

CSA Second Notice of Consultation Amendments relating to Syndicated Mortgages

Draft Regulation to amend Regulation 45-106 respecting Prospectus Exemptions

Draft Regulation to amend Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations

Draft Amendments to Policy Statement to Regulation 45-106 respecting Prospectus Exemptions

Draft Amendments to Policy Statement to Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations

March 15, 2019

Introduction

On March 8, 2018, the Canadian Securities Administrators (the **CSA** or **we**) published for comment draft *Regulation to amend Regulation 45-106 respecting Prospectus Exemptions* (**Regulation 45-106**), draft *Regulation to amend Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**Regulation 31-103**) and draft *Amendments to Policy Statement to Regulation 45-106 respecting Prospectus Exemptions* (**Policy Statement 45-106**) relating to syndicated mortgages (collectively, the **March 2018 Proposal**).

The March 2018 Proposal included changes to certain prospectus and registration exemptions available for the distribution of syndicated mortgages, including the following:

- removing the prospectus and registration exemptions under sections 2.36 of Regulation 45-106 and 8.12 of Regulation 31-103 (the **Mortgage Exemptions**) respectively for the distribution of syndicated mortgages in Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon;¹

¹ Syndicated mortgages are already excluded from the Mortgage Exemptions in Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan.

- introducing additional requirements to the offering memorandum prospectus exemption under section 2.9 of Regulation 45-106 (the **OM Exemption**) that would apply when the exemption is used to distribute syndicated mortgages; and
- amending the private issuer prospectus exemption under section 2.4 of Regulation 45-106 (the **Private Issuer Exemption**) so that it is not available for the distribution of syndicated mortgages.

We received 26 comment letters in response to the March 2018 Proposal.

In light of the comments received on the March 2018 Proposal, we are publishing for a 60-day comment period revised draft *Regulation to amend Regulation 45-106*, draft *Regulation to amend Regulation 31-103*, draft *Amendments to Policy Statement 45-106* and draft *Amendments to Policy Statement 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* related to syndicated mortgages (the **Proposed Amendments**). The substantive differences between the Proposed Amendments and the March 2018 Proposal are the following:

- Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador are proposing dealer registration and prospectus exemptions, and Alberta and Québec are proposing a prospectus exemption, for qualified syndicated mortgages, similar to the exemptions already available in British Columbia under British Columbia Rule 45-501 *Mortgages (BCI 45-501)*;
- Alberta is proposing a prospectus exemption for syndicated mortgages distributed to permitted clients similar to the prospectus exemption for distributions of syndicated mortgages to “institutional investors” under BCI 45-501;
- in relation to the OM Exemption,
 - the date of a property appraisal must be within 6 months preceding the date the appraisal is delivered to the purchaser instead of 12 months;
 - the proposed mortgage broker certificate has been removed; and
 - additional guidance as to the identity of the issuer of a syndicated mortgage has been added; and
- the amendments to Mortgage Exemptions will both come into effect at the same time instead of the amendments to the registration exemption coming into effect 12 months after the amendments to the prospectus exemption.

This notice will also be available on the following websites of CSA jurisdictions:

nssc.novascotia.ca
www.albertasecurities.com
www.bsc.bc.ca
www.fcaa.gov.sk.ca
www.fcnb.ca
www.lautorite.qc.ca
www.mbsecurities.ca
www.osc.gov.on.ca

Summary of Changes to the March 2018 Proposal

Exemptions for Qualified Syndicated Mortgages

Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador are proposing to adopt dealer registration and prospectus exemptions for qualified syndicated mortgages. Alberta and Québec are also proposing to adopt a prospectus exemption for qualified syndicated mortgages. These exemptions are being adopted on a local basis for consistency, in some jurisdictions, with local mortgage legislation and regulations. However, the proposed exemptions are substantially harmonized. Other jurisdictions may consider adopting similar or additional exemptions as local rules or blanket orders in the future. As these proposed exemptions are local matters, please refer to the annex to this Notice in the relevant jurisdiction for more information.

OM Exemption

As suggested by several commenters, we have revised the requirement regarding the date of a property appraisal so that it must be within 6 months preceding the date the appraisal is delivered to the purchaser. The March 2018 Proposal had proposed that it be within 12 months of the date the appraisal is delivered to the purchaser, but we agree with the commenters that this is too long of a period given the rapidly changing real estate markets in certain jurisdictions.

We have also proposed additional guidance as to the identity of the issuer of a syndicated mortgage. As several commenters noted, the issuer of a syndicated mortgage may be the mortgage broker or other party organizing the syndication, rather than the borrower under the mortgage. Given that a mortgage broker that is the issuer of the syndicated mortgage will provide a certificate as issuer, a separate requirement for a mortgage broker to provide a certificate in their capacity as mortgage broker is not necessary.

Timing

The March 2018 Proposal contemplated that the proposed amendments to the Mortgage Exemptions in Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon would have a staggered implementation with the amendment to the registration exemption coming into effect 12 months after the amendment to the prospectus exemption. We are now proposing that all the Proposed Amendments will come into force at the same time, as we believe a one-stage implementation will be less disruptive in those jurisdictions.

Subject to necessary regulatory approvals, the Proposed Amendments will come into effect on December 31, 2019. We encourage those persons who may be required to be registered in Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon to apply for registration well in advance of that date.

Impact on Investors

As with the March 2018 Proposal, investors in syndicated mortgages who purchase under the amended OM Exemption would be entitled to enhanced disclosure relating to their investment. We anticipate that this additional disclosure would result in more informed investment decisions and enable registrants involved in the distribution to better fulfil their obligations related to the distribution.

In the jurisdictions that currently provide a registration exemption for syndicated mortgages, investors will benefit from the protections associated with the involvement of a registrant in the distribution.

Anticipated Costs and Benefits of the Proposed Amendments

The anticipated costs and benefits of the Proposed Amendments are expected to be substantially the same as described in the March 2018 Proposal. In those jurisdictions that are proposing local amendments, including an exemption for qualified syndicated mortgages, an annex to this Notice contains further discussion.

Alternatives Considered

We considered adopting the March 2018 Proposal in its original form as well as the alternatives suggested by the commenters as detailed in Annex B.

Local Matters

An annex to this Notice is being published in any local jurisdiction that is proposing related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It may also include additional information that is relevant to that jurisdiction only.

Request for Comments

We welcome your comments on the Proposed Amendments.

Please submit your comments in writing on or before May 14, 2019. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Address your submission to all the CSA as follows:

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

Deliver your comments only to the addresses below. Your comments will be distributed to the other CSA jurisdictions.

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The Secretary
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Fax: 416-593-2318
comments@osc.gov.on.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Contents of Annexes

Annex A – List of Commenters

Annex B – Summary of Comments and Responses

Annex C – Local Matters (Québec)

Questions

Please refer your questions to any of the following:

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ANNEX A

LIST OF COMMENTERS

No.	Commenter	Date of Letter
1.	Secure Capital MIC Inc.	April 6, 2018
2.	Paragon Capital Corp. Inc.	May 15, 2018
3.	The Canadian Advocacy Council for Canadian CFA Institute Societies	May 18, 2018
4.	First Source Mortgage Corporation	May 30, 2018
5.	Donna Lewczuk	June 1, 2018
6.	Brownlee LLP	June 1, 2018
7.	TELB Investments Ltd.	June 1, 2018
8.	Appraisal Institute of Canada	June 5, 2018
9.	Paul Mangion	June 5, 2018
10.	MCAP Commercial LP	June 5, 2018
11.	Chuck Barrett	June 5, 2018
12.	Canadian Mortgage Brokers Association	June 5, 2018
13.	Empirical Capital Corp.	June 4, 2018
14.	Private Capital Markets Association of Canada	June 6, 2018
15.	McMillan LLP	June 6, 2018
16.	The Ontario Mortgage Investment Companies Association	June 6, 2018
17.	Farris, Vaughn, Wills & Murphy LLP	June 6, 2018
18.	McLeod Law LLP	June 6, 2018
19.	Olympia Trust Company	June 6, 2018
20.	Koffman Kalef LLP	June 6, 2018
21.	Lanyard Financial Corporation	June 6, 2018
22.	Foremost Financial Corporation	June 6, 2018
23.	Borden Ladner Gervais LLP	June 6, 2018
24.	Mortgage Professionals Canada	June 6, 2018
25.	Canadian Foundation for Advancement of Investor Rights	June 13, 2018
26.	Realtech Capital Group Inc.	June 25, 2018

ANNEX B

SUMMARY OF COMMENTS AND RESPONSES

No.	Subject	Summarized Comment	Response
GENERAL COMMENTS			
1.	Necessity	<p>Four commenters expressed their general support for the March 2018 Proposal and greater harmonization across the CSA.</p> <p>Three commenters were of the view that the status quo is sufficient for syndicated mortgages involving existing residential and commercial properties, but additional regulation was required for syndicated mortgages used for development financing.</p> <p>One commenter expressed support for applying the same regulation to syndicated mortgages as is currently applied to mortgage investment entities.</p> <p>Several commenters expressed support for the existing British Columbia regime, as discussed in more detail under “Alternative Prospectus and Registration Exemptions” (rows 39-43).</p>	<p>We thank all the commenters for their support and input.</p> <p>We agree that syndicated mortgages can involve a wide variety of property and loan types and the risks associated with investments in syndicated mortgages may vary as a result. The extent to which an investment in a syndicated mortgage is similar to an investment in the business of the borrower is not necessarily limited to syndicated mortgages sold in connection with property developments. For example, as one commenter suggested, this could be the case for syndicated mortgages on properties with businesses such retirement homes or hotels.</p> <p>In general, the requirements of the prospectus exemptions that are likely to be used to distribute syndicated mortgages, such as the accredited investor exemption or the family, friends and business associates exemption, are linked to the characteristics of the purchaser, rather than the specific terms of the securities. Accordingly, these exemptions should be suitable for the full range of syndicated mortgages that may be distributed.</p> <p>Similarly, the requirements</p>

No.	Subject	Summarized Comment	Response
			<p>applicable to registrants involved in the distribution of syndicated mortgages are principles-based and would apply to the distribution of syndicated mortgages in the same way as other securities sold in the exempt market.</p> <p>The Proposed Amendments would substantially align the requirements applicable to syndicated mortgages with those that apply to the distribution of mortgage investment entities. In addition, although certain local exemptions remain, they will substantially harmonize the treatment of syndicated mortgages under securities legislation across the CSA jurisdictions.</p>
2.	Risks of syndicated mortgages and comparisons to other securities	<p>Several commenters expressed the view that a few high-profile failures have created an inaccurate impression of syndicated mortgages. One of these commenters provided certain information in respect of syndicated mortgages it administers. Of the 2,083 syndicated mortgages this commenter funded in 2015, 2016 and 2017:</p> <ul style="list-style-type: none"> • 80 (3.8%) of the mortgages led to a loss of some principal or interest; • 35 (1.7%) are currently in foreclosure proceedings; • 19 (<1%) resulted in the lenders losing all of their money; and • 3 (<1%) resulted in the lenders foreclosing on the property. 	<p>We thank the commenters for their input. The Proposed Amendments are primarily intended to enhance investor protection for riskier types of syndicated mortgages marketed to retail investors. The data provided by one commenter supports the view that syndicated mortgages are relatively high-risk investments with investor losses in approximately 6.6% of the syndicated mortgages funded.</p>

No.	Subject	Summarized Comment	Response
		<p>One commenter noted that unsecured debt will not have increased disclosure requirements, notwithstanding the commenter's view that syndicated mortgages are less risky than unsecured debt.</p>	<p>We acknowledge this comment, but we have concerns with products sold as low risk on the basis that they are secured by an interest in real property.</p>
3.	Use of offering memorandum exemption	<p>Several commenters expressed the view that the offering memorandum exemption would rarely be used for the distribution of syndicated mortgages due to the fast pace with which such transactions are conducted.</p>	<p>We thank the commenters for their input.</p> <p>We agree that the offering memorandum exemption is likely to be used only where syndicated mortgages are marketed broadly to retail investors. Since these are the circumstances where investor protection concerns are likely to be more prevalent, we introduced additional disclosure requirements that are limited to this exemption.</p>
4.	Reports of exempt distribution	<p>Several commenters expressed concerns about the fees associated with filing reports of exempt distribution and that they may make borrowing more expensive as they would be passed along to the borrower.</p> <p>One commenter suggested that instead of revising the filing fees, we should extend the time for filing a report of exempt distribution from ten days to one month.</p> <p>Several commenters expressed concerns that the borrower is not the most appropriate party to be</p>	<p>We acknowledge the comments regarding costs. However, we do not expect the costs of filing reports of exempt distributions to be significant compared to the costs of registering the security interest or administering a syndicated mortgage, particularly in those jurisdictions that charge a fixed fee for filing reports of exempt distribution.</p> <p>We appreciate the commenter's suggestion. However, revising the report of exempt distribution requirements is outside the scope of this project.</p> <p>We believe this is addressed through the additional guidance we have provided as to the</p>

No.	Subject	Summarized Comment	Response
		<p>required to file a report of exempt distribution and some suggested the dealer or lenders could be required to file the report of exempt distribution.</p> <p>Two commenters suggested that reports of exempt distribution should not be required if the distribution was made solely to permitted clients.</p> <p>These commenters also noted that there is an exemption from filing reports of exempt distribution for certain distributions of securities to Canadian financial institutions and Schedule III banks but not for distributions to other commercial lenders. One of these commenters speculated that there is substantial non-compliance in jurisdictions that currently do not provide a prospectus exemption for syndicated mortgages and suggested the mortgage exemption should be available for syndicated mortgages distributed to permitted clients (as defined in section 1.1 of Regulation 31-103).</p> <p>One commenter suggested that reports of exempt distribution should be confidential as the fees and commissions paid to</p>	<p>identity of the issuer of a syndicated mortgage. We also note that the report of exempt distribution requires an issuer to disclose personal information about each investor. Accordingly, we do not think it would be appropriate to require a lender to file the report of exempt distribution as the lender would be required to obtain personal information from the other lenders.</p> <p>Alberta is proposing to introduce a prospectus exemption for the distribution of syndicated mortgages to permitted clients similar to the prospectus exemption for distributions of syndicated mortgages to “institutional investors” in BCI 45-501. This exemption will not require the filing of a report of exempt distribution.</p> <p>The other jurisdictions are not proposing similar exemptions because they have previously considered similar comments during amendments to the report of exempt distribution and still do not favour the change because they continue to believe that the information collected in the report is necessary to inform compliance programs, improve understanding of the syndicated mortgages market and inform future policy development.</p> <p>We thank the commenter for the feedback, but we disagree and believe transparency with respect to fees and commissions is</p>

No.	Subject	Summarized Comment	Response
		<p>mortgage brokers may be regarded as sensitive competitive information that is not today publicly disclosed.</p> <p>One commenter expressed that it could be ruinous to be required to report the names of its investors as they could be poached by a competitor.</p>	<p>important. Market participants can apply to the securities regulatory authorities for confidential treatment of certain records if the record contains personal or sensitive business information that would be detrimental to a person if it was disclosed to the public.</p> <p>We acknowledge the commenter's concern but note that the names of investors participating in the distribution appear only in Schedule 1 to the report of exempt distribution, which is not made publicly available as it includes investors' personal information.</p>
5.	Definition of syndicated mortgage	<p>Several commenters raised potential issues with the definition of syndicated mortgages.</p> <p>Some commenters suggested that the definition of syndicated mortgage may be too narrow in that it would not capture non-mortgage debt securities secured by real property.</p>	<p>We acknowledge these comments but note that the current definition of syndicated mortgage is already used in Regulation 45-106 and Regulation 31-103 by several CSA jurisdictions to exclude these products from the Mortgage Exemptions. We are not aware of any significant problems caused by the definition in those jurisdictions. One purpose of this project is to increase harmonization in the area. Accordingly, we are not proposing changes to the definition of syndicated mortgage.</p> <p>We acknowledge that there is a wide variety of securities that may be secured by real property. This project is not intended to apply to all investments in real estate.</p>

No.	Subject	Summarized Comment	Response
		<p data-bbox="542 235 958 485">One commenter noted that most syndicated mortgage failures involved hundreds of lenders so the definition of syndicated mortgage should be revised to a mortgage in which 10 or more lenders participate.</p> <p data-bbox="542 600 972 779">Some commenters suggested that the definition of syndicated mortgage was so broad that it would also capture mortgage investment entities.</p> <p data-bbox="542 1041 987 1255">One commenter suggested that the definition of syndicated mortgage was so broad it would capture mortgage-backed securities and sales of mortgages into the CMHC NBA MBS Program.</p> <p data-bbox="542 1478 987 1656">One commenter suggested that two persons in a legally recognized spousal relationship should be treated as one person on a mortgage.</p>	<p data-bbox="1013 235 1430 558">Please refer to commentary under “Exemption for small number of investors proposed in question 7 of March 2018 Proposal” (row 41) for commentary relating to exemptions for syndicated mortgages with a small number of investors.</p> <p data-bbox="1013 600 1435 999">We do not agree that all securities offered by mortgage investment entities would be captured by this definition. For example, the distribution of an equity investment in a mortgage investment entity is currently subject to both the prospectus and registration requirements and would not be affected by the Proposed Amendments.</p> <p data-bbox="1013 1041 1443 1440">Similarly, where a distribution of asset-backed securities linked to mortgages, such as pass-through certificates, pay-through certificates or other investments in securitization vehicles, involves the distribution of securities, we do not believe those securities would generally fall within the definition of a syndicated mortgage.</p> <p data-bbox="1013 1478 1430 1877">We acknowledge this comment and that the definition of syndicated mortgage may capture a mortgage where two persons in a spousal relationship are lenders. The definition of syndicated mortgage is an existing definition in Regulation 45-106 and Regulation 31-103 and we are not proposing to make any</p>

No.	Subject	Summarized Comment	Response
			changes at this time.
6.	Syndicated mortgage versus syndicated equity	Several commenters suggested that the Proposed Amendments should not capture all syndicated mortgages but only those that have a loan-to-value in excess of a threshold, such as 80% or 85%, which several commenters referred to as syndicated equity.	We thank the commenters for their input. Although we agree that the loan-to-value ratio is important, it is only one indicator of the risk of a syndicated mortgage. As a result, we do not propose to use this as the sole basis for determining the securities law requirements that should apply to the distribution of syndicated mortgages.
7.	Risk acknowledgement forms	One commenter suggested that the CSA review the efficacy of the existing risk acknowledgement forms.	Consideration of the risk acknowledgment requirements that apply to certain prospectus exemptions is outside the scope of this project.
8.	Who is the issuer?	Several commenters suggested that commonly in syndicated mortgages the borrower is not the issuer. These commenters stressed the difference between a mortgage that is syndicated at the time of the initial loan (<i>i.e.</i> , a shared mortgage or a mortgage with a co-lending syndicate) versus a mortgage with one initial lender who then, potentially unknown to the borrower, syndicates the mortgage to other investors.	<p>We thank the commenters for their input. We agree that additional guidance regarding the appropriate identity of the issuer or issuers of a syndicated mortgage is required. As suggested we have clarified in Policy Statement 45-106 that, where an existing mortgage is syndicated, the party undertaking the syndication will generally be an issuer of the syndicated mortgage. In some cases, the issuer may be a mortgage broker that is syndicating the loan. Alternatively, if the entity used for the syndication is established by a mortgage broker, the mortgage broker may be a promoter of the issuer.</p> <p>We have also provided additional guidance regarding the use of the offering memorandum exemption to distribute syndicated mortgages and the fact that the exemption is only available for the</p>

No.	Subject	Summarized Comment	Response
			<p>distribution by an issuer of a security of its own issue. Accordingly, where a mortgage that has already been advanced or committed is being syndicated, the exemption would only be available where the party syndicating the mortgage is the issuer.</p>
9.	Public database of syndicated mortgages	One commenter suggested that there should be a public database of syndicated mortgages to facilitate comparison across types of properties, issuers, brokers, regions, credit, <i>etc.</i>	We thank the commenter for this suggestion. Requiring detailed reporting regarding the terms of securities issued in the exempt market is beyond the current report of exempt distribution and would impose a significant burden on issuers. In addition, several regulatory and systems changes would be required that are beyond the scope of the Proposed Amendments.
10.	Currently exempt professionals	Several commenters indicated that chartered bank representatives, lawyers and other professionals currently exempt under mortgage legislation should no longer be exempt in order to level the playing field.	<p>Under securities laws, there is a business trigger for registration. Section 1.3 of Policy Statement 31-103 contains guidance related to the business trigger for registration in the context of certain professional services.</p> <p>In addition, there are registration exemptions that could potentially apply to a person involved in the distribution of syndicated mortgages. However, these do not necessarily correspond to the exemptions under mortgage legislation and may differ depending on the jurisdictions involved.</p>
11.	Statutory rights of action	One commenter expressed that purchasers in all jurisdictions should have a statutory right of action against issuers, promoters and mortgage brokers in the event	We thank the commenter for their input but changes to the statutory rights of action are beyond the scope of the Proposed Amendments. In the

No.	Subject	Summarized Comment	Response
		that an offering memorandum contains a misrepresentation.	event of a misrepresentation in an offering memorandum, local securities legislation provides for rights of action against the issuer and, depending on the jurisdiction, certain other parties.
12.	Compliance reviews	One commenter noted that the CSA will need to allocate resources to review offering memoranda and exempt market dealers in order to improve compliance and deter fraudulent activity.	For those jurisdictions that already exclude syndicated mortgages from the Mortgage Exemptions, our compliance programs will continue to review offering memoranda and registrants. For those jurisdictions that are amending the Mortgage Exemptions to exclude syndicated mortgages, we expect that the distribution of syndicated mortgages will be an area of focus following the implementation of the Proposed Amendments. Information provided through reports of exempt distribution will be particularly important to monitoring this area.
13.	Fee disclosure	One commenter noted that there needs to be clear disclosure about fees that lenders receive from borrowers on closing and how those fees are distributed back to investors or otherwise allocated.	<p>Item 18 of proposed Form 45-106F18 requires disclosure of the fees that are to be charged to the borrower, how they are to be calculated and paid and when any person involved in the distribution is entitled to payment or states that the investor may request a copy of the disclosure statement provided by the mortgage broker to the borrower concerning all fees.</p> <p>Item 7 of Form 45-106F2 requires disclosure of compensation paid to sellers and finders.</p> <p>Any registered dealer involved in the sale of syndicated</p>

No.	Subject	Summarized Comment	Response
			mortgages would be subject to the obligation to disclose fees to its clients in connection with its relationship disclosure information and ongoing reporting obligations.
14.	Decreased diversification	Three commenters suggested that the March 2018 Proposal may have the unintended consequence of decreased diversification for investors because there will be fewer syndicated mortgages in which they can invest, or they will be required to make larger investments in a syndicated mortgage.	We expect a registered dealer's suitability assessment to consider an investor's concentration in any investment, including a syndicated mortgage. Accordingly, concerns regarding diversification should be addressed in the ordinary course by the involvement of a registered dealer.
GENERAL REGISTRATION COMMENTS			
15.	Existing registration exemptions	One commenter suggested that all mortgage brokers involved in the business of distributing syndicated mortgages should be required to be registered as a dealer without exception.	Any mortgage broker in the business of trading securities will be required to register as a dealer or rely upon an available registration exemption. We note that there are existing registration exemptions upon which some mortgage brokers may be able to rely. For example, section 8.5 of Regulation 31-103 provides a dealer registration exemption for trades under certain conditions that are made through a registered dealer.
16.	Cost of using registered dealer	Several commenters expressed concerns that the requirement to use a registered dealer will significantly increase the cost of lending and create unnecessary complexities and that the required due diligence and suitability assessments are not feasible given the typically short transaction times for syndicated mortgages.	Certain jurisdictions already exclude syndicated mortgages from the Mortgage Exemptions. The registration requirement and the category of exempt market dealer seek to require any entity that is in the business of trading securities in the exempt market to possess the required level of proficiency, integrity and solvency to participate in the market. Investors in other forms

No.	Subject	Summarized Comment	Response
			<p>of real estate and mortgage investments, such as mortgage investment entities, currently benefit from the protections of the registration requirement. For those jurisdictions amending the Mortgage Exemptions to exclude syndicated mortgages, the Proposed Amendments would result in the same level of protection for syndicated mortgage investments as these other types of securities.</p> <p>Mortgage brokers that are currently relying on the Mortgage Exemptions to trade syndicated mortgages in Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon will be required to seek registration or rely on an alternative registration exemption if their activities meet the business trigger for dealer registration. We acknowledge that this will involve costs. However, as for other forms of mortgage investments, we consider that such costs are justified by the benefits to investors and the market generally.</p>
17.	New registration category	One commenter suggested that a new category of registration should be created, and the requirements should be the same as those currently applied to mortgage brokers.	We thank the commenter for their input, but we believe the existing categories of dealer registration are appropriate. Any entity seeking registration as an exempt market dealer may seek exemptions from specific requirements of securities legislation that are not compatible with their business model. Accordingly, dealers that

No.	Subject	Summarized Comment	Response
			are prepared to accept terms and conditions that limit their activities to syndicated mortgages may seek relief from requirements that could be more applicable to exempt market dealers offering securities generally.
18.	Relevant securities industry experience	Several commenters asked for guidance as to what we would consider to be relevant securities industry experience if a mortgage broker were to apply for registration as a dealing representative or chief compliance officer of an exempt market dealer.	<p>For firms and individuals that apply for registration to trade in syndicated mortgages, we will consider relevant securities industry experience to include relevant experience acquired at a licensed mortgage broker, brokerage, agency or dealer, provided the applicant demonstrates the proficiency, integrity and solvency for registration. Applicants that rely on mortgage-specific experience should expect regulators to place terms and conditions restricting their trading activities to a specified class of securities (<i>e.g.</i>, syndicated mortgages or securities of real estate issuers).</p> <p>We propose to include clarifying language in Policy Statement 31-103 as part of the Proposed Changes.</p>
19.	Know-your-product obligations	One commenter expressed that they consider it would be part of a dealer's know-your-product obligations to ensure there has been a recent and reliable property appraisal for a syndicated mortgage distribution under any exemption.	We thank the commenter for their input. We agree that taking reasonable steps to verify the loan-to-value ratio of a syndicated mortgage would be important for a registrant to discharge its know-your-product obligation.
20.	Restricted dealer registration	One commenter suggested that existing mortgage brokers should be registered as dealers but be permitted to engage solely in trading syndicated mortgages.	We thank the commenter for their input. If applicant firms demonstrate limited proficiency or experience beyond syndicated mortgages, we expect terms and

No.	Subject	Summarized Comment	Response
			<p>conditions will be placed to restrict trading activities to a specified class of securities (<i>e.g.</i>, syndicated mortgages or securities of real estate issuers).</p>
21.	Transition period	<p>One commenter suggested that the proposed 12-month registration transition period was not sufficient, and it should instead be 24 months.</p>	<p>In Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon the registration requirement is now proposed to come into effect on December 31, 2019. These jurisdictions are of the view that this period provides an adequate amount of time for transition.</p> <p>The exclusion for syndicated mortgages already exists in the other CSA jurisdictions and registration is already required, subject to any available exemptions.</p>
22.	Different roles of registered dealer and mortgage broker	<p>One commenter expressed that a registered dealer could not replace the current role of a mortgage broker, which may include underwriting the mortgage, drafting the mortgage commitment, ensuring the mortgage commitment conditions have been satisfied, ensuring the mortgage is registered before authorizing the release of investor funds, and inspecting development sites.</p> <p>Several commenters suggested that we appear to expect both mortgage broker and registered dealer to be involved in distributions of syndicated mortgages, but it is not clear how this would work, and it would not be economically feasible given the typical fees charged by brokers</p>	<p>The requirement to be licensed as a mortgage broker, brokerage or agency to deal in or trade in mortgages under local legislation is not affected by the Proposed Amendments. Accordingly, in some jurisdictions both a licensed mortgage broker, brokerage or agency and a registered dealer may be required.</p> <p>Many jurisdictions require mortgage investments entities, such as mortgage investment corporations, to offer their securities through a registrant. Such entities are generally also required to be licensed as a mortgage broker, brokerage or agency.</p>

No.	Subject	Summarized Comment	Response
		<p>and dealers.</p> <p>One commenter stated that it had consulted with its clients and they all confirmed their preference to work with mortgage brokers for these transactions.</p>	<p>We understand that it is not unusual for mortgage professionals involved with mortgage investment entities to maintain dual registration.</p> <p>As discussed above, the need for the involvement of a mortgage broker, brokerage or agency will not be affected by the Proposed Amendments.</p>
OFFERING MEMORANDUM EXEMPTION – PROPERTY APPRAISALS			
23.	Date of appraisal	Several commenters expressed that an appraisal should be required to be within 6 months before the date of an offering memorandum, instead of the proposed 12 months.	We thank the commenters for their input and have revised the requirement so that an appraisal must provide a value of the property as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.
24.	Methodology	Three commenters expressed that the type of appraisal methodology applied, and limitations of the methodology, should be disclosed to investors in plain language.	We have revised Item 8 of proposed Form 45-106F18 to include that the issuer must describe the type of appraisal, methodology applied and limitations of the methodology.
25.	Arm’s length transaction	<p>Several commenters stated that an appraisal should be required regardless of whether the property was acquired in an arm’s length transaction as this would not guarantee the amount paid was reasonable or the fair market value.</p> <p>One commenter stated that an appraisal should not be required if the property was recently acquired in an open market transaction with all parties acting at arm’s length.</p>	We thank the commenters for their input. We are not proposing to provide an exemption from the appraisal requirement under the offering memorandum exemption for properties acquired in an arm’s length transaction.
26.	Professional liability insurance	One commenter suggested that an appraiser should be required to have professional liability	We acknowledge the commenter’s concern. However, we are not proposing to prescribe

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		insurance appropriate to the valuation assignment.	standards for insurance for professional appraisers. To be a qualified appraiser, an appraiser must be a member in good standing of a professional association. We note that some professional associations, including the Appraisal Institute of Canada, have mandatory insurance programs for their members.
27.	Waiver of requirement for appraisal	Two commenters suggested that an investor could certify that they consider themselves an expert or professional and agree in writing to waive the requirement for an appraisal.	<p>We thank the commenter for this suggestion. However, we do not think that it would be appropriate to provide for this type of waiver. Appraisals are required only for distributions under the offering memorandum exemption, which is designed for distributions to retail investors.</p> <p>Syndicated mortgages offered under other exemptions, such as the accredited investor exemption, will not require an appraisal. However, an appraisal may be provided for such distributions to respond to concerns of investors or dealers participating in the transaction.</p>
28.	Form of appraisal	Three commenters suggested than an appraisal should be addressed to the investors or a letter of reliance should be provided from the appraiser to the investors.	We thank the commenters for this suggestion. However, we believe an obligation to deliver an appraisal to a purchaser is sufficient.
29.	Appraiser's independence	One commenter suggested that for an appraiser to be independent it should be restricted in terms of the volume of business it receives from an issuer, issuer group or mortgage broker.	Proposed subsection 2.9(19) of Regulation 45-106 provides an objective test for the independence of an appraiser. Any circumstance that, in the opinion of a reasonable person aware of all the relevant facts, could interfere with the qualified appraiser's judgment regarding the preparation of an appraisal

No.	Subject	Summarized Comment	Response
			<p>for a property, would result in the appraiser not being independent. We agree with the commenter that the amount of business that an appraiser does with an issuer or related issuers could result in the appraiser not being independent. For example, the guidance in proposed paragraph 3.8(13)(h) of Policy Statement 45-106 indicates that we would consider an appraiser not to be independent if the appraiser has received a majority of their income, either directly or indirectly, in the three years preceding the date of the appraisal from the issuer or a related party of the issuer.</p>
30.	Requirement for appraisal for syndicated mortgages distributed under other exemptions	<p>One commenter suggested that an appraisal should be a requirement for distributions under any exemption not just the offering memorandum exemption.</p> <p>Another commenter suggested that an appraisal should only be required for distributions under the offering memorandum exemption as distributions under other exemptions are dependent upon the ability to structure the transaction quickly.</p>	<p>We thank the commenters for their input. Although we have not added a requirement to provide investors with an appraisal for any exemptions other than the offering memorandum exemption, as noted above, a dealer's know-your-product obligations would likely require it to take reasonable steps to ascertain the loan-to-value ratio of a syndicated mortgage. In addition, we understand that sophisticated investors may demand adequate evidence of value of a property.</p>
OFFERING MEMORANDUM EXEMPTION – FORM 45-106F18			
31.	Item 8 - Appraisal	<p>One commenter suggested that we should repeat the requirement to deliver the appraisal to investors in Item 8 of Form 45-106F18.</p>	<p>We thank the commenter for their suggestion. Item 8 of Form 45-106F18 is meant to provide investors with a description of the appraisal. This does not alter the requirement that the issuer also deliver a copy of the entire</p>

No.	Subject	Summarized Comment	Response
			appraisal to the investor under subsection 2.9(19.1) of Regulation 45-106.
32.	Item 19 – Registration Documentation	One commenter suggested that we should add the appraisal to the list of documents in Item 19 of Form 45-106F18.	We thank the commenter for their suggestions. Item 19 of Form 45-106F18 provides a list of documents that the investor may request from the issuer after the completion of registration and disbursement of the syndicated mortgage. The issuer is required to deliver a copy of the appraisal to the investor at the same time or before the issuer delivers the offering memorandum to the investor.
33.	Alternative property values	<p>Two commenters noted that an issuer would still be permitted to disclose any value for a property if they could demonstrate a reasonable basis for the value and they disclosed the material factors and assumptions used in arriving at the value and whether it was prepared by an independent, qualified appraiser.</p> <p>One commenter suggested that we should prohibit the disclosure of a projected future value of the property or the expected market value upon completion of the development of a property regardless of whether such value was prepared by an independent, qualified appraiser.</p>	We believe that a projected future value may be relevant information for investors and the appropriate approach is to allow disclosure of such values while requiring disclosure of the factors and assumptions used in arriving at the value, together with the prominent disclosure of the appraised value.
34.	Marketing materials	One commenter suggested that any marketing, promotion or advertising material should be incorporated by reference into the offering memorandum.	We thank the commenter for their input but note that certain jurisdictions already require OM marketing materials to be incorporated by reference into an offering memorandum and filed with the regulator.
35.	Additional disclosure for	One commenter suggested that the proposed additional disclosure	We do not currently prescribe disclosure for other exemptions,

No.	Subject	Summarized Comment	Response
	other prospectus exemptions	under the offering memorandum should be a requirement for any distribution of syndicated mortgages regardless of which prospectus exemption is relied upon.	such as the accredited investor and family, friends and business associates exemptions. Introducing such disclosure would be a significant change that is beyond the scope of the Proposed Amendments.
36.	Mortgage broker certificate	<p>Two commenters indicated that the mortgage broker certificate is an important safeguard for investors and suggested the CSA issue guidance as to the extent of the broker’s due diligence obligations. Another commenter supported requiring the mortgage broker to sign the OM certificate and provide additional disclosure in the offering memorandum. This commenter could not think of a circumstance where it would not be appropriate to require this in connection with the offering memorandum exemption.</p> <p>Several commenters suggested the mortgage broker certificate may be costly in terms of the due diligence required by the broker and may not add any value or may be of little utility for investors. Some of these commenters suggested a certification in respect of matters within, or that ought to be within, the broker’s knowledge may suffice.</p> <p>Two commenters suggested a mortgage broker certificate should not be required unless the broker is the issuer or syndicator.</p> <p>One commenter suggested a mortgage broker certificate may provide a false sense of security to investors and that the lack of</p>	<p>We thank the commenters for their feedback. We have removed the mortgage broker certificate requirement.</p> <p>If a mortgage broker is actively involved in mortgage syndication, we expect that the mortgage broker will be required to certify the offering memorandum as the issuer of the syndicated mortgage. In these circumstances, a separate mortgage broker certificate would be redundant.</p> <p>We acknowledge the commenter’s concern. However, we note that mortgage brokers are subject to oversight under</p>

No.	Subject	Summarized Comment	Response
		oversight of brokers would need to be addressed if the certificate is to be a requirement.	mortgage legislation.
PRIVATE ISSUER EXEMPTION			
37.	Private issuer exemption should not be available	Two commenters supported our proposal that the private issuer exemption not be available for distributions of syndicated mortgages.	We thank the commenters for their support.
38.	Private issuer exemption should be available	<p>Several commenters expressed that the private issuer exemption should remain available for distributions of syndicated mortgages.</p> <p>Two commenters suggested the exemption could remain available but with the requirement to file a report of exempt distribution.</p> <p>Other commenters suggested there were ways the CSA could require reporting of distributions under the private issuer exemption other than the requirement to file a report of exempt distribution.</p> <p>One commenter suggested the private issuer exemption could remain available but be limited to distributions to directors, officers or employees of the issuer.</p> <p>One commenter suggested the private issuer exemption would be appropriate for distributions of syndicated mortgages where the property is used by the mortgagor for residential or business purposes.</p>	<p>We thank the commenters for their input, but we believe it is necessary for securities regulators to have a better understanding of this market by requiring issuers of syndicated mortgages to report distributions.</p> <p>Issuers will continue to be able to distribute syndicated mortgages to the same group of investors using the accredited investor or family, friends and business associates exemptions.</p>
ALTERNATIVE PROSPECTUS AND REGISTRATION EXEMPTIONS			
39.	No additional exemptions needed	Two commenters were of the view that no additional prospectus exemptions were required.	We thank the commenters for their input. Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador

No.	Subject	Summarized Comment	Response
		<p>Two other commenters were of the view that, if the private issuer exemption remains available, no additional prospectus exemptions would be required.</p> <p>Two other commenters were of the view that creating exemptions based on classes of syndicated mortgages would be difficult and it may create confusion and uncertainty among retail investors and result in less disclosure.</p>	<p>propose to introduce prospectus and dealer registration exemptions for the distribution of qualified syndicated mortgages by licensed mortgage brokerages, similar to the exemptions that exist in British Columbia. Alberta and Québec propose to introduce a prospectus exemption for this instance. Qualified syndicated mortgages are less likely to give rise to the same investor protection issues as other syndicated mortgages, which may have more equity-like characteristics. Please refer to the local annex in each of the above jurisdictions for the details of the above exemptions.</p> <p>We do not propose to introduce additional exemptions based on the attributes of the syndicated mortgage at this time. However, we will monitor activity and may consider additional exemptions in the future. In addition, we note that market participants may seek discretionary exemptive relief to offer certain types of securities if there is a sufficient basis to determine that it would not be contrary to the public interest to grant such relief.</p>
40.	Existing local British Columbia exemptions	Several commenters expressed the view that the current regime in British Columbia should remain in place and the exemptions in BCI 45-501 and British Columbia Instrument 32-517 <i>Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment</i>	As discussed above, certain jurisdictions propose to adopt exemptions similar to the existing exemptions for qualified syndicated mortgages in BCI 45-501.

No.	Subject	Summarized Comment	Response
		<p><i>Entities (BCI 32-517)</i> should be made permanent and adopted across the CSA.</p> <p>Several commenters suggested that BCI 45-501 should be adopted with modifications including:</p> <ul style="list-style-type: none"> • expanding the definition of institutional investor to include accredited investors and those that would be able to invest under the family, friends and business associates exemption; • expanding the definition of qualified syndicated mortgage by removing conditions (c) and (d)¹; or • limiting the exemptions to mortgages on residential or commercial property with loans-to-value of 80% or less of the appraised value or purchase price. <p>One commenter was of the view that the existing form of offering memorandum for syndicated mortgages in British Columbia, Form 45-901F, provides sufficient disclosure and was preferable to the Form 45-106F2 supplemented by the Form 45-106F18.</p> <p>Three commenters were of the view that BCI 45-501 should not be adopted due to the complexity of having two different regulatory regimes and investor protection concerns given that mortgage brokers may not have the same</p>	<p>We do not agree that all accredited investors should be treated as institutional investors. Syndicated mortgages may be sold under the accredited investor prospectus exemption or the family, friends and business associates prospectus exemption. However, subject to any available exemptions, the registration requirement may apply to parties involved in such distributions.</p> <p>The requirements of proposed Form 45-106F18 are based on British Columbia Form 45-901F and the level of disclosure is intended to be comparable.</p> <p>We acknowledge the feedback and have decided not to introduce these exemptions on a national basis at this time. As discussed above, certain jurisdictions are proposing to adopt exemptions similar to the</p>

¹ Conditions (c) and (d) of the existing definition of “qualified syndicated mortgage” under BCI 45-501 are the following: (c) the syndicated mortgage secures a debt obligation on property used solely for residential purposes and containing no more than four residential dwelling units, and (d) the syndicated mortgage does not secure a debt obligation incurred for the construction or development of property.

No.	Subject	Summarized Comment	Response
		<p>know-your-client and suitability obligations as registered dealers.</p> <p>One commenter was of the view that BCI 32-517 should be repealed.</p>	<p>exemptions for qualified syndicated mortgages in BCI 45-501. However, these exemptions are being adopted on a local basis because of differences in local mortgage legislation and regulation.</p> <p>BCI 32-517 expired on February 15, 2019.</p>
41.	Exemption for small number of investors proposed in question 7 March 2018 Proposal	<p>Three commenters were opposed to introducing an exemption for a small number of investors because in their view an exemption should be based on risk factors and the number of investors does not necessarily make a syndicated mortgage more or less risky or there would be more room for misrepresentation under such an exemption.</p> <p>Several commenters were supportive of the proposed exemption and one suggested the appropriate numbers of lenders would be ten or less.</p> <p>One commenter was supportive of the proposed exemption but thought it should not be limited to the mortgagor being an individual and there may need to be restrictions around the nature of the business to exclude land development or speculative land holding businesses.</p> <p>One commenter was of the view that the proposed exemption would be reasonable if there was sufficient disclosure on the use of premises and financial statements of the operating business.</p>	We thank the commenters for their input. We are not proposing an exemption based on the number of lenders at this time.
42.	Suggestions for	Several commenters suggested	We thank the commenters for

No.	Subject	Summarized Comment	Response
	new exemptions	<p>various new exemptions, including exemptions for each of the following scenarios:</p> <ul style="list-style-type: none"> • Investors are exclusively accredited investors and the mortgage is not provided to a developer for purposes of land servicing, land development, the development or construction of more than one residence or the development or construction of one or more commercial or industrial buildings or properties for resale to other persons after the completion of the development or construction. • Mortgages with loans-to-value of less than 85%, based on a third-party appraisal, and that are in first or second position. • Investors are exclusively high-net-worth individuals. • Investors are exclusively institutional investors. • The issuer acts as the lead investor and has its own capital at risk alongside the investors. 	<p>their suggestions. As discussed above, certain jurisdictions are proposing exemptions for qualified syndicated mortgages, similar to the existing British Columbia exemptions.</p> <p>We also note that there is an existing prospectus exemption for distributions to accredited investors, which will remain available for distributions of syndicated mortgages.</p>
43.	Further research	One commenter suggested that the CSA should further study the primary and secondary markets for syndicated mortgages to determine which exemptions are warranted.	We acknowledge the comment and will continue to monitor the distribution of syndicated mortgages following the adoption of the Proposed Amendments.

ANNEX C

LOCAL MATTERS (QUÉBEC)

Prospectus Exemption for Qualified Syndicated Mortgages

In Québec, we are proposing a new prospectus exemption for qualified syndicated mortgages (“QSM”), as defined and explained below. A QSM is a specific type of syndicated mortgage. A “syndicated mortgage” is defined¹ as a mortgage in which two or more persons participate, directly or indirectly, as a lender in a debt obligation that is secured by the mortgage.

The proposed definition of a QSM excludes a debt obligation that is incurred for the construction or development of property. QSMs are likely more similar to conventional mortgages. Accordingly, we think that they do not present the same investor protection concerns that the March 2018 Proposal was intended to address. For the same reasons, we do not intend on requiring the filing of a report of exempt distribution.

We propose the following definition:

“qualified syndicated mortgage” means a syndicated mortgage that satisfies all of the following:

- (a) the syndicated mortgage secures a debt obligation on property that satisfies all of the following:
 - (i) the property is used primarily for residential purposes;
 - (ii) the property includes no more than four units;
 - (iii) the property includes no more than one unit that is used for commercial purposes;
- (b) the syndicated mortgage does not secure a debt obligation incurred for the construction or development of property;
- (c) at the time the syndicated mortgage is arranged, the following apply:
 - (i) the amount of the debt it secures, together with all other debts secured by the same property and ranking equally with or before the syndicated mortgage, does not exceed 80 % of the fair market value of the property by which it is secured, excluding any value that may be attributed to proposed or pending development of the property; and
 - (ii) if the amount of the debt exceeds 80% of the fair market value of the property by which it is secured, the excess amount, after deduction of the other debts secured by the same property and ranking equally with or before the debt, is guaranteed or secured by Québec, Canada or a province of Canada, the Canada Mortgage and Housing Corporation, the Société

¹ Section 2.36 of *Regulation 45-106 respecting Prospectus Exemptions* (V-1.1, r. 21).

d'habitation du Québec or a hypothecary insurance policy issued by a company holding a license under the *Act respecting insurance*(c. A-32);

- (d) the syndicated mortgage is limited to one debt obligation;
- (e) the rate of interest payable under the syndicated mortgage is equal to the rate of interest payable under the debt obligation;
- (f) the term of the syndicated mortgage is the same as the term of the identified debt obligation;

We think the introduction of this exemption for QSMs also addresses concerns raised by several commenters in respect of the removal of the private issuer exemption for distributions of syndicated mortgages as well as several alternative exemptions that were suggested by the commenters.

The prospectus exemption would be adopted through a blanket order which would come into force on December 31, 2019.

Registration Exemption for Qualified Syndicated Mortgages

We are not proposing a registration exemption in Québec for now, because we are currently assessing more generally the rules that will apply to mortgage brokers in the context of the Autorité des marchés financiers' new mandate to oversee mortgage brokers by May 2020.