



**Canadian Bond
Investors' Association**

**Association canadienne des
investisseurs obligataires**

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BY EMAIL

Dear Sirs/Mesdames

Re: Improving regulation in the Canadian bond markets

The Canadian Bond Investors' Association (CBIA) was established in 2011 and represents over 20 of the largest fixed income institutional investor organizations in Canada, including those from the banking, insurance, pension and investment counsel sectors. Our membership includes only the "buy-side" operations affiliated with banking and insurance companies. As such the CBIA is the independent voice of Canadian bond investors, and hence of the millions of pensioners, policy holders and retail investors who depend on us for the sound management of these investments.

We make reference to a preliminary meeting held on January 24, 2013 between the CBIA (represented by Joe Morin, Ian McKinnon) and the Director of Finance, Huston Loke and certain other employees of the OSC. During the meeting we discussed a number of the concerns and issues of the fixed income community in Canada and agreed with Mr. Loke that we would follow up with a letter outlining our key concerns, as well as our specific requests of the OSC.

Through this letter we are broadening the scope of our communications to include all Canadian securities regulators.

The CBIA believes that there are certain aspects of the fixed income market in Canada that can be improved upon and we are therefore submitting this letter for your consideration and action. The emphasis of our request is on securing improved procedures for the corporate bond market

within existing regulations, as they apply to the needs for transparency, and access to timely information. We believe the suggested changes are reasonable and actionable. We also believe that implementation of these changes would create a more robust capital market which would benefit issuers and investment dealers, as well as investors.

We have a number of specific comments and requests as outlined below, which broadly pertain to issues of timely and full disclosure, and fair transparency within the fixed income market.

1. *Improved disclosure with regard to Credit Facilities*

Specifically, the CBIA believes it should be mandatory for any public or private issuer of bonds to file copies of the company's credit facility agreements, as well as credit facility compliance certificates on SEDAR on a timely basis. The key terms and conditions of credit facilities, including any restrictive covenants, are important inputs to the analysis of corporate bonds by fixed income investors. If margins or other pricing information in the credit agreement are deemed by banks and issuers to be commercially sensitive information then we are comfortable with that information being redacted.

We would highlight for your consideration that no bank in Canada would lend to a Canadian company without fully understanding the terms and conditions of all other key financing documents including an issuer's bond indentures. We are simply asking for a level playing field that accords reciprocal information access to public creditors.

Access to credit agreements would allow bond investors to fully assess the contractual or structural ranking, and to assess the risk of a breach of covenants or default under credit agreements. The current practice of an issuer disclosing when it is close to breaching a covenant under its credit agreement is inadequate in our view.

We note that the last time Canadian securities regulators sought comment on this topic, under National Instrument 41-101 in 2007, the Canadian Bankers Association (April 16, 2007) responded with strong opposition to such disclosure, as it is clearly in the interests of the banks to have such information withheld. Had the CBIA existed at the time, it would have been strongly in favour of such a rule.

Finally, we highlight, that the filing of credit agreements is mandatory under U.S. securities regulation and those agreements are readily available on EDGAR.

In our view, no change to existing regulations is required. Rather, simple enforcement of existing rules is all that is required to address this request. A reasonable interpretation of NI 51-102 (Section 12.2) would lead one to conclude that Canadian issuers of public securities are required to file credit agreements currently.

2. *Improved disclosure - availability of bond indentures on SEDAR*

While bond indentures are filed on SEDAR, they are often not filed on a timely basis and they are often very difficult to find. So-called 'private placement' bonds of public issuers are not filed at all (e.g. old Nova Gas bonds). We would request that securities regulators place greater scrutiny on timely filing of indentures and indenture supplements by issuers.

In order to facilitate easier access to key credit documents, we specifically request that a separate filing category on SEDAR entitled "Key Credit Documents" be created, which should

include credit agreements, indentures and indenture supplements. Currently, these documents are filed under "Other Material Contracts" and are often very difficult to find.

3. *Improved disclosure procedures during the new issue process*

Investors are often afforded insufficient time to review key terms and conditions of bond indentures when an issue comes to market. In many cases, the bond indenture may not be provided at all prior to a deal being launched. In Appendix 1, we highlight three recent new issues where there has been a lack of timely access to deal documentation.

We are specifically requesting that securities regulators ensure that bond indentures are provided to prospective investors concurrently with the Preliminary Prospectus. In our view it is unacceptable that issuers be permitted to sell debt securities without a final form contract in place.

4. *New issue process - access to legal counsel*

Fixed income investors currently do not have effective legal representation during the syndication process for a new bond issue. Whether a deal is done on an agency or underwritten basis, both the issuer and dealer/underwriter have legal counsel engaged to protect their interests, whereas investors, arguably the parties undertaking the greatest risk, have no direct legal representation during the new issue process. We believe this is a fundamental flaw in how corporate debt securities are issued in Canada and we would like to have this changed.

We believe that the lack of access to legal counsel is a problem with respect to every new issuer and many new issues that comes to market in Canada. The situation is particularly problematic when (as in the examples cited in Appendix 1) there is a rushed process that does not afford investors adequate time for reasonable due diligence.

It is particularly a concern when an issuer introduces terms that could be construed as a new variation on standard industry practice. For example in April 2007, Brookfield Asset Management ("the company") issued an Indicative Term Sheet which referenced an apparently standard Change of Control clause. However a close reading of the accompanying Prospectus Supplement would suggest that the Change of Control clause provides no protection to the investor in the event of a leveraged buy-out on the part of the company's management. In that context it would have been helpful to have had access to legal counsel so that investors could reach a better assessment of the significance of the exact wording in the Prospectus Supplement.

We are specifically requesting that securities regulators work with the CBIA to ensure better legal representation for fixed income investors during the new issue process. A possible solution that would allow for appropriate legal input would be the appointment of legal counsel, acting on behalf of potential investors, to provide a review of the risks associated with the indenture. The review would be detailed in the prospectus, followed by a national investor call hosted by counsel. The CBIA would like to explore this proposal and other possible alternatives further with securities regulators.

As a minimum more time is required for review of indentures. For new issuers we believe that a minimum of three working days should be allowed for investors to review final form indentures and prospectus supplements and to discuss concerns with legal counsel. In addition, we believe any amendments to indentures for existing issuers should be done independently from the new issue process for that issuer. We believe that this can be accomplished through simple

procedural changes to the new issue process and can be accommodated within current securities regulation.

5. *Regulatory Oversight of the Fixed Income Market*

At the CBIA's Annual Conference in November 2012, both the OSC and IIROC discussed improving transparency in the Canadian bond market. IIROC noted that it would begin monitoring trading in the fixed income markets in Canada in 2013. IIROC has recently issued a request for comment on Proposed Rule 2800C – Transaction Reporting for Debt Securities. We will be preparing a formal response to this, but our initial feedback is that regulatory bodies in Canada have been slow to address monitoring and transparency in the fixed income markets. We have reached out to IIROC and they have invited us to engage with them in a direct dialogue on how to improve oversight of the fixed income market.

6. *CDOR*

Given the scandal with respect to the manipulation of LIBOR by global banks, we would like to understand which regulatory body is responsible for the monitoring of CDOR in Canada and to what extent its setting is being monitored. CDOR is used as the reference rate in calculating interest on most floating rate notes issued in Canada, and we would like to know whether it is being set fairly.

In conclusion, on behalf of a broad group of Canadian institutional fixed income investors and the millions of beneficiaries that they represent, the CBIA asks the various Provincial securities commissions to take a close look at the issues we have presented above and to feel free to contact us for further discussion. We understand that changing or introducing new regulations into the marketplace can be very difficult. For this reason the emphasis of our requests is on securing improved procedures within existing regulations, as they apply to the needs for transparency and access to timely information for credit research.

Sincerely,



Joe Morin
Chair



Ian McKinnon
Director

Appendix 1: Recent transactions that highlight CBIA concerns about the New Issue Process in Canada

1. Alimentation Couche Tard Inc (“Couche Tard”)

Couche Tard filed a Preliminary Shelf for the issuance of debt securities on October 2, 2012. This was the first issuance of corporate bonds for this company in the Canadian market. The Preliminary Shelf included no “Description of the Notes” section and no draft Indenture was filed on SEDAR.

On October 25 at 9:00 a.m. a Preliminary Prospectus for the issuance of 5, 7, and 10 year notes was circulated by the investment dealers to institutional fixed income investors. At 10:00 a.m. of the same day the 'books were opened' and were closed by 11:00 a.m. This gave investors effectively 1-2 hours to review a Description of the Notes and get their firm orders in the book. Our members are simply asking for timely access to information that is critical in making an informed decision. In addition, the tight timeline unduly restricts access to legal counsel which is supposed to be retained on behalf of bond investors. The new issue process needs to be changed to allow adequate time for fixed income investors to review key documents.

On November 6, the Couche Tard Indenture was finally filed, while the Preliminary Prospectus (October 25) stated that it had been filed on SEDAR.

2. Corus Entertainment Inc

The Base Shelf was filed February 4, 2013. The deal was priced and the Prospectus Supplement filed February 6. Some of our members obtained the Trust Indenture directly from one of the dealers for this transaction but it is dated February 11 - a full 5 days after the deal was priced. The Trust Indenture was not filed on SEDAR on March 7, more than a month after the deal was priced.

3. Penske Truck Leasing Canada Ltd

Penske Truck Leasing Canada Ltd came to market with its first Canadian deal earlier this year in January. A typical ‘road show’ was held during the week of January 21 to allow investors to meet the issuer. New issue documents were provided on request, which included the rating agency reports and a Preliminary Offering Memorandum. Unfortunately, even though the trust indenture was not available until late Friday, January 25th, the deal was launched early on Monday morning, January 28th. Many investors missed the late e-mail of the Trust Indenture and were forced to make a quick decision on Monday with limited opportunity for the appropriate due diligence.