

Allen & Overy LLP

1221 Avenue of the Americas
New York NY 10020

Tel 212 610 6300

Fax 212 610 6399

Direct line 212 610 6309

Amy Starr
Chief, Office of Capital Markets Trends
Division of Corporation Finance
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Our ref 0010146-0000222 NY:15993787.15

May 31, 2013

Re: The Bank of Nova Scotia

Dear Ms. Starr:

On behalf of our client, The Bank of Nova Scotia (the **Issuer** or the **Bank**), we are writing to request the advice of the staff of the Division of Corporation Finance (the **Division**) of the Securities and Exchange Commission (the **Commission**) with regard to the Bank's plans to offer and sell covered bonds in the United States pursuant to a registration statement filed with the Commission.

1. Request

On behalf of the Bank, we request confirmation that the staff of the Division will not recommend that the Commission take enforcement action under the Securities Act of 1933, as amended (the **Securities Act**), if the Bank offers and sells covered bonds (the **Covered Bonds**) and the related Guarantee (as defined below) on a registered basis under the Securities Act, pursuant to a shelf registration statement on Form F-3 (the **Registration Statement**), as described in this letter.

2. Background

The Bank proposes to file the Registration Statement with the Commission for the offer and sale of the Covered Bonds under the Bank's Global Registered Covered Bond Program (the **Program**). Under its existing Global Public Sector Covered Bond Programme, the Bank has offered and sold covered bonds outside of the United States in Australia, under Regulation S of the Securities Act, and in the United States only in reliance on Rule 144A of the Securities Act. The Bank believes that covered bonds would provide an attractive investment alternative in the United States, and therefore believes that conducting a covered bond offering on a registered basis under the Program would greatly facilitate the availability of the product in the United States.

Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. It is authorized and regulated by the Solicitors Regulation Authority of England and Wales. Allen & Overy LLP is a multi-jurisdictional law firm with lawyers admitted to practise in a variety of jurisdictions. A list of the members of Allen & Overy LLP and their professional qualifications is open to inspection at its registered office, One Bishops Square, London, E1 6AD and at the above address. The term partner is used to refer to a member of Allen & Overy LLP or an employee or consultant with equivalent standing and qualifications.

Allen & Overy LLP or an affiliated undertaking has an office in each of: Abu Dhabi, Amsterdam, Antwerp, Athens, Bangkok, Beijing, Belfast, Bratislava, Brussels, Bucharest (associated office), Budapest, Casablanca, Doha, Dubai, Düsseldorf, Frankfurt, Hamburg, Hanoi, Ho Chi Minh City, Hong Kong, Istanbul, Jakarta (associated office), London, Luxembourg, Madrid, Mannheim, Milan, Moscow, Munich, New York, Paris, Perth, Prague, Riyadh (associated office), Rome, São Paulo, Shanghai, Singapore, Sydney, Tokyo, Warsaw and Washington, D.C.

2.1 Description of the Bank

The Bank is a leading multinational financial services provider and Canada's most international bank. Through its team of more than 82,000 employees, the Bank and its affiliates offer a broad range of products and services, including personal, commercial, corporate and investment banking to over 19 million customers in more than 55 countries. The Bank's common shares are listed for trading on the Toronto Stock Exchange and the New York Stock Exchange. The Bank is a "foreign private issuer" as such term is defined in Rule 3b-4 under the Securities Exchange Act of 1934, as amended (the **Exchange Act**) and Rule 405 under the Securities Act, with its common shares registered pursuant to Exchange Act Section 12(b). The Bank files periodic reports and furnishes current reports with the Commission, and, as discussed below, is currently eligible to register primary offerings of the Bank's securities on Form F-3.¹

2.2 Covered Bonds Generally

The term "covered bonds" is generally used to refer to debt instruments that have recourse either to the issuing entity or to an affiliated group to which the issuing entity belongs, or both, and, upon an issuer default also have recourse to a pool of collateral, called the cover pool, which is separate from the issuer's other assets. The cover pool usually consists of high quality assets, such as mortgages, mortgage-backed securities, or public debt, and is typically owned by a special purpose, bankruptcy remote vehicle (a **guarantor**). Covered bonds are issued by depositary institutions that are subject to supervision by banking authorities. Covered bond investors typically include central banks, pension funds, insurance companies, asset managers and bank treasuries. Investors in covered bonds are usually seeking low risk, yield-bearing products with long maturities. The covered bond market has grown rapidly in recent years. Since July 2012, covered bond offerings issued by Canadian issuers are subject to Canadian federal covered bond legislation administered by the Canada Mortgage and Housing Corporation (**CMHC**) (see Section 2.3 below).

2.3 Canadian Registered Covered Bond Programs

On July 6, 2012, amendments were made to the National Housing Act (Canada) (**NHA**) designating the CMHC with the authority to implement and administer a legal framework for covered bonds. On December 17, 2012, CMHC published the Canadian Registered Covered Bond Programs Guide (the **Guide**) which implements amendments to the NHA and sets out certain conditions and restrictions for covered bond offerings issued by Canadian issuers. Only eligible issuers, including regulated Canadian depositary institutions, certain cooperative credit societies, insurance companies and fraternal benefit societies meeting the requirements of the Guide, are permitted to issue covered bonds.

- *Investor Protection.* One of the stated objectives of the NHA is to provide increased investor protection by providing for the continuity of payment (and ultimate repayment) of issued covered bonds. Accordingly, the Guide (i) creates standard disclosure on the cover pool, (ii) provides certainty regarding the status of the cover pool and the guarantor upon an issuer insolvency, and (iii) imposes various protective measures relating to the cover pool, including limitations on cure periods for payment defaults, ratings triggers for the replacement of the account bank at which the guarantor's accounts are held, certain events which must be included as events of default, and certain actions that must be taken following the occurrence and continuance of any such event of default.

¹ The Bank has on file with the Commission an effective shelf registration statement on Form F-3 (Registration No. 333-185049).

- *Registration and the Covered Bonds Registry.* Pursuant to the NHA and the Guide, eligible issuers are required to apply to the CMHC for (i) registration as a covered bond issuer, and (ii) registration of a covered bond program. The issuer is required to provide the CMHC with certain information prescribed by the Guide. Registered covered bond programs are listed on a publicly-accessible covered bond registry, which is established and maintained by the CMHC.
- *Registered Program Requirements.* Registration of a covered bond program requires the program to meet certain criteria, including the following: (a) eligibility requirements for entities that may serve as guarantors; (b) requirements for entities serving as counterparties (including collateral hedge counterparties); (c) required ratings triggers for certain events; (d) a requirement to transfer the legal title of the covered bond collateral from the issuer to the guarantor entity following certain events, and (e) a requirement to engage a custodian to hold certain data and documents in respect of the cover pool.
- *Cover Pool Assets Requirements.* Pursuant to the NHA and the Guide, the guarantor may only hold as covered bond collateral: (a) certain loans secured by Canadian residential property; and (b) a limited amount of substitute assets consisting of Canadian government-issued securities. Further, the guarantor may not: (a) hold cash in excess of the amount necessary to meet the guarantor's obligations for the next six months, subject to certain exceptions; (b) include in its asset pool a residential loan insured by the CMHC or certain other specified institutions; and (c) include in its asset pool any loan with a loan-to-value ratio exceeding 80%. Registrants must also establish a minimum and maximum level of overcollateralization and disclose such levels in their offering documents and the covered bonds registry.
- *Risk-Monitoring and Risk-Mitigation Requirements.* The guarantor is required to comply with certain risk-monitoring and risk-mitigation requirements, including: (a) performing a valuation calculation measuring the present value of the collateral held by it relative to the value of the guaranteed and outstanding covered bonds; and (b) entering into hedges that comply with certain requirements to mitigate its risk of financial loss or exposure from fluctuations in interest rates or currency exchange rates. Every registered issuer is required under the Guide to engage a qualified cover pool monitor who must follow specific procedures set out in the Guide.
- *Disclosure and Reporting.* In addition to requiring compliance with Canadian securities laws, registrants must also comply with minimum specific disclosure requirements set forth under the Guide, which may in some cases exceed the level of disclosure found in public offering documents of existing un-registered Canadian covered bond programs. Additionally, registrants must maintain a website where investors can access, among other items, public offering documents, material transaction documents, monthly reports, and static pool data. Registrants must also comply with any additional reporting obligations enacted by the CMHC.
- *Enforcement.* As administrator of the legal framework, the CMHC also has the authority to reject applications, to suspend the right of a registrant to issue further registered covered bonds, and to deregister programs and issuers (provided in each case that no covered bonds are outstanding under such program or issued by such issuer).

2.4 Structure of the Bank's Covered Bonds

The Covered Bonds will be the direct, unsecured, and unconditional obligations of the Bank issued pursuant to a trust deed (the **Trust Deed**) to be entered into on or prior to the date of establishment of

the Program (the **Program Date**) between the Bank, as issuer, Scotiabank Covered Bond Guarantor Limited Partnership (the **Guarantor**), as guarantor, and Computershare Trust Company of Canada, as bond trustee (the **Bond Trustee**) and custodian (the **Custodian**). In accordance with the NHA and the Guide, the bondholders will rank *pari passu* with the ordinary depositors of the Bank and at least *pari passu* with the unsecured unsubordinated creditors of the Bank. Every Covered Bond issued under the Program will be unconditionally and irrevocably guaranteed as to payments of interest and principal (the **Guarantee**) by the Guarantor pursuant to the terms of the Trust Deed. The obligations of the Guarantor under the Guarantee will be secured by a security interest in all of the assets (the **Cover Pool**) of the Guarantor granted in favor of the Bond Trustee, for and on behalf of the Covered Bond holders and certain other specified creditors of the Guarantor.² The Guarantor will be a limited partnership formed under the laws of the Province of Ontario pursuant to the terms of a limited partnership agreement entered into on or prior to the Program Date (the **Guarantor Agreement**) between Scotiabank Covered Bond GP Inc., as managing general partner (the **Managing GP**), a newly incorporated Canadian corporation, as liquidation general partner (the **Liquidation GP**), and the Bank, as the limited partner.

As described more fully below, the Bank will be the sole limited partner of the Guarantor and will hold substantially all of the interests in the Guarantor.³ The Managing GP is a wholly owned subsidiary of the Bank and will hold a *de minimis* interest in the Guarantor. The remaining *de minimis* portion of the Guarantor will be owned by the Liquidation GP, a special purpose entity that is partly owned by the Bank and otherwise held by the Scotiabank Covered Bond LGP Trust (the **LGP Trust**) which has as its trustee Computershare Trust Company of Canada. Subject to the exceptions described below, any distributions from the Guarantor to the Liquidation GP will further be limited to a maximum of \$50,000 annually by the Guarantor Agreement.

To date, the covered bonds that have been issued under the Bank's previous covered bond program have been rated in the highest long-term category by each of Moody's Investors Service Inc., Fitch, Inc. and DBRS Limited (collectively, the **Rating Agencies**). It is anticipated that Covered Bonds offered on a registered basis under the Program will be similarly rated by the Rating Agencies or their affiliates in the United States.

Payments of principal and interest under the Covered Bonds will be made by the Issuer prior to a default under the Covered Bonds. A default under the Covered Bonds or the Program would include: (a) a failure of the Issuer to pay principal and interest within a specified period following the date on which such payments are due, (b) a failure of the Issuer to comply with any other obligation of the Issuer (other than the asset coverage test), (c) the insolvency of the Issuer or (d) a failure to meet the asset coverage test (calculated as described below) within a specified period (each, an **Issuer Event of Default**). Upon the occurrence of an Issuer Event of Default, the Bond Trustee may,⁴ or upon the passing of a resolution by a specified minority percentage of all of the Covered Bond holders shall,⁵ deliver a notice of acceleration to the Issuer and a notice to pay to the Guarantor, which would result in the Covered Bonds accelerating and becoming immediately due and payable by the Bank (a **Covered Bond Guarantee Activation Event**) and, concurrently, the Guarantor being required to make scheduled payments on the Covered Bonds.

² The other creditors are exclusively the swap counterparties and service providers to the Program, as described below in footnote 11.

³ The partnership agreement permits the addition of a limited partner if it sells mortgage loans to the Guarantor. The Bank shall admit only affiliates of the Bank as additional limited partners of the Guarantor.

⁴ This discretion on the part of the Trustee is consistent with Section 6.02 of the *Revised Model Simplified Indenture* published in 55 Bus. Law. 1115 (2000).

⁵ Provided that in circumstances other than a failure to pay, the Bond Trustee has determined that such event is materially prejudicial to the interests of the holders of Covered Bonds of any series.

The occurrence of certain events will constitute an event of default under the Guarantee, including: (a) a failure of the Guarantor to pay principal and interest within a specified period following the date on which such payments are due, (b) the insolvency of the Guarantor, or (c) a failure to meet the amortization test (calculated as described below) within a specified period (each, a **Guarantor Event of Default**). Upon the occurrence of a Guarantor Event of Default, the Bond Trustee may, or upon the passing of a resolution by a specified minority percentage of all of the Covered Bond holders shall,⁶ deliver notice to the Guarantor and the Issuer, which would result in the Covered Bonds accelerating and becoming immediately due and payable by the Guarantor (the **Guarantee Acceleration Event**), and the Bond Trustee will be entitled to exercise its rights to the Cover Pool under its security interest and make payments to Covered Bond holders and certain other creditors under the Program, all in accordance with pre-established priorities of payment.

The Cover Pool of the Guarantor will consist of residential mortgage loans originated by the Bank and may from time to time include other permitted assets under the Guide.⁷ The Guarantor will use the proceeds of an intercompany loan (the **Intercompany Loan**)⁸ from the Bank to purchase the residential mortgage loans in the Cover Pool. In addition to the residential mortgage loans and the other permitted assets, the Guarantor's assets will include an interest rate swap agreement, a covered bond swap agreement for each series of Covered Bonds and the GDA and Standby GDA (as defined below).

Prior to a Covered Bond Guarantee Activation Event, interest cash flows are exchanged under the interest rate swap agreement to pay interest on the Intercompany Loan.⁹

Pursuant to the terms of an agreement (the **GDA**) with the Bank, funds of the Guarantor deposited in an account with the Bank (the **GDA Account**) will benefit from a guaranteed rate of interest.¹⁰ The Guarantor will also have in place arrangements with a standby bank (the **Standby Bank**) to which its funds would be transferred in the event of a downgrade in the ratings of the Bank below certain thresholds. In such circumstances, under an agreement (the **Standby GDA**) with the Standby Bank, the funds deposited in an account (the **Standby GDA Account**) with the Standby Bank are entitled to the same guaranteed rate of interest as under the GDA.

Prior to the occurrence of an Issuer Event of Default, the asset coverage test is calculated monthly in accordance with the methodology prescribed in the Guide to measure the Cover Pool and is designed to ensure that at all times the Guarantor owns an outstanding principal amount of non-defaulted eligible residential mortgage loans or other permitted assets exceeding the aggregate principal amount of outstanding Covered Bonds by a specified percentage of over-collateralization. The over-collateralization requirement built into the asset coverage test is intended to ensure the Cover Pool is

⁶ See *supra* note 5.

⁷ Under the Guide, the Guarantor may hold (i) eligible residential mortgage loans; (ii) all sums derived from such loans (whether on account of principal, interest or otherwise and whether received from the borrower or a guarantor thereof); and (iii) securities issued by the Government of Canada, repos of Government of Canada securities having certain terms, and sums derived therefrom, provided that the value of all such government securities and repos does not exceed 10 percent of the total value of all covered bond collateral.

⁸ The Intercompany Loan consists of a guarantee loan (**Guarantee Loan**) and a demand loan (**Demand Loan**). The Guarantee Loan is in an amount equal to the outstanding amount of Covered Bonds plus the overcollateralization amount required in the Cover Pool to satisfy the asset coverage test. The amount of the Demand Loan is equal to the amount of the Intercompany Loan less the amount of the Guarantee Loan.

⁹ Under the Program, the Guarantor also has the option of entering into a forward starting interest rate swap, whereby interest cash flows are exchanged under the interest rate swap agreement following a Covered Bond Guarantee Activation Event. The obligation of the Guarantor to make payments under the interest rate swap agreement is conditional upon the interest rate swap provider not having been subject to an event of default or potential event of default that is continuing. As a result, where such circumstances exist, the Guarantor is not required to make payments to the interest rate swap provider and can use Cover Pool collections to make payments on the Covered Bonds when due in accordance with the relevant priority of payments or to enter into alternative arrangements to provide for such payments.

¹⁰ The guaranteed interest rate under the GDA and Standby GDA is a variable rate of interest agreed by the Guarantor and the provider of the GDA or the Standby GDA that is not less than 0.10% below the average of the rates per annum for Canadian Dollar bankers' acceptances having a term of 30 days.

sufficient to make scheduled payments of principal and interest on the Covered Bonds in the event of a Covered Bond Guarantee Activation Event and to repay the Covered Bonds at their maturity, notwithstanding the insolvency of the Bank at any time. Arithmetic testing will be conducted from time to time on the asset coverage test calculations by KPMG LLP, as cover pool monitor (the **Cover Pool Monitor**) under the Program at such times specified by the Guide.

Following a Covered Bond Guarantee Activation Event, the asset coverage test will no longer be applied and instead an amortization test performed in accordance with the methodology prescribed in the Guide will be applied to determine whether the Cover Pool is sufficient to satisfy the scheduled payment obligations on the outstanding Covered Bonds. The amortization test does not incorporate any requirement for over-collateralization, but rather tests whether the principal balance of the Cover Pool, reduced by a negative carry factor, exceeds the principal amount of the outstanding Covered Bonds. A failure of the amortization test is a Guarantor Event of Default, which results in the outstanding Covered Bonds accelerating and becoming immediately due and payable by the Guarantor.

In the event that a residential mortgage loan in the Cover Pool defaults, it will no longer be included in determining whether the asset coverage test or amortization test is met. If the asset coverage test is not met, as a result of residential mortgage loans defaulting, being paid down or otherwise, the Issuer and the Guarantor must facilitate the transfer of additional eligible residential mortgage loans or other permitted assets to the Guarantor in order to keep the Cover Pool in compliance with the asset coverage test and avoid an Issuer Event of Default. If, after the occurrence of a Covered Bond Guarantee Activation Event, the amortization test is not met, the Covered Bonds will accelerate and become immediately due and payable by the Guarantor.

The Cover Pool will secure the guarantee by the Guarantor of all outstanding series of Covered Bonds issued under the Program. If an Issuer Event of Default occurs for one series of Covered Bonds, an Issuer Event of Default occurs for all other outstanding series of Covered Bonds immediately without any further action of the Bond Trustee or the Covered Bond holders.

The Guarantor will have no assets other than residential mortgage loans and other permitted investments, cash, swap agreements, commitments in respect of the GDA and Standby GDA and other rights relating to the Program. The Guarantor will have no liabilities or claims outstanding against it other than those relating to the Program, which will consist of its Guarantee of outstanding series of Covered Bonds, its obligations under the Intercompany Loan, the swap agreements, and in respect of its obligations to service providers to the Program.¹¹ The ability of the Guarantor to perform on the Guarantee following a Covered Bond Guarantee Activation Event will essentially be entirely dependent on collections or proceeds received from the residential mortgage loans and other permitted investments that it owns in the Cover Pool or the sale thereof and its entitlements under the swap agreements and the GDA and Standby GDA. The Guarantor's other assets, the swap agreements, the GDA and Standby GDA, will not be a substantial portion of the assets of the Guarantor and are designed (a) to convert the interest received on the residential mortgage loans to the cash flow required to make interest payments on the Intercompany Loan prior to a Covered Bond Guarantee Activation Event, (b) in the event of a Covered Bond Guarantee Activation Event to convert the cash flows from the interest rate swap into the currency and rate of interest payable on the Covered Bonds, and (c) when applicable, to provide a temporary investment for principal collections on the residential mortgage loans following a Covered

¹¹ The service providers are the Bond Trustee, the Cover Pool Monitor, the Custodian, Computershare Trust Company of Canada in respect of corporate services provided for the Liquidation GP, the providers of the GDA and Standby GDA, who also provide a bank account and a commitment to provide a standby bank account, respectively, without guaranteed interest rates, the Cash Manager, the Servicer and the issuing, paying, transfer and exchange agents and registrar in respect of the Covered Bonds. The Bank will not be paid fees as Cash Manager or Servicer (the mortgage loans having been sold to the Guarantor on a fully serviced basis) under the relevant agreements.

Bond Activation Event and for proceeds of the residential mortgage loans in the event they are required to be sold prior to the maturity of the Covered Bonds, respectively. The exchange of cash flows under the covered bond swaps (being currency and/or interest swaps) will only occur following a Covered Bond Guarantee Activation Event.

Interest collections on the mortgage loans in the Cover Pool, prior to a Covered Bond Guarantee Activation Event, are applied to: (a) amounts due to third parties, (b) interest due on the Demand Loan, (c) fees to service providers, (d) amounts due to the interest rate swap provider, (e) interest due on the Guarantee Loan, (f) the Reserve Fund Required Amount¹² held in the GDA Account, (g) swap termination payments, (h) indemnities and (i) distribution to the partners as profit.

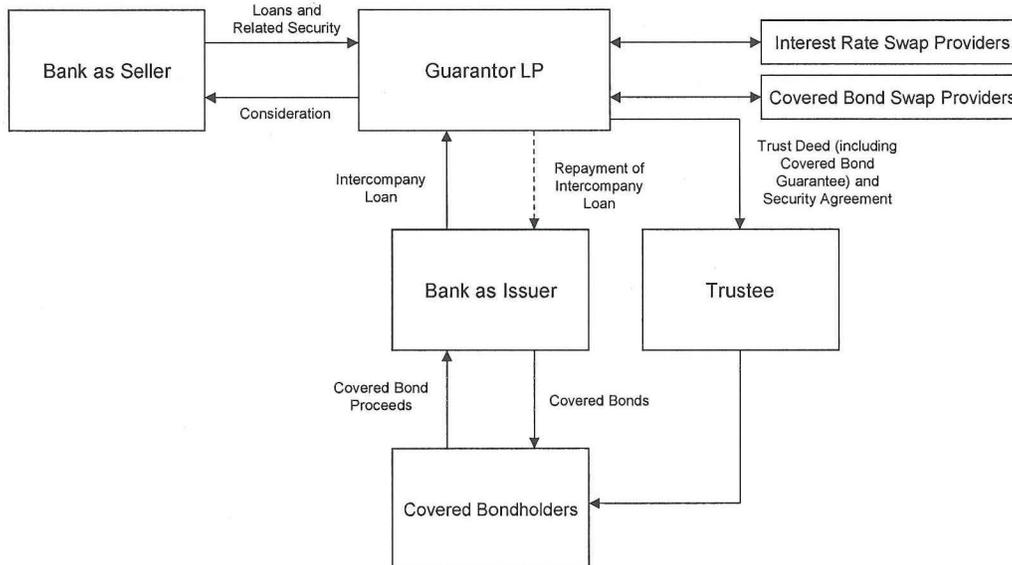
The principal collections on the mortgage loans in the Cover Pool, prior to a Covered Bond Guarantee Activation Event, are applied by the Cash Manager from time to time to (a) pay principal due on the Demand Loan, (b) acquire additional mortgage loans from the Bank as needed to satisfy the asset coverage test and (c) thereafter in the discretion of the Guarantor or the Cash Manager to acquire Substitute Assets¹³ up to the prescribed limit. The remaining balance of principal collections is deposited in the GDA Account or Standby GDA Account, as applicable, as necessary to satisfy the asset coverage test and then applied to make any payments due or to become due on the Guarantee Loan. If any amount remains, it may be used to make capital distributions to the partners of the Guarantor.

After a Covered Bond Guarantee Activation Event, the interest collections and the principal collections on the mortgage loans are deposited in the GDA Account or Standby GDA Account, as applicable, until needed to make payments under the priority of payments under the Guarantee, including interest due on the Covered Bonds and principal payments on the Covered Bonds or the conversion of the collections under the currency swaps to the currency and interest rate required to make interest and principal payments on the Covered Bonds when due.

¹² Following a downgrade of the Bank below a specified rating, an amount equal to three months of interest on the outstanding Covered Bonds plus one month's expenses; otherwise, zero.

¹³ The Guide defines "securities issued by the Government of Canada, repos of Government of Canada securities having terms acceptable to CMHC and sums derived from the Government of Canada securities or repos of Government of Canada securities" as Substitute Assets. Under the Guide, a guarantor entity may hold Substitute Assets provided the value of all Substitute Assets does not exceed 10 percent of the total value of all covered bond collateral (as determined in accordance with the Guide).

The structure and operation of the Covered Bonds is depicted in the following diagram:



2.5 Ownership Structure of the Guarantor

The Bank will be the sole limited partner of the Guarantor and will hold 99.95 percent of the interests in the Guarantor. The Managing GP (a wholly owned subsidiary of the Bank) and the Liquidation GP will own 99 percent and one percent, respectively, as general partners of the remaining .05 percent interest in the Guarantor. Accordingly, the Bank directly and indirectly will own 99.9995 percent of the interests in the Guarantor. In addition, prior to the Liquidation GP assuming the role of the Managing GP as a result of a Covered Bond Guarantee Activation Event or insolvency of the Managing GP, any distributions from the Guarantor to the Liquidation GP will be limited to the lesser of \$50,000 annually and the Liquidation GP's pro rata portion of any such distribution with any excess allocated to the Bank as sole limited partner, and following such event, such distributions will be pro rata based on the Liquidation GP's interest.

A new limited partner may be admitted to the Guarantor provided it is an affiliate of the Issuer, subject to meeting certain conditions precedent, including (except in the case of a subsidiary of a current limited partner) but not limited to, receipt of confirmation of the then current ratings of the Covered Bonds from the Rating Agencies, provided they are then rating the Covered Bonds.

The Managing GP will be a wholly owned subsidiary of the Bank. The directors and officers of the Managing GP will be officers and employees of the Bank. Ninety-one percent of the issued and outstanding shares in the capital of the Liquidation GP will be held by Computershare Trust Company of Canada, as trustee of the LGP Trust¹⁴ and nine percent of the issued and outstanding shares in the capital of the Liquidation GP will be held by the Bank. A majority of the directors of the Liquidation GP will be appointed by Computershare Trust Company of Canada, as trustee of the LGP Trust, and will be independent of the Bank. The Bank is entitled to have one nominee on the board of the Liquidation GP who is an officer or employee of the Bank.

¹⁴ The beneficiary of the LGP Trust is one or more charities registered under the Income Tax Act (Canada).

Other than in respect of those decisions reserved to the partners in certain limited circumstances described below, the Managing GP will manage and conduct the business of the Guarantor and will have all of the rights, power, and authority to act at all times for and on behalf of the Guarantor (provided that a voluntary liquidation of the Guarantor would require the consent of the Liquidation GP). Under certain circumstances, including a Covered Bond Guarantee Activation Event or insolvency or winding-up of the Managing GP, the Liquidation GP will assume the management responsibilities of the Managing GP.

3. Registration of the Covered Bond and Guarantee Offering on Form F-3

In anticipation of establishing a registered Covered Bond offering program in the United States, the Bank would file the Registration Statement in order to register, pursuant to Section 5 of the Securities Act, the offer and sale of the Covered Bonds and the Guarantee on a delayed or "shelf" basis as contemplated by Securities Act Rule 415(a)(1)(x). The Bank and the Guarantor would be co-registrants on the Registration Statement. For the policy reasons that we outline in this letter, we believe that the Guarantor should be permitted to use the Registration Statement filed by the Bank to register the Guarantee, so that the Covered Bonds and the related Guarantee could be offered and sold on a delayed basis pursuant to the Registration Statement.¹⁵

The Bank, which is a "foreign private issuer" as that term is defined in Rule 405 under the Securities Act, meets the registrant requirements set forth in Instruction I.A. of Form F-3, as follows:

- The Bank has a class of securities (its common shares) registered pursuant to Section 12(b) of the Exchange Act and has filed at least one annual report on Form 40-F.
- The Bank (a) has been subject to the requirements of Section 12 of the Exchange Act and has filed all the material required to be filed pursuant to Sections 13, 14 or 15(d) of the Exchange Act for a period of at least twelve calendar months immediately preceding the filing of the Registration Statement, and (b) at the time the Registration Statement is filed, will have filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the Registration Statement.
- Neither the Bank nor any of its consolidated or unconsolidated subsidiaries have, since the end of their last fiscal year for which certified financial statements of the Bank and its consolidated subsidiaries were included in a report filed pursuant to Section 13(a) or 15(d) of the Exchange Act: (a) failed to pay any dividend or sinking fund installment on preferred stock; or (b) defaulted (i) on any installment or installments on indebtedness for borrowed money, or (ii) on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the Bank and its consolidated and unconsolidated subsidiaries, taken as a whole.

The Bank satisfies the transaction criteria as set forth in Instruction I.B.1 of Form F-3, as the aggregate worldwide market value of the Bank's outstanding voting and non-voting common equity held by non-affiliates is over \$75 million.

It is also contemplated that the Guarantor will be a co-registrant with the Bank with respect to the Covered Bonds, given that the Guarantor is providing the Guarantee with respect to the Bank's Covered

¹⁵ The Covered Bonds offered and sold pursuant to the Registration Statement will be governed by the Trust Deed, which will be in compliance with the Trust Indenture Act of 1939, as amended (the **Trust Indenture Act**), and will be qualified under the Trust Indenture Act when the Registration Statement is declared effective. The Trustee under the Trust Deed will be eligible to serve as a trustee under the Trust Indenture Act and will be so qualified.

Bond obligations, as described above. The Guarantor does not have a class of securities registered under Section 12(b) or Section 12(g) of the Exchange Act, and does not file current and periodic reports pursuant to Section 13 and 15(d) of the Exchange Act. However, given the particular structural elements of the Covered Bonds and the Guarantee that serve to enhance the protection of investors in the Covered Bonds, as well as the disclosure that will be provided with regard to the Guarantor and the Cover Pool (discussed below), the Bank and the Guarantor should be permitted to register the offer and sale, on a delayed basis, of the Covered Bonds and the Guarantee, respectively, on a Form F-3, even though the Form F-3 eligibility requirements are not satisfied with respect to the Guarantor and the Guarantee.

3.1 Characteristics of the Guarantee

The Guarantee is unconditional and irrevocable as to payments of interest and principal under the Covered Bonds when such amounts become due for payment where such amounts would otherwise be unpaid by the Bank.¹⁶ The Guarantor will be required to pay the amount on the Guarantee if an Issuer Event of Default has occurred and notice to pay has been delivered to the Guarantor by the Bond Trustee in its discretion or as directed by a specified minority percentage of all of the Covered Bond holders.¹⁷ The purpose of the Guarantee, and the security granted in respect of the Guarantor's obligations under the Guarantee, is to provide full security for the Bank's obligations under the Covered Bonds in the event that the Bank is unable to meet those obligations. The Guarantee is designed to be available, funded and secured, and to pay the full amount of the Bank's obligations on the same payment schedule under the Covered Bonds in the event the Bank defaults. Moreover, the reason for the Guarantee and monthly asset coverage test calculations, overcollateralization requirement and amortization test (each described above) is to ensure that the Guarantor has sufficient assets to be able to pay the Covered Bonds to their maturity in accordance with their terms in the event that the Bank defaults. If at any time a notice to pay is delivered to the Guarantor, the Guarantor would hold a pool of nondefaulted mortgage loans with overcollateralization that should be sufficient to pay scheduled principal and interest on the Covered Bonds through their maturity. And if, after delivery of a notice to pay, the performance of the mortgage loans in the Cover Pool deteriorates to the point that the amortization test fails to be met,¹⁸ all Covered Bonds are accelerated and due immediately and will be paid on a pro rata basis. The Guarantee, as supported by the Cover Pool, provides an added level of security for the payment of the Covered Bonds.

3.2 Disclosure Considerations

As discussed above, the Bank is primarily liable for the Covered Bonds, with the Guarantee and the security of the Cover Pool serving as a security device for the remote contingency of the Bank's insolvency. We believe that the presence of the Cover Pool consisting of residential mortgage loans owned by the Guarantor for the purpose of funding payments of interest and principal under the Covered Bonds when such amounts become due for payment, where such amounts would otherwise be unpaid by the Bank, makes information about the Cover Pool itself of significant importance to investors in the Covered Bonds. The purpose of the Guarantee and ultimately the assets in the Cover Pool is to provide a readily available, funded and secured means by which to pay the full amount of the Bank's obligations on the same payment schedule under the Covered Bonds in the event that the Bank defaults. For that reason, we believe that, at a minimum, an asset disclosure template similar to those used for revolving master trusts would be the appropriate disclosure regime for describing the Guarantee and the Guarantor which holds the Cover Pool. While we do not believe that the Covered Bonds are asset-backed

¹⁶ We acknowledge that, while the Guarantee provides full security for the Bank's obligations under the Covered Bond, the Guarantee would not be considered a "full and unconditional" guarantee as defined in Rule 3-10 of Regulation S-X.

¹⁷ See *supra* note 5.

¹⁸ *Id.*

securities, nonetheless Regulation AB and other applicable disclosures specified in this letter appear to provide the appropriate guidance for disclosure of the Cover Pool in the Registration Statement and, as applicable, in subsequent periodic reports filed under the Exchange Act, and will, we believe, provide investors with all material information regarding the Covered Bonds, the Guarantee and the Guarantor. Accordingly, we believe the separate financial statements of the Guarantor are not material to an investment decision and therefore do not need to be included in the Registration Statement or in any subsequent periodic or current reports.

For all of these reasons, the Bank and the Guarantor will, at a minimum, provide disclosure of material information with respect to the Cover Pool, consistent with the applicable disclosure requirements specified in Regulation AB. The disclosure that will be provided in the Registration Statement, and as applicable in subsequent reports (in addition to all required information that will be provided with respect to the Bank) is, at a minimum and not limited to, the following:

- Information regarding repurchases and replacements in the Cover Pool, in accordance with Item 1104(e) of Regulation AB;
- Static pool information regarding assets in the Cover Pool, in accordance with Item 1105(b) of Regulation AB;
- Information regarding the servicing of the assets in the Cover Pool by the Bank, in accordance with Item 1108 of Regulation AB (including filing the servicing agreement as an exhibit);
- Information regarding the originator of the assets in the Cover Pool, in accordance with Item 1110 of Regulation AB;
- Information regarding the assets in the Cover Pool, in accordance with Item 1111 of Regulation AB;
- Information regarding significant obligors of assets in the Cover Pool, in accordance with Item 1112 of Regulation AB;
- Information regarding certain derivative instruments in the Cover Pool, in accordance with Item 1115 of Regulation AB;
- Information regarding reports and additional information in accordance with Item 1118 of Regulation AB;¹⁹
- Distribution and pool performance information for the Cover Pool, in accordance with Item 1121 of Regulation AB, including any additional information that is provided in monthly investor reports provided regarding the Cover Pool (to be included in reports filed on Form 10-D, as discussed below);
- Information regarding compliance with applicable servicing criteria in accordance with Item 1122 of Regulation AB (to be included in an annual report on Form 10-K, as described below); and

¹⁹ Consistent with the contemplated monthly reporting to investors under the Program, the Guarantor will undertake to file with the Commission a copy of its monthly report to investors by the 15th of each calendar month.

- A servicer compliance statement in accordance with Item 1123 of Regulation AB (to be included in an annual report on Form 10-K, as described below).

The Bank will continue to file periodic reports and furnish current reports with the Commission under the Exchange Act. The Guarantor will provide ongoing disclosure regarding the Guarantee and the Cover Pool in reports on Form 10-D, Form 8-K and Form 10-K. The certifications specified in Item 601(b)(31)(ii) of Regulation S-K will be provided with the Form 10-K.

Based on the foregoing, we believe that the Bank and the Guarantor should be eligible to register the offer and sale of the Covered Bonds and the related Guarantee on the Registration Statement.

4. Conclusion

On the basis of the facts and representations set forth above, we respectfully request that the staff of the Division concur with the views expressed herein and provide to the Bank an interpretive or no-action letter response addressing the matters discussed herein at the staffs earliest convenience.

* * * * *

Seven additional copies of this letter are enclosed pursuant to Securities Act Release No. 33-6269. Please feel free to contact the undersigned at Lawton M. Camp with any questions that you may have regarding the foregoing.

Very truly yours,



Lawton M. Camp

cc: Raquel Fox
Office of Capital Markets Trends
Division of Corporation Finance
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Jeffrey Heath, Executive Vice-President and Group Treasurer
Deborah Alexander, Executive Vice-President, General Counsel and Secretary