FOREMOST
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VIA EMAIL TO:

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division,
Department of Justice, Government of Nunavut
Ontario Securities Commission
Prince Edward Island Securities Office
Autorité des marches financiers
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon

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Dear Sirs:

Re: Proposed National Instrument 45-106 & Proposed Amendments to OSC Rule 45-501

The following is submitted for consideration by Foremost Financial Corporation ("Foremost") as one mortgage broker's perspective of the subject proposed changes and their potential ramifications for the mortgage brokerage industry and its clientele.

Background

Whereas we acknowledge that the comment period with respect to the above noted matter expired as of March 17, 2005, we request the opportunity to provide comment on these proposals as they relate to mortgage syndications. Our delayed response is a direct result of the fact that we learned of this issue only on March 21, 2005 when the Ministry of Finance (Ontario) issued a consultation draft of a new Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act.

Foremost is a company registered under the Mortgage Brokers Act (Ontario). It was founded in 1986 and during that period has been active in Mortgage Brokerage and Syndication of Mortgages. Foremost is in the business of originating, funding, purchasing, selling and administering Mortgages. Foremost administers a portfolio of Mortgages in the 50 million dollar range on an ongoing basis.

Application of the proposed NI 45-106, section 2.37 proposes to exempt trades in Mortgages on Real Property by a licensed Mortgage Broker from the dealer and prospectus requirements of securities laws. However section 2.37(2) removes the application of this exemption in the case of a syndicated mortgage. The Consultation Draft issued by Ontario's Ministry of Finance appears to rationalise the removal of this exemption on the basis that "concerns have arisen that the current syndicated mortgage exemption does not provide adequate protection to investors given the potential complexity of these investments". The basis for these concerns or the perceived complexity is not provided. We appear to have a solution without a clearly identified problem.

Foremost Recommendation

It is our submission that syndicated mortgages should not be excluded from this exemption and that the trading of all mortgages should continue to be governed by Mortgage Broker or Mortgage Dealer legislation in the appropriate jurisdiction in Canada. Any attempt to improve the protection of investors is applauded but should be achieved in consultation with the Mortgage Brokerage Industry based on an analysis of real risks to Investors and should take into consideration the issues of Mortgagors who are also clients of the Mortgage Brokerage Industry.

Rationale

- Unlike securities where the beneficiary of the deal is the issuer, the primary beneficiary in a syndicated mortgage is another consumer who requires funding and a timely response i.e. a Mortgage Broker has two consumers whose interests must be attended to and protected: the borrower and the lender. In fact a mortgage would only be analogous to a security if the issuer was the Mortgagor and as such the applicable securities legislation would not work as presently worded if the syndicating party (Mortgage Broker) is deemed to be the issuer of the security;
- Mortgages (whether syndicated or not) are instruments which are very distinct from "Securities" and dealing with them under a dual regulatory regime would add cost, complexity and the potential for conflicting requirements.
- It is not always clear at the outset whether a mortgage will be sold to one investor or a group and thus there would be the need to meet the potentially conflicting requirements of both regimes.
- There is no significant increase in the clarity or complexity of risk in a mortgage if it is sold to one entity or is syndicated and the assumption that this is so, betrays a lack of understanding of the risks.
- No public benefit or mitigation of risks to investors would be accomplished by the public registration of the holders of an interest in a syndicated mortgage and the potential exists for unprecedented intrusion into the privacy of Mortgagors who typically are private individuals and whose financial status and capability represent the most significant risk in a Mortgage, whether syndicated or not.

- Adding a significant regulatory layer to the mortgage granting process would greatly add to the cost and negatively impact the consumer service available to borrowers. It would reduce the number of players in the mortgage lending business and effectively give a huge and immediate advantage to institutional lenders who would no longer have to compete with alternate providers. The borrowing consumer would thus be deprived of a truly competitive marketplace and mortgage pricing/availability would reflect that lack of competition. Similarly, lenders/Investors would be faced with a less competitive marketplace in which to place their funds;
- Removal of the exemption as contemplated in Section 2.37(2) would mean that any mortgage syndication would likely take place under the Accredited Investor provisions of a Private Placement. Current definitions of Accredited Investors do not make it clear that holdings of Real Estate or Mortgage Receivables may be used by potential Accredited Investors when certifying that total assets held exceed $1 million. Investors in Syndicated Mortgages often hold a significant portion of their assets in such instruments. This is usually because Real Estate and Mortgages thereon are the area of expertise of such investors. It seems perverse to institute a change in pursuit of consumer protection and exclude investment by the very people who have expertise and substantial assets in Real Estate and Mortgage receivable assets while restricting access to that market to those whose area of expertise is other instruments i.e. Cash and securities. Clarification that holdings in Real Estate and Mortgages receivable can be included in the assets that add to $1 Million would be helpful in this particular regard.
- Excluding Non Accredited investors from the Syndicated Mortgage Market altogether is neither desirable nor fair to informed and knowledgeable investors who want to make investment decisions of their own free will. To permit that market to appropriately access Syndicated Mortgage Investments will require a major rewrite of existing OSC rules based on knowledge of how the business marketplace actually operates.
- The imposition of increased costs and reduced access to funding would restrict the ability of small business builders to compete with the major builders, thus reducing the choice available to the ultimate consumer as well as placing a high level barrier to entry for small builders.
- The existing regime in Ontario has been working with remarkably few issues of moment coming to the attention of the Industry (i.e. it isn't broke-so why fix it?). We can see no evidence of a Cost/Benefit analysis that would justify this change.

A Proposed Way Forward

- The consultation process currently underway to update the Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act presents a timely opportunity to deal with any shortcomings in present consumer protection afforded to the Investor and borrower clients of Mortgage Brokers.
- The Industry and the Ministry of Finance should work together to identify any risks and shortfalls in consumer protection that may require attention.
- The mitigation of those risks and shortfalls should proceed out of clearly identified issues arising from this consultation.

We appreciate the time you have taken to read this letter and consider its commentary.

Yours Truly
Foremost Financial Corporation

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