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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

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Dear Sirs/Mesdames:

Re: CSA Second Notice and Request for Comment on 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

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Foremost Financial Corporation ("Foremost") thanks you for the opportunity to provide our comments in connection with the Canadian Securities Administrators' ("CSA") 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 "Proposal") as set out below.

Foremost is an alternative mortgage lender funded by private investors who allocate capital to either a Mutual Fund Trust or via syndication. Foremost's assets under management are in excess of $200M.

General Comments on Proposed Amendments

Mortgage syndication is integral to the mortgage industry as it promotes investor protection by allowing investors to build customized and diversified mortgage portfolios that fit their specific needs, lending strategy and risk tolerance. Furthermore, some Mortgage Investment Entities ("MIE") use mortgage syndication to mitigate risk, by reducing single loan or borrower exposure (loan concentration), and to increase liquidity in their pooled funds. It is paramount that regulations governing syndication take a pragmatic approach to balancing investor protection while allowing MIEs to manage their liquidity and concentration risks.

Foremost welcomes the Proposal and its intent to enhance investor protection and improve national regulatory harmonization. However, we note several concerns with the current proposal, including:

1. There are potential conflicts from having syndicated mortgages regulated by two independent regulators. These issues include increased regulatory costs, investor confusion and regulatory arbitrage.

2. The definition of Non-Qualified Syndicated Mortgage ("NQSM") arbitrarily bisects the industry. Some lenders offer both Qualified Syndicated Mortgages ("QSM") and NQSM and investors do not currently distinguish between the two. This means some lenders and investors will have two sets of regulations to adhere to for what they would both currently consider to be a homogeneous asset class.

3. The regulatory cost burden associated with filing a 45-106F1 / Report of Exempt Market Distribution ("REMD") for each syndicated mortgage could be prohibitively high and has the potential to significantly reduce the variety and number of syndicated mortgages available to investors. It is possible the fee burden would become prohibitive and the only NQSM's offered would be on larger high-risk projects.

4. There are potential unintended consequences for sophisticated (Permitted) investors as the current proposal could significantly impair their ability to build a diversified custom mortgage portfolio through syndication.

5. There are several potential unintended consequences for mortgage funds. Frequently mortgage funds will seek a second lender (often another fund) if a mortgage is too large. Under the proposal, this would be deemed a syndicated mortgage distribution. If the syndicated mortgage is a NQSM, then the mortgage funds, who have already filed a REMD and conducted a know your client and suitability analysis on their investors whose capital will ultimately be invested in the mortgage, will now have to duplicate the process for the syndicated mortgage transaction. This will be most acute for mortgage funds distributed through a non-captive EMD who they will be required to pay as well to facilitate the syndicated mortgage transaction. The scenario gets even more complicated for mortgage funds who deal only in QSM, and do not distribute syndicated mortgages to individual lenders/investors, as these mortgage funds will now be straddling two separate regulatory regimes which will likely result in additional administrative work and costs.

Advocating for a Single Regulator Regime

The goal of increasing investor protections for syndicated mortgages is best achieved through a single regulator overseeing all mortgage capital-raising activities regardless of the characteristics of the mortgage or if it is done via syndications or a fund structure. The benefits of a mono-regulatory regime are as follows:

- **Reduced regulatory inefficiencies and related costs.** A dual regulator regime will result in duplication of licensing, insurance costs, unimpaired working capital requirements and increased administration. We note both the Ontario Securities Commission ("OSC") and the Financial Services Regulatory Authority of Ontario ("FSRA") have made regulatory reduction part of their mandate, but we are concerned the benefits of their individual efforts will be undermined by the inefficiencies of operating within a dual regulatory eco-system.
- **Reduced administrative burden on investors.** Often investors participate in both fund products as well as mortgage syndication. As is the case in the current regulatory environment, a dual regulator regime has resulted in the duplication of KYC and suitability procedures for investors. It should be noted, the prescribed Financial Services Commission of Ontario ("FSCO") investor forms are difficult to repurpose for KYC and suitability requirements under the OSC's regime as the forms are designed for a syndicated product. The requirement to complete different forms for different types of syndicated mortgages has measurably contributed to investor confusion.

- **Avoids the potential for regulatory arbitrage.** If inequality exists regarding licensing proficiencies and on-going regulatory obligations, bad actors will exploit the regulator with reduced regulatory oversight. Moreover, if the requirements are comparable, then a question is raised as to the point of having two regulators.
- **Easier path to harmonization:** Foremost supports the CSA's goal of achieving harmonization but has concerns the current proposal fails to establish the most effective foundation to do so. On a macro level there are three regulatory bodies, CSA, OSC and FSRA, all regulating capital raising for mortgages in Ontario. Regulatory jurisdiction will become further fragmented by subdividing syndicated mortgages between the CSA/OSC and FSRA. The proposed model is complicated and creates difficulties for national adoption and results in the aforementioned concerns. Conversely, a single regulator, as is the case in Alberta, and one set of regulations, creates a streamlined structure better suited for administrative efficiency. We further note:
    - There is no pragmatic reason for regulatory variances amongst the provinces as the underlying product and investor protection requirements has no correlation to geography.
    - Segregating mortgages based on syndicated versus pooled fund offerings has historically led to regulatory arbitrage. Furthermore, it is an academic division as syndicated mortgage investors often diversify their mortgage investments effectively creating their own "fund" portfolios.
    - Instilling an adequate investor protection regime should be based on the proficiencies of the dealer/broker and not based on the underlying product. An ill-equipped dealer/broker will fail to safeguard the investor regardless of the simplicity or complexity of the offering. The focus should be on increasing dealer/broker proficiency requirements.

A Better Definition of Non-Qualified Syndicated Mortgage

In recent years there have been investments marketed as syndicated mortgages, where the risk of the investment was comparable to an equity investment in a large construction development deal. The risks associated with these investments were often improperly disclosed. Investors erroneously believed the loans were backed by real estate when in fact, with loans-to-value in excess of 100%, they were not.

We fully support the CSA's goal to draw a line between these investments and true syndicated mortgages. However, the current definition of QSM is too broad and arbitrary. There are numerous instances where a mortgage on a commercial property or for construction purposes is less risky than a residential mortgage. The security of a mortgage is dependent as much on property type as it is on loan-to-value, geography and the borrower (history, credit rating and net worth etc.).

A better definition of QSM would capture mortgages that:

- Are negotiated or arranged through a mortgage brokerage;
- At the time the syndicated mortgage is arranged, the amount of debt it secures, together with all other debt secured by mortgages on the property that have priority over, or the same priority as, the syndicated mortgage, does not exceed 90% of the fair market value of the property relating to the mortgage, excluding any value that may be attributed to proposed or pending development of the property;
- Are limited to one debt obligation whose term is the same as the term of the syndicated mortgage; and
- Aside from reasonable administration fees, have a rate of interest payable under the mortgage that is equal to the rate of interest payable under the debt obligation; and
- Do not pay commissions to source the capital to fund the mortgage, where the result is less than 100% of lender/investor capital is used to fund the mortgage.

Furthermore, we believe revising the definition of NQSM would mitigate many of the other concerns we have identified with the current proposal, while allowing regulators to place their focus where it is most needed, the predatory selling of higher risk syndicated mortgages to non-accredited investors.

Reports of Exempt Market Distributions.

We request clarification as to why the timing of the filing of a report of exempt market distribution is outside the scope of this project. To many lenders, the REMD represents one of the larger financial and administrative costs associated with the proposed structure.

The argument that the cost of filing will be minor compared to the cost of mortgage registration fails to capture the realities of operating a syndicated portfolio. First, the costs associated with registering a mortgage are borne by the borrower. Second, mortgage registration is a one-time cost which allows it to be accounted for when determining the total loan amount. Conversely, a syndicated mortgage may require multiple REMD's and it is therefore difficult to predict the frequency as new investors are often added to a mortgage throughout the term of the loan. Furthermore, construction mortgages, which include multiple draws and have different investors participate at each stage, would trigger multiple reports. These issues get compounded in the context of managing a syndicated portfolio and are particularly burdensome for small-to-medium lenders whose investors maintain small investment amounts diversified across multiple small loans with short terms.

To illustrate the implications of imposing a $500 filing fee, consider a $200,000 mortgage loan as an example. A lender would likely earn between $2,000 to $4,000 in fees on a loan of this size. Having to file exempt market reports and pay $500 each time a syndicated investor participates could amount to consuming the entire revenue with regulatory filing fees.

In short, given the potential high frequency and large number of REMDs that would need to be filed for syndicated mortgages, the cost to borrowers/lenders and to regulators to review these filings is out of proportion with the benefit gained by the delivery of this information to the regulator.

In order to reduce the administrative burden and expense while still ensuring the CSA remains up to date, we recommend the following:

- Construction mortgages should require one filing at initial funding and subsequent advances should not trigger a REMD.
- Monthly filings reflecting all activities during the month;
- If the above is not adopted and the existing 10-day timeframes remain applicable, allow issuers to batch all syndicated activities that have occurred in a ten-day window into one report as this will limit the number of reports to 3 a month;
- Reduce the cost of the filing to account for the frequency; and
- In order to promote harmonization with jurisdictions like B.C. and Alberta, trades involving permitted investors should not trigger a REMD.

As an aside, we maintain that establishing who the issuer is remains unclear, even with the additional commentary provided. We request further clarification. It is imperative both issuers and regulators have a clear and shared understanding to avoid fragmented implementation and oversight.

Reducing Cost Burden and Unintended Consequences through a Carve-Out for Permitted Investors

As previously stated, these proposals have the potential to create unintended consequences for mortgage funds and sophisticated syndicated-mortgage investors. A solution which would provide mitigation would be to adopt a prospectus exemption for syndicated mortgages distributed to permitted investors. We do not believe permitted investors require the additional protection the current proposal offers and the changes will only be a detriment to them. Furthermore, this would assist in the CSA's harmonization goals as this is currently offered in B.C. and proposed in Alberta.

Risks of Syndicated Mortgages and Comparisons to Other Securities.

We maintain syndicated mortgages are being broadly miscategorized as high-risk investments which has an adverse impact on suitability analysis and unfairly portrays the industry in a negative light.

Syndicated mortgages represent a diverse array of loans which can encompass standard residential first mortgages with conservative loans-to-value and complicated commercial development with aggressive loans-to-value and in a subordinated position. Subsequently, determining the risk characteristics of the asset class should be assessed on a per-loan basis as all encompassing statements fail to capture important nuances.

We further note the CSA's response in the comment letter reaches an erroneous conclusion as it states that 6.6% of the reported syndicated mortgages resulted in a loss. In fact, according to the comment letter, only 3.8% of the 2,000+ mortgages resulted in some loss of principal or interest. Even assuming the higher figure of 6.6%, effectively, 93.4% of the total loans performed. Such data supports the argument that an individual syndicated mortgage or a portfolio comprising of lower risk private mortgages can be considered as low-medium risk.

We maintain there is no pragmatic reason why mortgages should be treated differently than other securities and we request clarification as to why they are being segregated. The conceptual nature of the segregation of mortgages is evident when examining the regulatory obligations of other securities. For instance, issuers of bonds and debentures who collateralize their security with a mortgage result in a product substantially the same as a mortgage, nonetheless they are subject to different regulatory oversight (i.e. the permitted use of the private issuer exemption). The atypical treatment of mortgages not only creates additional regulatory burden, it also impedes national harmonization.

Adopting the Existing Local British Columbia Exemptions.

We note Ontario is looking to adopt exemptions similar to BCI 45-501. As previously mentioned, doing so introduces unnecessary regulatory duplication and confusion when compared to having one regulator oversee all mortgage capital raising activities. In the event a single-regulator model is not adopted we request the adoption of the definition previously outlined of a QSM.

Furthermore, the definition should allow administrators to charge an administration fee. We note Ontario did not adopt the BC provision carving out administrators' fees as Ontario's definition of a QSM states that an investor needs to earn the face-rate of the loan. In doing so, mortgages not intended to be NQSM are being categorized as such, as a result of administrators' business model and not the underlying characteristics of the loan.

Closing Remarks

We note that in Ontario, the government has emphasized regulatory burden reduction as a priority and we are hopeful the CSA will take this into consideration when finalizing the amendments.

Foremost would like to thank the CSA for their efforts in drafting the proposal and for soliciting feedback from various stakeholders. We also welcome the opportunity to provide further input as required.

Sincerely,

[redacted] [redacted]

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