

**CSA Second 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* and Companion Policy 31-103CP *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 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) and proposed changes to Companion Policy 45-106CP *Prospectus Exemptions* (45-106CP) 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 NI 45-106 and 8.12 of NI 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
- introducing additional requirements to the offering memorandum prospectus exemption under section 2.9 of NI 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 NI 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.

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

In light of the comments received on the March 2018 Proposal, we are publishing for a 60-day comment period revised proposed amendments to NI 45-106 and NI 31-103 (the Proposed Amendments) and revised proposed changes (the Proposed Changes) to 45-106CP and to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (31-103CP) related to syndicated mortgages. The substantive differences between the Proposed Amendments and the Proposed Changes compared to 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 the 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.bcsc.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 Annex G 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 or companies 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 and Proposed Changes

The anticipated costs and benefits of the Proposed Amendments and Proposed Changes are expected to be substantially the same as described in the March 2018 Proposal. In those jurisdictions that are proposing local amendments or changes, including an exemption for qualified syndicated mortgages, Annex G 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

Annex G 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 and Proposed Changes.

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.

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

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 4e étage
C.P. 246, Place Victoria
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 – List of Commenters

Annex B – Summary of Comments and Responses

Annex C – Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions*

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

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

Annex F – Proposed Changes to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

Annex G – Local Matters

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

Jan Bagh
Senior Legal Counsel
403.355.2804
jan.bagh@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

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
506.453.6591
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