



Notice and Request for Comment

Publication of proposed amendments to Local Rule 45-501 *Prospectus and Registration Exemptions* (the “Amendments”).

Substance and Purpose

Exemption for Syndicated Mortgages

On 15 March 2019, the Financial and Consumer Services Commission (the “**Commission**”) published prospectus and registration exemptions related to syndicated mortgages. As a result of the comments received on those proposed exemptions and the Amendments generally, the Commission is publishing for comment additional changes to Local Rule 45-501 *Prospectus and Registration Exemptions* to clarify the definition of “qualified syndicated mortgage” and to expand the proposed exemptions to include syndicated mortgages sold to permitted clients, as discussed below.

Qualified Syndicated Mortgages Exemptions

Qualified syndicated mortgages will continue to be regulated under the *Mortgage Brokers Act* (New Brunswick). Commission staff are proposing changes to the definition of qualified syndicated mortgage to further clarify that it is intended to capture lower-risk products. The changes include:

- clarifying the 80% loan-to-value requirement by indicating that any other obligations with equal or greater priority to the syndicated mortgage must be treated as fully drawn for the purposes of the calculation;
- excluding syndicated mortgages that are subject to future subordination without the consent of the lenders;
- clarifying the drafting of the definition; and
- deleting unnecessary elements of the definition that were potentially confusing and that suggested that administration fees could not be charged.

The revised definition of qualified syndicated mortgage is set out in Annex A.

Syndicated Mortgages Sold to Permitted Clients

The comments received on the proposed definition of qualified syndicated mortgage suggested that the narrow scope of this definition could result in a reduction of available financing for small business and could subject mortgage brokerages who do not deal with retail investors to unnecessary regulatory burden.

Commission staff are proposing to include syndicated mortgages sold to permitted clients within the scope of the proposed prospectus and registration exemptions. These expanded exemptions are intended to maintain access to capital for small business and to minimize the burden on mortgage brokerages that do not deal with retail investors.

Commission staff have proposed using the existing definition of permitted client as the threshold for institutional and high-net-worth investors. This definition was designed to capture investors that are permitted to waive the requirement for a registrant to take reasonable steps to ensure that the purchase or sale of a security is suitable for its client.

Mortgage brokerages that deal in mortgages and syndicated mortgages only with permitted clients will continue to be regulated under the *Mortgage Brokers Act* (New Brunswick) and the distributions of these products to permitted clients will be exempt from the prospectus requirement.

The first trade of a security acquired under the prospectus exemption for the sale of syndicated mortgages to a permitted client is proposed to be designated as a distribution. Any subsequent resale of a syndicated mortgage acquired by a permitted client under the exemption will be made in accordance with the terms of a prospectus exemption. While resales to other permitted clients or accredited investors may continue on an exempt basis, sales to retail investors will be limited by the availability of prospectus exemptions. The proposed exemptions are set out in Annex A.

Reports of Exempt Distribution

Commission staff are not proposing to require reports of exempt distribution for the prospectus exemptions for qualified syndicated mortgages or syndicated mortgages sold to permitted clients. We expect that reporting for these transactions will be addressed by requirements under the *Mortgage Brokers Act* (New Brunswick).

How to Provide your Comment

Comments are to be provided, in writing, by no later than 5 October 2020 to:

Corporate Secretary
Financial and Consumer Services Commission
85 Charlotte Street, Suite 300
Saint John, N.B. E2L 2J2
Telephone: 506-658-3060
Toll Free: 866-933-2222 (within NB only)
Fax: 506-658-3059
E-mail: info@fcnb.ca

Submissions cannot be kept confidential. A summary of the written comments received during the comment period may be published.

Questions

If you have any questions, please refer them to:

To-Linh Huynh
Executive Director of Securities
Financial and Consumer Services Commission (NB)
Tel: (506) 643-7856
Email: to-linh.huynh@fcnb.ca

ANNEX A

AMENDMENTS TO LOCAL RULE 45-501 PROSPECTUS AND REGISTRATION EXEMPTIONS

1. *Local Rule 45-501 Prospectus and Registration Exemptions is amended by this Instrument.*

2. *Section 1.1 is amended by adding the following definitions:*

“qualified syndicated mortgage” means a syndicated mortgage that satisfies all of the following:

- (a) the syndicated mortgage secures a debt obligation on property that satisfies all of the following:
 - (i) it is used primarily for residential purposes;
 - (ii) it includes no more than four units;
 - (iii) it includes no more than one unit that is used for non-residential purposes;
- (b) the syndicated mortgage does not secure a debt obligation incurred for the construction or development of property;
- (c) at the time the syndicated mortgage is arranged, the amount of the debt it secures, together with all other debt secured by mortgages on the property that have priority over, or the same priority as, the syndicated mortgage, assuming in all cases that the maximum amounts of any such mortgages are fully drawn, does not exceed 80 per cent of the fair market value of the property relating to the mortgage, excluding any value that may be attributed to proposed or pending development of the property;
- (d) the syndicated mortgage cannot be subordinated to future financing without the consent of each lender;
- (e) there is no existing agreement that requires the lenders of the syndicated mortgage to consent to future subordination of the syndicated mortgage;
- (f) no person or company has the ability to consent to future subordination of the syndicated mortgage on behalf of the lenders of the syndicated mortgage without obtaining their instructions;

“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 2.2 is amended by adding the following subsections:*

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2.3 (1) The dealer registration requirement does not apply to a person who is licensed under the *Mortgage Brokers Act*, in respect to a trade in

- (a) a qualified syndicated mortgage on real property in a jurisdiction of Canada;
or
- (b) a syndicated mortgage on a real property in a jurisdiction of Canada with a permitted client.

(2) The prospectus requirement does not apply to a distribution by a person who is licensed under the *Mortgage Brokers Act*, of

- (a) a qualified syndicated mortgage on real property in a jurisdiction of Canada;
or
- (b) a syndicated mortgage on a real property in a jurisdiction of Canada to a permitted client.

(3) The first trade in a security acquired under paragraph (1)(b) is a distribution. .

4. *This Instrument comes into force on [*].*