Appraisal Institute of Canada
Institut canadien des évaluateurs

June 5, 2018

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

To Whom It May Concern:

Re: 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*

On behalf of the Appraisal Institute of Canada (AIC) and our more than 5,440 valuation professionals, we are pleased to have the opportunity to make a submission in the context of the 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*. We support the Canadian Securities Administrators (CSA) and Ontario Securities Commission's proposal of mandating professionally prepared appraisals as part of syndicated mortgage offerings.

AIC is the premier real property valuation association in Canada. Founded in 1938, AIC is a self-regulating professional organization that grants the distinguished Accredited Appraiser Canadian Institute (AACI) and Canadian Residential Appraiser (CRA) designations to qualifying individuals across Canada and around the world. Our members adhere to national and internationally recognized standards – the Canadian Uniform Standards of Professional Appraisal Practice – and are respected worldwide for the rigorous designation program and ongoing professional development requirements.

AIC has a long history of providing valued, independent opinions about property value. In 2017, our members conducted over 1.2 million third-party appraisals with an overall value of approximately $1.28 trillion. This represented $704 billion in residential property and $577 billion in non-residential property, including commercial, industrial and many other types of real estate. Furthermore, we have many members who provide in-house expertise to private and public interests including (but not limited to) governments, crown corporations/agencies, corporations and mortgage insurers.

Our organization is committed to working with government and stakeholders within the real estate industry to ensure consumers are protected and well informed in the case of real estate transactions, as we believe this results in a sustainable and healthy marketplace that enables all Canadians to prosper. This includes syndicated mortgage offerings.

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 stability in Canada.

The recent emergence of syndicated mortgage investments on the Canadian funding and investing landscape presents itself as an interesting opportunity for investors, but also exposes retail investors to what may be an unacceptable level of risk. The United States' recent experience in the world of mortgage-linked investments is a good reminder that lenders must practice sound and thorough mortgage underwriting practices, including strong robust valuation principles, and investors should take time to fully understand the offering before participating in such investment products.

While large institutional investors have long invested in real estate through a number of vehicles, they have access to expertise and have a risk tolerance that is different from the average investor. Marketing mortgage-related investments to less sophisticated investors seeking a higher yield on their life savings is another matter altogether. As this market grows, investors and regulators should ensure that these investment offerings are properly vetted and that the necessary due diligence of creditworthiness and collateral valuation has been carried out.

We applaud the efforts of the CSA and its provincial partners to protect the public/investors through the proposed amendments to National Instrument 45-106, 31-103 and Companion Policy 45-106CP that are meant to address the potential risk of syndicated mortgage-related investments. Designated members of the AIC can help mitigate the risk of lending and investment by providing unbiased opinions of value on properties. As previously mentioned, an on-site appraisal prepared by a qualified professional is the most effective way to establish the value of an individual property used as collateral to underwrite a syndicated mortgage.

Following are five recommendations that AIC would like to present for your consideration.

Recommendation #1: Include a statement 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.

Recommendation #2: Decrease the time period between the effective date of an appraisal and the date of delivery of the appraisal to six months from 12 months.

We also agree with the additions of subsection 19 through 19.4 under section 2.9. However, we recommend shortening the time period indicated in subsection 19.1 (d) that stipulates the appraisal is prepared with an effective date that is within 12 months preceding the date that the appraisal is delivered to the purchaser. Markets 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 and Montreal. A 12-month window may be too long of a time period. 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 allow for less opportunity for changes in a market to occur between the two dates.

Recommendation #3: The appraisal report must be provided to potential investors/purchasers and regulators.

In “Item 8 – Appraisal”, while it is mentioned early on in the proposal, we recommend reiterating that the appraisal report in its entirety must be provided to potential purchasers and regulators. Failing that, if the issuer is expected to describe the most recent appraisal, the author of that appraisal should be given the opportunity to review the description of the appraisal provided by the issuer. Additionally, the descriptor “the most recent appraisal” seems to suggest that the appraisal does not need to be the most current. We recommend reiterating that an appraisal report must be the most current appraisal prepared within the six months preceding the date that the appraisal is delivered to the purchaser. In addition, and notwithstanding the previous points, the provision of a copy of the appraisal report does not change, redirect or permit any other reliance on the appraisal report by any party, other than the original client and intended user, as noted in the original report.

Recommendation #4: Include an appraisal report in the list of registration documents that are required.

In “Item 19 – Registration documentation”, in addition to the documents listed, the purchaser should request a copy of the completed appraisal report in its entirety. This ensures the purchaser has an opportunity to validate the estimates provided by the issuer.

Recommendation #5: An appraisal report should be included in all syndicated mortgage investment transactions.

As it relates to the question in the “Request for Comments” document on appraisals - “*As proposed, an appraisal would be required in all cases where a syndicated mortgage is distributed under the OM Exemption. Should there be exceptions to this requirement? For example, should an appraisal be required if the property was acquired recently in an open market transaction with all parties acting at arm’s length?*”

We would note that any transaction – at arm’s length or otherwise - will not necessarily provide a true indication of value - purchase/sale prices may be very different than the market value provided by a qualified appraiser. Our recommendation is that there are no exceptions to the requirement for an appraisal in all cases where a syndicated mortgage is distributed under the OM Exemption.

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