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Our File No.: 88888-0001

June 6, 2018

VIA ELECTRONIC MAIL

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

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**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 (“Proposed Mortgage
Syndication Amendments”)**

We are making this submission on behalf of several “mortgage syndicators” active in the Province of British Columbia. This submission is primarily directed to the British Columbia Securities Commission.

These mortgage syndicators originate mortgage loans for funding by highly sophisticated investors, all of whom would be “accredited investors” under existing applicable securities laws in Canada or, in some cases, friends, family and business associates.

Our submission will only deal with three of the many changes proposed in the Proposed Mortgage Syndication Amendments, namely:

- The determination of “issuer” for purposes of the regulation of mortgage syndications.
- The removal of the registration exemptions for the distribution of syndicated mortgages.
- The filing of a “report on exempt distribution” for syndicated mortgages.

Firstly, however, we must define our use of the term “mortgage syndication”. The Proposed Mortgage Syndication Amendments define a “syndicated mortgage” as

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

This definition, while intentionally broad, would include:

- Investments in mortgage funds (including “mortgage investment corporations or “MICs”) in which investors invest in “interests” in the fund and the fund makes mortgage loans to several borrowers without allocation of the individual mortgage loans to the separate investors (“Pooled Mortgage Funds”)
- Investment by investors who acquire an undivided (direct or indirect) interest in a specific mortgage (“Specific Mortgage Investments”)

The Proposed Mortgage Syndication Amendments would regulate both Pooled Mortgage Funds and Specific Mortgage Investments in the same manner. However, as there are fundamental differences between the two, separate (but perhaps similar) regulations should apply to each.

Syndicated mortgages are more commonly considered, in the mortgage lending community, as Specific Mortgage Investments. However, it is not the “borrower” who arranges Specific Mortgage Investments but rather a “mortgage broker” who, in British Columbia, is required to be registered, and is regulated

under the *Mortgage Brokers Act* (British Columbia). However, the application of the Proposed Mortgage Syndication Amendments to Specific Mortgage Investments leads to significant changes to the manner in which the syndication of Specific Mortgage Investments would occur.

In this submission, we propose amendments to BC Commission Rule 45-501. The definition of “qualified syndicated mortgage” used in that Rule is appropriate for the definition of Specific Mortgage Investments.

The determination of the “issuer”.

The Proposed Mortgage Syndication Amendments identify the borrower as the “issuer” and impose new disclosure obligations on the borrower relating to a proposed prescribed form of Offering Memorandum, Appraisal Information and other certification and reporting requirements.

In practice, the person who “arranges” the Specific Syndicated Mortgage is the mortgage broker, and not the borrower. In practice, unlike the issue of other forms of securities such as shares or bonds, the corporation or borrower has little involvement in the process. Requiring borrowers to provide the disclosure materials contemplated by The Proposed Mortgage Syndication Amendments would add additional burdens to borrowers, many of whom may lack the sophistication and resources to provide this information.

We propose that, in the case of Specific Mortgage Investments, or “qualified syndicated mortgages” the “issuer” be the mortgage broker who distributes the interests in the mortgage.

The removal of the registration exemptions for the distribution of syndicated mortgages.

The Proposed Mortgage Syndication Amendments would remove the prospectus and registration exemptions for the distribution of syndicated mortgages. However, as indicated above, most investors in syndicated mortgages are “accredited investors”, syndicators of mortgages could continue to rely upon the accredited investor exemption for exemption from the prospectus requirements.¹

The most troubling, and potentially market disruptive, part of the proposed removal of the registration exemption for the distribution of syndicated mortgages is the requirement that these “investments” be distributed by “exempt market dealers or “EMDs” or other persons registered under securities laws for trading in securities.

Currently, British Columbia provides a registration exemption for “mortgage investment entities” under BC Instrument 32-517. This instrument was first introduced in 2010 but is to expire on December 31, 2018. There has been no announcement from the British Columbia Securities Commission about a further renewal of this instrument.

¹ The commentary to the Proposed Mortgage Syndication Amendments recognize that “syndicated mortgages will most likely be offered...under the accredited investor exemption....”

The commentary to the Proposed Mortgage Syndication Amendments states:

For firms that are currently in the business of trading in syndicated mortgages and are licensed under mortgage broker legislation, the transition to registration as an exempt market dealer could potentially involve significant costs.

We consider that the costs associated with the Proposed Amendments and the Proposed Changes are proportionate to the benefits of increased investor protection.

The first paragraph quoted above is correct. The second paragraph quoted above provides a conclusion with respect to benefits of increased investor protection without any factual matrix and is wrong.

Firstly, mortgage syndicators are required to be registered, and are regulated, in British Columbia, under the *Mortgage Brokers Act*. Registration as a mortgage broker requires specific industry educational qualifications (including on-going continuing education, licencing renewal and criminal record verification).

Secondly, proficiency requirements, including completing the Canadian Securities Course exam, the Exempt Market Products exam or the U.S. American Series 7 exam and the New Entrants Course exam as well as the in most instances the Canadian Partners, Directors and Senior Officers exam, bear no relationship to the mortgage syndication business. There is no need to know about derivative trading, corporate financial analysis, debt analysis, trading requirements and similar educational requirements when originating mortgage loans. Mortgage lending requires knowledge in real estate markets, mortgage lending laws, appraisal and other real estate underwriting criteria, and similar knowledge. Having a mortgage syndicator licensed as an EMD adds an unnecessary layer or regulatory compliance to the mortgage lending business, without added benefits for participants in mortgage syndications transactions.

Thirdly, requiring syndicated mortgages to be offered by a dealer in securities, including an EMD would add a layer of additional fees and costs, as well as delay in the mortgage origination process. Mortgage syndicators generally charge borrowers fees of between 1% and 3%. EMDs generally charge fees between 3% and 5%². Adding these additional levels of fees will only serve to increase, substantially, the costs of borrowing to the borrower without any additional investor protection being obtained.

Syndicated mortgages are usually “syndicated” quickly. Adding the requirement that these mortgages be distributed solely by persons registered as dealers in securities, including EMDs would slow the origination process (or lead to a termination of the prospective transaction), again without any increase in investor protection.

Fourthly, registered dealers in securities are required to observe “know your client” (“KYC”) rules. There is no need for these rules to be extended to sophisticated investors in syndicated

² We have been informed that some EMDs have suggested fees in the 6% to 10% range, which would make the costs of syndicated mortgages prohibitively expensive, and effectively, eliminate this market.

mortgages. Again, the increased costs greatly outweigh any commensurate increase in investor protection.

Mortgage syndicators, who are now registered as mortgage brokers, could be registered as exempt market dealers. However, under existing requirements, registration as an exempt market dealer is subject to a number of requirements, including appointment of compliance officers, book and record-keeping standards, capital and insurance requirements, and financial reporting requirements. The exempt market dealer is required to designate and register an ultimate designated person (who must be the chief executive officer) and a chief compliance officer who meets the proficiency requirements referenced above. And persons acting as dealers or soliciting trades for the entity are required to register as dealing representatives.

All of these registrants must meet proficiency requirements, including completing the Canadian Securities Course exam, the Exempt Market Products exam or the U.S. American Series 7 exam and the New Entrants Course exam.

The exempt market dealer entity is required to demonstrate and maintain sufficient working capital of at least \$50,000 and maintain bonding or insurance. Ninety days after the end of its financial year, the exempt market dealer must deliver to its principal regulator audited annual financial statements (comprised of an income statement, balance sheet and notes) prepared on an unconsolidated basis.

None of these requirements bear any relationship or is relevant to the distribution of syndicated mortgages. Imposing these requirements on “mortgage brokers” would add, substantially, to the costs and complexities of the operations of a mortgage broker, without, in our view, increased investor protection over the investor protections existing through the mortgage broker registration system and disclosure requirements.

Proposed Amendment to The Proposed Mortgage Syndication Amendments for Specific Mortgage Investments.

We proposed that The Proposed Mortgage Syndication Amendments be amended to provide for a registration exemption for Specific Mortgage Investments in which only accredited investors and “friends, family and business associates” participate. The existing requirements of NI-45-106 for accredited investors, coupled with the requirement that the originators of Specific Mortgage Investments be registered and regulated under mortgage broker legislation or other regulations specifically directed at the origination of mortgages would, in our view, provide an adequate and improved level of investor protection without unnecessary increases in costs or duplication of regulatory burdens

Our recommendations are as follows (as alternatives) and in” order of our preferred recommendations are as follows:

1. Renew and Amend B.C. Instrument 32-517

This Instrument provides an exemption to the dealer registration requirement for mortgage syndications. It has been in effect since 2010 and has been renewed on annual and as semi-annual basis. The instrument permits syndicated mortgages to be distributed in reliance on that Instrument, including obtaining a risk acknowledgement from the purchaser.

It is noted that the conditions to the exemption does not require the person who trades in the security to be registered under the *Mortgage Brokers Act* (British Columbia), nor limit the exemption to purchasers of syndicated mortgages who are accredited investors or “family friends and business associates. We propose that BC Instrument 32-517 be adopted as a permanent rule (and as by members of the CSA as a National Instrument) with the following amendments:

- the “person” be registered as a “mortgage broker” under the *Mortgage Brokers Act* (British Columbia);³ and
 - the purchaser be an accredited investor or a “friend, family or business associate.
2. Amend B.C. Rule 45-501 as proposed in the mark-up attached to this letter

We are informed that B.C. Rule 45-501 has limited application and that it is never (or rarely) used.

Our suggested amendment would:

- amend the definition of “institutional investor” to include “accredited investor” and “friends, family and business associates”; as the currently defined “instructional investors” are all “accredited investors,” the list of persons who are included in “institutional investor” can be deleted;
- amend the definition of “qualified syndicated mortgage” to remove the limitation of the exemption to four residential properties and the prohibition against construction or development financing;
- delete sections 3 and 4 so that the Rule is only applicable to qualified syndicated mortgages; and
- incorporate by reference the provisions of NI 45-106 relating to “accredited investors”.

In addition, in view of our comments below regarding “reports of exempt distributions, change this requirement to a report that is tailored to the mortgage market.

This amendment would limit its application to distributions of “qualified syndicated mortgages” to accredited investors and friends, family and business associates and is consistent with the policy inherent in the exemptions in National Instrument 45-106. The proposed amendments would also

³ This additional requirement may already exist as the *Mortgage Brokers Act* (British Columbia) requires persons who “deal” in mortgages to be registered under and comply with the requirements of this legislation.

continue the registration exemption, without the need for Instrument 32-517 (which need not be renewed) and require qualified syndicated mortgages to be distributed by mortgage brokers.

3. Create a new “dealer” registration as “mortgage broker”

The distribution of syndicated mortgages is unique and different from the distribution of stock, bonds, mutual funds and other forms of investment products currently regulated under the securities laws.

If it is the intention of the CSA to bring the regulation of syndicated mortgages under the regime of the securities laws, then a new category of “dealer registration” should be created. This would be a “mortgage broker” or “dealer in syndicated mortgages”. We do not think it necessary to change the current registration and regulation under the Mortgage Brokers Act. However, if the regulation of mortgage brokers is to be brought within the ambit of securities regulation, we recommend that the registration and reporting and oversight requirements be the same as those now required under the *Mortgage Brokers Act*. The change would eliminate the proposal, in the Proposed Mortgage Syndication Amendments, that syndicated mortgages be distributed by EMDs or others registered for trading in securities and adopt a well-known and effective regulatory regime for those distributing syndicated mortgages.

The Filing of Reports of Exempt Distribution.

The Proposed Mortgage Syndication Amendments would require persons who distribute syndicated mortgages to file reports of exempt distribution and pay the requisite fees. This is accomplished by the removal of the “private issuer exemption” for syndicated mortgages.

In the Proposed Mortgage Syndication Amendments, the CSA states that the reasons for “removing the private issue exemption for syndicated mortgages would result in more consistent reporting for syndicated mortgage distributions.... The additional reporting would provide us with more information about this market, enabling us to develop more targeted compliance and investor education programs related to syndicated mortgages.”

In our view, the existing reporting requirements for exempt distributions are not tailored to providing further information regarding the market for syndicated mortgages and require additional fees and costs to those involved in the distribution of syndicated mortgages.

While the fee of 0.03% of the dollar value may not appear to be material, when applied to the mortgage market, the fee may be material. Many syndicated mortgages are for terms of less than a year. Assume a \$10 million mortgage with a four-month term. The fee would be \$3,000. But on an annualized basis the fee would be \$9,000 or almost 0.1% of the annualized cost of borrowing. Since the pricing of interest rates on syndicated mortgages is competitive, the additional cost relating to the filing of the reports of exempt distribution would result in increased costs to borrowers.

This is unlike other forms of securities which generally have indefinite terms (stocks) or terms longer than four months or even one year (debt).

June 6, 2018

- 8 -

Form 45-106F1 Report of Exempt Distribution is designed for “traditional” forms of securities and, while it could be used to report distributions of syndicated mortgages, the only “market information” that is being provided is the amount of the mortgage and the fees paid to the “mortgage broker”.

It should be noted that the “fees” or “commissions” paid to mortgage brokers may be regarded as sensitive competitive information that is not, today, publicly disclosed. Making this information public could have significant repercussions on the competitive position of persons who distribute syndicated mortgages.

We proposed that if the purpose of requiring reports of exempt distributions for syndicated mortgages is to provide the securities regulators with further information, a form specific to the mortgage lending business be created. Fees should be adjusted so that they reflect, at least, not more than an equivalent annual per cent. And the filings should be confidential.

Yours truly,

FARRIS, VAUGHAN, WILLS & MURPHY LLP

Per: “*M. Gropper*”

Mitchell H. Gropper, Q.C.*

MHG/awm

*On behalf of a Law Corporation/awm

COMMISSION RULE 45-501 (BC)
MORTGAGES -PROPOSED AMENDMENT

(including amendments proposed in the CSA proposed amendments relating to syndicated mortgages)

Definitions

1. In this rule:

“institutional investor” means

- (a) an accredited investor,
- (b) a person to whom Section 2.5(1) of National Instrument 45-106 is applicable (*friend, family or business associate*),
- (c) a mortgage broker acting as principal, or
- (d) such other person as may be designated by order of the commission; “mortgage broker” means a person who is registered under the *Mortgage Brokers Act*;

“qualified syndicated mortgage” means a syndicated mortgage if

- (a) the syndicated mortgage is not contained in or secured by a bond, debenture or similar obligation or in a trust deed or other instrument to secure bonds or debentures or similar obligations,
- (b) the syndicated mortgage is sold through a mortgage broker,
- (c) the syndicated mortgage secures a debt obligation on real property,
- (d) at the time that debt secured by the syndicated mortgage is incurred, the amount of the debt secured by the syndicated mortgage, together with all other debt secured by mortgages on the property that have priority over, or the same priority as, the syndicated mortgage, does not exceed 90 percent of the fair market value of the property, excluding any value that may be attributed to proposed or pending development on the property,
- (e) the syndicated mortgage is limited to one identified debt obligation,
- (f) the rate of interest payable under the syndicated mortgage is equal to the rate of interest payable under the identified debt obligation,
- (g) any amount charged for the administration of the syndicated mortgage is disclosed to the purchaser, and
- (h) the term of the syndicated mortgage is not different from the term of the identified debt obligation;

“syndicated mortgage” means a mortgage in which two or more persons participate, directly or indirectly, as lenders in the debt obligation that is secured by the mortgage.

Interpretation

2. Unless otherwise defined in this rule, a term used in this rule that is defined or interpreted in the *Securities Act*, the Securities Rules or National Instrument 45-106 or National Instrument 14-101 Definitions has the meaning set out in the *Securities Act*, Securities Rules or National Instruments, respectively.

Syndicated mortgages-registration not required for trades to institutional investors

3. Dealer Registration
 - 3.1 The dealer registration requirement does not apply to a trade in a qualified syndicated mortgage to an institutional investor if, before the agreement of purchase and sale is entered into, the purchaser is provided with the form of investor disclosure required by the *Mortgage Brokers Act*.
 - 3.2 The prospectus requirement does not apply to a distribution of a qualified syndicated mortgage to an institutional investor if, before the agreement of purchase and sale is entered into, the purchaser is provided with the form of investor disclosure required by the *Mortgage Brokers Act*.
 - 3.3 An issuer that distributes a syndicated mortgage under section 5.2 must, no later than 10 days after the distribution, file a report in Form 45-106F1 Report of Exempt Distribution.
4. Incorporation of Certain Provisions of National Instrument 45-106

The provisions of Sections 2.3 and 2.5 of National Instruments 45-106 are incorporated into this Instrument as if set out in full in this Instrument.

Effective Date

5. This rule comes into force on ♦.

Amended ♦

COMMISSION RULE 45-501 (BC)

MORTGAGES ~~PROPOSED AMENDMENT (including amendments proposed in the CSA proposed amendments relating to syndicated mortgages)~~

Definitions

1. In this rule:

“institutional investor” means

- ~~(a) a government of Canada or any province of Canada or a crown corporation or agency of a Canadian federal or provincial government,~~
- ~~(b) a municipal corporation, public board or commission in Canada,~~
- ~~(c) a savings institution,~~
- ~~(d) a cooperative credit society as defined in the Cooperative Credit Associations Act (Canada) or a savings and credit union, federation or confederation as defined in the Savings and Credit Unions Act (Quebec),~~
- ~~(e) the Business Development Bank of Canada,~~
- ~~(f) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial pension supervisory authority,~~
- (a) ~~(g)~~ an insurance company, accredited investor,
- (b) ~~(h)~~ a trust company or insurer authorized under the laws of Canada or the laws of a province other than British Columbia to carry on business in Canada or that province, person to whom Section 2.5(1) of National Instrument 45-106 is applicable (friend, family or business associate),
- (c) ~~(i)~~ a mortgage broker acting as principal, or
- ~~(j) a person registered under the Securities Act or the securities legislation of another province as an investment dealer or equivalent, acting as principal or as an agent or trustee for accounts that are fully managed by it,~~
- ~~(k) a person registered under the Securities Act or the securities legislation of another province as a portfolio manager or equivalent, acting as principal or as an agent or trustee for accounts that are fully managed by it,~~
- ~~(l) a mutual fund or non-redeemable investment fund, if the investment portfolio of the fund is managed by a person that is registered under the~~

~~Securities Act or the securities legislation of another province as a portfolio manager or equivalent, or~~

- (d) ~~(m)~~ such other person as may be designated by order of the commission; “mortgage broker” means a person who is registered under the Mortgage Brokers Act;

“qualified syndicated mortgage” means a syndicated mortgage if

- (a) the syndicated mortgage is not contained in or secured by a bond, debenture or similar obligation or in a trust deed or other instrument to secure bonds or debentures or similar obligations,
- (b) the syndicated mortgage is sold through a mortgage broker,
- (c) the syndicated mortgage secures a debt obligation on ~~property used solely for residential purposes and containing no more than four residential dwelling units,~~
- ~~(d) the syndicated mortgage does not secure a debt obligation incurred for the construction or development of real~~ property,
- (d) ~~(e)~~ at the time ~~of issue~~ that debt secured by the syndicated mortgage is incurred, the amount of the debt secured by the syndicated mortgage, together with all other debt secured by mortgages on the property that have priority over, or the same priority as, the syndicated mortgage, does not exceed 90 percent of the fair market value of the property, excluding any value that may be attributed to proposed or pending development on the property,
- (e) ~~(f)~~ the syndicated mortgage is limited to one identified debt obligation,
- (f) ~~(g)~~ the rate of interest payable under the syndicated mortgage is equal to the rate of interest payable under the identified debt obligation,
- (g) ~~(h)~~ any amount charged for the administration of the syndicated mortgage is disclosed to the purchaser, and
- (h) the term of the syndicated mortgage is not different from the term of the identified debt obligation;

“syndicated mortgage” means a mortgage in which two or more persons participate, directly or indirectly, as lenders in the debt obligation that is secured by the mortgage.

Interpretation

2. Unless otherwise defined in this rule, a term used in this rule that is defined or interpreted in the Securities Act, the Securities Rules or National Instrument 45-106 or National Instrument 14-101 Definitions has the meaning set out in the Securities Act, Securities Rules or National ~~Instrument~~Instruments, respectively.

3. Dealer Registration and Property Requirements

3.1 ~~3. Despite section 8.12 (3) of National Instrument 31-103 Registration Requirements and Exemptions, the~~The dealer registration requirement does not apply ~~in respect of~~to a trade in a qualified syndicated mortgage ~~made~~to an institutional investor if, before the agreement of purchase and sale is entered into, the purchaser is provided with the form of investor disclosure required by the Mortgage Brokers Act.

Syndicated mortgages — prospectus not required for distributions to institutional investors

3.2 ~~4. Despite section 2.36 (3) of National Instrument 45-106 Prospectus and Registration Exemptions, the~~The prospectus requirement does not apply ~~in respect of~~to a distribution of a qualified syndicated mortgage to an institutional investor if, before the agreement of purchase and sale is entered into, the purchaser is provided with the form of investor disclosure required by the Mortgage Brokers Act.

Exemption from registration and prospectus requirements

~~5. Sections 34 and 61 of the Securities Act do not apply to a trade in a qualified syndicated mortgage if, before the agreement of purchase and sale is entered into, the purchaser is provided with the form of investor disclosure required by the Mortgage Brokers Act.~~

3.3 An issuer that distributes a syndicated mortgage under section 3.2 must, no later than 10 days after the distribution, file a report in Form 45-106F1 Report of Exempt Distribution.

4. Incorporation of Certain Provisions of National Instrument 45-106

The provisions of Sections 2.3 and 2.5 of National Instruments 45-106 are incorporated into this Instrument as if set out in full in this Instrument.

Effective Date

5. ~~6.~~This rule comes into force on September 1, 2000. ◆

Amended September 28, 200