

Draft Regulation

Securities Act
(chapter V-1.1, s. 331.1, pars. (11) and (34), and s. 331.2)

Regulation respecting the distribution of syndicated mortgages

Notice is hereby given by the Autorité des marchés financiers (the "AMF" or the "Authority") that, in accordance with section 331.2 of the *Securities Act*, chapter V-1.1, the following Regulation, the text of which is published hereunder, may be made by the Authority and subsequently submitted to the Minister of Finance for approval, with or without amendment, after 30 days have elapsed since its publication in the Bulletin of the Authority:

- *Regulation respecting the distribution of syndicated mortgages*

Background

As part of the regulatory amendments relating to the distribution of syndicated mortgages published by the Canadian Securities Administrators (the "CSA"), the AMF published for comment in section 6.2.2 of the Bulletin dated August 6, 2020 a draft local regulation to exempt the distribution of qualified syndicated mortgages within the jurisdiction of Québec from the prospectus requirement. We are not making any substantive changes to this exemption.

The AMF is publishing for comment an amendment to the draft Regulation to add a new exemption from the prospectus requirement for the distribution of syndicated mortgages within the jurisdiction of Québec.

Subject to ministerial approval, the AMF expects that the draft Regulation will come into force on July 1, 2021.

Purpose of the Regulation

The proposed Regulation exempts from the prospectus requirement, in Québec, the distribution of qualified syndicated mortgages and the distribution of syndicated mortgages to "permitted clients" (within the meaning of *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (c. V-1.1, r. 10)).

"Syndicated mortgage" means 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. Syndicated mortgages are securities and are consequently subject to securities legislation. The prospectus and registration requirements therefore apply to their distribution.

A "qualified syndicated mortgage" is a sub-category of syndicated mortgage whose main characteristic is that the mortgage secures a debt obligation on an immovable that is used primarily for residential purposes and includes no more than four units.

Distribution of qualified syndicated mortgages

As previously underscored in the AMF's notice accompanying the local regulation published for comment on August 6, 2020, the proposed definition of "qualified syndicated mortgage" limits the scope of this type of mortgage to low-risk mortgages on an immovable that is used primarily for residential purposes. Even though a qualified syndicated mortgage is a security, it more closely resembles a conventional mortgage than it does the other, more complex syndicated mortgages that the AMF wants to regulate more strictly. To minimize the risks associated with the distribution of this security, we have circumscribed its definition. The proposed definition therefore excludes syndicated mortgages incurred for the construction or development of an immovable. Moreover, the amount of the debt the syndicated mortgage secures,

together with all other debt secured by mortgages on the immovable that have priority over, or the same priority as, the syndicated mortgage, cannot exceed 80% of the fair market value of the immovable.

We received positive comments regarding the draft exemption for the distribution of qualified syndicated mortgages and are not making any substantive changes to it for the purposes of this consultation.

Distribution of syndicated mortgages to permitted clients

In light of the comments received as part of the local consultation initiated on August 6, 2020, we are proposing a new prospectus exemption for the distribution of syndicated mortgages to permitted clients (the “new exemption”). We are also proposing not to impose the requirement to file Form 45-106F1 *Report of Exempt Distribution* (the “report”) in connection with the new exemption.

Some commenters were of the view that not providing the new exemption, along with an exemption from filing a report, would cause disruptions in the Québec commercial mortgage syndication market among financial institutions.

Commercial mortgage syndication is a common practice in Québec that allows the participating lenders to manage their portfolio risk, build relationships among institutional lenders, diversify their investments and increase investment liquidity. Without the new exemption, those that distribute commercial mortgages to financial institutions, in particular, would be subject to the prospectus requirement or be required to find another prospectus exemption for their distributions. It is the AMF’s opinion that permitted clients do not need the regulator’s protection within the context of the distribution of syndicated mortgage loans.

Moreover, without the prospectus exemption under section 2.4 of *Regulation 45-106 respecting Prospectus Exemptions* (c. V-1.1, r. 21), which will no longer be able to be relied upon for the distribution of syndicated mortgages as a result of the CSA’s regulatory amendments, the prospectus exemptions that remain available for such distributions all include the requirement to file a report, which would make transactions far more cumbersome. For this reason, it is the AMF’s opinion that distributions of syndicated mortgages to permitted clients should not be made subject to the report filing requirement.

The new exemption would also place market participants that distribute syndicated mortgages to permitted clients on an equal footing. Without the new exemption, the participants referred to in the definition of “Canadian financial institution” (within the meaning of *Regulation 45-106 respecting Prospectus Exemptions*) would have the advantage of not being required to file a report or pay the prescribed fees as they benefit from a statutory exemption in this respect.

The new exemption would also ensure that participants in the Québec mortgage syndication market are not at a disadvantage compared to participants in other markets in Canada, where the prospectus exemption for syndicated mortgages distributed to permitted clients will be or has been adopted.

Certain transactions, such as commercial loans, which are structured as debt securities and held by investors that meet the definition of permitted clients, do not present the same risks as other types of riskier distributions that are sold as equity investments to the public.

It is the AMF’s opinion that the new exemption would be beneficial to the Québec syndicated mortgage market and not be detrimental to the protection of investors since it is limited to a generally sophisticated clientele.

Other considerations

Requirement to register as a securities dealer

The AMF is continuing its work relating to regulation of the syndicated mortgage market in order to, among other things, assess the possibility of proposing an exemption from the requirement to register as

a securities dealer in Québec. It is the AMF's opinion that it is premature at this time to propose an exemption from the registration requirement, for both the distribution of syndicated mortgages to permitted clients and the distribution of qualified syndicated mortgages. The distribution of syndicated mortgages will therefore continue to be subject to the requirement to register as a securities dealer in Québec.

Request for comments

The AMF welcomes your comments on the draft Regulation.

Please submit your comments in writing on or before **April 17, 2021**, to:

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Unless otherwise noted, comments will be posted on the Authority's website at www.lautorite.qc.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.

Further information

Additional information is available from:

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March 18, 2021