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Tuesday May 14, 2019

The Secretary, Ontario Securities Commission
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and

Me Anne-Marie Beaudoin, Corporate Secretary
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and

Mr. Doug Downey, Parliamentary Assistant to the Minister of Finance
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and

Mrs. Gina Stephens, Senior Policy Advisor
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and

Mr. Mark White, Chief Executive Officer
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RE: CSA Second Notice and Request for Comment 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 and Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations

With respect to the request for comments, please accept this letter as our suggested amendments to the above subject matters.

It is our recommendation that the following definitions need to be better addressed in order to more accurately reflect the manner in which the industry operates efficiently.

Suggested amendment for the definition of "**syndicated mortgage**";

> ***Definition of a "Syndicated Mortgage";*** *Defined as a mortgage debt investment that a Mortgage Brokerage would allocate to more than one investor who is not; (i) a regulated financial institution; (ii) public reporting issuers; (iii) pooled mortgage funds, mortgage corporation or mutual fund trust; that have a board of directors approving investments; and (iv) board of directors, members of management, employees and related parties, including related corporate entities to individuals affiliated with the Mortgage Brokerage and to the entities under (i), (ii) and (iii).*

Suggested amendment for the definition of "**qualified syndicated mortgage**";

> ***Definition of a "Qualified Syndicated Mortgage" ("QSM"): All syndicated mortgage investments that are not a NQSM.***
>
> For a QSM the Brokerage is required to complete a Form 1 Investor Disclosure Form, with the requirement of the Brokerage to incorporate by addendum reference detailed underwriting information that an investor should receive for the transaction type in order for the investor to understand the risk and credit adjudication needed to make an informed decision.

Suggested amendment for the definition of "non-qualified syndicated mortgage";

> ***Definition of a "Non-Qualified Syndicated Mortgage Investment" ("NQSM"):*** *A Syndicated mortgage investment; that for all intensive purposes represents the required equity for a real estate development that has been disguised and treated as mortgage debt security that has the characteristics of equity by being subordinated to construction financing, and purchasers bonding insurance and would exceed 90% of a projects capitalized cost, and whereby the mortgage investors were solicited by the Mortgage Brokerage to participate in the investment by way of payment of commissions to solicit such investors.*
>
> For any NQSM, the Mortgage Brokerage is required to:
>
> (i) provide the Borrower with a declaration that it represents the interest of the investor and not the borrower
>
> (ii) advise the Borrower that they should retain independent legal advice with respect to the NQSM transaction.

The proposed definition of NQSM will allow Mortgage Brokerages, who are not syndicating equity or high-risk debt investments, to be regulated by one regulator.

The above proposed definition of QSM will keep capital flowing to the real estate marketplace and provide liquidity to borrowers and risk reward income yielding investments for investors.

If amendments are not made, the marketplace will see a significant decrease in credit availability and have a significant negative effect on both Borrowers and Investors.

The public policy objective is commendable - to protect investors / lenders and avoid systematic risk that would result from syndicating equity style investments disguised as mortgage debt. FCC fully supports those objectives, both because it is a good corporate practice and because it is clearly in its long-term strategic interest and in the interest of having a functioning marketplace for our industry that addresses proper credit adjudication tailored to investors risk tolerance. However, the regulations, as they currently apply, do not achieve their stated purpose and have significant unintended negative side effects.

REGULATORY BODY:

In addition to the above amendments to the above definitions, we recommend that all regulation remain with one regulatory body, the Financial Services Regularity Authority of Ontario. This will ensure regulatory efficiencies with one regulator overseeing the entirety of the mortgage industry.

FIRM CAPITAL – BACKGROUND:

Since May 1988, Firm Capital Corporation ("FCC") acted primarily as a Mortgage Banker and lending servicer for various entities and partners, and through a mortgage banking agreement, since October 1999, the Toronto Stock exchange listed entity Firm Capital Mortgage Investment Corporation (TSX Symbol: FC) ("FCMIC"). FCC, as a Mortgage Banker, independently originates, underwrites, determines required financing conditions needed to address credit and risk management matters, issues commitment letters, syndicates, and prepares lending disclosure forms. It acts exclusively on behalf of its investors / lenders and advises the borrower that it represents the lenders exclusively and that borrowers should obtain independent legal advice prior to borrowing, as FCC has a duty to the lender client and not the borrower. We define these services as Mortgage Banking.

Thank you for considering the need to make these changes in the public interest.

FIRM CAPITAL CORPORATION
PER:

Eli Dadouch
President & CEO
ED/ns