

CSA Notice of Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* Relating to the Short-term Debt Prospectus Exemption and Short-term Securitized Products

February 19, 2015

A. Introduction

The Canadian Securities Administrators (**CSA** or **we**) are making amendments to National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**) to, among other things:

- change the requirements that short-term debt securities must satisfy in order to be distributed under the short-term debt prospectus exemption in section 2.35 of NI 45-106 (the **Short-term Debt Prospectus Exemption**);
- make the Short-term Debt Prospectus Exemption unavailable for securitized products such as asset-backed commercial paper (**ABCP**); and
- introduce a new short-term securitized products prospectus exemption in section 2.35.1 of NI 45-106 (as qualified by sections 2.35.2 to 2.35.4) (the **Short-term Securitized Products Prospectus Exemption**), that will only be available for short-term securitized products that satisfy certain conditions.

We are also making changes to Companion Policy 45-106 *Prospectus and Registration Exemptions* (**45-106CP**) and we are making consequential amendments to National Instrument 25-101 *Designated Rating Organizations* (**NI 25-101** or the **DRO Rule**).

Provided all necessary ministerial approvals are obtained, the amendments to NI 45-106 and the consequential amendments to NI 25-101 will come into force on May 5, 2015, subject to certain transitional provisions described more fully below.

The changes to 45-106 CP will also come into force on May 5, 2015.

B. The Short-term Debt Amendments

1. Substance and Purpose

We are amending section 2.35 of NI 45-106 (the **Short-term Debt Amendments**) to modify the credit ratings required to distribute short-term debt, which is primarily commercial paper (**CP**), under the Short-term Debt Prospectus Exemption.

Under the current Short-term Debt Prospectus Exemption, short-term debt must satisfy the following conditions:

| Type of condition | Terms |
|-----------------------------------|--|
| Rating Threshold Condition | The short-term debt has at least one credit rating at or above: <ul style="list-style-type: none"> • DBRS Limited (DBRS) – R-1(low); • Fitch, Inc. (Fitch) – F1; • Moody’s Canada Inc. (Moody’s Canada) – P-1; or • Standard & Poor’s Ratings Services (Canada) (S&P Canada) – A-1(Low). |
| Split Rating Condition | The short-term debt has no rating below the ratings in the Rating Threshold Condition. |

The Short-term Debt Amendments will modify the Split Rating Condition. The net effect is that short-term debt will have to satisfy the following conditions:

| Type of condition | Terms |
|---|--|
| Rating Threshold Condition (unchanged) | The short-term debt has at least one rating at or above: <ul style="list-style-type: none"> • DBRS – R-1(low); • S&P Canada – A-1(Low) (Canada national scale); • Moody’s Canada – P-1; or • Fitch – F1. |
| Modified Split Rating Condition | The short-term debt has no rating below: <ul style="list-style-type: none"> • DBRS – R-1(low); • Fitch – F2; • Moody’s Canada – P-2; or • S&P Canada – A-1(Low) (Canada national scale) or A-2 (global scale). |

The Short-term Debt Amendments are intended to:

- remove the regulatory disincentive for some CP issuers to obtain an additional credit rating;
- provide consistent treatment of CP issuers with similar credit risk; and
- maintain the current credit quality of CP distributed under the Short-term Debt Prospectus Exemption.

2. *Background*

We published the Short-term Debt Amendments for a 90-day comment period on January 23, 2014.

3. Summary of Written Comments Received by the CSA

During the comment period, we received submissions from six commenters on the Short-term Debt Amendments. We have considered the comments received and thank all of the commenters for their input. The names of commenters are contained in Annex D of this notice, as well as a summary of their comments together with our responses.

4. Summary of Changes since Publication for Comment

We have made only one change to the version of the Short-term Debt Amendments that was published for comment. The change relates to the prescribed credit ratings for S&P Canada.

S&P Canada issues credit ratings using either its Canada national scale or its global scale. The proposed Modified Split Rating Condition did not specify whether the S&P Canada A-2 rating was in respect of the Canada national scale or the global scale. We now specify that the relevant ratings are A-1(Low) for the Canada national scale and A-2 for the global scale.¹

As this change is not material, we are not re-publishing the Short-term Debt Amendments for a further comment period.

5. Coming into Force

Subject to the necessary approvals, the Short-term Debt Amendments will come into force on May 5, 2015.

C. The Short-term Securitized Products Amendments

1. Substance and Purpose

We are making several amendments to NI 45-106 related to the prospectus-exempt distribution of short-term securitized products (the **Short-term Securitized Products Amendments**). The Short-term Securitized Products Amendments are intended to:

- address investor protection and systemic risk concerns raised by certain types of complex short-term securitized products that were issued in Canada pre-financial crisis, i.e. non-bank sponsored ABCP; and
- allow us to collect information on distributions of securitized products made under prospectus exemptions such as the accredited investor prospectus exemption (section 2.3 of NI 45-106) and the minimum amount investment prospectus exemption (section 2.10 of NI 45-106).

The amendments to NI 45-106 relating to securitized products are as follows:

- The following prospectus exemptions will be unavailable for the distribution of short-term securitized products:
 - the Short-term Debt Prospectus Exemption;

¹ For more information on the equivalency between ratings under the Canada national scale and the global scale, see *Standard and Poor's Rating Definitions* (November 20, 2014). Available at https://www.globalcreditportal.com/ratingsdirect/renderArticle.do?articleId=1221284&SctArtId=198387&from=C&M&nsI_code=LIME.

- the private issuer prospectus exemption in section 2.4 (the **Private Issuer Prospectus Exemption**);
 - the friends, family, and business associates prospectus exemptions in sections 2.5 and 2.6 (the **Friends and Family Prospectus Exemption**);
 - the founder, control person and family prospectus exemption in section 2.7 (the **Founder Prospectus Exemption**); and
 - the offering memorandum prospectus exemption in section 2.9 (the **OM Prospectus Exemption**).
- A new Short-term Securitized Products Prospectus Exemption will be created in section 2.35.1, as qualified by sections 2.35.2 to 2.35.4.
 - Issuers (i.e. conduits) who distribute securities under the Short-term Securitized Products Exemption must disclose the following:
 - information about the conduit, including its structure, business and operations, in Form 45-106F7 *Information Memorandum for Short-term Securitized Products Distributed under Section 2.35.1* (the **Information Memorandum**) on or before the date that a purchaser purchases a short-term securitized product;
 - monthly information about the conduit, including asset transactions, asset pools and their performance, in Form 45-106F8 *Monthly Disclosure Report for Short-term Securitized Products Distributed under Section 2.35.1* (the **Monthly Disclosure Report**) no later than 50 days from the end of the most recent month; and
 - timely information about certain significant events relating to the conduit's credit rating and the payment of principal or interest no later than the second business day after the conduit becomes aware of the change or event.
 - Form 45-106F1 *Report of Exempt Distribution* and Form 45-106F6 *British Columbia Report of Exempt Distribution* (each an **Exempt Distribution Report**) will have a new industry classification for a securitized products issuer so that we can collect data regarding the distribution of securitized products under other prospectus exemptions.²

We are also making changes to 45-106CP to provide guidance on certain aspects of the Short-term Securitized Products Prospectus Exemption.

2. **Background**

We published on April 1, 2011 a comprehensive set of proposed new rules and amendments (the **2011 Proposals**) relating to securitized products that would have:

- introduced additional disclosure requirements for prospectus offerings of securitized products;
- introduced additional continuous disclosure and certification requirements for reporting issuers that had distributed securitized products; and

² The Exempt Distribution Report is required to be filed under section 6.1 of NI 45-106 to report distributions made under certain prospectus exemptions.

- restricted the prospectus-exempt distribution of securitized products to a class of highly sophisticated investors through a new prospectus exemption (the **Eligible Securitized Products Investor Exemption**), as well as mandated offering and continuous disclosure even if the issuer of the securitized product was not a reporting issuer.

After considering the comments and additional review and analysis, we decided not to proceed with the aspects of the 2011 Proposals relating to prospectus and continuous disclosure requirements. We also decided not to proceed with those aspects of the 2011 Proposals regarding the Eligible Securitized Products Investor Exemption and the prospectus-exempt distribution of term securitized products, i.e. securitized products with a maturity of one year or more. We determined that the comprehensive reform of securitized products securities regulation contemplated by the 2011 Proposals was unnecessary at this time.

We published for comment a more targeted set of Securitized Products Amendments for a 90-day comment period on January 23, 2014 (the **2014 Proposals**). The 2014 Proposals focused on short-term securitized products, which are primarily ABCP. The 2014 Proposals were as follows:

- exclude short-term securitized products from being distributed under the Short-term Debt Prospectus Exemption, the Private Issuer Prospectus Exemption, the Friends and Family Prospectus Exemption, the Founder Prospectus Exemption and the OM Prospectus Exemption;
- create a Short-term Securitized Products Prospectus Exemption in new section 2.35.1 of NI 45-106, as qualified by sections 2.35.2 to 2.35.4, that requires the short-term securitized product to satisfy a number of conditions; and
- prescribe an Information Memorandum, Monthly Disclosure Reports and timely disclosure reports.

3. *Summary of Written Comments Received by the CSA*

During the comment period, we received submissions from 14 commenters. We have considered the comments received and thank all of the commenters for their input. The names of commenters are contained in Annex D of this notice, as well as a summary of their comments together with our responses.

4. *Summary of Changes since Publication for Comment*

In response to comments, the Short-term Securitized Products Prospectus Exemption, the related forms and 45-106CP changes we are adopting reflect a number of changes from the 2014 Proposals. As these changes are not material, we are not re-publishing the Short-term Securitized Products Amendments for a further comment period.

There are no changes to the amendments we proposed to the DRO Rule in the 2014 Proposals.

(a) *Short-term Securitized Products Prospectus Exemption*

The main conditions of the Short-term Securitized Products Prospectus Exemption are:

- the conduit has a “global-style” liquidity agreement with an appropriate financial institution;

- there are no synthetic assets in any of the conduit's asset pools; and
- there is disclosure about:
 - the conduit's structure, business and operations;
 - the performance of the assets in the conduit's asset pool(s); and
 - events that impact the payment of interest or principal.

We have refined aspects of these conditions in order to better align them with market practice while still maintaining the core elements of the Short-term Securitized Products Prospectus Exemption. We describe some of the changes below.

(i) Modified credit ratings requirements for short-term securitized products

We originally proposed that short-term securitized products issued under the Short-term Securitized Products Prospectus Exemption must have at least two credit ratings, both at the highest rating categories of:

- R-1(high)(sf) if issued by DBRS;
- F1+sf if issued by Fitch;
- P-1(sf) if issued by Moody's Canada;
- A-1(High)(sf) if issued by S&P Canada.

We have modified this condition. Short-term securitized products will still need to have two credit ratings, but only one will need to be at the highest rating category. The second and any additional credit rating cannot be lower than:

- R-1(low)(sf) if issued by DBRS;
- F-2sf if issued by Fitch;
- P-2(sf) if issued by Moody's Canada;
- A-1(Low)(sf) (Canada national scale) or A-2(sf) (global scale) if issued by S&P Canada.

We have also included the relevant S&P Canada ratings for both the Canada national scale and the global scale.

In our view, this modification achieves our intent of only allowing ABCP of high credit quality to be issued through the prospectus exemption, while significantly reducing the risk of disruption to the ABCP market if bank sponsors and liquidity providers experience credit rating downgrades due to the introduction of the bail-in regime applicable to Canada's domestic systemically important banks, as proposed by the Department of Finance Canada on August 1, 2014.³

³The *Taxpayer Protection and Bank Recapitalization Regime: Consultation Paper* outlines the proposed bail-in regime applicable to Canada's domestic systemically important banks and is a follow-up to the announcement in the 2013 federal budget that such a regime would be forthcoming in Canada. The proposed bail-in regime reduces the likelihood of government support and clarifies that the banks' shareholders and creditors are responsible for bearing losses.

Certain designated rating organizations have changed their outlook for the six major Canadian banks to “Negative” from “Stable” as a result of the proposed bail-in regime. We understand that the long-term credit ratings of these banks will likely be lowered by one to two notches upon introduction of the bail-in regime. This is expected to result in a lowering of the short-term credit ratings of some of the banks. These changes are not being driven by a reduction in the credit quality of the banks but by the reduced likelihood of government support.

Any downgrades in the short-term credit ratings of banks due to the bail-in regime could also result in downgrades in the credit ratings of the ABCP for which they are sponsors and liquidity providers below the ratings categories we originally proposed. These downgrades would not be driven by a reduction in their ability to provide liquidity support. We therefore think it is appropriate to provide more flexibility in the credit ratings required by the Short-term Securitized Products Prospectus Exemption.

(ii) Removal of requirement regarding no expected credit rating downgrades

We originally proposed that the Short-term Securitized Products Prospectus Exemption would be unavailable for a short-term securitized product if:

- any of its credit ratings were under review by the relevant designated rating organization; and
- it would be reasonable for the conduit to expect that the review would result in the credit rating being withdrawn or downgraded below the prescribed minimum level.

We also proposed a similar condition regarding credit ratings of a liquidity provider.

We have removed these conditions as we recognize that a conduit is not necessarily in a position to make this type of determination.

(iii) Liquidity agreement requirements

We have made the following changes:

- modified the credit rating requirements for liquidity providers so that they are short-term, rather than long term; and
- removed the provision that would have required, in a situation where a conduit had more than one liquidity provider, that there needed to be another liquidity provider that would guarantee or otherwise commit to providing support in the event of non-payment by a liquidity provider.

These changes are intended to better align the requirements with the operation of liquidity arrangements in the Canadian market.

We have changed the conditions so that a deposit-taking institution can be a liquidity provider if it is regulated by or has been approved to carry on business in Canada by OSFI or a provincial regulator. The effect of this change is that a foreign bank that is a Schedule III bank can be a liquidity provider. We think that a foreign deposit-taking institution that OSFI or a provincial regulator regulates or has approved to carry on business (i.e. a Schedule II or Schedule III bank)

should be allowed to be a liquidity provider, provided it satisfies all the other conditions relating to liquidity support.

(iv) Modified timing for availability of Monthly Disclosure Report

We originally proposed that a conduit be required to make each Monthly Disclosure Report reasonably available to a holder of securitized products within 30 days from the end of the most recent month to which it relates. We have modified this condition so that the report must be reasonably available within 50 days.

(v) Triggers for and timing of timely disclosure report

We originally proposed that a conduit prepare a timely disclosure report if there was

- a change to the information required to be provided in the most recent monthly disclosure report; or
- an event that the conduit would reasonably expect to materially affect payment on a short-term securitized product or the performance of the assets in the asset pool.

We have narrowed the list of events that trigger a timely disclosure report to focus on events that affect the payment of interest or principal on the short-term securitized product. We also require the conduit to prepare a timely disclosure report in the event of a downgrade in one or more of the conduit's credit ratings.

We also have changed the timing requirement. The timely disclosure report is now required to be provided to or made reasonably available no later than two business days, rather than calendar days, after the conduit becomes aware of the change or event.

(vi) Other drafting changes

We have made several drafting changes to the definitions to make them more consistent with short-term securitization (i.e. ABCP) structures in the Canadian market.

(b) Information Memorandum

We have made several revisions to the Information Memorandum as follows:

- focused the disclosure so that it is in respect of the conduit's structure and operations;
- moved disclosure about specific asset transactions and asset pools to the Monthly Disclosure Report;
- clarified certain requirements; and
- eliminated duplicative disclosure.

The requirement to disclose information regarding interest alignment and risk retention has been moved from the Monthly Disclosure Report to the Information Memorandum.

We also are no longer requiring that the identities of principal obligors and originators be provided. Currently, principal obligors and originators have an expectation that their identities are kept confidential. Furthermore, in our view, this information is not necessary for investors to understand the credit quality and performance of a conduit's asset transactions and asset pools.

The requirements have been modified to focus on disclosure of parties responsible for a significant role in the conduit's structure or operations.

(c) Monthly Disclosure Report

We have made several revisions to the Monthly Disclosure Report. We have:

- focused the disclosure so that it is in respect of specific asset transactions and asset pools and moved disclosure about the conduit's structure and operations to the Information Memorandum;
- eliminated duplicative disclosure; and
- eliminated disclosure which in our view is not necessary for investors to understand the credit quality and performance of a conduit's asset transactions, where such disclosure
 - could raise confidentiality or competitive concerns (e.g. the specific credit ratings of sellers, fees and expenses); or
 - would require conduits to take additional steps to collect or present information that go beyond current market practice (e.g. average term of assets, performance ratios other than default or loss ratios).

(d) Exempt Distribution Reports

We originally proposed to add "securitization conduits" as a new industry classification. We have modified our proposal to change the new industry classification to "securitized product issuers" as the term "securitization conduit" now refers to issuers of short-term securitized products rather than issuers of securitized products generally.

(e) 45-106CP

We have provided additional guidance on the following:

- the definition of "asset pool";
- the interaction of the conditions of the Short-Term Securitized Products Prospectus Exemption with credit ratings; and
- liquidity agreements and on who can act as a liquidity provider.

5. Coming into Force

Subject to the necessary approvals, the Short-term Securitized Products Amendments will come into force on May 5, 2015. There are several transition provisions as follows:

- an Information Memorandum that is provided to or made reasonably available to a purchaser need only be prepared in accordance with Form 45-106F7 for a distribution of a short-term securitized product that takes place on or after November 5, 2015;
- a Monthly Disclosure Report that is provided to or made reasonably available to a holder of a short-term securitized product pursuant to an undertaking or agreement in writing need not be prepared in accordance with Form 45-106F8 in respect of any asset transaction that a conduit entered into on or before November 5, 2015.

D. Annexes

- Annex A Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions*
- Annex B Amendments to National Instrument 25-101 *Designated Rating Organizations*
- Annex C Changes to Companion Policy 45-106 *Prospectus and Registration Exemptions*
- Annex D Summary of Comments

E. Questions

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Annex A

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 is amended by adding the following definitions:*

“**asset pool**” means a pool of cash-flow generating assets in which an issuer of a securitized product has a direct or indirect ownership or security interest;

“**asset transaction**” means a transaction or series of transactions in which a conduit acquires a direct or indirect ownership or security interest in an asset pool in connection with issuing a short-term securitized product;

“**conduit**” means an issuer of a short-term securitized product

- (a) created to conduct one or more asset transactions, and
- (b) in respect of which it is reasonable for the issuer to expect that, in the event of a bankruptcy or insolvency proceeding under the *Bankruptcy and Insolvency Act* (Canada), the *Companies Creditors' Arrangement Act* (Canada) or a proceeding under similar legislation in Canada, a jurisdiction of Canada or a foreign jurisdiction,
 - (i) none of the assets in an asset pool of the issuer in which the issuer has an ownership interest will be consolidated with the assets of a third party that transferred or participated in the transfer of assets to the issuer prior to satisfaction in full of all securitized products that are backed in whole or in part by the assets transferred by the third party, or
 - (ii) for the assets in an asset pool of the issuer in which the issuer has a security interest, the issuer will realize against the assets in that asset pool in priority to the claims of other persons;

“**credit enhancement**” means a method used to reduce the credit risk of a series or class of securitized product;

“**liquidity provider**” means a person that is obligated to provide funds to a conduit to enable the conduit to pay principal or interest in respect of a maturing securitized product;

“**securitized product**” means a security that

- (a) is governed by a trust indenture or similar agreement setting out the rights and protections applicable to a holder of the security,
- (b) provides a holder with a direct or indirect ownership or security interest in one or more asset pools, and
- (c) entitles a holder to one or more payments of principal or interest primarily obtained from one or more of the following:
 - (i) the proceeds from the distribution of securitized products;
 - (ii) the cash flows generated by one or more asset pools;
 - (iii) the proceeds obtained on the liquidation of one or more assets in one or more asset pools;

“**short-term securitized product**” means a securitized product that is a negotiable promissory note or commercial paper that matures not more than one year from the date of issue;.

3. Section 2.4 is amended by adding the following subsection:

(4) Subsection (2) does not apply to a distribution of a short-term securitized product..

4. Section 2.5 is amended by adding the following subsection:

(3) Subsection (1) does not apply to a distribution of a short-term securitized product or, in Ontario, a distribution under subsection 73.4(2) of the *Securities Act* (Ontario)..

5. Section 2.6 is amended by adding the following subsection:

(3) Subsection (1) does not apply to a distribution of a short-term securitized product..

6. Section 2.7 is replaced with the following:

Founder, control person and family - Ontario

(1) In Ontario, the prospectus requirement does not apply to a distribution to a person who purchases the security as principal and is one of the following:

- (a) a founder of the issuer;

- (b) an affiliate of a founder of the issuer;
- (c) a spouse, parent, grandparent, brother, sister, child or grandchild of an executive officer, director or founder of the issuer;
- (d) a person that is a control person of the issuer.

(2) Subsection (1) does not apply to a distribution of a short-term securitized product..

7. Section 2.9 is amended by adding the following subsection:

(3.1) Subsections (1) and (2) do not apply to a distribution of a short-term securitized product..

8. Section 2.35 is replaced with the following:

Short-term debt

2.35 (1) The prospectus requirement does not apply to a distribution of a negotiable promissory note or commercial paper if all of the following apply:

- (a) the note or commercial paper matures not more than one year from the date of issue;
- (b) the note or commercial paper has a credit rating from a designated rating organization, or its DRO affiliate, that is at or above one of the following rating categories or that is at or above a rating category that replaces one of the following rating categories:
 - (i) R-1(low) if issued by DBRS Limited;
 - (ii) F1 if issued by Fitch, Inc.;
 - (iii) P-1 if issued by Moody's Canada Inc.;
 - (iv) A-1(Low) (Canada national scale) if issued by Standard & Poor's Ratings Services (Canada);
- (c) the note or commercial paper has no credit rating from a designated rating organization, or its DRO affiliate, that is below one of the following rating categories or that is below a rating category that replaces one of the following rating categories:
 - (i) R-1(low) if issued by DBRS Limited;

- (ii) F2 if issued by Fitch, Inc.;
- (iii) P-2 if issued by Moody's Canada Inc.;
- (iv) A-1(Low) (Canada national scale) or A-2 (global scale) if issued by Standard & Poor's Ratings Services (Canada).

(2) Subsection (1) does not apply to a distribution of a negotiable promissory note or commercial paper if either of the following applies:

- (a) the note or commercial paper is a securitized product;
- (b) the note or commercial paper is convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in subsection (1)..

9. *National Instrument 45-106 Prospectus and Registration Exemptions is amended by adding the following sections:*

Short-term securitized products

2.35.1 The prospectus requirement does not apply to a distribution of a short-term securitized product if all of the following apply:

- (a) the short-term securitized product is a security described in section 2.35.2;
- (b) the conduit issuing the short-term securitized product complies with section 2.35.4;
- (c) the short-term securitized product is not convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in paragraph (a) and for which disclosure is provided pursuant to paragraph (b).

Limitations on short-term securitized product exemption

2.35.2 All of the following must apply to a short-term securitized product distributed under section 2.35.1:

- (a) the short-term securitized product is of a series or class of securitized product to which all of the following apply:
 - (i) it has a credit rating from not less than two designated rating organizations, or their respective DRO affiliate, and at least one of the credit ratings is at or above one of the following rating

categories or is at or above a rating category that replaces one of the following rating categories:

- (A) R-1(high)(sf) if issued by DBRS Limited;
 - (B) F1+sf if issued by Fitch, Inc.;
 - (C) P-1(sf) if issued by Moody's Canada Inc.;
 - (D) A-1(High)(sf) (Canada national scale) or A-1+(sf) (global scale) if issued by Standard & Poor's Ratings Services (Canada);
- (ii) it has no credit rating from a designated rating organization, or its DRO affiliate, that is below one of the following rating categories or that is below a rating category that replaces one of the following rating categories:
- (A) R-1(low)(sf) if issued by DBRS Limited;
 - (B) F2sf if issued by Fitch, Inc.;
 - (C) P-2(sf) if issued by Moody's Canada Inc.;
 - (D) A-1(Low)(sf) (Canada national scale) or A-2(sf) (global scale) if issued by Standard & Poor's Ratings Services (Canada);
- (iii) the conduit has entered into one or more agreements that, subject to section 2.35.3, obligate one or more liquidity providers to provide funds to the conduit to enable the conduit to satisfy all of its obligations to pay principal or interest as that series or class of short-term securitized product matures;
- (iv) all of the following apply to each liquidity provider:
- (A) the liquidity provider is a deposit-taking institution;
 - (B) the liquidity provider is regulated or approved to carry on business in Canada by one or both of the following:
 - 1. the Office of the Superintendent of Financial Institutions (Canada);

2. a government department or regulatory authority of Canada, or of a jurisdiction of Canada responsible for regulating deposit-taking institutions;
- (C) the liquidity provider has a rating from each of the designated rating organizations providing a rating on the short-term securitized product under subparagraph 2.35.2(a)(i), or their respective DRO affiliate, for its senior, unsecured short-term debt, none of which is dependent upon a guarantee by a third party, and each rating from such designated rating organizations, or their respective DRO affiliate, is at or above the following rating categories or is at or above a rating category that replaces one of the following rating categories:
1. R-1(low) if issued by DBRS Limited;
 2. F2 if issued by Fitch, Inc.;
 3. P-2 if issued by Moody's Canada Inc.;
 4. A-1(Low) (Canada national scale) or A-2 (global scale) if issued by Standard & Poor's Ratings Services (Canada);
- (b) if the conduit has issued more than one series or class of short-term securitized product, the short-term securitized product to be distributed under section 2.35.1, when issued, will not in the event of bankruptcy, insolvency or winding-up of the conduit be subordinate in priority of claim to any other outstanding series or class of short-term securitized product issued by the conduit in respect of any asset pool backing the short-term securitized product to be distributed under section 2.35.1;
- (c) the conduit has provided an undertaking to or has agreed in writing with the purchaser of the short-term securitized product or an agent, custodian or trustee appointed to act on behalf of purchasers of that series or class of short-term securitized product, that any asset pool of the conduit will consist only of one or more of the following:
- (i) a bond;
 - (ii) a mortgage;
 - (iii) a lease;
 - (iv) a loan;

- (v) a receivable;
- (vi) a royalty;
- (vii) any real or personal property securing or forming part of that asset pool.

Exceptions relating to liquidity agreements

2.35.3(1) Despite subparagraph 2.35.2(a)(iii), an agreement with a liquidity provider may provide that a liquidity provider is not obligated to advance funds in respect of a series or class of short-term securitized product distributed under section 2.35.1 if the conduit is subject to any of the following:

- (a) bankruptcy, or insolvency proceedings under the *Bankruptcy and Insolvency Act* (Canada);
- (b) an arrangement under the *Companies Creditors' Arrangement Act* (Canada);
- (c) proceedings similar to those referred to in paragraph (a) or (b) under the laws of Canada or a jurisdiction of Canada or a foreign jurisdiction.

(2) Despite subparagraph 2.35.2(a)(iii), an agreement with a liquidity provider may provide that a liquidity provider is not obligated to advance funds in respect of a series or class of short-term securitized product distributed under section 2.35.1 that exceed the sum of the following:

- (a) the aggregate value of the non-defaulted assets in the asset pool to which the agreement relates;
- (b) the amount of credit enhancement applicable to the asset pool to which the agreement relates.

Disclosure requirements

2.35.4(1) A conduit that distributes a short-term securitized product under section 2.35.1 must, on or before the date a purchaser purchases the short-term securitized product, do all of the following:

- (a) provide to or make reasonably available to the purchaser an information memorandum prepared in accordance with Form 45-106F7 *Information Memorandum for Short-term Securitized Products Distributed under Section 2.35.1*;

- (b) provide an undertaking to or agree in writing with the purchaser, or with an agent, custodian or trustee appointed to act on behalf of purchasers of that series or class of securitized product, to
 - (i) for so long as a short-term securitized product of that class remains outstanding, prepare the documents specified in subsections (5) and (6) within the time periods specified in those subsections, and
 - (ii) provide to or make reasonably available to each holder of a short-term securitized product of that series or class, the documents specified in subsections (5) and (6).

(2) Subsection (1) does not apply to a conduit distributing a short-term securitized product under section 2.35.1 if

- (a) the conduit has previously distributed a short-term securitized product of the same series or class as the short-term securitized product to be distributed,
- (b) in connection with that previous distribution the conduit prepared an information memorandum that complied with paragraph (1)(a), and
- (c) the conduit, on or before the time each purchaser in the current distribution purchases a short-term securitized product, does each of the following:
 - (i) provides to or makes reasonably available to the purchaser the information memorandum prepared in connection with the previous distribution;
 - (ii) provides to or makes reasonably available to the purchaser all documents specified in subsections (5) and (6) that have been prepared in respect of that series or class of short-term securitized product.

(3) A conduit must, on or before the 10th day following a distribution of a short-term securitized product under section 2.35.1, do each of the following:

- (a) provide to or make reasonably available to the securities regulator either of the following:
 - (i) the information memorandum required under paragraph (1)(a);
 - (ii) if the conduit is relying on subsection (2), the documents referred to in paragraph (c) of subsection (2);

- (b) subject to subsection (4), deliver to the securities regulator an undertaking that it will, in respect of that series or class of short-term securitized product,
 - (i) provide to or make reasonably available to the securities regulator the documents specified in subsections (5) and (6), and
 - (ii) promptly deliver to the securities regulator each document specified in subsections (5) and (6) that is requested by the securities regulator.

- (4) Paragraph (3)(b) does not apply if
 - (a) the conduit has delivered an undertaking to the securities regulator under paragraph (3)(b) in respect of a previous distribution of a securitized product that is of the same series or class as the short-term securitized product currently being distributed, and
 - (b) the undertaking referred to in paragraph (a) applies in respect of the current distribution.

- (5) For the purpose of subsection 2.35.4(1), the undertaking or agreement must require the conduit to prepare a monthly disclosure report relating to the series or class of short-term securitized product that is
 - (a) prepared in accordance with Form 45-106F8 *Monthly Disclosure Report for Short-term Securitized Products Distributed under Section 2.35.1*,
 - (b) current as at the last business day of each month, and
 - (c) no later than 50 days from the end of the most recent month to which it relates, made reasonably available to each holder of that series or class of the conduit's short-term securitized product.

- (6) For the purpose of subsection 2.35.4(1), the undertaking or agreement must require the conduit to prepare a timely disclosure report, providing the information specified in subsection (7), in each of the following circumstances:
 - (a) a downgrade in one or more of the conduit's credit ratings;

- (b) failure by the conduit to make any required payment of principal or interest on the series or class of short-term securitized product;
 - (c) the occurrence of a change or event that the conduit would reasonably expect to have a significant adverse effect on the payment of principal or interest on the series or class of short-term securitized product.
- (7) The timely disclosure report referred to in subsection (6) must
- (a) describe the nature and substance of the change or event and the actual or potential effect on any payment of principal or interest to a holder of that series or class of short-term securitized product, and
 - (b) be provided to or made reasonably available to holders of that series or class of short-term securitized product no later than the second business day after the conduit becomes aware of the change or event..

10. Item 3 of Form 45-106F1 Report of Exempt Distribution is amended by adding

“ securitized products issuers” *after* “ mortgage investment companies”.

11. In British Columbia, item 3 of Form 45-106F6 British Columbia Report of Exempt Distribution is amended by adding

“ securitized products issuers” *after* “ mortgage investment companies”.

12. *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
Distributed under Section 2.35.1

Instructions:

- (1) Using language that is plain and easy to understand by the type of purchaser to whom the issuer's short-term securitized products are offered, provide the information required by this form. No reference need be made to inapplicable items and, unless otherwise required by this form, negative answers may be omitted.
- (2) An information memorandum may be used to disclose information about more than one series or class of short-term securitized product. If so, the disclosure required by this form must be provided for each series or class of short-term securitized product distributed under the information memorandum.
- (3) This form requires disclosure of certain items, matters or other information referred to as "material". Information is "material" if knowledge of it could reasonably be expected to affect a reasonable investor's decision whether to buy, sell or hold a short-term securitized product.
- (4) Include a glossary that defines all technical terms, and includes the following definition:

"**sponsor**" means a person or group of affiliated persons that organizes or initiates the formation of a conduit.

Item 1: Significant Parties

- 1.1 Provide the conduit's legal name.
- 1.2 Disclose the conduit's jurisdiction and form of organization.
- 1.3 Identify each sponsor of the conduit and disclose
 - (a) whether or not it is a Canadian bank, Schedule II foreign bank subsidiary or Schedule III bank, and
 - (b) if it is not a financial institution referred to in paragraph (a), whether there is a government department or regulatory authority responsible for overseeing it and, if applicable, the name of the government department or regulatory authority.

- 1.4 Briefly describe the conduit's structure, business and operations and the key documents that establish the conduit and govern its business and operations.
- 1.5 Identify each other party, excluding any liquidity provider or any credit enhancement provider for whom disclosure is not required under item 4, that is primarily responsible under the terms of the key documents referred to in section 1.4 for a significant role in the conduit's structure or operations and briefly describe that party's role.

Item 2: Structure

Include one or more diagrams or descriptions that provide the following information in summary form:

- (a) how the conduit acquires assets and issues securitized product;
- (b) liquidity facilities available to the conduit as disclosed in item 4;
- (c) credit enhancements available to the conduit as disclosed in item 4;
- (d) material agreements as disclosed in item 9;
- (e) the structure of one or more common types of asset transactions into which the conduit may enter.

Item 3: Eligible assets and asset transactions

- 3.1 Briefly describe the types of asset transactions into which the conduit expects to enter. If applicable, state that the conduit expects to finance the acquisition, origination or refinancing of asset pools from the proceeds of issuing short-term securitized products. Describe any other methods the conduit expects to employ to finance the acquisition, origination or refinancing of asset pools.
- 3.2 Briefly describe the types of asset eligibility criteria the conduit applies or anticipates applying when entering into asset transactions.
- 3.3 Briefly describe the types of due diligence or verification procedures that the conduit applies or anticipates applying to asset transactions and asset pools.
- 3.4 Briefly describe the conduit's approach to concentration limits, liquidity support and credit enhancement in respect of its asset transactions and asset pools.
- 3.5 Disclose the types of assets that the conduit is permitted to hold in its asset pools.
- 3.6 Briefly describe how the conduit uses or anticipates using derivatives for the purpose of hedging.

Item 4: Interest alignment, program-wide liquidity support and program-wide credit enhancement

- 4.1 Briefly describe how the interests of investors are aligned with the interests of the conduit, the sponsor and the parties to asset transactions entered into by the conduit, including any requirement of law that the conduit or the sponsor retain an interest in one or more of the conduit's asset pools or be exposed to the credit risk of assets in one or more of the conduit's asset pools.
- 4.2 Briefly describe any standard liquidity support arrangements the conduit has entered into or anticipates entering into, excluding liquidity support arrangements that are particular to an asset transaction or asset pool. Include the following information in the description:
- (a) the name of each existing liquidity provider;
 - (b) any minimum credit rating a liquidity provider must have under the terms of the key documents referred to in section 1.4;
 - (c) the nature of the liquidity support;
 - (d) a summary of the material terms of each liquidity agreement, including all material conditions to or limitations on the obligation of a liquidity provider to provide liquidity support;
 - (e) any limitations on the obligation of a liquidity provider to provide same-day funding.
- 4.3 Briefly describe any standard credit enhancement arrangements that the conduit has entered into or anticipates entering into, excluding credit enhancement arrangements that are particular to an asset transaction or asset pool. Include the following information in the description:
- (a) the name of each existing credit enhancement provider;
 - (b) any minimum credit rating a credit enhancement provider must have under the terms of the key documents referred to in section 1.4;
 - (c) the form of the credit enhancement;
 - (d) a summary of the material terms of each credit enhancement agreement, including all material conditions to or limitations on the obligation of a credit enhancement provider to provide credit support.

Item 5: Ownership or security interests in asset pool and priority of payments

- 5.1 Disclose the ownership or security interest a holder of a short-term securitized product will have in the conduit's asset pools.
- 5.2 If any other party other than the conduit has or is anticipated to have an ownership or security interest in one or more of the conduit's asset pools, briefly describe the following:
 - (a) the party's role in the conduit's structure or operations;
 - (b) the nature of its interest in the asset pool;
 - (c) the priority of its claims in the event of the conduit's insolvency.

Item 6: Compliance or termination events

- 6.1 Briefly describe any events or circumstances that would, pursuant to the terms of the conduit's governing documents or material agreements in item 9, constitute an event of default or require the conduit to cease issuing short-term securitized products.
- 6.2 Briefly describe the types of methods the conduit will use to monitor the performance of or identify adverse changes to an asset pool, such as portfolio performance tests.
- 6.3 Briefly describe any other structural features that are intended to reduce the risk of loss for a holder of the series or class of short-term securitized products or to protect the holder from material deterioration in respect of either or both of the following:
 - (a) the credit quality or performance of assets in an asset pool;
 - (b) the ability of a party in Item 4 to perform its obligations to the conduit.

Item 7: Description of short-term securitized product and offering

Describe the short-term securitized products to be distributed and the distribution procedure and include the following information:

- (a) whether short-term securitized products will be issued in certificated (registered or bearer) form or book-entry form and the delivery procedures;
- (b) whether short-term securitized products will be sold on a discount basis or on an interest-bearing basis;

- (c) the denominations in which short-term securitized products may be issued;
- (d) the permitted maturity period for the short-term securitized products, and the ability of the conduit to extend maturity;
- (e) the ability of either an investor to redeem prior to maturity or of the conduit to repay prior to maturity;
- (f) the maximum aggregate principal amount of short-term securitized products permitted to be outstanding at any one time, or a statement that there is no limit on the maximum aggregate principal amount of short-term securitized products outstanding at any one time;
- (g) the key risks related to the conduit that could cause a delay in or non-payment of principal or interest on the short-term securitized product.

Item 8: Additional information about the conduit

- 8.1 Disclose if the conduit has issued and outstanding, or anticipates issuing, any securities other than the series or class of short-term securitized product to which the information memorandum relates. If the conduit has issued and outstanding, or anticipates issuing, any security other than the series or class of short-term securitized product to which the information memorandum relates, describe that other security, its credit rating, if applicable, and how it will rank, in the event of insolvency of the conduit, relative to the series or class of the conduit's short-term securitized product to which the information memorandum relates.
- 8.2 Disclose how a potential purchaser can obtain access to disclosure that the conduit is required to provide or make reasonably available in connection with a purchase of a short-term securitized product of the conduit.
- 8.3 Disclose how a holder of a short-term securitized product of the conduit can obtain access to the disclosure the conduit is required to provide or make reasonably available to a holder of a short-term securitized product of the conduit.

Item 9: Material agreements

- 9.1 If not disclosed elsewhere in the information memorandum, identify and summarize each agreement to which the conduit is a party and that is material to the conduit's business and operations, excluding agreements that are particular to an asset transaction or asset pool.
- 9.2 If material and not disclosed elsewhere in the information memorandum, describe the ability of a person to waive or modify the requirements, activities or standards that would apply under an agreement referred to in section 9.1.

Item 10: Date of information memorandum

State the date of the information memorandum.

Item 11: Representation that no misrepresentation

State the following in the information memorandum:

“This information memorandum does not contain a misrepresentation regarding the conduit, its structure, or operations.”.

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

Form 45-106F8
Monthly Disclosure Report for Short-term Securitized Products
Distributed under Section 2.35.1

Instructions:

- (1) Using language that is plain and easy to understand by the type of purchaser to whom the issuer’s short-term securitized products are offered, provide the information required by this form. No reference need be made to inapplicable items and, unless otherwise required by this form, negative answers may be omitted.
- (2) A monthly disclosure report may be used to disclose information about more than one series or class of short-term securitized product. If so, the disclosure required by this form must be provided for each series or class of short-term securitized product to which the monthly disclosure report relates.
- (3) This form requires disclosure of certain items, matters or other information referred to as “material”. Information is “material” if knowledge of it could reasonably be expected to affect a reasonable investor’s decision whether to buy, sell or hold a short-term securitized product.
- (4) Include or incorporate by reference a glossary that defines all technical terms, and includes each of the following definitions:

“**seller**” means, in connection with an asset transaction, a person or group of affiliated persons that originates or acquires cash-flow generating assets and sells or otherwise transfers, either directly or indirectly, an ownership or security interest in such assets to a conduit, which assets form one or more asset pools of the conduit.

“**sponsor**” means a person or group of affiliated persons that organizes or initiates

the formation of a conduit;

Item 1: Summary of conduit operations and asset pools

Provide a summary of the conduit's operations and asset pools as at the last day of the month for which the monthly disclosure report applies that includes the following:

- (a) the total face value of securitized product outstanding;
- (b) the aggregate outstanding asset balance of the asset pools;
- (c) the number of asset pools in which the conduit has an ownership or security interest;
- (d) the number and dollar amount of new asset pools added during the month or other information that in conjunction with information in the report for the prior monthly period will permit an investor to easily calculate such amounts;
- (e) the number and dollar amount of asset pools repaid during the month or other information that in conjunction with information in the report for the prior monthly period will permit an investor to easily calculate such amounts;
- (f) each type of asset in the conduit's asset pools, expressed as a percentage of the total assets of the conduit's asset pools.

Item 2: Asset transaction information

Provide the following information regarding each of the conduit's asset pools in one or more tables or diagrams as at the last day of the month to which the monthly disclosure report applies:

- (a) the type of assets in the asset pool, including whether the assets are revolving or amortizing;
- (b) an identifier such as an asset pool, asset transaction or seller number;
- (c) the industry of the person or group of affiliated persons that originated the assets;
- (d) whether each seller or applicable performance guarantor has an investment grade rating;
- (e) the amount of any conduit commitment to acquire assets from a seller for the asset pool;

- (f) the balance outstanding on the asset pool;
- (g) if available, the number of assets or obligors in the asset pool.

Item 3: Asset transaction credit enhancement

Provide the following information regarding each of the conduit's asset transactions in one or more tables as at the last day of the month to which the monthly disclosure report applies:

- (a) the form of each credit enhancement;
- (b) the amount of credit enhancement expressed in either of the following forms:
 - (i) a dollar amount;
 - (ii) a percentage, including the basis of presentation.

Item 4: Asset transaction performance

Provide the following information regarding each of the conduit's asset transactions in one or more tables as at the last day of the month to which the monthly disclosure report applies:

- (a) the default or loss ratio for the month, including the basis of presentation;
- (b) information with respect to default experience both for the most recent period and over an extended period of time in the form of ratios or otherwise, provided on a consistent basis for that asset transaction in each monthly disclosure report;
- (c) defaults for the month relative to available credit enhancement.

Item 5: Compliance and termination events

Disclose the occurrence of any events or circumstances that the conduit would reasonably expect to have a significant adverse effect on the payment of principal or interest on the series or class of short-term securitized product or require the conduit to cease issuing short-term securitized products.

Item 6: 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 conduit..

Transitional provisions

14. (1) An information memorandum that is provided to or made reasonably available to a purchaser pursuant to paragraph 2.35.4(1)(a), as enacted by section 9 of this Instrument, need only be prepared in accordance with Form 45-106F7 Information Memorandum for Short-term Securitized Products Distributed under Section 2.35.1 for a distribution of a short term securitized product that takes place on or after November 5, 2015.

(2) A monthly disclosure report that is provided to or made reasonably available to a holder of a short-term securitized product pursuant to an undertaking or agreement in writing required by paragraph 2.35.4(1)(b), as enacted by section 9 of this Instrument, need not be prepared in accordance with Form 45-106F8 Monthly Disclosure Report for Short-term Securitized Products Distributed under Section 2.35.1 for an asset transaction that a conduit entered into on or before November 5, 2015.

15. This Instrument comes into force on May 5, 2015.

Annex B

Amendments to National Instrument 25-101 *Designated Rating Organizations*

- 1. *National Instrument 25-101 Designated Rating Organizations is amended by this Instrument.***
- 2. *Section 1 is amended,***
 - (a) in the definition of “related entity”, by striking out “securitized product” and substituting “structured finance product”, in both instances, and***
 - (b) by striking out the defined term “securitized product” and substituting “structured finance product”.***
- 3. *The following provisions of Appendix A are amended by striking out “securitized product” and substituting “structured finance product”:***
 - (a) section 2.9, in both instances;***
 - (b) section 2.19;***
 - (c) section 2.22, in both instances.***
- 4. *Appendix A is amended in section 4.5 by striking out “securitized product” and substituting “structured finance product” and by,***
 - (a) in paragraph (a), striking out “securitized product” and substituting “structured finance product”, in both instances, and***
 - (b) in paragraph (b), striking out “securitized products” and substituting “structured finance products”.***
- 5. *Appendix A is amended in sections 4.7 and 4.9 by striking out “securitized products” and substituting “structured finance products”.***
- 6. This Instrument comes into force on May 5, 2015.**

Annex C

Changes to Companion Policy 45-106 *Prospectus and Registration Exemptions*

1. *Companion Policy 45-106 Prospectus and Registration Exemptions is changed by this Instrument.*
2. *Companion Policy 45-106 Prospectus and Registration Exemptions is changed by adding the following section:*

4.6.1 Short-term securitized products

- (1) Types of short-term securitized products

Section 2.35.1 is a prospectus exemption for the distribution of short-term securitized products. Short-term securitized products distributed in Canada are generally asset-backed commercial paper.

- (2) Definition of “asset pool”

The term “cash-flow generating assets” in the definition of “asset pool” refers to the bonds, mortgages, leases, loans, receivables, or royalties in which a conduit has a direct or indirect ownership or security interest. It does not refer to a security or other instrument through which a conduit obtains an indirect ownership or security interest in underlying cash-flow generating assets. For example, a conduit may enter into an asset transaction whereby it purchases a note from a trust that owns a pool of mortgages, thereby acquiring an indirect ownership or security interest in that pool of mortgages. In this scenario, the “cash-flow generating assets” are the mortgages, not the note.

- (3) Interaction of conditions with credit ratings

In order for the short-term securitized products prospectus exemption to be available, the short-term securitized product must satisfy certain conditions relating to credit ratings as set out in subparagraphs 2.35.2(a)(i) and (ii). The short-term securitized product and issuing conduit must also satisfy other conditions regarding liquidity support, series or class seniority and asset pool composition as set out in subparagraphs 2.35.2(a)(iii) and (iv) and paragraphs 2.35.2(b) and (c).

Short-term securitized products that satisfy the conditions in the prospectus exemption relating to liquidity support, series or class seniority and asset pool composition may not necessarily satisfy the credit-rating conditions; particularly the requirement in subparagraph 2.35.2(a)(i) that one of the two credit ratings must be at the highest rating category. Designated rating organizations each have their own rating methodologies and may require features that go beyond those specified in the prospectus exemption in order for a short-term securitized product to obtain a credit rating in the highest category.

(4) Liquidity provider

Clause 2.35.2(a)(iv)(B) requires a liquidity provider to be a deposit-taking institution regulated or approved to carry on business in Canada by the Office of the Superintendent of Financial Institutions (OSFI) or a Canadian federal or provincial government department or regulatory authority. This provision allows a foreign bank to be a liquidity provider if it is a Schedule II or Schedule III bank that is regulated by OSFI or approved by OSFI to carry on business in Canada.

(5) Exceptions relating to liquidity agreements

The intention of subsection 2.35.3(2) is to permit a liquidity agreement to provide that a liquidity provider need not advance funds in respect of assets that have defaulted and that are not covered by any applicable credit enhancement. For purposes of paragraph 2.35.3(2)(a), we expect that the aggregate value of the non-defaulted assets would be the book value, unless some other method of determining the value is specified by the provisions of the applicable liquidity agreement, e.g. discounted value or market value.

(6) Disclosure – meaning of “make reasonably available”

Section 2.35.4 requires that each information memorandum and reports on Form 45-106F7 and Form 45-106F8 be made reasonably available both to securities regulators and purchasers of a short-term securitized product.

This requirement could generally be satisfied by a conduit posting the document on a website maintained by it or on its behalf. If a password is used to limit access to the website, we would expect that the password would be promptly provided upon application. We generally would not object if a prospective purchaser, before being provided access to a website on which the documents are posted, would have to agree to keep the information on the website confidential or that it would not provide others with access to the website or the documents available on it..

3. These changes become effective on May 5, 2015.

Annex D
Summary of Comments

List of Commenters

BMO Capital Markets
 The Canadian Advocacy Council for Canadian CFA Institute Societies
 Canadian Foundation for Advancement of Investor Rights
 CIBC
 Canadian Tire Corporation, Limited
 DBRS
 First National LP
 Investment Industry Association of Canada
 Moody's Investors Service
 RBC Capital Markets
 Scotia Capital Inc.
 Stikeman Elliott
 Structured Finance Industry Group
 TD Securities

A. GENERAL COMMENTS ON THE USE OF CREDIT RATINGS

| Issue | Comment | Response |
|---|---|--|
| Continued Use of Credit Ratings as a Condition in the Proposals | <p>Two commenters raised similar concerns with credit ratings being the primary conditions for the exemptions. They were concerned that having credit ratings in legislation lends an air of legitimacy to credit raters' opinions and could mislead investors into thinking that a security with those ratings is an appropriate investment.</p> <p>One commenter thought that the use of credit ratings in the proposals is inconsistent with the objective of reducing mechanistic use of credit ratings in regulation. It recommended that the CSA eliminate rating-based eligibility criteria in line with the Financial</p> | <p>We have considered the use of credit ratings in the Short-term Debt Prospectus Exemption and the Short-term Securitized Products Prospectus Exemption and determined that they serve an appropriate policy purpose.</p> <p>In the case of the Short-term Debt Prospectus Exemption, we continue to take the view that that it is appropriate to use the Rating Threshold Condition and the Modified Split Rating Condition to establish</p> |

| Issue | Comment | Response |
|-------|--|---|
| | <p>Stability Board’s (FSB) <i>Principles to Reduce Reliance on Credit Ratings</i>. It raised concerns that:</p> <ul style="list-style-type: none"> • the credit rating requirements and the credit ratings provided thereunder could create the inappropriate impression that they act as a substitute for transparency; • the widespread incorporation of credit ratings into regulation could give rise to the commoditization of credit ratings; and • credit ratings are current opinions of relative credit risk and do not measure other risk, and should not be used as a proxy for liquidity risk, price volatility or marketability. <p>One commenter said use of third party credit ratings strikes the right balance between appropriate investor protection and market efficiency functions, and that at this time, credit ratings are the best readily available metric for determining credit quality standards for CP.</p> <p>One commenter acknowledged the formal regulatory framework for credit rating agencies in Canada that is also recognized internationally, and believed it is not inappropriate for ratings to continue to serve as a condition for the relevant exemptions. It did not think such use is counter to the G20 and FSB’s commitment to reduce the mechanistic reliance on ratings. At present, there are no viable tested alternatives to credit ratings, and they are but one risk management tool available to investors in their decision-making.</p> <p>One commenter was concerned about legislating reliance on DROs and thought investors might be better served by increased disclosure about liquidity arrangements.</p> <p>In respect of additional factors that could reduce reliance on credit ratings, one commenter supported initiatives to potentially impose fiduciary duty on registrants. Two commenters strongly supported</p> | <p>parameters for the credit quality of short-term debt such as CP that can be issued on a prospectus-exempt basis. We have not identified specific alternatives or additional conditions to credit ratings that would materially enhance investor protection or financial stability in the CP market. Nor have we identified undue or inappropriate reliance on credit ratings in the CP market.</p> <p>In the case of the Short-term Securitized Products Prospectus Exemption, there are a number of conditions regarding liquidity support, restrictions on underlying assets and disclosure in addition to credit ratings requirements.</p> <p>We also note that NI 25-101 contains a framework for regulation of designated rating organizations (DROs) that wish to have their credit ratings referred to within securities legislation. All the DROs whose ratings are included in the exemption are designated and regulated in Canada under this framework.</p> <p>Whether a statutory best interest standard should be imposed on registrants is beyond the scope of this project. We note that in October 2012, the CSA published Consultation Paper 33-403 - <i>The Standard of Conduct for Advisers and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients</i>. This is a separate initiative of the CSA.</p> |

| Issue | Comment | Response |
|-------|--|----------|
| | imposing a statutory best interest standard on registered dealers providing advice to clients. | |

B. COMMENTS ON THE SHORT-TERM SECURITIZED PRODUCTS PROSPECTUS EXEMPTION

1. General Comments

| Issue | Comment | Response |
|---|--|---|
| Perceived Risk of Short-term Securitized Products | <p>Several commenters expressed concerns that the proposed amendments single out ABCP as being riskier than CP. They stated that this unwarranted because credit enhancements make the potential for actual loss remote and liquidity is guaranteed by an OFSI-regulated bank. One commenter was concerned that the higher credit ratings in the exemption could unfairly stigmatize ABCP relative to other forms of short-term debt.</p> <p>One commenter expressed concerns that certain requirements (including ratings, liquidity and disclosures) in the exemption would be inconsistent with market practice and international developments.</p> | <p>We have modified the credit rating requirements so that only one of the two credit ratings for ABCP must be at the highest short-term rating category of a DRO. The second required credit rating has been revised to be in line with the ratings used for the Short-term Debt Prospectus Exemption. The requirements are also in line with current Canadian market practices. They do not preclude further improvements in market practice or alignment with international developments.</p> <p>We also have added guidance in CP 45-106 that short-term securitized products that satisfy the conditions in the exemption relating to liquidity support, series or class seniority and asset pool composition may not necessarily satisfy the credit rating conditions; particularly the requirement that one of the two credit ratings be at the highest rating category.</p> |
| Risk Retention | One commenter recommended that the CSA adopt Recommendation 1 of the International Organization of Securities Commissions’ (IOSCO) final report on <i>Global Developments in Securitisation Regulation</i> (the IOSCO Risk | The IOSCO Risk Retention Report did not mandate any particular approach to credit risk retention but recommended that all jurisdictions evaluate and formulate their approach to aligning incentives of |

| Issue | Comment | Response |
|-------------------------------|--|---|
| | <p>Retention Report) and mandate risk retention for securitized products because the measures that originators have in place to retain risk are not mandatory (e.g. over-collateralization and excess spread allocation to investors).</p> | <p>originators and investors, including through mandating credit risk retention where appropriate.</p> <p>We have completed our evaluation of incentive alignment. As noted in the January 23, 2014 Notice of Publication and Request for Comment, the Canadian securitization market is by-and-large free from the types of incentive misalignment that raised major investor protection and systemic risk concerns during the financial crisis of 2007-2008. We are enhancing transparency with respect to incentive alignment by requiring disclosure in the Information Memorandum of a conduit’s approach to interest alignment and credit risk retention. Other requirements relating to liquidity support, permitted assets and disclosure address the features of non-bank ABCP that reflected misaligned incentives and caused problems during the financial crisis.</p> |
| Innovation | <p>One commenter was concerned about the risk associated with prescriptive regulations which would not allow for innovation or structural differences.</p> <p>One commenter recommended that a regulatory regime that anticipates future market developments should be put in place.</p> <p>One commenter expressed concern that innovation would be limited by making the exemption unavailable for transactions involving <i>pari passu</i> or subordinate short-term securitized products and asset classes not listed in the proposed exemption.</p> | <p>We are not prohibiting the issuance of innovative or differently-structured short-term securitized products. However, we think that certain minimum conditions must be met in order for short-term securitized products to be issued in the same manner as CP is issued under the Short-term Debt Prospectus Exemption.</p> <p>We have made the exemption available for conduits to distribute more than one series or class of short-term securitized products if the series or classes are <i>pari passu</i> in respect of any underlying asset pool.</p> |
| Regulation Based on ABCP Type | <p>One commenter cautioned that the CSA must be careful not to regulate based on classifications of the type of ABCP (e.g. bank-</p> | <p>The exemption does not distinguish between bank or non-bank sponsored ABCP or short-term securitized</p> |

| Issue | Comment | Response |
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| | sponsored or non-bank-sponsored) as a clear distinction may not be able to be made. | products. It sets out minimum conditions for credit ratings, liquidity support, permitted assets and disclosure. |
| Implementation/ Grandfathering | One commenter recommended that amendments only be applied prospectively so existing transactions would not be penalized. | We have added transitional provisions to address this concern. |
| Market has Self-Corrected | One commenter noted that many of the issues with the ABCP market have been self-corrected. For example, currently there are no non-bank sponsored conduits and “market disruption liquidity” has been replaced with global-style liquidity support. | We recognize that a number of improved practices have been adopted in the market. The requirements in the exemption are intended to ensure that those improved practices are consistently maintained. |
| Limited Retail Investor Participation/Suggestion to Create a New Prospectus Exemption for Sophisticated Investors | <p>Two commenters thought that the proposed amendments are largely targeted towards protecting retail investors whose participation in the ABCP market is limited.</p> <p>Two commenters proposed the creation of an alternative exemption for sophisticated investors. They suggested that the following conditions be met under such an exemption:</p> <ul style="list-style-type: none"> (i) a minimum cash purchase price of \$150,000 by the purchaser (who is not an individual); (ii) the securitized product has two prescribed minimum short-term ratings; and (iii) the securitized product is backed by a global style liquidity provider, having at least two prescribed minimum short-term ratings. <p>They recommended that only the conduit sponsor be required to file quarterly exempt distribution reports, and reports of each distribution of ABCP under such an exemption not be required. They also proposed no resale restrictions be applied to ABCP distributed under this exemption.</p> | <p>We recognize that the ABCP market is predominantly an institutional investor market. However, one of the objectives of the exemption is to address systemic risk concerns, which are present (and may be even greater) in predominantly institutional markets.</p> <p>For example, one of the key elements of the new exemption is the disclosure requirement. An important rationale for mandating disclosure is to increase market transparency, which in turn can mitigate systemic risk.</p> <p>At this time, we do not propose to introduce other prospectus exemptions that may be used to distribute short-term securitized products.</p> |

2. Specific Questions in the CSA Notice

| Question | Comment | Response |
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| <p>1.(a) Should certain short-term securitized products not be allowed to be sold on a prospectus- exempt basis?</p> | <p>Three commenters recommended that all types of short-term securitized products be permitted to be sold under other prospectus exemptions (such as the accredited investor and minimum investment amount exemptions).</p> | <p>The accredited investor and minimum amount prospectus exemptions will continue to be available for short-term securitized products.</p> |
| <p>1.(b) Is it likely that short-term securitized products would be sold under other prospectus exemptions?</p> | <p>Three commenters believed that it is unlikely that short-term securitized products would be sold under other prospectus exemptions because of the administrative burden of filing exempt distribution reports and associated fees. They recommended modifying the fee structure and reporting requirements of these other prospectus exemptions to accommodate the short-term nature of the product.</p> <p>One commenter expressed concern that because certain transactions currently funded by ABCP conduits would not be able to use the Short-term Securitized Products Prospectus Exemption due to the list of permitted assets, conduits would have to use different prospectus exemptions, increasing the administrative burden for conduits and the cost of funding for originators.</p> | <p>We have made a number of changes to the Short-term Securitized Products Prospectus Exemption to better align the exemption with current market practices. We therefore do not think it is necessary at this time to modify the fee structure and reporting requirements of other prospectus exemptions to facilitate the issuance of short-term securitized products under other prospectus exemptions.</p> <p>We have modified the list of permitted assets to include any real or personal property securing or forming part of an asset pool to address situations where assets go into default. We believe the list of permitted assets and the above modification address current transactions funded by ABCP conduits.</p> |
| <p>1.(c) Are there other types of relevant products that would not be covered by the definition of “securitized product”?</p> | <p>Three commenters think the definition of “securitized product” is broad enough to capture all structured products in the current marketplace. One commenter, however, recommends the inclusion of a basket provision to allow for exemptive relief of novel products that may be introduced in the future.</p> | <p>We have not made any significant changes to the definition of “securitized product”. Securities legislation contains provisions that allow for issuers to apply for discretionary exemptive relief.</p> |

| Question | Comment | Response |
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| <p>2. Are the credit rating requirements for short-term securitized products appropriate?</p> | <p>There was broad support for the introduction of the requirement of two credit ratings. However, many commenters felt the prescribed minimum ratings were prohibitive because they are set at the highest short-term rating of each rating agency. One commenter supported the two-rating requirement, but questioned whether there is a need to prescribe such a standard as market participants can better address this.</p> <p>Although the two-rating requirement is part of the eligibility criteria for the Bank of Canada’s Standing Liquidity Facility, one commenter suggested that this criteria was originally developed under unique circumstances to address a particular issue, and furthermore could be amended at any time (unlike a condition to a prospectus exemption).</p> <p>Several commenters recommended that the credit rating requirements for ABCP be consistent with those applicable to CP or with the minimum ratings of liquidity providers as the methodology used by many DROs does not allow ABCP to have a higher credit rating than that of the liquidity provider.</p> <p>One commenter noted that ABCP investors are in a much better position to limit their risk exposure to the operating entities that are related to the conduit because, as a SPE, each conduit has a prescribed purpose, is authorised to carry on a very limited scope of activities and is bankruptcy remote from its sponsor and originators. Moreover, there is a true sale of assets to the conduit in the case of ABCP, which puts the conduits and investors in a better position from an enforcement perspective than if they merely had an ownership interest in collateral.</p> <p>One commenter noted that many of the complexities in ABCP structures stem from mechanisms put in place to reduce risk, while concerns about liquidity mismatch will be addressed by the</p> | <p>The proposal for two credit ratings has been maintained. However, we now require that only one of the two credit ratings be at the highest short-term rating of a DRO. Please also refer to our response to the issue of using credit ratings as a condition of the Short-term Debt Prospectus Exemption and Short-term Securitized Products Prospectus Exemption.</p> <p>We agree that some of the complexities associated with securitization structures stem from mechanisms put in place to reduce risk. However, some of the complex features of pre-financial crisis non-bank ABCP structures increased risk and were difficult to assess from a credit rating perspective. For that reason, it is appropriate to have a more stringent set of credit rating requirements in the Short-term Securitized Products Prospectus Exemption along with specific conditions relating to liquidity, permitted assets and disclosure.</p> |

| Question | Comment | Response |
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| | requirement for global-style liquidity. | |
| Other Comments on Rating Thresholds | <p>One commenter was concerned that the proposed credit rating thresholds for DBRS credit ratings were R-1(high), while other DROs had lower ratings. It suggested that the credit rating thresholds should be:</p> <ul style="list-style-type: none"> • DBRS Limited – R-1(low)(sf) • Standard & Poor’s Ratings Services (Canada) – A-1(Low)(sf) • Moody’s Canada Inc. – P-1(sf) • Fitch, Inc. – F1sf | The ratings of the various DROs do not exactly correspond or correlate. We have set the ratings at what we consider to be appropriate levels for ABCP to be issued under the Short-term Securitized Products Prospectus Exemption. |
| 3. Liquidity Support Requirements - General Comments | <p>One commenter thought that the granular and prescriptive nature of the proposed liquidity requirements would compromise the ability of DROs to maintain their criteria as they deem appropriate on a going-forward basis. It suggested that meaningful disclosure to investors, as opposed to prescriptive liquidity requirements, would better equip investors to carry out any due diligence they may deem necessary.</p> <p>One commenter generally thought the level of specificity in the liquidity support requirements was inappropriate and overly prescriptive, and the minimum rating requirements would ensure appropriate liquidity arrangements are in place.</p> | Global-style liquidity is the appropriate standard for liquidity support. However, issuers and investors should not assume that global-style liquidity will be sufficient for a DRO to rate short-term securitized products at the highest credit rating levels. Credit ratings are based on a DRO’s specific rating methodology. Depending on that methodology, global-style liquidity may not be sufficient to obtain the highest credit rating. Greater liquidity support or credit protection (e.g. program-wide credit enhancement) may be necessary. The Information Memorandum requires disclosure of the standard liquidity support arrangements the conduit has entered or anticipates entering into. |
| 3.(a) In addition to the credit rating requirements for liquidity providers, should there be | Two commenters thought that the credit rating requirements for liquidity providers provide adequate protection to investors (provided the liquidity provider is regulated by OFSI or provincially regulated). They also stated that a corresponding credit rating requirement for conduit sponsors is unnecessary. | We have maintained the credit rating requirement for the liquidity provider and have not added a credit rating requirement for a conduit sponsor. |

| Question | Comment | Response |
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| <p>similar requirements for sponsors?</p> <p>3.(b) How common is it for the sponsor to also be the liquidity provider?</p> | <p>Several commenters noted that the conduit sponsor is usually also the liquidity provider. Only one Canadian ABCP issuer was identified where the sponsor does not provide a liquidity line.</p> | |
| <p>3.(c) Do you agree with the two credit rating approach for the liquidity provider?</p> | <p>Three commenters supported this requirement.</p> <p>One commenter did not agree with legislating reliance on DROs and thought investors might be better served by increased disclosure about liquidity arrangements. It is redundant to have a minimum credit rating for both the ABCP and the liquidity provider because the credit rating for the liquidity provider is considered in rating ABCP. The commenter also noted that the requirement that <u>each</u> liquidity provider meet the proposed minimum credit ratings is problematic in the context of a syndicated liquidity line. It recommended that where a liquidity provider suffers, or is at risk of suffering, a credit rating downgrade below the prescribed minimum level, there should be a reasonable grace period to allow the liquidity commitment to be prefunded, assigned or restructured to comply with the Short-term Securitized Products Prospectus Exemption.</p> | <p>We have maintained the requirement for two credit ratings.</p> <p>The conditions are in line with current market practice. If further accommodations are required, an application for discretionary exemptive relief may be made to the securities regulatory authorities.</p> |
| <p>3.(d) Are the proposed minimum credit rating levels for the liquidity provider in 2.35.2(a)(iv)(C) of the proposed rules appropriate?</p> | <p>Two commenters believed that the proposed minimum long-term credit rating levels for liquidity providers are appropriate, while one commenter thought they were too stringent. Three commenters recommend the inclusion of short-term equivalents.</p> | <p>We have changed the type of ratings required from long-term ratings to short-term ratings.</p> |

| Question | Comment | Response |
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| <p>3.(e) Would requiring liquidity providers to be regulated by OFSI or provincially cause any issues?</p> | <p>Two commenters did not have any issues with liquidity providers being prudentially regulated by OFSI or provincial regulators and are unaware of any foreign banks, not regulated by OFSI, that act as liquidity providers to Canadian conduits.</p> <p>One commenter did not have any concerns, but thought that this requirement would limit the ability to restructure liquidity provisions during an extreme market condition where numerous Canadian banks' ratings are downgraded.</p> | <p>We have changed the conditions so that a deposit-taking institution can be a liquidity provider if it is regulated by or has been approved to carry on business in Canada by OSFI or a provincial regulator. The effect of this change is that a Schedule III bank can be a liquidity provider. We think that a foreign deposit-taking institution that OSFI or a provincial regulator regulates or has approved to carry on business should be allowed to be a liquidity provider, provided it satisfies all the other conditions relating to liquidity support.</p> |
| <p>3.(f) Is it appropriate to allow foreign banks (not regulated by OFSI) to act as liquidity providers? What if they are subject to Basel III?</p> | <p>Three commenters do not think foreign banks should be permitted to act as liquidity providers because they are not subject to the same oversight and regulatory regime. Even if foreign banks are subject to Basel III, there may be differences in how Basel III is applied by other regulators.</p> | <p>Please see above.</p> |
| <p>3.(g) Are the proposed circumstances when a liquidity provider is permitted not to advance funds appropriate?</p> | <p>Three commenters support the exceptions to the liquidity provider's obligation to advance funds in the case of bankruptcy of insolvency of the conduit. Two commenters note that certain conduits have liquidity arrangements which are transaction-specific.</p> | <p>We have revised the drafting to accommodate transaction-specific liquidity arrangements.</p> |
| <p>4. Is it appropriate to extend the Short-term Securitized Products Prospectus Exemption to short-term securitized</p> | <p>Two commenters agreed that the exemption should be available for short-term securitized products that are convertible or exchangeable into, or accompanied by a right to purchase, another short-term securitized product that would qualify for the exemption.</p> | <p>The exemption will continue to be available for short-term securitized products that are convertible or exchangeable into, or accompanied by a right to purchase, another qualifying short-term securitized product.</p> |

| Question | Comment | Response |
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| <p>products that are convertible or exchangeable into, or accompanied by a right to purchase, another qualifying short-term securitized product?</p> | | |
| <p>5. Are there assets in addition to those listed in 2.35.2(c) that the conduit should be allowed to hold? Are they currently in the Canadian ABCP market?</p> | <p>Several commenters expressed concern about prescribing a list of eligible assets and proposed alternatives such as a negative pledge not to fund “non-traditional assets”, a list of ineligible assets or the addition of a catch-all phrase at the end of the eligible asset list, which would permit funding of assets that are substantively similar to those enumerated (while still excluding non-traditional assets).</p> | <p>We have maintained a prescribed list of assets. The list has been modified to include any property securing or forming part of the asset pool. We believe the list captures all relevant traditional assets.</p> |
| <p>6. Do the proposed triggers for timely disclosure reports cover all relevant material events?</p> | <p>Several commenters had concerns that the triggers were overly broad.</p> <p>Requiring disclosure of changes in the information required in the most recent Monthly Disclosure Report would be overly burdensome, as transactions within a conduit program change almost on a daily basis. Disclosure should not be required where deal-level structural protections are triggered and investors get the full benefits of those structural protections.</p> <p>The commenters recommended requiring timely disclosure only when there is a “material change”, such as a liquidity event, a significant default or a change reasonably expected to impact these events.</p> | <p>We have modified the triggers for timely disclosure to be one of the following events:</p> <ul style="list-style-type: none"> • a downgrade in one or more of the conduit’s credit ratings; • a default on the payment obligations of the conduit; or • a change or event that the conduit would reasonably expect to have a significant adverse effect on such obligations |

| Question | Comment | Response |
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| <p>7. Should the Short-Term Securitized Products Prospectus Exemption and the new forms be in a stand-alone rule?</p> | <p>One commenter thought the new exemption should remain part of NI 45-106.</p> | <p>The exemption will be part of NI 45-106.</p> |
| <p>8. What information should be available to regulators to monitor market trends and the build-up of risk? And by what means and how frequently should it be reported?</p> | <p>Three commenters believe monthly rating agency reports and monthly investor reports should provide the CSA with sufficient information for monitoring purposes.</p> | <p>We thank the commenters for their responses.</p> |

3. Specific Conditions of the Exemption

| Section | Comment | Response |
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| <p>2.35.2(a)(ii) and 2.35.2(a)(iv)(D) – Reasonable Expectation of Results of Ratings Review</p> | <p>Three commenters recommended removal of requirements that the issuer determine whether it reasonably expects that an announced ratings review of the ABCP will result in a rating being withdrawn or downgraded below the threshold requirements or that an announced ratings review of a liquidity provider will result in a rating being withdrawn or downgraded below the threshold requirements. These requirements place an unfair onus on issuers and are excessively punitive.</p> | <p>We have revised the exemption to remove the requirement for a conduit to make this assessment.</p> |
| <p>2.35.2(b) – Unavailability of</p> | <p>Several commenters believed that so long as investors are provided with adequate disclosure (on seniority, among other</p> | <p>We continue to take the view that the exemption should only be available for the highest ranked series. We</p> |

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| <p>Exemption for <i>pari passu</i> or Subordinate Short-term Securitized Products</p> | <p>things), they should be permitted to make an informed decision on whether to invest in such products.</p> <p>One commenter gave as an example of where this restriction would be inappropriate a trust or SPE that issues different series of notes and the assets of each are firewalled under the indenture.</p> | <p>have made the exemption available for <i>pari passu</i> short-term securitized products if each series satisfies all other conditions of the exemption.</p> |
| <p>2.35.3 – Exceptions Relating to Liquidity Providers/Agreements</p> | <p>Two commenters sought clarification on how to determine the “aggregate value” of assets under 2.35.3(2). One commenter suggested modifying 2.35.3(2)(a) by adding the term “non-defaulted” so it reads “aggregate value of the <u>non-defaulted</u> assets in the asset pool”. It also questioned whether this level of detail was needed, in light of the protection provided by the rating requirements for ABCP and liquidity providers.</p> <p>One commenter recommended modifying the language of 2.35.3(2) to speak to obligations to fund that do not exceed the aggregate value of the particular assets that are the subject of the related liquidity arrangements, rather than the entire asset pool.</p> <p>One commenter suggested that 2.35.3 be deleted or simplified as the investor protection function that is targeted here will be achieved by the rating and liquidity requirements.</p> <p>One commenter believed that it was unnecessary to codify liquidity arrangements as rating agencies publish detailed criteria outlining the rating principles they apply to all issuers and trying summarize these requirements into a couple of paragraphs could result in unnecessarily restrictive rules that do not reflect current standards.</p> | <p>Our intention was that non-defaulted assets be excluded under 2.35.3(2). We have clarified the drafting in this respect.</p> <p>Please also see our response above regarding the interaction of the liquidity requirements with the rating methodologies of DROs.</p> |

4. Disclosure

(a) General

| Issue | Comment | Response |
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| <p>Disclosure in the Information Memorandum vs. the Monthly Disclosure Report</p> | <p>Several commenters were concerned that many of the requirements in the Information Memorandum were too transaction-specific and would require issuers to update the disclosure on an on-going basis. They believed that the Information Memorandum should be a relatively static document and focus on program-level disclosure, whereas the Monthly Disclosure Report should capture any material updates and provide transaction-specific disclosure, without repeating disclosure that would already be in the Information Memorandum.</p> | <p>We have made several revisions to the Information Memorandum as follows:</p> <ul style="list-style-type: none"> • focused the disclosure so that it is in respect of the conduit’s structure and operations; • moved disclosure about specific asset transactions and asset pools to the Monthly Disclosure Report; • clarified certain requirements; and • eliminated duplicative disclosure. <p>The requirement to disclose information regarding interest alignment and risk retention has been moved from the Monthly Disclosure Report to the Information Memorandum.</p> |
| <p>Identification of Parties</p> | <p>Several commenters noted that to the extent the proposed disclosure required identification of principal obligors, originators, sellers and servicers, these would raise confidentiality and competitive concerns while being of limited value to investors.</p> <ul style="list-style-type: none"> • One commenter noted that financial institutions that are reporting issuers are not required to disclose the names of borrowers. • One commenter noted that to date investors have not been requiring such disclosure as a pre-condition to purchasing ABCP and it is not required in other markets. • One commenter recommended that only the identities of parties relevant to the structure of the conduit be required <p>One commenter believed that the identity of originators should be</p> | <p>We have modified the disclosure to focus on disclosure of parties responsible for a significant role in the conduit’s structure and operations. We have limited the disclosure requirements in respect of the seller to its industry and whether or not the seller’s credit rating is investment grade.</p> <p>Consistent with Recommendation 5 of the IOSCO Risk Retention Report, we have:</p> <ul style="list-style-type: none"> • considered how issuers who distribute short-term securitized products under the exemption should be required to provide investors with information necessary to make an informed investment decision; and • formulated an approach for point of sale and ongoing disclosure that is consistent with the |

| Issue | Comment | Response |
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| | <p>fully disclosed and that the disclosure in Recommendation 5 of the IOSCO Risk Retention Report should be required so that investors have the necessary information to make an informed investment decision.</p> | <p>disclosure framework under securities legislation.</p> |
| <p>Making Disclosure Available</p> | <p>A commenter sought clarification on the meaning of “make reasonably available” in connection with required disclosure.</p> <p>Several commenters suggested that the Monthly Disclosure Report should be made reasonably available 30 days rather than 45-60 days from the end of the month to which it relates. This longer time is necessary for the conduit to receive the information needed to prepare the form.</p> <p>Two commenters recommended that the time frame for providing timely disclosure be two business days, subject to certain modifications to the required disclosure. One commenter suggested making the time frame consistent with the timing of a material change report.</p> | <p>Posting materials to the conduit’s website would be sufficient to meet this requirement.</p> <p>We have modified this condition so that the Monthly Disclosure Report must be made reasonably available within 50 days.</p> <p>The time frame for timely disclosure has been revised to two business days.</p> |
| <p>Negative Answers or Inapplicable items</p> | <p>Two commenters recommended that an instruction be added clarifying that negative answers to prescribed items or inapplicable items need not be included in the Information Memorandum or the Monthly Disclosure Report.</p> | <p>We have revised the instructions in the Information Memorandum and the Monthly Disclosure Report to clarify that negative answers are not required unless specifically stated otherwise.</p> |
| <p>Amount and Cost of Disclosure</p> | <p>Two commenters were generally concerned that too much disclosure is required. Two other commenters were concerned with the increased administrative burden and costs that will be borne by conduit sponsors in complying with the proposed disclosure requirements.</p> | <p>We have revised the disclosure requirements to address the various comments. We think the revised disclosure requirements achieve an appropriate balance between the administrative burden and costs borne by conduits and the need for information to support investor protection and market transparency.</p> |

(b) Information Memorandum

| Item | Comment | Response |
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| <p>1.2 – Reporting of Originator and Principal Obligor Past Defaults</p> | <p>Three commenters recommended this item be deleted. Reasons given were:</p> <ul style="list-style-type: none"> • it is too broad and is not relevant; • it places an inappropriate duty on conduits as there is no practical way for conduits to ensure compliance of originators and principal obligors; and • past default reporting by the sponsor and liquidity provider based solely upon their identity may be misleading, and such reporting should only be required where the default was caused by their actions or inactions. | <p>We have eliminated this requirement.</p> |
| <p>1.5 – Performance Inspections or Verifications</p> | <p>One commenter recommended this item be clarified to specify that it requires a general description of the issuer/servicer.</p> | <p>We have made this clarification.</p> |
| <p>3.1 – Material Investment Criteria and Underwriting Guidelines</p> | <p>Several commenters recommended more general disclosure and noted that there are generally no concentration limits at the conduit level.</p> | <p>We have changed the requirement to make it more general in nature.</p> |
| <p>3.3 – Asset Acquisition Methods and Nature of Property Interests</p> | <p>One commenter did not believe this item is necessary given the required disclosure in item 3.1</p> | <p>This item has been revised to more clearly delineate the disclosure requirements for eligible assets and asset transactions.</p> |
| <p>3.5 – Exposure to Credit Derivatives or Highly Structured or Leveraged Credit Products</p> | <p>One commenter recommended that the language used by the Bank of Canada in its eligible collateral guidelines for its Standing Liquidity Facility be adopted.</p> <p>One commenter was concerned that standard hedging arrangements could fall within the meaning of “credit derivatives” and it would not be appropriate to present them in</p> | <p>This requirement has been revised to only require a brief description of how derivatives will be used for hedging. Bold text is not required.</p> |

| Item | Comment | Response |
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| | <p>bold text. It recommended “(other than standard interest rate and currency hedges)” be added after “credit derivatives” in this item.</p> | |
| <p>5.1 – Property Interest of Holders of Short-term Securitized Products.</p> | <p>One commenter requested clarification on whether “risk factor” disclosure (similar to a prospectus) is necessary.</p> | <p>That type of risk factor disclosure is not required for this item.</p> |
| <p>5.3, 5.4 and 5.5 – Priority of Claims</p> | <p>Two commenters recommended items 5.4 and 5.5 be removed because the disclosure required thereunder is captured in item 5.3.</p> | <p>We have revised this item and removed the text in items 5.4 and 5.5.</p> |
| <p>6 – Compliance or Termination Events</p> | <p>One commenter suggested item 6.1 be revised to focus on events that will impact investors. Three commenters recommended issuers only be required to provide a general description rather than transaction-specific details.</p> | <p>We have revised item 6.1 to more specifically address what would constitute an event of default or require the conduit to stop issuing short-term securitized products. Items 6.2 and 6.3 have been revised to clarify that only general descriptions are required.</p> |
| <p>7 – Description of Product and Offering</p> | <p>One commenter believed the disclosure of denominations in which short-term securitized products certificates will be issued under item 7(d) is unnecessary and should be removed. One commenter sought to clarify that disclosing minimum denominations and integral multiples (as it currently does) will be sufficient to meet the disclosure obligations in item 7(d).</p> <p>One commenter recommended revising item 7(g) to contemplate an uncapped maximum amount of outstanding short-term securitized products by adding “or a statement that the maximum aggregate principal amount of short-term securitized products to be outstanding at any one time is unlimited.”</p> | <p>Disclosure of minimum denominations and integral multiples would be sufficient for this requirement.</p> <p>We have incorporated the suggested drafting.</p> |
| <p>8 – Additional Information on</p> | <p>One commenter thought disclosure of whether the use of financial leverage is anticipated under item 8.1 is unnecessary.</p> | <p>Item 8.1 has been deleted.</p> |

| Item | Comment | Response |
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| Conduit | <p>One commenter sought clarification on the meaning of “financial leverage” in item 3.5, particularly because it could be interpreted to include CP.</p> <p>One commenter sought clarification on whether disclosure of the issuance of, or anticipated issuance of, other securities in item 8.2 included other firewalled series of securities such as medium-term notes and subordinated ABCP.</p> | <p>Disclosure required by this item (now item 8.1) includes disclosure of such securities.</p> |
| 9 – Material Agreements | <p>Three commenters thought that the disclosure required under this item would result in disclosure of too many agreements (many of which would be of little or no value to investors) because the definition of “significant parties” is too broad. Further, this requirement should be limited to program-level disclosure of material program agreements for the conduit. One commenter also recommended revising this item to require only disclosure of the principal ABCP conduit agreements (e.g. declaration of trust, financial services agreement, trust indenture, liquidity agreement and agency/distribution agreement).</p> | <p>We have revised the requirement to only require agreements material to the conduit’s structure and operations to be disclosed. For example, the following agreements would have to be disclosed:</p> <ul style="list-style-type: none"> • declaration of trust; • financial services agreements; • trust indenture; • liquidity agreements; and • agency/distribution agreements. |

(c) Monthly Disclosure Report

| Item | Comment | Response |
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| 1.2 – Structural Diagram | <p>One commenter suggested that no updates to the Information Memorandum disclosure should be made in the Monthly Disclosure Report unless there is a material change to the structure of the conduit.</p> | <p>The Monthly Disclosure Report has been revised to require disclosure only about asset transactions and asset pools, rather than the conduit’s structure and operations as a whole.</p> |
| 2 – Program Information | <p>Two commenters recommended that item 2(a) be revised to remove the requirement that interest payable at maturity be disclosed. One commenter noted that such disclosure would be impractical because the interest payable at maturity changes daily, resulting in continual updating, and a monthly snapshot</p> | <p>This item has been revised to require only the total face value of the securitized product outstanding to be disclosed.</p> |

| Item | Comment | Response |
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| | <p>would not be useful to investors and could be misleading. Another commenter noted that disclosure of the face amount and interest payable should also not be required under item 2(a), as it is the total amount of short-term securitized products outstanding that is relevant to investors.</p> <p>One commenter proposed that item 2(b)(ii) only require disclosure of the amounts or percentages of liquidity available, rather than both.</p> <p>Three commenters recommended that the requirement to disclose average maturity in days in item 2(d) be deleted because it can change on a daily basis and is not pertinent to investors.</p> | <p>Disclosure of standard liquidity arrangements is now found in the Information Memorandum.</p> <p>We have deleted this requirement.</p> |
| <p>4 – Asset Pool</p> | <p>One commenter recommended that item 4.2(c), which requires disclosure of the amount of assets obtained from each issuer, be removed because the information can otherwise be calculated and it is unnecessary for issuers to summarize the calculations. One commenter suggested that this item be revised to also allow for disclosure in tabular form.</p> | <p>This requirement has been revised.</p> |
| <p>5 – Second-Level Assets</p> | <p>Two commenters recommended removal of this requirement because such information would be disclosed in item 4.</p> | <p>We have removed this requirement.</p> |
| <p>6 – Asset Pool Changes</p> | <p>Three commenters did not believe disclosure of new asset interests required in item 6(a) is necessary because any new assets would be reported under item 8 and a comparison against the previous month’s Monthly Disclosure Report can be done. They also think disclosure on assets that are no longer part of the pool, as required by item 6(b), is irrelevant to investors.</p> <p>One commenter recommended not requiring disclosure of the reasons certain assets are added or removed from the asset pool in item 6(c) because this information is not relevant to investors.</p> | <p>These requirements have been removed.</p> |

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| | <p>One commenter was concerned such disclosure could reveal business-sensitive or confidential information with respect to originators, sellers and principal obligors.</p> <p>Two commenters also recommended item 6(d) be deleted because changes in commitment amounts can be obtained by doing a comparison against the previous month's Monthly Disclosure Report and commitment levels can fluctuate on a daily basis.</p> | |
| <p>7 – Program Compliance and Termination Events</p> | <p>Two commenters suggested that the required disclosure of events in items 7(a)(ii) and (iv) be limited to circumstances where it could be reasonably expected to adversely impact the repayment of the ABCP. One commenter requested clarification regarding whether it would be sufficient to report the Required Credit Enhancement and Available Credit Enhancement under item 8 to satisfy the requirement under item 7(c).</p> <p>One commenter noted that disclosure of program-wide credit enhancements under item 7(a)(iii) would be important to investors.</p> | <p>We have replaced the detailed disclosure required under of this item with a more general disclosure requirement (in item 5) that requires any events or circumstances that the conduit would reasonably expect to have a significant adverse effect on distributions of, or require the conduit to cease issuing, short-term-securitized products.</p> <p>Some of the disclosure requirements under this item (e.g. items 7(e) and (g)) have been moved to the Information Memorandum.</p> <p>Disclosure of program-wide credit enhancements has been maintained but is now required to be disclosed in the Information Memorandum.</p> |
| <p>8.2 – Securitization Transaction Summary</p> | <p>One commenter recommended amending item 8.2 to allow for disclosure by diagram or table.</p> <p>Two commenters suggested that item 8.2(b)(i), which requires disclosure of the average remaining term of assets (if material), be removed because it may not be possible for conduit</p> | <p>The disclosure required in item 8.2 (now item 2) may be made by diagram or table, except for asset transaction performance (now item 4) which must be provided in tabular format.</p> <p>The disclosure requirement in item 8.2(b)(i) has been removed.</p> |

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| | <p>administrators to disclose this information.</p> <p>Two commenters requested that item 8.2(d) (the number of obligors) be removed because this information changes frequently and may not be meaningful to investors.</p> <p>Two commenters questioned the relevance of disclosing the credit rating of the originators under item 8.2(f) and were concerned that such disclosure could reveal their identities.</p> <p>One commenter recommended simplifying disclosure of the performance of the assets in item 8.2(g) because different asset classes can have different performance metrics.</p> | <p>The number of assets or obligors in the asset pool is only required to be disclosed if this information is available.</p> <p>The disclosure requirement in item 8.2(f) (now item 2.1(d)) has been revised to indicate whether or not the credit rating is investment grade.</p> <p>This disclosure has been streamlined and simplified.</p> |
| <p>8.3 – Securitization Transaction Credit Enhancement Provider</p> | <p>One commenter requested that the disclosure in item 8.3 be limited to the credit enhancement available to the transaction, as it is not clear what entities are to be captured under “transaction credit enhancement provider”.</p> <p>One commenter thought that unless there is a material change to conduit-level credit enhancements, there should be no such disclosure in the Monthly Disclosure Report. The nature and amount of additional transaction-specific credit enhancement is determined on a deal-by-deal basis. The commenter recommended requiring deal-specific credit enhancements to be reported on a percentage basis in item 8.3(a). The commenter believed item 8.3(b) is misleading because any transaction-level credit enhancement would not be available generally to the entire class of short-term securitized products, so it should be revised to refer only to conduit structure credit enhancement.</p> <p>Three commenters questioned the relevance of the disclosure required in items 8.3(c) and 8.3(d) and suggested that such disclosure only be provided on a program-wide basis in the Information Memorandum.</p> | <p>We have revised the disclosure to clarify our intention to only require disclosure of credit enhancement available at the transaction level. We have also clarified that our expectation is that this would be disclosed as either a dollar amount or a percentage.</p> <p>These disclosure requirements have been modified and moved to the Information Memorandum.</p> |

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| <p>8.4 – Financial Leverage</p> | <p>One commenter recommended item 8.4 be removed as it would only relate to structured finance or structured products, which are not permitted to be included in the asset pool. Similarly, one commenter sought clarity on what is meant by “financial leverage” and was concerned that it could be interpreted to include CP.</p> | <p>These disclosure requirements have been modified and moved to the Information Memorandum.</p> |
| <p>11 – Conflicts of Interest</p> | <p>One commenter stated that such disclosure is not required in a prospectus with respect to asset-backed securities, and there are no special considerations in this context that would warrant it.</p> | <p>These disclosure requirements have been deleted.</p> |

c. COMMENTS ON THE SHORT-TERM DEBT PROSPECTUS EXEMPTION

1. Specific Questions in the CSA Notice

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| <p>1. We are proposing a Modified Split Rating Condition as part of the Proposed Short-term Debt Amendments in order to maintain minimum credit quality standards for CP that is issued through the Short-term Debt Prospectus Exemption. Do</p> | <p>Two commenters did not agree that the Modified Split Rating Condition is necessary to maintain minimum credit quality and suggest a prescribed credit rating from one DRO should be sufficient.</p> <p>One commenter thought that the pool of DROs is small and consists of well-known firms with global track records, which are subject to CSA regulation. This commenter added that if the CSA thinks a minimum floor is required, then the ratings proposed in the Modified Split Rating Condition are inappropriate and could cause investor confusion. This commenter noted that as proposed, the Modified Split Rating Condition would differ from equivalent ratings thresholds established by other regulators, such as OSFI. This commenter therefore thought that the appropriate credit rating for DBRS in</p> | <p>We continue to think minimum credit quality standards for CP are important and have maintained the Modified Split Rating Condition in the revised amendments. We think the Modified Split Rating Condition addresses the regulatory disincentive to obtain additional ratings while providing consistent treatment of CP issuers with similar credit risk and ensuring minimum credit quality standards for CP issued without a prospectus.</p> <p>With respect to appropriate thresholds in the Modified Split Rating Condition, we have clarified the minimum Standard & Poor’s credit rating in the Modified Split Rating Condition on both the Canada national scale and the global scale.</p> <p>At this time, we are not revising the DBRS rating in the</p> |

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| <p>you agree that some type of Split Rating Condition is necessary to achieve this objective, and if so, is the Modified Split Rating Condition we propose appropriate?</p> | <p>the Modified Split Rating Condition should be R-2(high).</p> <p>Another commenter thought the ratings required in existing CP exemptive relief should satisfy the objective of maintaining minimum credit quality standards for CP issued through the short-term debt exemption. This commenter thought the Modified Split Rating Condition would create a regulatory disincentive for CP issuers to obtain additional credit ratings, in case any additional credit rating would not meet the minimum standards. This commenter also did not see why issuers who currently have exemptive relief, but would not meet the requirements in the proposed credit rating conditions, should be forced to apply for relief.</p> <p>One commenter supported the proposed criteria and noted that the proposed Rating Threshold Condition and Modified Split Rating Condition will capture all of the currently active programs in the Canadian market. The commenter thought introducing the Modified Split Rating Condition as a secondary measure would remove a regulatory disincentive to seek additional ratings while ensuring minimum credit quality standards are maintained. As for appropriate thresholds, this commenter recommended that the A-1(low) Canadian scale of Standard & Poor’s should be the minimum credit rating that satisfies the Modified Split Rating Condition. This commenter also thought that there should be a grandfathering provision for the small subset of issuers who previously received exemptive relief and would not satisfy the Modified Split Rating Condition.</p> <p>One commenter thought the CSA should clearly state which Standard & Poor’s scale the requirements refer to, and that the Standard & Poor’s scale should be the Canadian scale. The commenter also thought the requirements should be set with reference to investment grade long-term ratings, and on this basis, suggested that the thresholds in the Modified Split Rating Condition for DBRS should be R-2(high) and for Standard &</p> | <p>Modified Split Rating Condition. We think the credit ratings proposed in both the Modified Split Rating Condition and the Rating Threshold Condition reflect the current Canadian market for CP, capture most active CP programs and maintain the current credit quality of CP being actively issued into the market.</p> <p>With respect to inconsistency with credit ratings thresholds established by other regulators, including OSFI, it should be noted that securities regulators and prudential regulators use credit ratings for different purposes. The credit ratings in the Short-term Debt Prospectus Exemption serve an investor protection and gate-keeping function by permitting the issuance of high-quality CP without a prospectus. Issuers that do not meet the credit rating thresholds would only be able to issue CP under a prospectus or under another prospectus exemption that may have reporting requirements and resale restrictions. On the other hand, prudential or solvency regulators rely on credit ratings for capital adequacy calculations, liquidity or other prudential measures for financial institutions that they regulate. The rationale underlying the use of credit ratings differs for investor protection purposes as compared to prudential or solvency purposes and accounts for the different thresholds in prudential regulation.</p> <p>We are aware that some issuers who currently have exemptive relief would not meet the revised criteria in the exemption given their current credit ratings. We will review these instances on a case-by-case basis.</p> <p>We will also continue to consider applications for exemptive relief in appropriate circumstances.</p> |

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| | <p>Poor's should be A-1(low) (Canadian scale).</p> | |
| <p>2. Is the Rating Threshold Condition in the Proposed Short-term Debt Amendments appropriate? Should the Short-term Debt Prospectus Exemption have a higher or lower rating threshold? If a lower threshold were adopted, would it raise investor protection concerns that lower-rated CP would be sold to less sophisticated or knowledgeable investors? If so, how could these concerns be addressed?</p> | <p>Three commenters agreed with the Rating Threshold Condition; however, one commenter suggested that the scale for Standard & Poor's should be the Canadian scale.</p> <p>One commenter thought the credit ratings required in existing CP exemptive relief are very high, and that issuers receiving these credit ratings are recognized as being of strong creditworthiness, which should satisfy the objective of maintaining minimum credit quality standards for CP issued through the exemption. The commenter felt it would be more expedient and equitable to codify the credit ratings required in existing CP exemptive relief and treat relief applications on a much more stringent basis.</p> <p>One commenter generally disagrees with using credit ratings, but supports requiring a minimum of two credit ratings, if minimum credit ratings must continue to be a condition to the exemption.</p> | <p>We think requiring at least one credit rating at or above the thresholds in the Rating Threshold Condition will maintain high credit quality standards for CP issued without a prospectus.</p> <p>With respect to appropriate thresholds in the Rating Threshold Condition, we agree with comments suggesting clarification of the Standard & Poor's scales. We have revised the thresholds to clarify that the minimum Standard & Poor's credit rating in the Rating Threshold Condition is the Canada national scale.</p> <p>The majority of issuers who currently have exemptive relief would be able to issue CP under the revised rating thresholds. As mentioned, we are aware that some issuers who currently have exemptive relief would not meet the revised criteria in the exemption given their current credit ratings. We will review these instances on a case-by-case basis.</p> |
| <p>3. The Short-term Debt Prospectus Exemption's primary condition</p> | <p>See A. General Comments on the Use of Credit Ratings.</p> | <p>See A. General Comments on the Use of Credit Ratings.</p> |

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| <p>relates to credit ratings. Do credit ratings in this context serve appropriate investor protection and market efficiency functions? Are there alternative or additional conditions that would materially enhance investor protection or financial stability?</p> | | |
| <p>4. Should the Short-term Debt Prospectus Exemption be unavailable if:</p> <ul style="list-style-type: none"> • a DRO has announced that a credit rating it has issued for the CP is under review and may be downgraded; and • that downgrade | <p>One commenter thought the exemption should be unavailable if a DRO has announced a credit rating is under review and may be downgraded so that the CP would no longer satisfy both the Rating Threshold Condition and the Modified Split Rating Condition.</p> <p>Other commenters did not think the exemption should be unavailable if a DRO has announced a credit rating is under review and may be downgraded so that the CP would no longer satisfy both the Rating Threshold Condition and the Modified Split Rating Condition. One commenter added that these announcements often result in no action being taken. The commenter thought the potential negative consequences to an issuer far outweigh the investor protection this provision would potentially provide.</p> | <p>We have not included a “no announcement” condition in the Short-term Debt Prospectus Exemption.</p> |

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| would result in the CP no longer satisfying both the Rating Threshold Condition and the Modified Split Rating Condition? | | |