

# VECTOR FINANCIAL SERVICES LIMITED

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April 7, 2005

## 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 marchés financiers  
Saskatchewan Financial Services Commission  
Registrar of Securities, Government of Yukon

Dear Sirs:

### **Re: Proposed National Instrument 45-106 and Proposed Amendments to OSC Rule 45-501**

Although we realize that the comment period in respect of the above noted matters expired on March 17, 2005, our attention was only recently drawn to this matter by publication of the proposed replacement for the *Mortgage Brokers Act*. We wish to provide comments on the referenced proposals to the extent they relate to mortgage syndications. Our delay in commenting arises from the fact that the Ministry of Finance (Ontario) issued a consultation draft of a new *Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act* on March 21, 2005, which was received on March 22, 2005, after the March 17, 2005 comment period expired. We thank you for accommodating our request to comment at this time.

Vector Financial Services Limited is a company that is registered under the *Mortgage Brokers Act* (Ontario). Its principals have been registered mortgage brokers in Ontario since 1973 and are in the business of originating, funding, purchasing, selling, and servicing mortgage investments. Since 1973 they have arranged and managed in excess of a \$1,000,000,000.00 of syndicated mortgage investments.

We have been provided with a copy of and have carefully reviewed the submissions made to the addressees by Firm Capital Corporation in their letter dated March 30, 2005, and we wish to endorse and embrace their response.

We wish to comment on the impact of transfer of jurisdiction of syndicated mortgages from the *Mortgage Brokers Act* to the *Securities Act* and, in particular, we wish to comment on the impact of section 2.37 of a Proposed National Instrument NI 45-106. Section 2.37 (1) proposes to exempt trades in mortgages on real property effected by a licensed mortgage broker from the dealer and prospectus requirements of the *Securities Act*. Unfortunately, Section 2.37 (2) removes this exemption with respect to syndicated mortgages.

We believe that syndicated mortgages should not be excluded from this exemption. The current and proposed legislation for the mortgage brokerage industry, namely, the *Mortgage Brokers Act* and the proposed *Mortgage Brokers, Mortgage Lenders and Mortgage Administrators Act* is designed to and does protect investors in a mortgage investment. The consultation draft - for discussions purposes of the new *Mortgage Brokers Statute* at part IV states that concerns have been expressed that the current mortgage exemption from the *Securities Act* "does not provide adequate protection to investors given the potential complexity of these investments" and that it is for this reason that Canadian Securities Administrators believe that further and additional protection would be given to the investors under the *Securities Act*.

We respectfully disagree with this proposition. We submit that the existing protection set out in Form 1 of the *Mortgage Brokers Act* would not be significantly enhanced by bringing the syndicated mortgages under the *Securities Act*. ***The due diligence required of a mortgage broker and the level of disclosure required for one lender in a mortgage transaction does not change when the lender consists of two or more persons.*** If the required information concerning the location and appraised value of the land, the terms and conditions of the charge, the principal amount, interest rate and term of the mortgage together with an outline of the risks of the mortgage investment are provided, as required under the current Act, the mortgage investors (whether one lender or two or more lenders) will be adequately protected.

We submit that it is not efficient to have a segregated portion of the mortgage market regulated by two organs of government. All aspects of the mortgage transaction are governed by the *Mortgages Brokers Act* and there is no new information which would be provided on a term sheet which would enhance the disclosure to the investors which could not be added as a required element of Form 1. We endorse the representation made in the Firm Capital Corporation letter to the effect that "If mortgage syndications were governed by securities

legislation, a dual registration regime would be created resulting in increased compliance costs and administrative burden as well as duplication and overlap of regulations.” and we would add “without an apparent benefit”.

We are concerned that the additional requirements imposed on mortgage brokers by the *Securities Act* will have an extremely negative impact on raising capital for mortgage transactions in that many investors will be unable to diversify their risk by investing in mortgages. The financial strength test for accredited investors is not necessarily the appropriate test for a mortgage investor because of the additional protection afforded an investor by the nature of the underlying asset. It is clear that in our current economy the increase in real estate values has given rise to larger mortgages and need for two or more lenders to participate in the ownership of a mortgage. We are concerned that the accredited investor qualifications would eliminate a number of investors thereby denying them the security that comes from a real estate based investment. Further, the need for limited market dealer involvement in Ontario will restrict the number of mortgage brokers who will participate in syndication. Many current mortgage brokers will not be prepared to qualify and register as limited market dealers for the broader market and their specialized experience and knowledge of the industry will be lost. The additional costs and paper work for reporting and accounting will inevitably be passed on to the lenders or borrowers thereby making the transaction unnecessarily more expensive. Finally, we see that this change may result in significant prejudice against small investors in smaller country centers and hurt the local economies.

From our perspective this proposed change has been effected without any cost benefit analysis being done in the industry. As it has been explained to us, the *Securities Act* does not currently reflect the way in which a mortgage is created, syndicated and managed. We believe that certain definitions under the *Securities Act* may need to be amended in order to accommodate our industry adequately.

Preliminary questions which arise in our mind and for which there do not appear to be answers as yet are:

1. Will mortgage syndicators have to be qualified as both mortgage brokers and limited market dealers, or will they have to engage a limited market dealer at further and additional cost to the transaction?
2. Is it the mortgage broker the promoter in a syndicated mortgage transaction?
3. Will the mortgage broker be in a position where he or she will be acting as a broker, a limited market dealer, a promoter and a deemed issuer of the syndication?
4. Who is the issuer in a syndicated mortgage transaction? Clearly the borrower (mortgagor) is the party giving the original charge on his or her land to the mortgage broker or investors (in such limited cases where the investors go directly on title), as the case may be and could be considered the original issuer.
5. As stated above, the disclosure required for one investor is the same disclosure for two or more investors. If syndicated mortgages are removed from the *Mortgage Brokers Act*, the result will be two types of disclosure, one for single lenders and one for multiple lenders?

It could be argued that there is already a greater disclosure required under the *Mortgage Brokers Act* than under a term sheet required under the *Securities Act*. Notwithstanding the disclosure requirements under either Act, the investors who invest in mortgages on identifiable pieces of land, frequently perform their own due diligence, often review the valuation and appraisal reports, examine the qualities of the real estate underlying the security, require proof of title or title insurance and in all cases the mortgage broker engages solicitors on behalf of the investors to review the mortgage documentation and address all legal issues without regard to the size of the Mortgage or the number of investors involved, before the investors commit their funds to the mortgage pool. Notwithstanding their knowledge of real estate and the security it affords, under the *Securities Act* these investors may be precluded from investing as they may not meet the accredited investor criteria appropriate for investment in less tangible security. This does not seem reasonable in our view.

On the basis of the foregoing and for the issues raised in the Firm Capital Letter, it seems to us that this change is being promoted without a proper consultation and thorough analysis of the way in which the *Securities Act* will apply to our industry. As a result, we would strongly recommend that prior to effecting the change, the Ontario Securities Commission set up a task force to canvas the industry and industry participants. We also believe that the Securities Commission should provide the industry with the consequential amendments that will be required to other areas of the *Securities Act* in order to adequately regulate the syndicated mortgages part of our industry.

We appreciate the Commission's courtesy in permitting us to provide our comments after the March 17th deadline.

Please feel free to contact the undersigned should you have any questions with respect to this matter.

Yours very truly,

Vector Financial Services Limited

Per: *Frank Laurie*

(Computer Generated Signature)

Frank Laurie - President