

## Comments on the Oct 2008 Consultation Paper of the CSA on ABCP:

The committee's assessment regarding the causes of the credit crisis in Part 1 is largely correct. Additionally, the banks/dealers in the non-bank ABCP selling group could have done more due diligence before offering the structured paper, and to ensure that their sales staff were sufficiently knowledgeable of the risk from the nature and composition of the assets in the conduits. A number of salespeople selling this paper were not aware of how the LSS structure worked, or that leverage was employed. We were pitched several times from different desks on the basis "it's R1H" implying there was very little risk, and they were surprised when we explained why we did not buy structured asset paper. Salespeople also were not aware, at least initially, that there were US subprime mortgages in some of the conduits. Fortunately we had done our due diligence and did not purchase those conduits.

Further, the sponsors/originators were not forthcoming in disclosing the degree of risk/leverage in conduits which employed the LSS strategy. It is questionable whether DBRS should have given these structures (especially the CDO squared assets) their highest rating, especially given the market-out clause for the liquidity lenders. In fact it is questionable whether they should have even received an investment grade rating at all.

### **CSA Proposal #1: CSA framework:**

- The provision regarding transparency per the IOSCO Code of Conduct and the SEC are welcome criteria and should be required in Canada. Structured products should not be given any credit rating without releasing full disclosure, including the identity of swap counterparties
- Re putting the onus on CRAs rather than issuers for disclosure requirements: first, the CRA could suspend or withdraw a rating if the issuer did not comply; second, the CSA should, in fact, impose a disclosure obligation directly on issuers of ABS.
- Re potential non-standardized data: then the CSA should introduce a set of rules for CRAs/issuers which standardizes data, including (where applicable): average credit scores, LTVs, seasoning, regional breakdown. The Committee could examine the prospectus and servicing reports for Canadian CMBS for examples of data transparency. For interest arbitrage assets, the underlying security or structure should be fully disclosed.
- Re dissemination of personal information: first, there is no need to release, for example, the names of individuals whose receivables are securitized. Second, if a Corporate borrower is concerned about 'confidential business information' being released as part of due diligence and transparency, then the borrower can rely on traditional lending facilities, no one is forcing borrowing via the conduit.

- Re inconsistent treatment between ABS and Corporate debt: there already is inconsistent treatment of ABS and Corporate debt which needs to be corrected for investors. Public companies file regular financials and Corporate debt is typically issued via some form of prospectus. ABCP conduits have been able to issue under exempt requirements. All ABS issuers should be required to be reporting issuers.

**CSA Proposal #2/3: Short-term debt exemption:**

- Prospectus exemptions should not be allowed for asset-backed paper or for any commercial paper or money market issuer.
- Given the liquidity risk, these investments may not be appropriate money-market investments for individuals as accredited investors regardless of how these investors are defined. The Committee should be aware that, along with straight commercial paper, Bank-sponsored ABCP credit spreads widened dramatically during the credit crunches. This was a result of flight to safety, combined with the premium demanded by Bank/dealer money market sales desks to repurchase paper they originated or sold.
- The Committee states that it can justify **not** requiring a prospectus for asset backed paper distributions, since accredited investors are presumed to be able to make investment decisions without the disclosure in a prospectus. The Committee need only to look at the names of accredited investors who were part of the Pan-Canadian Committee for the ABCP workout (which included several financial institutions and the Federal government) to realize that their assumption may be wrong.
- The Committee's comment that it is inconsistent to require enhanced disclosure for asset backed paper without doing the same for other products is correct but moot (i.e. two wrongs do not make a right).
- If the Committee decides to create a separate exemption for asset backed short term debt, it should impose disclosure requirements on issuers, which information would then be available to all buyers; and require a minimum R1H credit rating from at least two CRAs.
- If the Committee is seeking to prevent another situation of stranded individual investors, given the relatively small percentage of overall purchases of asset backed paper by individual investors, the committee could consider disallowing them from purchasing ABCP; the committee could also consider including Corporate commercial paper in this group (excluding BA's).

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**CSA Proposal #7 Investments by Mutual Funds in ABCP:**

- Re NI 81-102 10% restriction:
- The rules currently stipulate that a Money Market fund must have 95% of its assets in qualified investments or in cash. If a 10% holding defaulted or otherwise became illiquid then it would not comply with the 95% limit.
- Rather than changing the 10% restriction universally, the Committee could consider concentration limits by asset type, ranked by liquidity. For example: Canadian Sched I BAs 10% individual limit, other non-government issuers 5% individual limit. The allocation of the Fund to ABCP could be limited to a level which both fund managers and regulators would be comfortable, regarding liquidity and default risk.
- The rating criteria for acceptable investments could be used in conjunction with the limits detailed above.