

June 6, 2018

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

Dear Sirs/Mesdames:

Re: 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 (the “Proposed Amendments”)

We have been requested by a number of our clients who are involved in mortgage syndications in British Columbia to comment on the Proposed Amendments published by the Canadian Securities Administrators (the “CSA”), which we are pleased to do.

General Comments

For over 45 years, our law firm and its predecessor have represented financial institutions in British Columbia on, among other matters, commercial and residential mortgage loans. Due to the increase in the size of many mortgage loans over the last 20 or so years, an increasing percentage of the large commercial mortgage loans have been syndicated among two or multiple financial institutions, each contributing a portion of the total mortgage loan.

Over the last 25 years, our firm has also represented an increasing number of private lenders granting residential and commercial mortgage loans, each of which are funded by a syndication of the lender and a number of corporate and personal investors. Each of the investors contributes a portion of the total mortgage loan.

It is clear that there is a demand by borrowers for these private syndicated loans. This appears to be due to: (i) a general increase in borrowing activity; (ii) provincial, national and global financial institutions bumping against internal and external rules and regulations imposing same name borrower limits and aggregate industry limits; and (iii) new governmental cash flow stress tests. In many instances, private

lenders are able to process and approve loan applications more quickly than normal loan processing times at financial institutions.

A credit analysis performed by our private lender clients for their residential, project and development loans have demonstrated very insignificant loan losses, which they estimate to be less than 0.5% of their loan portfolios.

What we are seeing with our private syndicate lender clients is the circulation of a summary of the terms of the loan and a detailed description of the property to be mortgaged as security for the loan, including a summary of the current appraisal of the property. Accordingly, for each loan transaction, each investor is making his, her or its own assessment of the merits of the investment. Our observations are that the investors are, or soon become, very experienced in analyzing the material provided to them in each summary.

An investment in one of these syndicated loans is not a situation in which an investor is transferring money to a security issuer who has broad discretion as to how the invested funds are to be applied, nor are these contributions to a mortgage fund, from which proceeds are to be lent out by the issuer pursuant to stated criteria. These are “one-off” investments made by sophisticated, high net worth investors who are fully capable of assessing the merits of an investment.

Generally speaking, we see no need for a registered dealer to be employed by the private mortgage lender to provide adequate investor protection or to ensure funds are used in accordance with these criteria. Should regulators deem further investor protection necessary, we submit that issuances to accredited investors remain exempt from the prospectus and dealer registration requirements.

Turning more specifically to the National Instrument, we comment as follows:

Dealer Registration Requirements

Section 8.12 of National Instrument 31-103 “*Registration Requirements, Exemptions and Ongoing Registrant Obligations*” currently provides a dealer registration exemption in respect of trades in mortgages on real property in certain jurisdictions of Canada, primarily Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and the Yukon (the “**NI 31-103 Exemption**”).

In British Columbia, BC Instrument 32-517 “*Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities*” provides a dealer registration exemption for trades in “mortgage investment entities” (the “**BCI 32-517 Exemption**”). We understand that BCI 32-517 is regularly relied upon in British Columbia in connection with syndicated mortgage transactions.

Both the NI 31-103 Exemption and BCI 32-517 Exemption provide lenders with a necessary carve-out from the dealer registration requirements to enable our clients to provide lending services at a cost-efficient rate. While we acknowledge the rationale for creating a harmonized regulatory regime across Canada, the elimination of the NI 31-103 Exemption, coupled with the potential expiry of the BCI 32-517 Exemption, will significantly increase the cost of lending and create unnecessary complexities in the syndicated mortgage industry. Often, syndicated lending deals are required to be completed in short time frames. The requirement to involve a registered dealer in the lending process will invariably increase the transaction time to permit the registered dealer to conduct its necessary due diligence and suitability reviews. In addition, the syndicated mortgage business operates in a particular niche such that there is no room for the introduction of additional third-party fees for registered dealers (fees that are significantly higher than those typically charged by the lenders). Accordingly, the economic and commercial impact of such changes may ultimately lead to the demise of the syndicated mortgage business.

We do not believe that the involvement of a registered dealer is necessary or appropriate for a syndicated mortgage transaction. Participants in a syndicated mortgage transaction are typically high net worth investors that are acting as “co-lenders” using customary mortgage documentation. This is distinguishable from an investor purchasing a typical security such as stock. Given the fundamental nature of syndicated mortgage transactions, the proficiency requirements of a dealer representative do not provide the representative with the adequate tools to assess and evaluate a given syndicated mortgage transaction. A licensed mortgage broker, however, is more aptly equipped to consider the merits of a particular syndicated mortgage transaction.

In light of the foregoing, we submit that any proposed amendments to the NI 31-103 Exemption should be replaced with a separate dealer registration exemption, similar to that of the BCI 32-517 Exemption. Alternatively, the BCI 32-517 Exemption should be made permanent.

Private Issuer Exemption

In connection with the Proposed Amendments to section 2.4 (the “**Private Issuer Exemption**”) of National Instrument 45-106 “*Prospectus Exemptions*”, we do not support any amendment that would make the exemption unavailable for the distribution of syndicated mortgages. In our view, the Private Issuer Exemption should continue to be available in relation to distributions of syndicated mortgages in the same way it is for other types of securities.

Although we understand the desire of the regulators to have access to additional information provided in a report of exemption distribution, this information can be provided through means other than the removal of the availability of the Private Issuer Exemption. As an alternative to filing a report of exemption distribution, the lenders could provide certain information in the form of a streamlined report designed specifically for syndicated mortgage transactions. Such a report could be limited to collecting the information viewed relevant and necessary by the regulators for these types of transactions rather than the information required in Form 45-106F1 Report of Exempt Distribution. By implementing a streamlined form of report, regulators could obtain the desired information without imposing a significant and unnecessary administrative burden and cost on syndicators, borrowers and co-lenders.

Alternative Prospectus and Registration Exemption

“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?”

In response to the CSA’s aforementioned question, we are of the view that both registration **and** prospectus exemptions should be made available for syndicated mortgage transactions, particularly those involving distributions to high net worth investors. These high net worth investors participating in syndicated mortgage transactions are not typical investors, but rather experienced and sophisticated participants in lending transactions that have the necessary skill set, or have access to professionals with the necessary skill set, to evaluate the merits of the syndicated mortgage transaction. Accordingly, these high net worth investors do not need nor require the same investor protections afforded to a typical investor in stock.

In connection with the Proposed Amendments, our clients have serious concerns regarding the impact such changes will have on the syndicated mortgage industry and the viability of the industry on a going-forward basis if such Proposed Amendments come into effect.

Please do not hesitate to contact Michael Kalef (604-891-3700 or mmk@kkbl.com) or Bernard Poznanski (604-891-3606 or bp@kkbl.com) should you have any questions on the foregoing or require further information.

Yours truly,

KOFFMAN KALEF LLP

“Koffman Kalef LLP”