

British Columbia Securities Commission

Companion Policy 45-501CP (BC)

The Commission, considering that to do so would not be prejudicial to the public interest, orders that effective January 11, 2015, Companion Policy 45-501CP entitled *Mortgages*, dated September 25, 2009, is revoked and the attached Companion Policy 45-501CP *Mortgages* is made.

December 12, 2014
Paul Bourque
Chair

(This part for administrative purposes only and is not part of the Order)

Authority under which Order is made:

Act and sections:- *Securities Act*, section 171

Other (specify):-

COMPANION POLICY 45-501CP (BC)

MORTGAGES

PART 1 BACKGROUND

1.1 Background

A mortgage is a security. Section 8.12 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) exempts from the registration requirements of the *Securities Act* trades in mortgages on real property by a person registered or exempt from registration under mortgage brokers legislation if the real property is located in the jurisdiction where the person is registered or exempt from registration as a mortgage broker.

Section 2.36 of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) exempts from the prospectus requirements of the Act distributions of mortgages on real property by a person registered or exempt from registration under mortgage brokers legislation if the real property is located in the jurisdiction where the person is registered or exempt from registration as a mortgage broker.

In British Columbia, neither of these exemptions covers mortgage syndications, where a single mortgage is sold to a number of investors. Syndicated mortgages, particularly on commercial property and development property, are complex and risky securities similar to other real estate based securities that are subject to the registration and prospectus requirements of the Act.

1.2 Purpose

The purpose of BC Instrument 45-501 is to

- (1) allow trades in, and distributions of, syndicated mortgages on real property by persons registered or exempt from registration under the *Mortgage Brokers Act* to institutional investors, and
- (2) provide an exemption from the registration and prospectus requirements of the *Act* for relatively simple syndicated mortgages, called “qualified syndicated mortgages”.

A qualified syndicated mortgage is defined as a syndicated mortgage on property that is used solely for residential purposes, that contains no more than four residential dwelling units, that is not under construction and that meets other conditions set out in the instrument. The *Mortgage Brokers Act* continues to govern qualified syndicated mortgages.

The Commission has adopted related BC Instrument 33-517 *Registration and Prospectus Exemptions for Persons Registered under the Mortgage Brokers Act*, which provides a

blanket exemption for trades in, or distributions of, mortgages on real property located outside of British Columbia by persons registered under the *Mortgage Brokers Act*. That exemption similarly does not apply to trades in syndicated mortgages.

PART 2 STATUTORY EXEMPTIONS

- 2.1 General** – The Commission does not intend BC Instrument 45-501 to restrict the use of other available exemptions. NI 31-103, NI 45-106 and BC Instrument 35-516 *Registration Exemption for Trades in connection with certain Prospectus-exempt Distributions* describe these exemptions. Where an offering memorandum is required for the use of an exemption, the required form for mortgages is BC Form 45-901F.

Amended January 11, 2015