

CSA Second Notice and Request for Comment
Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*
relating to Syndicated Mortgages

and

Proposed Changes to Companion Policy 45-106CP *Prospectus Exemptions* and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

March 15, 2019

Introduction

On March 8, 2018, the Canadian Securities Administrators (the **CSA** or **we**) published for comment proposed amendments to National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) and proposed changes to Companion Policy 45-106CP *Prospectus Exemptions* (**45-106CP**) relating to syndicated mortgages (collectively, the **March 2018 Proposal**).

The March 2018 Proposal included changes to certain prospectus and registration exemptions available for the distribution of syndicated mortgages, including the following:

- removing the prospectus and registration exemptions under sections 2.36 of NI 45-106 and 8.12 of NI 31-103 (the **Mortgage Exemptions**) respectively for the distribution of syndicated mortgages in Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon;¹
- introducing additional requirements to the offering memorandum prospectus exemption under section 2.9 of NI 45-106 (the **OM Exemption**) that would apply when the exemption is used to distribute syndicated mortgages; and
- amending the private issuer prospectus exemption under section 2.4 of NI 45-106 (the **Private Issuer Exemption**) so that it is not available for the distribution of syndicated mortgages.

We received 26 comment letters in response to the March 2018 Proposal.

¹ Syndicated mortgages are already excluded from the Mortgage Exemptions in Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan.

In light of the comments received on the March 2018 Proposal, we are publishing for a 60-day comment period revised proposed amendments to NI 45-106 and NI 31-103 (the **Proposed Amendments**) and revised proposed changes (the **Proposed Changes**) to 45-106CP and to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations (31-103CP)* related to syndicated mortgages. The substantive differences between the Proposed Amendments and the Proposed Changes compared to the March 2018 Proposal are the following:

- Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador are proposing dealer registration and prospectus exemptions, and Alberta and Québec are proposing a prospectus exemption, for qualified syndicated mortgages, similar to the exemptions already available in British Columbia under British Columbia Rule 45-501 *Mortgages (BCI 45-501)*;
- Alberta is proposing a prospectus exemption for syndicated mortgages distributed to permitted clients similar to the prospectus exemption for distributions of syndicated mortgages to “institutional investors” under BCI 45-501;
- in relation to the OM Exemption,
 - the date of a property appraisal must be within 6 months preceding the date the appraisal is delivered to the purchaser instead of 12 months;
 - the proposed mortgage broker certificate has been removed; and
 - additional guidance as to the identity of the issuer of a syndicated mortgage has been added; and
- the amendments to the Mortgage Exemptions will both come into effect at the same time instead of the amendments to the registration exemption coming into effect 12 months after the amendments to the prospectus exemption.

This notice will also be available on the following websites of CSA jurisdictions:

nssc.novascotia.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.fcaa.gov.sk.ca
www.fcnb.ca
www.lautorite.qc.ca
www.mbsecurities.ca
www.osc.gov.on.ca

Summary of Changes to the March 2018 Proposal

Exemptions for Qualified Syndicated Mortgages

Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador are proposing to adopt dealer registration and prospectus exemptions for qualified syndicated mortgages. Alberta and Québec are also proposing to adopt a prospectus exemption for qualified syndicated mortgages. These exemptions are being adopted on a local basis for consistency, in some jurisdictions, with local mortgage legislation and regulations. However, the proposed exemptions are substantially harmonized. Other jurisdictions may consider adopting similar or additional exemptions as local rules or blanket orders in the future. As these proposed exemptions are local matters, please refer to Annex G in the relevant jurisdiction for more information.

OM Exemption

As suggested by several commenters, we have revised the requirement regarding the date of a property appraisal so that it must be within 6 months preceding the date the appraisal is delivered to the purchaser. The March 2018 Proposal had proposed that it be within 12 months of the date the appraisal is delivered to the purchaser, but we agree with the commenters that this is too long of a period given the rapidly changing real estate markets in certain jurisdictions.

We have also proposed additional guidance as to the identity of the issuer of a syndicated mortgage. As several commenters noted, the issuer of a syndicated mortgage may be the mortgage broker or other party organizing the syndication, rather than the borrower under the mortgage. Given that a mortgage broker that is the issuer of the syndicated mortgage will provide a certificate as issuer, a separate requirement for a mortgage broker to provide a certificate in their capacity as mortgage broker is not necessary.

Timing

The March 2018 Proposal contemplated that the proposed amendments to the Mortgage Exemptions in Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon would have a staggered implementation with the amendment to the registration exemption coming into effect 12 months after the amendment to the prospectus exemption. We are now proposing that all the Proposed Amendments will come into force at the same time, as we believe a one-stage implementation will be less disruptive in those jurisdictions.

Subject to necessary regulatory approvals, the Proposed Amendments will come into effect on December 31, 2019. We encourage those persons or companies who may be required to be registered in Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon to apply for registration well in advance of that date.

Impact on Investors

As with the March 2018 Proposal, investors in syndicated mortgages who purchase under the amended OM Exemption would be entitled to enhanced disclosure relating to their investment. We anticipate that this additional disclosure would result in more informed investment decisions and enable registrants involved in the distribution to better fulfil their obligations related to the distribution.

In the jurisdictions that currently provide a registration exemption for syndicated mortgages, investors will benefit from the protections associated with the involvement of a registrant in the distribution.

Anticipated Costs and Benefits of the Proposed Amendments and Proposed Changes

The anticipated costs and benefits of the Proposed Amendments and Proposed Changes are expected to be substantially the same as described in the March 2018 Proposal. In those jurisdictions that are proposing local amendments or changes, including an exemption for qualified syndicated mortgages, Annex G contains further discussion.

Alternatives Considered

We considered adopting the March 2018 Proposal in its original form as well as the alternatives suggested by the commenters as detailed in Annex B.

Local Matters

Annex G is being published in any local jurisdiction that is proposing related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It may also include additional information that is relevant to that jurisdiction only.

Request for Comments

We welcome your comments on the Proposed Amendments and Proposed Changes.

Please submit your comments in writing on or before May 14, 2019. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Address your submission to all the CSA as follows:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Manitoba Securities Commission
Nova Scotia Securities Commission

Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Deliver your comments only to the addresses below. Your comments will be distributed to the other CSA jurisdictions.

The Secretary
Ontario Securities Commission
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M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

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Annex B – Summary of Comments and Responses

Annex C – Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions*

Annex D – Proposed Changes to Companion Policy 45-106CP *Prospectus Exemptions*

Annex E – Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

Annex F – Proposed Changes to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

Annex G – Local Matters

Questions

Please refer your questions to any of the following:

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Nova Scotia Securities Commission

H. Jane Anderson
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ANNEX A

LIST OF COMMENTERS

No.	Commenter	Date of Letter
1.	Secure Capital MIC Inc.	April 6, 2018
2.	Paragon Capital Corp. Inc.	May 15, 2018
3.	The Canadian Advocacy Council for Canadian CFA Institute Societies	May 18, 2018
4.	First Source Mortgage Corporation	May 30, 2018
5.	Donna Lewczuk	June 1, 2018
6.	Brownlee LLP	June 1, 2018
7.	TELB Investments Ltd.	June 1, 2018
8.	Appraisal Institute of Canada	June 5, 2018
9.	Paul Mangion	June 5, 2018
10.	MCAP Commercial LP	June 5, 2018
11.	Chuck Barrett	June 5, 2018
12.	Canadian Mortgage Brokers Association	June 5, 2018
13.	Empirical Capital Corp.	June 4, 2018
14.	Private Capital Markets Association of Canada	June 6, 2018
15.	McMillan LLP	June 6, 2018
16.	The Ontario Mortgage Investment Companies Association	June 6, 2018
17.	Farris, Vaughn, Wills & Murphy LLP	June 6, 2018
18.	McLeod Law LLP	June 6, 2018
19.	Olympia Trust Company	June 6, 2018
20.	Koffman Kalef LLP	June 6, 2018
21.	Lanyard Financial Corporation	June 6, 2018
22.	Foremost Financial Corporation	June 6, 2018
23.	Borden Ladner Gervais LLP	June 6, 2018
24.	Mortgage Professionals Canada	June 6, 2018
25.	Canadian Foundation for Advancement of Investor Rights	June 13, 2018
26.	Realtech Capital Group Inc.	June 25, 2018

ANNEX B

SUMMARY OF COMMENTS AND RESPONSES

No.	Subject	Summarized Comment	Response
GENERAL COMMENTS			
1.	Necessity	<p>Four commenters expressed their general support for the March 2018 Proposal and greater harmonization across the CSA.</p> <p>Three commenters were of the view that the status quo is sufficient for syndicated mortgages involving existing residential and commercial properties, but additional regulation was required for syndicated mortgages used for development financing.</p> <p>One commenter expressed support for applying the same regulation to syndicated mortgages as is currently applied to mortgage investment entities.</p> <p>Several commenters expressed support for the existing British Columbia regime, as discussed in more detail under “Alternative Prospectus and Registration Exemptions” (rows 39-43).</p>	<p>We thank all the commenters for their support and input.</p> <p>We agree that syndicated mortgages can involve a wide variety of property and loan types and the risks associated with investments in syndicated mortgages may vary as a result. The extent to which an investment in a syndicated mortgage is similar to an investment in the business of the borrower is not necessarily limited to syndicated mortgages sold in connection with property developments. For example, as one commenter suggested, this could be the case for syndicated mortgages on properties with businesses such retirement homes or hotels.</p> <p>In general, the requirements of the prospectus exemptions that are likely to be used to distribute syndicated mortgages, such as the accredited investor exemption or the family, friends and business associates exemption, are linked to the characteristics of the purchaser, rather than the specific terms of the securities. Accordingly, these exemptions should be suitable for the full range of syndicated mortgages that may be distributed.</p>

No.	Subject	Summarized Comment	Response
			<p>Similarly, the requirements applicable to registrants involved in the distribution of syndicated mortgages are principles-based and would apply to the distribution of syndicated mortgages in the same way as other securities sold in the exempt market.</p> <p>The Proposed Amendments would substantially align the requirements applicable to syndicated mortgages with those that apply to the distribution of mortgage investment entities. In addition, although certain local exemptions remain, they will substantially harmonize the treatment of syndicated mortgages under securities legislation across the CSA jurisdictions.</p>
2.	Risks of syndicated mortgages and comparisons to other securities	<p>Several commenters expressed the view that a few high-profile failures have created an inaccurate impression of syndicated mortgages. One of these commenters provided certain information in respect of syndicated mortgages it administers. Of the 2,083 syndicated mortgages this commenter funded in 2015, 2016 and 2017:</p> <ul style="list-style-type: none"> • 80 (3.8%) of the mortgages led to a loss of some principal or interest; • 35 (1.7%) are currently in foreclosure proceedings; • 19 (<1%) resulted in the lenders losing all of their money; and 	<p>We thank the commenters for their input. The Proposed Amendments are primarily intended to enhance investor protection for riskier types of syndicated mortgages marketed to retail investors. The data provided by one commenter supports the view that syndicated mortgages are relatively high-risk investments with investor losses in approximately 6.6% of the syndicated mortgages funded.</p>

No.	Subject	Summarized Comment	Response
		<ul style="list-style-type: none"> • 3 (<1%) resulted in the lenders foreclosing on the property. <p>One commenter noted that unsecured debt will not have increased disclosure requirements, notwithstanding the commenter's view that syndicated mortgages are less risky than unsecured debt.</p>	<p>We acknowledge this comment, but we have concerns with products sold as low risk on the basis that they are secured by an interest in real property.</p>
3.	Use of offering memorandum exemption	<p>Several commenters expressed the view that the offering memorandum exemption would rarely be used for the distribution of syndicated mortgages due to the fast pace with which such transactions are conducted.</p>	<p>We thank the commenters for their input.</p> <p>We agree that the offering memorandum exemption is likely to be used only where syndicated mortgages are marketed broadly to retail investors. Since these are the circumstances where investor protection concerns are likely to be more prevalent, we introduced additional disclosure requirements that are limited to this exemption.</p>
4.	Reports of exempt distribution	<p>Several commenters expressed concerns about the fees associated with filing reports of exempt distribution and that they may make borrowing more expensive as they would be passed along to the borrower.</p> <p>One commenter suggested that instead of revising the filing fees, we should extend the time for filing a report of exempt distribution from ten days to one month.</p>	<p>We acknowledge the comments regarding costs. However, we do not expect the costs of filing reports of exempt distributions to be significant compared to the costs of registering the security interest or administering a syndicated mortgage, particularly in those jurisdictions that charge a fixed fee for filing reports of exempt distribution.</p> <p>We appreciate the commenter's suggestion. However, revising the report of exempt distribution requirements is outside the scope of this project.</p>

No.	Subject	Summarized Comment	Response
		<p>Several commenters expressed concerns that the borrower is not the most appropriate party to be required to file a report of exempt distribution and some suggested the dealer or lenders could be required to file the report of exempt distribution.</p> <p>Two commenters suggested that reports of exempt distribution should not be required if the distribution was made solely to permitted clients.</p> <p>These commenters also noted that there is an exemption from filing reports of exempt distribution for certain distributions of securities to Canadian financial institutions and Schedule III banks but not for distributions to other commercial lenders. One of these commenters speculated that there is substantial non-compliance in jurisdictions that currently do not provide a prospectus exemption for syndicated mortgages and suggested the mortgage exemption should be available for syndicated mortgages distributed to permitted clients (as defined in section 1.1 of NI 31-103).</p>	<p>We believe this is addressed through the additional guidance we have provided as to the identity of the issuer of a syndicated mortgage. We also note that the report of exempt distribution requires an issuer to disclose personal information about each investor. Accordingly, we do not think it would be appropriate to require a lender to file the report of exempt distribution as the lender would be required to obtain personal information from the other lenders.</p> <p>Alberta is proposing to introduce a prospectus exemption for the distribution of syndicated mortgages to permitted clients similar to the prospectus exemption for distributions of syndicated mortgages to “institutional investors” in BCI 45-501. This exemption will not require the filing of a report of exempt distribution.</p> <p>The other jurisdictions are not proposing similar exemptions because they have previously considered similar comments during amendments to the report of exempt distribution and still do not favour the change because they continue to believe that the information collected in the report is necessary to inform compliance programs, improve understanding of the syndicated mortgages market and inform future policy development.</p>

No.	Subject	Summarized Comment	Response
		<p>One commenter suggested that reports of exempt distribution should be confidential as the fees and commissions paid to mortgage brokers may be regarded as sensitive competitive information that is not today publicly disclosed.</p> <p>One commenter expressed that it could be ruinous to be required to report the names of its investors as they could be poached by a competitor.</p>	<p>We thank the commenter for the feedback, but we disagree and believe transparency with respect to fees and commissions is important. Market participants can apply to the securities regulatory authorities for confidential treatment of certain records if the record contains personal or sensitive business information that would be detrimental to a person if it was disclosed to the public.</p> <p>We acknowledge the commenter's concern but note that the names of investors participating in the distribution appear only in Schedule 1 to the report of exempt distribution, which is not made publicly available as it includes investors' personal information.</p>
5.	Definition of syndicated mortgage	<p>Several commenters raised potential issues with the definition of syndicated mortgages.</p> <p>Some commenters suggested that the definition of syndicated mortgage may be too narrow in that it would not capture non-</p>	<p>We acknowledge these comments but note that the current definition of syndicated mortgage is already used in NI 45-106 and NI 31-103 by several CSA jurisdictions to exclude these products from the Mortgage Exemptions. We are not aware of any significant problems caused by the definition in those jurisdictions. One purpose of this project is to increase harmonization in the area. Accordingly, we are not proposing changes to the definition of syndicated mortgage.</p> <p>We acknowledge that there is a wide variety of securities that may be secured by real property. This project is not intended to</p>

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		<p data-bbox="557 233 979 302">mortgage debt securities secured by real property.</p> <p data-bbox="557 342 979 594">One commenter noted that most syndicated mortgage failures involved hundreds of lenders so the definition of syndicated mortgage should be revised to a mortgage in which 10 or more lenders participate.</p> <p data-bbox="557 709 979 884">Some commenters suggested that the definition of syndicated mortgage was so broad that it would also capture mortgage investment entities.</p> <p data-bbox="557 1150 979 1360">One commenter suggested that the definition of syndicated mortgage was so broad it would capture mortgage-backed securities and sales of mortgages into the CMHC NBA MBS Program.</p> <p data-bbox="557 1587 979 1766">One commenter suggested that two persons in a legally recognized spousal relationship should be treated as one person on a mortgage.</p>	<p data-bbox="1027 233 1425 302">apply to all investments in real estate.</p> <p data-bbox="1027 342 1446 663">Please refer to commentary under “Exemption for small number of investors proposed in question 7 of March 2018 Proposal” (row 41) for commentary relating to exemptions for syndicated mortgages with a small number of investors.</p> <p data-bbox="1027 709 1451 1104">We do not agree that all securities offered by mortgage investment entities would be captured by this definition. For example, the distribution of an equity investment in a mortgage investment entity is currently subject to both the prospectus and registration requirements and would not be affected by the Proposed Amendments.</p> <p data-bbox="1027 1150 1458 1545">Similarly, where a distribution of asset-backed securities linked to mortgages, such as pass-through certificates, pay-through certificates or other investments in securitization vehicles, involves the distribution of securities, we do not believe those securities would generally fall within the definition of a syndicated mortgage.</p> <p data-bbox="1027 1587 1446 1873">We acknowledge this comment and that the definition of syndicated mortgage may capture a mortgage where two persons in a spousal relationship are lenders. The definition of syndicated mortgage is an existing definition in NI 45-106</p>

No.	Subject	Summarized Comment	Response
			and NI 31-103 and we are not proposing to make any changes at this time.
6.	Syndicated mortgage versus syndicated equity	Several commenters suggested that the Proposed Amendments should not capture all syndicated mortgages but only those that have a loan-to-value in excess of a threshold, such as 80% or 85%, which several commenters referred to as syndicated equity.	We thank the commenters for their input. Although we agree that the loan-to-value ratio is important, it is only one indicator of the risk of a syndicated mortgage. As a result, we do not propose to use this as the sole basis for determining the securities law requirements that should apply to the distribution of syndicated mortgages.
7.	Risk acknowledgement forms	One commenter suggested that the CSA review the efficacy of the existing risk acknowledgement forms.	Consideration of the risk acknowledgment requirements that apply to certain prospectus exemptions is outside the scope of this project.
8.	Who is the issuer?	Several commenters suggested that commonly in syndicated mortgages the borrower is not the issuer. These commenters stressed the difference between a mortgage that is syndicated at the time of the initial loan (<i>i.e.</i> , a shared mortgage or a mortgage with a co-lending syndicate) versus a mortgage with one initial lender who then, potentially unknown to the borrower, syndicates the mortgage to other investors.	<p>We thank the commenters for their input. We agree that additional guidance regarding the appropriate identity of the issuer or issuers of a syndicated mortgage is required. As suggested we have clarified in 45-106CP that, where an existing mortgage is syndicated, the party undertaking the syndication will generally be an issuer of the syndicated mortgage. In some cases, the issuer may be a mortgage broker that is syndicating the loan. Alternatively, if the entity used for the syndication is established by a mortgage broker, the mortgage broker may be a promoter of the issuer.</p> <p>We have also provided additional guidance regarding the use of the offering memorandum exemption to distribute syndicated mortgages</p>

No.	Subject	Summarized Comment	Response
			<p>and the fact that the exemption is only available for the distribution by an issuer of a security of its own issue. Accordingly, where a mortgage that has already been advanced or committed is being syndicated, the exemption would only be available where the party syndicating the mortgage is the issuer.</p>
9.	Public database of syndicated mortgages	One commenter suggested that there should be a public database of syndicated mortgages to facilitate comparison across types of properties, issuers, brokers, regions, credit, <i>etc.</i>	We thank the commenter for this suggestion. Requiring detailed reporting regarding the terms of securities issued in the exempt market is beyond the current report of exempt distribution and would impose a significant burden on issuers. In addition, several regulatory and systems changes would be required that are beyond the scope of the Proposed Amendments.
10.	Currently exempt professionals	Several commenters indicated that chartered bank representatives, lawyers and other professionals currently exempt under mortgage legislation should no longer be exempt in order to level the playing field.	<p>Under securities laws, there is a business trigger for registration. Section 1.3 of 31-103CP contains guidance related to the business trigger for registration in the context of certain professional services.</p> <p>In addition, there are registration exemptions that could potentially apply to a person or company involved in the distribution of syndicated mortgages. However, these do not necessarily correspond to the exemptions under mortgage legislation and may differ depending on the jurisdictions involved.</p>
11.	Statutory rights of action	One commenter expressed that purchasers in all jurisdictions should have a statutory right of	We thank the commenter for their input but changes to the statutory rights of action are

No.	Subject	Summarized Comment	Response
		<p>action against issuers, promoters and mortgage brokers in the event that an offering memorandum contains a misrepresentation.</p>	<p>beyond the scope of the Proposed Amendments. In the event of a misrepresentation in an offering memorandum, local securities legislation provides for rights of action against the issuer and, depending on the jurisdiction, certain other parties.</p>
12.	Compliance reviews	<p>One commenter noted that the CSA will need to allocate resources to review offering memoranda and exempt market dealers in order to improve compliance and deter fraudulent activity.</p>	<p>For those jurisdictions that already exclude syndicated mortgages from the Mortgage Exemptions, our compliance programs will continue to review offering memoranda and registrants. For those jurisdictions that are amending the Mortgage Exemptions to exclude syndicated mortgages, we expect that the distribution of syndicated mortgages will be an area of focus following the implementation of the Proposed Amendments. Information provided through reports of exempt distribution will be particularly important to monitoring this area.</p>
13.	Fee disclosure	<p>One commenter noted that there needs to be clear disclosure about fees that lenders receive from borrowers on closing and how those fees are distributed back to investors or otherwise allocated.</p>	<p>Item 18 of proposed Form 45-106F18 requires disclosure of the fees that are to be charged to the borrower, how they are to be calculated and paid and when any person involved in the distribution is entitled to payment or states that the investor may request a copy of the disclosure statement provided by the mortgage broker to the borrower concerning all fees.</p> <p>Item 7 of Form 45-106F2 requires disclosure of compensation paid to sellers and finders.</p>

No.	Subject	Summarized Comment	Response
			Any registered dealer involved in the sale of syndicated mortgages would be subject to the obligation to disclose fees to its clients in connection with its relationship disclosure information and ongoing reporting obligations.
14.	Decreased diversification	Three commenters suggested that the March 2018 Proposal may have the unintended consequence of decreased diversification for investors because there will be fewer syndicated mortgages in which they can invest, or they will be required to make larger investments in a syndicated mortgage.	We expect a registered dealer's suitability assessment to consider an investor's concentration in any investment, including a syndicated mortgage. Accordingly, concerns regarding diversification should be addressed in the ordinary course by the involvement of a registered dealer.
GENERAL REGISTRATION COMMENTS			
15.	Existing registration exemptions	One commenter suggested that all mortgage brokers involved in the business of distributing syndicated mortgages should be required to be registered as a dealer without exception.	Any mortgage broker in the business of trading securities will be required to register as a dealer or rely upon an available registration exemption. We note that there are existing registration exemptions upon which some mortgage brokers may be able to rely. For example, section 8.5 of NI 31-103 provides a dealer registration exemption for trades under certain conditions that are made through a registered dealer.
16.	Cost of using registered dealer	Several commenters expressed concerns that the requirement to use a registered dealer will significantly increase the cost of lending and create unnecessary complexities and that the required due diligence and suitability assessments are not feasible given the typically short transaction times for syndicated mortgages.	Certain jurisdictions already exclude syndicated mortgages from the Mortgage Exemptions. The registration requirement and the category of exempt market dealer seek to require any entity that is in the business of trading securities in the exempt market to possess the required level of proficiency, integrity and

No.	Subject	Summarized Comment	Response
			<p>solvency to participate in the market. Investors in other forms of real estate and mortgage investments, such as mortgage investment entities, currently benefit from the protections of the registration requirement. For those jurisdictions amending the Mortgage Exemptions to exclude syndicated mortgages, the Proposed Amendments would result in the same level of protection for syndicated mortgage investments as these other types of securities.</p> <p>Mortgage brokers that are currently relying on the Mortgage Exemptions to trade syndicated mortgages in Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon will be required to seek registration or rely on an alternative registration exemption if their activities meet the business trigger for dealer registration. We acknowledge that this will involve costs. However, as for other forms of mortgage investments, we consider that such costs are justified by the benefits to investors and the market generally.</p>
17.	New registration category	One commenter suggested that a new category of registration should be created, and the requirements should be the same as those currently applied to mortgage brokers.	We thank the commenter for their input, but we believe the existing categories of dealer registration are appropriate. Any entity seeking registration as an exempt market dealer may seek exemptions from specific requirements of securities legislation that are not

No.	Subject	Summarized Comment	Response
			<p>compatible with their business model. Accordingly, dealers that are prepared to accept terms and conditions that limit their activities to syndicated mortgages may seek relief from requirements that could be more applicable to exempt market dealers offering securities generally.</p>
18.	<p>Relevant securities industry experience</p>	<p>Several commenters asked for guidance as to what we would consider to be relevant securities industry experience if a mortgage broker were to apply for registration as a dealing representative or chief compliance officer of an exempt market dealer.</p>	<p>For firms and individuals that apply for registration to trade in syndicated mortgages, we will consider relevant securities industry experience to include relevant experience acquired at a licensed mortgage broker, brokerage, agency or dealer, provided the applicant demonstrates the proficiency, integrity and solvency for registration. Applicants that rely on mortgage-specific experience should expect regulators to place terms and conditions restricting their trading activities to a specified class of securities (<i>e.g.</i>, syndicated mortgages or securities of real estate issuers).</p> <p>We propose to include clarifying language in 31-103CP as part of the Proposed Changes.</p>
19.	<p>Know-your-product obligations</p>	<p>One commenter expressed that they consider it would be part of a dealer’s know-your-product obligations to ensure there has been a recent and reliable property appraisal for a syndicated mortgage distribution under any exemption.</p>	<p>We thank the commenter for their input. We agree that taking reasonable steps to verify the loan-to-value ratio of a syndicated mortgage would be important for a registrant to discharge its know-your-product obligation.</p>
20.	<p>Restricted dealer registration</p>	<p>One commenter suggested that existing mortgage brokers should be registered as dealers but be</p>	<p>We thank the commenter for their input. If applicant firms demonstrate limited proficiency or experience beyond syndicated</p>

No.	Subject	Summarized Comment	Response
		permitted to engage solely in trading syndicated mortgages.	mortgages, we expect terms and conditions will be placed to restrict trading activities to a specified class of securities (<i>e.g.</i> , syndicated mortgages or securities of real estate issuers).
21.	Transition period	One commenter suggested that the proposed 12-month registration transition period was not sufficient, and it should instead be 24 months.	<p>In Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon the registration requirement is now proposed to come into effect on December 31, 2019. These jurisdictions are of the view that this period provides an adequate amount of time for transition.</p> <p>The exclusion for syndicated mortgages already exists in the other CSA jurisdictions and registration is already required, subject to any available exemptions.</p>
22.	Different roles of registered dealer and mortgage broker	<p>One commenter expressed that a registered dealer could not replace the current role of a mortgage broker, which may include underwriting the mortgage, drafting the mortgage commitment, ensuring the mortgage commitment conditions have been satisfied, ensuring the mortgage is registered before authorizing the release of investor funds, and inspecting development sites.</p> <p>Several commenters suggested that we appear to expect both mortgage broker and registered dealer to be involved in distributions of syndicated mortgages, but it is not clear how this would work, and it would not be economically feasible given the</p>	<p>The requirement to be licensed as a mortgage broker, brokerage or agency to deal in or trade in mortgages under local legislation is not affected by the Proposed Amendments. Accordingly, in some jurisdictions both a licensed mortgage broker, brokerage or agency and a registered dealer may be required.</p> <p>Many jurisdictions require mortgage investments entities, such as mortgage investment corporations, to offer their securities through a registrant. Such entities are generally also required to be licensed as a</p>

No.	Subject	Summarized Comment	Response
		<p>typical fees charged by brokers and dealers.</p> <p>One commenter stated that it had consulted with its clients and they all confirmed their preference to work with mortgage brokers for these transactions.</p>	<p>mortgage broker, brokerage or agency.</p> <p>We understand that it is not unusual for mortgage professionals involved with mortgage investment entities to maintain dual registration.</p> <p>As discussed above, the need for the involvement of a mortgage broker, brokerage or agency will not be affected by the Proposed Amendments.</p>
OFFERING MEMORANDUM EXEMPTION – PROPERTY APPRAISALS			
23.	Date of appraisal	Several commenters expressed that an appraisal should be required to be within 6 months before the date of an offering memorandum, instead of the proposed 12 months.	We thank the commenters for their input and have revised the requirement so that an appraisal must provide a value of the property as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.
24.	Methodology	Three commenters expressed that the type of appraisal methodology applied, and limitations of the methodology, should be disclosed to investors in plain language.	We have revised Item 8 of proposed Form 45-106F18 to include that the issuer must describe the type of appraisal, methodology applied and limitations of the methodology.
25.	Arm’s length transaction	<p>Several commenters stated that an appraisal should be required regardless of whether the property was acquired in an arm’s length transaction as this would not guarantee the amount paid was reasonable or the fair market value.</p> <p>One commenter stated that an appraisal should not be required if the property was recently acquired in an open market transaction with all parties acting at arm’s length.</p>	We thank the commenters for their input. We are not proposing to provide an exemption from the appraisal requirement under the offering memorandum exemption for properties acquired in an arm’s length transaction.
26.	Professional liability insurance	One commenter suggested that an appraiser should be required to	We acknowledge the commenter’s concern. However,

No.	Subject	Summarized Comment	Response
		<p>have professional liability insurance appropriate to the valuation assignment.</p>	<p>we are not proposing to prescribe standards for insurance for professional appraisers. To be a qualified appraiser, an appraiser must be a member in good standing of a professional association. We note that some professional associations, including the Appraisal Institute of Canada, have mandatory insurance programs for their members.</p>
27.	<p>Waiver of requirement for appraisal</p>	<p>Two commenters suggested that an investor could certify that they consider themselves an expert or professional and agree in writing to waive the requirement for an appraisal.</p>	<p>We thank the commenter for this suggestion. However, we do not think that it would be appropriate to provide for this type of waiver. Appraisals are required only for distributions under the offering memorandum exemption, which is designed for distributions to retail investors.</p> <p>Syndicated mortgages offered under other exemptions, such as the accredited investor exemption, will not require an appraisal. However, an appraisal may be provided for such distributions to respond to concerns of investors or dealers participating in the transaction.</p>
28.	<p>Form of appraisal</p>	<p>Three commenters suggested that an appraisal should be addressed to the investors or a letter of reliance should be provided from the appraiser to the investors.</p>	<p>We thank the commenters for this suggestion. However, we believe an obligation to deliver an appraisal to a purchaser is sufficient.</p>
29.	<p>Appraiser's independence</p>	<p>One commenter suggested that for an appraiser to be independent it should be restricted in terms of the volume of business it receives from an issuer, issuer group or mortgage broker.</p>	<p>Proposed subsection 2.9(19) of NI 45-106 provides an objective test for the independence of an appraiser. Any circumstance that, in the opinion of a reasonable person aware of all the relevant facts, could interfere with the qualified appraiser's judgment regarding the</p>

No.	Subject	Summarized Comment	Response
			<p>preparation of an appraisal for a property, would result in the appraiser not being independent. We agree with the commenter that the amount of business that an appraiser does with an issuer or related issuers could result in the appraiser not being independent. For example, the guidance in proposed paragraph 3.8(13)(h) of 45-106CP indicates that we would consider an appraiser not to be independent if the appraiser has received a majority of their income, either directly or indirectly, in the three years preceding the date of the appraisal from the issuer or a related party of the issuer.</p>
30.	Requirement for appraisal for syndicated mortgages distributed under other exemptions	<p>One commenter suggested that an appraisal should be a requirement for distributions under any exemption not just the offering memorandum exemption.</p> <p>Another commenter suggested that an appraisal should only be required for distributions under the offering memorandum exemption as distributions under other exemptions are dependent upon the ability to structure the transaction quickly.</p>	<p>We thank the commenters for their input. Although we have not added a requirement to provide investors with an appraisal for any exemptions other than the offering memorandum exemption, as noted above, a dealer's know-your-product obligations would likely require it to take reasonable steps to ascertain the loan-to-value ratio of a syndicated mortgage. In addition, we understand that sophisticated investors may demand adequate evidence of value of a property.</p>
OFFERING MEMORANDUM EXEMPTION – FORM 45-106F18			
31.	Item 8 - Appraisal	<p>One commenter suggested that we should repeat the requirement to deliver the appraisal to investors in Item 8 of Form 45-106F18.</p>	<p>We thank the commenter for their suggestion. Item 8 of Form 45-106F18 is meant to provide investors with a description of the appraisal. This does not alter the requirement that the issuer also deliver a copy of the entire appraisal to the investor under</p>

No.	Subject	Summarized Comment	Response
			subsection 2.9(19.1) of NI 45-106.
32.	Item 19 – Registration Documentation	One commenter suggested that we should add the appraisal to the list of documents in Item 19 of Form 45-106F18.	We thank the commenter for their suggestions. Item 19 of Form 45-106F18 provides a list of documents that the investor may request from the issuer after the completion of registration and disbursement of the syndicated mortgage. The issuer is required to deliver a copy of the appraisal to the investor at the same time or before the issuer delivers the offering memorandum to the investor.
33.	Alternative property values	<p>Two commenters noted that an issuer would still be permitted to disclose any value for a property if they could demonstrate a reasonable basis for the value and they disclosed the material factors and assumptions used in arriving at the value and whether it was prepared by an independent, qualified appraiser.</p> <p>One commenter suggested that we should prohibit the disclosure of a projected future value of the property or the expected market value upon completion of the development of a property regardless of whether such value was prepared by an independent, qualified appraiser.</p>	We believe that a projected future value may be relevant information for investors and the appropriate approach is to allow disclosure of such values while requiring disclosure of the factors and assumptions used in arriving at the value, together with the prominent disclosure of the appraised value.
34.	Marketing materials	One commenter suggested that any marketing, promotion or advertising material should be incorporated by reference into the offering memorandum.	We thank the commenter for their input but note that certain jurisdictions already require OM marketing materials to be incorporated by reference into an offering memorandum and filed with the regulator.
35.	Additional disclosure for	One commenter suggested that the proposed additional disclosure under the offering memorandum	We do not currently prescribe disclosure for other exemptions, such as the accredited investor

No.	Subject	Summarized Comment	Response
	other prospectus exemptions	should be a requirement for any distribution of syndicated mortgages regardless of which prospectus exemption is relied upon.	and family, friends and business associates exemptions. Introducing such disclosure would be a significant change that is beyond the scope of the Proposed Amendments.
36.	Mortgage broker certificate	<p>Two commenters indicated that the mortgage broker certificate is an important safeguard for investors and suggested the CSA issue guidance as to the extent of the broker’s due diligence obligations. Another commenter supported requiring the mortgage broker to sign the OM certificate and provide additional disclosure in the offering memorandum. This commenter could not think of a circumstance where it would not be appropriate to require this in connection with the offering memorandum exemption.</p> <p>Several commenters suggested the mortgage broker certificate may be costly in terms of the due diligence required by the broker and may not add any value or may be of little utility for investors. Some of these commenters suggested a certification in respect of matters within, or that ought to be within, the broker’s knowledge may suffice.</p> <p>Two commenters suggested a mortgage broker certificate should not be required unless the broker is the issuer or syndicator.</p> <p>One commenter suggested a mortgage broker certificate may provide a false sense of security to investors and that the lack of oversight of brokers would need</p>	<p>We thank the commenters for their feedback. We have removed the mortgage broker certificate requirement.</p> <p>If a mortgage broker is actively involved in mortgage syndication, we expect that the mortgage broker will be required to certify the offering memorandum as the issuer of the syndicated mortgage. In these circumstances, a separate mortgage broker certificate would be redundant.</p> <p>We acknowledge the commenter’s concern. However, we note that mortgage brokers are subject to oversight under mortgage legislation.</p>

No.	Subject	Summarized Comment	Response
		to be addressed if the certificate is to be a requirement.	
PRIVATE ISSUER EXEMPTION			
37.	Private issuer exemption should not be available	Two commenters supported our proposal that the private issuer exemption not be available for distributions of syndicated mortgages.	We thank the commenters for their support.
38.	Private issuer exemption should be available	<p>Several commenters expressed that the private issuer exemption should remain available for distributions of syndicated mortgages.</p> <p>Two commenters suggested the exemption could remain available but with the requirement to file a report of exempt distribution.</p> <p>Other commenters suggested there were ways the CSA could require reporting of distributions under the private issuer exemption other than the requirement to file a report of exempt distribution.</p> <p>One commenter suggested the private issuer exemption could remain available but be limited to distributions to directors, officers or employees of the issuer.</p> <p>One commenter suggested the private issuer exemption would be appropriate for distributions of syndicated mortgages where the property is used by the mortgagor for residential or business purposes.</p>	<p>We thank the commenters for their input, but we believe it is necessary for securities regulators to have a better understanding of this market by requiring issuers of syndicated mortgages to report distributions.</p> <p>Issuers will continue to be able to distribute syndicated mortgages to the same group of investors using the accredited investor or family, friends and business associates exemptions.</p>
ALTERNATIVE PROSPECTUS AND REGISTRATION EXEMPTIONS			
39.	No additional exemptions needed	Two commenters were of the view that no additional prospectus exemptions were required.	We thank the commenters for their input. Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador propose to introduce prospectus

No.	Subject	Summarized Comment	Response
		<p>Two other commenters were of the view that, if the private issuer exemption remains available, no additional prospectus exemptions would be required.</p> <p>Two other commenters were of the view that creating exemptions based on classes of syndicated mortgages would be difficult and it may create confusion and uncertainty among retail investors and result in less disclosure.</p>	<p>and dealer registration exemptions for the distribution of qualified syndicated mortgages by licensed mortgage brokerages, similar to the exemptions that exist in British Columbia. Alberta and Québec propose to introduce a prospectus exemption for this instance. Qualified syndicated mortgages are less likely to give rise to the same investor protection issues as other syndicated mortgages, which may have more equity-like characteristics. Please refer to Annex G in each of the above jurisdictions for the details of the above exemptions.</p> <p>We do not propose to introduce additional exemptions based on the attributes of the syndicated mortgage at this time. However, we will monitor activity and may consider additional exemptions in the future. In addition, we note that market participants may seek discretionary exemptive relief to offer certain types of securities if there is a sufficient basis to determine that it would not be contrary to the public interest to grant such relief.</p>
40.	Existing local British Columbia exemptions	Several commenters expressed the view that the current regime in British Columbia should remain in place and the exemptions in BCI 45-501 and British Columbia Instrument 32-517 <i>Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities (BCI 32-517)</i> should be	As discussed above, certain jurisdictions propose to adopt exemptions similar to the existing exemptions for qualified syndicated mortgages in BCI 45-501.

No.	Subject	Summarized Comment	Response
		<p>made permanent and adopted across the CSA.</p> <p>Several commenters suggested that BCI 45-501 should be adopted with modifications including:</p> <ul style="list-style-type: none"> • expanding the definition of institutional investor to include accredited investors and those that would be able to invest under the family, friends and business associates exemption; • expanding the definition of qualified syndicated mortgage by removing conditions (c) and (d)¹; or • limiting the exemptions to mortgages on residential or commercial property with loans-to-value of 80% or less of the appraised value or purchase price. <p>One commenter was of the view that the existing form of offering memorandum for syndicated mortgages in British Columbia, Form 45-901F, provides sufficient disclosure and was preferable to the Form 45-106F2 supplemented by the Form 45-106F18.</p> <p>Three commenters were of the view that BCI 45-501 should not be adopted due to the complexity of having two different regulatory regimes and investor protection concerns given that mortgage brokers may not have the same</p>	<p>We do not agree that all accredited investors should be treated as institutional investors. Syndicated mortgages may be sold under the accredited investor prospectus exemption or the family, friends and business associates prospectus exemption. However, subject to any available exemptions, the registration requirement may apply to parties involved in such distributions.</p> <p>The requirements of proposed Form 45-106F18 are based on British Columbia Form 45-901F and the level of disclosure is intended to be comparable.</p> <p>We acknowledge the feedback and have decided not to introduce these exemptions on a national basis at this time. As discussed above, certain jurisdictions are proposing to adopt exemptions similar to the exemptions for qualified</p>

¹ Conditions (c) and (d) of the existing definition of “qualified syndicated mortgage” under BCI 45-501 are the following: (c) the syndicated mortgage secures a debt obligation on property used solely for residential purposes and containing no more than four residential dwelling units, and (d) the syndicated mortgage does not secure a debt obligation incurred for the construction or development of property.

No.	Subject	Summarized Comment	Response
		<p>know-your-client and suitability obligations as registered dealers.</p> <p>One commenter was of the view that BCI 32-517 should be repealed.</p>	<p>syndicated mortgages in BCI 45-501. However, these exemptions are being adopted on a local basis because of differences in local mortgage legislation and regulation.</p> <p>BCI 32-517 expired on February 15, 2019.</p>
41.	Exemption for small number of investors proposed in question 7 March 2018 Proposal	<p>Three commenters were opposed to introducing an exemption for a small number of investors because in their view an exemption should be based on risk factors and the number of investors does not necessarily make a syndicated mortgage more or less risky or there would be more room for misrepresentation under such an exemption.</p> <p>Several commenters were supportive of the proposed exemption and one suggested the appropriate numbers of lenders would be ten or less.</p> <p>One commenter was supportive of the proposed exemption but thought it should not be limited to the mortgagor being an individual and there may need to be restrictions around the nature of the business to exclude land development or speculative land holding businesses.</p> <p>One commenter was of the view that the proposed exemption would be reasonable if there was sufficient disclosure on the use of premises and financial statements of the operating business.</p>	We thank the commenters for their input. We are not proposing an exemption based on the number of lenders at this time.

No.	Subject	Summarized Comment	Response
42.	Suggestions for new exemptions	<p>Several commenters suggested various new exemptions, including exemptions for each of the following scenarios:</p> <ul style="list-style-type: none"> • Investors are exclusively accredited investors and the mortgage is not provided to a developer for purposes of land servicing, land development, the development or construction of more than one residence or the development or construction of one or more commercial or industrial buildings or properties for resale to other persons after the completion of the development or construction. • Mortgages with loans-to-value of less than 85%, based on a third-party appraisal, and that are in first or second position. • Investors are exclusively high-net-worth individuals. • Investors are exclusively institutional investors. • The issuer acts as the lead investor and has its own capital at risk alongside the investors. 	<p>We thank the commenters for their suggestions. As discussed above, certain jurisdictions are proposing exemptions for qualified syndicated mortgages, similar to the existing British Columbia exemptions.</p> <p>We also note that there is an existing prospectus exemption for distributions to accredited investors, which will remain available for distributions of syndicated mortgages.</p>
43.	Further research	<p>One commenter suggested that the CSA should further study the primary and secondary markets for syndicated mortgages to determine which exemptions are warranted.</p>	<p>We acknowledge the comment and will continue to monitor the distribution of syndicated mortgages following the adoption of the Proposed Amendments.</p>

ANNEX C

PROPOSED AMENDMENTS TO

NATIONAL INSTRUMENT 45-106 *PROSPECTUS EXEMPTIONS*

1. *National Instrument 45-106 Prospectus Exemptions is amended by this Instrument.*
2. *Section 1.1 is amended by adding the following definitions:*

“professional association” means an organization of real property appraisers that has its head office in Canada and that

- (a) admits members on the basis of their academic qualifications, experience and ethical fitness,
- (b) requires its members to comply with professional standards of competence and ethics established or endorsed by the organization,
- (c) requires or encourages its members to engage in continuing professional development, and
- (d) disciplines, suspends or expels its members if misconduct occurs;

“qualified appraiser” means an individual who

- (a) regularly performs property appraisals for compensation,
- (b) is a member of a professional association holding the appropriate designation, certification, charter or licence to act as an appraiser for the type of property appraised, and
- (c) is in good standing with the professional association referred to in paragraph (b);
and

“syndicated mortgage” means a mortgage in which two or more persons participate, directly or indirectly, as a lender in a debt obligation that is secured by the mortgage;

3. *Section 2.4 is amended by:*
 - (a) *adding “or a syndicated mortgage” after “a short-term securitized product” in subsection (4), and*
 - (b) *adding the following subsection:*
 - (6) In Ontario, subsection 73.4(2) of the *Securities Act* (Ontario) does not apply to a distribution of a short-term securitized product or a syndicated mortgage..

4. *Section 2.9 is amended by adding the following subsections:*

(19) For the purposes of subsections (19.1) and (19.3), a qualified appraiser is independent of an issuer of a syndicated mortgage if there is no circumstance that, in the opinion of a reasonable person aware of all the relevant facts, could interfere with the qualified appraiser's judgment regarding the preparation of an appraisal for a property.

(19.1) Subsections (1), (2) and (2.1) do not apply to a distribution by an issuer of a syndicated mortgage unless, at the same time or before the issuer delivers an offering memorandum to the purchaser in accordance with subsections (1), (2) or (2.1), the issuer delivers to the purchaser an appraisal of the property subject to the syndicated mortgage that

- (a) is prepared by a qualified appraiser who is independent of the issuer,
- (b) includes a certificate signed by the appraiser stating that the appraisal is prepared in accordance with the applicable professional standards of the professional association of which the qualified appraiser is a member,
- (c) provides the fair market value of the property subject to the syndicated mortgage, without considering any proposed improvements or proposed development, and
- (d) values the property as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.

(19.2) An issuer of a syndicated mortgage relying on an exemption set out in subsection (1), (2) or (2.1) must not make a representation or give an opinion as to the value of a property subject to the syndicated mortgage in any communication, unless the issuer has a reasonable basis for that value.

(19.3) If an issuer of a syndicated mortgage relying on an exemption set out in subsection (1), (2) or (2.1) discloses in any communication a representation or an opinion as to the value of a property subject to the syndicated mortgage, other than the fair market value disclosed in the appraisal required under subsection (19.1), the issuer must also disclose

- (a) with equal or greater prominence, the fair market value disclosed in the appraisal required under subsection (19.1),
- (b) the material factors or assumptions used to determine the value, and
- (c) whether or not the value was determined by a qualified appraiser who is independent of the issuer.

(19.4) The issuer must file a copy of an appraisal delivered under subsection (19.1) with the securities regulatory authority concurrently with the filing of the offering memorandum..

5. Section 2.36 is amended by:

- (a) repealing subsection (1),**
- (b) replacing “Except in Ontario, and subject” in subsection (2) with “Subject”, and**
- (c) replacing subsection (3) with the following:**
 - (3) Subsection (2) does not apply to the distribution of a syndicated mortgage..**

6. Section 6.4 is amended by adding the following subsection:

(3) Despite subsections (1) and (2), an offering memorandum for the distribution of a syndicated mortgage under section 2.9 [*Offering memorandum*] must be prepared in accordance with Form 45-106F2 and Form 45-106F18..

7. The following form is added after Form 45-106F17:

Form 45-106F18

Supplemental Offering Memorandum Disclosure for Syndicated Mortgages

INSTRUCTIONS:

- 1. Integrate the following disclosure into your offering memorandum for a distribution of a syndicated mortgage.*
- 2. You do not need to follow the order of items in this form. Information required in this form that has already been disclosed in response to the requirements of Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers need not be repeated.*
- 3. You do not need to respond to any item in this form that is inapplicable.*
- 4. Certain items of this form require disclosure about the issuer of a syndicated mortgage and the borrower under a syndicated mortgage. The borrower could be the issuer of the syndicated mortgage. In these circumstances, the terms “issuer” and “borrower” are interchangeable and there is no requirement to duplicate information.*

The issuer is required to provide all disclosure required under Form 45-106F2 and this form, including information about the borrower under the syndicated mortgage.

5. In this form, the distribution of a syndicated mortgage is also referred to as the “offering”. The lenders or investors in a syndicated mortgage are also referred to in this form as the “purchasers”.

6. In this form “principal holder” means each person who, directly or indirectly, beneficially owns or controls 10% or more of any class of voting securities of another person. If a principal holder is not an individual, in addition to the other disclosure requirements, provide the information required for the principal holder for any person that, directly or indirectly, beneficially owns or controls more than 50% of the voting rights of the principal holder.

7. In this form, “related party” has the meaning set out in the General Instructions to Form 45-106F2.

8. Where this form requires an issuer to indicate that copies of a document are available on request, the issuer must provide a copy of such document when requested.

Item 1 – Description of the Offering

(1) Describe the investment being offered and the legal rights of the purchaser, including all of the following:

- the nature of the investment, i.e., whether it is a participation in a mortgage, an assignment of a participation in a mortgage, a mortgage unit or some other direct or indirect interest or participation in a mortgage over real property and the legal rights of the purchaser attaching to the investment;
- the rights of the purchaser on default by the borrower and the rights of the purchaser to share in the proceeds of any recovery from the borrower, in particular the purchaser’s voting rights and whether the purchaser has the right to institute individual legal action against the borrower and, if not, the person or persons who may institute or coordinate the institution of legal action against the borrower;
- if the issuer of the syndicated mortgage is not the borrower under the syndicated mortgage, the rights of the purchaser against the issuer of the syndicated mortgage on default by the borrower, if any.

(2) Describe the project and the plans for the use of the funds.

Item 2 – Raising of Funds

(1) If the funds to be raised through the offering are required to be raised in stages, disclose the period over which the funds will be raised and the factors that determine when they will be raised.

(2) If there are any arrangements under which any part of the funds raised will only become available to the borrower if certain conditions are fulfilled, describe those conditions, the procedure for the return of funds to the purchaser if the conditions are not met and any deduction or penalty imposed on the borrower or any other person for not meeting the conditions. Give details of the arrangements made for, and the persons responsible for, the supervision of the trust or escrow account or the investment of unreleased funds, and the investment policy to be followed.

Item 3 – Other Risk Factors Specific to Syndicated Mortgages

(1) State in bold:

Investments in syndicated mortgages are speculative and involve a high degree of risk. You should be aware that this investment has not only the usual risks associated with the financial ability of the borrower to make repayments, but also additional risks associated with syndication.

(2) If the syndicated mortgage includes a personal covenant, guarantee or other financial commitment, state in bold:

The ability of the person providing the personal covenant, guarantee or other financial commitment to perform under the personal covenant, guarantee or other financial commitment will depend on the financial strength of the person. There is no assurance that the person will have the financial ability to be able to satisfy the person's obligations under the personal covenant, guarantee or other financial commitment. You might not receive any return from your investment or the initial amount invested.

(3) Disclose any risk factors associated with the offering.

INSTRUCTIONS:

Potential risk factors include, but are not limited to, any of the following:

- *the reliance on the ability of the borrower to make payments under the mortgage;*
- *the financial strength of any person offering a personal covenant, guarantee or financial commitment;*
- *the ability to raise further funds as progress in development or construction takes place;*
- *changes in land value;*
- *unanticipated construction and development costs or delays;*
- *the ability to recover one's investment in the event of foreclosure;*
- *restrictions on the ability of purchasers to take action individually if the borrower defaults;*
- *whether there are other encumbrances on the mortgaged property and their relative priority;*
- *the ranking of the syndicated mortgage in relation to other mortgages and encumbrances;*
- *conflicts of interest between the borrower, purchasers, issuer or others involved in the offering;*
- *inadequate insurance coverage;*
- *inability to change the trustee (if any);*
- *the restrictions imposed by securities legislation on the resale of the syndicated mortgage.*

Item 4 – Administration of the Mortgage

(1) Describe how the syndicated mortgage will be administered as well as all parties involved, including the name, address, contact person and any relevant licences or registration held by each party.

(2) Describe the specific responsibilities of all parties involved in the administration of the syndicated mortgage, including all of the following:

- collection responsibility for payments due under the syndicated mortgage;
- commencement of legal action on default;
- follow-up on insurance expirations or cancellations;
- all other material matters of administration to be provided by the person administering the syndicated mortgage.

(3) Describe the material terms of any administration agreement related to the syndicated mortgage.

(4) Disclose all fees and expenses to be charged to the purchaser under the administration agreement and how they are to be calculated.

(5) Disclose that copies of the administration agreement are available from the issuer on request and explain how to request a copy.

Item 5 – Trust or Other Agreement

(1) Disclose whether there is any trust or other agreement that provides for any person to make advances of the funds to the borrower and to distribute the proceeds of repayments made by the borrower.

(2) Describe the material terms of any agreement disclosed in (1), including all of the following:

- whether the purchaser is required to grant a power of attorney to the trustee and the terms of that power of attorney;
- all fees and expenses to be charged to the purchaser under the agreement;
- the specific responsibilities of all parties to the agreement, including all of the following:
 - the opening of a trust account into which all investment proceeds must be paid until advanced to the borrower and into which all proceeds received in repayment of the syndicated mortgage must be paid before distribution to the purchasers;
 - details of how payments related to the syndicated mortgage will be made;
 - the mechanism for replacing the trustee and the procedures for dispute resolution.

(3) Disclose that copies of any agreement disclosed in (1) is available from the issuer on request and explain how to request a copy.

Item 6 – Property Subject to Mortgage

Describe the details of the property subject to the mortgage, including all of the following:

- the address and legal description;
- the past, current and intended use;
- any proposed improvements;
- the date of acquisition of the property and the purchase price paid;
- the details, including the purchase price, of any other transactions involving the property known to the borrower, any related party of the borrower or any of their respective partners, directors, officers or principal holders;
- if the borrower is not the issuer of the syndicated mortgage, the details, including the purchase price, of any other transactions involving the property known to the issuer, any related party of the issuer or any of their respective partners, directors, officers or principal holders;
- any contractual arrangements relating to the property;
- any insurance policies applicable to the property and their status;
- any claims or litigation;
- any known contamination or environmental concerns;
- any other material facts.

Item 7 – Description of the Syndicated Mortgage

(1) Describe the syndicated mortgage, including all of the following:

- the material terms of the syndicated mortgage, including the principal amount, term, amortization period, interest rate, maturity date, any prepayment entitlement and the ranking of the syndicated mortgage (i.e., first, second, etc.);
- the material terms and relative priority of any other mortgages or encumbrances on the mortgaged property;
- the loan-to-value ratio of the property, calculated on an aggregate basis using the loan value of the syndicated mortgage and all other mortgages or encumbrances with priority over the syndicated mortgage and the appraised value of the property described under item 8;
- the aggregate dollar amount of the funds being raised under the offering;
- the status of the syndicated mortgage, including whether there are any arrears and, if so, the amount and due dates of outstanding payments;
- the means by which the repayments by the borrower will be distributed and the procedure for establishing the proportion to which each purchaser is entitled to share in the distribution;

- the source of funds that the borrower will use to pay interest on the syndicated mortgage, including any reserve accounts or other fund maintained by the borrower or any other person.

(2) Describe the material terms of any commitment letter, or other commitment document, that sets out the terms of the commitment to advance funds to the borrower.

(3) Disclose that copies of the commitment letter, or other commitment document, are available from the issuer on request and explain how to request a copy.

Item 8 – Appraisal

(1) Describe the most recent appraisal of the value of the property subject to the mortgage, prepared by a qualified appraiser in accordance with subsection 2.9(19.1) of National Instrument 45-106 *Prospectus Exemptions*, including all of the following:

- the methodology used;
- all assumptions made;
- any qualifications or limitations;
- the date of the valuation.

(2) Provide details of the most recent assessment of the property subject to the mortgage, including existing improvements by any provincial or municipal assessment authority.

Item 9 – Exemptions

Disclose any statutory or discretionary exemption from the registration requirement that is being relied upon by any person involved in the offering of the syndicated mortgage.

Item 10 – Guarantees or Other Similar Financial Commitments

(1) Summarize the terms of any personal covenant, guarantee or other financial commitment provided in connection with the syndicated mortgage. Explain how the personal covenant, guarantee or financial commitment works.

(2) Disclose that copies of the personal covenant, guarantee or financial commitment are available from the issuer on request and explain how to request a copy.

(3) Describe the business experience of the person providing any personal covenant, guarantee or other financial commitment.

(4) Describe the financial resources of the person providing the personal covenant, guarantee or other financial commitment. The description must allow a reasonable purchaser applying reasonable effort to understand the person's ability to meet the obligations under the personal covenant, guarantee or other financial commitment.

(5) Indicate whether the purchasers will be entitled to ongoing disclosure of the financial position of the person providing any personal covenant, guarantee or other financial

commitment during the period of the personal covenant, guarantee or commitment, and the nature, verification, timing and frequency of any disclosure that will be provided to purchasers.

Item 11 – Organization of Mortgage Broker, Mortgage Brokerage or Mortgage Agency

State the laws under which any firm acting as a mortgage broker, mortgage brokerage or mortgage agency is organized and the date of formation of the mortgage broker, mortgage brokerage or mortgage agency.

Item 12 – Borrower Information

If the borrower is not the issuer of the syndicated mortgage, provide the disclosure required under items 2, 3, 4 and 12 of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* as if the borrower were the issuer of the syndicated mortgage.

Item 13 – Developer

If the property subject to the syndicated mortgage is being developed, state the laws under which the developer is organized and the date of formation of the developer. Describe the business of the developer and any prior experience of the developer in similar projects.

Item 14 – Mortgage Broker, Mortgage Brokerage or Mortgage Agency, Partners, Directors, Officers and Principal Holders

(1) Disclose the name, municipality of residence and principal occupation for the 5 years preceding the date of the offering memorandum of any individual mortgage broker involved in the offering and the partners, directors, officers and any principal holders of any firm acting as a mortgage broker, mortgage brokerage or mortgage agency involved in the offering.

(2) Disclose any penalty or sanction, including the reason for it and whether it is currently in effect, that has been in effect during the 10 years preceding the date of the offering memorandum, or any cease trade order that has been in effect for a period of more than 30 consecutive days during the 10 years preceding the date of the offering memorandum against any of the following:

- a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;
- a director, officer or principal holder of a firm acting as a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;
- any issuer of which a person referred to above was a director, officer or principal holder at the time of the penalty or sanction.

(3) Disclose any declaration of bankruptcy, voluntary assignment in bankruptcy, proposal under any bankruptcy or insolvency legislation, proceedings, arrangement or compromise

with creditors or appointment of a receiver, receiver manager or trustee to hold assets that has been in effect during the 10 years preceding the date of the offering memorandum with respect to any of the following:

- a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;
- a director, officer or principal holder of a firm acting as a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;
- any issuer of which a person referred to above was a director, officer or principal holder at the time of the declaration, assignment, proposal, proceedings, arrangement, compromise or appointment.

Item 15 – Developer, Partners, Directors, Officers and Principal Holders

(1) Disclose the name and address of any developer of the property subject to the syndicated mortgage.

(2) Disclose any penalty or sanction, including the reason for it and whether it is currently in effect, that has been in effect during the 10 years preceding the date of the offering memorandum, or any cease trade order that has been in effect for a period of more than 30 consecutive days during the 10 years preceding the date of the offering memorandum against any of the following:

- a developer of the property subject to the syndicated mortgage;
- a director, officer or principal holder of a developer of the property subject to the syndicated mortgage;
- any issuer of which a person referred to above was a director, officer or principal holder at the time of the penalty or sanction.

(3) Disclose any declaration of bankruptcy, voluntary assignment in bankruptcy, proposal under any bankruptcy or insolvency legislation, proceedings, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets that has been in effect during the 10 years preceding the date of the offering memorandum with respect to any of the following:

- a developer of the property subject to the syndicated mortgage;
- a director, officer or principal holder of a developer of the property subject to the syndicated mortgage;
- any issuer of which a person referred to above was a director, officer or principal holder at the time of the declaration, assignment, proposal, proceedings, arrangement, compromise or appointment.

Item 16 – Conflicts of Interest

(1) Describe any existing or potential conflicts of interest among any of the following:

- the borrower;

- the issuer;
- a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;
- a developer of the property subject to the syndicated mortgage;
- any partners, directors, officers or principal holders of the borrower, issuer, mortgage broker, mortgage brokerage or mortgage agency, or developer;
- the trustee, administrator of the mortgage, or any other person providing goods or services to the borrower, issuer, mortgage broker, mortgage brokerage or mortgage agency or developer in connection with the syndicated mortgage.

(2) Describe any direct or indirect interest in the property subject to the syndicated mortgage, the borrower or the business of the borrower held by any of the following:

- any mortgage broker, mortgage brokerage or mortgage agency, developer, trustee or administrator involved in the offering;
- a director, officer or principal holder of a person or company listed above.

Item 17 – Material Contracts

(1) To the extent not already disclosed elsewhere in the offering memorandum, give particulars of every material contract relating to the offering or the syndicated mortgage entered into or to be entered into by the borrower, issuer, mortgage broker, mortgage brokerage, mortgage agency or developer, or any related party of the foregoing, within the 2 years preceding the date of the offering memorandum, or that is still in force.

(2) Disclose that copies of the material contracts are available from the issuer on request and explain how to request a copy.

Item 18 – Disclosure of Fees Specific to the Syndicated Mortgage

(1) Disclose whether a mortgage broker, mortgage brokerage or mortgage agency has provided a disclosure statement under mortgage legislation to the borrower concerning all fees, by whatever name those fees are called, to be charged to the borrower. Disclose that copies of the disclosure statement are available from the issuer on request and explain how to request a copy.

(2) If no mortgage broker, mortgage brokerage or mortgage agency has provided a disclosure statement to the borrower, describe the fees, by whatever name those fees are called, that are to be charged to the borrower, how they are to be calculated and paid and when any person involved in the distribution is entitled to payment.

(3) Disclose all fees, by whatever name those fees are called, to be paid by the purchaser, directly or indirectly in connection with the syndicated mortgage.

Item 19 – Registration Documentation

State:

In addition to all other material and documentation reasonably requested and mutually agreed upon, the purchaser should request, either from the lawyer or notary acting on the purchaser's behalf, or from the borrower, issuer or any mortgage broker, mortgage brokerage or mortgage agency involved in the distribution, all of the following documentation after the completion of registration and disbursement of the syndicated mortgage:

- a copy of the certificate of mortgage interest or assignment of the mortgage or any other document evidencing the investment;
- a copy of a confirmation signed by any secured party with priority over the syndicated mortgage confirming the outstanding balance of its encumbrance over the property and that the borrower is not in arrears with any payments;
- written confirmation of valid insurance on the property and disclosure of the interest of the purchaser in the insurance;
- written confirmation that there are no outstanding arrears or delinquent municipal property taxes on the property;
- a state of title certificate, or equivalent, within 120 days of the date of the syndicated mortgage;
- a copy of administration agreement or trust indenture;
- a copy of any agreement the purchaser entered into in connection with the distribution of the syndicated mortgage..

8. This Instrument comes into force on [**December 31, 2019**].

ANNEX D

PROPOSED CHANGES TO

COMPANION POLICY 45-106CP PROSPECTUS EXEMPTIONS

1. *Companion Policy 45-106CP Prospectus Exemptions is changed by this Document.*
2. *Section 3.8 is changed by adding the following subsections:*

(11) Issuer of a syndicated mortgage

The offering memorandum exemption may only be used by an issuer to distribute a security of its own issue. Accordingly, only the issuer of a syndicated mortgage may use the offering memorandum exemption to distribute the syndicated mortgage.

Where a borrower enters into a mortgage with two or more persons participating as lenders under the debt obligation secured by the mortgage, or enters into a mortgage with a view to the subsequent syndication of that mortgage to two or more purchasers, lenders or investors, the borrower is the issuer of the syndicated mortgage. Consequently, the obligations to comply with the conditions of the exemption and reporting requirements (including the filing of a report of exempt distribution) would fall on the borrower.

There may be circumstances where a person other than the borrower may be an issuer of a syndicated mortgage. For example, where an existing or committed mortgage is syndicated among lenders by a party not acting on behalf of the borrower, that party will generally be an issuer of the syndicated mortgage. The determination of the identity of the issuer, or issuers, of a syndicated mortgage will depend on the facts and circumstances of the transaction.

Where a person other than the borrower is the issuer of a syndicated mortgage, the ability of the issuer to rely on the offering memorandum exemption for the distribution of the syndicated mortgage will be dependent upon the issuer providing the required information regarding the borrower, including financial statements, in the offering memorandum. The issuer's certificate that the offering memorandum does not contain a misrepresentation will extend to any information provided about the borrower under the syndicated mortgage.

(12) Professional association

The definition of "qualified appraiser" in section 1.1 of the Instrument requires a qualified appraiser to be a member of a professional association. The Appraisal Institute of Canada, The Canadian National Association of Real Estate Appraisers and l'Ordre des évaluateurs agréés du Québec are examples of organizations that we consider to meet the definition of "professional association" in section 1.1 of the Instrument.

(13) Independent qualified appraiser for syndicated mortgages

Subsection 2.9(19) of the Instrument provides the test that the issuer of a syndicated mortgage and a qualified appraiser must apply to determine whether a qualified appraiser is independent of the issuer. The following are examples of when we would consider that a qualified appraiser is not independent. These examples are not a complete list. We would consider that a qualified appraiser is not independent of an issuer if the qualified appraiser satisfies any of the following:

- (a) is an employee, insider or director of the issuer;
- (b) is an employee, insider or director of a related party of the issuer;
- (c) is a partner of any person in paragraph (a) or (b);
- (d) holds or expects to hold securities, either directly or indirectly, of the issuer or a related party of the issuer;
- (e) holds or expects to hold securities, either directly or indirectly, in another issuer that has a direct or indirect interest in the property that is the subject of the appraisal or in an adjacent property;
- (f) is an employee, insider or director of another issuer that has a direct or indirect interest in the property that is the subject of the appraisal or in an adjacent property;
- (g) has or expects to have, directly or indirectly, an ownership, royalty or other interest in the property that is the subject of the appraisal or in an adjacent property;
- (h) has received the majority of their income, either directly or indirectly, in the three years preceding the date of the appraisal from the issuer or a related party of the issuer.

(14) Appraisals

Subsection 2.9(19.1) of the Instrument requires the issuer to deliver an appraisal of the property subject to a syndicated mortgage. The appraisal must disclose the fair market value of the property, without taking into account any proposed improvements or proposed development. The fair market value of the property, as it currently exists, is important information for prospective purchasers to understand the protection afforded by the security interest in the property subject to the syndicated mortgage in the event of a default by the borrower..

3. *Section 4.7 is changed by deleting the first paragraph.*
4. These changes become effective on **[December 31, 2019]**.

ANNEX E

PROPOSED AMENDMENTS TO

NATIONAL INSTRUMENT 31-103 *REGISTRATION REQUIREMENTS, EXEMPTIONS
AND ONGOING REGISTRANT OBLIGATIONS*

1. *National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by this Instrument.*
2. *Section 8.12 is amended by:*
 - (a) *replacing “In Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan, subsection (2)” in subsection (3) with “Subsection (2)”, and*
 - (b) *repealing subsection (4).*
3. This Instrument comes into force on [**December 31, 2019**].

ANNEX F

PROPOSED CHANGES TO

**COMPANION POLICY 31-103CP REGISTRATION REQUIREMENTS, EXEMPTIONS
AND ONGOING REGISTRANT OBLIGATIONS**

1. *Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations is changed by this Document.*
2. *Section 3.3 is changed by adding the following to the end of Relevant securities industry experience:*

In limited circumstances, relevant securities industry experience may include experience obtained during employment at a firm that has relied on a registration exemption. For example, experience obtained at a registered or licensed mortgage broker, mortgage brokerage, mortgage agency or mortgage dealer under applicable legislation may be considered relevant if the experience can be demonstrated to be relevant to the category applied for. In these circumstances, the regulator may also impose terms and conditions on the individual or the registered firm sponsoring the individual in order to limit their specific activities.

3. These changes become effective on **[December 31, 2019]**.

ANNEX G

LOCAL MATTERS (ALBERTA)

Prospectus Exemption for Qualified Syndicated Mortgages

We are proposing a prospectus exemption for qualified syndicated mortgages, as set out in the Schedule to this annex.

The proposed definition of qualified syndicated mortgage excludes a debt obligation that is incurred for the construction or development of property. Qualified syndicated mortgages are likely more similar to conventional mortgages. Accordingly, we believe that qualified syndicated mortgages do not present the same investor protection concerns that the March 2018 Proposal was intended to address.

As noted in Annex B, we believe the introduction of this exemption for qualified syndicated mortgages also addresses concerns raised by several commenters in respect of the removal of the Private Issuer Exemption for distributions of syndicated mortgages as well as several alternative exemptions that were suggested by the commenters.

Prospectus Exemption for Syndicated Mortgages Distributed to Permitted Clients

We are proposing a prospectus exemption for syndicated mortgages distributed to “permitted clients” (as defined in NI 31-103). We received comments noting that because syndicated mortgages are excluded from section 2.36 of NI 45-106, this means that a different prospectus exemption must be utilized for these transactions. The other prospectus exemptions that may be available require reporting and fees (unless the issuer is a “Canadian financial institution” or a “Schedule III bank”, each as defined in NI 45-106). The comments raised concerns about the burden imposed on these transactions by reporting and fees. The comments suggested that if the lenders are “permitted clients”, there should be a prospectus exemption that does not require reporting and fees.

We are publishing both proposed prospectus exemptions for a 60-day comment period.

SCHEDULE

PROPOSED AMENDMENTS TO ALBERTA SECURITIES COMMISSION RULE 45-511 *LOCAL PROSPECTUS EXEMPTIONS AND RELATED REQUIREMENTS*

1. *Alberta Securities Commission Rule 45-511 Local Prospectus Exemptions and Related Requirements is amended by this Instrument.*
2. *Part 1 is replaced by the following:*

Part 1: Definitions

1.1 In this rule

“Act” means the *Securities Act*, R.S.A. 2000, c. S-4, as amended;

“jurisdiction” or “jurisdiction of Canada” means a province or territory of Canada;

“permitted client” has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“prospectus requirement” means the requirement in the Act that prohibits a person or company from distributing a security unless a preliminary prospectus and a prospectus for the security have been filed and the Executive Director has issued receipts for them;

“qualifying issuer” has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*;

“qualified syndicated mortgage” means a syndicated mortgage that satisfies all of the following:

- (a) the syndicated mortgage secures a debt obligation on property that satisfies both of the following:
 - (i) it includes no more than four units;
 - (ii) it includes no more than one unit that is used for non-residential purposes;
- (b) the syndicated mortgage does not secure a debt obligation incurred for the construction or development of property;
- (c) at the time the syndicated mortgage is arranged, the amount of the debt it secures, together with all other debt secured by mortgages on the property that have priority over, or the same priority as, the syndicated mortgage, does not exceed 80 per cent of the fair market value of the property relating to the mortgage, excluding any value that may be attributed to proposed or pending development of the property;

- (d) the syndicated mortgage is limited to one debt obligation;
- (e) the rate of interest payable under the syndicated mortgage is equal to the rate of interest payable under the debt obligation;
- (f) the term of the syndicated mortgage is the same as the term of the identified debt obligation;

“registration requirement” means the requirement in the Act that prohibits a person or company from acting as a dealer, adviser or investment fund manager unless the person or company is registered in accordance with Alberta securities laws; and

“syndicated mortgage” means a mortgage in which two or more persons participate, directly or indirectly, as a lender in a debt obligation that is secured by the mortgage.

1.2 Unless defined in this rule, terms defined in section 1 of the Act apply..

3. *Part 2 is amended by adding the following sections:*

2.2 Qualified syndicated mortgages

The prospectus requirement does not apply to a distribution of a qualified syndicated mortgage on real property in a jurisdiction of Canada by a person or company that is registered or licensed, or exempted from registration or licensing, under legislation governing mortgage brokers in Alberta.

2.3 Syndicated mortgages distributed to permitted clients

- (1) The prospectus requirement does not apply to a distribution of a syndicated mortgage on real property in a jurisdiction of Canada to a permitted client by a person or company that is registered or licensed, or exempted from registration or licensing, under legislation governing mortgage brokers in Alberta.
- (2) A trade in a security acquired under subsection (1) is a distribution..

4. *Paragraph 3.1(a), clause 3.4(2)(a)((ii)(B) and subsection 3.4(3) are each amended by replacing any reference to “Securities Act (Alberta)” with “Act”.*

5. *Subparagraph (ii) of paragraph 3.1(f) is replaced by the following:*

- (ii) a sale made under an exemption from the prospectus requirement and the registration requirement..

4. This Instrument comes into force on ●.

Montréal, le 4 juin 2018



Me Anne-Marie Beaudoin
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Objet : Projet de Règlement modifiant le Règlement 45-106 sur les dispenses de prospectus et Projet de Règlement modifiant le Règlement 31-103 sur les obligations et dispenses d'inscription et les obligations continues des personnes inscrites – **Créances hypothécaires syndiquées – Consultation publique**

Commentaires de l'Ordre des évaluateurs agréés du Québec

Maître Beaudoin,

La présente lettre fait suite à la publication en date du 8 mars 2018 sur le site Internet de l'Autorité des marchés financiers (l'« **Autorité** ») de l'avis de consultation sur le Projet de Règlement modifiant le Règlement 45-106 sur les dispenses de prospectus et Projet de Règlement modifiant le Règlement 31-103 sur les obligations et dispenses d'inscription et les obligations continues des personnes inscrites – **Créances hypothécaires syndiquées** (le «**Projet de Règlement**»).

Notre intervention s'inscrit avant tout dans notre mission principale de la **protection du public**. Elle vise à cerner les facteurs augmentant le préjudice potentiel pour le public dans le contexte des créances hypothécaires syndiquées.

Nous avons pris connaissance avec grand intérêt de cet avis de consultation et nous souhaitons vous soumettre, au nom de l'Ordre des évaluateurs agréés du Québec (l'«**Ordre**»), nos préoccupations et commentaires lesquels porteront de façon générale sur les modifications proposées aux dispenses de prospectus et d'inscriptions ouvertes pour le placement de créances hypothécaires syndiquées et, plus précisément sur les modifications qui *«prévoient que les émetteurs remettent un rapport d'évaluation de la juste de valeur de marché de l'immeuble visé par la créance hypothécaire syndiquée aux souscripteurs éventuels [...]»*.

L'Ordre

Mandaté par la loi pour assurer la protection du public et la qualité des actes professionnels posés par ses membres – dont le titre professionnel est « **évaluateur agréé** » (« É.A. ») ou « estimateur agréé », en anglais « Chartered Appraiser » ou « Chartered Assessor » ou « C.App. »-, l'Ordre est un délégataire de l'autorité publique qui relève du ministre de la Justice, responsable de l'application des lois professionnelles du Québec. Les fonctions et mécanismes de fonctionnement de l'Ordre sont prescrits par le *Code des professions*, une loi du Québec.

Leur travail consiste à formuler une **opinion objective** sur la valeur d'un bien ou d'un droit immobilier à une date donnée. Ils sont aussi les **seuls intervenants impartiaux** qui n'aient aucun intérêt à conclure une transaction immobilière. Les préjugés, les intérêts personnels et les préférences ne peuvent figurer dans leur démarche professionnelle, non plus que l'influence de tiers, clients ou donneurs d'ouvrage.

L'Ordre regroupe plus de 1 000 membres actifs, dont près de 45% exercent dans le secteur du financement hypothécaire. Ceux-ci sont quotidiennement impliqués dans le processus de souscription de prêts hypothécaires. Tout comme l'Ordre, ils partagent les préoccupations de l'Autorité et de l'Autorité canadienne des valeurs mobilières (l'« **ACVM** ») exprimées dans l'avis de consultation des ACVM concernant les créances hypothécaires syndiquées.

L'avis de consultation des ACVM souligne que *« Certains territoires ont connu une hausse marquée du nombre d'offres de créances hypothécaires syndiquées dans le cadre de projets de promotion immobilière. Ces offres peuvent poser des enjeux de protection des investisseurs, particulièrement si elles s'adressent à des investisseurs individuels, car elles peuvent présenter les caractéristiques suivantes :*

- *servir à obtenir du capital de démarrage pour financer des projets de promotion immobilière, notamment les coûts des projets de conception initiaux et les frais de démarrage;*
- *être fonction des valeurs projetées du projet achevé;*
- *ne pas être pleinement garanties par une charge grevant un bien immeuble, car le montant du prêt peut considérablement dépasser la juste valeur actuelle du terrain;*
- *être subordonnées à des financements futurs, notamment des travaux de construction, qui peuvent être substantiels et faire que l'investissement ressemble, sur le plan du risque, davantage à un investissement dans des titres de capitaux propres qu'à un investissement dans des titres à revenu fixe;*
- *provenir d'émetteurs n'ayant aucune source de revenus, si bien que le paiement des intérêts courants serait tributaire du financement futur ou de réserves issues du capital avancé;*
- *être assujetties au risque de retard et aux coûts accrus inhérents à la promotion immobilière.*

Dans la commercialisation de ces investissements, on met souvent l'accent sur les valeurs projetées du projet immobilier achevé et sur le fait que la créance hypothécaire syndiquée est garantie par un bien immeuble. La protection accordée par cette sûreté dépend principalement de la juste valeur de marché du bien immeuble à ce moment-là relativement aux obligations et à toutes charges de rang supérieur.»

En tant qu'organisme de réglementation créé par une loi provinciale et voué à **la protection de l'intérêt général**, l'Ordre souscrit entièrement aux objectifs qui sous-tendent les modifications

proposées aux dispenses de prospectus et d'inscription ouvertes pour le placement de créances hypothécaires à l'effet d'«*instaurer des mécanismes additionnels de protection des investisseurs relativement au placement de créances hypothécaires syndiquées*».. Ces objectifs rejoignent les valeurs d'objectivité, d'intégrité, de prudence et de compétence, à la base des Normes de pratique professionnelle des évaluateurs agréés et du contrôle de leur application par l'Ordre.

* * *

«Les projets de modification prévoient que les émetteurs remettent un rapport d'évaluation de la juste valeur de marché de l'immeuble visé par la créance hypothécaire syndiquée aux souscripteurs éventuels sous le régime de la dispense pour notice d'offre. Ce rapport serait établi par un évaluateur qualifié indépendant de l'émetteur. Si l'émetteur fournit une autre valeur de l'immeuble, celle-ci devrait avoir un fondement valable, et il serait tenu d'indiquer les hypothèses et facteurs importants qui la sous-tendent, ainsi que de préciser si elle a été établie par un évaluateur qualifié indépendant de lui.»

L'Ordre insiste sur les **enjeux pour le public** d'investir dans des créances hypothécaires syndiquées dispensées de prospectus s'il n'y a pas de rapport d'évaluation effectué par un évaluateur compétent, membre en règle d'un organisme de réglementation et soumis à des exigences rigoureuses en matière de normes dans la détermination des valeurs. Au Québec, l'évaluateur agréé répond à ces critères. L'opinion d'un professionnel indépendant est primordiale, quant à nous, et déterminante pour établir de façon objective la valeur marchande d'un bien immobilier sans égard aux intérêts des parties à la transaction (émetteur, courtier, vendeur, acheteur).

À cet égard, les évaluateurs agréés agissent comme « agents régulateurs ». Lors de l'émission d'une créance hypothécaire syndiquée, l'évaluateur agréé est l'intervenant impartial qui n'a pas d'intérêt dans la transaction, contrairement aux autres : tant l'acheteur que le vendeur ou son courtier ou encore l'émetteur, tous ont intérêt à conclure, au plus vite, une transaction qui affectera financièrement l'investisseur.

* * *

Section «Rapports d'évaluation»

1. *«Comme il est proposé, un rapport d'évaluation serait requis dans tous les cas où des créances hypothécaires syndiquées seraient placées sous le régime de la dispense pour notice d'offre. Devrait-il y avoir des exceptions à cette obligation? Par exemple, faut-il exiger ce rapport si l'immeuble a été récemment acquis dans une opération sur le marché libre où toutes les parties agissaient sans lien de dépendance?»*

Nous sommes d'avis qu'il ne devrait pas y avoir d'exceptions à cette obligation. **L'intervention d'un professionnel est essentielle pour assurer la protection des investisseurs**, et réduire les risques associés aux créances hypothécaires syndiquées. En disposant d'une opinion professionnelle objective, l'investisseur est rassuré sur la qualité de son investissement financier.

Selon l'exemple proposé, une créance hypothécaire syndiquée dont *l'immeuble aurait récemment été acquis dans une opération sur le marché libre où toutes les parties agissaient sans lien de dépendance* pourrait être exemptée de l'obligation d'évaluation par un évaluateur indépendant. Nous avons de fortes réserves relativement à cet exemple. En effet, est-ce l'émetteur de la créance qui pourra déterminer l'exemption d'évaluation? Ces intervenants ne sont pas objectifs et pourraient faire fi de certains ajustements au prix de vente liés à des transferts hypothécaires, des

baux en place ou tout autre incitatif financier. Nous croyons que ce type d'exemption ne favorise pas l'objectif des modifications, soit la protection des investisseurs.

Section «Autres dispenses de prospectus»

5. «D'autres dispenses de prospectus devraient-elles être prévues pour faciliter le placement de catégories précises de créances hypothécaires syndiquées dans les cas où les enjeux de protection des investisseurs peuvent ne pas être aussi prononcés?
6. Devrions-nous envisager l'adoption d'une dispense pour le placement de créances hypothécaires syndiquées sur des immeubles résidentiels existants qui serait similaire à celle prévue à l'égard des créances hypothécaires qualifiées (qualified syndicated mortgages) en vertu de la Rule 45-501: Mortgages de la British Columbia Securities Commission?
7. Une dispense devrait-elle être prévue pour le placement de créances hypothécaires syndiquées auprès d'un petit nombre de prêteurs dans le cas d'un immeuble que le débiteur hypothécaire utilise à des fins résidentielles ou commerciales? Dans l'affirmative, la dispense devrait-elle être subordonnée à des conditions? Par exemple, devrait-elle être accordée seulement dans le cas où le placement i) est effectué par une personne physique, ii) se rapporte à un immeuble résidentiel, ou iii) concerne un nombre maximum précis de prêteurs.»

Au risque de nous répéter, nous réitérons qu'il ne devrait pas y avoir d'exceptions à cette obligation. **L'intervention d'un professionnel est essentielle pour assurer la protection des investisseurs**, et réduire les risques associés aux créances hypothécaires syndiquées. Les biens immobiliers servant de garantie aux investisseurs doivent subir une évaluation par un professionnel compétent et indépendant de l'émetteur.

Il apparaît très évident à l'Ordre que, dans le contexte des présentes modifications relatives aux créances hypothécaires syndiquées, l'intérêt de la saine gestion et d'évaluation des sûretés justifie que l'on exige un encadrement adéquat des émetteurs desdites sûretés en règlementant l'obligation d'obtenir une évaluation de la juste valeur marchande par un évaluateur indépendant.

* * *

En tout respect, nous nous permettons de vous proposer une précision relativement au *Règlement modifiant le Règlement 45-106 sur les dispenses de prospectus*.

Nous proposons le libellé suivant de ce paragraphe :

1. L'article 1.1 du *Règlement 45-106 sur les dispenses de prospectus* (chapitre V-1.1, r. 21) est modifié :

1° par l'insertion, après la définition de l'expression « agence de notation désignée », de la suivante :

« association professionnelle » : un organisme regroupant des évaluateurs immobiliers dont le siège est situé au Canada et qui remplit les conditions suivantes :

a) il est généralement reconnu dans le milieu de l'évaluation immobilière comme **un ordre professionnel** ou une association réputée;

Au Québec, « Évaluateur agréé » est **le seul titre professionnel en évaluation immobilière reconnu législativement** ((art. 36 j) du *Code des professions*). La profession d'évaluateur agréé est régie par l'Ordre qui octroie un permis d'exercice et un titre professionnel. L'Ordre professionnel se distingue de l'association professionnelle, car il est **un délégué de l'autorité**

publique qui relève du ministre de la Justice, responsable de l'application des lois professionnelles du Québec. Les fonctions et mécanismes de fonctionnement de l'Ordre sont prescrits par le *Code des professions*, une loi du Québec. Vous trouverez en annexe quelques-uns de ces mécanismes.

Les compétences en évaluation immobilière des É.A. sont expressément reconnues par le législateur québécois. Le préjudice qui pourrait être subi par le public recourant à leurs services a été jugé suffisamment sérieux pour mériter un encadrement par un ordre professionnel. Qui plus est, à titre d'ordre professionnel, nous sommes imputables de la qualité de l'encadrement de nos membres auprès de l'Office des professions du Québec.

* * *

En terminant, nous résumons nos commentaires de la façon suivante :

La gestion saine et prudente d'émission de créances hypothécaires syndiquées implique forcément une intervention d'un évaluateur compétent et indépendant membre en règle d'un organisme de réglementation et soumis à des exigences rigoureuses en matière de normes dans la détermination des valeurs. **Au Québec, il s'agit d'évaluateurs agréés, membres de l'Ordre des évaluateurs agréés du Québec.**

Nous demeurons à votre disposition pour toute question ou information supplémentaire et vous offrons, bien entendu, notre entière collaboration, eu égard aux éventuels travaux sur les modifications concernant les créances hypothécaires syndiquées.

Vous remerciant de l'attention que vous aurez portée à nos commentaires, nous vous prions de croire, maître Beaudoin, à l'expression de nos salutations respectueuses.

Le président,

Richard Lahaye, É.A.

c.c. Nathalie Parent, Directrice générale et Secrétaire

Annexe

À notre avis, il est raisonnable d'inférer que les mécanismes du contrôle de l'exercice de la profession mis à la disposition de l'Ordre, aident aux instances gouvernementales à améliorer l'efficacité des services qu'elles rendent à la population. Parmi ces mécanismes, soulignons les suivants:

Le contrôle de l'accès à la profession

Pour avoir accès à la profession d'évaluateur agréé, un professionnel doit non seulement détenir un diplôme universitaire, mais également suivre les cours sur les méthodes et techniques reconnues en matière de l'évaluation immobilière du *Programme de formation professionnelle de l'Ordre*. Ces cours sont sanctionnés par un examen écrit.

Dans le cadre de ces cours, le candidat à l'exercice de la profession apprend également les règles d'éthique et de déontologie ainsi que les **Normes de pratique professionnelle** dont vous trouverez copie ci-jointe pour votre information.

L'inspection professionnelle et le processus disciplinaire

Comme pour l'ensemble des ordres professionnels soumis au *Code des professions*, le gouvernement approuve et adopte tous les règlements de l'Ordre régissant l'exercice de la profession; l'Ordre en sanctionne le respect par ses membres via l'inspection professionnelle régulière et le processus disciplinaire.

L'inspection professionnelle vise plus particulièrement à contrôler le respect des *Normes de pratique professionnelle* qui établissent les standards obligatoires dans la détermination des valeurs et dans l'utilisation des méthodes et techniques d'évaluation.

Selon les résultats de l'inspection professionnelle, l'Ordre est aujourd'hui en mesure d'affirmer que les évaluateurs agréés remplissent leurs mandats de services professionnels avec rigueur et professionnalisme et en respectant les normes de pratique obligatoires. Toutefois, lorsque les lacunes sont décelées dans la pratique d'un membre, il peut se voir imposer un stage de perfectionnement avec une limitation du droit d'exercice.

Le processus disciplinaire vise quant à lui le respect des règles d'éthique et de déontologie contenues dans le *Code de déontologie des évaluateurs agréés*. Ses dispositions astreignent les membres de l'Ordre au respect des règles d'éthique d'autant plus indispensables dans des situations lorsque, d'une part, il s'agit de la gestion des fonds publics, et d'autre part, des interventions auprès des citoyens. Parmi ces règles, ne citons que quelques unes :

- l'obligation d'exercer sa profession en respectant les normes de pratique généralement reconnues (art. 4);
- l'obligation de sauvegarder en tout temps son indépendance professionnelle (art. 17);
- l'obligation de demander des honoraires justes et raisonnables dont la détermination doit être basée sur des facteurs précis, tels le degré de la responsabilité assumé, la difficulté et l'importance des services professionnels, l'expérience professionnelle (art. 24).

Le non-respect de ces règles entraîne comme sanction ultime la radiation du Tableau de l'Ordre.

L'obligation de tenir à jour et de perfectionner ses connaissances

Les attentes du public envers les professionnels ne cessent d'augmenter et les évaluateurs agréés étaient parmi les premiers professionnels qui ont décidé de prendre les moyens nécessaires pour s'assurer que tous maintiennent et approfondissent leurs connaissances liées à l'exercice de la profession. C'est ainsi, que depuis le 1^{er} janvier 2007, les membres de l'Ordre sont tenus de suivre au moins 12 heures de formation continue par année.

L'assurance de la responsabilité professionnelle

Enfin, en vertu du *Règlement sur l'assurance de la responsabilité professionnelle*, tout évaluateur agréé bénéficie de la couverture établissant une garantie contre les conséquences pécuniaires de la responsabilité qu'il peut encourir en raison des fautes commises dans l'exercice de sa profession.



12/6/2018

Ms. Gina Stephens
Senior Policy Advisor
Financial Services Policy Division
Ministry of Finance
95 Grosvenor St. – 4th Floor
Toronto, ON M7A 1Z1

Via email: mblaa.consultation@ontario.ca

Re: **2018 Legislative Review of the Mortgage Brokerages, Lenders and Administrators Act, 2006 and Recent Regulatory Changes re. Syndicated Mortgages**

Dear Ms. Gina Stephens,

We are writing as both a Mortgage Brokerage and a Mortgage Administrator which gives us a somewhat unique perspective. We are a large brokerage that primarily provides significant financing for the development and construction activity in Ontario. Our lenders provide critical capital not currently provided by other financial institutions to facilitate much needed construction of housing and infrastructure. The mortgages we typically provide are classified as Non-Qualified Syndicated Mortgages (NQSM's) and we generally work with parties that are institutional or have the qualifications of a designated class of investor. This area of mortgage activity is very different and more complex than the typical residential mortgage brokerage activity and has seen recent regulatory changes implemented on July 1st, 2018. Many of our comments specifically address these regulatory changes.

Establishing an appropriate regulatory framework for development and construction mortgages requires specific industry and financial knowledge. Protecting stakeholders' interests, both borrowers and lenders, requires an understanding of the standard practices, risks involved, and how lenders are able to realize against their security should the mortgage not perform as expected. We are willing to support this process as necessary.

We understand and take the obligations we have to our stakeholders very seriously. We fully support initiatives designed to ensure parties entering into these transactions are aware and understand the associated risks, and ensure the transactions are suitable for the risk profile of these parties.

We have had the opportunity to work with and digest the impact recent changes have had on our business. We support the impetus behind the recently amended regulations under the Mortgage Brokerages, Lenders and Administrators Act, 2006 (MBLAA) effective July 1, 2018 and the regulatory changes/clarifications made to address syndicated mortgages and more specifically,



NQSMs. From a functional perspective, we are proposing modifications to the prescribed process that more appropriately address the need for clear and meaningful disclosure with the goal of protecting lenders, particularly vulnerable and unsophisticated individuals. Further, we would like to participate in the evolution of the system and regulatory framework supporting the mortgage brokerage and administration activities in Ontario to meet the needs of all stakeholders involved.



Summary

From a functional perspective, we are proposing modifications to the prescribed process we believe more appropriately address the need for clear and meaningful disclosure with the goal of protecting lenders, particularly vulnerable and unsophisticated individuals. The suggested modifications fall into the following categories:

- **Forms** – Generally, we are suggesting various refinements to the forms used to process NQSMs to make them clearer and easier to use.
- **Appraisals** – Given how a development/construction project is funded and security improved, we are suggesting “leverage” and “value” be reviewed in a more sophisticated way and disclosed to the lenders in a more detailed manner. While an “as is” appraisal has some meaningful value at a point in time, a lenders’ understanding of value and leverage throughout the life of the project is critical to their understanding of the associated investment risk. Methods to disclose this information in a more comprehensive way should be prescribed in the regulations.
- **Audited Financials** – Providing professional financial information to lenders is a key component in evaluating risk, however the recommended standard should be modified to better match the burden on borrowers with the corresponding reduction in risk. Further, situations, such as a default or non-performance by the borrower, must also be considered to allow for alternative options to properly protect lender security.
- **Defaults and Protecting Lender Security** – Construction and development does not always unfold exactly as planned; as such the alternatives available to lenders to advance additional funds to protect their interests need to be contemplated in the Regulations even if the borrowers are not willing or able to perform as required.
- **Investor/Lender Limit** – Non-accredited persons should be precluded entirely from participation in NQSMs.
- **Cooling Off Period** – Persons and organizations whose primary business is lending, investing, or providing financial services should have the ability to declare themselves as an exempt class of investors, thereby waiving the requirement to receive and complete Forms 3.0 - 3.2 and the related cooling off period.



New Forms

While we agree the prescriptive nature of the new forms 3.0, 3.1 and 3.2 adds clarity and understanding of FSCO's specific requirements, we believe there are refinements that could be made to improve the usability of the forms and provide better disclosure of information.

Form 3.0 – Investor/Lender Information for Investor/Lender in a Non-qualified Syndicated Mortgage

Form 3.1 – Suitability Assessment for Investor/Lender in a Non-qualified Syndicated Mortgage

Form 3.2 – Disclosure Statement for Investor/Lender in a Non-qualified Syndicated Mortgage

- Form Numbering
Numbering sequence should be intuitive and align with the order the forms are expected to be completed. Currently, Form 3.1 is expected to be completed after 3.0 and 3.2, renumbering to match the order of completion would make more sense.
- Form Section Applicability
In Form 3.0, it should be clear what the requirements are in relation to the various categories of investor (i.e. Individual, Personal Investment Entity, Corporation/Partnership/Trust). Based on our understanding of the current wording, it would appear a large portion of the form is not applicable to corporations; however, we have been told FSCO had perhaps provided different direction to some. The form should be tailored to request and group only applicable information that is relevant to the investor category. For example, corporations should not be asked to provide employment information and spousal information or if savings are being used for educational savings.
- Form Field Formatting
There are fields within the electronic forms which are not properly formatted and do not allow information to be inputted correctly or display correctly.

FSCO Form 3.2 specifically:

- Page 1 – Mortgage Brokerage License number adds a comma to the number – 12453 shows as 12,453
- Page 10 – #7 – all fields should accommodate numeric and letters
- Page 19 – #6 – Tarion Warranty Corporation # - form adds a comma to the #
- Page 21 – #1 – Tarion Warranty Corporation # - form adds a comma to the #
- Page 20 – Year 1: example – 2016 shows up as 2,016
Year 2: example – 2017 shows up as 2,017

All fields within the forms should be formatted to allow for the appropriate input formatting and have the ability to insert additional lines to accommodate any additional information we are providing.



- Form Date Requirement

In FSCO Form 3.2 - Page 3 – Section 1 – the shaded area – It is asking the lender to insert a date that they received the Form 3.1. If we are not to provide Form 3.1 to the lender until 2 days after we provide them with the Form 3.2, then we feel this question is not appropriate for Form 3.2.

- Leverage Calculation

In Form 3.2, the leverage calculation in our opinion is overly simplistic given the nature of development and construction financing with multiple fundings over the life of a project against a “committed financing facility”. We believe it is overly punitive to perform the calculation based on the maximum facility without including the incremental value added by the spending associated with the fundings throughout the project. These funds will only be advanced based on a cost consultant’s report or the achievement of certain milestones outlined in the Commitment Letter. Further, there is typically a capped leverage amount that cannot be exceeded during the life of the project.

In addition, loan to value added costs (versus loan to value) is likely a more relevant measure in development and construction mortgages, given it is exceptionally difficult to determine the value of a project which is partially completed. Determining value for a partially completed project is typically a function of the initial value plus additional costs, which may not necessarily be reflective of the liquidation value of a project’s security.

- Material Contracts

In Form 3.2, the Material Contracts requirement is vague and given the nature and magnitude of the numerous contracts in a large project, specific examples with respect to material contracts should be included.

Recommendation

- A more comprehensive “leverage schedule” should be developed and provided as part of Form 3.2 to properly disclose the leverage related metrics of a mortgage project.
- Make improvements/corrections to the forms to address content requirements, input and display issues.
- Renumber the forms to match the order of completion would make the forms more intuitive.

Appraisals

We understand providing an appropriate “as is” appraisal at the outset of a project is an important part of determining the due diligence process and assessing the risk associated with lending against the security being valued by the appraisal. That said, once development and/or construction begins on a project, any “valuation” becomes very subjective and is typically based on the initial value plus a portion of costs spent to improve the security or an assessment of value to be delivered upon completion of the project less the costs necessary to achieve completion.



In addition, “liquidating” an uncompleted project half way through construction is both difficult and will likely come with a significant discount which is impossible to determine without going through a liquidation process. The existing Tarion licensing, existing pre-sales and outstanding obligations which cannot be satisfied with the security value available, must all be considered in maximizing security value for outstanding creditors. Further, raising the necessary financing to complete the project, given the only real cash events with which outstanding debt will be repaid comes from closing with a Purchaser or a refinancing. Lenders may often be better served by continuing to fund a project to completion to maximize their security value.

Our concern is that the focus on an “as is” value disclosure does not properly represent the various options available, given the “as is” value is representative of the “worst case” scenario and not necessarily the “most likely” path the lender would and should pursue.

Furthermore, throughout the course of a year from receipt of an “as is” appraisal multiple fundings against the loan facility can occur, thereby increasing the leverage relative to the appraised value. The leverage ratio can become skewed as the appraised value and the loan balance diverge because the loan outstanding is a floating number, whereas the “as is” value is a static number. Fundings against the loan facility are conducted to pay for costs that improve the value of a project and there should be an opportunity to reflect these value-added activities in loan leverage calculations.

Recommendation

- A more comprehensive “leverage schedule” should be developed and provided as part of Form 3.2 to properly disclose the leverage related metrics of a mortgage project.

Audited Financials

In our opinion, this requirement has been the most difficult to address and the effort and cost does not correspond with an appropriate reduction in risk for the lenders.

The requirement for audited financial statements from the borrower creates significant additional costs, lead time constraints (audited financials can take 3 plus months to prepare), and time demands on the borrower. While we feel there is benefit provided by professionally prepared and validated financial statements, in our opinion, the following factors must also be considered:

- Lenders in this space are primarily “asset-based” lenders and focus a significant amount of attention on the value of the security supporting the mortgage.
- Financial statements have typically been part of the due diligence materials required of borrowers along with appraisals, cost consultant approved budgets and reports, security opinions, legal advice, environmental, geotechnical, commitment letters with explicit pre-funding conditions, project milestones, pre-sale requirements, borrower execution history and qualifications, etc. While “audited” financial statements would improve the consistency and accuracy of the financial information received, they are not “foolproof” and the additional value gained from an audit may be limited, especially if the borrower is a newly created special purpose vehicle as is often industry practice. Further, it is possible this could lead to transaction structuring, which will limit the “borrower(s)” listed as parties to a loan



and steer borrowers away from providing corporate entities/security value. This could potentially expose lenders to risk in an attempt to avoid more involved audit efforts.

- The requirement for audited financial statements from borrowers is a requirement that is not in place at many other financial institutions regulated by OSFI, which essentially erodes our competitive position.
- The wording within the Regulation is very confusing:
 - It appears in all cases, “audited” financials are required other than some interim statements. If that is the case, it should be stated more clearly.
 - Who can provide “audited” financial statements? A suggestion that the Brokerage could provide audited financial statements adds further confusion as there is specific CPA licensing required to provide “audited” financial statements depending on the FSCO definition of audited. Further, meeting a standard of providing IFRS compliant statements seems to be both overly burdensome (most domestic large companies do not look to achieve this standard (more likely to be Accounting Standards for Private Enterprises (ASPE)) and appears inconsistent with the provision of audited financial statements by the Brokerage.

Recommendation

- We believe the requirements in section 31.1 paragraph 15 and 16 should be revisited. A standard should be developed which is clear, practical, and consistent with providing professional financial information without imposing a burden on the stakeholders involved that does not provide a corresponding reduction in risk.
- Situations, such as a default or non-performance by the borrower, must also be considered to properly protect lender security.

Defaults and Protecting Lender Security Value

We believe it is important to acknowledge and outline how existing lenders on a project can protect their security position where a borrower/mortgage is not performing or is in default. Historically, in challenging situations, existing lenders have been best served by advancing additional “defensive funds” required to complete a project to protect and maximize their available security value. The following should be considered:

- Half-built residential construction projects have significantly less value than a completed project and it is often difficult to find a buyer or a builder to complete a project;
- Replacing the existing Tarion-qualified builder on the project risks the existing pre-sales being cancelled and putting the project’s sales and revenue at further risk; and
- Within the existing Regulations, there does not appear to be any accommodations available where additional funds can be advanced against a mortgage while regulatory deliveries are required from the borrower (i.e. audited financial statements) without being in direct conflict with the requirements of the Regulations. This is primarily of concern where the existing lender group has not committed to fund on a pro-rata basis to completion of the project.



Recommendation

- Provide accommodations for projects that are not performing or are in Default. It is important to acknowledge providing the lenders with flexibility on addressing these matters will better protect their interest (i.e. the lender may not wish to pursue certain recovery alternatives if the borrower continues to cooperate).
- An alternative allowing for “new funds” from lenders that are not currently involved in a project should be considered where the borrower is unwilling or unable to provide the Regulatory requirements to attract new funds. The new lender must clearly understand the situation. Such lenders are often brought in to participate in a priority position relative to existing lenders, in order to move the project forward for the benefit of all stakeholders.

Investor/Lender Investment Limit

We agree with limiting the involvement of investors/lenders that are not part of a designated class of investors/lenders in non-qualified syndicated mortgages. We would also suggest the necessary regulatory framework could be simplified if “retail investors” did not have to be considered as potential parties to these transactions.

Recommendation

- Consider only allowing those that meet the designated class of investors to participate in non-qualified syndicated mortgages.
- If retail investors are to participate, consider language that is specific to different classes of investors/lenders.

Cooling Off Period

From our perspective, this requirement would provide the most value when a “retail investor” is involved in a transaction. The lenders we work with are typically regular participants in transactions we originate. They are sophisticated real estate development and construction debt investors and many have professional portfolio managers representing their interests. In our opinion, the two-day “cooling off” or waiting period is unnecessary for this class of professional investor. We believe consideration should be given to allow these lenders to waive this obligation if they choose to do so.

Recommendation

- Consider providing a waiver option for the designated class of investors described above.



Thank you for considering the commentary provided above. We would be happy to arrange a meeting to discuss these items and any other items you wish to discuss further. We appreciate the position you are in as a regulator to protect the public interest and understand the need to make the changes outlined in the new regulations. Our desire remains to ensure all stakeholders are protected and understand the risks they are taking and balance that with workable regulations to achieve this objective.

Murray Snedden

Chief Financial Officer

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MarshallZehr Group Inc. | Mortgage Administration #11955 | Mortgage Brokerage #12453



APPENDIX A.- Excerpt from O. Reg. 188/08

REQUIRED DELIVERABLES BY BROKERAGE FOR A NON-QUALIFIED SYNDICATED MORTGAGE

Same, syndicated mortgages

31.1 (1) A brokerage shall give each lender or investor the following information and documents with respect to an investment in, or loan in respect of, a syndicated mortgage other than a qualified syndicated mortgage that the brokerage presents for consideration to the lender or investor:

1. A completed syndicated mortgage disclosure form, in a form approved by the Superintendent, signed by a broker.
2. A copy of an appraisal of the property relating to the syndicated mortgage that satisfies the following criteria:
 - i. It was prepared within 12 months before the day the syndicated mortgage disclosure form was provided to the lender or investor.
 - ii. It was prepared by a member of the Appraisal Institute of Canada who is independent, as described in subsection (2), and who holds the designation of Accredited Appraiser Canadian Institute.
 - iii. It was prepared in accordance with the Canadian Uniform Standards of Professional Appraisal Practice published by the Appraisal Institute of Canada, as amended from time to time.
 - iv. It provides an estimated market value of the property relating to the syndicated mortgage that reflects its condition and stage of development as of the day of the inspection or any day within 60 days after the day of the inspection.
 - v. The estimated value of the property referred to in subparagraph iv must not depend or rely on,
 - A. assumptions about proposed or future development of the property,
 - B. assumptions about proposed or future improvements to the property, or
 - C. any other condition that is not in existence as of the date selected for the estimated market value of the property.
3. If the investment is in, or the loan is in respect of, an existing mortgage, a copy of the mortgage instrument.
4. If the investment is in, or the loan is in respect of, an existing mortgage, a statement indicating whether the mortgage is in arrears and whether any mortgage payments are delayed or owing.
5. A copy of the certificate of mortgage interest, the assignment of the mortgage or any other document that provides evidence of the investment or loan.
6. If an agreement of purchase and sale in respect of the property relating to the syndicated mortgage has been entered into in the preceding 12 months and is available to the brokerage, a copy of the agreement of purchase and sale.
7. Documentary evidence of the borrower's ability to meet the mortgage payments.
8. A copy of the application for the mortgage and of any document submitted in support of the application.
9. If the investment is in, or if the loan is in respect of, a new mortgage, documentary evidence of any down payment made by the borrower for the purchase of the property relating to the syndicated mortgage.
10. A copy of any administration agreement that is applicable to the lender or investor.
11. A copy of any trust agreement that is applicable to the lender or investor.
12. A copy of the commitment letter or document setting out the terms of the lender's or investor's commitment to advance funds to the borrower.
13. The information required to be given under sections 21, 22 and 23.
14. A copy of any agreement that the lender or investor may be asked to enter into with the brokerage.
15. If the borrower is not an individual, one of the following:
 - i. Both,
 - A. the borrower's financial statements for its most recently completed financial year that ended more than 120 days before the day the syndicated mortgage disclosure form was provided to the lender or investor and for the financial year immediately preceding that financial year, and
 - B. the borrower's interim financial statements from the day after the end of the most recently completed financial year referred to in subparagraph A to the end of the most recent interim



- period that ended more than 60 days before the day the syndicated mortgage disclosure form was provided to the lender or investor.
- ii. The borrower's financial statements for its most recently completed financial year that ended 120 days or less before the day the syndicated mortgage disclosure form was provided to the lender or investor and for the financial year immediately preceding that financial year.
 - iii. If the borrower's first financial year ended more than 120 days before the day the syndicated mortgage disclosure form was provided to the lender or investor and the borrower's second financial year did not end before that day,
 - A. the borrower's audited financial statements for the first financial year, and
 - B. the borrower's interim financial statements from the day after the end of the borrower's first financial year to the end of the most recent interim period that ended more than 60 days before the day the syndicated mortgage disclosure form was provided to the lender or investor.
 - iv. If the borrower's first financial year did not end before the day the syndicated mortgage disclosure form was provided to the lender or investor or ended 120 days or less before that day, the borrower's audited financial statements for the period from its inception to a date that is 120 days or less before the day the syndicated mortgage disclosure form was provided to the lender or investor.
16. All other information, in writing, that a lender or investor of ordinary prudence would consider to be material to a decision about whether to lend money on the security of the property relating to the syndicated mortgage or to invest in the syndicated mortgage. O. Reg. 96/18, s. 7.
- (2) For the purposes of subparagraph 2 ii of subsection (1), a member of the Appraisal Institute of Canada is independent if there are no circumstances that, in the opinion of a reasonable person aware of all relevant facts, could interfere with the member's judgment regarding the preparation of the appraisal. O. Reg. 96/18, s. 7.
- (3) The following rules apply to the financial statements required by paragraph 15 of subsection (1):
1. The financial statements must be prepared in accordance with generally accepted accounting principles applicable to publicly accountable enterprises, the primary source of which is the *CPA Canada Handbook - Accounting*.
 2. The most recently completed financial year referred to subparagraph i or ii of that paragraph must be audited.
 3. For greater certainty, the brokerage may provide an audited version of a financial statement even if that paragraph does not require it to be audited.
 4. Any audit of the financial statements must be conducted in accordance with generally accepted auditing standards, the primary source of which is the *CPA Canada Handbook - Assurance*.
 5. Any unaudited financial statements must clearly be labelled as "unaudited". O. Reg. 96/18, s. 7.

Meaning of interim period

- (4) In paragraph 15 of subsection (1), "interim period" means a period that ends three, six or nine months after the end of the borrower's financial year. O. Reg. 96/18, s. 7.

Disclosure form for lenders re mortgage renewals

- 32.** (1) A brokerage shall give each lender the following information and documents with respect to a renewal of a mortgage that the brokerage presents for the lender's consideration:
1. A completed renewal disclosure form, in a form approved by the Superintendent, signed by a broker.
 2. If an appraisal of the property has been done in the preceding 12 months and is available to the brokerage, a copy of the appraisal.
 3. If an agreement of purchase and sale in respect of the property has been entered into in the preceding 12 months and is available to the brokerage, a copy of the agreement of purchase and sale.
 4. All other information, in writing, that a lender of ordinary prudence would consider to be material to a decision about whether to renew the mortgage. O. Reg. 188/08, s. 32 (1).
- (2) Subsection (1) does not apply if the lender is a member of a designated class of lenders and investors. O. Reg. 188/08, s. 32 (2).
- (3) A brokerage shall obtain the lender's written acknowledgement that the brokerage has disclosed the information and documents required by this section. O. Reg. 188/08, s. 32 (3).

INCLUDES COMMENT LETTERS



Ontario Regulation
188-08 (Jul 1-18)(w. C

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

March 28, 2019

The Secretary
Ontario Securities Commission
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22nd Floor
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Me Anne-Marie Beaudoin
Corporate Secretary
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Montréal (Québec) H4Z 1G3
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

Good Morning,

Our organization is currently regulated by Financial Services Commission of Ontario (FSCO) and we broker and administer primarily construction and development mortgages through what is defined by FSCO as non-qualified syndicated mortgages. Our understanding is that syndicated mortgages will be regulated by the OSC in December of this year and we would like to provide comments towards the CSA proposed Amendments.

We are concerned that there has been no specific reference to "non-qualified" syndicated mortgages or the underlying purposes the "syndicated mortgage" is used for. Financing the approval, servicing and construction of a \$200 million high-rise condo is not the same as financing a stabilized strip plaza, purchase of raw land or a residential home. The administration of a construction/servicing mortgage is also very different, given the multiple fundings and potentially different lenders in each funding

for this type of mortgage versus the one-time funding of the purchase of a stabilized asset. Further, the metrics of a construction project (i.e. valuation, pre-sales, costs to complete, loan to cost vs. loan to value, etc.) and processes to verify the enhancement of security value throughout the project are very different from stabilized assets.

We believe there are various items that are key to getting the regulatory framework correct for development and construction syndicated mortgages:

- Construction and development financing should not be treated in the same manner as stabilized asset financing
- A detailed understanding of how the existing construction and development finance environment works and where the risks within construction and development lie is necessary. Further, what can be done in each area to mitigate the risks involved – we complete a formal Risk Register on projects to isolate and determine risk mitigation strategies prior to funding into the project.
- Multiple fundings on construction and development projects make them inherently more complex to understand, broker and administer versus other real estate transactions where there may be one or very few fundings. All stakeholders must be “qualified” to participate in such transactions given the risk and complexities involved and there are also numerous potential conflicts of interest.
- Valuation of security on a development and construction project is much more complex than a simple “as is” appraisal. Additional fundings do not necessarily immediately increase the value of the project if it were to be liquidated in a “distressed” environment. Further, any meaningful valuation needs to incorporate the remaining estimated costs to complete, the expected revenues, the timing of both, and the profits to be achieved. Completing the project is often the best available option for Lenders rather than liquidating the assets involved and projects tend to be looked at with this lens in mind.
- There needs to be enough time for the existing providers and participants of this type of financing to adjust to the new licensing and regulatory regime. Existing financing commitments with ongoing funding requirements are difficult to change half-way through the term of the mortgage and putting a borrower into default because they are unable to meet the new standards only exposes the lender participants to increased risks.
- Ideally, the regulator needs the industry to operate on an administration software tailored to manage, track and distribute required information (both initial underwriting information and ongoing reporting requirements) for all stakeholders involved. We recognized this some time ago and have been working to develop that software to support our business and others for the past 5 years.
- In the past, the regulations do not seem to adequately address the differences between the nature of various financings. We have been continuously exposed to situations where parties that are regulated by the same set of rules and are apparently in the “same” business, but it is absolutely clear that our businesses are completely different.

In closing, this is a critical capital channel for developers and builders and it is not being met by other conventional capital providers. All parties that have a vested interest in the provision of housing in this province should desire an effective regulatory framework, that protects investors, mitigates transaction risk, but does not add an

unnecessary burden to the efficient funding of suitable housing projects. We have attached a letter we had sent to FSCO which we believe raises points that should also be considered when addressing the changes related to development and construction related syndicated mortgages.

We would be happy to discuss further at your convenience.

Respectfully,

Murray Snedden CPA, CMA, CMC

Chief Financial Officer & Principal Broker

May 2, 2019

In response to your request for comments regarding changes in mortgage brokerage regulations, I wanted to offer some insights from industry, in hopes of having an impact on its governance going forward. I am happy to talk in person or by phone to discuss any of my concerns. My apologies for the length of this email – feel free to use parts or the entire email – but as you will see, I'm not usually at a loss for words.

I attended a consultation with FSCO, OSC and the Ministry of Finance, along with some industry professionals on April 18, 2018 to offer feedback on the proposed forms, and would welcome the opportunity to be part of any future solution rather than sit idly on the sidelines and let our industry be so drastically altered by the recent changes to disclosure requirements and investor participation. I recently participated in a Stakeholder Roundtable on March 6, 2019 with Mr. Doug Downey and other industry professionals, and followed that with a personal meeting with Mr. Downey and his assistants in his office on March 21, 2019. After the meeting, Mr. Downey's assistant, Gina Stephens, encouraged me to share my thoughts with you directly.

Private Mortgage Capital Funding Ltd. ("PMC Funding" – FSCO Lic. 12583) is licensed as a Mortgage Brokerage, having incorporated in late 2014, and is focused on sourcing, underwriting, and syndicating private mortgage loans, which are all administered by my administration company, Private Mortgage Capital Holdings Ltd. ("PMC Holdings" – FSCO Lic. 12582). As the name indicates, our primary focus is providing an alternative source of funds for borrowers who either cannot or will not borrow funds from traditional institutional lending sources. Having worked in the industry since 2002 and been licensed as a Mortgage Broker for more than 10 years, I primarily focus on providing opportunities to participate in private mortgages for private lenders – an endeavour that helps both borrowers and lenders satisfy their borrowing and investment needs.

In speaking with many colleagues who are sources of private funds like PMC Funding, there is a number of concerned parties who are very worried about the impact of the changes that were implemented on July 1, 2018. While I am sure you will receive plenty of "feedback" from experienced mortgage professionals in the industry, I want to specifically address the definition of (1) a "non-qualified SMI" and (2) some unintended consequences of the recent changes.

I would add that a 'syndicated' loan shouldn't be implicitly considered a 'bad' loan or 'risky' loan; by definition, it only means that the loan has been funded by more than one lender. In other words, as long as I place a commercial or industrial loan with a single investor/lender, it would be considered "qualified", which is counterintuitive. How is the lender protected from risk by investing such a large amount in a single loan? In my view, putting all their eggs in one basket exposes the lender to greater risk, not less.

Non-Qualified SMIs:

I appreciated being involved in the April 18, 2018 meeting after offering my support to Rocca D'Angela, though I was surprised to learn that the definition of a "non-qualified SMI" had already been determined and enacted into Law. Neither I nor any of my colleagues recall being asked for input or feedback as to what should constitute a qualified vs non-qualified SMI. The vast majority of my private loans would be considered "non-qualified" under the current definition due to the asset class, as our focus is lending against commercial and industrial properties.

I acknowledge the need for increased oversight due to companies like Fortress placing investors into loans that were not appropriate for them, however I think the current changes should specifically address that aspect of the industry, without affecting private mortgage syndicators who have extensive knowledge and experience at underwriting and assessing private lending risk. There should be a distinction made

between “equity financing” which Fortress performed and “debt financing”, which is being done by many seasoned mortgage brokers, acting responsibly.

While there are countless brokers/lenders who are focused on lending on residential properties – many to 85% LTV or higher – at PMC Funding I choose to focus on the commercial and industrial sector, as I feel those deals are stronger in general. In my experience, people who are borrowing privately for shelter are doing so because they have demonstrated either an inability or an unwillingness to service their debts historically (i.e. people with poor credit or unverifiable/nonexistent income). Many of these private residential mortgages are intended to consolidate debt, with borrowers subsisting solely on their ability to tap into and access equity in the inflated values of their homes, with many subsequently owing more than they originally paid for the property. Those who borrow privately for investment are doing so either for speed or convenience, as financial institutions require more extensive underwriting documentation and can take months to close a commercial mortgage transaction. Private lenders are much more responsive and can close deals expeditiously, enabling the borrowers to generate a cash flow from their properties sooner – time is money.

In underwriting risk, I have a very difficult time accepting that a residential loan to 85% LTV to a ‘deadbeat’ (for lack of a better term) *contains less risk* than a commercial/industrial loan to 50-60% LTV for a commercial borrower who has the necessary cash flow to service the debt, and has a worthwhile reason for arranging private financing, other than it being the only lending alternative available to them. While this is obviously my personal opinion and business focus, it has served me well over the years, as evidenced by our 0% default rate; to wit, we have only had a single borrower’s payment declined since we began operations in 2014, which was subsequently replaced with certified funds within 48 hours. In other words, my conservative underwriting and focus on lending only to borrowers that have the ability to service the debt has contributed to nothing but successful loans since incorporation, simultaneously satisfying both borrowers’ and lenders’ interests.

A “non-qualified SMI” should be limited solely to development projects (i.e. residential or commercial subdivisions of 5 units or greater), which can be highly speculative in nature and require a greater depth of underwriting of the developer’s experience and financial strength and ability to respond and react to cost overruns and delays. A property that is zoned commercial/industrial is not necessarily a riskier investment just by virtue of its asset class. Additionally, small construction (i.e. infill homes and renovations) should not be considered non-qualified, as these are not speculative development projects that may or may not ever be built, but quick, short term financing opportunities which fill an industry void, as most institutional lenders are not bullish on construction financing.

The current definition of a “non-qualified SMI” needs to be revisited, as it does not appear that the new regulations take into account the way the industry actually operates. The definition of a “non-qualified SMI” should be narrowed to include loans where the future value is something different than the current value, or loans where a lender’s priority can change without their knowledge or consent. They should not include loans on commercial or industrial properties.

Unintended Consequences:

By limiting a non-‘designated’ or ‘accredited’ investor to lending less than \$60K per annum, the new regulations are actually exposing them to more risk rather than protecting them from risk, as the rules essentially preclude them from participating in 1st mortgages and relegate them to participating in 2nd mortgages, even though the reduced risk inherent in 1st mortgages would better fit their conservative lending profile. Most commercial and industrial mortgages are larger than \$60,000, and, with the excessive paperwork required for non-qualified SMIs, it isn’t feasible to syndicate the loan into units as small as \$60,000. The issue is that this class of investor – those who would benefit from participating in

more conservative loans – are precluded from participating in loans that would objectively be deemed to be more appropriate for them. A balanced investment portfolio should consist of a variety of investment vehicles, including stocks, bonds, funds and investment in private mortgages, thus mitigating the investor’s risk. It is not fiscally responsible to exclusively participate in private mortgage, however it is just as inappropriate to preclude an investor from participating in same.

The bottom line is that while the changes that have been recently introduced are generally well-intentioned and useful, the definition of a “qualified” vs “non-qualified” SMI needs to be revisited and amended, as it does not accurately reflect what is happening in the industry. Throw the book at the Fortresses of the world, but recognize that not all successful private lending brokerages are alike. One size definitely does not fit all, just as every loan should be treated on its own merit. Amending the definition of a non-qualified SMI will simultaneously address the issues raised regarding the unintended consequences of the new regulations.

I am happy to meet in person to discuss this further.

Best regards,

Stephen Lidsky
President, Principal Broker
[PMC Funding](#)

May 3, 2019

BY EMAIL

Alberta Securities Commission
 Autorité des marchés financiers
 British Columbia Securities Commission
 Financial and Consumer Affairs Authority of Saskatchewan
 Financial and Consumer Services Commission (New Brunswick)
 Manitoba Securities Commission
 Nova Scotia Securities Commission
 Nunavut Securities Office
 Office of the Superintendent of Securities, Newfoundland and Labrador
 Office of the Superintendent of Securities, Northwest Territories
 Office of the Yukon Superintendent of Securities
 Ontario Securities Commission
 Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

The Secretary
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Dear Sirs/Mesdames:

Re: **CSA Notice and Request for Comment – Proposed Amendments to National Instrument and Companion Policy 45-106 *Prospectus Exemptions* (NI 45-106) and National Instrument and Companion Policy 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) (collectively, the “Proposed Amendments”)**

The Canadian Advocacy Council¹ for Canadian CFA Institute² Societies (the CAC) appreciates the opportunity to comment on the Proposed Amendments.

¹The CAC is an advocacy council for CFA Societies Canada, representing over 17,000 Canadian charterholders, of the 12 Member Societies across Canada. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

² CFA Institute is a global, not-for-profit professional association of over 166,000 investment analysts, advisers, portfolio managers, and other investment professionals in 163 markets, of whom more than 159,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 152 member societies in 74 markets. For more information, visit www.cfainstitute.org.

As stated in our previous letter responding to the first publication of the Proposed Amendments in March 2018, we generally support the changes to the prospectus and registration exemptions for syndicated mortgages in light of the inherent risks associated with distributing such products to retail investors under the current regime. In our view, consistent with the objective of the Proposed Amendments, changes to the syndicated mortgage regime are important for investor protection. The Proposed Amendments would seek to further harmonize, to the extent possible, rules regarding the distribution of these products among all CSA jurisdictions, of which we are supportive.

We have outlined our comments on specific aspects of the Proposed Amendments below.

A. Annex C – Proposed Amendments to NI 45-106

Six-month Appraisal

We are generally supportive of the new requirements relating to the Offering Memorandum Exemption under section 2.9 of NI 45-106. Proposed subsection 2.9(19) will require an issuer to deliver to a purchaser an appraisal of the property subject to the syndicated mortgage that values the property as at a date that is within 6 months preceding the date that the appraisal is delivered. The CSA may wish to consider whether this requirement should be further expanded to require an appraisal within 6 months, or within a shorter timeframe if there has been an event that has a material adverse impact on the value of the property. Such a requirement would deal with unforeseen market events, such as the expropriation of surrounding properties, which may occur within the six month period.

Subsection 2.9(19.3) will outline the requirements for an issuer of a syndicated mortgage relying on an exemption set out in subsection (1), (2) or (2.1) to disclose any communication pertaining to a representation or an opinion as to the value of a property other than the fair market value. One such requirement is disclosure of the material factors or assumptions used to determine the value. We are of the view that such disclosure may not adequately address the risk of the assumptions used. In our prior comment letter, we had suggested that investors should also be made aware of the limitations of the valuation method used, in order to better understand the value that is disclosed. To achieve this goal, the disclosure could also be required to contain a description of the inherent risks and limitations of the assumptions relied upon.

Definition of Professional Association

The proposed definition of “professional association” found in section 1.1 of NI 45-106 includes a reference to the fact that a professional association “disciplines, suspends or expels its members if misconduct occurs”. This branch of the definition might be too narrow, as it is likely that such associations can only take action if they become aware of such misconduct. Consequently, it might be appropriate to refer instead to “having the power discipline, suspend or expel its members if it becomes aware that misconduct has occurred”.

Perceived Conflicts of Interest

Proposed subsection 2.9(19) states that: *“For the purposes of subsections (19.1) and (19.3), a qualified appraiser is independent of an issuer of a syndicated mortgage if there is no circumstance that, in the opinion of a reasonable person aware of all the relevant facts, could interfere with the qualified appraiser’s judgment regarding the preparation of an appraisal for a property.”* The CSA may wish to consider broadening the concept of a conflict of interest by

explicitly referring to circumstances which could reasonably be perceived to potentially interfere with the appraiser's judgement. We believe that the addition of "perceived or potential conflicts" would align more consistently with CSA expectations for registered firms under NI 31-103, where registrants must take reasonable steps to identify existing material conflicts of interest as well as material conflicts that the firm, in its reasonable opinion, would expect to arise, between itself and its clients, and then respond to those existing or potential conflicts. While the phrase "could" is used above instead of "would", as some firms are relatively inexperienced with CSA regulation, this nuance could be important, especially since Item 16 of Proposed Form 45-106F18 will require disclosure of potential conflicts of interest in other contexts.

Form 45-106F18

Item 2 – Raising of Funds

In section (1) of Item 2, the form will require disclosure of the period over which funds will be raised and the factors that determine when they will be raised. To the extent ongoing capital raises include progress draw mortgages or investments subject to cash calls, there should be a requirement to disclose committed capital amounts, as well as a prior cash call schedule. Such disclosure is consistent with suggested client reporting practices as set out in ASC Notice 33-705 *Exempt Market Dealer Sweep* ("ASC Notice 33-705") under the heading "Reporting to Clients".³

Item 3 – Other Risk Factors Specific to Syndicated Mortgages

We acknowledge that the list of potential risk factors detailed in the instructions is not exhaustive. However, when disclosing the risks and key assumptions in an offering memorandum, the CSA should consider adding the following as mandatory disclosure items for all syndicated mortgage offerings as well as disclosure of the risks related thereto and potential mitigation efforts:

- (a) interest rate capitalization ("cap rates") and any variations in cap rates;
- (b) the results of stress tests;
- (c) the maturity schedule for mortgages and any mortgage refinancing considerations;
- (d) operational risks including the servicing of the loans and expertise of the sponsor;
- (e) risks relating to progressive mortgage advances;
- (f) cost overruns, time delays, and a description of any cost consultants' reports;
- (g) level of tenant concentration;
- (h) rental growth rates;
- (i) credit spread-related risks;
- (j) liquidity risk; and
- (k) the existence of any shared co-lender or agency agreements and the risks thereof, including without limitation:
 - a. for loans with progressive advances, the risk of a lender not funding its share of such advance;
 - b. the remedies available to mitigate the risk of having a defaulting lender in the lending syndicate;

³ Alberta Securities Commission, ASC Notice 33-705 *Exempt Market Dealer Sweep* (May 10, 2017), online: <https://www.albertasecurities.com/-/media/ASC-Documents-part-1/Regulatory-Instruments/2018/10/5331553-EMD-Project-Staff-Notice-33-705.ashx>

- c. a description of the mechanism / approval thresholds for decisions by more than one lender (i.e. unanimous, simple majority, other);
- d. the process by which decisions are made to call an event of default under the loan, to realize on the security and/or re-structure the loan;
- e. the process by which the administrative agent can be replaced if it fails to comply with its obligations; and
- f. how and to whom a co-lender may assign an interest in its position.

Additional risk-related disclosure is needed, particularly in the case of syndicated mortgages because issuers may engage in high credit risk transactions such as unsecured lending and lending that involves high interest rate spreads over risk free bond rates.

Item 4 – Administration of the Mortgage

The CSA may wish to consider whether there should be an explicit requirement to state any connection or relationship under this section, in addition to the qualifications of the service provider. If any known conflicts of interest or operational risks exist, such as those that may relate to the servicing of the loan, they can be disclosed here in addition to the risk disclosure section under Item 3.

Item 6 – Property Subject to Disclosure

Item 6 of the proposed Form states that the offering memorandum must describe the details of the property subject to the mortgage. The CSA should consider whether there should also be explicit disclosure for any past material adjustments to valuations of the property and the reasons for such adjustments. These material adjustments may occur for various reasons, including changes in the valuation firm or changes to the underlying assumptions (i.e., cap rate/ discount rates) used.

Item 7 – Description of the Syndicated Mortgage

Item 7 of the proposed Form requires a detailed description of the syndicated mortgage. Factors not explicitly required but that are important to disclose to investors include information that may result in an impairment of the mortgage loan security, the debt service ratio, and material events that may impact the payments, such as insurance or prior natural disaster/ insurance claims, if applicable.

The Form will require disclosure of the loan-to-value (LTV) ratio of the property, calculated on an aggregate basis using the loan value of the syndicated mortgage and all other mortgages or encumbrances with priority over the syndicated mortgage and the appraised value of the property. Perhaps in the future, the CSA may wish to build on terms such as LTV in order to harmonize risk methodology for syndicated mortgages that will allow investors to better assess the viability of the mortgage.

Another key term that the offering memorandum should disclose is the duration of leases. By including such a term, the issuer will be able to better evaluate a lender's suitability and investment horizon by matching it to the duration or length of the lease.

Finally, an offering memorandum must be able to explain high credit risk in plain language to investors.

Item 8 – Appraisal

When undertaking an appraisal, the CSA should consider whether stress testing assumptions should be a required factor in an appraisal. We are of the opinion that stress testing assumptions provide valuable information to potential investors. In connection with a firm's KYP responsibility, ASC Notice 33-705 suggests that stress testing encompasses economic and financial variables that may have an impact on the issuer's performance (e.g., interest rate levels, unemployment rate, commodity prices and exchange rates).⁴

Item 19 – Registration Documentation

We recommend that the CSA should also mandate disclosure of the existence of any co-lender agreement.

B. Annex D – Proposed Amendments to NI 45-106CP

Proposed subsection 3.8(13) of the Companion Policy to NI 45-106 states that an independent qualified appraiser is required for syndicated mortgages. The examples provided in the guidance focus on the concept of ownership and employment considerations when determining the independence of an appraiser. We recommend that the CSA broaden this section to include guidance related to other ongoing relationships as well. For example, independence may be evaluated on whether additional services are provided by the valuation firm or services are provided by a related entity of the valuation firm that may jeopardize independence.

C. Additional Considerations

We understand that the different prospectus exemptions that will be available across the country are in part as a result of the differences in provincial mortgage regulation. We continue to encourage the CSA to seek harmonization of prospectus exemptions whenever possible to help ease the compliance burden on issuers and improve understanding of the exempt market amongst investors. We also support ongoing efforts to collaborate with other provincial regulators (such as FSRA), and focus should be given to reducing duplicative regulation as it relates to mortgage activities.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council for
Canadian CFA Institute Societies*

**The Canadian Advocacy Council for
Canadian CFA Institute Societies**

⁴ Ibid.

FAIR

Canadian Foundation *for*
Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement
des droits *des* investisseurs

May 8, 2019

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

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RE: CSA Second Notice and Request for Comment Proposed Amendments to National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations relating to Syndicated Mortgages

and

Proposed Changes to Companion Policy 45-106CP Prospectus Exemptions and Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations

FAIR Canada is pleased to provide comments on the Consultation Document and Proposed Amendments. These comments follow our submissions dated June 13, 2018 on the initial CSA Notice and Request for Comment.

FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice for Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit www.faircanada.ca for more information.

1. General Comments

- 1.1 FAIR Canada welcomes the introduction of increased investor protections in relation to the distribution of syndicated mortgages and increasing the level of harmonization in regard to the regulatory framework for syndicated mortgages throughout all CSA jurisdictions.
- 1.2 FAIR Canada has become concerned about the increasing number of frauds and misrepresentations involved in the sale of syndicated mortgages by mortgage brokers to retail investors. Syndicated mortgages were sold as safe investments, secured against real property, low-risk or risk-free and paid high annual fixed rates of interest. We welcome the transfer of jurisdiction in regard to regulation of syndicated mortgages from the Financial Services Commission of Ontario (FSCO) to the Ontario Securities Commission (OSC).
- 1.3 Syndicated mortgages lacked sufficient oversight and enforcement and we welcome reforms to how syndicated mortgages are regulated.
- 1.4 We believe that the Proposed Amendments adopt some of our comments on the prior version in an adequate manner. We detail below some of our concerns with the current version.

2. Specific Comments

- 2.1. As noted in our June 2018 submission we continue to be concerned about the issue of non-compliance. Now that the regulatory jurisdiction over syndicated mortgages has transferred from the FSCO to the OSC, the regulatory compliance mechanisms should be increased to make sure that those involved with providing investments in syndicated mortgages are complying with the rules and are not misleading investors. This moves syndicated mortgages more in line with the regulation in other provinces – under the purview of the securities regulator. As well, the CSA and OSC have to enforce the rules after enactment and ensure that those who

breach the rules face consequences.

- 2.2. The addition of Form 45-106F18 is useful because it requires the addition of disclosure of the speculative nature of an investment in a syndicated mortgage. While this is an improvement, we echo our concerns from our June 2018 submission that this risk disclosure does still not go far enough because many retail investors lack sufficient financial literacy to be proficient in financial matters associated with investments in syndicated mortgages. There should be clear instructions and notations about the risks involved in investing in syndicated mortgages.
- 2.3. We repeat our statements in our June 2018 submission that non-compliance harms investors and weakens confidence in the market generally. We re-emphasize our submission that resources within the CSA and OSC should be allocated to encourage compliance and enforcing the rules applicable to syndicated mortgage investments once in place.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Please feel free to contact Ermanno Pascutto at ermanno.pascutto@faircanada.ca, or Vanisha Sukdeo at vanisha.sukdeo@faircanada.ca.

Sincerely,

Canadian Foundation for Advancement of Investor Rights



Appraisal Institute of Canada
Institut canadien des évaluateurs

May 14, 2019

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
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Fax: 416-593-2318
comments@osc.gov.on.ca

To Whom It May Concern:

Re: CSA Second Notice and Request for Comment Proposed Amendments to National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations relating to Syndicated Mortgages

On behalf of the Appraisal Institute of Canada (AIC) and our more than 5,500 valuation professionals, we are pleased to have the opportunity to make this submission in the context of the *Canadian Securities Administrator (CSA) Second Notice and Request for Comment on Proposed Amendments to National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations relating to Syndicated Mortgages*.

We begin by stating that we support the CSA's and Ontario Securities Commission's efforts on addressing fraud in syndicated mortgage investments and implementing its proposals from March 2018.

As mentioned in our June 2019 submission, on-site appraisals carried out by qualified professionals are the most effective way to mitigate lending and property investment risk. Professionally prepared appraisals help to ensure that properties are not overvalued/inflated and help to detect and prevent mortgage fraud or other issues involving real property, thus contributing significantly to real estate market integrity and stability in Canada.

As it pertains to the recent notice and request for comment, we first would like to reiterate our support for a decreased time period between the effective date of an appraisal and the date of delivery of the appraisal to 6 months from 12 months. We fully acknowledge that the new proposed amendments reflect that change. As previously mentioned, markets



Appraisal Institute of Canada
Institut canadien des évaluateurs

can change drastically and in a very short period of time in a given market, as we have seen in several cities across the country such as Toronto, Vancouver, Calgary and Montreal. With a year-long window, our concern is that potential purchasers could end up relying on an appraisal that could already be months out of date by the time it is delivered to them. Thus, we recommend a six-month window between the effective date of the appraisal and its delivery date, as it will better capture any significant change in a given market and decrease the risk of significant changes in a market occurring between the two dates.

We would also like to reiterate another recommendation from our June 2019 submission: to include a statement indicating that a qualified appraiser must have professional liability insurance appropriate to a valuation assignment. AIC fully supports the proposed amendment (Section 1.1 Definitions) that defines “professional association” and “qualified appraiser”. As a complement, we recommend adding the requirement of the qualified appraiser having liability insurance coverage appropriate to the valuation assignment. This ensures proper protection for both the investor/purchaser and the appraiser in high-risk endeavours.

Once again, we applaud the CSA’s efforts and its provincial partners in closing the existing gaps in syndicated mortgage-related investments in order to protect the public and mitigating risks related to mortgage fraud. AIC shares these objectives and is available to provide support to these efforts. If you require further information regarding the recommendations presented above, please do not hesitate to contact me.

Yours truly,

Keith Lancaster MBA, CAE, AACI (Hon.)
Chief Executive Officer
Appraisal Institute of Canada

Firm Capital Corporation

Mortgage Banking • Real Estate Capital

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Tuesday May 14, 2019

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and

Me Anne-Marie Beaudoin, Corporate Secretary
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and

Mr. Doug Downey, Parliamentary Assistant to the Minister of Finance
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and

Mrs. Gina Stephens, Senior Policy Advisor
Financial Services Policy Division
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and

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RE: CSA Second Notice and Request for Comment Proposed Amendments to National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations relating to Syndicated Mortgages and Proposed Changes to Companion Policy 45-106CP Prospectus Exemptions and Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations

With respect to the request for comments, please accept this letter as our suggested amendments to the above subject matters.

It is our recommendation that the following definitions need to be better addressed in order to more accurately reflect the manner in which the industry operates efficiently.

Suggested amendment for the definition of “**syndicated mortgage**”:

*Definition of a “**Syndicated Mortgage**”; Defined as a mortgage debt investment that a Mortgage Brokerage would allocate to more than one investor who is not; (i) a regulated financial institution; (ii) public reporting issuers; (iii) pooled mortgage funds, mortgage corporation or mutual fund trust; that have a board of directors approving investments; and (iv) board of directors, members of management, employees and related parties, including related corporate entities to individuals affiliated with the Mortgage Brokerage and to the entities under (i), (ii) and (iii).*

Suggested amendment for the definition of “**qualified syndicated mortgage**”:

*Definition of a “**Qualified Syndicated Mortgage**” (“**QSM**”): All syndicated mortgage investments that are not a **NQSM**.*

For a QSM the Brokerage is required to complete a Form 1 Investor Disclosure Form, with the requirement of the Brokerage to incorporate by addendum reference detailed underwriting information that an investor should receive for the transaction type in order for the investor to understand the risk and credit adjudication needed to make an informed decision.

Suggested amendment for the definition of “**non-qualified syndicated mortgage**”:

*Definition of a “**Non-Qualified Syndicated Mortgage Investment**” (“**NQSM**”): A Syndicated mortgage investment; that for all intensive purposes represents the required equity for a real estate development that has been disguised and treated as mortgage debt security that has the characteristics of equity by being subordinated to construction financing, and purchasers bonding insurance and would exceed 90% of a projects capitalized cost, and whereby the mortgage investors were solicited by the Mortgage Brokerage to participate in the investment by way of payment of commissions to solicit such investors.*

For any **NQSM**, the Mortgage Brokerage is required to:

- (i) provide the Borrower with a declaration that it represents the interest of the investor and not the borrower
- (ii) advise the Borrower that they should retain independent legal advice with respect to the **NQSM** transaction.

The proposed definition of **NQSM** will allow Mortgage Brokerages, who are not syndicating equity or high-risk debt investments, to be regulated by one regulator.

The above proposed definition of QSM will keep capital flowing to the real estate marketplace and provide liquidity to borrowers and risk reward income yielding investments for investors.

If amendments are not made, the marketplace will see a significant decrease in credit availability and have a significant negative effect on both Borrowers and Investors.

The public policy objective is commendable - to protect investors / lenders and avoid systematic risk that would result from syndicating equity style investments disguised as mortgage debt. FCC fully supports those objectives, both because it is a good corporate practice and because it is clearly in its long-term strategic interest and in the interest of having a functioning marketplace for our industry that addresses proper credit adjudication tailored to investors risk tolerance. However, the regulations, as they currently apply, do not achieve their stated purpose and have significant unintended negative side effects.

REGULATORY BODY:

In addition to the above amendments to the above definitions, we recommend that all regulation remain with one regulatory body, the Financial Services Regularity Authority of Ontario. This will ensure regulatory efficiencies with one regulator overseeing the entirety of the mortgage industry.

FIRM CAPITAL – BACKGROUND:

Since May 1988, Firm Capital Corporation (“FCC”) acted primarily as a Mortgage Banker and lending servicer for various entities and partners, and through a mortgage banking agreement, since October 1999, the Toronto Stock exchange listed entity Firm Capital Mortgage Investment Corporation (TSX Symbol: FC) (“FCMIC”). FCC, as a Mortgage Banker, independently originates, underwrites, determines required financing conditions needed to address credit and risk management matters, issues commitment letters, syndicates, and prepares lending disclosure forms. It acts exclusively on behalf of its investors / lenders and advises the borrower that it represents the lenders exclusively and that borrowers should obtain independent legal advice prior to borrowing, as FCC has a duty to the lender client and not the borrower. We define these services as Mortgage Banking.

Thank you for considering the need to make these changes in the public interest.

FIRM CAPITAL CORPORATION
PER:

Eli Dadouch
President & CEO
ED/ns

Tuesday May 14, 2019

Alberta Securities Commission
Autorité des Marchés Financiers
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission New Brunswick
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities Newfoundland and Labrador
Office of the Superintendent of Securities Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

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Dear Sirs/Mesdames:

Re: CSA Second Notice and Request for Comment on Proposed Amendments to National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations relating to Syndicated Mortgages and Proposed Changes to Companion Policy 45-106CP Prospectus Exemptions

The Ontario Mortgage Investment Companies Association (“ONMICA”) thanks you for the opportunity to provide our comments in connection with the Canadian Securities Administrators’



(“**CSA**”) Proposed Amendments to National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations relating to Syndicated Mortgages and Proposed Changes to Companion Policy 45-106CP Prospectus Exemptions (the “**Proposal**”) as set out below.

ONMICA is an association of Mortgage Investment Corporations, Mortgage Funds, Mortgage Mutual Fund Trusts, and other Mortgage Investment Entities (MIEs) as well as registrants, including exempt market dealers (“**EMDs**”) registered with the Ontario Securities Commission who operate in the MIE space. There are currently 27 ONMICA members who collectively have approximately \$5.3 billion of gross assets under administration.

ONMICA’s purpose is to:

- Facilitate the exchange of information and ideas between members.
- Work with regulators and other stakeholders to promote both business efficiencies and investor protection.
- Establish and uphold industry standards for ethics and professionalism.
- Assist regulators to better understand the business of MIEs to ensure the regulation of capital raising is fair, simple, and pragmatic for our industry.
- Raise the profile, awareness and understanding of MIEs in the minds of both investors and capital market participants.
- Assist members with advice, problem solving and professional referrals.

ONMICA membership criteria requires the member firm’s primary source of income be derived from acting as or managing a MIE, whose securities are distributed through a registered entity recognized by the Ontario Securities Commission (and other provincial regulators as the case may be), and who conducts business in an ethical and professional manner reflecting positively on the industry.

General Comments on Proposed Amendments

Mortgage syndication is integral to the mortgage industry as it promotes investor protection by allowing investors to build a customized, defined and diversified mortgage portfolio that fits that investors specific needs, lending strategy and risk tolerance. Furthermore, some MIEs use mortgage syndication to mitigate risk, by reducing single loan or borrower exposure (loan concentration), and to increase liquidity in their pooled funds. It is paramount regulations governing syndications take a pragmatic approach to balancing investor protection and business efficiencies.



ONMICA welcomes the Proposal and its intent to enhance investor protection and improve national regulatory harmonization. However, we note several concerns with the current proposal, including:

1. There are potential conflicts from having syndicated mortgages regulated by two independent regulators. These issues include increased regulatory costs, investor confusion and regulatory arbitrage.
2. The definition of Non-Qualified Syndicated Mortgage ("NQSM") arbitrarily bisects the industry. Some lenders offer both Qualified Syndicated Mortgages ("QSM") and NQSM and investors do not currently distinguish between the two. This means some lenders and investors will have two sets of regulations to adhere to for what they would both currently consider to be a homogenous asset class.
3. The regulatory cost burden associated with filing a 45-106F1 / Report of Exempt Market Distribution ("REMD") for each syndicated mortgage could be prohibitively high and has the potential to significantly reduce the variety and number of syndicated mortgages available to investors. It is possible the fee burden would become prohibitive and the only NQSM's offered would be on larger high-risk mortgage financing.
4. There are potential unintended consequences for sophisticated (Permitted) investors as the current proposal could significantly impair their ability to build a diversified custom mortgage portfolio through syndication.
5. There are several potential unintended consequences for mortgage funds. Frequently mortgage funds will seek a second lender (often another fund) if a mortgage is too large. Under the proposal, this would be deemed a syndicated mortgage distribution. If the syndicated mortgage is a NQSM, then the funds, who have already filed a REMD and conducted a know your client and suitability analysis on their investors whose capital will ultimately be invested in the mortgage, will now have to duplicate the process for the syndicated mortgage transaction. This will be most acute for mortgage funds distributed through a non-captive EMD who they will be required to pay as well to facilitate the syndicated mortgage transaction. The scenario gets even more complicated for mortgage funds who deal only in QSM, and do not distribute syndicated mortgages to individual lenders/investors, as these mortgage funds will now be straddling two separate regulatory regimes which will likely result in additional administrative work and costs.

Advocating for a Single Regulator Regime

The goal of increasing investor protections for syndicated mortgages is best achieved through a single regulator overseeing all mortgage capital-raising activities regardless of the characteristics of the mortgage or if it is done via syndications or a fund structure. The benefits of a mono-regulatory regime are as follows:

- **Reduced regulatory inefficiencies and related costs.** A dual regulator regime will result in duplication of licencing, insurance costs, unimpaired working capital requirements and increased administration. We note both the OSC and the Financial Services Regulatory Authority of Ontario (“FSRA”) have made regulatory reduction part of their mandate, but we are concerned the benefits of their individual efforts will be undermined by the inefficiencies of operating within a dual regulatory eco-system.
- **Reduced administrative burden on investors.** Often investors participate in both fund products as well as mortgage syndication. As is the case in the current regulatory environment, a dual regulator regime has resulted in the duplication of KYC and suitability procedures for investors. It should be noted, the prescribed Financial Services Commission of Ontario (“FSCO”) investor forms are difficult to repurpose for KYC and suitability requirements under the OSC’s regime as the forms are designed for a syndicated product. The requirement to complete different forms for different types of syndicated mortgages has measurably contributed to investor confusion.
- **Avoids the potential for regulatory arbitrage.** If inequality exists regarding licencing proficiencies and on-going regulatory obligations, bad actors will exploit the regulator with reduced regulatory oversight. Moreover, if the requirements are comparable, then a question is raised as to the point of having two regulators.
- **Easier path to harmonization:** ONMICA supports the CSA’s goal of achieving harmonization but has concerns the current proposal fails to establish the most effective foundation to do so. On a macro level there are three regulatory bodies, CSA, OSC and FSRA, all regulating capital raising for mortgages in Ontario. Regulatory jurisdiction will become further fragmented by subdividing syndicated mortgages between the CSA/OSC and FSRA. The proposed model is complicated and creates difficulties for national adoption and results in the aforementioned concerns. Conversely, a single regulator, as is the case in Alberta, and one set of regulations, creates a streamlined structure better suited for administrative efficiency. We further note:
 - There is no pragmatic reason for regulatory variances amongst the provinces as the underlying product and investor protection requirements has no correlation to geography.
 - Segregating mortgages based on syndicated versus pooled fund offerings has historically led to regulatory arbitrage. Furthermore, it is an academic division as

syndicated mortgage investors often diversify their mortgage investments effectively creating their own “fund” portfolios.

- Instilling an adequate investor protection regime should be based on the proficiencies of the dealer/broker and not based on the underlying product. An ill-equipped dealer/broker will fail to safeguard the investor regardless of the simplicity or complexity of the offering. The focus should be on increasing dealer/broker proficiency requirements.

A Better Definition of Non-Qualified Syndicated Mortgage

In recent years there have been investments marketed as syndicated mortgages, where the risk of the investment was comparable to an equity investment in a large construction development deal. The risks associated with these investments were often improperly disclosed. Investors erroneously believed the loans were backed by real estate when in fact, with loans-to-value in excess of 100%, they were not.

We fully support the CSA’s goal to draw a line between these investments and true syndicated mortgages. However, the current definition of QSM is too broad and arbitrary. There are numerous instances where a mortgage on a commercial property or for construction purposes is less risky than a residential mortgage. The security of a mortgage is dependent as much on property type as it is on loan-to-value, geography and the borrower (history, credited rating and net worth etc.).

A better definition of QSM would capture mortgages that are:

- Negotiated or arranged through a mortgage brokerage;
- At the time the syndicated mortgage is arranged, the amount of debt it secures, together with all other debt secured by mortgages on the property that have priority over, or the same priority as, the syndicated mortgage, does not exceed 90% of the fair market value of the property relating to the mortgage, excluding any value that may be attributed to proposed or pending development of the property;
- It is limited to one debt obligation whose term is the same as the term of the syndicated mortgage; and
- Aside from reasonable administration fees, the rate of interest payable under the mortgage is equal to the rate of interest payable under the debt obligation.

Furthermore, we believe revising the definition of NQSM would mitigate many of the other concerns we have identified with the current proposal.

Reports of Exempt Market Distributions.

We request clarification as to why the timing of the filing of a report of exempt market distribution is outside the scope of this project. To many lenders, the REMD represents one of the larger financial and administrative costs associated with the proposed structure.

The argument that the cost of filing will be minor compared to the cost of mortgage registration fails to capture the realities of operating a syndicated portfolio. First, the industry recognizes the costs associated with registering a mortgage are borne by the borrower. Second, mortgage registration is a one-time cost which allows it to be accounted for when determining the total loan amount. Conversely, a syndicated mortgage may require multiple REMD's and it is therefore difficult to predict the frequency as new investors are often added to a mortgage throughout the term of the loan. Furthermore, construction mortgages, which include multiple draws and have different investors participate at each stage, would trigger multiple reports. These issues get compounded in the context of managing a syndicated portfolio and are particularly burdensome for small-to-medium lenders whose investors maintain small investment amounts diversified across multiple small loans with short terms.

To illustrate the implications of imposing a \$500 filing fee, consider a \$200,000 mortgage loan as an example. A lender would likely earn between \$2,000 to \$4,000 in fees on a loan of this size. Having to file exempt market reports and pay \$500 each time a syndicated investor participates could amount to consuming the entire revenue with regulatory filing fees.

In short, given the potential high frequency and large number of REMDs that would need to be filed for syndicated mortgages, the cost to borrowers/lenders and to regulators to review these filings is out of proportion with the benefit gained by the delivery of this information to the regulator.

In order to reduce the administrative burden and expense while still ensuring the CSA remains up to date, we recommend the following:

- Construction mortgages should require one filing at initial funding and subsequent advances should not trigger a REMD.
- Monthly filings reflecting all activities during the month;
- If the above is not adopted and the existing 10-day timeframes remain applicable, allow issuers to batch all syndicated activities that have occurred in a ten-day window into one report as this will limit the number of reports to 3 a month;
- Reduce the cost of the filing to account for the frequency; and
- In order to promote harmonization with jurisdictions like B.C. and Alberta, trades involving permitted investors should not trigger a REMD.

As an aside, we maintain that establishing who the issuer is remains unclear, even with the additional commentary provided. We request further clarification. It is imperative both issuers and regulators have a clear and shared understanding to avoid fragmented implementation and oversight.

Reducing Cost Burden and Unintended Consequences through a Carve-Out for Permitted Investors

As previously stated, these proposals have the potential to create unintended consequences for mortgage funds and sophisticated syndicated-mortgage investors. A solution which would provide mitigation would be to adopt a prospectus exemption for syndicated mortgages distributed to permitted investors. We do not believe permitted investors require the additional protection the current proposal offers and the changes will only be a detriment to them. Furthermore, this would assist in the CSA's harmonization goals as this is currently offered in B.C. and proposed in Alberta.

Risks of Syndicated Mortgages and Comparisons to Other Securities.

We maintain syndicated mortgages are being broadly miscategorized as high-risk investments which has an adverse impact on suitability analysis and unfairly portrays the industry in a negative light.

Syndicated mortgages represent a diverse array of loans which can encompass residential standard first mortgages with conservative loans-to-value and complicated commercial development with aggressive loans-to-value and in a subordinated position. Subsequently, determining the risk characteristics of the asset class should be assessed on a per-loan basis as all encompassing statements fail to capture important nuances.

We further note the CSA's response in the comment letter reaches an erroneous conclusion as it states that 6.6% of the reported syndicated mortgages resulted in a loss. In fact, according to the comment letter, only 3.8% of the 2,000+ mortgages resulted in some loss of principal or interest. Even assuming the higher figure of 6.6%, effectively, 93.4% of the total loans performed. Such data supports the argument that an individual syndicated mortgage or a portfolio comprising of lower risk private mortgages can be considered as low-medium risk.

We maintain there is no pragmatic reason why mortgages should be treated differently than other securities and we request clarification as to why they are being segregated. The conceptual nature of the segregation of mortgages is evident when examining the regulatory obligations of other securities. For instance, issuers of bonds and debentures who collateralize their security with a mortgage result in a product substantially the same as a mortgage, nonetheless they are subject to different regulatory oversight (i.e. the permitted use of the private issuer exemption). The atypical treatment of mortgages not only creates additional regulatory burden, it also impedes national harmonization.

Adopting the Existing Local British Columbia Exemptions.

We note Ontario is looking to adopt exemptions similar to BCI 45-501. As previously mentioned, doing so introduces unnecessary regulatory duplication and confusion when compared to having one regulator oversee all mortgage capital raising activities. In the event a single-regulator model is not adopted we request the adoption of the definition previously outlined of a QSM.

Furthermore, the definition should allow administrators to charge an administration fee. We note Ontario did not adopt the BC provision carving out administrators' fees as Ontario's definition of a QSM states that an investor needs to earn the face-rate of the loan. In doing so, mortgages not intended to be NQSM are being categorized as such, as a result of administrators' business model and not the underlying characteristics of the loan.

Closing Remarks

ONMICA would like to thank to the CSA for their efforts in drafting the proposal and for soliciting feedback from various stakeholders.

* * * *

We thank you for considering our submissions and we would be pleased to respond to any questions or meet with you to discuss our comments.

Yours truly,

THE ONTARIO MORTGAGE INVESTMENT COMPANIES ASSOCIATION

Adam Rose

Ricky Dogon

~~Robert Trager~~



May 14, 2019

Alberta Securities Commission
 Autorité des marchés financiers
 British Columbia Securities Commission
 Financial and Consumer Affairs Authority of Saskatchewan
 Financial and Consumer Services Commission (New Brunswick)
 Manitoba Securities Commission
 Nova Scotia Securities Commission
 Nunavut Securities Office
 Office of the Superintendent of Securities Newfoundland and Labrador
 Office of the Superintendent of Securities Northwest Territories
 Office of the Yukon Superintendent of Securities
 Ontario Securities Commission
 Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

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consultation-en-ours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: CSA Second Notice and Request for Comment on Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* relating to Syndicated Mortgages and Proposed Changes to Companion Policy 45-106CP *Prospectus Exemptions* and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

The Private Capital Markets Association of Canada (“PCMA”) is pleased to provide our comments in connection with the Canadian Securities Administrators’ (“CSA”) Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* relating to Syndicated Mortgages and Proposed Changes to Companion Policy 45-106CP *Prospectus Exemptions* and Companion Policy 31-103 CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the “**Proposal**”) as set out below.

About the PCMA

The PCMA is a not-for-profit association founded in 2002 as the national voice of the exempt market dealers (“**EMDs**”), issuers and industry professionals in the private capital markets across Canada.

The PCMA plays a critical role in the private markets by:

- assisting hundreds of dealer and issuer member firms and individual dealing representatives to understand and implement their regulatory responsibilities;
- providing high-quality and in depth educational opportunities to the private capital markets professionals;
- encouraging the highest standards of business conduct amongst its membership across Canada;
- increasing public and industry awareness of private capital markets in Canada;
- being the voice of the private capital markets to securities regulators, government agencies and other industry associations and public capital markets;
- providing valuable services and cost-saving opportunities to its member firms and individual dealing representatives; and
- connecting its members across Canada for business and professional networking.

Additional information about the PCMA is available on our website at www.pcmacanada.com.

The first section of the letter presents our general comments on the Proposal, followed by responses to specific questions asked in the Proposal.

General Comments on Proposed Amendments

Mortgage syndication is integral to the mortgage industry as it promotes investor protection by allowing investors to build a custom, diversified mortgage portfolio. Furthermore, some mortgage investment entities (“**MIEs**”) use mortgage syndication to mitigate risk by reducing loan concentration and increase liquidity in their pooled funds. It is paramount that the regulations governing syndications pragmatically balance investor protection and business efficiencies.

The PCMA welcomes the Proposal and its intent to enhance investor protection and improve national regulatory harmonization. However, we note several concerns with the Proposal, including:

1. There are potential issues from having syndicated mortgages being regulated by two separate regulators. This will increase regulatory costs and create the potential for investor confusion and regulatory arbitrage.
2. The definition of non-qualified syndicated mortgages (“**NQSM**”) draws an arbitrary line down the middle of the industry. Some lenders offer both qualified syndicated mortgages (“**QSM**”) and NQSM and investors do not currently distinguish between the two. This means that some lenders and investors will have two sets of regulations to adhere to for what they would currently consider to be a homogenous asset class.
3. The regulatory cost burden associated with filing a Form 45-106F1 *Report of Exempt Distribution* (“**Report of Exempt Distribution**”) for each syndicated mortgage could be prohibitive and has the potential to drastically reduce the number of syndicated mortgages

available for investors. It is possible that the fee burden will be high enough that the only NQSM offered to retail investors will be for riskier large-scale developments.

4. There are several potential unintended consequences for both mortgage funds and sophisticated investors. Often lenders will share deals between each other if the deal is too large for one lender to fund alone. Such a transaction would constitute a syndicated mortgage distribution under the Proposal and require the filing of a Report of Exempt Distribution. This will be most acute for mortgage funds that are distributed through a non-captive EMD who they will have to pay as well to facilitate the transaction. The Proposal could also drastically reduce the ability of sophisticated investors to build a custom mortgage portfolio through syndication.

Advocating for a Single Regulator Regime

The PCMA believes that the goal of increasing investor protection for syndicated mortgages is best achieved by having a single regulator oversee all mortgage capital raising activities regardless of the characteristics of the mortgage or if it is done via syndications or a fund structure. The benefits of a mono-regulatory regime are as follows:

- **Reduces regulatory inefficiencies and related costs.** A dual regulator regime will likely result in duplication of licencing, insurance costs, unimpaired working capital requirements and increased administration. We note that provincial regulators have made regulatory reduction part of their mandate but we are concerned that the benefits of their individual efforts will be countered by the results of operating within a dual regulatory eco-system.
- **Reduces administrative burden on investors.** Often investors participate in both fund products as well as mortgage syndication. As is the case in the current regulatory environment, dual regulators have resulted in the duplication of know your client (“**KYC**”) and suitability procedures for investors. It should be noted that the prescribed Financial Services Commission of Ontario investor forms are difficult to also utilize for KYC and suitability purposes under the OSC’s regime as the forms are designed for a syndicated product. The requirement to fill out different forms for different types of syndicated mortgage has created confusion on the part of the investor.
- **Avoids the potential for regulatory arbitrage.** If there is inequality regarding licencing proficiencies and on-going regulatory obligations, bad actors will target the regulator with less regulatory oversight; a reality that recently occurred with a high-profile mortgage syndicator. Moreover, if the requirements are on par, then a question is raised as to the point of having two regulators.
- **Easier path to harmonization:** The PCMA supports the CSA’s goal of achieving harmonization but has concerns that the Proposal fails to establish the most effective foundation to do so. If the Proposal is adopted as suggested, there will be four regulatory bodies, the Ontario Securities Commission (“**OSC**”), the British Columbia Securities Commission (“**BCSC**”), the Financial Institutions Commissions (“**FICOM**”) and the Financial Services Regulatory Authority of Ontario (“**FSRA**”), all regulating capital raising for mortgages for Canada’s two largest markets. Regulatory jurisdictions that are further fractured by subdividing syndicated mortgages between the OSC/BCSC and FSRA/FICOM. The proposed model is complicated and creates difficulties for national adoption and also results in the aforementioned concerns. Comparatively, having a single

regulator, as is the case in Alberta, creates a streamlined structure that is better suited for duplication. We further note that:

- There is no pragmatic reason for regulatory variances amongst the provinces as the underlying product and investor protection requirements has no correlation with specific provinces.
- Dividing up mortgages based upon syndicated versus pooled fund offerings has historically led to regulatory arbitrage. Furthermore, it is an academic division as syndicated mortgage investors often diversify their mortgage investments effectively creating their own “fund” portfolios.
- Instilling a sufficient investor protection regime should be based on the proficiencies of the dealer/broker not the underlying product. An ill-equipped dealer/broker will fail to safeguard the investor regardless of the simplicity of the offering.

A Better Definition of Non-Qualified Syndicated Mortgage

In recent years there have been investments marketed as secured syndicated mortgages, where the risk of the investment was much more akin to an equity investment in a large construction development deal. The risks associated with these investments were often not properly disclosed to or understood by investors who erroneously believed the loans were fully backed by real estate when in fact, having loans-to-value far in excess of 100%, they were not.

We fully stand behind the CSA’s goal to draw a line between these investments and true syndicated mortgages. However, the current definition of NQSM is far too broad and arbitrary. There are plenty of instances where a mortgage on a commercial property or for construction purposes is less risky than a residential mortgage, as the riskiness of a mortgage is dependant as much on property type as it is on loan-to-value, geography of the loan and the borrower’s history, credit rating and net worth.

A better definition of NQSM would capture:

- Negotiated or arranged through a mortgage brokerage;
- At the time the syndicated mortgage is arranged, the amount of debt it secures, together with all other debt secured by mortgages on the property that have priority over, or the same priority as, the syndicated mortgage, does not exceed 90% of the fair market value of the property relating to the mortgage, excluding any value that may be attributed to proposed or pending development of the property;
- It is limited to one debt obligation whose term is the same as the term of the syndicated mortgage; and
- Aside from reasonable administration fees, the rate of interest payable under the mortgage is equal to the rate of interest payable under the debt obligation.

Furthermore, we feel that revising the definition of NQSM would mitigate many of the other concerns we have with the Proposal.

Reports of Exempt Distributions

We request clarity as to why the timing of the Report of Exempt Distribution is out of the scope of this project. To many lenders, the Report of Exempt Distribution represents one of the larger financial and administrative costs associated with the Proposal.

The response that the expectation that the cost of filing is minor compared to the cost of registration of a mortgage fails to capture the realities of operating a syndicate portfolio. For starters, there is an industry expectation that the costs associated with registering a mortgage are borne by the borrower from the proceeds of the mortgage. Second, it is a one-time cost which allows it be to accounted for when determining the total loan amount. Conversely, a syndicate mortgage can require multiple Report of Exempt Distributions and it is often difficult to predict the frequency as new investors are often added to a mortgage throughout the course of the loan's terms. Furthermore, construction mortgages which may include 4+ draws and have different investors participate in each draw could also trigger multiple reports. These issues are multiplied in the context of a managing a syndicate portfolio and are particularly burdensome for small to medium lenders whose investors maintain small investment amounts diversified across multiple small loans with short terms.

To illustrate the implications of imposing a \$500 filing fee, we use a \$200,000 mortgage loan. A lender would likely earn between \$2,000 to \$4,000 in fees on a loan of this nature. Having to file a Report of Exempt Distribution and pay \$500 each time a syndicated investor participates could amount to consuming the entire revenue with regulatory filing fees.

In order to reduce the administrative burden and expense while still ensuring that the CSA remains up to date, we recommend an annual filing for Form 45-106F1 – *Report of Exempt Distribution for all syndicate mortgages*. The CSA currently allows investment funds distributed under prospectus exemptions to file annually, but all other exempt distributions have to be filed within 10 calendar days. This is costly and time consuming and for the aforementioned reasons is in particular burdensome for syndicate mortgages given the nuances of the product.

As an aside, we maintain that determining who the issuer is remains unclear, even with the additional commentary provided, and we request further clarification on this matter. It is imperative that both issuers and regulators have a clear and shared understanding to avoid fragmented implementation and oversight.

Reducing Cost Burden and Unintended Consequences through a Carve Out For Permitted Investors

As previously stated, the Proposal has the potential for unintended consequences for mortgage funds and sophisticated syndicated mortgage investors. A solution that would provide some mitigation is to adopt a prospectus exemption for syndicated mortgages distributed to permitted investors. We do not believe that permitted investors require the additional protection that the Proposal aims for and that the changes will only be a detriment to them. Furthermore, this would help in the CSA's harmonization goals as this is currently being offered in B.C. and is being proposed for Alberta.

Risks of Syndicate Mortgages and Comparisons to Other Securities.

We maintain that syndicate mortgages are being blanketly miscategorized as high-risk investments which has an adverse impact on suitability analysis and unjustly portrays the industry negatively.

Syndicated mortgages represent a diverse array of loans that can encompass residential standard first mortgages with conservative loan to values and complicated commercial development with aggressive loan to values and in a subordinated position. Subsequently, determining the risk characteristics of the asset class should be assessed on a per loan basis as all-encompassing statements fail to capture the nuances.

We further note that the CSA's response in the Proposal reaches an erroneous conclusion as it states that 6.6% of the reported syndicated mortgages resulted in a loss. Rather, according to the Proposal, only 3.8% of the 2,000+ mortgages led to a loss of some principal or interest. Even assuming the higher figure of 6.6%, results in an asset class wherein 93.4% of the total loans preformed. Such data should support the conclusion that an individual syndicated mortgage or a portfolio comprising of lower risk private mortgages can be categorized as low-medium risk.

We also maintain that there is no pragmatic reason as to why mortgages should be treated differently than other securities and we request insight as to why they are being segregated. The conceptual nature of the segregation of mortgages is evident when examining the regulatory obligations of other securities. For instance, issuers of bonds and debentures who collateralize their security with a mortgage results in a product that is substantially the same as a mortgage however they are subject to different regulatory oversight (i.e. the permitted use of the private issuer exemption). The atypical treatment of mortgages is not only creating additional regulatory obligations it is also impeding national harmonization as each province is adopting nuanced regulations for their jurisdictions.

Adopting the Existing Local British Columbia Exemptions.

We note that Ontario is looking to adopt exemptions similar to Commission Rule 45-501 (BC) *Mortgages*. As previously mentioned, doing so introduces unnecessary regulatory duplications and confusion when compared to having one regulator oversee all mortgage capital raising activities. In the event that a single regulator model is not adopted we request that the definition as previously outlined of a QSM is adopted.

Furthermore, the definition should allow administrators to charge an administration fee. We note that Ontario did not adopt the B.C. provision that carves out administrators' fees as Ontario's definition of a QSM states that an investor needs to earn the face rate of the loan. We maintain that in doing so, mortgages that are not intended to be categorized as NQSM are being categorized as such as a result of an administrators' business models and not the underlying characteristics of the loan.

Closing Remarks

The PCMA would like to thank to the CSA for their efforts in drafting the Proposal and for soliciting feedback from various stakeholders.

* * * *

We thank you for considering our submissions and we would be pleased to respond to any questions or meet with you to discuss our comments.

Yours truly,

COMMENT LETTER COMMITTEE MEMBERS

“Craig Skauge”

**Co-Chair of Comment
Letter Committee and
Vice- Chair**

“Diana Soloway”

**Co-Chair of Comment
Letter Committee**

PCMA Executive

“Frank Laferriere”

Chair

“Georgina Blanas”

**Vice-Chair and Executive
Director**



May 14, 2019

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Re: CSA Second Notice and Request for Comment Proposed Amendments to *National Instrument 45-106 Prospectus Exemptions* and *National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations* relating to Syndicated Mortgages

AND

Proposed Changes to Companion Policy 45-106CP *Prospectus Exemptions* and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

Dear Sirs & Madame's,

Background of the Respondent

Vector Financial Services Limited (VFSL) has been engaged in the business of providing syndicated mortgages to investors and borrowers since 1969. We are currently licenced by FSCO as both a Mortgage Broker (licence # 10160) and Administrator (licence # 11205) and both licences are in good standing. We have developed an investor pool of primarily high net worth/accredited retail investors (>99%), sophisticated family office investors and institutional co-lenders. We currently manage a loan book of in excess of \$250,000,000 and employ 10 individuals full time. Over the past 7 years we have originated and repaid in excess of \$700 million to our investors and provided our investors with net returns of between 8.3% and 9% per annum with capital losses of no greater than 25 basis points during the entire period. We are not currently, nor have ever been, subject to any legal claim, threat or suit by any of our investors throughout our near 50-year history.

VFSL does not engage in mortgage brokering between a borrower and another lender except for a loan it will underwrite for itself and its clients. Thus while we are technically a broker to satisfy the requirements of FSCO, we are primarily investor-lender focused – you might consider us more of an alternative lender or mortgage banker.

VFSL welcomes the Proposal and its intent to enhance investor protection and improve regulatory harmonization. However, we note several concerns with the current proposal which are outlined below.

General Comments:

- Why 2 separate regulators?
- Revising the definition of Non-Qualified Syndicated Mortgages (NQSM)

- Transition period too short (Prospectus exemption by Dec 31, 2019 and Registration exemption 12 months thereafter)
- Regulatory cost burden (upfront registration transition plus ongoing reporting) too high for small business
- Why are Syndicated Mortgages thought to be so risky – A Commentary

Why Not a Single Regulator Regime?

We believe the goal of increasing investor protections for syndicated mortgages is best achieved through a single regulator overseeing all mortgage capital-raising activities regardless of the characteristics of the mortgage whether it is done via syndications or a fund structure. The benefits of a single-regulatory regime are as follows:

- Reduced regulatory inefficiencies and costs
- Reduced administrative burden on investors and borrowers
- Avoids the potential for regulatory arbitrage
- Less confusing path to harmonization for all parties.

VFSL is now regulated by a single regulator (FSCO/FSRA). The introduction of the OSC as the regulator for the 'distribution' to investors/lenders of syndicated mortgage 'securities' still leaves the 'brokerage' and 'administration' functions to be regulated by FSCO/FSRA. Does it not make sense to regulate the registrant (i.e. VFSL) under one regulator like other participants in the capital markets? VFSL does not engage in traditional brokering (the brokering of a loan from a one arms length entity to another), nor employs any agents that broker deals between lenders and investor/lenders. We currently protect all investors with the newly enhanced KYC, Suitability and Disclosure (forms 3.0, 3.1, and 3.2) and reduced investment totals for non-accredited investors (\$60,000 maximum per 12-month period), as required by FSCO/FSRA. Does this not cover the essence of the protection regulators are searching for?

Dual registration would necessitate reporting twice on the same activities via an Annual Information Return (FSCO/FSRA) and reports of exempt market distributions, possible duplicate errors & omissions coverage, separate and potentially overlapping educational and proficiency requirements for those individuals that liaise with the public (agent/broker requirements for FSCO/FSRA; dealing representative for EMD), and other duplicative efforts.

Would the firm be subject to two possible audits on the same material? Would the regulators share the findings between each other? Would the firm require two different forms of policies and procedure manuals? The list goes on and on about what can become very confusing for the registrant.

We believe a single regulator is in the best interests of all stakeholders.

Revising the Definition of Non-Qualified Syndicated Mortgages (NQSM)

In recent years there have been investments marketed as syndicated mortgages, where the risk of the investment was comparable to an equity investment in a large construction development deal. The risks associated with these investments were often improperly disclosed. Investors erroneously believed the loans were backed by real estate when in fact, with loans-to-value in excess of 100%, they were not. In

many cases, excessive commissions and other transaction related costs were deducted from the initial advance to borrowers leaving a wide gap of value that needed to be earned back by the project before additional profits could be distributed to investors.

We fully support the CSA's goal to draw a line between these investments and true syndicated mortgages. However, the current definition of QSM is too broad and arbitrary. There are numerous instances where a mortgage on a commercial property or one provided for construction purposes poses no greater risk than a residential mortgage (especially if the residential mortgage is in second position).

The security of a mortgage is dependent as much on property type as it is on loan-to-value, geography and the borrower (history and experience, credited rating and net worth etc.). A better definition of QSM would capture mortgages that are:

- Negotiated or arranged through a mortgage brokerage;
- At the time the syndicated mortgage is arranged, the amount of debt it secures, together with all other debt secured by mortgages on the property that have priority over, or the same priority as, the syndicated mortgage, does not exceed 90% of the fair market value of the property relating to the mortgage, including any value that may be attributed to proposed or pending development of the property;
- It is limited to one debt obligation whose term is the same as the term of the syndicated mortgage; and
- Net of reasonable administration fees, the rate of interest payable under the mortgage is equal to the rate of interest payable under the debt obligation.
- The investor is of a designated, accredited or FFBA's class of investors and by definition can absorb the risk of the investment.

We believe revising the definition of NQSM would mitigate many of the other concerns we have identified with the current proposal.

Transition Period Too Short

We have been following the regulatory comment process for the past 18 months and have attended and participated in meetings (both public and private) with regulatory staff (MOF, FSRA, OSC and politicians). We have always been working on the assumption of a two stage roll out of the dates for the termination of the prospectus exemption and the termination of the registration exemption which was broadcasted to be 12 months following the prospective exemption deadline.

Given there is still some regulatory confusion in the industry including the delayed roll out of FSRA, the continuing comment periods which are still open to the CSA, the non-finalization of Parliamentary Assistant Doug Downey's review of MBLAA 2006, the lack of clarity from any regulator as to the proficiency requirements for mortgage agents / brokers moving from FSCO/FSRA to the OSC, we believe the transition period is too short for firms like VFSL to figure out the most efficient regulatory set up.

We believe the transition period for the elimination of the registration exemption should be revised back to December 31, 2020 or 12 months following the end of the prospectus exemption in keeping with the original intent.

Regulatory Cost Burden Too High for Small Business (Upfront & Ongoing Reporting)

The upfront cost of VFSL converting to an EMD could be in excess of \$100,000 when one takes into account the proposed 2 regulator regime, additional hires proficient in securities reporting and legislation and the additional legal costs of ensuring VFSL is abiding by the regulations. As mentioned previously, serious consideration should be given to the concept of a single regulator.

We request clarification as to why the timing of the filing of a report of exempt market distribution (REMD) is outside the scope of this project. To many lenders, the REMD represents one of the larger financial and administrative costs associated with the proposed structure.

The argument that the cost of filing will be minor compared to the cost of mortgage registration fails to capture the realities of operating a syndicated portfolio. First, the industry recognizes the costs associated with registering a mortgage are borne by the borrower. Second, mortgage registration is a one-time cost which allows it to be accounted for when determining the total loan amount. Conversely, a syndicated mortgage may require multiple REMD's and it is therefore difficult to predict the frequency as new investors are often added to a mortgage throughout the term of the loan. Furthermore, construction mortgages, which include multiple draws and have different investors participate at each stage, could trigger multiple reports. These issues get compounded in the context of managing a syndicated portfolio and are particularly burdensome for small-to-medium lenders whose investors maintain small investment amounts diversified across multiple small loans with short terms.

To illustrate the implications of imposing a \$500 filing fee, consider a \$200,000 mortgage loan as an example. A lender would likely earn between \$2,000 to \$4,000 in fees on a loan of this size. Having to file exempt market reports and pay \$500 each time a syndicated investor participates could amount to consuming the entire revenue with regulatory filing fees.

In short, given the potential high frequency and large number of REMDs that would need to be filed for syndicated mortgages, the cost to borrowers/lenders and to regulators to review these filings is out of proportion with the benefit gained by the delivery of this information to the regulator.

In order to reduce the administrative burden and expense while still ensuring the CSA remains up to date, we recommend the following:

- **Construction mortgages should require one filing at initial funding and subsequent advances should not trigger a REMD.**
- **A single monthly filing reflecting all activities during the month;**
- **Reduce the cost of the filing to account for the frequency; and**
- **Trades involving accredited and/or FFBA investors should not trigger a REMD.**

Why are Syndicated Mortgages thought to be so risky – A Commentary

We believe syndicated mortgages are being broadly miscategorised as high-risk investments which has an adverse impact on suitability analysis and unfairly portrays the industry in a negative light. Syndicated mortgages represent a diverse array of loans which can encompass residential or commercial

construction first mortgages with conservative loans-to-value (below 75%) or poorly documented/disclosed “equity-like” development loans with aggressive loan-to-values (> 95%) and which rank in a subordinated position. Determining the risk characteristics of the asset class should be assessed on a per-loan basis and the use of all encompassing statements fail to capture important nuances.

We further note the CSA’s response in the comment letter reaches an erroneous conclusion as it states that 6.6% of the reported syndicated mortgages resulted in a loss. In fact, according to the comment letter, only 3.8% of the 2,000+ mortgages resulted in some loss of principal or interest. Such data supports the argument that an individual syndicated mortgage or a portfolio comprising of lower risk private mortgages can be considered as low to medium risk. Has anyone studied how investors fared in owning block-chain technology companies or bitcoin ownership? Bitcoin peaked at almost \$20,000 USD in December of 2017 and is now down almost 60%. None of VFSL mortgages has ever had this type of value change!

We maintain there is no pragmatic reason why mortgages should be treated differently than other securities and we request clarification as to why they are being segregated. For instance, issuers of bonds and debentures who collateralize their security with a mortgage result in a product substantially the same as a mortgage, nonetheless they are subject to different regulatory oversight (i.e. the permitted use of the private issuer exemption). Are there two types (qualified and non-qualified) of preferred shares offered in the capital markets? The answer is obviously no. There are different types of companies that issue preferred shares from large corporations like BCE to smaller junior oil and gas companies. Obviously the risk profile of each is quite different and not all investors are suitable for each type. The same concept could exist for syndicated mortgages and it is our job to ensure that investors risk tolerances are reflected in their choice of mortgages.

The atypical treatment of mortgages not only creates additional regulatory burden; it also impedes national harmonization.

We hope you will consider these comments and we are available to discuss these in depth with the CSA if they are so inclined.

Yours truly,

VECTOR FINANCIAL SERVICES LIMITED

Mitchell Oelbaum
Chief Operating Officer



Wednesday May 15, 2019

Alberta Securities Commission
Autorité des Marchés Financiers
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission New Brunswick
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities Newfoundland and Labrador
Office of the Superintendent of Securities Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

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Toronto, ON M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des Marchés Financiers
800, rue du Square-Victoria, 22^e
Étage
C.P. 246, tour de la Bourse
Montréal, QC H4Z 1G3
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: CSA Second Notice and Request for Comment on Proposed Amendments to National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations relating to Syndicated Mortgages and Proposed Changes to Companion Policy 45-106CP Prospectus Exemptions



Foremost Financial Corporation (“Foremost”) thanks you for the opportunity to provide our comments in connection with the Canadian Securities Administrators’ (“CSA”) Proposed Amendments to National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations relating to Syndicated Mortgages and Proposed Changes to Companion Policy 45-106CP Prospectus Exemptions (the “Proposal”) as set out below.

Foremost is an alternative mortgage lender funded by private investors who allocate capital to either a Mutual Fund Trust or via syndication. Foremost’s assets under management are in excess of \$200M.

General Comments on Proposed Amendments

Mortgage syndication is integral to the mortgage industry as it promotes investor protection by allowing investors to build customized and diversified mortgage portfolios that fit their specific needs, lending strategy and risk tolerance. Furthermore, some Mortgage Investment Entities (“MIE”) use mortgage syndication to mitigate risk, by reducing single loan or borrower exposure (loan concentration), and to increase liquidity in their pooled funds. It is paramount that regulations governing syndication take a pragmatic approach to balancing investor protection while allowing MIEs to manage their liquidity and concentration risks.

Foremost welcomes the Proposal and its intent to enhance investor protection and improve national regulatory harmonization. However, we note several concerns with the current proposal, including:

1. There are potential conflicts from having syndicated mortgages regulated by two independent regulators. These issues include increased regulatory costs, investor confusion and regulatory arbitrage.
2. The definition of Non-Qualified Syndicated Mortgage (“NQSM”) arbitrarily bisects the industry. Some lenders offer both Qualified Syndicated Mortgages (“QSM”) and NQSM and investors do not currently distinguish between the two. This means some lenders and investors will have two sets of regulations to adhere to for what they would both currently consider to be a homogeneous asset class.
3. The regulatory cost burden associated with filing a 45-106F1 / Report of Exempt Market Distribution (“REMD”) for each syndicated mortgage could be prohibitively high and has the potential to significantly reduce the variety and number of syndicated mortgages available to investors. It is possible the fee burden would become prohibitive and the only NQSM’s offered would be on larger high-risk projects.



4. There are potential unintended consequences for sophisticated (Permitted) investors as the current proposal could significantly impair their ability to build a diversified custom mortgage portfolio through syndication.
5. There are several potential unintended consequences for mortgage funds. Frequently mortgage funds will seek a second lender (often another fund) if a mortgage is too large. Under the proposal, this would be deemed a syndicated mortgage distribution. If the syndicated mortgage is a NQSM, then the mortgage funds, who have already filed a REMD and conducted a know your client and suitability analysis on their investors whose capital will ultimately be invested in the mortgage, will now have to duplicate the process for the syndicated mortgage transaction. This will be most acute for mortgage funds distributed through a non-captive EMD who they will be required to pay as well to facilitate the syndicated mortgage transaction. The scenario gets even more complicated for mortgage funds who deal only in QSM, and do not distribute syndicated mortgages to individual lenders/investors, as these mortgage funds will now be straddling two separate regulatory regimes which will likely result in additional administrative work and costs.

Advocating for a Single Regulator Regime

The goal of increasing investor protections for syndicated mortgages is best achieved through a single regulator overseeing all mortgage capital-raising activities regardless of the characteristics of the mortgage or if it is done via syndications or a fund structure. The benefits of a mono-regulatory regime are as follows:

- **Reduced regulatory inefficiencies and related costs.** A dual regulator regime will result in duplication of licensing, insurance costs, unimpaired working capital requirements and increased administration. We note both the Ontario Securities Commission (“OSC”) and the Financial Services Regulatory Authority of Ontario (“FSRA”) have made regulatory reduction part of their mandate, but we are concerned the benefits of their individual efforts will be undermined by the inefficiencies of operating within a dual regulatory eco-system.
- **Reduced administrative burden on investors.** Often investors participate in both fund products as well as mortgage syndication. As is the case in the current regulatory environment, a dual regulator regime has resulted in the duplication of KYC and suitability procedures for investors. It should be noted, the prescribed Financial Services Commission of Ontario (“FSCO”) investor forms are difficult to repurpose for KYC and suitability requirements under the OSC’s regime as the forms are designed for a syndicated product. The requirement to complete different forms for different types of syndicated mortgages has measurably contributed to investor confusion.



- **Avoids the potential for regulatory arbitrage.** If inequality exists regarding licensing proficiencies and on-going regulatory obligations, bad actors will exploit the regulator with reduced regulatory oversight. Moreover, if the requirements are comparable, then a question is raised as to the point of having two regulators.
- **Easier path to harmonization:** Foremost supports the CSA's goal of achieving harmonization but has concerns the current proposal fails to establish the most effective foundation to do so. On a macro level there are three regulatory bodies, CSA, OSC and FSRA, all regulating capital raising for mortgages in Ontario. Regulatory jurisdiction will become further fragmented by subdividing syndicated mortgages between the CSA/OSC and FSRA. The proposed model is complicated and creates difficulties for national adoption and results in the aforementioned concerns. Conversely, a single regulator, as is the case in Alberta, and one set of regulations, creates a streamlined structure better suited for administrative efficiency. We further note:
 - There is no pragmatic reason for regulatory variances amongst the provinces as the underlying product and investor protection requirements has no correlation to geography.
 - Segregating mortgages based on syndicated versus pooled fund offerings has historically led to regulatory arbitrage. Furthermore, it is an academic division as syndicated mortgage investors often diversify their mortgage investments effectively creating their own "fund" portfolios.
 - Instilling an adequate investor protection regime should be based on the proficiencies of the dealer/broker and not based on the underlying product. An ill-equipped dealer/broker will fail to safeguard the investor regardless of the simplicity or complexity of the offering. The focus should be on increasing dealer/broker proficiency requirements.

A Better Definition of Non-Qualified Syndicated Mortgage

In recent years there have been investments marketed as syndicated mortgages, where the risk of the investment was comparable to an equity investment in a large construction development deal. The risks associated with these investments were often improperly disclosed. Investors erroneously believed the loans were backed by real estate when in fact, with loans-to-value in excess of 100%, they were not.

We fully support the CSA's goal to draw a line between these investments and true syndicated mortgages. However, the current definition of QSM is too broad and arbitrary. There are numerous instances where a mortgage on a commercial property or for construction purposes is less risky than a residential mortgage. The security of a mortgage is dependent as much on



property type as it is on loan-to-value, geography and the borrower (history, credit rating and net worth etc.).

A better definition of QSM would capture mortgages that:

- Are negotiated or arranged through a mortgage brokerage;
- At the time the syndicated mortgage is arranged, the amount of debt it secures, together with all other debt secured by mortgages on the property that have priority over, or the same priority as, the syndicated mortgage, does not exceed 90% of the fair market value of the property relating to the mortgage, excluding any value that may be attributed to proposed or pending development of the property;
- Are limited to one debt obligation whose term is the same as the term of the syndicated mortgage; and
- Aside from reasonable administration fees, have a rate of interest payable under the mortgage that is equal to the rate of interest payable under the debt obligation; and
- Do not pay commissions to source the capital to fund the mortgage, where the result is less than 100% of lender/investor capital is used to fund the mortgage.

Furthermore, we believe revising the definition of NQSM would mitigate many of the other concerns we have identified with the current proposal, while allowing regulators to place their focus where it is most needed, the predatory selling of higher risk syndicated mortgages to non-accredited investors.

Reports of Exempt Market Distributions.

We request clarification as to why the timing of the filing of a report of exempt market distribution is outside the scope of this project. To many lenders, the REMD represents one of the larger financial and administrative costs associated with the proposed structure.

The argument that the cost of filing will be minor compared to the cost of mortgage registration fails to capture the realities of operating a syndicated portfolio. First, the costs associated with registering a mortgage are borne by the borrower. Second, mortgage registration is a one-time cost which allows it to be accounted for when determining the total loan amount. Conversely, a syndicated mortgage may require multiple REMD's and it is therefore difficult to predict the frequency as new investors are often added to a mortgage throughout the term of the loan. Furthermore, construction mortgages, which include multiple draws and have different investors participate at each stage, would trigger multiple reports. These issues get compounded in the context of managing a syndicated portfolio and are particularly burdensome for small-to-medium



lenders whose investors maintain small investment amounts diversified across multiple small loans with short terms.

To illustrate the implications of imposing a \$500 filing fee, consider a \$200,000 mortgage loan as an example. A lender would likely earn between \$2,000 to \$4,000 in fees on a loan of this size. Having to file exempt market reports and pay \$500 each time a syndicated investor participates could amount to consuming the entire revenue with regulatory filing fees.

In short, given the potential high frequency and large number of REMDs that would need to be filed for syndicated mortgages, the cost to borrowers/lenders and to regulators to review these filings is out of proportion with the benefit gained by the delivery of this information to the regulator.

In order to reduce the administrative burden and expense while still ensuring the CSA remains up to date, we recommend the following:

- Construction mortgages should require one filing at initial funding and subsequent advances should not trigger a REMD.
- Monthly filings reflecting all activities during the month;
- If the above is not adopted and the existing 10-day timeframes remain applicable, allow issuers to batch all syndicated activities that have occurred in a ten-day window into one report as this will limit the number of reports to 3 a month;
- Reduce the cost of the filing to account for the frequency; and
- In order to promote harmonization with jurisdictions like B.C. and Alberta, trades involving permitted investors should not trigger a REMD.

As an aside, we maintain that establishing who the issuer is remains unclear, even with the additional commentary provided. We request further clarification. It is imperative both issuers and regulators have a clear and shared understanding to avoid fragmented implementation and oversight.

Reducing Cost Burden and Unintended Consequences through a Carve-Out for Permitted Investors

As previously stated, these proposals have the potential to create unintended consequences for mortgage funds and sophisticated syndicated-mortgage investors. A solution which would provide mitigation would be to adopt a prospectus exemption for syndicated mortgages distributed to permitted investors. We do not believe permitted investors require the additional protection the current proposal offers and the changes will only be a detriment to them. Furthermore, this would assist in the CSA's harmonization goals as this is currently offered in B.C. and proposed in Alberta.



Risks of Syndicated Mortgages and Comparisons to Other Securities.

We maintain syndicated mortgages are being broadly miscategorized as high-risk investments which has an adverse impact on suitability analysis and unfairly portrays the industry in a negative light.

Syndicated mortgages represent a diverse array of loans which can encompass standard residential first mortgages with conservative loans-to-value and complicated commercial development with aggressive loans-to-value and in a subordinated position. Subsequently, determining the risk characteristics of the asset class should be assessed on a per-loan basis as all encompassing statements fail to capture important nuances.

We further note the CSA's response in the comment letter reaches an erroneous conclusion as it states that 6.6% of the reported syndicated mortgages resulted in a loss. In fact, according to the comment letter, only 3.8% of the 2,000+ mortgages resulted in some loss of principal or interest. Even assuming the higher figure of 6.6%, effectively, 93.4% of the total loans performed. Such data supports the argument that an individual syndicated mortgage or a portfolio comprising of lower risk private mortgages can be considered as low-medium risk.

We maintain there is no pragmatic reason why mortgages should be treated differently than other securities and we request clarification as to why they are being segregated. The conceptual nature of the segregation of mortgages is evident when examining the regulatory obligations of other securities. For instance, issuers of bonds and debentures who collateralize their security with a mortgage result in a product substantially the same as a mortgage, nonetheless they are subject to different regulatory oversight (i.e. the permitted use of the private issuer exemption). The atypical treatment of mortgages not only creates additional regulatory burden, it also impedes national harmonization.

Adopting the Existing Local British Columbia Exemptions.

We note Ontario is looking to adopt exemptions similar to BCI 45-501. As previously mentioned, doing so introduces unnecessary regulatory duplication and confusion when compared to having one regulator oversee all mortgage capital raising activities. In the event a single-regulator model is not adopted we request the adoption of the definition previously outlined of a QSM.

Furthermore, the definition should allow administrators to charge an administration fee. We note Ontario did not adopt the BC provision carving out administrators' fees as Ontario's definition of a QSM states that an investor needs to earn the face-rate of the loan. In doing so, mortgages not intended to be NQSM are being categorized as such, as a result of administrators' business model and not the underlying characteristics of the loan.



Closing Remarks

We note that in Ontario, the government has emphasized regulatory burden reduction as a priority and we are hopeful the CSA will take this into consideration when finalizing the amendments.

Foremost would like to thank the CSA for their efforts in drafting the proposal and for soliciting feedback from various stakeholders. We also welcome the opportunity to provide further input as required.

Sincerely,

Evan Cooperman
CEO, UDP, Foremost Financial Corporation

Ricky Dogon
CCO, Foremost Financial Corporation