Alberta Securities Commission
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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The Secretary
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Good Morning,

Our organization is currently regulated by Financial Services Commission of Ontario (FSCO) and we broker and administer primarily construction and development mortgages through what is defined by FSCO as non-qualified syndicated mortgages. Our understanding is that syndicated mortgages will be regulated by the OSC in December of this year and we would like to provide comments towards the CSA proposed Amendments.

We are concerned that there has been no specific reference to “non-qualified” syndicated mortgages or the underlying purposes the “syndicated mortgage” is used for. Financing the approval, servicing and construction of a $200 million high-rise condo is not the same as financing a stabilized strip plaza, purchase of raw land or a residential home. The administration of a construction/servicing mortgage is also very different, given the multiple fundings and potentially different lenders in each funding for this type of mortgage versus the one-time funding of the purchase of a stabilized asset. Further, the metrics of a construction project (i.e. valuation, pre-sales, costs to complete, loan to cost vs. loan to value, etc.) and processes to verify the enhancement of security value throughout the project are very different from stabilized assets.

We believe there are various items that are key to getting the regulatory framework correct for development and construction syndicated mortgages:

- Construction and development financing should not be treated in the same manner as stabilized asset financing

- A detailed understanding of how the existing construction and development finance environment works and where the risks within construction and development lie is necessary. Further, what can be done in each area to mitigate the risks involved – we complete a formal Risk Register on projects to isolate and determine risk mitigation strategies prior to funding into the project.

- Multiple fundings on construction and development projects make them inherently more complex to understand, broker and administer versus other real estate transactions where there may be one or very few fundings. All stakeholders must be "qualified" to participate in such transactions given the risk and complexities involved and there are also numerous potential conflicts of interest.

- Valuation of security on a development and construction project is much more complex than a simple "as is" appraisal. Additional fundings do not necessarily immediately increase the value of the project if it were to be liquidated in a "distressed" environment. Further, any meaningful valuation needs to incorporate the remaining estimated costs to complete, the expected revenues, the timing of both, and the profits to be achieved. Completing the project is often the best available option for Lenders rather than liquidating the assets involved and projects tend to be looked at with this lens in mind.

- There needs to be enough time for the existing providers and participants of this type of financing to adjust to the new licensing and regulatory regime. Existing financing commitments with ongoing funding requirements are difficult to change half-way through the term of the mortgage and putting a borrower into default because they are unable to meet the new standards only exposes the lender participants to increased risks.

- Ideally, the regulator needs the industry to operate on an administration software tailored to manage, track and distribute required information (both initial underwriting information and ongoing reporting requirements) for all stakeholders involved. We recognized this some time ago and have been working to develop that software to support our business and others for the past 5 years.

- In the past, the regulations do not seem to adequately address the differences between the nature of various financings. We have been continuously exposed to situations where parties that are regulated by the same set of rules and are apparently in the "same" business, but it is absolutely clear that our businesses are completely different.

In closing, this is a critical capital channel for developers and builders and it is not being met by other conventional capital providers. All parties that have a vested interest in the provision of housing in this province should desire an effective regulatory framework, that protects investors, mitigates transaction risk, but does not add an unnecessary burden to the efficient funding of suitable housing projects. We have attached a letter we had sent to FSCO which we believe raises points that should also be considered when addressing the changes related to development and construction related syndicated mortgages.

We would be happy to discuss further at your convenience.

Respectfully,

Murray Snedden CPA, CMA, CMC

Chief Financial Officer & Principal Broker