

THE MANITOBA SECURITIES COMMISSION
MSC Rule No. 2020-6
(Section 149.1, *The Securities Act*)

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 association or other organization, whether incorporated or not, of real property appraisers that

(a) has its head office in Canada,

(b) admits its members on the basis of their academic qualifications, experience and ethical fitness,

(c) requires its members to meet standards of competence and comply with a code of ethics it has established or endorsed,

(d) requires or encourages its members to engage in continuing professional development, and

(e) under the powers conferred by statute or under an agreement, may suspend or expel its members if misconduct occurs;

"qualified appraiser" means an individual who

(a) regularly performs property appraisals for compensation,

(b) is a member of a professional association and holds the designation, certification or licence to act as an appraiser for the class of property appraised, and

(c) is in good standing with the professional association referred to in paragraph (b);

"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:*

2.4(6) In Ontario, 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. *Subsection 2.5(3) is amended by deleting " or, in Ontario, a distribution under subsection 73.4(2) of the Securities Act (Ontario)".*

5. *Section 2.9 is amended by*

(a) *replacing "10" in paragraph (11.1)(d) with "(10)", and*

(b) adding the following subsections:

2.9(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 the relevant facts, could interfere with the qualified appraiser's judgment regarding the preparation of an appraisal for a property.

2.9(19.1) Subsections (1), (2) and (2.1) do not apply to a distribution of a syndicated mortgage by an issuer 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) includes a certificate signed by the qualified appraiser stating that the appraisal is prepared in accordance with the standards and the code of ethics established or endorsed by the professional association of which the qualified appraiser is a member,

(c) provides the appraised fair market value of the property subject to the syndicated mortgage, without considering any proposed improvements or proposed development, and

(d) provides the appraised fair market value of the property as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.

2.9(19.2) An issuer of a syndicated mortgage relying on an exemption set out in subsection (1), (2) or (2.1) must not make a representation of, or give an opinion as to, the value of a property subject to the syndicated mortgage in any communication related to the distribution under the exemption, unless the issuer has a reasonable basis for that value.

2.9(19.3) If an issuer of a syndicated mortgage relying on an exemption set out in subsection (1), (2) or (2.1) discloses in any communication related to the distribution under the exemption any representation of, or opinion as to, the value of a property subject to the syndicated mortgage, other than the appraised fair market value disclosed in the appraisal referred to in subsection (19.1), the issuer must also disclose in that communication,

(a) with equal or greater prominence as the representation or opinion, the appraised fair market value referred to in subsection (19.1),

(b) the material factors or assumptions used to determine the representation or opinion, and

(c) whether or not the representation or opinion was determined by a qualified appraiser who is independent of the issuer.

2.9(19.4) The issuer must file a copy of an appraisal delivered under subsection (19.1) with the securities regulatory authority concurrently with the filing of the offering memorandum..

6. 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 subsection 2.36(3) with the following:*

2.36(3) Subsection (2) does not apply to the distribution of a syndicated mortgage.

7. Section 6.4 is amended by adding the following subsection

6.4(3) Despite subsections (1) and (2), an offering memorandum for the distribution of a syndicated mortgage under section 2.9 [*Offering memorandum*] must be prepared in accordance with Form 45-106F2 and Form 45-106F18.

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

Form 45-106F18

Supplemental Offering Memorandum Disclosure for Syndicated Mortgages

INSTRUCTIONS:

1. Provide all disclosure required under Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers, as supplemented by this form, including information about the borrower under the syndicated mortgage. Where the headings in Form 45-106F2 and this form are the same, provide all of the required disclosure under the Form 45-106F2 heading.

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 need not be repeated.

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

4. Certain items in this form require disclosure about the issuer of a syndicated mortgage and the borrower under a syndicated mortgage. In some cases, the borrower is the issuer of the syndicated mortgage. In these circumstances, the terms "issuer" and "borrower" are interchangeable and there is no requirement to duplicate information.

5. In this form, the distribution of a syndicated mortgage is also referred to as the "offering". The lenders or investors in a syndicated mortgage are also referred to in this form as the "purchasers".

6. In this form, "principal holder" means each person who beneficially owns, or directly or indirectly has control or direction over, 10% or more of any class of voting securities of another person. If a principal holder is not an individual, in addition to the other disclosure requirements, provide the information required for the principal holder for any person that beneficially owns, or directly or indirectly has control or direction over more than 50% of the voting rights of the principal holder.

7. In this form, "related party" has the meaning set out in the General Instructions to Form 45-106F2.

8. Where this form requires an issuer to indicate that copies of a document are available on request, the issuer must provide a copy of such document when requested.

Item 1 – Description of the Offering

(1) Provide the following information about the investment being offered and the legal rights of the purchaser:

(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;

(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 on default by the borrower, if any;

(d) any other material information about the investment or the legal rights of the purchaser.

(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 factors that 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, 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. Disclose 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. You 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 additional 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 the person's obligations under the personal covenant, guarantee or other financial commitment. You might not receive any return from your investment or the initial amount invested.

(3) Disclose any material risk factors associated with the offering.

INSTRUCTIONS:

Potential risk factors include, but are not limited to, any of the following:

(a) the reliance on the ability of the borrower to make payments under the mortgage;

(b) the financial strength of any person offering a personal covenant, guarantee or other financial commitment;

(c) the ability to raise further funds as progress in development or construction takes place;

- (d) changes in land value;*
- (e) unanticipated construction and development costs or delays;*
- (f) the expertise of the parties involved in administering the syndicated mortgage or operations involving the property;*
- (g) the ability to recover one's investment in the event of foreclosure;*
- (h) operational risks involving the businesses of any tenants of the property;*
- (i) restrictions on the ability of purchasers to take action individually if the borrower defaults;*
- (j) whether there are other liabilities secured against the mortgaged property and their maturity schedule;*
- (k) the ranking of the syndicated mortgage in relation to other mortgages and liabilities secured against the mortgaged property, including any potential for future subordination;*
- (l) conflicts of interest between the borrower, purchasers, issuer or others involved in the offering;*
- (m) inadequate insurance coverage;*
- (n) inability to change the trustee (if any);*
- (o) the restrictions imposed by securities legislation on the resale of the syndicated mortgage and the resulting lack of liquidity.*

Item 4 – Administration of the Mortgage

- (1) Describe how the syndicated mortgage will be administered as well as all parties involved, including the name, address, contact person and any relevant licences or registration held by each party.
- (2) Provide the following information about the specific responsibilities of all parties involved in the administration of the syndicated mortgage:
 - (a) collection responsibility for payments due under the syndicated mortgage;
 - (b) commencement of legal action on default;
 - (c) follow-up on insurance expirations or cancellations;
 - (d) all other material matters of administration to be provided by the person administering the syndicated mortgage.
- (3) Describe the material terms of any administration agreement related to the syndicated mortgage.
- (4) Disclose all fees and expenses to be charged to the purchaser under the administration agreement and how they are to be calculated.
- (5) Disclose that copies of the administration agreement are available from the issuer on request and explain how to request a copy.

Item 5 – Trust or Other Agreement

(1) 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.

(2) Provide the following information about any agreement disclosed under subsection (1):

(a) whether the purchaser is required to grant a power of attorney to the trustee and the terms of that power of attorney;

(b) all fees and expenses to be charged to the purchaser under the agreement;

(c) the specific responsibilities of all parties to the agreement regarding the following:

(i) 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;

(ii) details of how payments related to the syndicated mortgage will be made;

(iii) the mechanism for replacing the trustee and the procedures for dispute resolution;

(d) any other material terms of the agreement.

(3) Disclose that copies of any agreement disclosed under subsection (1) are available from the issuer on request and explain how to request a copy.

Item 6 – Property Subject to the Mortgage

Provide the following information about the property subject to the mortgage:

(a) the address and legal description;

(b) the past, current and intended use;

(c) any proposed improvements;

(d) the date of acquisition of the property and the purchase price paid;

(e) 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;

(f) 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;

(g) any material contractual arrangements relating to the property;

(h) any insurance policies applicable to the property and their status;

(i) any material claims or litigation;

- (j) any known contamination or environmental concerns;
- (k) any other material facts.

Item 7 – Description of the Syndicated Mortgage

(1) Provide the following information about the syndicated mortgage:

- (a) the principal amount, term, amortization period, interest rate, maturity date, any prepayment entitlement, the ranking of the syndicated mortgage (i.e., first, second, etc.) and any ability of the borrower to subordinate the syndicated mortgage to other indebtedness or to require the purchaser to consent to the subordination of the syndicated mortgage;
- (b) the material terms and relative priority of any other mortgages or liabilities secured against the mortgaged property;
- (c) the loan-to-value ratio of the property, calculated on an aggregate basis using the following formula:

$$A \div B$$

where A is the aggregate of the following:

- (i) the loan value of the syndicated mortgage and
 - (ii) the loan value of all other mortgages or liabilities secured against the mortgaged property with priority that is equal to or greater than the syndicated mortgage, assuming in all cases that the maximum amount of any such mortgage or liability is fully drawn,
- and B is the appraised value of the property described under item 8;
- (d) the impact on the loan-to-value ratio of any potential future subordination of the syndicated mortgage;
 - (e) the aggregate dollar amount of the funds being raised under the offering;
 - (f) the status of the syndicated mortgage, including whether there are any arrears and, if so, the amount and due dates of outstanding payments;
 - (g) 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;
 - (h) the source of funds that the borrower will use to make payments on the syndicated mortgage, including any reserve accounts or other fund maintained by the borrower or any other person;
 - (i) any other material terms.

(2) Describe the material terms of any commitment letter, or other commitment document, that sets out the terms of the commitment to advance funds to the borrower.

(3) Disclose that copies of the commitment letter, or other commitment document, are available from the issuer on request and explain how to request a copy.

Item 8 – Appraisal

(1) Provide the following information about the most recent appraisal of the value of the property subject to the mortgage, prepared by a qualified appraiser in accordance with subsection 2.9(19.1) of National Instrument 45-106 *Prospectus Exemptions*:

- (a) the method used;
- (b) all assumptions made;
- (c) any qualifications or limitations;
- (d) the date of the valuation.

(2) Describe the most recent assessment of the property subject to the mortgage, 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 the 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.

(2) Disclose that copies of the personal covenant, guarantee or other financial commitment are available from the issuer on request and explain how to request a copy.

(3) Describe the business experience of the person providing any personal covenant, guarantee or other financial commitment.

(4) Describe the financial resources of the person providing the personal covenant, guarantee or other financial commitment. The description must enable a reasonable purchaser applying reasonable effort to understand the person's ability to meet the obligations under the personal covenant, guarantee or other financial commitment.

(5) Disclose 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 other financial commitment, and the nature, verification, timing and frequency of any disclosure that will be provided to purchasers.

Item 11 – Organization of Mortgage Broker, Mortgage Brokerage or Mortgage Agency

State the laws under which any firm acting as a mortgage broker, mortgage brokerage or mortgage agency is organized and the date of formation of the mortgage broker, mortgage brokerage or mortgage agency.

Item 12 – Borrower Information

If the borrower is not the issuer of the syndicated mortgage, provide 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, Mortgage Brokerage or Mortgage Agency, Partners, Directors, Officers and Principal Holders

(1) Disclose the name, municipality of residence and principal occupation for the 5 years preceding the date of the offering memorandum of any individual mortgage broker involved in the offering and the partners, directors, officers and any principal holders of any firm acting as a mortgage broker, mortgage brokerage or mortgage agency involved in the offering.

(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 10 years preceding the date of the offering memorandum, or any cease trade order that has been in effect for a period of more than 30 consecutive days during the 10 years preceding the date of the offering memorandum against any of the following:

(a) a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;

(b) a director, officer or principal holder of a firm acting as a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;

(c) any issuer of which a person referred to above was a director, officer or principal holder at the time of the penalty or sanction.

(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 10 years preceding the date of the offering memorandum with respect to any of the following:

(a) a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;

(b) a director, officer or principal holder of a firm acting as a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;

(c) any issuer of which a person referred to above was a director, officer or principal holder at the time of the declaration, assignment, proposal, proceedings, arrangement, compromise or appointment.

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

(1) Disclose the name and address of any developer of the property subject to the syndicated mortgage.

(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 10 years preceding the date of the offering memorandum, or any cease trade order

that has been in effect for a period of more than 30 consecutive days during the 10 years preceding the date of the offering memorandum against any of the following:

- (a) a developer of the property subject to the syndicated mortgage;
 - (b) a director, officer or principal holder of a developer of the property subject to the syndicated mortgage;
 - (c) any issuer of which a person referred to above was a director, officer or principal holder at the time of the penalty or sanction.
- (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 10 years preceding the date of the offering memorandum with respect to any of the following:

- (a) a developer of the property subject to the syndicated mortgage;
- (b) a director, officer or principal holder of a developer of the property subject to the syndicated mortgage;
- (c) any issuer of which a person referred to above was a director, officer or principal holder at the time of the declaration, assignment, proposal, proceedings, arrangement, compromise or appointment.

Item 16 – Conflicts of Interest

(1) Describe any existing or potential conflicts of interest among any of the following:

- (a) the borrower;
- (b) the issuer;
- (c) a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;
- (d) a developer of the property subject to the syndicated mortgage;
- (e) any partners, directors, officers or principal holders of the borrower, issuer, mortgage broker, mortgage brokerage or mortgage agency, or developer;
- (f) the trustee, administrator of the mortgage, or any other person providing goods or services to the borrower, issuer, mortgage broker, mortgage brokerage or mortgage agency or developer in connection with the syndicated mortgage.

(2) Describe any direct or indirect interest in the property subject to the syndicated mortgage, the borrower or the business of the borrower held by any of the following:

- (a) any mortgage broker, mortgage brokerage or mortgage agency, developer, trustee or administrator involved in the offering;
- (b) a director, officer or principal holder of a person or company listed above.

Item 17 – Material Contracts

(1) To the extent not already disclosed elsewhere in the offering memorandum, describe each material contract relating to the offering or the syndicated mortgage that is in force or is to be entered into by the

borrower, issuer, mortgage broker, mortgage brokerage, mortgage agency or developer, or any related party of the foregoing.

(2) Disclose that copies of the material contracts are available from the issuer on request and explain how to request a copy.

Item 18 – Disclosure of Fees

(1) Disclose whether a mortgage broker, mortgage brokerage or mortgage agency has provided a disclosure statement under mortgage legislation to the borrower concerning all fees, by whatever name those fees are called, to be charged to the borrower. Disclose that copies of the disclosure statement are available from the issuer on request and explain how to request a copy.

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

(3) Disclose all fees, by whatever name those fees are called, to be paid by the purchaser, directly or indirectly, in connection with the syndicated mortgage.

Item 19 – Registration Documentation

State:

In addition to all other documentation received, the purchaser should request from the borrower, issuer or any mortgage broker, mortgage brokerage or mortgage agency involved in the distribution, the following documentation:

(a) a copy of the certificate of mortgage interest or assignment of the mortgage or any other document evidencing the investment;

(b) a copy of any confirmation signed by any secured party with priority over the syndicated mortgage confirming the outstanding balance of its encumbrance over the property and confirming that the borrower is not in arrears with any payments;

(c) written confirmation of valid insurance on the property and disclosure of the interest of the purchaser in the insurance;

(d) written confirmation that there are no outstanding arrears or delinquent municipal property taxes on the property;

(e) a state of title certificate or equivalent, showing the registration of the syndicated mortgage;

(f) a copy of any administration agreement or trust indenture;

(g) a copy of any agreement the purchaser entered into in connection with the distribution of the syndicated mortgage.

9. (1) This Instrument comes into force on March 1, 2021.

9. (2) In Ontario, despite subsection (1), this Instrument comes into force on the later of the following:

(a) March 1, 2021; and

(b) the day on which sections 4 and 5 of Schedule 37 to Bill 177, *Stronger, Fairer Ontario Act (Budget Measures), 2017* are proclaimed into force.

9. (3) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after March 1, 2021, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

10. This Instrument may be cited as MSC Rule 2020-6.