
MEMORANDUM

DATE: June 4, 2018

FROM: Michael (Mickey) Baratz
Principal

RE: **Request for Comments Response Regarding OSC & Syndicated Mortgages**

The proposed amendments to National Instrument 45-106 and 31-103 relating to Syndicated Mortgages et al, while timely and relevant, fail, nevertheless, to address certain pivotal facts:

- For centuries syndicated Mortgages were provided to developers in Ontario. Considering banks do not lend for commercial development or land-banking other than for construction, the mere availability of Private funds contributed directly to the growth of the Ontario Economy and in fact, allowed for the growth that the Province experienced over the years.
- With the exception of a few “bad apples”, the Industry, is driven by professionals, often lawyers, accountants etc. Members of the Industry can boast that when audited by FSCO, they passed the audits for the most part without any negative comments. Furthermore, a single audit will show that public complaints were limited, if not rare, except of course in the case of the few who are dragging an entire Industry with them.
- My colleagues have drawn your attention to the fact that the issues that were the catalyst that drove the proposed changes centered squarely on;
 - i. Insufficient lack of or misleading disclosure and
 - ii. undermining risks inherent in the investments that were offered to the public.

The fact is that the majority of the Industry including countless Brokerages and Administrators have for years, provided credible prudent and necessary financing and directly helped the Ontario economy.

Many Brokerages who syndicate Mortgages, yours truly included, will never lend in excess of 70% of loans to value being vetted by qualified Appraisers on an “as is” basis. In most cases the Principals of the Brokerages will themselves invest in the Mortgages alongside the investors, amounts that will exceed any fees earned by the Brokerages. In other words, risk real money, not just fees.

As my colleagues have indicated, loans over a threshold of say 80% - 85% are and should be termed “Syndicated Equity.” As such, syndicated Equity should be treated as a Sale of Securities but not syndicated Mortgages.

I therefore suggest the following:

- FSCO, in cooperation with OSC, Mortgage Professional Canada as well as CMBA Ontario, establish a tight list of criteria to identify what constitutes a Mortgage and Mortgage syndication and, by default, what constitutes Equity and Equity Syndication.
- Tight audits should be instituted to ensure compliance. The auditors shall be selected from OSC as well as the industry to ensure compliance. Audit Fees will be charged to each Brokerage / Administrator being audited. A substantive punitive system shall be introduced to ensure that compliance is taken seriously.
- Audit results shall be published, and Brokerages / Administrators shall be ranked as to compliance or lack thereof to forewarn the public in advance (the Medical profession provides a doctor rating system that is very effective).

As for specific requested comments:

- 1) **Appraisals:** The fact that a buy and sell transaction is at arm’s length by itself does not mean that the transacted amount is reasonable and fair market. The investing public needs to be informed that, independently, the transacted amount has been independently verified.
- 2) **Additional Disclosure:** There should not be any exemption for additional disclosure which should be requested of all those who are syndicating Mortgages.
- 3) **Exclusion of syndicated mortgages from the Private Issuer Exemption:** The public has the right to rely on Brokers, being experts in their field. If a Broker knows or should know that certain information relates to items not within the Broker’s personal knowledge, he should have the responsibility to ensure he makes best efforts to ensure there are no misrepresentations in the offering but also should alert the public of this risk and possibility of omission.

In conclusion, the proposed changes are drastic and, in my opinion penalize an entire industry. I invite the OSC to review our processes and files before implementing any changes and to independently assess the extent of the divergence between the few bad apples and the rest of the industry.