

October 31, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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RE: Retention of Risk for Asset Backed Securities

FAIR Canada urges the Canadian Securities Administrators (“**CSA**”) to consider recent developments in the United States wherein federal regulatory agencies responsible for implementing regulations under The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) have finalized rules for risk retention requirements in asset-back securities transactions.¹ FAIR Canada recommends that the CSA do likewise and require retention of risk in securitization products.

¹ The rules are available at https://www.fdic.gov/news/board/2014/2014-10-21_notice_dis_a_fr.pdf.

We continue to believe that it is important for Canada to impose rules in this area that are at or above the standards of other leading jurisdictions and that accord with the first recommendation of the IOSCO Final Report on Global Developments in Securitisation Regulation (the "IOSCO Final Report"). Requiring skin in the game is important as it allows for a better alignment of economic interests in the securitization process and is a necessary response to the 2008 financial crisis. As discussed in our 2011 comments to the CSA², risk retention addresses one of the shortcomings of the securitization market's "originate to distribute" model, which, as we painfully learned, allowed the generation, distribution and amplification (through derivative transactions) of securitized products whose underlying assets were of poor quality. This resulted in unacceptable risk to investors and a disastrous level of systemic risk. However, we do not agree with the US approach that allows for the exempting of certain classes of assets, as such rules can be "skirted". We therefore favour the European model under Article 122a.

FAIR Canada also reiterates that there is a need for transparency and detailed, complete and accurate information about asset-backed securities so that investors have the information they require to assess the level of risk.³ As noted in a recent speech by Commissioner Luis Aguilar⁴, the United States has required the disclosure of key information to assess the risk of the investment in asset-backed securities through Reg AB 2. However, the Commission's work in the asset backed securities area is not complete as "...it has yet to act on, among others, rules requiring issuers to provide asset-level information across other ABS asset classes, such as equipment loans and leases, student loans, and inventory financings." FAIR Canada has provided comments to the CSA on the importance of asset-level disclosure requirements in its previous comments⁵.

FAIR Canada cautions that the CSA needs to ensure that Canada will have equally rigorous regulations on asset backed securities as do other jurisdictions such as the EU and the US. This can be accomplished if the CSA requires, as part of its amendments, the retention of risk and a sufficient degree of asset-level disclosure. If the CSA does not follow suit, then regulatory arbitrage could ensue, resulting in Canada being used to distribute products that would not pass muster elsewhere.

We would be pleased to discuss this letter with you at your convenience and welcome its public posting. Feel free to contact Neil Gross at 416-214-3408 (neil.gross@faircanada.ca) or Marian Passmore at 416-214-3441 (marian.passmore@faircanada.ca).

Sincerely,



Canadian Foundation for Advancement of Investor Rights

² Our submission is available online at: <http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-Comments-re-Securitized-Products-Aug.-31-2011.pdf>.

³ See our earlier submissions

⁴ Commissioner Luis A. Aguilar, October 22, 2014, "Skin in the Game: Aligning the Interests of Sponsors and Investors: available online at <http://www.sec.gov/News/PublicStmt/Detail/PublicStmt/1370543250034#.VEqrSPmM5cY>.

⁵ See paragraph 8 of our April 23, 2014 comments, available online at: <http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-comments-re-CSA-securitized-products-exemption.pdf> and section 4 of the 2011 comment letter.