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ABCP investor asks Prentice to reverse change in federal law

By Kristine Owram, THE CANADIAN PRESS

TORONTO - A retail investor who bought asset-backed commercial paper before it became a four-letter word is asking the federal government to reverse a Cabinet decision that she says has unnecessarily delayed a proposed restructuring of \$32 billion worth of third-party ABCP.

Wynne Miles says that an amendment to the Companies' Creditors Arrangement Act, approved last November by the federal cabinet, appears to give special treatment to international banks over individual investors involved in the ABCP restructuring.

Efforts to rescue the third-party ABCP - a form of debt that had been considered by many investors as a low-risk way to earn interest for a few months at a time - began soon after the market suddenly froze in August 2007.

However, a plan to unfreeze the assets and salvage at least some of the investors' money has been delayed by numerous court challenges by different types of creditor.

The deal has received court and creditor approval but the restructuring has been stalled - it's now to be completed by November - as lawyers for various parties review the agreements.

Miles argues that the change in CCAA rules, signed by Industry Minister Jim Prentice, has been a "major factor in the delay" because it limited the judge's ability to treat international banks equal to other parties and his ability to set firm deadlines.

"I feel this order in council needs to be reversed so that all parties would be on an equal playing field," Miles said in an interview Tuesday, after writing a letter to Prentice.

But Industry Canada replied in a letter obtained by The Canadian Press that the process was the fairest the government could devise.

"In considering stakeholder comments received during the regulatory process, the government strived for a solution which was most consistent with its underlying policy objectives and fairest to the collective interest of all stakeholders," the letter reads.

Investors haven't been able to redeem their investments in ABCP for more than a year, and the repeatedly delayed restructuring now isn't expected to be completed until the end of November.

The Pan-Canadian Investors Committee, which was set up by large-scale investors to salvage the ABCP, says the process has taken longer than expected because of the large number of participants, the complexity of the documentation and the recent volatility in the global financial markets.

Asset-backed commercial paper was supposed to be a low-risk, short-term investment that would mature within a year. The restructuring calls for holders of the notes, also called non-bank ABCP, to swap them for new notes that will mature in several years.

An estimated 99 per cent of the notes are held by institutional investors, such as pensions and businesses, but \$371 million is held in 2,542 retail accounts.

Most of the retail investors with less than \$1 million in ABCP will be compensated in separate side deals with their brokers - but only once the main restructuring is completed.

The Pan-Canadian committee was set up by a number of institutions with major ABCP holdings after the market for Canadian third-party asset-backed commercial paper dried up in August 2007.

The process has required court-supervised approvals from noteholders. While the deal was passed by the required majorities in April, some creditors objected and launched court challenges.

In September, the Supreme Court of Canada declined to hear an appeal of requests by the unhappy noteholders, ending the litigation delays.

But the broader credit market has also undergone tremendous upheaval in recent weeks - including government interventions and bank bailouts in the United States, Europe and elsewhere.

Diane Urquhart, an adviser to a number of retail investors with ABCP, said Tuesday her clients are beginning to "panic."

"These people aren't sleeping, they haven't been for months," Urquhart said in an interview. "It's a little bit like Chinese water torture."

Urquhart said some of her clients are beginning to worry that the deal is falling apart because it's now in the hands of the international banks - and that's why the cabinet's decision is so worrisome.

"This provision, whether it was a mistake or not, was clearly for the benefit of the international banks and Canadian banks operating in the credit default swap markets," she said, adding that it's time the government steps up to help the individual investor.