance report filed in respect of each class or series listed in subsection (1) in respect of a payment period any part of which occurred during the three most recently completed financial years of your company, or the lesser period commencing on the first date on which securitized products of the relevant class or series were outstanding. List the date each report was filed.

4. This Instrument is effective on [*].

**Annex I
Local Information**

ADDITIONAL INFORMATION REQUIRED IN ONTARIO

Authority for the Proposed Materials

The Proposed Securitized Products Rules are being proposed for implementation in Ontario as rules.

National Instrument 41-103 *Supplementary Prospectus Disclosure Requirements for Securitized Products* and the consequential amendments to each of National Instrument 41-101 *General Prospectus Requirements* and National Instrument 44-101 *Short Form Prospectus Requirements*, are being proposed under the authority of paragraph 143(1)39 of the *Securities Act*, which provides the Commission with the authority to make rules requiring or respecting the preparation, form and content of preliminary prospectuses and prospectuses.

National Instrument 51-106 *Continuous Disclosure Requirements for Securitized Products* (other than subsections 6(1) and (2), and subsections 7(1) and (2)) and the consequential amendments to National Instrument 51-102 *Continuous Disclosure Obligations* are being proposed under paragraph 143(1)22 of the *Securities Act*, which provides the Commission with the authority to make rules prescribing requirements in respect of the preparation of documents providing for continuous disclosure. Assuming we proceed with proposed National Instrument 51-106 *Continuous Disclosure Requirements for Securitized Products*, we would require rule-making authority in respect of subsections 6(1) and (2) and subsections 7(1) and (2) of the Instrument.

The amendments to National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* are being proposed under paragraphs 143(1)58, 59, 60 and 61 of the *Securities Act*.

The amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* and National Instrument 45-102 *Resale of Securities* are being proposed under paragraph 143(1)20 of the *Securities Act*.

Alternatives Considered

No alternatives to this approach were considered.

Unpublished Materials

In proposing the Proposed Securitized Products Rules, we have not relied upon any significant unpublished study, report or decision.