

# **Canadian Police College**

**Investment Fraud Course**

**May 17, 2013**

**Diane A. Urquhart**

**Independent Financial Analyst**

# **ABCP Retail Owners**

## **Lessons for Regulatory and Police Investigations**

### **1. Overall Goals of Investors**

**Prevention = Other Canadians never put in same position as they have been**

**Punishment = Justice**

**Recovery = Financial remedy**

# **ABCP Retail Owners**

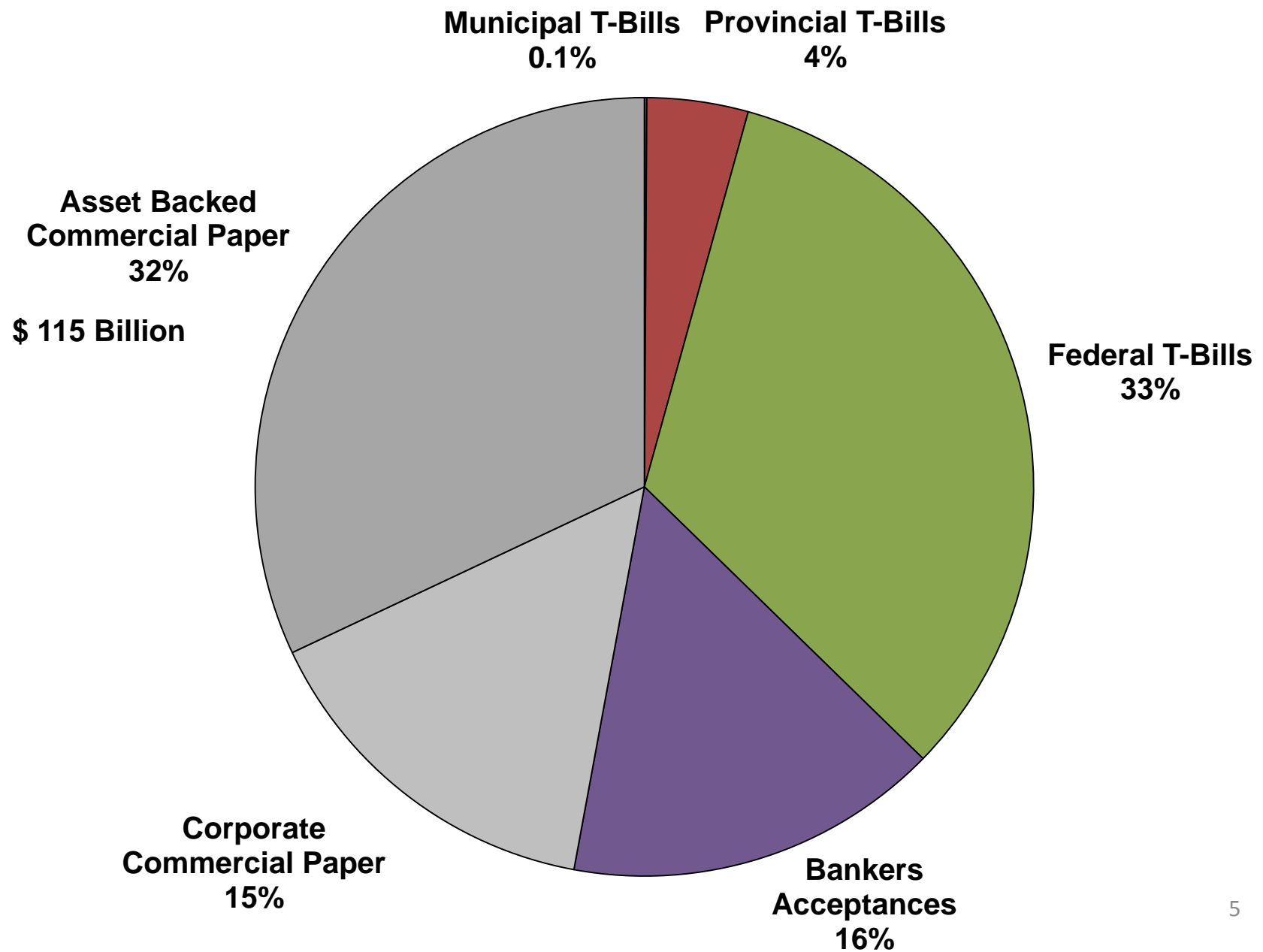
## **Lessons for Regulatory and Police Investigations**

- 2. More Criminal Investigations**
- 3. Investors' Participation in Investigations**
- 4. Experts in the Courtroom**

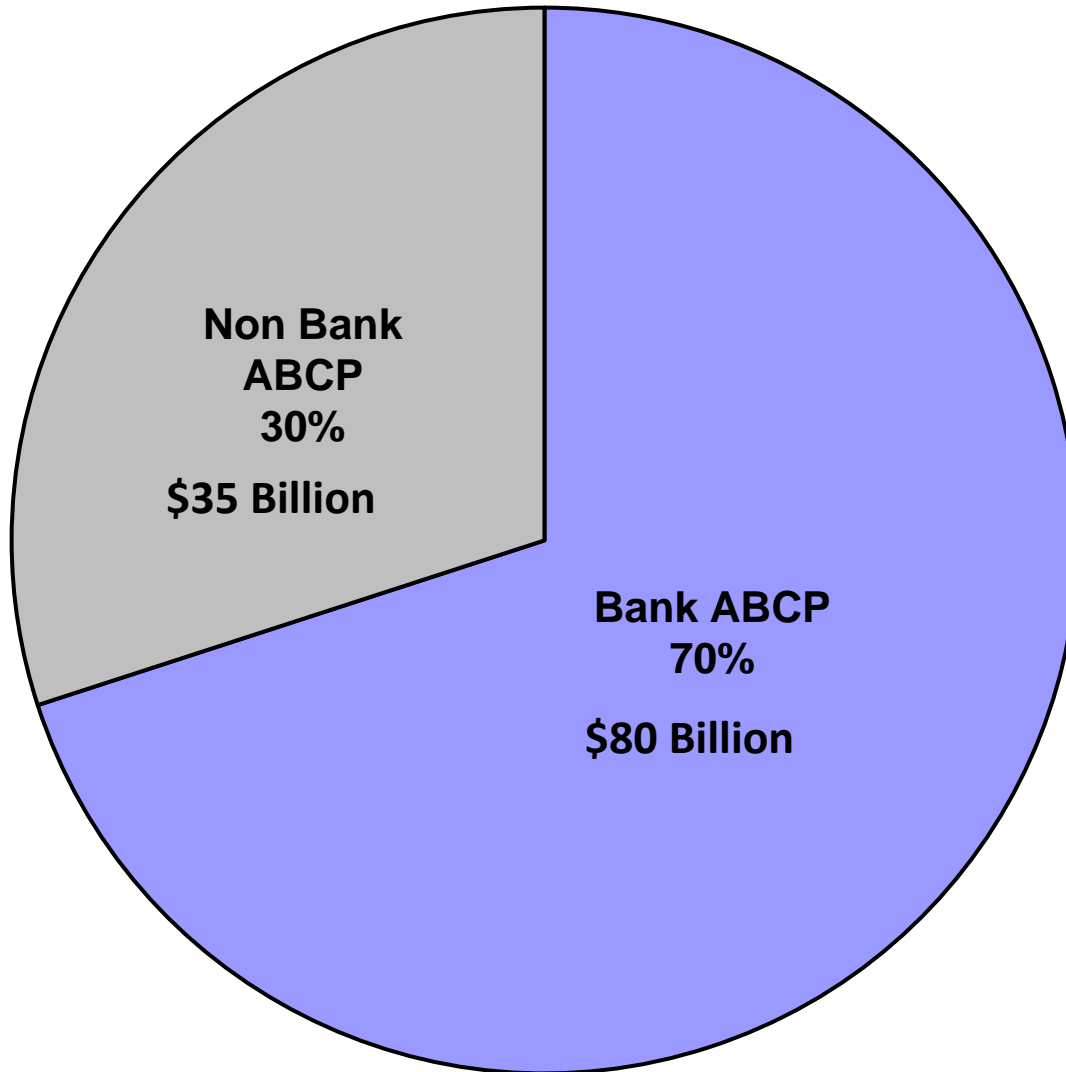
## **Non Bank ABCP – How Was it Sold?**

- **ABCP is a savings product sold by investment dealers as a substitute for Government Treasury Bills, Bankers Acceptances and Bank Guaranteed Investment Certificates.**
- **The ABCP interest rate was close to T-Bills and GIC's so there was no premium to alert you to the possibility of risk.**
- **ABCP buyers were told the paper was safe and with AAA credit rating.**
- **Just one credit rating agency – DBRS gave top ratings, while S & P and Moody's gave ratings below the minimum standard.**

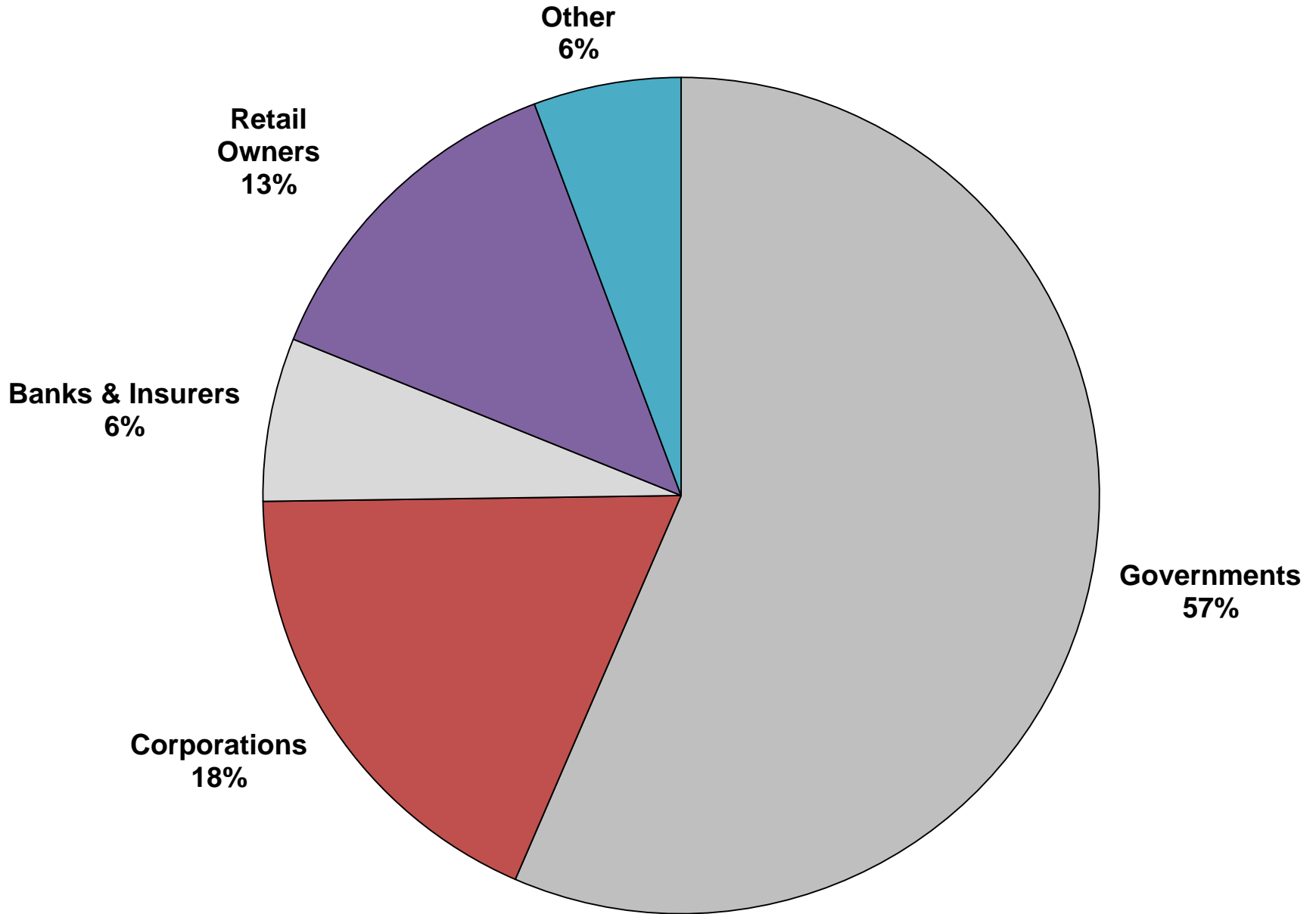
# ABCP 32% of Canada's \$360 Billion Money Market



# Non Bank ABCP 30% of \$115 Billion ABCP Market



# Non Bank ABCP Ownership

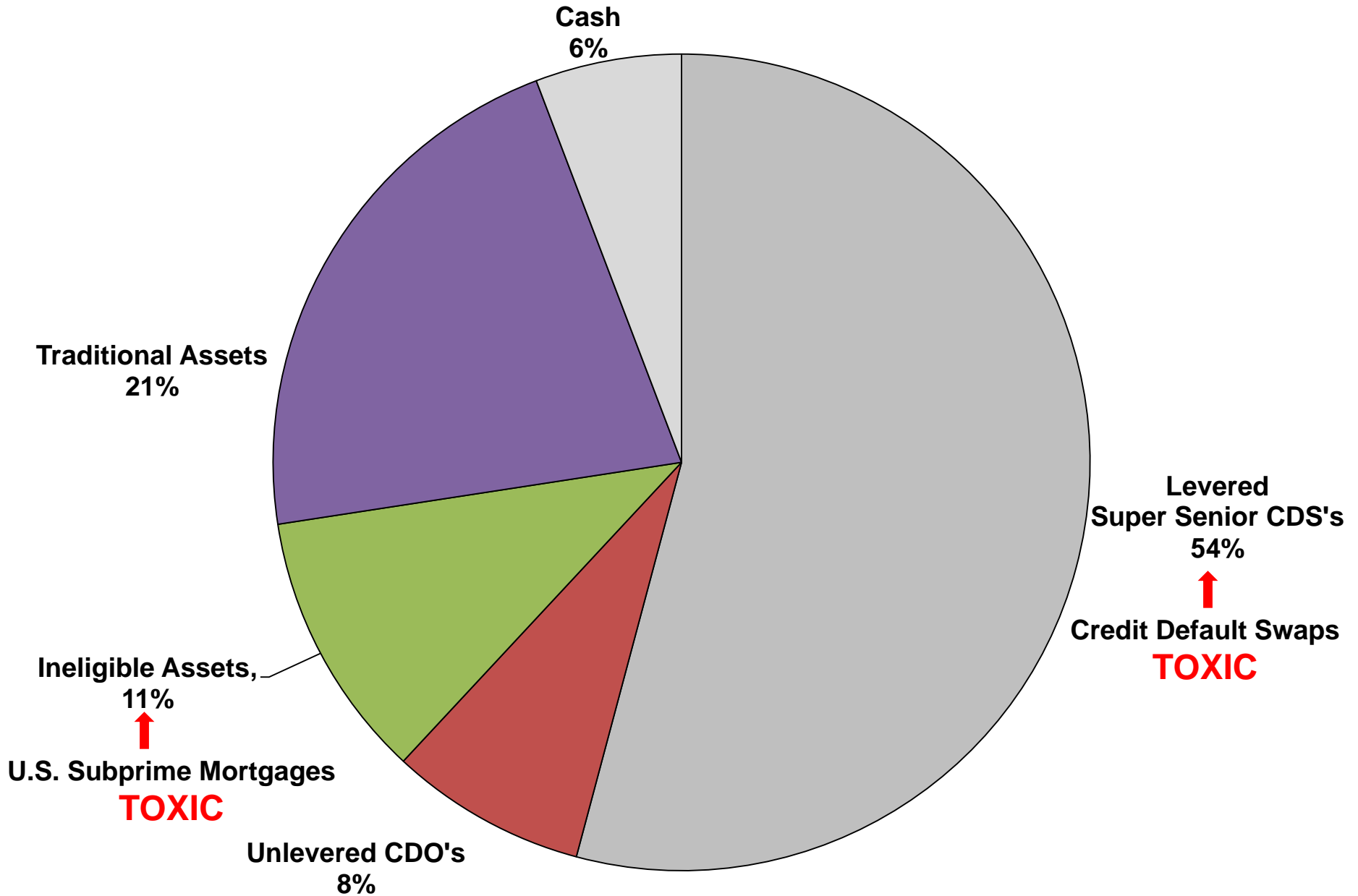


# Financial Engineering Fails on August 13, 2007





# Types of Assets in Non Bank ABCP Trusts



International Banks

# International Banks Squeeze Play

## Leveraged Super Senior Credit Default Swap



\$1,250  
Reference  
Portfolio  
of  
Loans  
Bonds  
Mortgages

Canadian ABCP Trusts

Canadian ABCP Investors

Excess Revenue

Premiums

Margin Call

Marked to Market Losses

OR

Credit Default Damages

\$100 AAA  
Collateral  
Assets

Interest

\$100 ABCP  
Funding

**ALLEGED FRAUD**

Canadian Style General Market Disruption | Liquidity Agreement

# Corporate Bond Portfolio With Leverage

	Before	After
Face Amount	\$1,250	\$1,250
Coupon Rate	4.50%	6.75%
Risk Free Return	4.00%	4.00%
Risk Spread	0.50%	2.75%
Current Yield		

Net Present Value	\$1,250	\$1,050
Marked to Market Loss		-\$200
% Loss		-16%
Cash Flows		
1	\$56	\$56
2	\$56	\$56
3	\$56	\$56
4	\$56	\$56
5	\$56	\$56
6	\$56	\$56
7	\$56	\$56
8	\$56	\$56
9	\$56	\$56
10	\$1,306	\$1,306

LEVERAGE RATIO	12.5	12.5
Original Collateral	\$100	\$100
Loss of Investor Collateral		-\$100
Loss to LSS CDS Bank		-\$100

# **The \$60 Billion Margin Call**

**on \$217 Billion of**

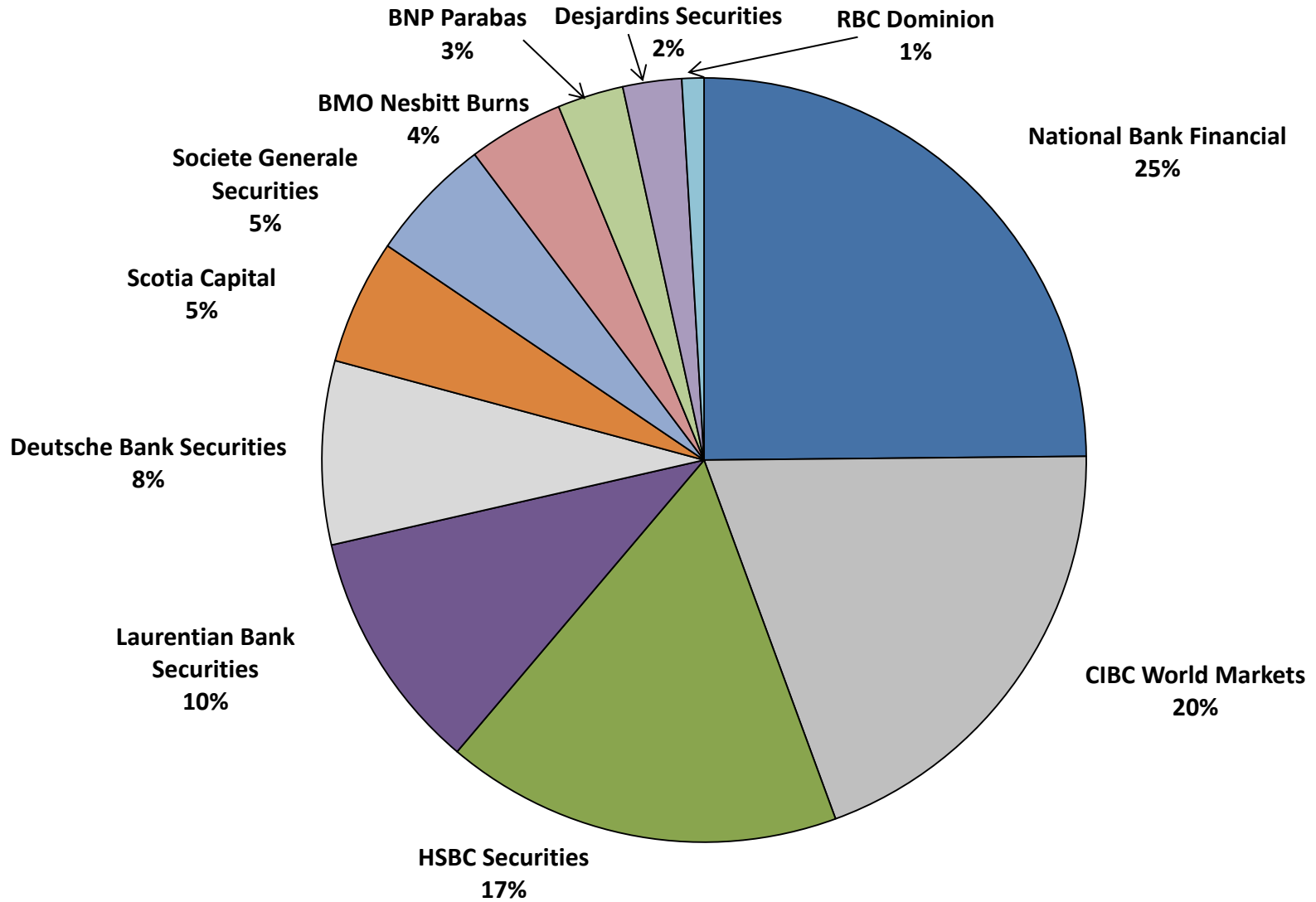
**Leveraged Super Senior Credit Default Swaps**

<b>\$ Billions</b>	<b>Got</b>	<b>Wanted</b>
<b>MTM Loss</b>	<b>-\$34</b>	<b>-16%</b>
<b>Original Collateral</b>	<b>\$17</b>	<b>\$17</b>
<b>Bank Counter-Party Loss</b>	<b>-\$17</b>	
<b>First Margin Funding Facility</b>	<b>\$13</b>	<b>\$13</b>
<b>Senior Funding Facility (Gov'ts)</b>	<b>\$4</b>	<b>\$30</b>
<b>Margin or Collateral in the End</b>	<b>\$34</b>	<b>\$60</b>

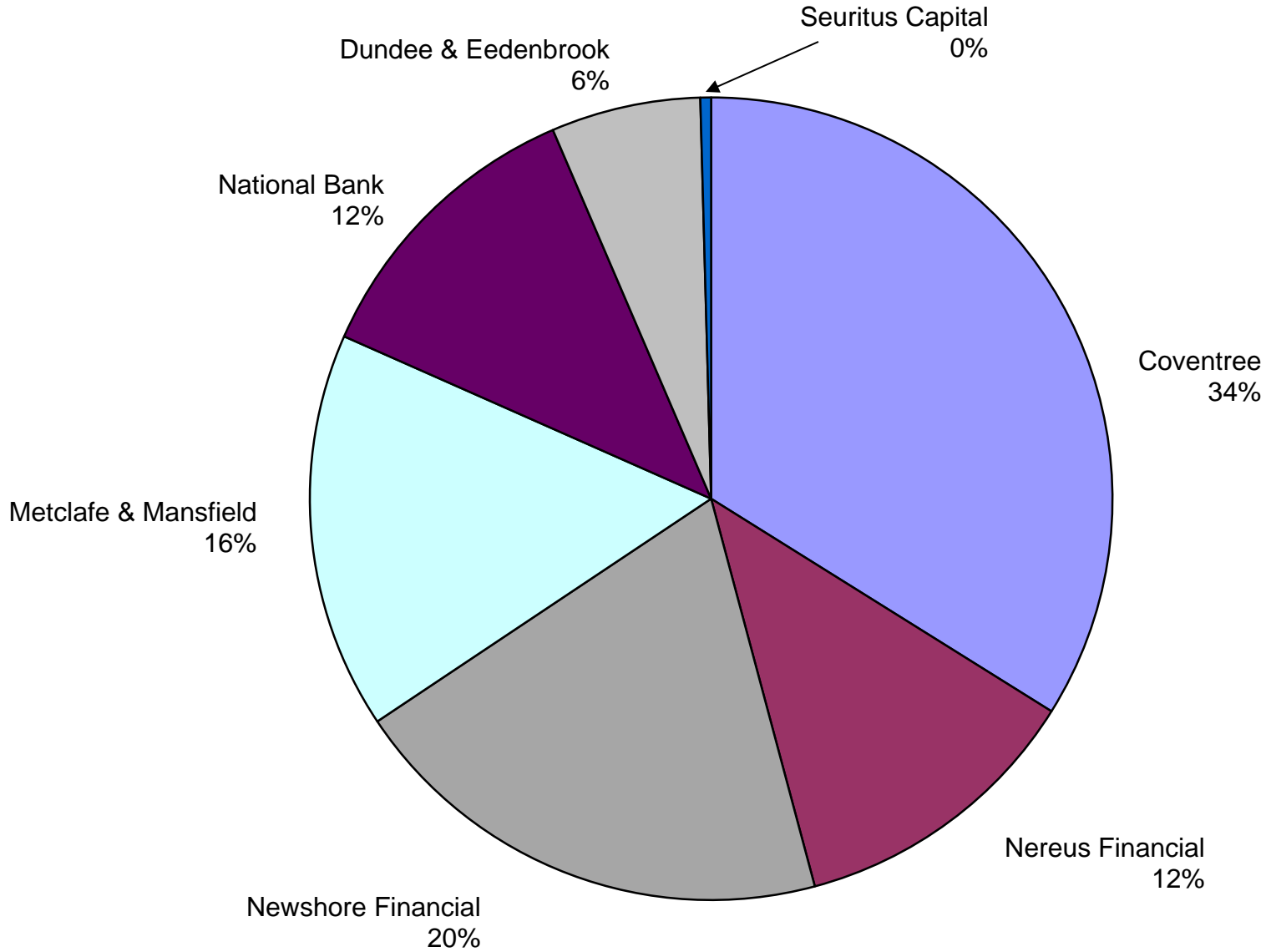
# Non Bank ABCP Losses in the Financial Crisis

	\$ Billions
Leveraged Super Senior CDSs	\$17.4
US Subprime Mortgages	\$ 3.4
Total	\$20.8

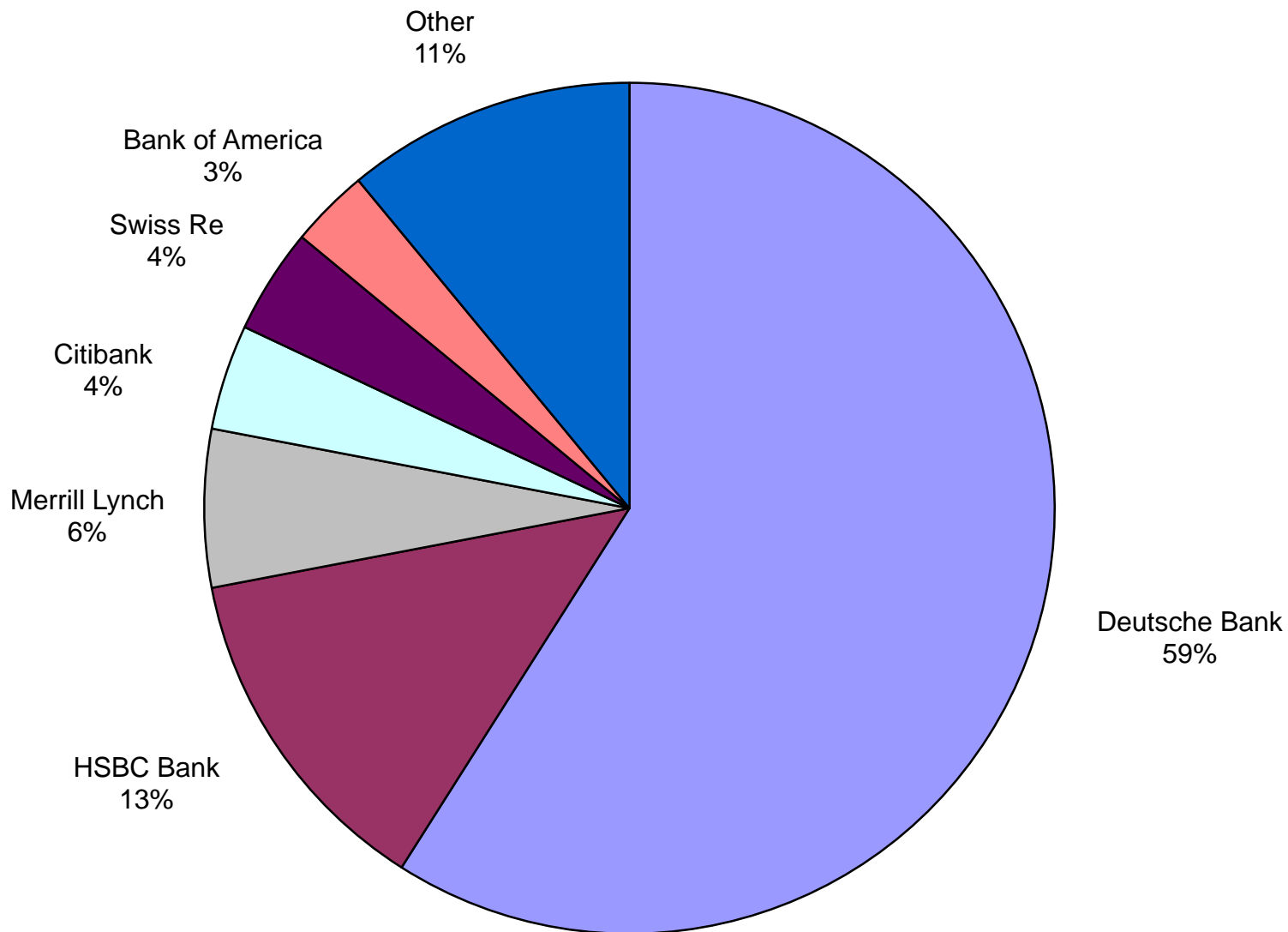
# Non Bank ABCP Canadian Investment Dealers (% of Initial Distribution \$)



# Non Bank ABCP Trust Sponsors (% of Face Amount \$)



# Non Bank ABCP Synthetic Assets and Liquidity Providers (% of Face Amount \$ in Series A)





# Made-in-Canada “No Use” Liquidity Agreement

OSFI B-5 Regulation says:

"Liquidity support is a commitment ... to purchase assets of an SPE in order to provide investors with assurance of timely payment of principal and interest. Liquidity support may include a general market disruption clause. A general market disruption can be defined as a disruption in the Canadian commercial paper market resulting in the inability of Canadian commercial paper issuers, including the SPE, to issue any commercial paper.."

**OSFI Provides a Capital Incentive for “No Use” Liquidity Agreement**

## Ontario Government and OSC Facilitation of Non Bank ABCP

- In 2005, allows sale of Non Bank ABCP to retail market buyers under \$50,000, provided credit rating agencies give minimum credit ratings. NO PROSPECTUS IS REQUIRED.
- OSC does not supervise the credit rating agencies despite this delegation of public interest responsibility.
- In 2005, gives DBRS an exemption from civil liability for misrepresentation in the secondary market.
- In 2006, several OSC Commissioners give exemptive relief decisions for BMO, TD and CIBC to sell ABCP with just one DBRS credit rating above its minimum at R1 (high), with S&P and Moody's failing their credit rating tests.
  - IIROC CEO & Former OSC Vice Chairman Susan Wolbough Jenah (BMO, TD Bank)
  - OSC Vice Chairman Paul Moore (CIBC & CIBCWM)
  - OSC Commissioner Harold Hands (CIBC & CIBCWM)
  - OSC Commissioner David Knight (BMO)
  - OSC Commissioner Wendel Wigle (TD Bank)

# National Instrument 45-106 Prospectus & Registration Exemptions For ABCP = Short Term Debt

Approved Credit  
Rating Organization

Approved Credit  
Rating

---

Dominion Bond Rating Service

R-1 (low)

Fitch Ratings

F1

Moody's Investors Service

P-1

Standard & Poor's

A-1(Low)

# Made-in-Canada Inflated Credit Rating from One Rating Agency

- DBRS – Approved Credit Rating Agency  
Gives Approved Credit Rating R1 (High)
- S & P – Approved Credit Rating Agency  
Refuses to Give Canadian ABCP  
Investment Grade Rating  
August 1, 2002, **“Leap of Faith”**
- Moody’s – Approved Credit Rating Agency  
Refuses to Give Canadian ABCP  
P1 Minimum Rating  
February 26, 2002, **“Alternatives for Structuring  
Liquidity for ABCP Programs”**

Provincial Securities Commissions Do Not Enforce NI 45 - 106

# Standard & Poor's Reasons for Non Investment-Grade

Canadian market is unique in its acceptance of ABCP conduits with extremely limited-use liquidity... for the credit line to be drawn, no CP can be issued at any price by any issuer within the Canadian market. This condition for a liquidity line advance is narrow to the point of being almost meaningless. More importantly, such a facility provides no benefit at all against the range of circumstances that a conduit needs to manage liquidity pressures, even assuming the conduit's credit fundamentals remain intact.

In the view of Standard & Poor's, a conduit with a Canadian-style liquidity facility would be rated no differently from a conduit with no contractual liquidity facility at all, that is reliant on the non contractual "moral obligation" of the program administrator.

[Canadian-style liquidity facility] is insufficient as a primary response to liquidity risk for a conduit to achieve an investment-grade CP rating.

# OSC Coventree Hearing Evidence

January 19, 2007, DBRS issues media release indicating that it will no longer give R1 (high) credit ratings for ABCP trusts using:

- Canadian Style General Market Disruption Clause
- No downgrade clause for the assets in the ABCP trusts.

No more LSS Credit Default Swap – Global Style Liquidity Agreement Non Bank ABCP Offerings. 10 LSS ``Deals rejected between November 10, 2006 and January 19, 2007. None brought forward thereafter.

Huston Loke, Co-President of DBRS gives testimony that:

“Most banks said that this was not a transaction they were willing to do, under a Global Style Liquidity Agreement. They were buying credit protection and did not want to pay out on liquidity agreements. Just when the market is weak the banks would have to pay cash under their liquidity agreements and they did not want to do this.” May 17, 2010

“Canadian Style Liquidity Agreements enabled international dealers access to Canadian market.” May 20, 2010

# OSC Coventree Hearing Evidence

79. The dealer sent the July 11, 2007 email to CDPQ on July 20, 2007. In the first half of 2007, CDPQ held up to 50 percent of Coventree-sponsored ABCP. In response to the facts disclosed in the July 11 email, on July 23, 2007 CDPQ began substantially reducing its holdings of Coventree ABCP with US subprime exposure. CDPQ's reduction of ABCP with US subprime exposure was of such a concern to Coventree that Coventree took steps to reallocate US subprime assets among its conduits to satisfy CDPQ. In doing so, Coventree did not take into account the interests of other ABCP investors.

- Huston Loke testifies on May 19<sup>th</sup> that DBRS knows there are 14 CDO's with US subprime mortgage exposure.
- He decides not to publish March 15, 2007 credit rating report showing which conduits have US subprime mortgages, despite DBRS U.S. reporting U.S. subprime mortgage origination and mono-line insurers are facing significant rating pressure.
- On May 21, 2010, Mr. Loke is aware of Coventree moving US subprime assets that he thinks was at the request of the Caisse. He says "he knew move of subprime assets from one trust to the other. This was an administrative process rather than rating process. ... Asset moves required a DBRS letter of no ratings downgrade, but not always."

## Retail ABCP Owners Wanted Their Money Back and Justice



SOURCE: CBC NEWS



SOURCE: CBC NEWS

*In Memory of Securities Fraud Victims  
Who Have Left Us Without Seeing Justice*



# Facebook helps rally dissent over ABCP losses

Scotiabank AGM

Jim Middlemiss, Financial Post

Published: Tuesday, March 04, 2008

BBC Direct Investing\*

Member CIPF

In this story:



BNS \$49.50  \$0.50



Data delayed at least 15 min

A Facebook site created to advocate on behalf of retail investors in asset-backed commercial paper is gathering steam and members plan to take their message to the floor of the Bank of Nova Scotia annual general meeting today in Edmonton.

## Related Topics

[Bank of Nova Scotia](#)

[Facebook Inc.](#)

[Financial Services Sector](#)

[Diane Urquhart](#)

## Canaccord and other ABCP Clients

Global

## Basic Info

Type: Business - Investing  
 Description: PLEASE TAKE THE TIME TO JOIN THE GROUP AND SHARE YOUR THOUGHTS, IDEAS and YOUR SITUATION

Forum for Individuals or Corporations that have Asset Backed Commercial Paper Investments' through Canaccord or other retail Vendors. Share concerns and ideas.

Check this website for detailed ABCP information from legal team for retail level  
<http://www.retailabcpinfo.com>

Check these websites for archived ABCP information

[http://investorvoice.ca/ABCP/ABCP\\_index.htm](http://investorvoice.ca/ABCP/ABCP_index.htm)  
[http://www.sontag.ca/blogs/How\\_Safe\\_is\\_Your\\_RRSP.html](http://www.sontag.ca/blogs/How_Safe_is_Your_RRSP.html)

## Contact Info

Email: windyfield@hotmail.com

## Recent News

Cash has now replaced ABCP in online account record... On Friday January 30 it will be available at the cash cage. Restructuring costs (2nd interest payments) have also now appeared in our accounts.

Link to the news time line is at the following web link

[http://sontag.ca/blogs/ABCP\\_timeline.html](http://sontag.ca/blogs/ABCP_timeline.html)

## Members

Displaying 8 of 289 members

See All



Penny Caceres



Brian Neer



Helen Huynh



David Warren



Julia Jones



Doug Long



Brent Rusk



Robert MacRae

## Discussion Board

Displaying 3 of 440 discussion topics

Start New Topic | See All

Mark Maybank Says tomorrow will be a good day...

1 post by 1 person. 11 dated 11 hours ago



View Discussion Board

Leave Group

Share +

## Officers

Brian Hunter (Calgary, AB)  
 Administrator

## Group Type

This is a closed group. Members must be invited or approved by an admin.

## Admins

■ Brian Hunter (Calgary, AB)  
 (creator)

## Related Groups

Six Degrees Of Separation - The Face

book Experiment

Just for Fun - Facebook Classics

Student Class Action Lawsuit

AGAINST York University

Student Groups - General

Psychology Marketing project - I need your help!!!

Just for Fun - Totally Random

Let's set and break a Guinness

Record!!!! Approved by

guinnessworldrecords.ca

Entertainment & Arts - General

Publishing Talk

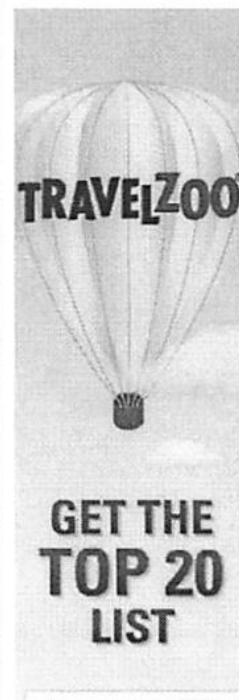
Entertainment & Arts - Books & Literature

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Videos from Canaccord and other ABCP Clients

Back to Canaccord and other ABCP Clients

Displaying all 8 videos.



**ABCP FURBER DEAL**  
 BNN Purdy Crawford and Amanda Lang by Brian Hunter (video)  
 6:38 Added about 10 months ago



**RECYCLING SEC RAFFA**  
 BNN Squeeze play Lang/O'Leary interview Jarovinsky by Brian Hunter (video)  
 9:06 Added about 10 months ago



**BNN Squeeze Play: Wynne Miles and John McCallum on ABCP**  
 by Brian Hunter (video)  
 8:37 Added about 10 months ago



**ABCP Credit Union Nightmares Grow - Global National**  
 by Brian Hunter (video)  
 3:53 Added about 10 months ago



**Scotiabank President points finger at Canaccord and Others**  
 by Brian Hunter (video)  
 8:56 Added about 11 months ago



**CBC Newsworld Dave Simms/ Brian Hunter ABCP Flasco**  
 by Brian Hunter (video)  
 2:10 Added about 11 months ago



**BNN - Pat Bolland Interviews Jill O'Hara and Reid Howley 080307**  
 by Brian Hunter (video)  
 9:09 Added about 11 months ago



**Reid Howley ScotiaBank AGH**  
 by Brian Hunter (video)  
 7:39 Added about 11 months ago

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Excellent	750-850
Good	660-749
Fair	620-659

## Reid Moseley speaks at Scotiabank's 2007 Annual Meeting on March 4, 2008



My name is Reid Moseley and I am one of 1400 individuals, who is suffering financial distress due to Non Bank Asset Backed Commercial Paper. Most of us are customers of Canaccord Capital and the Central Credit Unions, but these firms were retail sub-agents for Scotia Capital who sold them this flawed savings product. Many of us own Structured Investment Trust III, where the Bank of Nova Scotia is the issuing and paying agent.

Scotiabank has the expertise and duty to know it was selling a flawed savings product to unknowing retail investors. Scotiabank executives took large bonuses from profits made. But, you did not administer and sell a savings product that performed according to its stated return and safety.

# Main Street v. Bay Street



JUROVLESKY & RICCI LLP



[Henry Jurovlesky](#)

March 26, 2008

Jurovlesky and Ricci LLP is retained by retail ABCP holders



[Diane Urquhart](#)

31 March 2008

**Another Made-in-Canada**

[Defective Investment Product](#)

# Webinars with ABCP Legal Counsel & Financial Expert

## ABCP Retail Noteholders Information Update

Join us for a Webinar on Monday, December 1, 2008

**REGISTER NOW**

Reserve your Webinar space now or at least 15 minutes before the scheduled time at:

<https://www2.gotomeeting.com/register/128955718>

Henry Juroviesky is leading a panel of presenters to discuss the current status of ABCP. After the presentation, Henry Juroviesky, Diane Urquhart, and Arthur Jacques will be available for questions.

Invited participants are the ABCP retail noteholders throughout Canada.

You will get an update on the current status of the ABCP CCAA Restructuring Plan and the securities dealers' retail customer relief plans. In addition, there will be a review of steps being taken to accelerate the cash settlements with retail noteholders through consultations with the securities dealers involved, with the Investment Industry Regulatory Organization of Canada, the Ontario Securities Commission and the Federal Government.

Title: ABCP Retail Noteholders Information Update

Date: Monday December 1, 2008

Time: 3:00 PM – 5:00 PM EST

After registering you will receive a confirmation email containing the teleconference number and code for joining the Webinar.

This webinar is both a 'Webinar' and a 'Teleconference' in that you can view the presentation slides on your computer (if you have access to a computer with an internet connection) and you listen to the slide presentation through your telephone (by calling the telephone number and entering your pass code).

If you do not have access to a computer and want to listen to the teleconference, call Lisa at 1-877-JRUSLAW - Ext. 321 for the telephone number and pass code. A Toll Free Number is available.

System Requirements:

**PC-Based Attendees**

Required: Windows® 2000, XP Home, XP Pro, 2003 Server, Vista

**Macintosh®-Based Attendees**

Required: Mac OS® X 10.4 (Tiger®) or newer

## Canadian Hog Farmers, Pastors May Block C\$32 Billion Debt Plan

Bloomberg.com

20 March 2008

## Canadian banks: Beware grannies on Facebook

Economist.com

17 April 2008



17 March 2008

### Economic Turmoil

Global TV talks to Murray & Cindy Candlish

"...no risk, we wanted to sleep at night. Told it was as safe as a GIC."

### ABCP Hurts Ordinary Investors with Extraordinary Stories

BNN talks to Jill O'Hara (Victoria) and  
Reid Moseley (Calgary)



07 March 2008

Jill O'Hara: "My broker, without my knowledge or consent, invested my savings in commercial paper. I was told it was a term deposit, fully secured, ...

... I found out my money wasn't available."

...

So where are the securities regulators?

## ORDINARY PEOPLE, AN EXTRAORDINARY MESS

globeandmail.com  
**business**

08 August 2008

CBCnews

SUNDAY



sun  
day



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sun  
day

CBC News: **Sunday** airs on CBC-TV at 10:00am, and on CBC Newsworld at 9:00am (ET)

sun  
day  
night

CBC News: **Sunday Night** airs on CBC-TV at 10:00pm, and on CBC Newsworld on 9:00pm and 12:00am (ET)

## The Great Wall Street Swindle & Canadian Non-Bank ABCP

14 September 2008





**Wynne Miles**

(ABCP holder)

18 March 2008



*House of Commons Standing  
Committee of Finance (FINA)*

Motion for Hearing on non Bank  
ABCP

**31 March 2008**



**John McCallum**

Liberal Finance Critic

18 March 2008

*MP agrees to delay hearings into  
ABCP crisis*

National Post, 31 March 2008

## IIROC Settlement Agreement with Scotia Capital December 17, 2009



17 July 2008

48. On July 23, 2007, the Respondent authorized the purchase of \$38.9 million in Comet E notes from the CDPQ. The purchase of the Comet E position was contrary to management's objective of managing down inventory levels. Upon learning of the Comet E purchase, management directed the sales staff to sell the position.
  
63. From July 25 to August 3, 2007, the Respondent sold Comet E from inventory, as noted in paragraph 56, and newly issued Planet A ABCP in the amount of \$35,400,000, to institutional clients who the Respondent was not aware had knowledge of the US subprime exposure.
  
64. On August 3 the Respondent sold \$28 million and from August 7 to 10 the Respondent sold \$235 million in newly issued Aurora A, SAT A, and SIT III A to institutional clients (excluding sales of ABCP that matured prior to August 13, 2007 and sales to the CDPQ and other certain professional counterparties).

## **IIROC Settlement Agreement with Scotia Capital December 17, 2009**

71. The Respondent admits to the following contraventions of IIROC Rules, Guidance, IDA By-Laws, Regulations or Policies:

Between July 25 and August 10, 2007, the Respondent failed to adequately respond to emerging issues in the Coventree ABCP market insofar as it continued to sell Coventree ABCP without engaging Compliance and other appropriate processes for the assessment of such emerging issues, contrary to IDA By-law 29.1 (ii) (now Dealer Member Rule 29.1(ii)).

### **V. TERMS OF SETTLEMENT**

72. Based on these facts and admissions, Scotia Capital Inc. agrees to the following terms of settlement :

- (a) Payment of \$28,950,000 pursuant to IIROC Dealer Member Rules, upon acceptance of the Settlement Agreement;

**Dealer Member Rule 29.1 (ii): shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest**

## **From ABCP Retail Owners Perspective**

### **What investors would like to see improved in terms of investigative service delivery?**

- Do not send the victims of systemic investment fraud to the self-regulatory organizations as the sole point of investigation.
- Investors want to be partners with securities regulatory and police investigators not adversaries, but it is frustrating when investigators pass the buck, ask for investors to do their own investigation, say the matters are too complex and do not communicate with them.