

# OSC Notice of Amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* relating to Syndicated Mortgages

December 7, 2020

## Introduction

The Ontario Securities Commission (the **OSC** or **we**) is making amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* (**OSC Rule 45-501**) relating to syndicated mortgages (the **Amendments**).

The Amendments were originally published for comment on March 15, 2019 (the **2019 Proposal**) and revised proposals were published for a second comment period on August 6, 2020 (the **2020 Proposal**).

In the same notice as the 2020 Proposal, the Canadian Securities Administrators (the **CSA**) published final amendments and changes (collectively, the **CSA 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
- Companion Policy 45-106CP *Prospectus Exemptions* (**45-106CP**) and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

The OSC made the CSA Amendments on February 4, 2020 and the Amendments on November 3, 2020. The notice for the CSA Amendments indicated that we would deliver the CSA Amendments to the Minister of Finance at the same time as the Amendments.

The Amendments, the CSA Amendments and other required materials were delivered to the Minister of Finance today. The Minister may approve or reject the Amendments and the CSA Amendments or return them for further consideration. If the Minister approves the Amendments and the CSA Amendments or does not take any further action by February 5, 2021, the Amendments and the CSA Amendments will come into force on the later of March 1, 2021 and the date that the amendments to the *Securities Act* (Ontario) (the **Act**) that repeal subsections 35(4) and 73.2(3) are proclaimed in force.

## Substance and Purpose

The purpose of the Amendments and the CSA Amendments is to introduce additional investor protections related to the distribution of syndicated mortgages and to increase harmonization regarding the regulatory framework for syndicated mortgages across all CSA jurisdictions. In Ontario, this will result in the transfer of primary oversight of syndicated mortgages other than qualified syndicated mortgages and syndicated mortgages distributed to permitted clients from the Financial Services Regulatory Authority of Ontario (**FSRA**) to the OSC.

## **Summary of Changes to the 2020 Proposal**

In response to comments received on the 2019 Proposal, the 2020 Proposal included proposed prospectus and registration exemptions for sales of syndicated mortgages to permitted clients and refined the definition of “qualified syndicated mortgage”.

We received 9 comment letters from 8 commenters in response to the 2020 Proposal. A summary of the comments and our responses are included in Annex A. We did not make any changes to the 2020 Proposal as a result of the comments received.

## **Impact on Investors**

With respect to the exemptions for qualified syndicated mortgages or syndicated mortgages sold to permitted clients, there will be no change from the current regime as a result of the Amendments. FRSA will continue to exercise primary oversight of the distribution of qualified syndicated mortgages and syndicated mortgage transactions that involve only institutional or high-net-worth investors that fall within the definition of a permitted client. Given this alternative regulatory regime, we believe that it is appropriate for them to continue to be exempt from the prospectus and dealer registration requirements under securities legislation.

## **Anticipated Costs and Benefits of the Amendments**

The anticipated costs and benefits of the Amendments are expected to be substantially the same as described in the 2020 Proposal.

## **Alternatives Considered**

We considered adopting the 2020 Proposal in the original form as well as the alternatives suggested by the commenters as detailed in Annex A.

## **Unpublished Materials**

In adopting the Amendments, we have not relied on any significant unpublished study, report or other written materials.

## **Authority for Amendments**

The rule-making authority for the Amendments is as follows:

- prospectus exemption: paragraph 20 of subsection 143(1) of the Act.
- specifying that a trade in securities acquired under an exemption is a distribution: paragraph 48 of subsection 143(1) of the Act.
- registration exemption: paragraph 8 of subsection 143(1) of the Act.

## **Annexes**

Annex A – Summary of Comments and Responses

Annex B – Amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*

## **Questions**

Please refer your questions to any of the following:

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**ANNEX A**  
**SUMMARY OF COMMENTS AND RESPONSES**

<b>Commenters</b>
New Haven Mortgage Corporation/Integrated-Equities Inc. (Arjun Sharaf)
Cosman Mortgage Capital Corporation (Jason Cosman)
Investor Advisory Panel (Neil Gross)
Vector Financial Services Limited (Mitchell Oelbaum)
AUM Law (Kevin Cohen)
Foremost Financial Corporation (Evan Cooperman and Ricky Dogon)
The Canadian Advocacy Council for Canadian CFA Institute Societies
Firm Capital Corporation (Eli Dadouch)

<b>General</b>	
1.	<p><b>Summarized Comment:</b> Several commenters expressed their general support for the proposed changes to the regulation of syndication mortgage investment activity in Ontario.</p> <p><b>Response:</b> We thank the commenters for their support.</p>
2.	<p><b>Summarized Comment:</b> One commenter expressed their preference for one regulator, but in the absence of that outcome agreed and appreciated that FSRA and the OSC had taken a reasonable approach as it relates to regulatory burden reduction.</p> <p><b>Response:</b> We acknowledge the comment.</p>
3.	<p><b>Summarized Comment:</b> One commenter noted that they would generally prefer the exemptions were the same in each province and territory but did not object to the expansion of those exemptions in Ontario. The commenter encouraged the CSA to continue to seek harmonization of prospectus and registration exemptions, whenever possible, and reduce duplicative regulation to help ease the compliance burden on issuers and registrants and improve understanding of the syndicated mortgage amongst investors and other market participants.</p> <p><b>Response:</b> We acknowledge the importance of harmonization among the CSA.</p>
4.	<p><b>Summarized Comment:</b> One commenter expressed concern that threshold dangers posed by syndicated mortgages for retail investors were not being addressed in the regulatory measures currently under consideration. The commenter noted that wealth is not a valid indicator of investment understanding or sophistication, and perpetuating this</p>

	<p>simplistic and faulty concept is no longer appropriate in an era where regulatory policy is meant to be evidence based.</p> <p><b>Response:</b> The CSA Amendments are primarily intended to enhance investor protection for riskier types of syndicated mortgages marketed to retail investors through amendments to the offering memorandum prospectus exemption (the <b>OM Exemption</b>). The amendments to the OM Exemption are intended to enhance the ability of investors to understand the risks related to investing in syndicated mortgages and the extent to which the security interest in the property subject to the syndicated mortgage provides meaningful protection in the event of a default under the syndicated mortgage. The additional disclosure under the OM Exemption is also intended to assist registrants in discharging their obligations to their clients.</p> <p>In Ontario, where syndicated mortgages were previously exempt from the dealer registration requirement, investors will also benefit from the protections associated with the involvement of a registrant in the distribution.</p> <p>We also note that the permitted client exemptions are premised on the fact that FSRA will retain oversight of the syndicated mortgages. These exemptions specifically require the distribution or trade to be by a person or company registered or licensed under the <i>Mortgage Brokerages, Lenders and Administrators Act, 2006 (MBLAA)</i> and not a person or company relying upon an exemption from such registration or licensing.</p>
5.	<p><b>Summarized Comment:</b> One commenter urged the OSC and FSRA to make sure the dividing line between their responsibilities for overseeing syndicated mortgages is made, and kept, absolutely clear to not expose investors to potential harm from gaps in regulatory coverage as a result of oversight being split between two agencies.</p> <p><b>Response:</b> We acknowledge the importance of eliminating regulatory gaps. We expect that the definition of “qualified syndicated mortgage” under MBLAA will be revised to be substantially similar to that under OSC Rule 45-501 to create a clear dividing line.</p>
6.	<p><b>Summarized Comment:</b> One commenter suggested eliminating (or grandfathering) alternative prospectus exemptions for retail investors on loans that originated prior to March 1, 2021 but which have future advances after that date.</p> <p><b>Response:</b> Whether future advances would be subject to the prospectus or registration requirements under securities law would depend on whether such future advances are themselves additional distributions or trades. For example, if an investor is required to make such future advances as a condition of the initial distribution, the future advances may not be additional distributions or trades. Alternatively, the future advance may be in connection with a distribution in respect of which another prospectus exemption is available, such as the exemption for conversions, exchanges and exercises in subsection 2.42(1) of NI 45-106. However, this will depend on the specific facts of the initial distribution.</p>

7.	<p><b>Summarized Comment:</b> One commenter was still unclear about who the issuer of a syndicated mortgage would be.</p> <p><b>Response:</b> We recognize that there may be a variety of industry practices in terms of how syndicated mortgages are structured and offered to investors.</p> <p>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.</p> <p>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.</p> <p>The determination of the identity of the issuer, or issuers, of a syndicated mortgage will depend on the facts and circumstances of the transaction. If a market participant is having difficulty after considering the guidance in section 3.8 of 45-106CP, we recommend that they consult with OSC staff.</p>
<p><b><i>Qualified Syndicated Mortgage Exemption</i></b></p>	
8.	<p><b>Summarized Comment:</b> One commenter submitted that the definition of qualified syndicated mortgage should be the same throughout the CSA rules as well as in the FSRA rules. Another commenter recommended that the OSC and FRSA use the same definition of “qualified syndicated mortgage” and was of the view that the OSC definition was preferable.</p> <p><b>Response:</b> The definitions are substantially harmonized across the CSA. We expect that the definition under MBLAA will be revised to be substantially similar to that in OSC Rule 45-501.</p>
9.	<p><b>Summarized Comment:</b> One commenter submitted that a loan-to-value threshold of 90% is too high as the fair market value of a property can be volatile and depends on a variety of factors and the total loss in value of the property as a result of these factors can often amount to greater than 10%, which could lead to a loss in principal for the lender, compounded further if the lender is subordinated to others. The commenter suggested lowering the loan-to-value threshold to 75%, which is the typical maximum level used by conventional (uninsured) mortgage lenders. The commenter also noted that Quebec, Alberta and New Brunswick had proposed loan-to-value thresholds of 80% in their proposed local qualified syndicated mortgage exemptions, which would still be 5% off what the commenter believed to be the mortgage lender standard.</p>

	<p><b>Response:</b> The loan-to-value restriction in the definition of “qualified syndicated mortgage” is not meant to indicate that qualified syndicated mortgages are safe investments but to address whether it is secured by property and not a mezzanine syndicated mortgage investment. We acknowledge that a qualified syndicated mortgage with loan-to-value of 90% may be riskier than one with a loan-to-value of 75% but this does not affect that both syndicated mortgages would be more like a conventional mortgage than an unsecured, equity-like investment.</p>
10.	<p><b>Summarized Comment:</b> One commenter suggested that project size should and/or the number of partners involved in the transaction be factors when determining whether a syndicated mortgage is subject to regulation by the OSC or by FSRA. The commenter supported the idea of stricter regulation around the industry but was of the view that people with less capital should be afforded an opportunity without the burden of dual regulation to deal in smaller projects.</p> <p><b>Response:</b> We have not made the suggested changes. Project size and the number of investors are not generally determinative as to whether investors require the protections provided by a registered firm or a prospectus. We also note that it would be easy for parties to structure investments to avoid limits on project size or number of investors so developing meaningful exemptions of this nature would introduce unnecessary complexity that would create a regulatory burden.</p>
<p><b><i>Permitted Client Exemption</i></b></p>	
11.	<p><b>Summarized Comment:</b> One commenter recommended adding mortgage brokers and mortgage brokerages acting on their own behalf to the definition of permitted client. The commenter noted that persons or companies registered under securities legislation of a jurisdiction of Canada as an adviser or dealer are considered to be permitted clients and submitted that the same rationale would apply for mortgage brokers in respect of syndicated mortgages in that they should be sophisticated enough to make their own decision on investment and there is no effect on consumer protection when they want to invest themselves in opportunities. Another commenter recommended the definition of permitted client be expanded to include:</p> <ul style="list-style-type: none"><li>• a mortgage brokerage, its officers and directors, and their associated and related companies and family;</li><li>• mortgage brokers and mortgage agents registered with the brokerage and their associated and related companies and family; and</li><li>• any entity, including a limited partnership, mutual fund trust or corporation whose officer and director is the same officer and director of the mortgage brokerage.</li></ul> <p><b>Response:</b> Since non-qualified syndicated mortgages are more similar to equity securities than conventional mortgages, we believe the current categories of permitted clients are appropriate.</p>

12.	<p><b>Summarized Comment:</b> One commenter asked for clarification about whether a firm could choose to distribute syndicated mortgage to permitted clients under the OSC's regime.</p> <p><b>Response:</b> An issuer or dealer of syndicated mortgages does not need to rely upon the prospectus and dealer registration exemptions for permitted clients in OSC Rule 45-501. If an issuer chooses not to rely upon the prospectus exemption for permitted clients, it would likely rely upon the accredited investor prospectus exemption. If a person or company chooses not to rely upon the dealer registration exemption for permitted clients, it would need to be registered as a dealer or rely upon another available exemption, such as using a third-party registered dealer. There may be requirements under MBLAA that would also apply.</p>
<b>Accredited Investors</b>	
13.	<p><b>Summarized Comment:</b> One commenter strongly suggested that the OSC should only have regulatory oversight for non-qualified syndicated mortgages whether the investor is a true retail consumer and FSRA should retain oversight of distributions to:</p> <ul style="list-style-type: none"><li>• accredited investors, whereby no commission is being paid to secure such investors;</li><li>• employees who are licensed as mortgage brokers and mortgage agents; and</li><li>• close friends, family and business partners of the mortgage brokerage where such investors are not solicited from the general public.</li></ul> <p>The commenter was of the view that this would be consistent with the OSC regulating mortgage entities, such as mortgage trusts, limited partnerships and mortgage investment corporations who issue securities (shares, LP units, or trust units) to the public.</p> <p>Another commenter agreed that accredited investors should be carved-out from OSC oversight as their investors were 95% permitted clients or accredited investors and they would be required to send different documentation to different lenders in the same loan and keep track of who gets what.</p> <p><b>Response:</b> We have not expanded the exemption as suggested by the commenter. We also note that the commenter was incorrect to suggest that exempting those classes of persons would be consistent with how mortgage trusts, limited partnerships and mortgage investment corporations are regulated. Even if such entities limit their distributions to the classes of persons described by the commenter, they are still subject to the prospectus and dealer registration requirements under securities legislation. We also would do not agree that some accredited investors are not retail investors.</p> <p>The exemptions in OSC Rule 45-501 are intended for persons and companies that only deal with permitted clients. If persons or companies deal with both permitted clients and non-permitted clients, it can rely on the exemptions in OSC Rule 45-501 in respect of the permitted clients but would need to rely upon other available prospectus and registration exemptions for the non-permitted clients.</p>

14.	<p><b>Summarized Comment:</b> One commenter asked that we consider additional steps to further reduce the regulatory burden to the extent that syndications cover accredited investors and permitted clients but not retail investors.</p> <p><b>Response:</b> We have not made the suggested change. We do not agree that some accredited investors are not retail investors. We are always considering steps to reduce regulatory burden as part of our policy projects and general initiatives to reduce regulatory burden.</p>
<b><i>Audited Financial Statements</i></b>	
15.	<p><b>Summarized Comment:</b> Two commenters submitted that the current requirement for audited financial statements for a borrower in a non-qualified syndicated mortgage investment is burdensome, not practical, and should be removed.</p> <p><b>Response:</b> Under securities law, audited financial statements of a borrower would only be required if the syndicated mortgage is distributed under the OM Exemption. This requirement applies to all issuers that rely on this exemption and since the exemption is targeted to retail investors we think this requirement is appropriate.</p>
<b><i>Appraisal</i></b>	
16.	<p><b>Summarized Comment:</b> One commenter was of the view that a 6-month or 12-month updated appraisal requirement would not be practical on construction projects. The commenter noted that they typically obtain “as-is” and “as-complete” appraisals at the start of a project but to obtain an appraisal on a project in progress is costly and it is unlikely the borrower or investor would be willing to bear these costs. Furthermore, it is extraordinarily difficult to value a project during construction because the universe of potential buyers is reduced. The commenter requires appraisals on all properties prior to approving a loan, which they consider to be reasonable and responsible and no prudent lender should lend without an appraisal from an accredited provider, but noted it does not seem practicable to require further appraisals on construction projects in progress.</p> <p>Another commenter raised similar concerns regarding appraisals for construction projects and recommended that the requirement revert to the initially proposed 12-month dating.</p> <p>A third commenter suggested that there was a proposal that every transaction have an appraisal that is not older than 12 months.</p> <p><b>Response:</b> The appraisal requirement is only required when an issuer distributes a syndicated mortgage under the OM Exemption. We reduced the requirement for the date of the appraisal to be within 12 months preceding the date the appraisal is delivered to the purchaser to 6 months as a result of comments received that 12 months was too long. We would not expect that syndicated mortgages in respect of construction projects will</p>

	be distributed to retail investors under the OM Exemption so the concerns expressed should not materialize.
<b><i>Disclosure Documents and Marketing Materials</i></b>	
17.	<p><b>Summarized Comment:</b> One commenter submitted that regulators should be mindful of the fact that syndicated mortgages can be misrepresented, and mistakenly viewed, as being safe and secure when they are aggressively marketed to the public as “secured” investments. The commenter suggested this can be mitigated only by prohibiting representations and statements that imply a syndicated mortgage is a safe or secure investment. In addition, marketing materials and presentations should be prohibited from containing statements that the investment is “mortgage-backed” or “secured by a mortgage registered on title” unless the materials and presentations immediately state, with equal prominence, that: (a) the mortgage does not make the investment secure or guarantee repayment because the value of the land may be insufficient to cover all debts, including those that may rank ahead of the syndicated mortgage lenders, and (b) a syndicated mortgage therefore is an inherently risky investment in which investors may lose some or all of the money they invest.</p> <p><b>Response:</b> We remind issuers that while some prospectus exemptions do not prescribe disclosure to be given to prospective investors, if an issuer chooses to provide information, including presentations and marketing materials, that would fall within the broad definition of “offering memorandum” in subsection 1(1) of the <i>Securities Act</i> (Ontario) (the <b>Act</b>) then the requirements of Part 5 of OSC Rule 45-501 and liability for misrepresentations under section 130.1 of the Act may apply.</p> <p>In addition, Ontario securities law already contains a number of prohibitions on persons and companies making statements, in connection with a sale of securities, that are untrue or omit information necessary to prevent the statement from being false or misleading in the circumstances in which they are made. See, for example, subsection 44(2) of the Act.</p> <p>Finally, we note that, as a result of the transition of regulatory oversight over non-qualifying syndicated mortgages to the OSC, the sale of such securities to retail investors will generally need to be made through a registered dealer. As the Commission has noted on a number of occasions, the registration requirement is a cornerstone of the securities regulatory framework. It is an important gate-keeping mechanism that protects investors and the capital markets by imposing obligations of proficiency, integrity and solvency on those who seek to be engaged in the business of trading in securities with or on behalf of the public. See <a href="#">Re Money Gate Mortgage Investment Corporation et al.</a>, dated December 17, 2019 at 140.</p> <p>Registered dealers are subject to important obligations under Ontario securities law, including obligations in relation to dealing fairly, honestly and in good faith with clients, know-your-client (<b>KYC</b>), know-your-product (<b>KYP</b>) and suitability obligations, conflicts of interest and client relationship disclosure. In accordance with these obligations, registered dealers are generally expected to review marketing materials used</p>

	<p>to distribute securities to ensure the materials are fair, balanced and not misleading. Registered firms are encouraged to review the guidance in CSA Staff Notice 31-325 <a href="#">Marketing Practices of Portfolio Managers</a> and the guidance on “Unsubstantiated claims, unbalanced or misleading information and inadequate disclosure in marketing materials” at pages 24-26 of ASC Staff Notice 33-705 <a href="#">Exempt Market Dealer Sweep</a>.</p>
<p><b>Reports of Exempt Distribution</b></p>	
<p>18.</p>	<p><b>Summarized Comment:</b> One commenter was of the view that reports of exempt distribution should be required for distributions of qualified syndicated mortgages or distributions to permitted clients unless FSRA in fact required and collected equivalent reports of such trades.</p> <p><b>Response:</b> Regulatory oversight by FSRA is an important feature of the prospectus and registration exemptions for both qualified syndicated mortgages and permitted clients. Both exemptions require the distribution or trade to be by a person or company registered or licensed under MBLAA and not a person or company relying upon an exemption from such registration or licensing. Reporting requirements will be divided between the OSC and FSRA depending upon which will have primary oversight.</p>
<p>19.</p>	<p><b>Summarized Comment:</b> One commenter suggested eliminating the requirement for filing multiple reports of exempt distribution on loans with multiple advances over the course of the loan (<i>i.e.</i>, construction).</p> <p><b>Response:</b> Whether subsequent advances would require another report of exempt distribution to be filed would depend on whether such subsequent advances are themselves additional distributions. For example, if an investor is required to make such subsequent advances as a condition of the initial distribution, the subsequent advances may not be additional distributions. Alternatively, the subsequent advance may be in connection with a distribution in respect of which another prospectus exemption is available that does not require a report of exempt distribution to be filed, such as the exemption for conversions, exchanges and exercises in subsection 2.42(1) of NI 45-106. However, this will depend on the specific facts of the initial distribution.</p>
<p>20.</p>	<p><b>Summarized Comment:</b> Several commenters encouraged a reduction in the frequency of filing reports of exempt distribution, the costs of filings or, ideally, both. One commenter noted that based on their current syndication volumes, they estimate the cost of filing reports of exempt distribution would increase by \$10,000 to \$20,000 per year. Another commenter estimated the incremental costs of being required to file reports of exempt distribution as \$10,000 to \$12,000 per year.</p> <p><b>Response:</b> As part of our burden reduction efforts, we are looking at our activity fees including the fee for reports of exempt distribution.</p>
<p>21.</p>	<p><b>Summarized Comment:</b> One commenter asked for clarification about whether a lender can file a report of exempt distribution that covers the distributions of multiple non-qualified syndicated mortgages made during a 10-day period.</p>

	<p><b>Response:</b> If an issuer has distributed multiple syndicated mortgages during a 10-day period, the issuer may file one report of exempt distribution for those distributions.</p>
<b>Registered Dealers</b>	
22.	<p><b>Summarized Comment:</b> One commenter welcomed the migration to a principles-based regime that does not require prescribed forms for accredited investors.</p> <p><b>Response:</b> We thank the commenter for their submission. We also remind firms that they have an obligation to collect KYC information under section 13.2 of NI 31-103 and assess a client’s suitability under section 13.3 of NI 31-103. These are among the most fundamental obligations owed by registrants to their clients. The OSC does not require prescribed forms, but firms may not meet this obligation by conducting a “check-the-box” exercise. We expect registrants to perform a meaningful suitability assessment and to appropriately document that assessment.</p>
23.	<p><b>Summarized Comment:</b> One commenter suggested that the OSC grant proficiency relief and EMD registration restrictions tied to real credit and equity investments to any mortgage brokerage who has been in the business for 20 years or longer, who has an administration licence for 20 years or longer, and who has never had investor complaints filed against them with FSRA (or the predecessor regulator).</p> <p><b>Response:</b> In limited circumstances, the OSC may consider granting relief from the proficiency requirements to be registered as a dealing representative of an EMD. These exemptive relief applications are reviewed on a case-by-case basis and will depend on the circumstances of the individual applying. The OSC may also impose terms and conditions on the individual or the registered firm sponsoring the individual in order to limit their specific activities.</p>
24.	<p><b>Summarized Comment:</b> One commenter asked for clarification about whether an OSC registrant engaging in the brokerage of mortgages would be subject to capital market participation fees on mortgage brokerage revenue (i.e., fees paid by borrowers to mortgage brokers).</p> <p><b>Response:</b> OSC staff have previously published guidance in relation to the calculation of participation fees paid by registrants in connection with mortgage brokerage activities in OSC Staff Notice 33-749 <a href="#"><u>Compliance and Registrant Regulation – Annual Summary Report for Dealers, Advisers and Investment Fund Managers</u></a> .</p> <p>As explained in that guidance, a registered firm is required to calculate and remit, by December 31 of each year, the participation fee shown in Appendix B to OSC Rule 13-502 <i>Fees</i> (the <b>Fees Rule</b>) opposite the firm’s “specified Ontario revenues” for the previous financial year of the firm.</p>

	<p>Although a registered firm is permitted to deduct certain revenues not attributable to “capital markets activities”, as defined in the Fees Rule, firms are generally not permitted to deduct fees that come within the definition of “capital markets activities”, such as origination fees and renewal fees paid to a registered firm in connection with mortgage financings. The term “capital markets activities”, as defined in the Fees Rule, means “activities for which registration is required, or activities for which an exemption from registration is required under the Act...”.</p> <p>OSC staff are continuing to review various matters relating to the appropriate calculation of participation and activity fees under the Fees Rule in connection with the OSC’s regulatory burden initiative. If a registrant firm identifies a situation whereby the imposition of a participation fee or activity fee would be duplicative or unduly burdensome, the firm is encouraged to contact staff.</p>
25.	<p><b>Summarized Comment:</b> One commenter noted that individuals who participate in sourcing both the opportunity and investors for a non-qualified syndicated mortgages as part of their business activities can currently receive income relating to all such efforts into a corporation that they own but exemptive relief or tailored terms and conditions would be required for this to be possible for an OSC registrant. The commenter recommended that OSC Staff provide comfort to the industry that if the right safeguards are in place, non-registered entities can receive payments that will be reported as business income.</p> <p><b>Response:</b> An individual who “participates in sourcing both the opportunity and investors for non-qualified syndicated mortgages as part of their business activities” will generally be considered to be “in the business of trading securities” and therefore required to register as a dealer (or a representative of a dealer) or rely on an exemption from registration to conduct such activities.</p> <p>OSC staff generally take the view that the use of a directed commission structure (<i>i.e.</i>, directing that an issuer or intermediary pay commissions to an unregistered holding company owned by the individual) may breach the requirements of Ontario securities law, particularly where payments are being made to an unregistered entity for the ostensible performance of registerable services by the unregistered entity. OSC staff take the view that directed commission arrangements cannot be used to shield assets from clients in the case of a client complaint or regulatory action and that regulators have full access to the books and records for any entity that receives directed commissions.</p> <p>These issues are not unique to the distribution of syndicated mortgages and are therefore outside the scope of this initiative.</p>
26.	<p><b>Summarized Comment:</b> One commenter noted that the OSC has imposed terms and conditions on third-party EMDs so that some individuals originating non-qualified syndicated mortgages cannot become registered as dealing representatives on a third-party platform. These terms and conditions will require these individuals/small businesses either to: (1) pay additional fees to a third-party EMD to perform additional</p>

functions, or (2) dedicate or hire an additional resource internally to take this on this responsibility. The commenter was of the view that such terms and conditions no longer appear to be warranted and asked that OSC Staff provide comfort that a principal of a non-qualified syndicated mortgaged could be a dealing representative on a third-party platform if a proper compliance regime is in place (including clear insight into the flow of all funds associated with a transaction).

**Response:** The commenter appears to be referencing a business model that is not unique to syndicated mortgages and that is described in [\*Re Waverley Corporate Financial Services Ltd.\*](#), dated March 1, 2017. OSC staff continue to be guided by the principles articulated by the Commission in that decision. If the commenter has any questions, we encourage the commenter to reach out to staff to discuss.

**ANNEX B**  
**AMENDMENTS TO**  
**ONTARIO SECURITIES COMMISSION RULE 45-501 ONTARIO PROSPECTUS AND**  
**REGISTRATION EXEMPTIONS**

**1. *Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions is amended by this Instrument.***

**2. *Section 1.1 is amended by adding the following definitions:***

“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 all of the following:
  - (i) it is used primarily for residential purposes;
  - (ii) it includes no more than four units;
  - (iii) 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, assuming in all cases that the maximum amounts of any such mortgages are fully drawn, does not exceed 90 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 cannot be subordinated to future financing without the consent of each lender;
- (e) there is no existing agreement that requires any lender of the syndicated mortgage to consent to future subordination of the syndicated mortgage;
- (f) no person has the ability to consent to future subordination of the syndicated mortgage on behalf of the lenders of the syndicated mortgage without obtaining the consent of each lender;

“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. *Part 2 is amended by adding the following section:***

**2.10 Mortgages –**

- (1) The prospectus requirement does not apply to a distribution of
  - (a) a mortgage, other than a syndicated mortgage, on real property in a jurisdiction of Canada,
  - (b) a qualified syndicated mortgage on real property in a jurisdiction of Canada, or

- (c) a syndicated mortgage on a real property in a jurisdiction of Canada to a permitted client,

by a person that is registered or licensed under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*.

- (2) The first trade in a security acquired under paragraph (1)(c) is a distribution..

**4. Part 3 is amended by adding the following section:**

**3.5** Mortgages – The dealer registration requirement does not apply in respect to a trade in

- (a) a mortgage, other than a syndicated mortgage, on real property in a jurisdiction of Canada,
- (b) a qualified syndicated mortgage on real property in a jurisdiction of Canada, or
- (c) a syndicated mortgage on a real property in a jurisdiction of Canada with a permitted client,

by a person that is registered or licensed under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*..

**5. This Instrument comes into force on the later of the following:**

- (a) March 1, 2021; and
- (b) the day on which sections 4 and 5 of Schedule 37 to Bill 177, *Stronger, Fairer Ontario Act (Budget Measures), 2017* are proclaimed into force.