Private Mortgage Lenders Forum

Private Mortgage Lenders Forum
Suite 200, 1940 – 9 Ave SW
Calgary, AB T2G0V2
P) 403.685.9652 / 1.888.452.2652
F) 403.685.9682
www.amba.ca

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Canadian Securities Administrators:

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

c/o: The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, ON M5H 3S8

and: Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246 tour de la Bourse
Montréal (Québec) H4Z 1G3

By email only to: comments@osc.gov.on.ca and consultation-en-cours@lautorite.qc.ca

Dear CSA:

<u>Re: CSA Notice and Request for Comment Proposed Amendments to National Insturment 81-102 Mutual Funds, Companion Policy 81-102CP Mutual Funds and Related Consequential Amendments – and – Other Matters Concerning National Instrument 81-104 Commodity Pools and Securities Lending, Repurchases and Revers Repurchases by Investment Funds</u>

The Private Mortgage Lenders Forum is an industry initiative that was formalized on October 15, 2012 by a group of committed industry members with a common vision of developing an industry association that was committed to professional standards, compliance, and the health, growth and development of an independent and committed voice for the industry.

Mandate:

The Private Mortgage Lenders Forum (PMLF) will provide leadership in the areas of compliance, standards of excellence, information and networking. In addition the mandate of the Forum will be to promote ethical, professional and consistent industry practices that will foster a healthy and sustainable industry.

Membership:

Today, the Private Mortgage Lenders Forum membership represents 18 separate mortgage investment entities (MIE) located in the provinces of Alberta and British Columbia. The members have more than $1.04 billion of mortgages under administration.

We are particularly concerned with two of the proposals in the request for comment. Firstly, the section on investments in mortgages and secondly, the section titled Custodianship Requirements which would extend custodianship requirements for non-redeemable investment funds to all non-redeemable funds, rather than only to those that file a prospectus under NI 41-101.

A Mortgage Investment Corporation (MIC) is a company which operates under restrictions in the Income Tax Act which, among other things, limit its activities primarily to investing in mortgages in Canada. This corporate structure was created by an Act of Parliament in 1972 to attract small investors to the real estate market and to provide a pooling of funds to allow for diversification of risk and professional management of investments. As an industry, the MICs which operate in Canada provide a valuable alternative to the conventional banks and trust companies by serving borrowers who otherwise may not be able to access credit, by creating unique and creative financing solutions and by creating additional competition in the marketplace, thus benefitting all borrowers.

Generally MICs engage in lending outside of the lines of business and guidelines normally favoured by banks. Different MICs often specialize in particular types of mortgages such as debt consolidation, second mortgages, construction mortgages, commercial mortgages or a variety of other such products. Rather than competing with the "banks" MICs provide an alternative source for more customized financing solutions, accompanied by a more in-depth underwriting and "hands-on" administrative/management process to mitigate what for the banks could entail greater risk.

Under securities legislation of various Canadian jurisdictions, and depending on how it is structured, a MIC may be considered to be a non-redeemable investment fund. Currently there are a number of publicly traded MICs which are also considered to be non-redeemable investment funds. Restricting the mortgage investments that these MICs can hold to insured mortgages may preclude their ability to pursue their target markets, will restrict competition in the marketplace, will restrict certain borrower's access to credit and could result in some types of mortgage loans disappearing from the marketplace. MIC's as a strategy generally pursue lending opportunities outside of those available from conventional lenders, many of which, like construction or commercial mortgages, may in fact not be insurable at all.

Currently, mortgage regulations in Canada require mortgage insurance for loans which exceed a loan to value ratio of 80%. This Loan to Value cut-off has been established based on historic loan default rates and modeling of probabilities of default. We submit that this cut-off which balances the likelihood of default against the additional costs of mortgage insurance is the correct determinant of whether mortgage insurance should be required, rather than the particular legal or listing structure of the lender. Currently many MICs, as part of their investment policies, limit themselves to investing only in mortgages with loan to values which would not require mortgage insurance under OSFI rules. Limiting a MIC to investments in only insured mortgages will necessitate a complete re-writing of the investment objectives of a number of existing publicly offered non-redeemable investment funds, possibly making them uneconomic, and certainly drastically changing their return profile. It will also deny investors the opportunity to access the large and potentially profitable non-insured mortgage market. It will also make it impossible for borrowers to access the kind of financing solutions currently available from the "private" mortgage sector.

In our view, even assuming that insurance can be obtained for some of the loans currently made by MICs, the premium paid for the insurance will negatively impact investor returns, without significantly improving the risk profile of the portfolio.

As an alternative, the Notice and Request for Comment also includes discussions regarding an Alternative Funds Framework. The concept is to create a subset of non-redeemable investment funds that focus on alternative asset classes. We would submit that if the requirements for conventional non-redeemable investment funds to hold only insured mortgages are established, then MICs which choose to hold non-insured mortgages be allowed to operate under the Alternative Funds Framework. This would allow investors continued access to non-insured mortgages as an asset class.

In Alberta specifically Mortgage Investment Corporations are classified as investment funds, and most will qualify as non-redeemable investment funds. A presumably unintended consequence of the proposed custodianship requirements is that MICs in Alberta will not be able to hold title to their mortgage investments directly, and will be required to use a custodian for that purpose. We would submit that in a jurisdiction with a government operated land titles registry, like Alberta's Torrens based system, a custodianship arrangement does not in fact add additional security. In Alberta's Torrens system, and in other jurisdictions, the Government has custody of all original titles, documents and plans and has the legal responsibility for the validity and security of all registered land title information. This secures the MIC, and the MIC's investors to the extent that a custodian would be redundant and would add no additional value. A custodianship requirement would add only costs, with no benefit.

We understand in areas where a Torrens type land titles system does not exist, that there might be a benefit to a custodianship arrangement, but in creating the new regulations, we submit that the requirements should have exceptions for mortgages held in government land titles systems.

Thank you for taking these comments into consideration. We would be happy to provide further information or clarification if it might be of assistance.

Yours truly,
PRIVATE MORTGAGE LENDERS FORUM

Dean J Koeller
President