

Via Email

June 6, 2018

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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

Dear Sirs/Mesdames:

Re: 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

Olympia Trust Company (“**Olympia**”) is grateful for the opportunity to provide comments to the Canadian Securities Administrators (the “**CSA**”) with respect to the 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 (collectively, the “**Proposed Amendments**”).

About Olympia

Olympia is a non-deposit taking trust corporation formed under the *Loan and Trust Corporations Act* (Alberta). Olympia is licensed to provide trust services in the Provinces of Alberta, British Columbia,

Saskatchewan, Manitoba, Quebec, Nova Scotia, Prince Edward Island, New Brunswick and Newfoundland and Labrador. Olympia's principal business is the provision of trust services to individuals who have established a self-directed registered plan, such as an RRSP, RRIF, TFSA, RESP or LIRA, with Olympia in accordance with the *Income Tax Act* (Canada).

Funds held in self-directed registered plans are used by the registered plan holders to make investments in private company securities, syndicated mortgages, mutual funds, public securities, bonds and other investments qualified to be held in a registered plan under the *Income Tax Act* (Canada).

Approximately, 90,000 self-directed registered plans holding approximately \$4.5 billion in private company securities, syndicated mortgages, mutual funds, public securities, bonds and other investments are currently administered by Olympia.

Disclosure of Financial Information respecting Syndicated Mortgages held by Olympia

As one of the few registered plan trustees that accepts syndicated mortgages as plan assets, Olympia is uniquely positioned to provide insight to the CSA with respect to the financial performance of syndicated mortgages in Canada. As the CSA is undoubtedly aware, information on the financial performance of syndicated mortgages in Canada is difficult to obtain as there are few publicly available sources for such information. In addition, those publicly sources that are available (i.e. Provincial Land Title Registries) provide incomplete financial information that needs to be further refined to even have the potential to be of use.

It is Olympia's view that the lack of available information with respect to the financial performance of syndicated mortgages has created considerable speculation and supposition on the risks associated with syndicated mortgage investments in Canada. In the absence of information, it is human nature to assume the worst and presume that the risks associated with an investment are higher than they may be actually be. It is Olympia's hope that the disclosure of financial information to the CSA with respect to the performance of syndicated mortgages held by Olympia will permit the CSA to conduct an objective assessment of their associated risks and modify the Proposed Amendments accordingly.

As an example of the information available to Olympia, Olympia is pleased to advise the CSA as follows:

- In 2015, 2016 and 2017 Olympia funded a total of 2,083 syndicated mortgages across Canada with between 2 to 10 account holders per syndicated mortgage on existing residential or commercial properties.

- Of the 2,083 syndicated mortgages funded:
 - 861 (41.3%) paid out with a complete return of principal and interest to account holders;
 - 1,085 (52%) remain outstanding, but are current in terms of payment of interest and principal;
 - 80 (3.8%) paid out with a loss of some principal or interest to the account holder;
 - 35 (1.7%) are currently in foreclosure proceedings;
 - 19 (<1%) resulted in the account holder losing all of their money; and
 - 3 (<1%) saw the account holder foreclose and take ownership of the secured property.

Olympia, in its sole discretion, is prepared to disclose additional information to the CSA respecting the financial performance of the syndicated mortgages held by Olympia. Such disclosure would be in the aggregate and would not include any particular information with respect any single syndicated mortgage or any personal information that may be in Olympia's control or possession.

Harmonization of Syndicated Mortgages and Debt Securities Regulatory Regimes

Olympia generally agrees that amendments to the current syndicated mortgage regime are required to enhance investor protection (particularly in Ontario). However, it is Olympia's position that the resulting syndicated mortgage regulatory regime needs to be harmonized with and be substantively similar to the regulatory regime that exists with respect to debt securities such as bonds and debentures.

Olympia notes that the issuance by an issuer of bonds or debentures that are secured by a collateral mortgage against real property is substantively the same as the issuance of a syndicated mortgage against the same real property. However, under the Proposed Amendment a syndicated mortgage will be subject to a far more onerous regulatory regime than a comparable issuance of bonds or debentures secured by a collateral mortgage against real property. Specifically, the issuer of bonds or secured debentures secured by a collateral mortgage against real property will:

1. not be subject to the proposed additional requirements for syndicated mortgages under the offering memorandum exemption under section 2.9 of National Instrument 45-106 - *Prospectus Exemptions* ("**NI 45-106**"); and
2. continue to be able to use the Private Issuer exemption under section 2.4 of NI 45-106.

Olympia also notes that under the Proposed Amendments, unsecured bonds and debentures will be subject to a less onerous regulatory regime than a syndicated mortgage, even though arguably there is less risk associated with the syndicated mortgage (which is secured against real property) than with

unsecured bonds or debentures. It is Olympia's view that the requirements of any regulatory regime designed to provide investor protection should be proportionate to the anticipated risks borne by such investors.

Finally, Olympia notes that the definition of "syndicated mortgage" under the Proposed Amendments is problematic. This definition reads follows:

"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 a mortgage.

It is Olympia's view that this definition elevates the form of the offered security (i.e. a mortgage) over the substance of the offered security (i.e. a debt obligation that is secured by real property). Olympia is unable to discern a reason as to why the form of any debt obligation that is secured by real property should matter in determining the application of the proposed regulatory regime. All debt obligations that are secured by real property should be subject to the same regulatory regime.

As a result of the issues outlined above, it is Olympia's view that the effect of the Proposed Amendments will be to cause issuers that previously used syndicated mortgages to finance their business activities to adopt bonds or secured debentures as an alternative financing vehicle as the regulatory regime associated with bonds and secured debentures is less onerous than the one being proposed with respect to syndicated mortgages.

Definition of "Syndicated Mortgage" a Disincentive to Diversification

Olympia is concerned that the threshold number of lenders at which the regulatory regime proposed by the Proposed Amendments becomes applicable has been set too low. Under the Proposed Amendments "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 a mortgage. It is Olympia's view that this definition of syndicated mortgage will encourage issuers to make efforts to avoid the proposed regulatory regime by requiring that the offered mortgage be held by only a single mortgagor. As a consequence investors wishing to invest in a mortgage will be required to invest a greater share of their investment portfolio in a single mortgage and will have less ability to diversify their overall investment portfolio.

The importance of diversification in the mitigation of idiosyncratic investment risk is well established and in Olympia's opinion should be encouraged by any regulatory regime proposed by the CSA.

Furthermore, as evidenced by the information disclosed above with respect to the financial performance of syndicate mortgages having between 2 and 10 lenders, it is Olympia's experience that the risk of default with such mortgages is actually quite low and can be reasonably managed through diversification.



However, if lenders are unable to or are discouraged from diversifying their mortgage investment portfolio they will be required to assume unnecessary idiosyncratic investment risk.

Accordingly, it is Olympia recommendation that the definition of "syndicated mortgage" under the Proposed Amendments be changed so that only those syndicated mortgages with 10 or more lenders are subject to the proposed regulatory regime.

In further support of this recommendation, Olympia notes that the syndicated mortgages that have recently dominated news headlines usually had hundreds of investors; not 10 or less. It is Olympia's view that it is appropriate and in accordance with the public expectations that the regulatory regime adopted with respect to syndicated mortgages place stricter regulatory requirements on syndicated mortgages with more than 10 investors than on those with less than 10 investors.

Conclusion

Olympia would like to reiterate its appreciation to the CSA for the opportunity to comment on the Proposed Amendments and, as indicated above, is prepared to provide the CSA with access to significant information respecting the financial performance of syndicated mortgages in Canada. Olympia sincerely believes that this information would be of great assistance to the CSA in its current endeavours.

Sincerely,

"Signed"

Craig Skauge
President
Olympia Trust Company

"Signed"

Jonathan Bahnuik
General Counsel
Olympia Trust Company