

Firm Capital Corporation

Mortgage Banking • Real Estate Capital

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Monday, September 21, 2020

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

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

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

EXCLUSION OF MORTGAGE BROKERS AND AGENTS WHEN INVESTING IN NQSMI'S:

The draft proposal has only Permitted Clients as being permitted to invest in a non-qualified syndicated mortgage investment ("NQSMI").

The OSC has an exemption for issuer employees and employees of an EMD to invest in a transaction without falling into specific investor categories that meet certain exemptions.

We highly recommend that any registered Mortgage Broker or Mortgage Agent, shall be permitted to co-invest in a NQSMI without the need to do so through an EMD. If the Mortgage Broker and or Mortgage Agent is syndicating the mortgage, they should have the right to co-invest and should not need any investor protection by FSRA.

It is actually counter-productive to have to protect the interest of a Mortgage Broker or Mortgage Agent, as it should be accepted that they invest because they understand the business they are in.

ADDING ACCREDITED INVESTOR TO REMAIN WITH FSRA:

Only investors who are Permitted Clients are permitted to participate in a NQSMI whereby the regulatory supervision remains with FSRA. We strongly suggest that the permitted investors be expanded to include;

1. Accredited Investors, whereby no commission is being paid to secure such investors;
2. Employees who are licensed as Mortgage Brokers and Mortgage Agents;
3. Close friends, family and business partners of the Mortgage Brokerage where such investors are not solicited from the general public.

The above noted investors are sophisticated enough to understand a NQSMI. This will avoid the need for dual regulatory supervision.

The OSC should have regulatory oversight for NQSMI when the investor is a true retail consumer, categorized as;

1. Eligible investor,
2. Non-Eligible Investor

This would be consistent with the OSC regulating mortgage entities, such as Mortgage Trust, Limited Partnerships and Mortgage Investment Corporations who issue securities (Shares, LP Units, or Trust Units) to the public.

RENEWAL OF EXISTING (“LEGACY”) NQSMI’S:

We are recommending that a renewal of a NQSMI should not require any further reporting to FSRA as long as the renewal has no new investors replacing existing investors and/or new investors being added to current prior syndication. The Mortgage Servicing Agreement entered into with the investors and the Mortgage Administrator should outline what is required at the time of renewal, such as can the administrator renew with or without investor consent.

APPRAISAL REPORT REQUIREMENTS FOR NQSMI:

It is proposed that every transaction have an appraisal that is not older than 12 months. NQSMI can be extremely complicated. An appraisal is not necessarily the driving decision to lend money. In the case of a development, it might be a Cost Consultants Report that prepares a feasibility study that works on a residual valuation basis that determines the value of a parcel of land, or the cost to complete that determines the end value. All other Canadian regulated lending entities have the choice of requiring an appraisal or not. We propose that if no appraisal is obtained, there be a specific acknowledgement by the investor that no appraisal has been obtained, and the Mortgage Brokerage who is syndicating the mortgage explain the underwriting rationale for the loan to values.

EMD REGISTRATION EXEMPTION RELIEF:

We suggest the OSC grant education exemption relief and EMD registration restrictions tied to real estate credit and equity investments to any mortgage brokerage who has been in the business for 20 years or longer, who has an Administration License for 20 years or longer, and who has never had investor complaints filed against them with FSRA (or the predecessor regulator).

It is unreasonable to subject Mortgage Brokerages who have been in the business for over 20 years to have to re-educate themselves in an industry that they have fully lived in for 20 plus years. Only new employees who oversee mortgage syndication should be required to take the Exempt Market Proficiency Course. Existing Brokerages, as outlined herein, should have a restricted EMD license that restricts syndication for only real estate debt and equity.

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, administers, and services mortgages 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 request outlined in this letter.

FIRM CAPITAL CORPORATION

PER:



Eli Dadouch
President & CEO
ED/ns

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