The Canadian Advocacy Council for Canadian CFA Institute Societies
ADVOCATING THE CFA INSTITUTE'S CODE OF ETHICS AND STANDARDS

May 18, 2018

BY EMAIL

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

The Secretary
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M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marches financiers
800, rue du Square-Victoria, 22e étage
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Dear Sirs/Mesdames:

Re: **CSA Notice and Request for Comment – Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) relating to Syndicated Mortgages and Proposed Changes to Companion Policy 45-106CP *Prospectus Exemptions* (collectively, the "Proposed Amendments")**

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to comment on the Proposed Amendments.

[1]The CAC represents more than 15,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at http://www.cfasociety.org/cac. Our Code of Ethics and Standards of Professional Conduct can be found at http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx.

[2] CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come

We generally support the Proposed Amendments to the prospectus exemptions and registration requirements for syndicated mortgages, in light of the inherent risks associated with distributing such products to retail investors under the current regime in Ontario and other jurisdictions. In our view, consistent with the objective of the Proposed Amendments, changes to the syndicated mortgage regime are important for investor protection. Further, the Proposed Amendments would seek to ensure consistency of regulation in relation to these products among all CSA jurisdictions of which we are supportive.

As a general comment, we note that it is our understanding that the commercial real estate mortgage loan market is not homogeneous and varies by property type (e.g. land, hotels, industrial, retail, office) as well as the type of loan (e.g. construction, bridge, term). Some loans, such as term loans, may trade in the secondary market. While limited information is available to the public on the Canadian CRE loan sector, we understand that there is no public data on the Canadian CRE syndicated loan sector. This lack of public data and transparency contributes to the importance of clear disclosure in offering documents in the sector. In addition, the creation of a data utility might be valuable to all market participants as a complement to additional disclosure. A public database of syndicated mortgage loans would facilitate comparison across the types of properties, issuers, brokers, regions, credit, etc.

We wish to provide the following comments to the specific questions raised with respect to the Proposed Amendments:

1. *As proposed, an appraisal would be required in all cases where a syndicated mortgage is distributed under the OM Exemption. Should there be exceptions to this requirement? For example, should an appraisal be required if the property was acquired recently in an open market transaction with all parties acting at arm's length?*

   We do not think it is necessary to provide a list of exceptions to the appraisal requirement, because such exceptions would undermine a key objective of the Proposed Amendments which is to provide more disclosure to investors given the inherent risks of syndicated mortgages. These risks include leverage (often at a rate of 50% or higher) from financing which can enable syndicated mortgage products to seek attractive returns for investors.

   The appraisal requirement may in some instances mitigate against insufficient disclosure of the underlying assets. However, it is not clear to us which type of appraisal would be most useful to investors, or that the same type of appraisal should be required in all circumstances (e.g. based on construction cost,

first, markets function at their best, and economies grow. CFA Institute has more than 155,000 members in 165 countries, including more than 148,900 CFA charterholders and 149 member societies. For more information, visit www.cfainstitute.org.

comparable sales, or economic value). Investors should also be made aware of the limitations of the method used, in order to better understand the value that is disclosed.

Further, the issuer under the Proposed Amendments would still be permitted to disclose any other value for the property (such as the market price of the disposition of the property in an open market) as long as it can demonstrate a reasonable basis for that value and discloses the material factors and assumptions underlying that value and whether it was prepared by an independent, qualified appraiser.

2. *Are there circumstances where requiring additional disclosure by and a certificate from a mortgage broker would not be appropriate in connection with the use of the OM Exemption? If so, please explain why and whether there are other participants in the distribution that should be subject to these requirements.*

   The additional disclosure and certificate from a mortgage broker involved in the distribution of a syndicated mortgage indicating that the offering memorandum does not contain a misrepresentation is an important safeguard for investors who rely on the representations in the offering memorandum.

3. *Is it appropriate to require a mortgage broker to certify that it has made best efforts to ensure that the offering memorandum does not contain a misrepresentation with respect to matters that are not within its personal knowledge?*

   We take the view that the requirement of making best efforts with respect to matters not within the mortgage broker's personal knowledge may be too burdensome for mortgage brokers as there may be a number of matters disclosed in the offering memorandum not specifically related to the product offering that would fall outside the expertise and knowledge of a mortgage broker, such as the corporate structure of the issuer or finances related thereto. Accordingly, requiring mortgage brokers to make best efforts with respect to such matters and certify that they do not contain a misrepresentation may be of little utility to the retail investor and costly. Rather, the certification that the offering memorandum does not contain a misrepresentation with respect to matters within the mortgage broker's knowledge or matters that the mortgage broker ought to know (including for example, determinants of the loan such as probability of default, exposure at default, loss given default) may suffice. As an example, the mortgage broker should be able to give assurances on the rent roll for commercial properties. It is important that the concept of "within the knowledge of" does not become too limiting.

4. *Are there circumstances where the distribution of syndicated mortgages under the Private Issuer Exemption would be appropriate and reporting to the securities regulatory authorities would not be necessary? If so, please provide examples and explain why there are limited investor protection concerns in those circumstances.*

   In our view, the ability to participate in the exempt market is very important to Canada's capital markets. Limiting investors' participation in the exempt market may not be a preferred regulatory action for all investors. Rather, limiting investor's participation in the exempt market could be for those investors that are unable to evaluate and appreciate the risks. As an alternative, the Private Issuer Exemption could be further limited to certain categories of investors, such as directors, officers and employees of the issuer who are otherwise able to understand the risks of the investment.

   We agree that it would be helpful, if this alternative exemption were available, to require reports of exempt distribution to be filed.

5. *Should alternative prospectus exemptions be provided to facilitate the distribution of specific classes of syndicated mortgages where the investor protection concerns may not be as pronounced?*

   Although there may be certain differences in the classes of syndicated mortgages, proposing alternative prospectus exemptions based on the class may create confusion and uncertainty among retail investors and in some cases, result in less disclosure. Nevertheless, we take the view that in all cases there should also be disclosure of the fees that lenders receive from borrowers on closing, in order to provide investors with sufficient disclosure on how those fees are distributed back to investors or otherwise allocated.

6. *Should we consider adopting an exemption for the distribution of syndicated mortgages on existing residential properties similar to the exemption for "qualified syndicated mortgages" under British Columbia Securities Commission Rule 45-501 Mortgages?*

   Syndicated mortgages in the context of real estate developments and developments subject to future financings such as construction financings (with potential cost overruns, liens and no cash flow) may bring increased risk to investors compared to the risk profile of existing residential mortgages. In addition, syndicated mortgages in the context of retirement homes with assisted living as well as hotels may also bring increased risks, given operational challenges and the difficulty to repurpose and liquidate the real estate while maintaining operations, respectively. It may be worthwhile for regulators to study this area more in depth in order to determine whether the adoption of an exemption for syndicated mortgages dealing with existing residential property is warranted. Further, it may also be worthwhile for regulators to study more in depth the secondary trading market for syndicated mortgages with respect to term loans that are subsequently sold to retail investors, as investors may not fully understand the underlying assets once these syndicated mortgages are traded in the secondary market.

7. *Should an exemption be provided for the distribution of a syndicated mortgage to a small number of lenders on a property that is used for residential or business purposes by the mortgagor? If so, should the exemption be subject to conditions? For example, should the exemption be available only for a distribution: (i) by an individual; and/or (ii) relating to a residential property; and/or (iii) involving a specified maximum number of lenders?*

   Given the expected increased cost of the Proposed Amendments, permitting an exemption for syndicated mortgages on a property that is used for residential or business purposes by the mortgagor in the context of a few lenders appears to be reasonable, provided there is sufficient disclosure on the use of the premises and disclosure of financial statements of the operating business. In this context, it seems that the biggest risk on a loan to an owner/operator is the owner's business, which for private businesses is difficult to evaluate. We would also welcome more data on what the specified maximum number of lenders should be to ensure an adequate balance of access to the exempt market and investor protection.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council for Canadian CFA Institute Societies*

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