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METHODOLOGY

Legal Criteria for Canadian Structured Finance

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Related Research

For a list of the Structured Finance related methodologies for our principal Structured Finance asset class methodologies that may be used during the rating process, please see the DBRS Global Structured Finance Related Methodologies document on www.dbrs.com. Please note that not every related methodology listed under a principal Structured Finance asset class methodology may be used to rate or monitor an individual structured finance or debt obligation.

DBRS is a full-service credit rating agency established in 1976. Spanning North America, Europe and Asia, DBRS is respected for its independent, third-party evaluations of corporate and government issues. DBRS's extensive coverage of securitizations and structured finance transactions solidifies our standing as a leading provider of comprehensive, in-depth credit analysis.

All DBRS ratings and research are available in hard-copy format and electronically on Bloomberg and at DBRS.com, our lead delivery tool for organized, web-based, up-to-the-minute information. We remain committed to continuously refining our expertise in the analysis of credit quality and are dedicated to maintaining objective and credible opinions within the global financial marketplace.

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Key Updates

For key updates in this methodology, please refer to the press release titled "DBRS Publishes Updated Methodologies for Canadian Structured Finance" dated July 7, 2017.

Scope and Limitations

DBRS evaluates both qualitative and quantitative factors when assigning ratings to (or confirming ratings on) a Canadian structured finance instrument. This methodology represents the current DBRS approach to reviewing various legal and structural elements that DBRS considers important to Canadian structured finance transactions. It describes the DBRS approach to reviewing the underlying transaction documents and related information provided in connection with assigning or maintaining a rating or a transaction assessment, each as more fully described in this methodology. It is important to note that the various topics discussed in this methodology may not be applicable or relevant in all cases, depending on the legal structure and issuance in question and the related rating or transaction assessment level. Further, this methodology is meant to provide guidance regarding the DBRS methods used in Canadian structured finance and should not be interpreted with formulaic inflexibility, but understood in the context of the dynamic environment in which it is intended to be applied.

Introduction

While each structured finance transaction is unique and new variations continue to emerge, there are a number of legal considerations common to all Canadian structured finance transactions. These are the focus of this publication. DBRS reviews relevant information, documents and legal opinions (including, without limitation, a review of the transaction parties' rights and obligations and the representations, warranties, covenants and trigger events) prior to assigning (or proposing the assignment of) a Canadian structured finance rating or transaction assessment to determine whether the terms of the transaction and the Rated Securities[1] are commensurate with the transaction assessment or rating being (or proposed to be) assigned[2] by DBRS. The purpose of this publication is to provide greater transparency to the transaction assessment and ratings process by outlining the legal considerations that DBRS applies when rating a Canadian structured finance transaction or determining a transaction assessment, as applicable. To the extent that the terms of the related transaction documents do not contain specific contractual provisions addressing the matters DBRS considers important to a rating or transaction assessment, as outlined in this methodology, DBRS may still apply the criteria outlined in this methodology to the relevant Rated Securities or transaction assessment, as the case may be, and may rely on written covenants or undertakings from transaction parties to provide DBRS with the necessary information as outlined in its methodologies to permit DBRS to continue to monitor the Rated Securities.

The matters set out in this publication are considered for transaction assessments and Rated Securities in the highest DBRS structured finance rating categories (AAA (sf)/R-1 (high) (sf)). In circumstances where the Canadian structured finance transaction assessment or Rated Security is lower than AAA (sf)/R-1 (high) (sf), DBRS may take this into consideration as it deems appropriate under the circumstances and in relation to the applicable rating category. The considerations set out in this publication generally apply to Canadian structured finance transactions including, where relevant, Canadian commercial mortgage-backed securities, but do not generally apply to Canadian split shares, Canadian structured credit transactions and structured finance transactions that have no connection to Canada (whether with respect to the assets or the issuer and other transaction parties).

Where any ratings levels or rating thresholds are used in this publication in relation to an entity, the long-term rating thresholds typically refer to an entity's Issuer Rating or senior unsecured debt rating, and the short-term rating thresholds typically refer to an entity's commercial paper or short-term debt rating, unless otherwise indicated. In addition, DBRS determines (in accordance with its policies and procedures) whether a Critical Obligations Rating or other similar bail-in rating is the appropriate rating level against which to measure rating thresholds used in this methodology. DBRS considers, on a case-by-case basis, circumstances where the entity's rating is at a relevant minimum rating threshold described in this methodology, but such rating is Under Review with Negative Implications.

1. See Appendix B: Glossary of Terms for the definitions of capitalized terms.
2. The use of the word *assigned* or *assignment* of a rating in this publication is also intended to refer to a rating confirmation or satisfaction of the Rating Agency Condition, as the context requires it, in the event that there are existing Rated Securities.

The legal considerations outlined in this publication should be read in conjunction with the applicable Canadian Structured Finance asset-specific methodology. Also see *Derivatives Methodology for Canadian Structured Finance* at www.dbrs.com for DBRS's approach to reviewing hedging used in Canadian structured finance transactions. See also *Rating Canadian ABCP* and *Related Enhancement Features* at www.dbrs.com for the considerations that DBRS applies to rating Canadian ABCP and any ABCP-related enhancement, in addition to the matters outlined in this publication.

Legal Elements of Asset-Backed Securities

Bankruptcy Remoteness

Securitization involves the legal separation of a pool of assets and their associated cash flows and contractual rights from the Seller/Servicer by transferring them from the Seller/Servicer to an entity that is created specifically for this purpose, a special-purpose vehicle (SPV), or in some cases, by originating them in the name of such SPV so that the assets are initially legally segregated and bankruptcy remote from the operating entity. There may be a number of transfers or legal separation of assets by a number of entities in a securitization legal structure designed to achieve tax objectives and protections for the SPV and Security Holders. DBRS expects that whatever its form, the legal structure in a securitization transaction ultimately achieves asset segregation and bankruptcy remoteness in favour of the Security Holders.

An SPV typically takes the form of a trust in Canadian securitization transactions, but it can also be a limited partnership or other corporate structure, in some cases, as long as it is considered bankruptcy remote from the Seller/Servicer (which DBRS expects to be supported by a legal opinion) and not at risk of substantive consolidation or other risks that could adversely impact Security Holders. The SPV then issues debt that is backed by the Asset Pool that has been transferred to or is originated by the SPV, or it further transfers the Asset Pool to a purchaser or third-party SPV.

The SPV can be specifically created for this and other transactions entered into with the particular Seller/Servicer or it can be a trust or vehicle administered by a third party, such as a bank-sponsored conduit that issues ABCP to fund purchases of assets (which may include ABS) from various Sellers/Servicers. In the latter case, a number of Sellers/Servicers from various asset classes may sell assets (which may include ABS) to the SPV. If structured properly, the SPV is free of the liabilities and risks associated with the Seller(s)/Servicer(s) and can therefore issue debt backed purely by the cash flows and credit quality of the Asset Pool or the ABS, as the case may be.

Asset Pools are expected to be legally separated in a manner as to be beyond the reach of the Seller's/Servicer's creditors and the issuer's other creditors (if any), so that the relevant Asset Pool only backs the related Notes for which a rating or transaction assessment is being determined by DBRS. In cases where the issuer issues debt that is unrated, whether backed by the same Asset Pool as Rated Securities or a segregated pool of assets, DBRS expects to be provided with relevant information prior to such issuance to be able to assess whether the issuer or the Rated Securities may be exposed to any increased risks as a result of the issuance of such unrated debt.

Regardless of the legal structure to achieve bankruptcy remoteness and legal separation of assets, DBRS expects the following elements to be satisfied:

- If the structure includes a transfer of assets to the SPV, the transfer of the Asset Pool from the Seller to the SPV constitutes a true sale, such that the transfer of the assets to the SPV is effective to transfer all of the Seller's right, title and interest to the Asset Pool where the assets in the Asset Pool would no longer be considered to be property of the Seller and could not be attacked by creditors of the Seller, as supported by a legal opinion.
- The SPV (and ultimately, the Indenture Trustee, on behalf of the Security Holders) has an unencumbered ownership or security interest in and to the Asset Pool, and there are no outstanding liens or security interests in the assets that could compromise the SPV's or Indenture Trustee's interest (other than those securing the ABS or ABCP).[3]

3. See paragraph 2 under "Legal Opinions, First Priority Security, Searches and Filings" below for further details.

- In the event of the bankruptcy or insolvency of the Seller/Servicer, neither the SPV nor its assets will be substantively consolidated into, or considered part of, the estate of the Seller/Servicer, as supported by a legal opinion.[4]
- The transfer or segregation of the Asset Pool cannot be set aside under applicable bankruptcy, fraudulent conveyance or preference legislation for any reason, as supported by a legal opinion.

DBRS expects to see legal opinions for the matters indicated above (with DBRS named as an addressee), which DBRS relies on in completing its rating analysis or transaction assessment, as applicable. See the "Legal Opinions, First Priority Security, Searches and Filings" section below for further details on other matters DBRS expects to be covered by legal opinions.

While bankruptcy remoteness is an essential factor considered by DBRS in determining a transaction assessment or rating on Rated Securities, it is not the only consideration. DBRS's review encompasses other issues that may arise during the life of the transaction, such as the proper servicing of the Asset Pool (including the Asset Pool backing ABS if the ABS is not rated by DBRS but it backs Rated Securities) and collection of the cash flows the Asset Pool generates. DBRS's review of the legal documents in relation to a transaction includes a review of whether sufficient resources are available to allow the SPV to meet its payment obligations to holders of Rated Securities. DBRS expects the insolvency, legal status or existence of claims against any party involved in the transaction will not threaten payments to the Security Holders. See the sub-section "Segregated Collections and Other Transaction Accounts" below for further details on DBRS's expectations regarding segregation of collections.

Legal Opinions, First Priority Security, Searches and Filings

1. True Sale, Bankruptcy Remoteness and Corporate Legal Opinions

DBRS expects that legal opinions delivered with respect to a securitization transaction, with DBRS named as an addressee,[5] include the true sale (where applicable) and bankruptcy remoteness opinions indicated above, as well as opinions regarding the Seller, Servicer and the SPV (including any agents or administrators acting on the SPV's behalf) being legally constituted in the appropriate jurisdictions, validly existing and having the legal power, capacity and authority to enter into the transaction and issue the Rated Securities, as applicable. DBRS also expects the Seller to provide an officer's certificate (with DBRS named as an addressee) attesting to various matters relating to the true sale of the Asset Pool (where applicable), which are typically relied upon or assumed for purposes of the true sale and bankruptcy remoteness legal opinions. Where structures contemplate additional transfers of assets after the initial rating or transaction assessment is assigned by DBRS, DBRS expects that either the initial true sale and bankruptcy remoteness opinion addresses future transfers of assets, or additional true sale and bankruptcy remoteness opinions will be provided in relation to the additional transfers of assets.

In cases where the SPV is a completely independent third party from the Seller/Servicer, such as a bank-sponsored conduit, DBRS expects that legal opinions as to its legal existence, power, capacity and authority are provided when the conduit is established, so they may not be repeated for each securitization transaction into which the conduit subsequently enters.

In cases where a corporate legal opinion cannot be provided with respect to an agent or administrator of the SPV (such as the Issuer Trustee, Indenture Trustee or Custodian), DBRS may consider it acceptable for an officer's certificate to be delivered (with DBRS named as an addressee), whereby an officer of such agent or administrator (that is legally permitted to bind the entity) attests to the above matters in a way that is satisfactory to DBRS.

2. First Priority Security, Searches and Filings

At or prior to the time of closing of a transaction and assigning or confirming the rating on Rated Securities, DBRS expects all relevant formalities necessary to perfect the issuer's (and ultimately, the Security Holders') interests in the Asset Pool to have been taken. DBRS expects to be provided with an opinion from counsel at the time a transaction assessment or a rating is assigned or confirmed that says the Indenture Trustee has been granted a legal, valid, binding and enforceable first-priority security interest in the related Asset Pool

4. DBRS may, in some cases and depending on the legal structure of the securities, expect to see a non-consolidation opinion delivered at closing, with DBRS named as an addressee of the opinion. See paragraph 3 under "Legal Opinions, First Priority Security, Searches and Filings" below for further details.
5. DBRS expects to be named as an addressee on all legal opinions and officer's certificates delivered in connection with a transaction assessment or Rated Securities referred to in this publication and other applicable DBRS methodologies.

or ABS purchased (or otherwise held) by the SPV, and holds such security interest on behalf of all of the specified creditors (including the Security Holders). DBRS also expects the opinion to say that (a) all necessary and advisable searches have been conducted in all relevant jurisdictions, (b) searches have revealed no registered interests in the assets (or, if interests have been discovered, that they have been released, they are not adverse to the interests of the SPV or the Security Holders, or they have been subordinated to the interests of the SPV or the Security Holders, as the case may be) and (c) all PPSA registrations or other steps necessary to perfect the interests of the SPV and the Indenture Trustee (on behalf of the Security Holders) in and to the securitized assets (including, without limitation, a security interest in the Collections Accounts and other transaction accounts) have been taken.

If the laws of a relevant jurisdiction do not permit pre-filing of registrations to perfect the Indenture Trustee's interests (on behalf of the Security Holders), DBRS expects all relevant PPSA registrations to be made and relevant steps taken to perfect the interests of the SPV and the Indenture Trustee (on behalf of the Security Holders) in all relevant jurisdictions as soon as possible after closing, and in any event, within 14 calendar days of closing of the transaction or issuance of the Rated Securities, with a related legal opinion delivered within 30 calendar days of closing (which allows sufficient time for the relevant registration confirmations to be received for purposes of providing the opinion(s)).

3. Non-Consolidation Opinions

Canadian courts may have the power to order the legal doctrine of substantive consolidation in a bankruptcy or reorganization whereby separate corporate or partnership entities will have their assets and liabilities consolidated and treated as one debtor. This avenue can be used under extraordinary circumstances to allow creditors of each entity to reach the assets of the entire consolidated estate. This power does not arise from the Companies' Creditors Arrangement Act (CCAA) or the Bankruptcy and Insolvency Act (BIA), but rather from the general equitable and discretionary powers of the court. As a result, DBRS expects that when the SPV is a corporation, limited partnership or general partnership or where there appears to be sufficient linkage or control between the Seller and the SPV, a non-consolidation opinion will be delivered at closing stating that a court would not apply the legal doctrine of substantive consolidation to the SPV in the event that of the bankruptcy of the Seller (or Sellers where there are multiple sales of assets in the structure).

4. No Tax Liability

An unexpected tax liability for the SPV could erode the value of the Asset Pool, thereby affecting the SPV's ability to pay principal and interest on the debt that it issues, which may have an impact on DBRS's transaction assessment or rating. DBRS may, in certain circumstances, expect to see a legal opinion (with DBRS named as an addressee) or other acceptable evidence that indicates the transfer of the assets from the Seller to the SPV or any tax filing made by the SPV in relation to the Asset Pool will not result in adverse liability under the Income Tax Act or any other applicable tax statute, and/or that the SPV will not be subject to any significant tax liability that may rank ahead of payments to Security Holders. DBRS may also expect the SPV to be indemnified for any tax liabilities by a Seller/Servicer or parent entity in order to protect tax claims from being made against the SPV (and the Asset Pool) that may rank ahead of payments to Security Holders.

5. Bulk Sales Legislation

With respect to any potentially applicable bulk sales legislation in relation to the sale of Asset Pool to the SPV, DBRS may in some circumstances expect to see (a) a legal opinion that indicates that the bulk sales legislation is not applicable in the circumstances, (b) a bulk sales order obtained under the legislation (with a copy provided to DBRS) or (c) a court-ordered or approved exemption from compliance with applicable bulk sales legislation in relation to the particular transaction (with a copy of the exemption order provided to DBRS).

Québec: Specific Considerations

Ontario is the forum of choice for most Canadian structured finance transactions. For this reason, this publication focuses on Ontario law. Québec, however, with its civil law tradition and code, presents special challenges for securitization. Issues of registration and perfection of security interests in particular are different in Québec than in the common-law provinces. A lack of clear legislative provisions and clarifying case law means there is some debate as to the best method of perfecting an interest enforceable against third parties in Québec. The "Québec Perfection – Sales of Receivables" section outlines DBRS's expectations for perfection of the sale of Québec assets, which should apply even where the law that governs all other transaction documents and the sale of assets is not Québec law.

Segregated Collections and Other Transaction Accounts

DBRS expects funds collected, invested or deposited by the Servicer for the SPV to be bankruptcy remote and, as such, placed in segregated Collections Accounts or other transaction accounts that are in the name of the SPV[6] at an Eligible Institution and over which the SPV has sole control (although it may delegate servicing of the Asset Pool, collections, investments, deposits to reserve accounts and payments to Security Holders and other specified creditors in accordance with the transaction waterfall, to the Servicer or some other delegate). Eligible Institutions are typically Canadian chartered banks and trust companies that hold a short-term rating of at least R-1 (low) by DBRS (or its equivalent)[7] or a long-term rating of at least "A" by DBRS or otherwise satisfy the Rating Agency Condition. It is possible to satisfy the Rating Agency Condition with respect to an account bank that does not meet the Eligible Institution definition by relying on the account bank's parent guarantee, provided that the guarantee is in a form satisfactory to DBRS and the parent itself meets the Eligible Institution rating threshold (or otherwise satisfies the Rating Agency Condition). Alternatively, the account bank risk can be mitigated in some other way satisfactory to DBRS.

Investments in the form of securities are usually held by a securities intermediary. Although it is preferable that securities intermediaries hold the same ratings as those of Eligible Institutions for securities reserves and other investments, DBRS recognizes that there is a different legal relationship between an Eligible Institution and an account holder compared to a securities intermediary and its client. To facilitate the trading of book entry securities, securities intermediaries hold securities in title only, while beneficial ownership remains with the securities account holder. Upon the bankruptcy or insolvency of a securities intermediary, the securities held on behalf of clients are not assets of the intermediary but remain property of their beneficial owners. For this reason, an SPV is not exposed to the bankruptcy risk of a securities intermediary in the same manner as it is exposed to an institution holding cash in a bank account. Therefore, notwithstanding the Eligible Institution minimum rating thresholds, DBRS may consider it to be acceptable for securities reserves or collateral accounts to be held by unrated securities intermediaries, provided that they are subsidiaries of financial institutions that are Eligible Institutions and the transaction documentation includes rating triggers and subsequent actions to be taken based on the parent Eligible Institution's rating. Securities reserves or collateral may also be held by a Custodian or a bankruptcy remote nominee.

In order to mitigate the risk relating to the account bank, DBRS expects the relevant transaction documents to provide that if the rating of the account bank at which collections, reserves, investments or other transaction-related funds are held (or its parent bank, as applicable) falls below the minimum rating threshold for an Eligible Institution (or it no longer satisfies the Rating Agency Condition) during the life of the transaction or the Rated Securities, and no other satisfactory mitigant is in place, the account will be relocated within 30 calendar days to another entity that meets the Eligible Institution definition.

DBRS considers exceptions to the above-mentioned Eligible Institution definition in rare circumstances where it is determined to be acceptable to leave certain accounts in the name of the Servicer or Seller at an Eligible Institution. In this case, DBRS expects the SPV (and the Indenture Trustee) to be provided with a perfected first-priority security interest in the account. It may also be beneficial in some circumstances for the Indenture Trustee or other party on behalf of the SPV to enter into a blocked account agreement with the bank holding the account, or, in the case of a securities account, an account control agreement may be entered into with the securities intermediary (or such other method of perfection as required by applicable law to perfect the SPV's (and the Indenture Trustee's) interests in the relevant account). If Collections Accounts or other transaction accounts are maintained in the name of the Servicer or Seller, DBRS expects a legal opinion to be provided (with DBRS named as an addressee) indicating that the method of creating a first-priority perfected security interest has been completed and the funds in such account will continue to be available to the SPV in the event of the insolvency of the Seller. The latter is likely to be considered acceptable to DBRS if there are other acceptable features of the Canadian structured finance transaction that mitigate this risk, such as no commingling by the Seller/Servicer for more than two business days and the ability to provide instructions directly to the account bank prior to (or upon) the bankruptcy of the Servicer or Seller.

6. In the case where there is a Custodian, collateral trustee or another third party other than the Seller or Servicer acting on behalf of the specified creditors, the Collection Accounts may be in such party's name; however, such party(ies) is (are) collectively referred to as the SPV in this section for ease of reference.
7. The phrase "or its equivalent" refers to the equivalent DBRS rating. All rating references used in this publication refer to the relevant rating by DBRS or its equivalent rating by DBRS.

Commingling Risk

Commingling in this context refers to a practice of the Servicer collecting funds from Obligors on behalf of the SPV with respect to the Asset Pool and depositing them into the Seller's/Servicer's regular corporate/operating accounts, which results in such funds being commingled or mixed with the Seller's/Servicer's own operating funds. DBRS has two concerns associated with commingling. The first is the possibility that commingled cash may be tied up in a BIA or CCAA proceeding (or other similar bankruptcy proceeding in the relevant jurisdiction). The shorter the commingling period, the less the exposure to this risk, although terminating the Servicer and changing remittance obligations could be delayed or frustrated in a CCAA or BIA restructuring proceeding (or other similar bankruptcy proceeding in the relevant jurisdiction).

The second and more important consideration is the ongoing cash flow arrangement associated with the transaction. While commingled cash may be caught up in a CCAA or BIA filing, DBRS expects safeguards to be in place to ensure that further cash flows are not caught up as well. A court-ordered stay of proceedings after a BIA/CCAA filing (or other similar bankruptcy proceeding in the relevant jurisdiction) could mean that cash flow arrangements and other servicing agreements cannot be changed after the Seller/Servicer enters court protection. DBRS therefore considers it necessary for the transaction documents to provide for a proactive approach to protect the SPV from this risk by including the "non-commingling" provisions in transaction documents.

DBRS generally considers it acceptable for investment-grade Servicers (i.e., rated at least BBB (low) or the equivalent short-term rating by DBRS) to commingle funds collected for the SPV with its own funds until such collections are expected to be remitted to the SPV accounts to make payments to Security Holders under the terms of the transaction documents (i.e., until the next settlement date). Where DBRS has some concerns about a Servicer, notwithstanding that it is investment grade (for example, if it is rated at least BBB (low) or the short-term equivalent by DBRS but is under review or there is some other reason to cause DBRS some concern), DBRS may consider a more appropriate maximum commingling period to be two business days from receipt of collections.

In order to protect the interests of the Security Holders, DBRS expects that unrated and non-investment-grade Sellers/Servicers (rated below BBB (low) or the equivalent short-term rating by DBRS) not commingle collections collected on behalf of the SPV with their own cash flows, unless this risk is mitigated in some other way that is satisfactory to DBRS and commensurate with the rating or transaction assessment. If the Seller/Servicer is unrated or non-investment grade (i.e., rated below BBB (low) or the short-term equivalent by DBRS), DBRS typically expects to see Obligors remit directly to segregated Collections Accounts or to a third-party Servicer or Custodian, in which case, no commingling occurs with the Seller's/Servicer's operating funds. If an investment-grade Seller/Servicer is downgraded to non-investment grade (i.e., rated below BBB (low) or the short-term equivalent by DBRS), while Rated Securities remain outstanding, and in some circumstances where DBRS considers it acceptable for unrated Sellers/Servicers, DBRS expects that funds collected by the Seller/Servicer on behalf of the SPV are remitted or deposited to the Collections Account within two business days of receipt, unless the commingling risk is mitigated in some other way satisfactory to DBRS and commensurate with the rating or transaction assessment.

Due to the large sums of money involved in revolving credit card transactions, the non-commingling rating thresholds for Servicers in credit card transactions are somewhat more stringent. DBRS generally considers it acceptable if credit card Servicers rated at least R-1 (low) or A (low) by DBRS commingle collections with general operating funds on the same terms as investment-grade Servicers in non-credit card transactions; however, if the credit card Servicer does not maintain a rating of at least R-1 (low) or A (low) by DBRS, DBRS considers it acceptable for the credit card Servicer to continue to commingle funds in order that the credit card Servicer can continue to use such collections to purchase assets for the Asset Pool on behalf of the SPV. However, in these circumstances, DBRS expects the Partial Commingling Conditions (see below) to be met until the credit card Servicer is no longer investment grade (rated below BBB (low) or the short-term equivalent by DBRS), at which time DBRS expects all funds to be remitted to the Collections Account within two business days of receipt.

For all other asset classes that are revolving in nature, to the extent that the non-commingling ratings threshold is higher than BBB (low) by DBRS, DBRS considers it acceptable for the Seller/Servicer to continue to commingle funds, provided that the Partial Commingling Conditions are met until the Servicer is no longer investment grade (i.e., rated below BBB (low) or the short-term equivalent by DBRS), at which time DBRS expects all funds to be remitted to the Collections Account within two business days of receipt. If the revolving transaction only includes one non-commingling rating trigger of at least BBB (low) (or the equivalent short-term rating by DBRS), whereby no collections are commingled with the Seller's/Servicer's operating funds for more than two business days for any reason, the Partial Commingling Conditions are not expected to be met.

Partial Commingling

DBRS recognizes that flexibility is required in certain transactions with revolving Asset Pools, where collections may need to be used to frequently purchase new receivables from the Seller(s). As such, where the Seller/Servicer is rated above BBB (low) by DBRS but below a non-commingling rating trigger, instead of the remittance of all collections within two business days of receipt, DBRS considers it acceptable if the Seller/Servicer commingles collections until the next distribution or settlement date (partial commingling) without this having an impact on the transaction assessment assigned or the rating of the Rated Securities, subject to the following conditions (the Partial Commingling Conditions):

1. A daily asset test is conducted by the Servicer in accordance with the terms of the transaction documents to ensure there are sufficient eligible assets to meet a defined minimum required amount.
2. A daily monitoring of the occurrence of any amortization or similar event is completed by the Servicer.
3. The above two conditions are certified by an officer of the Servicer on a monthly basis, confirming that no amortization or similar event has occurred during that month and that the asset test has been complied with on a daily basis during that month.

DBRS expects that in the event that the Seller/Servicer's rating drops below BBB (low) by DBRS, or the revolving period ends if any of the above three conditions are not met, no further commingling of funds occurs (for more than two business days), with all collections remitted to the Collections Account within two business days of receipt, unless the commingling risk is mitigated in some other way that is satisfactory to DBRS and is commensurate with the rating or transaction assessment.

Eligible Investments

In the process of collecting funds for purposes of making payments to Security Holders, an SPV or a Servicer or Custodian on behalf of an SPV may wish to invest cash that has been collected until the amounts collected are required to make payments. The following is a list of investments that DBRS considers acceptable for AAA (sf)/R-1 (high) (sf) transaction assessments or Rated Securities, in order to mitigate the risk that collected funds may not be available to make payments when necessary. DBRS expects that the maximum term for such investments is one business day before the next payment date with respect to the Rated Securities:

1. Obligations issued or fully guaranteed as to both credit and timeliness by the Government of Canada.
2. Short-term or long-term unsecured debt obligations issued or fully guaranteed by any province or municipality of Canada, provided such investments are rated at least "A" or R-1 (low) by DBRS.
3. Term deposits, bankers' acceptances and subordinated debentures issued or accepted by any Canadian financial institution, provided such investments are rated at least "A" or R-1 (low) by DBRS.
4. Commercial paper, secured bonds and senior unsecured obligations of any Canadian corporation, provided such investments are rated at least "A" or R-1 (low) by DBRS.
5. ABCP issued by a conduit administered by a Canadian financial institution, provided the ABCP is rated R-1 (high) by DBRS and is backed by liquidity that meets the global liquidity standard.[8]
6. Money market funds rated at least AAA by DBRS.
7. Such other investments as may satisfy the Rating Agency Condition.

8. See *The DBRS Approach to Global Liquidity Standard* attached as Schedule A to *Rating Canadian ABCP and Related Enhancement Features* at www.dbrs.com for more details regarding the global liquidity standard.

Representations, Warranties and Covenants

DBRS expects the Seller/Servicer/Issuer to provide assurances that there are no adverse claims or interests in the Asset Pool (and there will not be any such adverse claims or interests in the Asset Pool at any time that the transaction assessment or any Rated Securities are outstanding) in the form of representations, warranties and covenants in the relevant transaction documents. With respect to a transfer of assets from the Seller to an SPV, DBRS expects the representations and warranties to be made for the ultimate benefit of the Security Holders, covering, at a minimum, that the Seller's right, title and interest in and to the assets are free and clear of any liens, adverse claims or security interests immediately prior to the sale, that the information provided with respect to the Asset Pool was true and correct, and that the Asset Pool consists of eligible assets under the terms of the transaction documents.

DBRS expects the transaction documents to contain other representations, warranties and covenants by transaction parties that are generally considered standard for similar Canadian structured finance transactions, and which are given to protect the interests of the Security Holders and other specified creditors. DBRS also expects remedies for a breach of representations, warranties and covenants to be those that are generally considered standard for similar Canadian structured finance transactions, including a repurchase obligation by the Seller/Servicer to the extent any assets in the Asset Pool were not eligible on a funding date or were not serviced by the Servicer in accordance with its applicable credit and collection policies.

Indemnities from the Seller/Servicer

As part of the origination, transfer, sale or allocation of assets to or by the SPV, DBRS expects there to be indemnities from the Seller/Servicer/operating entity to ultimately protect the Security Holders against any damages, losses, claims, liabilities or expenses (including legal expenses) arising from the following, in addition to any indemnities relating to the particular assets as set out in the relevant asset-class methodology:

- An asset that is not an eligible asset according to the terms of the transaction when transferred to the SPV (as above, DBRS expects that this results in at least a repurchase of the related assets).
- Any adverse claims on the assets.
- An asset that causes the Obligor's concentration limit to be exceeded.
- Any breach of covenant by the Seller (or Servicer) (including, without limitation, any non-commingling or servicing covenants) or the reliance by the SPV or Security Holders on a false or erroneous representation or warranty.
- A failure on the part of the Seller (or Servicer) to comply with laws and contractual terms that apply to the assets.
- Product liability claims involving the assets (applicable in some equipment lease and/or loan securitizations).
- The failure on the part of the Seller/Servicer to have a perfected security interest in the underlying assets (or for the Servicer to maintain a perfected security interest in the assets in favour of the SPV and the Indenture Trustee (on behalf of the Security Holders), where applicable).
- Taxes of any kind that may be imposed in connection with the assets.
- Any set-off, defense or counterclaim raised by an Obligor to the payment of amounts owing with respect to an asset.
- Any claims made in relation to disclosure of personal information in connection with the sale of the assets to the SPV.

For greater certainty, DBRS expects the Seller/Servicer to cover any fees or expenses (including any potential hedge breakage or unwind fees or other amounts) that may be payable in connection with the above indemnified amounts.

It is important that, where relevant, the Seller/Servicer/operating entity providing the indemnities has the financial ability to meet indemnity obligations for AAA/R-1 (high) (sf) Rated Securities or transaction assessments. DBRS expects the indemnities to be ultimately for the benefit of the Security Holders where there are a number of legal entities involved in a securitization structure, so that the Seller/Servicer/operating entity (and, a performance guarantor, where applicable) is ultimately responsible for the representations, warranties, covenants and indemnities provided. Although these indemnities may be limited by the bankruptcy of the Seller/Servicer/operating entity (or performance guarantor), as the case may be, indemnities from the Seller/Servicer/operating entity (or performance guarantor) provide some comfort that the Seller/Servicer/operating entity is responsible for its own actions and/or omissions.

Non-Petition Clauses and Limited Recourse

The SPV will enter into agreements with a number of third parties, including (without limitation) the Indenture Trustee, Financial Services Agent (FSA), Custodian, Servicer, backup servicer, credit enhancers, liquidity lenders and swap counterparties. To the extent that such agreements create obligations, the third party becomes a creditor of the SPV. DBRS therefore expects that such agreements contain a non-petition clause whereby the third party agrees not to petition the SPV into bankruptcy for at least one year plus one day after all Rated Securities or the ABS which are subject to a transaction assessment are repaid.

DBRS also expects that such third parties to a transaction contractually agree that recourse with respect to the SPV's obligations (whether in respect of payments to counterparties, service providers or Security Holders) is limited to the assets that specifically back the related Rated Securities.

Payment Priorities

The priority in which Security Holders (and other secured creditors) are paid is an essential consideration for DBRS when determining a rating or transaction assessment. DBRS expects that only statutory liens and quantifiable fees and expenses payable to service providers rank in priority to payments to Security Holders. DBRS understands that payments to certain third-party service providers are typically expected to be paid at the top of a transaction waterfall; however, DBRS generally expects that amounts payable to service providers that rank senior in priority of payment to the Rated Securities either be in respect of a clearly identifiable and quantifiable amount, a pre-determined amount or be subject to a cap at the top of the waterfall so that DBRS can accurately consider and take into account such quantifiable amounts in its credit analysis. A notable exception may be fees and expenses of the Indenture Trustee and any receiver appointed in connection with the enforcement of security on behalf of the Security Holders. In cases where payable amounts are variable and not subject to a cap, including after enforcement, DBRS will review the related ratings to determine consistency with the assigned ratings on the Rated Securities.

DBRS expects that any payments of fees and expenses to related-party service providers (such as the liquidity lender, financial services agent or administrative agent) in priority to Security Holders be subject to an excess funds condition. An excess funds condition is intended to ensure that sufficient funds are available to pay Security Holders after the payment of prior-ranking obligations, such as fees and expenses to the Issuer Trustee and Indenture Trustee. In other words, DBRS expects that payment of (1) interest to a liquidity lender in excess of the interest that is payable on the Rated Securities and (2) fees and expenses payable to the liquidity lender, financial services agent or administrative agent are subordinated and paid only after relevant payments of principal and interest, as applicable, have been paid to the Security Holders on a particular payment date. DBRS also expects that program fees (excluding third-party servicer or trustee fees and expenses) payable to sponsors, arrangers or underwriters, etc., are subordinated to principal payable on the Rated Securities unless subject to an excess funds condition..

In circumstances where an ABCP issuer enters into a transaction to purchase assets or ABS from another SPV, two payment priority waterfalls may be applicable (the waterfall at the transaction/ABS level and the waterfall at the ABCP issuer level). In such cases, DBRS reviews both waterfalls to ensure that the priority of payments noted above is respected such that the Rated Securities are repaid in a way that is commensurate with the rating or transaction assessment assigned. For more information on DBRS's expectations with respect to ABCP issuers, please see *Rating Canadian ABCP and Related Enhancement Features* at www.dbrs.com.

DBRS has additional expectations regarding risks expected to be addressed in addition to payment priority applicable to hedge counterparties. For more information, please see *Derivatives Criteria for Canadian Structured Finance Transactions* at www.dbrs.com.

Cure Periods for Events of Default, Amortization Events, Servicer Termination Events and Other Similar Events

DBRS expects that the maximum cure periods for various events such as Events of Default, related events of possession, amortization events, termination events, servicer termination events and other similar events for AAA (sf)/R-1 (high) (sf) Rated Securities are as follows:

1. ABCP:
   a. For an event with respect to non-payment or failure to deposit funds as required, typically three but not more than five business days;
   b. For events associated with bankruptcy proceedings relating to the issuer(s), Seller(s), Servicers, guarantors or parent companies and any other relevant parties, 45 calendar days;
   c. For breaches of representations, warranties and covenants, 30 calendar days; and
   d. For all other events (other than a breach of performance or ratings triggers), 30 calendar days.

2. ABS:
   a. For an event with respect to non-payment or failure to deposit funds as required, five business days;
   b. For events associated with bankruptcy proceedings relating to the issuer(s), Seller(s), Servicers, guarantors or parent companies and any other relevant parties, 60 calendar days;
   c. For breaches of representations, warranties and covenants, 60 calendar days; and
   d. For all other events (other than a breach of performance or ratings triggers), 60 calendar days.

DBRS expects that the transaction documents provide for DBRS to receive prompt written notice of the occurrence of any such event (including any event that would otherwise occur but for a force majeure exception) from the Servicer, administrative agent, FSA or other relevant party to the transaction.

Enforceability by Holders of the Rated Securities

The Trust Indenture gives Security Holders the right to enforce the terms and covenants of the Trust Indenture. This right usually extends to the Indenture Trustee, which is authorized to bring an action on behalf of Security Holders. DBRS expects that, to the extent that the Indenture Trustee does not take any action after being requested to do so by a certain number or percentage of Security Holders (typically at least 50%), the Trust Indenture provides that the Security Holders themselves may take enforcement action.

Amendments to the Trust Indenture and Other Significant Transaction Documents

DBRS expects that any material amendments[9] to significant transaction documents are subject to satisfaction of the Rating Agency Condition. In the event that a resolution of Security Holders is sought to approve such material amendments, DBRS expects that, if not already subject to satisfaction of the Rating Agency Condition, the relevant transaction documents provide for DBRS to receive prior written notice of the proposed Security Holder meeting at which the amendment is to be considered, and for DBRS to receive prompt written notice of any such amendment if approved. DBRS also expects to receive prompt written notice of all non-material amendments.

9. References to "material" amendments, waivers and consents in this publication are intended to refer to "material" (or "non-material," as the case may be) as determined by the issuer and its counsel.

Waivers of Events of Default, Amortization Events and Servicer Termination Events or Consents by Transaction Parties

A breach of certain material covenants and trigger events in a securitization transaction, such as defaults which become Events of Default with the passage of time or the giving of notice, Events of Default, related events of possession, amortization events, termination events, servicer termination events and other similar events, may potentially have an impact on the transaction assessment or the rating on the Rated Securities, or on the Security Holders. As such, DBRS expects that waivers of such material events be subject to satisfaction of the Rating Agency Condition. In the event that a resolution of Security Holders is sought to approve such material waivers, DBRS expects that, if not already subject to satisfaction of the Rating Agency Condition, the relevant transaction documents provide for DBRS to receive prior written notice of the proposed Security Holder meeting at which the waiver(s) is to be considered, and for DBRS to receive prompt written notice of any such waiver(s) if approved. DBRS expects the same standard to apply to consents that are provided by transaction parties which may have an impact on the transaction assessment or the rating on the Rated Securities, or on the Security Holders.

In cases where the waiver of the event or consent being requested is considered to be non-material (by the issuer and its counsel), DBRS expects the relevant transaction document to provide for DBRS to receive prompt written notice of such waiver or consent, or in the case where the non-materiality is evidenced by a legal opinion, DBRS expects to be an addressee to such opinion and to receive prompt written notice of the waiver or consent, as the case may be.

Assignments

DBRS expects to be provided with at least ten business days' prior written notice of any assignments by the Seller, Servicer and/or any other transaction party of its obligations under transaction documents, in order to assess whether there may be any negative impact on the transaction assessment or the rating on the Rated Securities. DBRS expects that any such assignment be made on the same terms and not result in any adverse consequences to the SPV or the Security Holders (such as adverse tax consequences). In some cases, the assignee or transferee of a transaction party may still be subject to minimum ratings thresholds and other mitigating factors that may apply to the transaction party in question under this publication and other applicable DBRS methodologies. If an Event of Default or event of termination or other similar event has occurred and the SPV is assigning the Note, assets or transaction to another party, DBRS expects prompt written notice in order to update and keep current its disclosure and monthly reporting, and expects the SPV to use the proceeds from the assignment to repay the relevant Rated Securities in full, where applicable.

Mergers, Amalgamations, Consolidations and Reorganizations

Other than with respect to the SPV, DBRS expects the relevant transaction document(s) to provide for DBRS to receive prompt written notice of any merger, amalgamation, consolidation or other similar reorganization of transaction parties in order for DBRS to assess whether there may be any negative impact on the transaction assessment or the rating on the Rated Securities. In order to not have any negative ratings impact on the Rated Securities, DBRS expects that the legal successor to the transaction party will not cause any adverse consequences, such as adverse tax consequences. In some cases, the legal successor of a transaction party may still be subject to minimum ratings thresholds and other mitigating factors that may apply to the transaction party in question under this publication and other applicable DBRS methodologies. See "The Special-Purpose Vehicle" section below for DBRS's expectations regarding a merger, amalgamation, consolidation or reorganization of the SPV.

Non-Assignment Clauses and Set-Off Rights

DBRS expects that any assets being securitized are freely assignable, or the relevant steps required to assign the assets have been taken such that the SPV (and ultimately, the Indenture Trustee) has the ability to directly enforce against the assets (for the benefit of the Security Holders), if necessary. In cases where assets that are being securitized contain clauses prohibiting their assignment without complying with some obligation (such as obtaining consent from the Obligor prior to such assignment or complying with the provisions of relevant law), DBRS may consider the securitization of those assets acceptable provided that the risk is mitigated in a way that is satisfactory to DBRS, which may include the provision of a legal opinion (with DBRS named as an addressee) or legal advice that indicates such clauses do not ultimately impact the SPV's (or a trustee's) rights to collect the receivables or enforce those assets in a timely manner in order to meet the issuer's obligations in respect of the Rated Securities.

In addition, where the terms of the assets in the Asset Pool contractually permit underlying Obligors (or any other relevant party) to exercise set-off rights (or where there may be an equitable right of set-off), DBRS expects the relevant steps as required under the contract or applicable law to be taken to mitigate this risk at or prior to the time the assets are included in the Asset Pool, unless this risk is addressed or mitigated in some other way that is satisfactory to DBRS and commensurate with the rating or transaction assessment.

The Special-Purpose Vehicle

In order to be considered bankruptcy remote from the Seller, DBRS expects the SPV to have certain characteristics and be subject to certain restrictions in its constitutional documents (regardless of what legal form it takes), including the following:

Limited Powers

The activities of the SPV are confined to those that are necessary to carry out the securitization transaction(s), including purchasing the assets from the Seller, issuing ABS, ABCP or the Rated Securities (as applicable). An SPV's activities are expected to be limited to mitigate the risk of unexpected creditors having the ability to make a claim against the SPV.

Debt Limitation

The SPV's ability to issue additional ABS or ABCP (or incur any other debt), as the case may be, is subject to satisfaction of the Rating Agency Condition on the existing Rated Securities or prior written notice to DBRS, where appropriate, unless the additional debt is already contemplated by the terms of the transaction documents reviewed by DBRS for purposes of determining the transaction assessment or rating on the Rated Securities. DBRS also expects the SPV to be restricted from guaranteeing any other entity's obligations or pledging its assets to secure any other entity's debt (and, in particular, the debt of the Seller). An SPV is expected to have limited obligations to mitigate the risk of unexpected creditors having the ability to make a claim against the SPV.

No Merger or Reorganization

DBRS expects the SPV to be restricted from amalgamating, merging, consolidating or otherwise joining with another entity. DBRS also expects any material changes to the SPV's constitutional documents or legal form while Rated Securities are outstanding to be subject to satisfaction of the Rating Agency Condition in order to ensure that the SPV does not participate in activities that were not anticipated or factored into DBRS's analysis at the time DBRS provided its rating.

Tax Neutrality

Any tax liability incurred by the SPV could erode assets that are available for meeting the obligations to the Security Holders. As such, DBRS needs to be satisfied that the SPV is not exposed to any significant tax liability that may rank ahead of payments to Security Holders, and may expect to see a legal opinion or other acceptable evidence to address this issue.

Maintain Existence

DBRS expects the relevant documents to prohibit the SPV from being able to terminate its existence while Rated Securities remain outstanding, including, without limitation, a prohibition against making a voluntary filing under applicable bankruptcy or insolvency legislation.

Identity Independent from that of the Seller/Separateness Covenants

In order to guard against a potential ruling of substantive consolidation by a court, DBRS expects the SPV to be an entity independent of the Seller/Servicer. One way of achieving such independence is for the SPV to be subject to "separateness covenants" in its constitutional documents, including the following:

- It maintains its accounts, books and financial statements (other than consolidated financial statements) separately from any other entity.
- It will not commingle its assets with those of any other entity.
- It pays its expenses and liabilities out of its own funds.

- It observes all formalities of the Declaration of Trust or trust settlement deed or its limited partnership agreement or other constitutional document, as the case may be.
- It conducts its business in its own name and maintains an arm's-length relationship with the Seller/Servicer.
- It maintains adequate capital to meet its operational needs.
- It refrains from acquiring any interest in the Seller/Servicer.

Minimal Unsecured Assets

DBRS expects the relevant documents to prohibit the SPV from acquiring assets other than those transferred and those that are necessary in order to carry out its functions under the transaction documents. DBRS also expects the transaction documents to provide that all the related assets are pledged to secure the SPV's obligations to related Security Holders (and other specified transaction party creditors).

Conduit Sponsors in a Securitization Transaction

Given the central role of the Sponsor of an SPV in the day-to-day operation and administration of the SPV, DBRS considers the financial strength, experience and capabilities of the Sponsor as significant for the purposes of ratings analysis in connection with ABCP or ABS issued by the SPV. DBRS therefore expects a Sponsor to be acceptable in accordance with the sponsorship considerations identified in Appendix A in order for that Sponsor to establish an SPV that issues securities that may achieve DBRS ratings in the higher rating categories.

DBRS refers to the same sponsorship considerations for single- and multi-seller ABCP SPVs. Depending on the level of continued and active involvement in the securitization activities related to an ABS-issuing SPV, DBRS may expect similar sponsorship considerations to be addressed for purposes of the initial assessment of a proposed ABS-issuing SPV Sponsor, as it deems appropriate for the proposed structure and rating level of the Notes intended to be issued. DBRS does not expect that all of the sponsorship considerations identified in Appendix A will need to be addressed in the context of captive finance companies that set up SPVs to be used in securitization transactions, as DBRS already completes a review of the captive entity with respect to its underwriting and servicing processes as part of its ratings analysis.

DBRS expects that where Sponsors charge program fees or administration fees to the SPV in connection with the day-to-day operations and maintenance of the SPV, those fees are subordinated to payments to Security Holders or subject to an excess funds condition, unless such fees are payable to unrelated third-parties and are nominal and quantifiable.

For more details, please refer to *The DBRS New Conduit Sponsorship Criteria* in Appendix A.

Service Providers in a Securitization Transaction

Issuer Trustee of a Trust SPV

An Issuer Trustee is appointed to hold title to the trust property and to carry out the activities of the trust SPV. As such, DBRS needs to be satisfied that it is qualified to do so. In order to determine whether DBRS considers the Issuer Trustee satisfactory for the particular Canadian structured finance transaction DBRS is reviewing, DBRS considers whether the Issuer Trustee is independent and acting at arm's length from the Seller, whether it is incorporated under the federal *Trust and Loan Companies Act*, whether it is subject to regulatory oversight by OSFI, and whether it is legally entitled to act as trustee in all relevant jurisdictions in which it may have to act under the transaction documents. DBRS needs to understand and expects to receive detailed information on, at a minimum, the history of the Issuer Trustee (including how long it has acted in such capacity and the number of transactions in which it is currently engaged to act as Issuer Trustee), the experience of its staff in acting in a trust capacity, whether it has the ability and financial wherewithal to effectively staff itself and support its operations, whether it has proper governance policies and procedures (including procedures to deal with any competing roles or conflicts if acting in more than one capacity), whether it has sufficient technology systems and capabilities to accurately process payments, notices and other similar operational matters, and whether it benefits from any implicit or explicit support from a parent company, each to the extent that DBRS deems such information necessary to determine whether it considers the Issuer Trustee satisfactory for the particular transaction.

With respect to the particular transaction assessment or Rated Securities, DBRS expects the Issuer Trustee to be subject to a standard of care to act as a reasonably prudent person in similar circumstances and have a fiduciary duty to act in the best interests of the SPV. DBRS also expects the Issuer Trustee to be barred from resigning until a successor is in place, with the appointment of a replacement Issuer Trustee being subject to at least ten business days' prior written notice to DBRS prior to the replacement Issuer Trustee beginning to act in such capacity. DBRS expects the Issuer Trustee to provide a covenant in the Declaration of Trust (or other applicable document) to co-operate with any replacement Issuer Trustee and to transfer assets, records, files, documentation and software as necessary to allow the replacement Issuer Trustee to assume its duties. DBRS expects that such transfer to a replacement servicer not be subject to payment of the original Issuer Trustee's outstanding fees or expenses (as the payment of such fees and expenses are already accounted for in the transaction waterfall). In addition, for the protection of the noteholders, DBRS expects that, to the extent that the Issuer Trustee delegates any of its duties to another entity or agent (other than the FSA, with whom the Issuer directly contracts), the Issuer Trustee will remain responsible for its obligations and primarily liable for the acts or omissions of any delegate. In this way, DBRS need only consider the Issuer Trustee in determining the transaction assessment or the rating of the Rated Securities. If the Issuer Trustee does not agree to be primarily liable for any acts or omissions of its delegates, DBRS assumes that the noteholders have agreed to accept this risk and any potential ratings impact.

Commingling by the SPV

As a matter of general trust law, assets held in trust by a trustee are beyond the reach of the trustee's creditors. While trust property is considered part of a trustee's estate, the bankruptcy trustee is barred from distributing such property by the BIA. To avoid SPV commingling risk, DBRS expects the Issuer Trustee of a trust SPV to segregate all related trust property and related cash flows with respect to a particular series of Rated Securities from other funds and to hold them in separate trust accounts designated for each such series of Rated Securities. DBRS expects this concept of segregation of related assets and cash flows to apply regardless of the constitution or form of the SPV.

FSA of a Trust SPV

Since an Issuer Trustee does not typically participate in the day-to-day activities of a trust, it enters into a Financial Services Agreement[10] with a FSA[11] that carries out the trust's business activities and its day-to-day and administrative functions. DBRS needs to be satisfied that the FSA has the ability and financial wherewithal to discharge its duties. In making this assessment, DBRS is guided by *The DBRS New Conduit Sponsorship Criteria* included as Appendix A, to the extent it is applicable to the particular structure being reviewed. DBRS expects that provisions are included in the Financial Services Agreement for both the resignation of the FSA and the removal of the FSA by the Issuer Trustee to be effective upon notice being delivered by the Issuer Trustee. DBRS also expects the FSA to provide a covenant in the Financial Services Agreement that it cooperate with any replacement FSA and that it transfer assets, records, files, documentation and software as necessary to allow the replacement FSA to assume its duties. DBRS expects that such transfer to a replacement FSA not be subject to payment of the original FSA's outstanding fees or expenses (as the payment of such fees and expenses are already accounted for in the transaction waterfall).

DBRS expects a replacement FSA to be subject to satisfaction of the Rating Agency Condition. In the event that a resolution of the Security Holders is sought to approve the replacement FSA, DBRS expects that, if not already subject to satisfaction of the Rating Agency Condition, the relevant transaction documents provide for DBRS to receive prior written notice of the proposed meeting of Security Holders to consider a replacement FSA (so that DBRS can conduct its analysis as to whether there may be any ratings impact), and for DBRS to receive prompt written notice of any appointed replacement. DBRS expects the Financial Services Agreement to provide that a replacement FSA be in place before either a resignation or removal of the original FSA becomes effective. DBRS also expects the FSA to be subject to a standard of care to act as a reasonably prudent person in similar circumstances and have a fiduciary duty to act in the best interests of the SPV.

10. May also be called an Administrative Agreement or Administration and Management Agreement, etc.
11. May also be called an Administrative Agent, Administrator, etc., but is referred to as the FSA for ease of reference.

The FSA often contracts with another party, such as a sub-FSA, to carry out some of its duties under the Financial Services Agreement. In these circumstances, DBRS expects the Financial Services Agreement (or other relevant document) to provide for DBRS to receive prior written notice of the appointment of the sub-FSA. Notwithstanding the appointment of a sub-FSA and notice being provided to DBRS, DBRS expects the Financial Services Agreement (or other relevant document) to provide for the FSA to remain responsible for its obligations to the SPV (including the ones delegated to the sub-FSA) and that it remains primarily liable for acts and omissions of the sub-FSA. This is to ensure that Security Holders are not exposed to risks associated with the sub-FSA and allows DBRS to consider only the FSA in its rating analysis.

The Indenture Trustee

An SPV that issues debt by way of a Trust Indenture retains an Indenture Trustee to act as agent for the Security Holders and other specified creditors. Similar to an Issuer Trustee, DBRS needs to be satisfied that the Indenture Trustee is qualified to act in such capacity. In order to determine whether DBRS considers the Indenture Trustee satisfactory for the particular Canadian structured finance transaction DBRS is reviewing, DBRS considers the same matters that are relevant to DBRS's consideration of an Issuer Trustee, as indicated under the subheading "Issuer Trustee of a Trust SPV" above. DBRS also expects the Trust Indenture to provide for the Indenture Trustee to be subject to a standard of care to act as a reasonably prudent person in similar circumstances and to have a fiduciary duty to act in the best interests of the SPV's specified creditors.

DBRS expects the Trust Indenture to contain provisions to replace the Indenture Trustee and stipulate that the Indenture Trustee cannot resign until a replacement has assumed its responsibilities, with any replacement Indenture Trustee being subject to at least ten business days' prior written notice to DBRS prior to the replacement Indenture Trustee beginning to act in such capacity. DBRS also expects the Indenture Trustee to give a covenant in the Trust Indenture to cooperate with any replacement Indenture Trustee and to transfer assets, records, files, documentation and software as necessary to allow the replacement Indenture Trustee to assume its duties, and that such transfer not be subject to payment of the original Indenture Trustee's outstanding fees or expenses (as payment of such fees and expenses are already accounted for in the transaction waterfall). DBRS expects the Trust Indenture to restrict the Indenture Trustee from commingling funds held in trust for the Security Holders with its own personal funds or other funds it may be holding for Security Holders of a separate series of Notes (unless specifically permitted by the terms of the relevant transaction(s)). Finally, DBRS expects designated (and segregated) trust accounts where the assets are held by the Indenture Trustee on behalf of the specified creditors to be established and maintained by the Indenture Trustee at Eligible Institutions.

The Indenture Trustee can, under certain conditions, delegate responsibility for some of its obligations under the Trust Indenture to a third party. For the protection of the noteholders, DBRS expects the Indenture Trustee to remain responsible for its obligations under the Trust Indenture (including those delegated) and primarily liable for the acts or omissions of the delegate. In this way, DBRS need only consider the Indenture Trustee in determining the transaction assessment or the rating of the Rated Securities. If the Indenture Trustee does not agree to be primarily liable for any acts or omissions of its delegates, DBRS assumes that the noteholders have agreed to accept this risk and any potential ratings impact.

Custodian

Similar to an Issuer Trustee and Indenture Trustee, DBRS expects to be satisfied that any Custodian appointed to hold records or title to assets on behalf of the SPV or to hold assets, records or investments directly on behalf of a transaction party, is qualified to do so. In order to determine whether DBRS considers the Custodian satisfactory for the particular Canadian structured finance transaction DBRS is reviewing, DBRS considers the same matters that are relevant to DBRS's consideration of an Issuer Trustee, as indicated under the subheading "Issuer Trustee of a Trust SPV" above.

In cases where a Custodian is not a Canadian entity, DBRS may expect a legal opinion to be delivered regarding the Custodian being legally constituted in the appropriate jurisdictions, validly existing and having the legal power, capacity and authority to enter into the transaction, and more importantly, opinions relating to the enforcement against the transaction party's assets in such other jurisdiction (if necessary), among other matters that DBRS may consider necessary to be addressed by way of legal opinion in determining whether the Custodian is satisfactory for the transaction.

DBRS expects the relevant document to prevent the Custodian from resigning until a successor is in place and that the appointment of a replacement Custodian is subject to ten business days' prior written notice to DBRS prior to it beginning to act in such capacity. Once a Custodian is required to hand over the assets or collections for purposes of the SPV being able to fulfill its payment obligations to Security Holders, DBRS expects the relevant document to provide the Custodian to do so without condition, including the transfer not being subject to receipt by the Custodian of all outstanding fees and expenses (as provision has already been made in the transaction waterfall for payment of such fees and expenses to the Custodian). As with the Issuer Trustee and Indenture Trustee, DBRS expects the Custodian to be restricted from commingling funds held in trust for the Security Holders or transaction party, as the case may be, with its own personal funds or other funds it may be holding for other Security Holders or transaction parties, or even the same transaction party with respect to another transaction or series (unless specifically permitted by the terms of the relevant transaction(s)). Finally, DBRS expects designated (and segregated) trust accounts where the assets are held by the Custodian on behalf of the specified creditors to be established and maintained by the Custodian at Eligible Institutions.

Indemnities of Third-Party Service Providers (Other than the Servicer)

The Trust Indenture likely contains provisions whereby the Indenture Trustee's liability is limited and the SPV indemnifies the Indenture Trustee for liability arising from actions taken in connection with its responsibilities under the Trust Indenture and other transaction documents (such as taking any enforcement actions). A similar limitation of liability and indemnity may exist with respect to the Issuer Trustee under the Declaration of Trust (or other applicable constitutional document) and the Servicer (under the Servicing Agreement). DBRS expects such limitations of liability and indemnification to be subject to the proviso that the liability arises from actions that were taken by the Indenture Trustee, Issuer Trustee or Servicer, as the case may be, in good faith and consistent with their contractual standard of care. DBRS expects that liability arising from willful misconduct, bad faith, gross negligence, fraud or breach of the service provider's standard of care are specifically excluded from the limitation of liability and indemnity. In addition, DBRS expects the relevant agreement to say such indemnification is paid solely from the SPV's property (and more specifically, the assets that secure the particular Rated Securities for which the service provider has been retained to act). DBRS understands that a similar limitation of liability and indemnity may be granted to the FSA and the Custodian (using a negligence rather than a gross negligence standard), but in this case, DBRS expects each of the FSA and Custodian to provide a reciprocal indemnity to the SPV for any damages, liabilities or claims made against the SPV as a result of the FSA's or Custodian's (as the case may be) willful misconduct, bad faith, negligence, fraud or breach of its standard of care.

Unlimited Expenses and Indemnities of Third-Party Service Providers

The priority in which Security Holders are paid is an essential consideration in DBRS's ratings analysis. DBRS understands that fees and expenses, including indemnities, payable by the SPV to certain third-party service providers are expected to be paid near the top of a transaction waterfall; however, to the extent that such fees and expenses, including indemnities, cannot be quantified for purposes of DBRS's analysis, DBRS considers it more appropriate to provide for only a reasonable portion of such fees and expenses, including indemnities, to be paid ahead of payments to Security Holders. Any fees, expenses or indemnities payable to third-party service providers that exceed predetermined or capped amounts may rank below payment of principal on the Rated Securities. In cases where indemnities are provided to parties that take enforcement action that will benefit or protect the Security Holders, it may be appropriate to pay the full amount of the indemnities ahead of Security Holders after enforcement action is commenced, but this may result in rating action where appropriate. DBRS assumes that where an Issuer does not include only payments of quantifiable fees and expenses, including indemnities, to third-party service providers ahead of payments to Security Holders, the Security Holders have agreed to the priority of payments indicated and accept any potential ratings impact once a rating or transaction assessment has been assigned by DBRS. DBRS may consider exceptions to the above on a case-by-case basis, depending on the circumstances, the asset class and the rating level. For further information on DBRS's expectations regarding payment priorities, see the subheading "Payment Priorities" above.

Servicing

A Servicer is also a service provider in a securitization transaction, and is retained by the SPV to serve as a point of contact with the Obligors to collect payments due on the assets and to pass these funds on to the SPV, which in turn passes them on to the Security Holders and other specified creditors.

Seller as Servicer

Typically, but not necessarily, the Seller is also the Servicer of the portfolio of securitized assets. Maintaining the Seller as Servicer brings administrative efficiencies and seamless service for the Seller's (or Originator's, as the case may be) customers, and rather than pay a separate fee for a third-party Servicer, which could attract additional taxes, the consideration for the Servicer can be built into the overall consideration for the sale of the assets (in other words, the assets are sold to the SPV on a fully-serviced basis). When a third-party Servicer is used (or may be used in the future), the expenses of the SPV are likely to be higher. To ensure that there are sufficient cash flows to pay a third-party Servicer, DBRS may expect to see additional credit enhancement or, if excess spread is available to be used for such purpose, the excess spread remaining may be considered sufficient to cover the third-party servicing fee in some cases.

The Servicer may wish to delegate responsibility for some of its Servicing obligations to a third party. DBRS expects the relevant document to provide that the Servicer remains responsible for its Servicing obligations (including those delegated) and primarily liable for the acts or omissions of the delegate. In this way, DBRS need only consider the Servicer (and, if applicable, the performance guarantee relating to the Servicer) in determining the transaction assessment or the rating of the Rated Securities.

Replacement Servicer

DBRS expects the relevant agreement that contains the contractual servicing provisions between the SPV and the Seller as Servicer to include provisions allowing the SPV to appoint a replacement Servicer if the original Servicer is unable to perform its servicing duties, or if the Servicer takes (or omits to take) some action that results in a default or servicer termination event under the terms of the transaction documents. As such, DBRS expects servicer termination events to be incorporated into the relevant agreement to give the SPV the right to replace the Servicer. DBRS expects any replacement Servicer to be subject to satisfaction of the Rating Agency Condition by DBRS. DBRS also expects the Servicer to be replaced as soon as reasonably practicable under the circumstances (which DBRS expects typically to be within 60 to 120 calendar days of the occurrence of a servicer termination or replacement event).

DBRS expects servicer termination events to be proactive, with early-warning triggers that allow the servicing contract to be terminated before the Seller enters bankruptcy. DBRS expects servicer termination events to include, at a minimum, (1) failure by the Servicer to make a required payment, deposit or remittance; (2) a breach of representation or warranty given by the Servicer; (3) any failure to observe or perform a term or covenant of the Servicer; (4) standard bankruptcy and insolvency triggers (including, where appropriate, insolvency of the performance guarantor if the performance guarantee includes a guarantee of the Servicer's obligations); and (5) in some cases, financial tests, including ratings triggers, where appropriate. DBRS expects the cure periods for the above events to be consistent with those indicated above for ABS and ABCP events of termination or default.

The relevant agreement that contains the servicing functions may include the ability to waive servicer termination events, which DBRS expects to be subject to the waiver terms indicated above. In addition, DBRS expects the relevant agreement to include provisions that assets, files, records, documentation, software and other critical resources of the Seller/Servicer are transferred to a replacement Servicer and that any software licenses necessary for such transfers are obtained on a timely basis. As above, DBRS expects that the relevant document provides that the transfer of records and other critical resources from the original Servicer to the replacement Servicer not be subject to payment of the original Servicer's outstanding fees or expenses (as these are already accounted for in the transaction waterfall).

Backup Servicer

A backup servicer may be appointed at the time the transaction is initially assessed or rated in circumstances where the Seller/Servicer is a non-investment-grade company or where there is some concern about the Servicer, as it may help ease any transition problems associated with a new Servicer in the event of a Servicer termination. Having a backup servicer in place at the inception of the transaction may help to mitigate any issues relating to servicing expectations, file management and access in advance of the backup servicer beginning to act in such capacity. In addition, appointing a backup servicer at the beginning of the transaction is considered advantageous because the servicing fee can be predetermined, thus eliminating the risk that market rates could be higher than expected if the original Servicer is replaced at some future date (as DBRS typically models the replacement servicer fee based on the expected market rate). The classification of a backup servicer can range from a "cold" backup servicer, who has minimal day-to-day responsibilities until it takes over as the replacement servicer, and a "hot" backup servicer, which is actively involved in monitoring and reviewing the Asset Pool and essentially "shadows" the servicer in its performance of the servicing duties in parallel with the Servicer.

DBRS expects the backup servicing agreement to include provisions that assets, files, records, documentation, software and other critical resources of the Seller/Servicer are transferred to the backup servicer and that any software licenses necessary for such transfers are obtained on a timely basis. DBRS expects that the transfer of records and other critical resources from the original Servicer to the backup servicer not be subject to payment of the original Servicer's outstanding fees or expenses (as these are already accounted for in the transaction waterfall).

The backup servicer may wish to delegate responsibility for some of its backup servicing obligations to a third party. DBRS expects the backup servicing agreement to provide for the backup servicer to remain responsible for its servicing obligations (including those delegated) and primarily liable for the acts or omissions of the delegate. In this way, DBRS need only consider the backup servicer in determining the transaction assessment or the rating of the Rated Securities.

DBRS expects the relevant documents to provide for any replacement backup servicer to be subject to satisfaction of the Rating Agency Condition. In the event that a resolution of the Security Holders is sought to approve a replacement backup servicer, DBRS expects the relevant documents to provide for DBRS to receive prior written notice of the proposed meeting of Security Holders at which the replacement backup servicer is to be considered so that DBRS can conduct its analysis as to whether there may be any ratings impact, and for DBRS to receive prompt written notice of the appointment of the replacement backup servicer by the Security Holders.

Reporting

DBRS expects the transaction documents for any transaction assessment or Rated Securities to include a provision that DBRS is provided with a copy of all reports generated by the Servicer in relation to each transaction assessment or Rated Securities, as soon as such report is disseminated to other parties to the transaction, unless DBRS is otherwise receiving sufficient information as DBRS considers necessary to monitor the transaction assessment or the Rated Securities from the Servicer or other relevant transaction party.

Asset-Specific Considerations

All asset-backed transactions share certain characteristics and the preceding sections have addressed many of them. There are, however, a number of concerns unique to individual types of transactions. The nature of the underlying assets is a key consideration that results in different treatment and legal considerations for each transaction. It is not the intention of this section to review all matters that may be applicable to each asset class. This section should be seen as a complement to previous sections and to the specific asset-class DBRS methodologies.

Revolving Versus Discrete Asset Pools

Structured finance transactions may involve discrete or revolving Asset Pool structures. Typically, with a discrete Asset Pool, no new assets are added to the Asset Pool over the life of the transaction.[12] The loans, mortgages, receivables, etc., that are initially securitized are typically the assets that are relied on to pay interest throughout the term of the transaction and to pay principal on the ABS, ABCP or Rated Securities at maturity. The static nature of these transactions allows DBRS to evaluate the underlying credit risk and anticipated historical loss rates with more certainty.

12. Subject to the exception that assets that do not meet eligibility criteria may need to be replaced.

Revolving Asset Pool transactions involve a number of considerations not relevant to discrete Asset Pool structures. The assets that eventually pay the principal on the Rated Securities at maturity in a revolving structure may not be the same as those that were initially securitized. Therefore, an evaluation of the assets at the beginning of the transaction remains essential but is not sufficient. The initial evaluation should be complemented by measures to assess that assets that enter the Asset Pool after the closing date are of similar credit quality.

DBRS examines the Originator's, Servicer's or Seller's (as applicable) underwriting criteria, with emphasis on underwriting standards, legal safeguards (including standard-form legal agreements and procedures for security registrations, lien searches, etc.) and collection policies, as indicated in DBRS's *Operational Risk Assessments for Canadian Structured Finance Methodology*, which can be found at www.dbrs.com. DBRS expects these standards and policies to be documented and formalized. DBRS also expects assets that enter the Asset Pool, both at the time of closing and after closing, to be originated in a manner consistent with the underwriting criteria and collection policy, as well as the specific eligibility criteria set out in the transaction documents. DBRS expects the relevant documents to provide for DBRS to receive at least prompt written notice of any material changes to these policies and procedures in order for DBRS to assess whether such changes may result in any impact on the transaction assessment or rating of the Rated Securities.

The ongoing viability of the Originator, Servicer or Seller is also crucial to the analysis of the transaction or Rated Securities. A deterioration of the Originator's, Servicer's or Seller's business may reduce its ability to replace assets in the Asset Pool as they are retired or to be able to continue to service the Asset Pool, as applicable. When the financial health of an Originator or Seller deteriorates, it may be more inclined to relax or fail to maintain underwriting standards in an attempt to generate or maintain business volume. DBRS therefore expects certain trigger events to be built into the transaction structure to protect Security Holders. Triggers may be tied to loss levels, delinquency levels, prepayment rates, the Originator's/Servicer's/Seller's credit rating, bankruptcy or insolvency events, payment or other Originator/Servicer/Seller covenant defaults, and the level of the remaining credit enhancement. If a trigger event occurs, DBRS expects that deferred payments and excess spread otherwise payable to the Originator/Servicer/Seller are locked up as an additional loss reserve or that additional credit enhancement is provided. In a worst-case scenario, prepayment or rapid amortization of the Rated Securities may be necessary.

DBRS expects transaction documents to provide that in the event that the Originator/Servicer/Seller wishes to sell, originate or allocate additional types of assets to the SPV or Asset Pool, as the case may be, that have not already been contemplated under the terms of the initial transaction assessment or rating on the Rated Securities, such purchase, origination or allocation into the Asset Pool is subject to satisfaction of the Rating Agency Condition by DBRS, unless the risk involved in adding such assets to the Asset Pool is mitigated in some other way that is satisfactory to DBRS and commensurate with the rating or transaction assessment. Similarly, if an additional/new Originator/Servicer/Seller wishes to sell, originate or allocate assets to an SPV or Asset Pool in relation to an existing transaction assessment or rating on Rated Securities that was not already contemplated under the terms of the initial transaction assessment or rating, DBRS expects the transaction documents to provide that the addition of that Originator/Servicer/Seller is subject to satisfaction of the Rating Agency Condition by DBRS, unless the risk of adding the assets of another Originator/Servicer/Seller to the Asset Pool is mitigated in some other way that is satisfactory to DBRS and commensurate with the rating or transaction assessment.

Residential Mortgages

Securitizations that involve interests in real property, typically mortgages, are not covered under PPSA legislation. They require a filing in the relevant land title or registry office in order for the transfer to be considered a legal assignment and enforceable against third parties. DBRS recognizes that it may be impractical to file a transfer of the interests in mortgage receivables that are being sold in a securitization transaction in the local land title or registry office prior to closing a transaction that involves large or revolving Asset Pools. As such, DBRS considers it acceptable for an investment-grade Originator/Servicer/Seller (rated at least BBB (low) by DBRS) to grant at least an irrevocable power of attorney to the SPV in each relevant jurisdiction, which would permit the SPV to effect a transfer of the mortgage(s) in the related registry or land titles office unilaterally at a later date, without having to rely on the Originator/Servicer/Seller's cooperation. An alternative would be for the Originator/Seller/Servicer to provide registrable transfers to the SPV for each relevant jurisdiction (accompanied by a legal opinion that the transfers are in registrable form and may be filed by the SPV without any assistance from the Originator/Servicer/Seller), which would benefit the SPV with respect to the amount of time it may take to re-title the mortgages when necessary. DBRS expects re-titling of mortgages in a securitization pool to take place once the Originator/Servicer/Seller is no longer investment grade (i.e., once its rating drops below BBB (low) or the short-term equivalent by DBRS) or if a default or triggering event occurs in the securitization transaction.

DBRS expects the relevant transaction documents to indicate that the re-registration process be completed within 60 to 90 calendar days of the date of the Originator/Servicer/Seller's rating falling below investment grade (i.e., rated below BBB (low) or the short-term equivalent by DBRS) or the default or triggering event occurring (subject to any applicable cure periods), at the Originator/Servicer/Seller's expense, in order to attempt to ensure that the Security Holders' interests are protected prior to the Originator/Servicer/Seller's insolvency. This re-registration period may be extended in certain circumstances where it may not be reasonably practicable to re-register all mortgages in the relevant land registry or titles offices in that time frame, provided that DBRS is provided with at least ten business days' prior written notice and more importantly, provided that DBRS considers that the extended time frame acceptable under the circumstances is not likely to result in any adverse effect on the rights of (or payments to) the SPV or the Security Holders.

It is important for the irrevocable powers of attorney or registrable transfers noted above to be granted by the Originator/Servicer/Seller to the SPV in registrable form (supported by a legal opinion from counsel in each relevant jurisdiction) either at the time of closing of the securitization transaction (particularly if the Originator/Servicer/Seller is non-investment grade (rated below BBB (low) or the short-term equivalent by DBRS) or unrated at closing), or in exceptional circumstances, once the Originator/Servicer/Seller's rating falls into the BBB category (high, middle or low) (but before the Originator/Servicer/Seller's rating falls below investment grade (below BBB (low) or the short-term equivalent by DBRS)). If DBRS considers the Originator/Servicer/Seller to be of insufficient credit quality at the time the transaction assessment is conducted or rating is assigned, or if the Originator/Servicer/Seller is unrated or is not investment grade (rated below BBB (low) or the short-term equivalent by DBRS) at the time, DBRS considers that this risk can only be addressed to its satisfaction if the mortgages are re-titled in the name of the SVP, a nominee or third-party Custodian (supported by a legal opinion) at or before completion of the transaction assessment or assignment of the rating, unless the risk is mitigated in some other way that is satisfactory to DBRS and commensurate with the rating or transaction assessment. DBRS may, in some cases, consider it acceptable if local counsel opinions regarding registrable transfers or powers of attorney are not delivered with respect to jurisdictions where the mortgages represent a nominal amount of the Asset Pool, as long as the aggregate of the mortgages in such jurisdictions are not considered significant by DBRS, and as long as this is not expected to have an adverse effect on the rights of (or payments to) the SPV or the Security Holders.

It is important for the Originator/Servicer/Seller to confirm by way of representations and warranties that the properties being included in the Asset Pool are not subject to any encumbrances or liens that may take priority over the securitized mortgages and that there are no orders relating to environmental matters, where relevant. In particular, DBRS expects the relevant documents to include representations and warranties indicating that there are no liens for taxes, unpaid fees or statutory or other liens on title to the property at closing. And finally, DBRS considers it important that the Originator/Servicer/Seller provides representations, warranties and covenants that adequate property insurance exists to protect against losses and that the Originator/Servicer/Seller (and/or the SPV or Indenture Trustee) is a first-loss payee under the relevant policies.

Credit Enhancement

A vital element of a structured finance transaction is the level of credit enhancement or credit protection that is provided. Forms of credit enhancement used in DBRS-rated structured finance transactions include but are not limited to the following: the holding of cash and securities as reserve funds, letters of credit and insurance policies, overcollateralization, excess spread, subordination and, in some cases, guarantees. DBRS may consider other types of credit enhancement on a case-by-case basis. See each specific asset-class methodology for more information on the types of credit enhancement typically provided for such asset-class securitizations. In the event that the initial level or type of credit enhancement that is considered by DBRS to determine a transaction assessment or to assign or confirm the rating on any Rated Securities changes significantly prior to the maturity of the relevant Rated Securities, such changes are subject to a review by DBRS in order to determine whether there may be any negative impact on the transaction assessment or rating on the Rated Securities.

Reserve Funds

Of the various forms of credit enhancement, a cash reserve is preferable to all other forms for a AAA (sf)/R-1 (high) (sf) Rated Security since it is extremely liquid, has a known value, is generally not subject to any legal ambiguity and has no credit risk. In addition to cash, certain investments that are considered highly liquid with little default risk and are held in reserve accounts in the name of the SPV[13] are acceptable as a form of credit enhancement. The investments considered acceptable by DBRS for this purpose are the same as Eligible Investments listed in the "Legal Elements of Asset-Backed Securities" section.

DBRS expects cash reserves as well as holdings in the form of collateral or securities to be held in accounts in the name of (or for the benefit of) the SPV at an Eligible Institution. See the "Segregated Collections and Other Transactions Accounts" section for a discussion regarding Eligible Institutions and the name in which reserve accounts are expected to be held.

Credit Enhancers/Letters of Credit

Letters of credit are considered by DBRS to be an acceptable type of credit enhancement, as they form contractual obligations between the letter of credit beneficiary (the SPV) and the letter of credit provider (the credit enhancer), independent of the conduct or status of the third party whose obligations the letter of credit is being used to (in part) satisfy (the Seller or Servicer). Insurance policies are also considered an acceptable form of credit enhancement for the same reason. The credit strength of a letter of credit or insurance policy is based on the credit strength of the provider (as the credit enhancer), and as such, DBRS expects the provider to have a rating of at least "A" or R-1 (low) by DBRS or otherwise satisfy the Rating Agency Condition. DBRS expects the transaction documents to provide that if the credit enhancer's rating drops below this threshold, a replacement credit enhancer meeting such minimum rating threshold provides replacement credit enhancement in substantially the same form within 30 calendar days of the initial credit enhancer's downgrade.

Overcollateralization

Overcollateralization is the most common form of credit enhancement seen in Canadian structured finance transactions. Simply put, overcollateralization refers to the practice of issuing a lesser dollar amount of Rated Securities than the amount of the assets in the relevant Asset Pool. This form of credit enhancement attempts to ensure that, if the assets are liquidated due to an amortization or early payout of the Rated Securities or if some of the assets do not perform as expected or decline in value, sufficient assets are still available to cover the SPV's obligations to the specified creditors (including the Security Holders). DBRS's review and analysis of the overcollateralization is included in its review of the Asset Pool and the legal aspects of transferring or segregating the assets in the Asset Pool to or by the SPV, including ensuring that a transfer is on a true sale basis, if applicable.

Excess Spread

After overcollateralization, excess spread is the next most common form of credit enhancement used in Canadian structured finance. Excess spread refers to the difference in the yield generated by the assets and the costs and expenses relating to the Rated Securities (including funding costs and other expenses of the issuer, such as third-party service provider fees, etc.). Put more simply, this is the amount by which interest collected on the assets surpasses interest paid on the Rated Securities. Excess spread accumulates in the Collections Accounts and is applied to the transaction waterfall in accordance with the terms of the transaction documents. DBRS's review and analysis of excess spread and how it is applied is part of its general review and analysis of the Rated Securities and, where applicable, the transaction assessment.

Subordination

Subordination refers to the practice of issuing more than one class of securities, each with different rights and entitlements. Subordinate Notes are junior, or subordinate to, senior Notes, meaning that collections received from the Asset Pool are first to be used to pay more senior Notes. Only after the issuer's obligations to senior Notes are paid in full are collections directed to amounts payable on subordinate Notes. Subordinate Notes are more likely to suffer losses as a result of deterioration of credit quality of the Asset Pool, before those losses flow through to senior Notes. Subordinate Notes are rated lower than senior Notes, or may not be rated by DBRS.

13. See footnote 6 above.

Guarantees

There are situations in which performance guarantees are relevant to Canadian structured finance transactions. Performance guarantees are most frequently seen when the Seller/Servicer is an unrated (or lower-rated) Canadian subsidiary of a foreign and/or rated parent. The parent often guarantees the performance of the subsidiary's contractual obligations as Seller and/or Servicer to the SPV (and ultimately, the Security Holders), including the subsidiary's indemnity obligations. Such performance guarantees are not intended to cover the risk of credit deterioration of the assets themselves. If a swap counterparty or liquidity provider is an unrated (or lower rated) Canadian subsidiary of a foreign company, a guarantee may also be considered appropriate.

DBRS makes a case-by-case determination if a performance guarantee from a parent company is acceptable in relation to the rating of the Rated Securities or the transaction assessment. Factors used to make this determination include the potential amount or type of obligation the subsidiary may owe to the SPV, the credit rating of the Canadian subsidiary (if any) and the credit rating or financial condition of its parent, and an understanding of the degree of reliance the Canadian subsidiary places on assistance from its parent for financial and operational support. The form and substance of the performance guarantee is reviewed by DBRS to assess whether its terms are appropriate for the particular transaction assessment or rating on the Rated Securities.

In circumstances where a guarantee (performance or otherwise) is provided in a transaction, DBRS may expect to see an opinion from the guarantor's counsel stating that the guarantee is an irrevocable and unconditional obligation of the guarantor, enforceable by the SPV against the guarantor. Comfort letters and keep-well agreements are of questionable enforceability and are not considered to be the equivalent of a performance guarantee in a Canadian structured finance transaction.

Québec Perfection – Sales of Receivables

In Québec, the legislation governing perfection of a security interest and the sales of receivables are significantly different from the PPSAs in force in the common-law provinces and territories. Registrations cannot be made before the close of a transaction in Québec, and the method of perfecting a sale of assets by registration or rendering it enforceable against third parties is subject to greater legal debate because there is a lack of clear legislative provisions and an absence of clarifying case law. The uncertainty relates to the concept of a universality of claims (described in more detail below). When the claims or receivables sold do not constitute a universality of claims, perfection is only possible by providing notice of the sale to the Québec Obligors, thereby allowing the SPV to protect its rights in the assets against third parties, including a trustee in bankruptcy. In addition, Québec law may apply to a sale of assets notwithstanding if it is made under the laws of a non-Québec jurisdiction.

The Québec Civil Code

In Québec, the legislation governing the sale of receivables is, in general, the Civil Code of Québec (Civil Code). The Civil Code may apply to a sale of assets where (1) Obligors are located in Québec, (2) collections on the assets are payable at a location or to an account situated or maintained in Québec or (3) the Seller's registered office or chief executive office is located in Québec. Any such assets are collectively referred to as "Québec Assets."

DBRS Québec Guidelines

The following section sets forth DBRS principles based guidelines with respect to Québec Assets. If the amount of Québec Assets is minimal in the context of the particular Asset Pool being reviewed, DBRS may not consider all of these steps necessary in some exceptional cases.

Universality of Claims Versus Notification

A universality of claims is a concept that is unique to Québec law. The Civil Code does not provide any definition of universality, but the legal community agrees that it is essentially a grouping or category of identifiable claims or other assets. However, the lack of a definition, combined with the lack of any case law, has led to variations in the treatment of this Québec issue by leading Québec law firms, resulting in differing structural protections for any given transaction. DBRS believes that the following statements have received acceptance among the legal community in Québec:

- If a universality of claims exists, registration of an appropriate form with respect to the sale of the Québec Assets in the Register of Personal and Movable Real Rights (the Registre des droits personnels et réels mobiliers) in Québec is sufficient under Québec law to render the SPV's interest in the Québec Assets remote from the bankruptcy of the Seller.
- If a universality of claims does not exist, the only way to ensure that the sale of Québec Assets is bankruptcy remote is to provide notification to each of the Obligors of Québec Assets (Québec Obligors) or to obtain their consent to the sale.

Accordingly, DBRS expects the transaction documents in a Canadian structured finance transaction to provide for the following with respect to transfers of Québec Assets:

1. **Registrations:** DBRS expects registration to be made for each sale of Québec Assets between a Seller and an SPV, regardless of whether it can be said with certainty that a universality of claims has been created. Where it can be said with certainty that a universality of claims exists, DBRS expects the description of the universality of claims to appear in the registration. Even if there is no consensus on the existence of a universality of claims, DBRS expects a registration (cautionary filing) to be made. DBRS expects registrations to be made with respect to Québec Assets as soon as possible after closing and in any event, within 14 calendar days of closing. DBRS also expects appropriate registrations relating to the transfer of certain rights under installment sales contracts, leasing contracts or leases, to be made within 14 calendar days of closing, if required.
2. **Legal Opinion:** DBRS expects an opinion from Québec counsel to be provided (naming DBRS as an addressee) stating one of the following:

   If Québec laws are applicable, (a) the Québec Assets would constitute a universality of claims and upon registration in the appropriate offices (with a follow-up report, if necessary, confirming the making of those registrations), the SPV's interest in the Québec Assets are remote from the bankruptcy of the Seller or (b) where legal counsel is not prepared to provide (a) above, a cautionary filing has been made or submitted for registration and a follow-up report confirming the registration is delivered.

   DBRS expects opinions relating to Québec registrations to be delivered within 30 calendar days following closing (which allows sufficient time for searches, confirmations and corrections to the registrations to be conducted, received or made).
3. **Notice to Québec Obligors of Sale of Québec Assets:** If Québec law may apply to the Canadian structured finance transaction and it is unclear whether the elements of commonality required to create a universality of claims are present, DBRS expects the transaction documents to provide for the Seller (at the Seller's expense) to notify Québec Obligors of the assignment or sale of Québec Assets when the rating of the Seller (or other relevant party, such as the performance guarantor) drops below investment grade (below BBB (low) or the short-term equivalent) by DBRS. If the Seller's obligations are not rated, notification is expected to occur prior to closing.

   Once the notification rating trigger has been breached, DBRS expects the transaction documents to provide that the Seller (or the Servicer or Custodian on the Seller's behalf) gives notice to all Québec Obligors of the transfer of Québec Assets to the SPV as soon as possible and at least between 30 and 60 calendar days from the occurrence of the trigger event. This notice period may be extended in certain circumstances where it may not be reasonably possible to notify all Québec Obligors in that time frame, provided that DBRS is provided with at least ten business days' prior written notice and more importantly, provided that DBRS considers the extended time frame acceptable under the circumstances, and provided that the extension is not likely to result in any adverse effect on the rights of the SPV or the Security Holders.

Appendix A: The DBRS New Conduit Sponsorship Criteria

Currently there are only a handful of SPVs issuing ABCP in the Canadian market. The Sponsors backing these SPVs are highly rated financial institutions with significant access to capital and several years of experience in the sponsorship and day-to-day functioning of an SPV. In the event that a newly formed SPV proposes to issue ABCP (or ABS) to be rated by DBRS, the following minimum sponsorship considerations are expected to be addressed, particularly where the Sponsor will be intricately involved in the day-to-day operations and maintenance of the SPV. As above, DBRS does not expect that all of the sponsorship considerations in this Appendix to be addressed in the context of captive finance companies that set up SPVs to be used in securitization transactions, as DBRS already completes a review of the captive entity with respect to its underwriting and servicing processes as part of its ratings analysis under DBRS's *Operational Risk Assessments for Canadian Structured Finance Methodology*, which can be found at www.dbrs.com.

Financial Institutions

For SPVs where the proposed Sponsor is a financial institution (or a subsidiary of a financial institution) regulated by the *Bank Act* (Canada) that has and maintained a DBRS long-term rating of at least BBB (low) (unless otherwise, the Sponsor has satisfied the Rating Agency Condition), DBRS must be satisfied that the necessary capital and operational resources and abilities are available.

In instances where the proposed Sponsor of the SPV is not a financial institution or subsidiary of a financial institution regulated by the *Bank Act* (Canada) or which does not have a DBRS long-term rating of at least BBB (low), DBRS expects to see the following:

Access to Capital

To determine whether each new SPV has a Sponsor with the financial wherewithal to ensure that the SPV can meet its obligations to Noteholders (other than for reasons of credit quality related to an Asset Pool), DBRS expects Sponsors to maintain a minimum level of capital as follows:

DBRS expects the Sponsor to maintain unencumbered equity equal to the greater of $5 million and 5% of the outstanding ABCP/ABS to a maximum of $50 million (unless the Sponsor has otherwise satisfied the Rating Agency Condition). The unencumbered equity is expected to be identifiable in audited financial statements of the Sponsor or its parent entity.

Operational Resources

Prior to the establishment of the SPV, the Sponsor is expected to have and maintain resources in place, or in the case of legal resources, available, to manage the following functions:

- **Legal**: Access to legal capabilities whether in-house or external with a proven track record in structuring securitization transactions funded in the Canadian ABCP or ABS market.
- **Quantitative**: Strong analytical and modelling capabilities, including expertise in pricing and surveillance.
- **Debt Market Experience**: Proven track record in the fixed-income and securitization market, with direct experience in managing/analyzing credits (either on an entity or portfolio basis).
- **Risk Management**: Experienced risk manager, with surveillance and monitoring experience in the credit market.
- **Liability Management**: Experience in managing treasury and funding of liabilities (commercial paper, fixed-rate notes or medium-term notes), including distribution of commercial paper in the Canadian market and experience with liquidity and asset liability management.
- **Back Office/Servicing**: Experience in executing and servicing securitization transactions, including transaction reporting and settlements, record-keeping, audit, payroll, security and human resources.
- Appropriate policies and procedures must be well developed and documented.
- Access to staff experienced in disaster recovery, planning and business continuation planning, and the development and management of systems for financial analysts and, if appropriate, a support team.

Information Systems

Prior to assigning any rating on securities (to be) issued by the SPV, the Sponsor is expected to demonstrate the following systems infrastructure:

- **General**: Hardware and software required to maintain an office (i.e., servers, computers and software).
- **Quantitative**: Systems for quantitative review of transactions (i.e., spreadsheet transactions and models for pricing and surveillance).
- **Reporting and Treasury Management**: Systems for tracking asset and liability management (i.e., commercial paper tracking systems).
- **Back-Office**: Systems to handle settlements and transfers.

Outsourcing of Functions

DBRS understands that there are many methods by which the above matters can be addressed. One possible method is to outsource key functions to third parties. Outsourcing of certain functions is acceptable under limited circumstances, provided that:

- The third party has significant expertise in the relevant area(s).
- The agreement between the Sponsor and the third party is documented and is provided to DBRS for review prior to the assignment of any ratings or transaction assessments by DBRS. If entered into post-closing, the Rating Agency Condition is expected to be satisfied.
- The term of the agreement is expected to be greater than the longest term of any asset held by the Sponsor

DBRS expects any material changes to the agreements (as determined by the Sponsor and its counsel) to be made available to DBRS to determine whether there may be any ratings impact on the relevant Rated Securities.

Operational Risk

As part of the review process, for all new SPV Sponsors, members of the DBRS ratings team perform an onsite review at the Sponsor's offices. In general, the review covers:

- Legal ownership and structure.
- Overall business and investment strategy and objectives.
- Staff in support of conduit operations.
- Systems.
- Internal controls, processes and procedures.
- Portfolio management, surveillance and administration.
- Third-party providers of service or other contractual counterparties to the conduit.
- Other issues deemed relevant to the assignment and maintenance of ratings or transaction assessments by DBRS on the Rating Securities.

For each of the above areas, where applicable, DBRS focuses on: (1) quality, (2) controls, (3) transparency and (4) capacity.

Disclosure and Notifications

DBRS expects that sponsorship of the SPV will be disclosed in a transparent and accessible manner, including:

- Full disclosure to DBRS of all administrators of the SPV.
- Where the sponsor is privately held, or narrowly held, full disclosure of all beneficial owners of the Sponsor.
- Prior written notice of any changes of beneficial ownership of a privately/narrowly held Sponsor.
- Prior written notice of any change of administrator or appointment of a sub-administrator.

- Prior written notice of any change of structure of the SPV or Sponsor.
- As long as securities issued by an SPV are rated by DBRS, DBRS may conduct annual reviews or may request additional information about the Sponsor (or its management of the business of the SPV) as DBRS deems appropriate.

Sponsorship Fees

DBRS expects that where Sponsors charge program fees or administration fees to the SPV in connection with the day-to-day operations and maintenance of the SPV, those fees are subordinated to payments to Security Holders, unless such fees are payable to unrelated third-parties and are nominal and quantifiable or subject to an excess funds condition as described under the subheading "Payment Priorities" above.

Appendix B: Glossary of Terms

ABCP: Asset-backed commercial paper issued by way of a structured finance transaction backed by (or secured by) an Asset Pool (or ABS), with a term of 364 calendar days or less.

ABS: Asset-backed securities issued by way of a structured finance transaction backed by (or secured by) an Asset Pool, with a term of greater than 364 calendar days.

Asset Pool: A pool of assets (which typically includes associated cash flows and related contractual rights, and in some cases, tangible assets) that are securitized (whether on a true sale or other bankruptcy remote basis and whether on a discrete or revolving basis), which are held as security for the Notes (used interchangeably with collateral pool).

Asset Purchase Agreement: Contractual agreement between a Seller and an SPV whereby assets are transferred to the SPV and consideration is paid by the SPV to the Seller in return for such assets.

BIA: Bankruptcy and Insolvency Act (Canada).

CCAA: Companies' Creditors Arrangement Act (Canada).

Collections Account: Accounts (including collections, reserves and other transaction funds accounts) held in the name of and controlled by an SPV (or Custodian, collateral trustee or other party acting on behalf of the specified creditors (other than the Seller/Originator or Servicer, in most cases), as the case may be) in which funds are held for the benefit of the specified creditors, including Security Holders.

Custodian: A bankruptcy remote entity that holds records and/or assets (and, in some cases, legal title to those assets) and provides safekeeping and custodial services for and on behalf of specified creditors, including the Security Holders. May also be called a collateral agent, collateral trustee or another similar name for the role described in this definition.

Declaration of Trust: Establishing document for a trust that spells out the powers and capacities of the trust and establishes the scope of its activities.

Eligible Institution: An account bank that holds a short-term rating of at least R-1 (low) by DBRS or a long-term rating of at least "A" by DBRS or otherwise satisfies the Rating Agency Condition. See the subsection "Segregated Collections and Other Transaction Accounts" under the "Legal Elements of Asset-Backed Securities" section for further details.

Event of Default: Certain enumerated events in a Trust Indenture or other transaction document, the occurrence of which permit the Indenture Trustee (after any applicable cure periods) on behalf of specified creditors (including Security Holders) to take certain remedial actions to protect the rights and interests of those specified creditors.

Financial Services Agent (FSA): Agent appointed by the Issuer Trustee to carry out day-to-day and administrative functions of the SPV (sometimes also called an administrative agent).

Financial Services Agreement: Contract entered into by the Issuer Trustee and the Financial Services Agent outlining the duties and responsibilities of the Financial Services Agent.

Issuer Trustee: Trustee appointed in the Declaration of Trust or trust settlement deed to carry out the activities of the trust and to hold title to the transferred assets in the case where the SPV is a trust.

Notes: Rated Securities or, in some cases, unrated ABS, ABCP or structured loans backed by Asset Pools.

Obligor: Underlying debtor, contractually bound to pay the Originator under the terms of the contract giving rise to the asset.

Originator: The entity that originates and owns the assets that are ultimately securitized to raise funds.

OSFI: The Office of the Superintendent of Financial Institutions.

Partial Commingling Conditions: See the Partial Commingling subsection in the "Collections Accounts" section.

PPSA: *Personal Property Security Act* (or Québec equivalent) in the relevant Canadian jurisdiction, or any other equivalent registration or filing process or law in any other relevant jurisdiction with respect to perfection.

Rated Securities:[14] ABS, ABCP or structured loans backed by Asset Pools, in each case, rated by DBRS.

Rating Agency Condition (RAC): DBRS indicates in writing that taking a proposed action will not, in and of itself, result in the rating(s) of the relevant Rated Securities being downgraded or withdrawn. If reference to satisfying the Rating Agency Condition relates to a proposed action that will be completed in connection with the initial assignment of a rating or transaction assessment, the Rating Agency Condition is considered to have been satisfied upon the assignment of the initial rating or transaction assessment, as the case may be.

Security Holders: Owners of the Rated Securities.

Seller: The entity that sells assets to the SPV in a securitization, whether it is the Originator or it acquires assets from the Originator and then sells them to the SPV.

Servicer: The entity responsible for administering, maintaining and performing collections on the assets that have been transferred to the SPV. It is common in structured finance transactions for the Seller to act as the initial Servicer.

Sponsor: The entity that establishes an SPV, who often contracts with the SPV to act as administrator or other main service provider for the SPV.

SPV: A special-purpose vehicle (sometimes referred to as a special-purpose entity) created for the purpose of separating asset risk from operating entity risk in a Canadian structured finance transaction. The SPV typically takes the form of a trust, but can also be a limited partnership or other corporate entity, provided that it is bankruptcy remote from the Seller. The SPV can be either a bankruptcy remote entity specifically organized to enter into transactions with a particular Seller or a bankruptcy remote third-party entity, such as a bank-sponsored conduit. In a typical Canadian structured finance transaction, the SPV acquires assets from the Seller and advances funds to the Seller in consideration for the assets. The Seller may also sell its assets to another entity that then sells them or grants a first-priority security interest to the SPV that issues debt in a securitization transaction. In the context of this publication, the term Seller is used to refer to both scenarios. The SPV subsequently issues Rated Securities backed by the transferred assets. The activities, assets and powers of an SPV are carefully circumscribed to those necessary for the structured finance transaction.

Supplemental Indenture: A document that may change or modify provisions of a Trust Indenture. Under many Trust Indentures, a Supplemental Indenture is required in order to issue securities.

14. In some cases, DBRS rates a different type of note or debt obligation, such as a variable-rate funding note or the probability that a credit facility will be drawn. In such cases, DBRS applies the same principles, methodologies and analysis, so the term Rated Securities is intended to refer to any type of debt obligation owing by an issuer/borrower, etc., that is rated by DBRS. The term "Rated Securities" in the context of this publication also includes ABS that are issued but not rated by DBRS, but which are still reviewed in the form of a transaction assessment because they are being purchased by an issuer that issues Rated Securities.

Transaction assessment: Akin to assigning a rating and used in cases where the underlying transaction that is being entered into or the assets or notes being purchased by the issuer of the Rated Securities is not directly rated by DBRS, but it is necessary for DBRS to assign what is akin to a rating (using (1) the long-term or short-term rating scales, as appropriate, (2) an approach that is consistent with the rating approach taken by DBRS when assigning a public or private rating to Rated Securities, and (3) applicable and approved DBRS methodologies) for purposes of assigning or confirming a rating on Rated Securities. DBRS discloses transaction assessments and certain metrics in its published reports.

Trust Indenture: A formal document governing the issuance of debt and whose covenants provide rights and protections to Security Holders and specified creditors.