
Subject: Request for Assistance: Adverse affects of restructuring Asset Backed Commercial Paper on small Canadian retail note holders

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From: Mike Miles [<mailto:mikemiles@shaw.ca>]

Sent: Monday, April 07, 2008 1:29 PM

To: Thomas Mulcair; Joe Comartin

Subject: Request for Assistance: Adverse affects of restructuring Asset Backed Commercial Paper on small Canadian retail note holders

Dear Mr. Comartin et M. Mulcair,

Veillez excuser notre manque de Francais.

I am writing on behalf of approximately 1800 Canadians who have had their savings frozen as a result of the collapse of Canadian non-bank asset backed commercial paper (ABCP). As you may have read, this "savings product" was sold to retail clients of Canaccord Capital, Credential Securities, Scotia Capital (wholesaler), National Bank Financial and others. Some of us were sold this product without our knowledge or consent; others were assured it was as trustworthy as Government of Canada T-bills, it was supposedly backed by a bank sponsored liquidity agreement (like a bank guarantee) and it paid comparable interest rates to a GIC or T-bill. This was reputed to be the type of secure product in which Canadians could place their money for periods of 30 to 60 days in the course of carrying out activities such as paying for their retirement or temporarily storing money in the period between selling one house and purchasing another.

This lengthy email tries to explain the national, and potentially international, significance of the ABCP crisis and how the proposed restructuring arrangement will improperly affect the rights of individual Canadians owning ABCP. The NDP missed an opportunity last week to be seen to be sponsoring the proposed Federal Finance Committee(FINA)investigations into the Canadian ABCP fiasco. However, there is still an opportunity to bring this issue to the attention of the House of Commons in question period. We request that the NDP Party demand of the Government that either the accumulated savings of small retail note holders be returned or that other actions be taken to protect their legitimate rights to recourse under Canadian law. The following URL provides an April 6, 2008 newspaper article which does a good job of explaining the predicament of the small investor in the ABCP fiasco (http://investorvoice.ca/ABCP/ABCP_TStar_06Apr08.htm).

The ABCP market collapsed in mid-August last summer as concerns over exposure to American sub-prime mortgages spread into Canada and new clients could not be found for ABCP. The (frequently foreign) banks which had been paid to provide assistance in this type of situation refused to provide liquidity and our savings have been frozen ever since. Retail savings total around \$350 M and are less than 1 percent of the total \$32 B of commercial paper which is affected. It is important to note that much of the ABCP paper is leveraged (i.e. 1000 dollars of paper have been used to secure an asset value of \$12,600); hence unwinding the entire ABCP structure could involve something like \$230B; this is large enough to disrupt both the Canadian and world economies!

A committee of large Canadian institutional investors was formed in August to find a solution to this crisis. Over the last 8 months this "Pan-Canadian Committee" has developed a restructuring plan which would convert the short term ABCP into long term notes such that institutional creditors can hope to eventually get their money back. The details of this plan are very complicated but the implications for small retail customers are substantial. The proposed

deal could allow us to receive 10% of our money back in 2013 and the remaining amount (there is no guarantee on what this is) in 2016. This may be a good strategy for a large institution but small, frequently elderly, retail customers cannot wait this long. The retail customer's group had money in short term "deposits" because we needed it to pay bills, finance our children's education, buy a house or undertake the other needs of daily living. As there were no "retail" investors on the Pan Canadian Committee, these requirements were overlooked by the people developing the restructuring plan.

The Pan-Canadian Committee petitioned the Ontario courts for bankruptcy protection on March 17, 2008 using provisions of the Companies Creditors Arrangement Act (CCAA). All owners of this paper are to vote on the proposed restructuring on April 25, 2008.

In the last 8 months there has been much speculation on how this unfortunate circumstance arose. It is my understanding that the Liberals and the Bloc Quebecois voted for FINA to open an investigation into this matter in the next few weeks (the NDP was not present for the vote, but my understanding is that it supports the hearing too). What is known is that the American credit rating agencies, such as Standard and Poors, refused to rate Canadian ABCP because they felt the liquidity agreements with the banks could not be relied upon. Despite this assessment (which was made in 2002 and was recently proven to be accurate), the Canadian Dominion Bond Rating Service or DBRS agreed to "rate" the Canadian ABCP and gave it their highest standard, equivalent to Government of Canada T-bills. The Provincial Governments of Canada did not stop the ABCP sponsors from putting the paper onto the market without a "prospectus," which is a document that would have explained to consumers what the underlying assets were. In most of the retail customer group, the ABCP was wholesaled by Scotia Capital, who sold it to retail outlets, such as Canaccord or Credential Securities. It has been widely reported that Scotia Capital received a letter from the sponsor (a company called Coventree) that Canadian ABCP was in trouble on July 24., 2007. Substantial quantities of this paper were subsequently sold into the Canadian market to retail clients who were told it was "just like a T-bill or GIC", or were not informed before their existing T-bill like savings products were rolled over into ABCP.

It is alleged that by the time the paper was frozen on August 13, 2007 Scotia Capital had managed to unload \$140 M of ABCP onto the retail market and had reduced their own exposure to about \$200 million. Canaccord, National Bank and Credential, have taken very substantial criticism for misrepresenting this product to their customers. According to the April 6, 2008 Toronto Star article ["Little Guy Blameless in This Mess,"](#) written by Doug Peters and Arthur Donner, many financial organizations had their finger in this ABCP product and many failed to undertake their responsibilities, despite being paid to perform this service.

The proposed restructuring deal includes an all encompassing legal release which will ensure that none of the following can be sued by anyone for any action whatsoever: bank asset providers and liquidity agreement providers; trust companies acting as trustees; DBRS; sponsors; wholesale and retail distributors; their auditors, financial advisors and lawyers; and, even members of the Pan Canadian Committee that are institutional investors. The retail customer group never had a seat at the Montreal Accord table and so this group is not covered by the legal release in terms of the large financial organizations being free to sue retail customers who might complain too vociferously.

If the restructuring agreement is passed, the legal release stops the retail customers (even those who voted against the restructuring) from taking any action to claim for any damages in any manner and at any forum. This intends to stop all judicial, arbitral, administrative or other forums available to ABCP owners to obtain remedy for their damages. The court causes of actions being denied include breach of fiduciary duty, breach of trust, failure in duty of care, misrepresentation, product defect and liability, return of goods taken in the course of unlawful conduct or criminal fraud.

The Pan Canadian Committee advised small retail investors last week to accept the restructuring agreement. However, many people cannot wait 5 to 9 years to see what, if anything, is left at the end of the restructuring deal. They will not be able to recover their

savings in the shorter term as the new notes are expected to trade at a substantial discount. We have been told that if this deal fails, we will be left with little or nothing! However, if we accept the restructuring, we will not be able to sue the responsible parties for any short fall or for damages, which in some cases are very substantial. We have also been provided with no information on what the value of the restructured notes will be nor have we been provided with any guarantee of what percentage of our savings might be eventually recovered. This amounts to a gross miscarriage of justice and is possibly an infringement under the Charter of Rights and Freedoms.

It is our position that the CCAA should not be used to shelter unlawful, or potential criminal behavior, or to restrict victims from seeking justifiable remedies for damages caused by the CCAA parties who were involved in this flawed savings product. The present restructuring process was developed between large organizations principally for their mutual benefit. The legitimate needs of the small retail owners, who thought they had a safe place to park their savings (and did not receive any higher interest rate appropriate for a risky product that would give them reason for suspicion of risk) are being trampled on. Most of us simply want our money back and for this whole mess to go away. The proposed restructuring deal does not do this, and it severely limits our legal rights to pursue other courses of actions under Canadian law.

A group of affected Canadians has joined together to fight this issue. A representative number of us from across Canada have put our names to this letter. We have used a web site to exchange information and to provide mutual support in this fight against the large financial institutions in Canada. You might be interested in seeing how this grass roots organization has managed to pull people together from all across Canada (go to <http://www.facebook.com/> search for ABCP, request permission to log in from the administrator Brian Hunter). The following web site provides a comprehensive list of articles on the ABCP issue (http://investorvoice.ca/ABCP/ABCP_index.htm).

We would be pleased to discuss this issue with you at your convenience or to provide any additional details which you might require.

Merci pour votre attention.

Respectfully,

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