

CSA Notice and Request for Comment
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*

March 8, 2018

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period proposed amendments (the **Proposed Amendments**) to National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) related to syndicated mortgages.

The Proposed Amendments are set out in Annexes A and C of this notice. Related changes to Companion Policy 45-106CP *Prospectus Exemptions* (the **Proposed Changes**) are set out in Annex B. This notice will also be available on the following websites of CSA jurisdictions:

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

Substance and Purpose

The Proposed Amendments include changes to the prospectus and registration exemptions available for the distribution of syndicated mortgages. A syndicated mortgage is a mortgage in which two or more persons participate, directly or indirectly, as lenders in the debt obligation that is secured by the mortgage.

In particular, the Proposed Amendments:

- Remove the prospectus and registration exemptions under sections 2.36 of NI 45-106 and 8.12 of NI 31-103 respectively for the distribution of syndicated mortgages in the CSA jurisdictions where the exemptions are available.

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

The Proposed Changes provide guidance regarding the new requirements introduced by the Proposed Amendments and regarding the determination of the issuer of a syndicated mortgage.

The purpose of the Proposed Amendments is to introduce additional investor protections related to the distribution of syndicated mortgages and to increase harmonization regarding the regulatory framework for syndicated mortgages across all CSA jurisdictions.

Background

All CSA jurisdictions currently have prospectus and registration exemptions for securities that are mortgages (the **Mortgage Exemptions**) if they are sold by a mortgage broker licensed in the Canadian jurisdiction where the property is located. The rationale for the Mortgage Exemptions is that an alternative regulatory regime applies to the distribution of mortgages.

In Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan, the Mortgage Exemptions are not available for syndicated mortgages.

There has been a significant increase in the offering of syndicated mortgages in connection with real estate developments in certain jurisdictions. These offerings potentially raise investor protection concerns, particularly when sold to retail investors, because they may:

- be used to raise seed financing for real estate developments, such as the costs of initial design proposals and start-up expenses;
- be sold based on projected values of a completed development;
- not be fully secured by a charge against real property, since the amount of the loan may significantly exceed the current fair value of the land;
- be subordinate to future financings, such as construction financing, which may be substantial and effectively render the investment more similar in risk to an equity investment rather than a fixed income investment;
- be offered by issuers with no source of income, rendering the payment of ongoing interest dependent on future financing or reserves from the principal advanced; and
- be subject to the risk of delay and increased costs inherent to real estate development.

Summary of the Proposed Amendments

Changes to the Mortgage Exemptions

Consistent with the current approach in Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan, the Proposed Amendments, together with related legislative amendments in Ontario, would remove the Mortgage Exemptions for syndicated mortgages in Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon.

Alternative prospectus exemptions would be required for the distribution of syndicated mortgages in all CSA jurisdictions. If we make the Proposed Amendments, we expect that syndicated mortgages will

most likely be offered primarily under the accredited investor exemption under section 2.3 of NI 45-106 (the **AI Exemption**), the OM Exemption or the family, friends and business associates exemption under section 2.5 of NI 45-106 (the **FFBA Exemption**), although other prospectus exemptions may be available.

In those jurisdictions where the Mortgage Exemptions currently apply to syndicated mortgages, market participants that are in the business of trading syndicated mortgages would be required to consider whether the registration requirement applies to them. Since entities involved in financing real estate developments tend to engage in repeated financing activities, we expect that some of these firms will be required to become registered as a dealer or to rely on a registration exemption. In Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon, the amendment to the registration exemption will be made effective one year later than the change to the prospectus exemption to allow time for market participants to register as required.

Changes to the Offering Memorandum Exemption

The OM Exemption is available for the distribution of syndicated mortgages. The OM Exemption allows for the distribution of securities to retail investors and is premised on adequate disclosure being provided to prospective purchasers.

Projected values of the completed development and the fact that the syndicated mortgage is secured against real property are often emphasized in connection with the marketing of these investments. The protection provided by this security interest depends primarily on the current fair market value of the real property relative to the obligations and any prior ranking charges.

The Proposed Amendments require issuers to deliver an appraisal of the current fair market value of the property subject to the syndicated mortgage to prospective purchasers under the OM Exemption. The appraisal would be prepared by a qualified appraiser who is independent of the issuer. Any other value of the property disclosed by the issuer would be required to have a reasonable basis and the issuer would be required to disclose the material factors and assumptions underlying that value and whether it was prepared by a qualified appraiser who is independent of the issuer.

Consistent with the current approach in British Columbia, the Proposed Amendments also include supplemental disclosure requirements that are tailored to syndicated mortgages, including disclosure of development risks, prior obligations secured against the real property and the price paid by the developer to acquire the real property. The intention of these amendments is to require adequate information for:

- potential purchasers under the OM Exemption to make an informed investment decision, and
- any registrants involved in the distribution to discharge their obligations to know the product being offered and to conduct a meaningful analysis of the suitability of the investment.

Issuers of syndicated mortgages would be required to meet the requirements of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, as supplemented by proposed Form 45-106F18 *Supplemental Offering Memorandum Disclosure for Syndicated Mortgages*. The new disclosure requirements include information regarding the business and financial position of the borrower under the syndicated mortgage. We expect that the issuer of the syndicated mortgage and the borrower will generally be the same entity. However, in circumstances where the issuer of the syndicated mortgage is not the borrower, its ability to rely on the OM Exemption will be dependent on its ability to provide the required information regarding the borrower and to certify that it does not contain a misrepresentation. We

consider information regarding the borrower to be essential, since it is the borrower that will be required to make payments of principal and interest under the syndicated mortgage.

Any mortgage broker involved in the distribution of a syndicated mortgage under the OM Exemption would also be required to provide a certificate that the offering memorandum does not contain a misrepresentation with respect to matters within its knowledge and that the mortgage broker has made best efforts to ensure that matters that are not within its knowledge do not contain a misrepresentation. The certificate requirement for mortgage brokers is modelled on the current requirements that apply in British Columbia. In some jurisdictions, a person that certifies an offering memorandum is subject to the statutory right of action for purchasers if the offering memorandum contains a misrepresentation.

Changes to the Private Issuer Exemption

The Proposed Amendments would make the Private Issuer Exemption unavailable for the distribution of syndicated mortgages. The Private Issuer Exemption is intended for small businesses to raise capital and we do not believe that it is appropriate for this exemption to be used for products such as syndicated mortgages. We are also concerned with our ability to monitor developments related to syndicated mortgage distributions without adequate reporting through reports of exempt distribution, which are not required under the Private Issuer Exemption. Since the FFBA Exemption and the AI Exemption will be available as alternatives to the Private Issuer Exemption, this proposed amendment should not significantly restrict the range of potential purchasers for syndicated mortgages.

Removing the Private Issuer Exemption for syndicated mortgages would result in more consistent reporting for syndicated mortgage distributions through the report of exempt distribution. The additional reporting would provide us with more information about this market, enabling us to develop more targeted compliance and investor education programs related to syndicated mortgages.

Impact on Investors

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.

Investors in syndicated mortgages distributed under other prospectus exemptions would benefit from the potential involvement of a registrant in the distribution, in the same manner as for the distribution of other real estate related securities.

Anticipated Costs and Benefits of the Proposed Amendments and Proposed Changes

The Proposed Amendments and Proposed Changes are intended to enhance investor protection, particularly in connection with distributions to retail investors under the OM Exemption.

The proposed amendments to the OM Exemption are intended to enhance the ability of investors to understand the risks related to investing in syndicated mortgages and the extent to which the security interest in the property subject to the syndicated mortgage provides meaningful protection in the event of a default under the syndicated mortgage. The additional disclosure proposed under the OM Exemption is also intended to assist registrants in discharging their obligations to their clients.

The Proposed Amendments would also result in greater harmonization regarding the regulation of syndicated mortgages.

The costs associated with the Proposed Amendments and Proposed Changes may include the costs of:

- obtaining a property appraisal and providing supplemental disclosure for distribution under the OM Exemption;
- filing of reports of exempt distribution for the distribution of syndicated mortgages that could otherwise have been made in reliance on the Private Issuer Exemption; and
- registering as an exempt market dealer and ongoing compliance for market participants in jurisdictions where syndicated mortgages may currently be offered in reliance on the Mortgage Exemptions.

With the exception of the costs of registration and compliance, we do not expect these costs to be significant. For firms that are currently in the business of trading in syndicated mortgages and are licensed under mortgage broker legislation, the transition to registration as an exempt market dealer could potentially involve significant costs. These firms would be subject to new requirements and would be required to adopt new policies and procedures. We are proposing that the changes to the registration exemption for mortgages will take effect one year later than the other Proposed Amendments to minimize the immediate impact on these firms.

We consider that the costs associated with the Proposed Amendments and the Proposed Changes are proportionate to the benefits of increased investor protection.

Alternatives Considered

We have not considered any alternatives to the Proposed Amendments related to the Mortgage Exemptions or the OM Exemption. We consider the additional investor protections related to the distribution of syndicated mortgages included in the Proposed Amendments to be necessary.

As an alternative to removing the Private Issuer Exemption for syndicated mortgages, we considered requiring an issuer distributing syndicated mortgages under that exemption to file a report of exempt distribution. However, because the AI Exemption and FFBA Exemption would allow for the distribution of syndicated mortgages to substantially the same potential purchasers as the Private Issuer Exemption, we did not think that alternative was preferable. Further, adding a reporting requirement to the Private Issuer Exemption would require additional changes to the form of report of exempt distribution and system changes to the electronic filing systems in certain jurisdictions, which could result in additional costs and complexity for market participants.

Request for Comments

We welcome your comments on the Proposed Amendments and Proposed Changes.

In addition, we would appreciate comments regarding the following questions:

Appraisals

1. As proposed, an appraisal would be required in all cases where a syndicated mortgage is distributed under the OM Exemption. Should there be exceptions to this requirement? For example, should an

appraisal be required if the property was acquired recently in an open market transaction with all parties acting at arm's length?

Mortgage broker requirements

2. Are there circumstances where requiring additional disclosure by and a certificate from a mortgage broker would not be appropriate in connection with the use of the OM Exemption? If so, please explain why and whether there are other participants in the distribution that should be subject to these requirements.
3. Is it appropriate to require a mortgage broker to certify that it has made best efforts to ensure that the offering memorandum does not contain a misrepresentation with respect to matters that are not within its personal knowledge?

Exclusion of syndicated mortgages from the Private Issuer Exemption

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

Alternative prospectus exemptions

5. Should alternative prospectus exemptions be provided to facilitate the distribution of specific classes of syndicated mortgages where the investor protection concerns may not be as pronounced?
6. Should we consider adopting an exemption for the distribution of syndicated mortgages on existing residential properties similar to the exemption for "qualified syndicated mortgages" under British Columbia Securities Commission Rule 45-501 *Mortgages*?
7. Should an exemption be provided for the distribution of a syndicated mortgage to a small number of lenders on a property that is used for residential or business purposes by the mortgagor? If so, should the exemption be subject to conditions? For example, should the exemption be available only for a distribution: (i) by an individual; and/or (ii) relating to a residential property; and/or (iii) involving a specified maximum number of lenders?

Please submit your comments in writing on or before June 6, 2018. 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 of 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.

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax : 514-864-6381
consultation-en-cours@lautorite.qc.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 – Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions*

Annex B – Proposed Changes to Companion Policy 45-106CP *Prospectus Exemptions*

Annex C – Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions And Ongoing Registrant Obligations*

Questions

Please refer your questions to any of the following:

Ontario Securities Commission

David Surat
Senior Legal Counsel, Corporate Finance
416.593.8052
dsurat@osc.gov.on.ca

Matthew Au
Senior Accountant, Corporate Finance
416.593.8132
mau@osc.gov.on.ca

Melissa Taylor
Legal Counsel, Corporate Finance
416.596.4295
mtaylor@osc.gov.on.ca

Adam Braun
Legal Counsel, Compliance and Registrant Regulation
416.593.2348
abraun@osc.gov.on.ca

Alberta Securities Commission

Lanion Beck
Senior Legal Counsel
403.355.3884
lanion.beck@asc.ca

Autorité des marchés financiers

Alexandra Lee
Senior Policy Adviser
514.395.0337, ext. 4465
alexandra.lee@lautorite.qc.ca

British Columbia Securities Commission

Gordon Smith
Acting Manager and Senior Legal Counsel, Corporate Finance
604.899.6656
gsmith@bcsc.bc.ca

Leslie Rose
Senior Legal Counsel, Corporate Finance
604.899.6654
lrose@bcsc.bc.ca

Financial and Consumer Affairs Authority of Saskatchewan

Mikale White
Legal Counsel, Securities Division
306.798.3381
mikale.white@gov.sk.ca

Financial and Consumer Services Commission (New Brunswick)

Ella-Jane Loomis
Senior Legal Counsel, Securities
506.658.2602
ella-jane.loomis@fcnb.ca

Manitoba Securities Commission

Chris Besko
Director, General Counsel
204.945.2561
chris.besko@gov.mb.ca

Nova Scotia Securities Commission

H. Jane Anderson
Director, Policy & Market Regulation and Secretary to the Commission
902.424.0179
jane.anderson@novascotia.ca

ANNEX A

PROPOSED AMENDMENTS TO

NATIONAL INSTRUMENT 45-106 PROSPECTUS EXEMPTIONS

1. ***National Instrument 45-106 Prospectus Exemptions is amended by this Instrument.***
2. ***Section 1.1 is amended by adding the following definitions:***

“professional association” means an organization of real property appraisers with its head office in Canada that

- (a) is generally accepted within the Canadian real property appraisal community as a reputable association,
- (b) admits individuals on the basis of their academic qualifications, experience and ethical fitness,
- (c) requires compliance with professional standards of competence and ethics established or endorsed by the organization,
- (d) requires or encourages continuing professional development, and
- (e) has and applies disciplinary powers, including the power to suspend or expel a member regardless of where the member practices or resides;

“qualified appraiser” means an individual who

- (a) regularly performs property appraisals for compensation,
- (b) is a member of a professional association holding the appropriate designation, certification, charter or licence to act as an appraiser for the type of property, and
- (c) is in good standing with the professional association;, ***and***

“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;

3. ***Section 2.4 is amended by:***

(a) ***adding “or a syndicated mortgage” after “a short-term securitized product” in subsection (4), and***

(b) ***adding the following subsection:***

(6) Subsection 73.4(2) of the *Securities Act* (Ontario) does not apply to a distribution of a short-term securitized product or a syndicated mortgage.

4. Section 2.9 is amended by adding the following subsections:

(19) For the purposes of subsections (19.1) and (19.3), a qualified appraiser is independent of an issuer of a syndicated mortgage if there is no circumstance that, in the opinion of a reasonable person aware of all of the relevant facts, could interfere with the qualified appraiser's judgment regarding the preparation of an appraisal for a property.

(19.1) Subsections (1), (2) and (2.1) do not apply to a distribution by an issuer of a syndicated mortgage unless, at the same time or before the issuer delivers an offering memorandum to the purchaser in accordance with subsections (1), (2) or (2.1), the issuer delivers to the purchaser an appraisal of the property subject to the syndicated mortgage that

- (a) is prepared by a qualified appraiser who is independent of the issuer,
- (b) is prepared in accordance with the applicable professional standards of the professional association of which the qualified appraiser is a member,
- (c) provides the fair market value of the property subject to the syndicated mortgage, without taking into account any proposed improvements or proposed development, and
- (d) is prepared with an effective date that is within 12 months preceding the date that the appraisal is delivered to the purchaser.

(19.2) An issuer of a syndicated mortgage distributed in reliance on the exemption described in subsection (1), (2) or (2.1) must not disclose any value of the property subject to the syndicated mortgage, other than the fair market value disclosed in the appraisal required under subsection (19.1), unless the issuer has a reasonable basis for that value.

(19.3) If an issuer of a syndicated mortgage distributed in reliance on the exemption described in subsection (1), (2) or (2.1) discloses any value of the property subject to the syndicated mortgage, other than the fair market value disclosed in the appraisal required under subsection (19.1), the issuer must state

- (a) with equal or greater prominence the fair market value disclosed in the appraisal required under subsection (19.1),
- (b) the material factors or assumptions used to develop the value, and
- (c) whether or not the value was prepared by a qualified appraiser who is independent of the issuer.

(19.4) The issuer of a syndicated mortgage distributed in reliance on the exemption described in subsection (1), (2) or (2.1) must file with the securities regulatory authority a copy of the appraisal required under subsection (19.1) on or before the 10th day after the distribution of the syndicated mortgage.

5. **Section 2.36 is amended by:**
- (a) **repealing subsection (1),**
 - (b) **replacing “Except in Ontario, and subject” in subsection (2) with “Subject”, and**
 - (c) **replacing “In Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan, subsection (2)” in subsection (3) with “Subsection (2)”.**

6. **Section 6.4 is amended by adding the following subsection:**

(3) Despite subsections (1) and (2), if the security distributed under section 2.9 [Offering memorandum] is a syndicated mortgage, the required form of offering memorandum is Form 45-106F2 supplemented by Form 45-106F18.

7. **The following form is added after Form 45-106F17:**

Form 45-106F18

Supplemental Offering Memorandum Disclosure for Syndicated Mortgages

INSTRUCTIONS:

1. Integrate the following disclosure into your offering memorandum for a distribution of a syndicated mortgage.

2. You do not need to follow the order of items in this form. Information required in this form that has already been disclosed in response to the requirements of Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers need not be repeated.

3. You do not need to respond to any item in this form that is inapplicable.

4. Certain items of this form require disclosure about the issuer of a syndicated mortgage or the borrower under a syndicated mortgage. In general, the borrower will also be the issuer of the syndicated mortgage. In these circumstances, the terms “issuer” and “borrower” are interchangeable and there is no requirement to duplicate information.

There may be circumstances where the borrower is not the issuer of a syndicated mortgage, such as where a mortgage is syndicated by the original lender to add lenders. In these circumstances, the issuer is required to provide all disclosure required under Form 45-106F2 and this form as the issuer of the security being distributed. This form also requires information about the borrower under the syndicated mortgage, because the borrower is the person obligated to pay the principal and interest under the syndicated mortgage.

5. In this form, the distribution of a syndicated mortgage may also be referred to as the “offering”. The lenders or investors in a syndicated mortgage may also be referred to in this form as the “purchasers”.

6. References to the “principal holder” of a person mean each person who, directly or indirectly, beneficially owns or controls 10% or more of any class of voting securities of the person. If a

principal holder is not an individual, also provide the information required for the principal holder for any person that, directly or indirectly, beneficially owns or controls more than 50% of the voting rights of the principal holder.

7. When the term “related party” is used in this form, it has the meaning set out in the General Instructions to Form 45-106F2.

Item 1 – Description of the Offering

(1) Describe what kind of investment is being offered and the legal rights of the purchaser, including, but not limited to, details of the following:

- (a) the nature of the investment, i.e., whether it is a participation in a mortgage, an assignment of a participation in a mortgage, a mortgage unit or some other direct or indirect interest or participation in a mortgage over real property and the legal rights of the purchaser attaching to the investment;
- (b) the rights of the purchaser on default by the borrower and the rights of the purchaser to share in the proceeds of any recovery from the borrower, in particular the purchaser’s voting rights and whether the purchaser has the right to institute individual legal action against the borrower and, if not, the person or persons who may institute or coordinate the institution of legal action against the borrower; and
- (c) if the issuer of the syndicated mortgage is not the borrower under the syndicated mortgage, the rights of the purchaser against the issuer of the syndicated mortgage.

(2) Describe the project and the plans for the use of the funds.

Item 2 – Raising of Funds

(1) If the funds to be raised through the offering are required to be raised in stages, disclose the period over which the funds will be raised and the criteria to determine when they will be raised.

(2) If there are any arrangements under which any part of the funds raised will only become available to the borrower if certain conditions are fulfilled, describe those conditions and the procedure for the return of funds to the purchaser if the conditions are not met and any deduction or penalty imposed on the borrower or any other person for not meeting the conditions. Give details of the arrangements made for, and the persons responsible for, the supervision of the trust or escrow account or the investment of unreleased funds, and the investment policy to be followed.

Item 3 – Other Risk Factors Specific to Syndicated Mortgages

(1) State in bold:

Investments in syndicated mortgages are speculative and involve a high degree of risk. Purchasers should be aware that this investment has not only the usual risks associated with the financial ability of the borrower to make repayments but also risks associated with financing real estate and risks associated with syndication.

(2) If the syndicated mortgage includes a personal covenant, guarantee or other financial commitment, state in bold:

The ability of the person providing the personal covenant, guarantee or other financial commitment to perform under the personal covenant, guarantee or other financial commitment will depend on the financial strength of the person. There is no assurance that the person will have the financial ability to be able to satisfy their obligations under the personal covenant, guarantee or other financial commitment and therefore you may not receive any return from your investment, including any initial amount invested.

(3) Disclose the risk factors that make the offering a risk or speculation.

INSTRUCTIONS:

Risk factors may include, but are not limited to

- *the reliance on the ability of the borrower to make payments under the mortgage,*
- *the financial strength of any person offering a personal covenant, guarantee or financial commitment,*
- *the ability to raise further funds as progress in development or construction takes place,*
- *changes in land value,*
- *unanticipated construction and development costs,*
- *the ability to recover one's investment in the event of foreclosure,*
- *whether there are other encumbrances on the mortgaged property and their relative priority,*
- *the level of ranking of the syndicated mortgage in relation to other mortgages and other encumbrances,*
- *the conflicts of interest between the borrower and the mortgage broker,*
- *the mortgage broker's efforts, ability and experience,*
- *inadequate insurance coverage,*
- *inability to change the trustee (if any), and*
- *the restrictions imposed by securities legislation on the resale of the syndicated mortgage.*

Item 4 – Administration Agreement

(1) Disclose whether there is an administration agreement requiring the purchaser to pay fees or expenses for the administration of the syndicated mortgage to any person, such as a mortgage broker or a related party. Disclose all fees and expenses to be charged to the purchaser and how they are to be calculated. Also disclose the specific responsibilities of all parties to the administration agreement, including

- the collection responsibility for payments due under the syndicated mortgage,
- the commencement of legal action on default,
- the follow-up on insurance expirations or cancellations, and
- all other matters of administration to be provided by the person administering the syndicated mortgage.

(2) State:

Copies of the administration agreement are available on request from the borrower or any mortgage broker involved in the distribution.

Item 5 – Trust Agreement

Disclose whether there is any trust or other agreement that provides for any person to make advances of the funds to the borrower and to distribute the proceeds of repayments made by the borrower. Disclose the material terms of any agreement, in particular,

- whether the purchaser is required to grant a power of attorney to the trustee and the terms of that power of attorney,
- all fees and expenses to be charged to the purchaser, and
- the specific responsibilities of all parties to the agreement, including
 - the opening of a trust account into which all investment proceeds must be paid until advanced to the borrower and into which all proceeds received in repayment of the syndicated mortgage must be paid before distribution to the purchasers,
 - the means by which the syndicated mortgage will be repaid, and
 - the mechanism for replacing the trustee and the procedure for dispute resolution.

Item 6 – Property Subject to Mortgage

Describe the details of the property subject to the mortgage, including

- the address and legal description,
- the past, current and intended use,
- any proposed improvements,
- the date of acquisition of the property and the purchase price paid,
- the details, including the purchase price, of any other transactions involving the property known to the borrower, any related party of the borrower or any of their respective partners, directors, officers or principal holders,
- if the borrower is not the issuer of the syndicated mortgage, the details, including the purchase price, of any other transactions involving the property known to the issuer, any related party of the issuer or any of their respective partners, directors, officers or principal holders,
- any contractual arrangements relating to the property,
- any insurance policies applicable to the property and their status,
- any claims or litigation,
- any known contamination or environmental concerns, and
- any other material facts.

Item 7 – Details of the Syndicated Mortgage

(1) Describe the details of the syndicated mortgage, including

- the material terms of the syndicated mortgage, including the principal amount, term, amortization period, interest rate, maturity date, any prepayment entitlement and the ranking of the syndicated mortgage (i.e., first, second, etc.),

- the material terms and relative priority of any other mortgages and other encumbrances on the mortgaged property,
- the loan-to-value ratio of the property, calculated on an aggregate basis using the loan value of the syndicated mortgage and all other mortgages or encumbrances with priority over the syndicated mortgage and the appraised value of the property described under item 8,
- the aggregate dollar amount of the funds being raised under the offering,
- the status of the syndicated mortgage, including whether there are any arrears and, if so, the amount and due dates of outstanding payments, if advances have already been made to the borrower and interests in the syndicated mortgage are subsequently sold to purchasers,
- the means by which the repayments by the borrower will be distributed and the procedure for establishing the proportion to which each purchaser is entitled to share in the distribution, and
- the source of funds that the borrower will use to pay interest on the syndicated mortgage, including any reserve accounts or other fund maintained by the borrower or any other person.

(2) Attach a copy of any commitment letter, or other commitment document, in which the mortgage broker or other person sets out the terms of the commitment to advance funds to the borrower.

Item 8 – Appraisal

Describe the most recent appraisal of the value of the land and existing improvements, including all assumptions and qualifications and the date of the appraisal prepared by a qualified appraiser in accordance with subsection 2.9(19.1) of National Instrument 45-106 *Prospectus Exemptions*.

Provide details of the most recent assessment of the land, including existing improvements by any provincial or municipal assessment authority.

Item 9 – Exemptions

Disclose any statutory or discretionary exemption from the registration requirement that is being relied upon by any person involved in the offering of the syndicated mortgage.

Item 10 – Guarantees or Other Similar Financial Commitments

(1) Summarize, in plain language, the key terms of any personal covenant, guarantee or other financial commitment provided in connection with the syndicated mortgage. Explain how the personal covenant, guarantee or financial commitment works and state:

Copies of the personal covenant, guarantee or other financial commitment are available on request from the borrower or any mortgage broker involved in the distribution.

(2) Disclose the financial position and business experience of the person providing any personal covenant, guarantee or other financial commitment.

(3) Indicate whether the purchasers will be entitled to ongoing disclosure of the financial position of the person providing any personal covenant, guarantee or other financial commitment during the period of the personal covenant, guarantee or commitment, and the nature, verification, timing and frequency of any disclosure that will be provided to purchasers.

Item 11 – Organization of Mortgage Broker

State the laws under which the mortgage broker is organized and the date of formation of the mortgage broker.

Item 12 – Borrower Information

If the borrower is not the issuer of the syndicated mortgage, include the disclosure required under items 2, 3, 4 and 12 of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* as if the borrower were the issuer of the syndicated mortgage.

Item 13 – Developer

If the property subject to the syndicated mortgage is being developed, state the laws under which the developer is organized and the date of formation of the developer. Describe the business of the developer and any prior experience of the developer in similar projects.

Item 14 – Mortgage Broker, Partners, Directors, Officers and Principal Holders

(1) Disclose the name, municipality of residence and principal occupation for the last 5 years of the mortgage broker, if the mortgage broker is an individual, or of the partners, directors, officers and any principal holders, if the mortgage broker is not an individual.

(2) Disclose any penalty or sanction, including the reason for it and whether it is currently in effect, that has been in effect during the last 10 years, or any cease trade order that has been in effect for a period of more than 30 consecutive days during the past 10 years against

- the mortgage broker,
- a director, executive officer or control person of the mortgage broker, or
- any issuer of which a person referred to above was a director, executive officer or control person at the time.

(3) Disclose any declaration of bankruptcy, voluntary assignment in bankruptcy, proposal under any bankruptcy or insolvency legislation, proceedings, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets, that has been in effect during the last 10 years with regard to

- the mortgage broker,
- a director, executive officer or control person of the mortgage broker, or
- any issuer of which a person referred to above was a director, executive officer or control person at that time.

Item 15 – Developer, Partners, Directors, Officers and Principal Holders

Disclose the information required by item 14 in respect of the mortgage broker for the developer and, if the developer is not an individual, its partners, directors, officers and principal holders.

Item 16 – Conflicts of Interest

(1) State the name of the mortgage broker, any relationship between the mortgage broker and the borrower or issuer, particulars of any agency or similar agreement and the remuneration, if any, that purchasers will pay to the mortgage broker in connection with the offering.

(2) Describe any existing or potential conflicts of interest that could reasonably be expected to affect the purchaser's investment decision among any of

- the borrower,
- the issuer,
- the mortgage broker,
- any partners, directors, officers and principal holders of the borrower, issuer, mortgage broker or developer, or
- the trustee and any person providing goods or services to the borrower, issuer, mortgage broker or developer in connection with the syndicated mortgage.

(3) Describe any direct or indirect interest of the mortgage broker, developer or related parties in the property, mortgage or business of the borrower, issuer or trustee.

Item 17 – Material Agreements

(1) To the extent not already disclosed elsewhere in the offering memorandum, give particulars of every material agreement relating to the offering of the syndicated mortgage entered into or to be entered into by the borrower, issuer or the mortgage broker or any of the affiliates of the borrower, issuer or mortgage broker, within the 2 years preceding the date of the offering memorandum.

(2) If the material agreements are not attached to the offering memorandum, disclose a place at which during regular business hours those agreements or copies of those agreements may be inspected during distribution of the syndicated mortgage.

Item 18 – Disclosure of Fees Specific to the Syndicated Mortgage

(1) Disclose whether a mortgage broker has provided a disclosure statement under mortgage broker legislation to the borrower concerning all fees, by whatever name those fees are called, charged to the borrower in addition to assessment, appraisal, survey and legal fees. State that a copy of that disclosure statement is available to the purchaser on request from the mortgage broker or issuer.

(2) If no mortgage broker has provided a disclosure statement to the borrower, state what fees (by whatever name those fees are called) 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.

(3) Disclose all fees to be paid by the purchaser, directly or indirectly, including any commissions, charges or referral fees.

Item 19 – Registration documentation

State:

In addition to all other material and documentation reasonably requested and mutually agreed upon, the purchaser should request, either from the lawyer or notary acting on the purchaser’s behalf, or from the borrower, issuer or any mortgage broker involved in the distribution, the following documentation after the completion of registration and disbursement of the syndicated mortgage

- a copy of the certificate of mortgage interest or assignment of the mortgage or any other document evidencing the investment,
- a copy of a confirmation signed by any secured party with priority over the syndicated mortgage confirming the outstanding balance of its encumbrance over the property and that the borrower is not in arrears with any payments,
- written confirmation of valid insurance on the property and disclosure of the interest of the purchaser in the insurance,
- written confirmation that there are no outstanding arrears or delinquent municipal property taxes on the property,
- a state of title certificate, or equivalent, within 120 days of the date of the syndicated mortgage, and
- a copy of administration agreement or trust indenture.

Item 20 – Certification by Mortgage Broker

State, in a certificate signed by the mortgage broker, the following:

With respect to matters that are or should be within my personal knowledge, the foregoing contains no misrepresentation. With respect to matters that are not and are not required to be within my personal knowledge, I have made best efforts to ensure that the foregoing contains no misrepresentation.

The certificate must be signed by the persons holding positions with the mortgage broker that are the same as the signatories for an issuer under subsections 2.9(9) to 2.9(12) of National Instrument 45-106 *Prospectus Exemptions*..

8. This Instrument comes into force on ●.

ANNEX B

PROPOSED CHANGES TO

COMPANION POLICY 45-106CP PROSPECTUS EXEMPTIONS

1. ***Companion Policy 45-106CP Prospectus Exemptions is changed by this Document.***
2. ***Section 3.8 is changed by adding the following subsections:***

(11) Issuer of a syndicated mortgage

Where a borrower enters into a mortgage with two or more persons participating as lenders under the debt obligation secured by the mortgage, or enters into a mortgage with a view to the subsequent syndication of that mortgage to two or more purchasers, lenders or investors, we would generally consider the borrower to be the issuer of the syndicated mortgage. Consequently, the obligations to comply with the conditions of the exemption and reporting requirements (including the filing of a report of exempt distribution) would fall on the borrower.

There may be circumstances where we would consider a person other than the borrower to be an issuer of a syndicated mortgage. For example, where a borrower enters into a mortgage with a single lender, and that lender subsequently distributes interests in the mortgage, or assigns interests in the mortgage, to more than one lender, purchaser or investor, the original lender could be considered to be the issuer of the syndicated mortgage. The determination of the identity of the issuer, or issuers of a syndicated mortgage, will depend on the particular facts and circumstances of the transaction.

Where a person other than the borrower is the issuer of a syndicated mortgage, the ability of the issuer to rely on the offering memorandum exemption for the distribution of the syndicated mortgage will be dependent upon the issuer providing the required information regarding the borrower, including financial statements, in the offering memorandum. The issuer's certificate that the offering memorandum does not contain a misrepresentation will extend to any information provided about the borrower under the syndicated mortgage.

(12) Professional association

The definition of "qualified appraiser" in section 1.1 of the Instrument requires a qualified appraiser to be a member of a professional association. The Appraisal Institute of Canada, The Canadian National Association of Real Estate Appraisers and l'Ordre des évaluateurs agréés du Québec are examples of organizations that we consider to meet the definition of a professional association.

(13) Independent qualified appraiser for syndicated mortgages

Subsection 2.9(19) of the Instrument provides the test that the issuer of a syndicated mortgage and a qualified appraiser must apply to determine whether a qualified appraiser is independent of the issuer. The following are examples of when we would consider that a qualified appraiser is not independent. These examples are not a complete list. We would consider that a qualified appraiser is not independent of an issuer if the qualified appraiser:

- (a) is an employee, insider or director of the issuer,
- (b) is an employee, insider or director of a related party of the issuer,
- (c) is a partner of any person in paragraph (a) or (b),
- (d) holds or expects to hold securities, either directly or indirectly, of the issuer or a related party of the issuer,
- (e) holds or expects to hold securities, either directly or indirectly, in another issuer that has a direct or indirect interest in the property that is the subject of the appraisal or in an adjacent property,
- (f) is an employee, insider or director of another issuer that has a direct or indirect interest in the property that is the subject of the appraisal or in an adjacent property,
- (g) has or expects to have, directly or indirectly, an ownership, royalty or other interest in the property that is the subject of the appraisal or in an adjacent property, or
- (h) has received the 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.

(14) Appraisals

Subsection 2.9(19.1) of the Instrument requires the issuer to deliver an appraisal of the property subject to a syndicated mortgage. The appraisal must disclose the fair market value of the property, without taking into account any proposed improvements or proposed development. The fair market value of the property, as it currently exists, is important information for prospective purchasers to understand the protection afforded by the security interest in the property subject to the syndicated mortgage in the event of a default by the borrower..

3. These changes become effective on ●.

ANNEX C

PROPOSED AMENDMENTS TO

NATIONAL INSTRUMENT 31-103 *REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS*

1. *National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by this Instrument.*
2. *Section 8.12 is amended by:*
 - (a) *replacing “In Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan, subsection (2)” in subsection (3) with “Subsection (2)”, and*
 - (b) *repealing subsection (4).*
3. This Instrument comes into force on ●.