

April 8, 2004

**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

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Dear Sirs,

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

Thank you providing the Canadian Institute of Mortgage Brokers and Lenders (CIMBL) with the opportunity to comment on Proposed National Instrument 45-106 and Proposed Amendments to OSC Rule 45-501

The Canadian Institute of Mortgage Brokers and Lenders (CIMBL) is the national organization which represents the Canadian mortgage industry. Its membership is drawn from every province and from all sectors of the mortgage industry including mortgage brokers, mortgage lenders and mortgage insurers. This diversified membership enables CIMBL to bring together key players from all sectors with the aim of enhancing professionalism in Canada's mortgage industry through Best Practices, harmonized educational standards, fraud prevention, informative publications, improved public profile and enforcement of a Code of Ethics.

CIMBL currently has 7,000 individual members and it is the largest member-based mortgage industry organization in Canada.

CIMBL and its members first became aware of Proposed National Instrument 45-106 and Proposed Amendments to OSC Rule 45-501 as a result of the recent publication of *Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act: A Consultation Draft*. This draft was produced by the Ontario Ministry of Finance and was released on March 21, 2005. Page 16 of the Draft confirms that “trades in mortgages are not subject to the registration and prospectus requirements of the *Securities Act* if the mortgages are sold by a person who is registered, or exempt from registration, under the *Mortgage Brokers Act*.” However, the Draft then goes on to indicate that because of “concerns over consumer protection given the potential complexity of these investments”, the Ministry proposes that the current registration and prospectus exemption for syndicated mortgages that is currently part of Ontario Securities law may be removed. This would mean that syndicated mortgages could only be sold by dealers registered under the applicable securities legislation and in compliance with the prospectus requirements of such legislation.

CIMBL members are concerned about the removal of the exemption for syndicated mortgages for a number of reasons:

1. Mortgage industry participants have not had the opportunity to comment on the proposed National Instrument 45-106 Prospectus and Registration Exemptions and the Proposed Amendments to OSC Rule 45-501.

The OSC and other CSA members published these documents on December 17, 2004, inviting comments until March 17, 2005. The mortgage industry, a significant stakeholder, was not informed directly of the proposed changes. It was not until the release of the Consultative Draft for the Mortgage Brokerages, Mortgage Lenders, and Mortgage Administrators Act on March 21, 2005, that this change came to our attention. Unfortunately, by this time, the deadline for providing comments had passed.

Once CIMBL became aware of N.I. 45-106 and the Amendments to OSC Rule 45-501 CIMBL contacted Jo-Anne Matear who was identified in the document as one of the parties to which questions should be addressed. CIMBL requested an extension of the deadline for the comments and was told that it could comment, but that it must do so very quickly if it wanted its comments to be considered.

CIMBL would like to bring to your attention that none of the letters of comment on N.I. 45-106 and the Amendments to OSC Rule 45-501 CIMBL that have been published mention the issue of mortgage syndication. We believe that this indicates that the industry was unaware of the proposals re syndication found in the document and that the industry has not had an adequate opportunity to provide its comments.

Our members believe that a rushed response to the proposed changes is a recipe for poor public policy. We strongly urge the CSA and the OSC to extend the period for comment so that CIMBL can do additional research and provide additional industry comments.

2. Given that the proposed amendments to OSC Rule 45-501 would take away the exemption that is currently relied upon in Ontario, we would like to speak directly to matters relating to mortgage syndication in Ontario. In 1992 Ontario, under the Ministry of Finance, implemented enhanced consumer protection measures, including mandatory disclosure requirements and provisions relating to the administration and servicing of mortgage investments. Since that time, billions of dollars of syndicated mortgages have been issued and there have been no real problems or harm to those who have been investing in this product.

Although the industry is open to suggested improvement in the regulation of syndicated mortgages, we believe that the current disclosure document, *Form 1, Investor Lender Disclosure Statement for Brokered Transactions* provides appropriate disclosure to private investors, whether they are investing as individuals or as part of mortgage syndicates.

If the Ontario Ministry of Finance or the OSC has concerns over the current level of consumer protection provided under the Mortgage Brokers Act, the industry would be pleased to consult and propose changes that could be incorporated into the new Ontario Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act. Before the Ministry cedes some jurisdiction to the OSC, there should be discussions with the industry to determine whether any potential concerns could be better addressed in the new mortgage brokers act.

3. Placing syndicated mortgages under the partial jurisdiction of the securities regulatory authorities will result in dual registration requirements, adding expense and red tape to the few brokers who would continue to offer them.

Under the proposed changes, syndicated mortgages, although based on real property, would be governed under securities legislation, but would still fall under the jurisdiction of the Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act (with respect to accounting and reporting).

In order to be allowed to offer syndicated mortgages, mortgage brokers would incur the expense and effort of having to register as a dealer. Because the limited market dealers are entitled only to act in connection with registration exempt trades, the registration (at least in Ontario) would have to be as an investment dealer unless the mortgage syndicators limited themselves to dealing only with Accredited Investors. A limited market dealer would be required to acquire the services of registered investment dealers if a prospectus was required. If sold to accredited investors only, the brokers would be required to file documents on each mortgage syndication and pay a filing fee for each

such mortgage to the securities regulator. In Ontario this fee would be \$500 per mortgage. This extra financial burden would be passed on to consumers.

The requirements to comply with the FSCO rules and regulations would remain despite the additional work required to comply with the securities laws. These changes and the need for OSC pre-approval, could impact response time in the underwriting of a mortgage proposal.

Anticipated costs and benefits are identified on page 15 of the Proposed National Instrument 45-106 and Proposed Amendments to OSC Rule 45-501. CIMBL would like to point out that the document is silent on the anticipated costs and benefits of the proposals re mortgage syndication. CIMBL is concerned that there are many elements of securities law that may not work with syndicated mortgages so we believe that a discrete cost benefit analysis should be undertaken before any of the proposed changes are implemented.

4. Removal of the exemption for syndicated mortgages from Securities law will place onerous restrictions on which Canadian citizens will be allowed to invest in a syndicated mortgage.

The proposed legislation will eliminate any mechanism for private investors who do not qualify as “Accredited Investors”, or who do not wish to invest at least \$150,000 in syndicated mortgages with limited market dealers. The definition of an Accredited Investor (see below for details relating to accredited investors) is such that only a very small proportion of citizens would qualify on that basis to invest in syndicated mortgages.

m) an individual who beneficially owns, or who together with a spouse beneficially own, financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$1,000,000;

n) an individual whose net income before taxes exceeded \$200,000 in each of the two most recent years or whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of those years and who, in either case, has a reasonable expectation of exceeding the same net income level in the current year”

This will decrease the ability of the vast majority of investors to add diversification to their portfolios through the use of syndicated mortgages. For borrowers, it will decrease the pool of funds available to them to finance the purchase of a home or in the case of businesses, the funds needed to build or purchase commercial properties.

The end result will be to reduce the number of players in the mortgage lending business. The borrowing consumer would have a less competitive marketplace and mortgage pricing and availability would reflect the lower level of competition.

In this letter I have tried to demonstrate that the industry does not believe there is a problem with syndicated mortgages. If problems do exist, then they should best be addressed by consultation with the industry and regulation under legislation regulating mortgage brokers. It is our position that the exemption for syndicated mortgages should be retained within securities legislation and that responsibility for the mortgage brokerage industry should remain with the respective provincial regulators in order to eliminate the negative administrative and financial ramifications that would result from such a change.

CIMBL would like the members of the CSA to postpone any changes to the securities regulations governing syndicated mortgages until the ramification of any changes have been identified and alternative solutions have been fully considered.

We appreciate that the members of the CSA may be concerned about possible delays in the implementation of the many other non mortgage related proposals found in N.I. 45-106 and the amendments to OSC Rule 45-501. CIMBL believes that there is no reason why the rest of the rule can not move forward and leave the element of syndicated mortgages unchanged.

If, after careful consideration, the members of the CSA believe that mortgage syndications should fall under securities regulations, we believe that a new rule should be drafted with input from all interested parties including mortgage brokers and investors. Creating a new rule would allow for a thoughtful process that would allow full consultation.

We thank you for the opportunity to provide these comments beyond the March 17 deadline. Do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Mark Webb". The signature is written in a cursive, slightly slanted style.

Mark Webb  
Senior Director Professional Affairs, CIMBL

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