April 28, 2014

Sent By E-mail

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Dear Sirs/Mesdames:

Re: Re-Opening of Comment Period for Asset-Backed Securities Releases No. 33-9552; 34-71611; File No. S7-08-10

We are writing in response to the re-opening of the comment period by the Securities and Exchange Commission (the **Commission**). These submissions are filed on behalf of the Treasurers of Royal Bank of Canada, Canadian Imperial Bank of Commerce, The Bank of Nova Scotia, The Toronto-Dominion Bank, Bank of Montreal and National Bank of Canada (the **Banks** or the **Treasurer Group**) concerning the proposal made with respect to the proposed revisions to Regulation AB in Release No 33-9117 (April 7, 2010) (the **Release**) and in a Memorandum from the Commission's Division of Corporation Finance dated February 25, 2014 (the **Memorandum** and together with the Release, the **Proposal**), concerning the disclosure of asset-level information in connection with the issuance of securities which are subject to Regulation AB. The Treasurer Group appreciates the opportunity to provide these submissions and thanks the Commission for the extension of the timeframe in which to do so.

I OVERVIEW

The Treasurer Group has a dual role as both issuer and investor and has kept both of these aspects in mind in framing these submissions and in considering the issue of the disclosure of asset-level information as presented in the Release and the Memorandum. As issuers, the Banks have issued and expect to continue to issue, and or are contemplating issuances of, securities in the United States (**U.S.**) on a registered basis under the Securities Act of 1933, as amended (the **Act**) and in private placements under Rule 144A of the Act. The Banks take pride in the comprehensive information they provide to investors and their commitment to the security and protection of their borrowers' personal information.

With respect to the Proposal, the Treasurer Group is concerned that:

- providing personal information through an issuer-based website does not eliminate the significant concerns regarding unauthorized use and disclosure of personal information that the Banks' borrowers could be exposed to if the Proposal is implemented in its current form;

- alternative solutions to an issuer-based website should be considered to ensure the information being provided is useful for investors while ensuring the protection and security of borrowers' personal information;

- required data fields need to balance the needs of investors and potential investors with the need to ensure there is no risk of identification or re-identification of individual borrowers; and

- required data fields need to be flexible to account for jurisdictional differences in applicability and availability of the information and the alternative of substituted compliance should be available.

II ACCESS TO INFORMATION

Web-Site Access

The Proposal requires issuers of asset-backed securities to disclose asset-level information in connection with the offering of such securities and proposes to address privacy concerns related to the disclosure of personal information as part of such Proposal, by requiring issuers to post such asset-level information to an issuer-maintained website instead of EDGAR. While the Treasurer Group appreciates and supports the Commission's efforts to address privacy rights and data security concerns, without other changes to the Proposal addressed below, the Treasurer Group disagrees that an issuer-based website alone addresses the privacy rights and data security concerns related to the Proposal.

Given the nature of a registered offering, all members of the public must be entitled to access the same information. Although an issuer-maintained website can limit access and require the person accessing the information to acknowledge the sensitive nature of the information and agree to maintain its confidentiality and use it only for the purpose for which it is provided, given the information is to be incorporated by reference in the prospectus, it would not be appropriate to limit a potential investor or investor from accessing the information. While the terms of access can provide some protection, where there is a breach of the terms of access there is the potential for delay between the abuse and any discovery of the abuse and the remedies may not be sufficient to compensate for the abuse. As a result, it is essential that any information that is required to be made available not be susceptible to abuse. For this reason, we respectfully submit that, the appropriate strategy is to ensure that personal information that would or could, alone or together with other information, identify an individual borrower or otherwise be misused, not be required to be disclosed.

Alternative to Providing Disaggregated Asset-Level Information

We encourage the Commission to consider alternatives to requiring issuers to make available asset-level information to investors in order to achieve the Proposal's objectives. Subject to the comments below, an alternative to consider further may be to allow data fields be maintained to allow investors and potential investors to conduct analysis and modelling as part of the due diligence process through systems that permit analysis and modelling without providing direct access to asset-level information. By developing and implementing systems either individually or in a concerted manner that permit investors to conduct analysis and produce models without providing access to asset-level information or allowing the investor to view any individual asset-level information, investors would have access to the information necessary for them to complete their due diligence without directly exposing asset-level information to unauthorized collection, use or disclosure. While the technical implications, costs and timing requirements applicable to such an approach will require further consideration, consultation, investigation and analysis both generally and in the context of Canadian issuers (for which, among other things, there may be difficulty in applying U.S. based models to Canadian data fields) and further consideration will need to be given to how and whether such information is incorporated by reference in a prospectus, the Treasurer Group would like to work with the Commission and, as applicable, other stakeholders, in investigating such an approach as an alternative to or in conjunction with the Proposal. Such an alternative would likely require a substantial period for implementation which would need to be accommodated in the Proposal.

III DISCLOSURE OF ASSET-LEVEL INFORMATION

Privacy Concerns

The Banks agree that an appropriate level of disclosure is required to ensure investors and potential investors have the information necessary to complete their due diligence on asset-backed securities that are subject to Regulation AB. However, where such information is sensitive asset-level information that can be subject to unauthorized collection, use or disclosure, the paramount concern must be the privacy interests of the borrower. As such, it is imperative that <u>any</u> asset-level information that is required to be disclosed to investors and potential investors, whether on EDGAR or through an issuer controlled website, cannot alone, or together with other

information, subject any individual borrower to the risk of identification or re-identification. The Commission had contemplated not requiring issuers to disclose a borrower's name, address or other identifying information, such as zip code (or the Canadian equivalent postal code) and ranges, or categories of coded responses for income or debt amounts in order to prevent individual identification, which the Treasurer Group supports. However, the Proposal now seems to contemplate that, to the extent an issuer-maintained website is used, specific credit scores, income and debt amounts could be disclosed, instead of coded ranges. As some of the comments received by the Commission (as reflected in the Memorandum) noted, it is possible that the disclosure of this information at an asset-level could expose individual borrowers to a risk of re-identification. In this regard, we want to emphasize that asset-level information that is required to be disclosed for asset-backed securities subject to Regulation AB cannot include geographic identifiers (such as, for example, the alpha-numeric postal code for Canadian addresses which could identify a single residence) or other individual identifiers that, alone or together with any other information, can identify the individual borrower. By way of example, in the case of geographic data fields for the relevant assets, they will have to be sufficiently broad to ensure that there is no risk of identification or re-identification of an individual borrower. Broad and aggregated information can still provide investors with information that is meaningful and sufficient to complete their due diligence for the investment assessment while protecting the privacy of individual borrowers against the risk of breach of privacy, identity theft or fraud.

In addition, it is essential that the laws that are binding on the Banks and the impact such laws have on the ability of the Banks to comply with any aspects of the Proposal be considered in connection with the Proposal. While these submissions are framed in the context of Canadian laws, we expect non-U.S. issuers in other jurisdictions may have similar issues.

Under Canada's *Personal Information Protection and Electronic Documents Act* (**PIPEDA**), the collection, use and disclosure of personal information must be reasonable and appropriate in the circumstances, which includes an assessment of whether such collection, use and disclosure is being undertaken in the least privacy-invasive manner possible to achieve the objective. As discussed above, to the extent any asset-level information required to be disclosed could expose individual borrowers to a risk of re-identification, we would not consider it sufficiently necessary to an investor or potential investor's due diligence to justify its disclosure. We are confident that aggregated or more general disclosure that does not permit identification or re-identification of an individual borrower would be sufficient for such purposes.

In addition, the Banks have an obligation to adequately protect personal information from unauthorized use and disclosure. Individuals in foreign jurisdictions that invest in or are considering investing in securities issued in the U.S. may not be bound by U.S. laws (and accordingly may not be entitled to the U.S. system and substantive safeguards) if the information is accessed on or through technical systems located outside the U.S. There is a risk, therefore, that borrowers' information could be used improperly with potentially no meaningful recourse against the person misusing the information and limited, or no, protection for the individuals whose information may have been compromised or inappropriately transferred or shared.

Quite apart from current privacy/data protection laws, Canada's Privacy Commissioner (the **Privacy Commissioner**) has commented on the need to ensure that improvements to Canada-U.S. security and commerce arrangements do not jeopardize Canadians' privacy rights. The Privacy Commissioner has highlighted the need for all federal departments and agencies to be directed to ensure that all personal information on individuals is collected, used and disclosed to other government bodies in accordance with defined terms set out in formalized information sharing agreements and to ensure that the sharing of personal information with the U.S. complies with Canadian standards of protection. Similarly, concerns have been expressed surrounding the need to ensure that information shared with the U.S. is accurate, that an appropriate process for citizens to request correction of their personal information is in place, that mechanisms for reconsideration and review are provided for, and that citizens may request details on the use of their personal information. All of these issues arise in the context or framework that Canadians have a reasonable expectation of privacy over their personal information and a right to protect themselves against identity theft and fraud. While the discussions that have taken place arose in the context of the Canada/U.S. Beyond the Border initiative, the

considerations that have been highlighted in those bilateral discussions highlight the need to ensure that privacy rights are not eroded and are equally applicable to the present discussion.

Requiring disclosure of any asset-level information that could lead to identification or re-identification of a borrower presents significant compliance concerns for Canadian issuers, and we expect other non-U.S. issuers, of asset-backed securities which are subject to Regulation AB. The Treasurer Group urges the Commission to engage in dialogue with their Canadian and, as applicable, other foreign counterparts and data protection authorities to ensure that full consideration is given to the very important issue of data/personal information protection in this regard. The Group would also support the creation of an inter-jurisdictional working group to assess how such revised requirements could most efficiently be implemented.

Data Fields for Foreign Issuers and Substituted Compliance

While there remains uncertainty, given statements in the Memorandum, as to whether the specific data fields that will be required are those set out in Schedules L, L-D and CC to the Release (collectively, the **Schedules**), it is important to note that a significant number of the data fields set out in the Schedules are different from those used in Canada or not generally collected by or applicable to Canadian issuers. By way of example only, and not as an exhaustive list, with respect to items listed in Schedule L to the Release, Canadian issuers do not use MERS or NMLS numbers, ARMs work differently in Canada than in the U.S., there are different geographic identifiers and no comparable confidence scores. In addition, the recommendations arising from The American Securitization Forum's Project on Residential Securitization Transparency and Reporting (also known as Project RESTART) should be taken into consideration with respect to the disclosure to be required as part of the Proposal.

To ensure the quality and usefulness of information being provided by Canadian issuers, there will need to be discussions with Commission staff to establish a clear understanding of whether there is a corresponding Canadian data field and if so, what it is, and/or whether it should be required of Canadian issuers. Requiring Canadian issuers to provide data fields that are not generally collected would impose a significant burden on Canadian issuers in terms of investment in information technology systems and data processing capabilities to achieve compliance with the asset-level information required to be disclosed by the Schedules.

In addition, to the extent there are similar Canadian legislative requirements applicable to a Canadian issuer now or in the future, this could lead to overlapping (but differing) compliance requirements under regimes which are seeking to achieve the same objectives. Serious consideration should be given to providing for substituted compliance where the issuer is complying with an alternative disclosure regime with the same or similar objectives.

IV CONCLUSION

In conclusion, the Treasurer Group considers that it is essential that the privacy rights and data security concerns set out in this letter are adequately addressed and Canadian borrowers' personal information protected from loss and misuse. The disclosure regime cannot impact the ability of Canadian issuers to comply with Canadian privacy laws and needs to consider the applicability of required data fields for Canadian issuers. We encourage the Commission to consider alternatives to balance the competing objectives of ensuring investors have the information necessary to carry out their due diligence review while ensuring that Canadian borrowers' personal information is adequately protected and that Canadian issuers can comply with Regulation AB and Canadian privacy laws.

We appreciate the opportunity to comment on the Proposal and the Commission's taking the time to consider the Treasurer Group's recommendations and concerns as set forth above. The Treasurer Group would welcome the opportunity to meet and discuss these matters with the Commission in more detail and to respond to any questions. Please contact James Salem, Executive Vice President and Treasurer, Royal Bank of Canada, on behalf of the Treasurer Group, to arrange such a meeting or discussion.

Yours very truly,

(*James Salem*)

James Salem
Executive Vice President and Treasurer
Royal Bank of Canada

(*Peter Levitt*)

Peter Levitt
Executive Vice President and Treasurer
Canadian Imperial Bank of Commerce

(*Jeffrey Heath*)

Jeffrey Heath
Executive Vice-President and Group Treasurer
The Bank of Nova Scotia

(*Alan Jette*)

Alan Jette
Executive Vice President, Treasury and Balance Sheet Management, TD Bank Group
The Toronto-Dominion Bank

(*Cathryn E. Cranston*)

Cathryn E. Cranston
Senior Vice President and Treasurer,
BMO Financial Group
Bank of Montreal

(*Éric Girard*)

Éric Girard
Senior Vice-President, Corporate Treasury
National Bank of Canada

Copy to: Chantal Bernier, *Interim Privacy Commissioner of Canada*

DOCSTOR: 2997465\5