

Wednesday June 6, 2018

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

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Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment on 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

The Ontario Mortgage Investment Companies Association (“**ONMICA**”) thanks you for the opportunity to provide our comments in connection with the Canadian Securities Administrators’ (“**CSA**”) 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 (the “**Proposal**”) as set out below.

ONMICA is an association of Mortgage Investment Corporations, Mortgage Funds, Mortgage Mutual Fund Trusts, and other Mortgage Investment Entities (MIEs) as well as registrants including exempt market dealers (“EMDs”) and mutual fund dealers registered with the Ontario Securities Commission who operate in the MIE space. There are currently 27 ONMICA members who collectively have approximately \$3.7 billion of gross assets under administration.

ONMICA’s purpose is to:

- Facilitate the exchange of information and ideas between members.
- Present a unified voice to regulators and other stakeholders to protect the specific interests of our industry.
- Set and uphold industry standards for ethics and professionalism.
- Act as an advocacy group for the MIE “community” dealing primarily with securities regulators (such as the Ontario Securities Commission) to further their understanding of the business of MIEs and ensuring the regulation of capital raising is fair, simple, and specific to our industry.
- To raise the profile and understanding of MIEs in the minds of both investors and capital raising industry participants.
- To assist the members of our organization with advice, problem solving and professional referrals.

ONMICA membership criteria includes that the member firm’s primary source of income is derived from being or managing a MIE whose securities are distributed through a registered entity recognized by the Ontario Securities Commission, and who conducts business in an ethical and professional manner that positively reflects on the industry.

GENERAL COMMENTS

General Comments on Proposed Amendments

ONMICA welcomes the Proposal and its potential to enhance investor protection and improve harmonization within the mortgage investment industry. However, we are concerned that there may be the potential for unintended consequences to the syndicated mortgage industry based on the current Proposal. We believe there are facets that need to be discussed in order to find a regulatory regime for syndicated mortgages that protects investors and is practical for syndicated mortgage providers, borrowers, registrants and regulators.

There has long been a structural issue in the mortgage investment industry whereby investments made into pooled mortgage funds have involved higher investor protection protocols when compared to syndicated mortgages regardless that both investment vehicles are lending on the same product. We maintain that all syndicated mortgages should be held to the higher standard implemented by securities regulators as the current and proposed investor protection regime mandated by the Financial Service Commission of Ontario is not sufficient. Elevating to the OSC/CSA’s standard will not only provide sufficient investor protection protocols it will also thwart bad actors targeting syndicate mortgages where there is less regulatory oversight.

Comments on Carve-Outs for Qualified (Non-Complex) Syndicated Mortgages and the Private Issuer Exemption

ONMICA believes that the carve outs to exemptions for syndicated mortgages should not be implemented. We are proponents of increasing jurisdictional harmony. We believe in order to

have fair and efficient capital markets it is important to have homogeneity among the CSA members and therefore the complexities that could arise from adding these carve outs should be avoided.

The Private Issuer Exemption:

ONMICA does not agree with carving out trades in syndicated mortgages from the private issuer exemption (“PIE”). We maintain the importance of the exemption for persons who are not in the business of mortgage lending and should not therefore be subject to securities obligations. However, we recommend that the CSA should include in a companion policy commentary on the appropriate use of the exemption. The commentary should highlight the business trigger test to ensure that individuals who are in the business of mortgage lending are not to rely on the exemption as this violates the spirit of the rule. It should also speak to small mortgage investment entities who purposefully limit the number of their investors to be below 50 in order to skirt registration and reporting obligations. ONMICA believes that the proposed commentary is in keeping with regulators’ current ideology of the acceptable use of the exemption and would appreciate the opportunity to comment on amendments to the companion policy.

Qualified (Non-Complex) Syndicated Mortgages & British Columbia Securities Commission Rule 45-501 (“BCSCR”):

Adopting a carve out for an exemption for the distribution of syndicated mortgages on non-complex transactions as well as BCSCR is unnecessary if the PIE as recommended above is maintained.

ONMICA is concerned that mortgage syndications on non-complex assets are ostensibly being categorized as less risky transactions. Currently, a large portion of retail syndications are being conducted by mortgage brokers on standard residential assets. To date, these brokers and their investors have had the benefit of a rising housing market. However, with changing market conditions, we are concerned that the vulnerability of these investments will likely surface.

In addition to the added complexities created by having separate regulatory authorities monitoring the same industry, ONMICA feels that an adoption of the carve outs may raise investor protection issues. ONMICA maintains that security regulators and their registrants are best suited for securities transactions particularly on matters relating to investor protection. We are wondering if the provincial regulatory authorities that oversees mortgage brokers have a sufficient focus on investor protection. Comparatively, securities regulators have a history of investor protection which includes a higher level of proficiencies for registrants. Furthermore, we recognize that some mortgage broker regulators, such as FSCO, are in the process of adopting know your client (“KYC”) and suitability requirements for syndicated mortgages that will likely mirror current securities regulations. While laudable, we wonder if mortgage brokers have the requisite training or qualifications to properly conduct these assessments as they have historically focused on know your product (“KYP”) on qualified (non-complex) syndicated mortgages, which is only one third of the trinity of KYC, KYP & suitability.

Registration and Transition Period

ONMICA recognizes that firms transitioning from licensing under mortgage broker legislation to registration as exempt market dealers under securities regulation may result in short term disruption during the transition period. In the spirit of fair and efficient capital markets, regulators should be prepared to allocate additional resources for a likely uptick in applications and for the

ongoing oversight of the increase in number of registrants. Applicants will require time to consider the registration requirements and if appropriate, prepare their application and obtain any required proficiencies. Given this, it is important that the transitory period provides industry participants with reasonable time to transition to the new requirements.

RESPONSES TO 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?

ONMICA believes that due to the cost and time involved in establishing an OM, the OM exemption will be rarely used and only for large transactions. So, while an exception from the appraisal requirement sounds reasonable, this and any other exceptions would probably not be a determining factor in whether an issuer distributes under the OM Exemption. Please note that one of the primary reasons that borrowers turn to alternative lenders is that the underwriting process is supposed to take less time than traditional lenders. In addition, it is arguably part of the dealer's KYP responsibilities to ensure that there has been a recent and reliable appraisal.

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.

ONMICA feels there is ambiguity regarding what information is expected to be within the personal knowledge of a mortgage broker. Subsequently, we feel that it is unfair to place the onus on the mortgage broker to make representations regarding information that should or should not be within their personal knowledge. If there was more clarity on these expectations, then a more informed discussion could occur about what a certificate page should include.

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?

See response to question 2.

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.

Yes. Mortgages are used in a variety of settings that fall outside the actions intended to be captured in the Proposal. For instance, an individual providing a vendor take back mortgage to ensure the sale of their property. Mortgages are also used in business and personal transactions

and not just for investment purposes. ONMICA believes that keeping the private issuer exemption in place in conjunction with providing additional commentary on the business trigger test and expectations of when PIE is not to be relied upon will strike an appropriate balance of not subjecting the above activities to undue securities regulations while ensuring those who are engaged in the business of trading in securities are fulfilling their regulatory requirements.

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?

Not necessary if the PIE is maintained.

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?

Not necessary if the PIE is maintained. See comments above under the section titled *Qualified (Non-Complex) Syndicated Mortgages & British Columbia Securities Commission Rule 45-501 ("BCSCR")*.

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?

No, not necessary if the PIE is maintained.

ADDITIONAL COMMENTARY SOUGHT

ONMICA is aware of discussions about who should be responsible for the reporting of distributions relating to syndicated mortgages. We are requesting commentary on who will be required to file reports of exempt market distributions as we recognize that the borrower, who is technically the issuer, may not be the person best suited to do so. We ask that we are provided an opportunity to submit comments on the CSA's proposal on this matter.

We are requesting feedback on how the proposed changes to syndicated mortgages impact the current process of consolidation of Ontario regulators (Financial Services Commission of Ontario, Ontario Securities Commission and the Financial Services Regulatory Authority of Ontario).

ONMICA recognizes that relevant securities industry experience is determined by the regulator. ONMICA members are requesting guidance on what will be considered acceptable relevant securities industry experience for those individuals who have historically not had to be registered but have been in the business of mortgage syndications.

Closing Remarks

ONMICA would like to thank to the CSA for their efforts in drafting the Proposal and for soliciting feedback from various stakeholders.

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We thank you for considering our submissions and we would be pleased to respond to any questions or meet with you to discuss our comments.

Yours truly,

ONMICA Volunteer Members

Diana Soloway

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