

CSA Notice of

**Amendments to National Instrument 45-106 *Prospectus Exemptions*
and National Instrument 31-103 *Registration Requirements,
Exemptions and Ongoing Registrant Obligations***

and

**Changes to Companion Policy 45-106CP *Prospectus Exemptions* and
Companion Policy 31-103CP *Registration Requirements, Exemptions
and Ongoing Registrant Obligations*****relating to Syndicated Mortgages****August 6, 2020****Introduction**

The Canadian Securities Administrators (the **CSA** or **we**) are making the following amendments and changes relating to syndicated mortgages (collectively, the **Amendments**):

- 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
- Companion Policy 45-106CP *Prospectus Exemptions* (**45-106CP**) and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

The Amendments were originally published for comment on March 8, 2018 (the **2018 Proposal**) and revised proposals were published for a second comment period on March 15, 2019 (the **2019 Proposal**).

Substance and Purpose

The Amendments include 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

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

- introducing additional requirements to the offering memorandum prospectus exemption under section 2.9 of NI 45-106 (the **OM Exemption**) that will 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.

Summary of Changes to the 2018 Proposal

We received 26 comment letters in response to the 2018 Proposal.

As a result of the comments:

- Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador proposed dealer registration and prospectus exemptions, and Alberta and Québec proposed 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 proposed 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;
- we proposed changes to the Amendments related to the OM Exemption, including:
 - changing the date of a property appraisal to be within 6 months preceding the date the appraisal is delivered to the purchaser instead of 12 months;
 - eliminating the proposed mortgage broker certificate; and
 - providing additional guidance as to the identity of the issuer of a syndicated mortgage; and
- we changed the proposed effective dates so that all the amendments will come into effect at the same time, instead of having the prospectus-related amendments come into effect before the registration-related amendments.

These proposed changes were published for comment in the 2019 Proposal and are substantially included in the Amendments.

Summary of Changes to the 2019 Proposal

We received 11 comment letters in response to the 2019 Proposal. The comments are summarized in Annex A to this notice.

The Amendments are substantially the same as the 2019 Proposal. As a result of the comments:

- we clarified the definition of a professional association;
- we included additional examples of potential risk factors in the instructions to Item 3 of Form 45-106F18 *Supplemental Disclosure for Syndicated Mortgages* (**Form 45-106F18**);
- we revised Item 7 of Form 45-106F18 to include disclosure of the potential subordination of the syndicated mortgage and to clarify the calculation of the loan-to-value ratio;
- we changed the effective date to March 1, 2021; and
- certain jurisdictions are proposing additional changes to their local exemptions for syndicated mortgages, as described in Annex F for those jurisdictions.

Impact on Investors

Investors in syndicated mortgages who purchase under the OM Exemption will 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.

Investors will also benefit from the protections associated with the involvement of a registrant in the distribution in all jurisdictions.

Anticipated Costs and Benefits of the Amendments

The anticipated costs and benefits of the Amendments are expected to be substantially the same as described in the March 2018 Proposal. In those jurisdictions that are adopting local amendments or changes, including an exemption for qualified syndicated mortgages, Annex F may contain further discussion.

Alternatives Considered

We considered adopting the 2019 Proposal in the original form as well as the alternatives suggested by the commenters as detailed in Annex A.

Local Matters

Annex F 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.

In some jurisdictions, ministerial approvals are required for the implementation of the Amendments. Provided all ministerial approvals are obtained, the Amendments will come into force on March 1, 2021.

Annexes

Annex A – Summary of Comments and Responses

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

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

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

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

Annex F – Local Matters

Questions

Please refer your questions to any of the following:

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ANNEX A
SUMMARY OF COMMENTS AND RESPONSES

Commenter
Appraisal Institute of Canada (Keith Lancaster)
The Canadian Advocacy Council for Canadian CFA Institute Societies
Canadian Foundation for Advancement of Investor Rights (Ermanno Pascutto and Vanisha Sukdeo)
Firm Capital Corporation (Eli Dadouch)
Foremost Financial Corporation (Evan Cooperman and Ricky Dogon)
MarshallZehr Group (Murray Snedden)
Ontario Mortgage Investment Companies Association (Adam Rose, Ricky Dogon and Robert Trager)
Ordre des évaluateurs agréés du Québec ²
The Private Capital Markets Association (Craig Skauge, Diane Soloway, Frank Laferriere and Georgina Blanas)
PMC Funding (Stephen Lidsky)
Vector Financial Services Limited (Mitchell Oelbaum)

Number	Comment	Response
<i>Support for the objectives of the proposed amendments</i>		
1.	Six commenters support the general goals of enhancing investor protection and increasing harmonization in the regulation of syndicated mortgages. One commenter applauds the efforts of the CSA and its provincial partners in closing the gaps in syndicated mortgage-related investments in order to protect the public and mitigate risks related to mortgage fraud. One commenter agrees entirely with the underlying goals of the project to introduce additional investor protections related to the distribution of syndicated mortgages.	We thank the commenters for their support and input.

² Submitted in connection with the initial March 8, 2018 publication for comment.

Number	Comment	Response
2.	<p>One commenter acknowledges the need for increased oversight of companies placing investors in loans that were not appropriate for them but thinks that the new requirements should be limited to “equity financings” without affecting private mortgage syndicators.</p>	<p>Addressing concerns with the inappropriate distribution of high-risk investments in development projects under the existing prospectus and registration exemptions for mortgages is one of the purposes for undertaking this project. However, the primary rationale for the changes is to substantially harmonize the requirements for syndicated mortgages across the CSA.</p> <p>In Ontario, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon, excluding syndicated mortgages from the registration and prospectus exemptions for mortgages will align the treatment of these investments with the requirements that currently exist in Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan.</p>
3.	<p>One commenter notes that the public policy objective of the project to protect investors/lenders and avoid systemic risk that would result from syndicating equity style investments disguised as mortgage debt is commendable. The commenter supports this objective because it is good corporate practice and it is clearly in the long-term strategic interest of having a functioning marketplace for the industry that addresses proper credit adjudication tailored to investors’ risk tolerance. However, the commenter believes that absent amendments to expand the definition of qualified syndicated mortgage, the proposals will lead to a decrease in credit availability and have negative effects.</p>	<p>We thank the commenter for its support and input. With respect to the exemptions for qualified syndicated mortgages in certain jurisdictions, we are comfortable that these exemptions have been limited to mortgages that do not have the same investor protection concerns as the investments that the project is intended to focus on.</p>

Number	Comment	Response
<i>Participation of retail investors</i>		
4.	<p>One commenter suggests, in the context of the current Ontario mortgage legislation, that retail investors should be precluded entirely from investing in non-qualified syndicated mortgages.</p>	<p>We acknowledge that there are concerns with non-qualified syndicated mortgages being offered to retail investors that do not qualify as accredited investors. However, we do not believe that it is appropriate to exclude these offerings entirely. The additional requirements under the offering memorandum prospectus exemption are intended to address the investor protection concerns that could arise when these products are marketed to retail investors.</p> <p>The other prospectus exemption that we expect may be used to sell non-qualified syndicated mortgages to retail investors is the family, friends and business associates prospectus exemption. Under this exemption, the requirement for a close relationship between the issuer and the purchaser is intended to ensure that retail investors are better equipped to assess the risk of the investment. In addition, the required report of exempt distribution will allow securities regulators to monitor the use of the family, friends and business associates exemption for syndicated mortgages.</p>

Number	Comment	Response
5.	<p>One commenter suggests that the existing annual limit on investments in non-qualified syndicated mortgages under Ontario mortgage legislation of \$60,000 per year for non-designated class investors effectively precludes an investor from investing in industrial or commercial first mortgages because the amounts are larger than \$60,000 and the requirements to syndicate are too onerous. The commenter suggests that the limit exposes investors to greater risk by limiting them to private mortgages of less than \$60,000.</p>	<p>In Ontario, we expect that many of the specific requirements related to non-qualified syndicated mortgages under mortgage legislation, including the \$60,000 limit, will not be continued after the effective date of the amendments.</p> <p>Investment limits may apply under the terms of the specific prospectus exemption relied on, such as the offering memorandum exemption in some jurisdictions. In addition, registrants involved in an offering of syndicated mortgages will be subject to standards regarding suitability and concentration of investments under their obligations to clients.</p>
<i>Risks of syndicated mortgages and comparisons to other securities</i>		
6.	<p>Four commenters suggest that syndicated mortgages are being mischaracterized as high-risk investments and that they should not be treated differently than other securities.</p>	<p>One of the primary purposes of the amendments in Ontario, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon is to harmonize the requirements for syndicated mortgages with the rest of the CSA.</p> <p>We believe that specific requirements for syndicated mortgages under the offering memorandum prospectus exemption are appropriate given that this exemption is generally associated with sales to retail investors. In addition, we do not believe that it is appropriate for these products to be offered under the private issuer prospectus exemption. Syndicated mortgages offered under other exemptions, such as the accredited investor prospectus exemption, will be subject to the same requirements as other securities offered under these exemptions.</p>

Number	Comment	Response
<i>Transition period</i>		
7.	One commenter suggests that the proposed effective date of December 31, 2019 for the changes to both the registration and prospectus exemptions for mortgages does not provide enough time for market participants and that the registration-related changes should be delayed for a further year to December 31, 2020.	The effective date of the amendments has been changed to March 1, 2021 to provide additional time for market participants.
8.	One commenter notes that there needs to be enough time for the existing providers and participants of this type of financing to adjust to the new licensing and regulatory regime. Existing financing commitments with ongoing funding requirements are difficult to change halfway through the term of the mortgage and putting a borrower into default because they are unable to meet the new standards only exposes the lender participants to increased risks.	We acknowledge that market participants will require time to adjust to the removal of exemptions that are currently available for the distribution of syndicated mortgages in Ontario, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon. The requirements will apply only to syndicated mortgages distributed after the effective date of the amendments and any existing mortgages will be unaffected. However, future advances of funds from existing lenders will be subject to the availability of alternative prospectus exemptions for retail investors who do not qualify as accredited investors.
<i>Compliance</i>		
9.	One commenter suggests that the regulatory compliance mechanisms should be increased to make sure that those involved with providing investments in syndicated mortgages are complying with the rules and are not misleading investors. Resources within the CSA and OSC should be allocated to encourage compliance and enforcing the rules applicable to syndicated mortgage investments once in place.	As is already the case in Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan, the oversight of syndicated mortgages will fall within the scope of our existing prospectus exempt market compliance and enforcement programs. All jurisdictions expect that information provided through reports of exempt distribution will be helpful in monitoring activity relating to syndicated mortgages.

Number	Comment	Response
<i>Multiple regulators for syndicated mortgages</i>		
10.	Five commenters suggest that a single regulator should oversee all mortgage capital raising activities, regardless of the characteristics of the mortgage and whether it is done by syndication or in a fund structure.	<p>The commenters refer primarily to the existing state of regulation in Ontario. Please refer to Annex F in Ontario for a discussion of the anticipated changes to local regulation.</p> <p>As discussed above, syndicated mortgages are currently subject to regulation by the securities regulatory authority in Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan. We note that investments in mortgages through a fund structure or a mortgage investment entity are currently regulated in the same manner as any other security and are subject to the prospectus and registration requirements in all jurisdictions.</p>
11.	Four commenters suggest that dual regulation will result in duplication of licensing, insurance costs and working capital requirements and administration costs. The commenters suggest that multiple regulators are inconsistent with a reduction in regulatory burden.	We note that dual regulation of syndicated mortgages currently exists in several Canadian jurisdictions. The Amendments reflect the view that distributions of syndicated mortgages should be regulated by the securities regulatory authorities, because these investments are securities and potential investor protection concerns are present. The CSA will continue to work with local mortgage regulators to eliminate areas of overlap and duplication where possible.
12.	One commenter supports ongoing efforts to collaborate with other provincial regulators (such as the Financial Services Regulatory Authority of Ontario), and believes focus should be given to reducing duplicative regulation as it relates to mortgage activities.	We acknowledge the importance of collaboration and minimizing duplicative regulation.

Number	Comment	Response
13.	<p>Four commenters note that investors frequently participate in both fund products and mortgage syndication. The commenters are concerned that there would be duplication in KYC and suitability procedures and an obligation to complete different forms. The commenters suggest that different requirements for syndicated mortgage investments and mortgage fund investments may create investor confusion.</p>	<p>Removal of syndicated mortgages from the prospectus and registration exemption for mortgages in Ontario, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon will mean that in all jurisdictions, syndicated mortgages will be regulated in substantially the same way as distributions of other mortgage-related securities. As such, the requirements across different products will be harmonized.</p>
14.	<p>Four commenters also note that a potential for regulatory arbitrage is created if there are differences in licensing proficiencies and ongoing regulatory obligations. Alternatively, if the requirements are similar, the value of involving different regulators is questionable.</p>	<p>We understand this comment to pertain to the regulation of parties that deal in or advise on syndicated mortgages. As stated elsewhere, this project proposes, among other things, to exclude syndicated mortgages from the registration exemption that is currently available in Ontario, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon. Generally, the involvement of a party registered under securities legislation is an important protection for investors, particularly if the syndicated mortgage is high-risk and has complicated terms.</p> <p>We also note that there does not appear to be any confusion in Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan, where the registration exemption for mortgages already excludes syndicated mortgages (and as a result the securities regulators regulate parties that deal in or advise on syndicated mortgages).</p>

Number	Comment	Response
15.	Four commenters suggest that a single regulator would provide a better basis for harmonization. The commenters note that fragmenting regulatory oversight between securities regulators and mortgage regulators in each jurisdiction is complicated and creates difficulties for national adoption.	We acknowledge that a single regulator could potentially result in less burden on regulated entities. The changes will substantially harmonize the securities law requirements for syndicated mortgages nationally. However, there will continue to be local differences because jurisdictions have different approaches to mortgage legislation.
<i>Definitions of syndicated mortgage, qualified syndicated mortgage and non-qualified syndicated mortgage</i>		
16.	Four commenters suggest that the definition of qualified syndicated mortgage in Ontario should be amended to adopt a provision to specifically permit administrators' fees in a similar manner as the definition under British Columbia Securities Commission Instrument 45-501.	The definition of qualified syndicated mortgage in Ontario, Alberta, New Brunswick, Nova Scotia and Québec does not preclude charging fees to investors. Certain jurisdictions have proposed changes to the local definition of qualified syndicated mortgages to clarify this matter. Please refer to Annex F for those jurisdictions.

Number	Comment	Response
17.	<p>Four commenters suggest that the definition of qualified syndicated mortgage should include any syndicated mortgage that:</p> <ul style="list-style-type: none"> • is negotiated or arranged through a mortgage broker; • the total debt, together with all other debt secured against the property that has equal or greater priority does not exceed 90% of the fair market value of the property, excluding any value that may be attributed to proposed or pending development of the property; • aside from reasonable administration fees, has a rate of interest payable under the mortgage that is equal to the rate of interest payable under the debt obligation; and • does not pay commissions to source the capital to fund the mortgage, where the result is that less than 100% of lender/ investor capital is used to fund the mortgage. 	<p>In Ontario, Alberta, New Brunswick, Nova Scotia and Québec, the rationale for the exemptions for qualified syndicated mortgages is that they are not expected to present significant investor protection concerns and do not require the investor to be able to understand the business of the borrower in order to make an investment decision. Accordingly, the definition is limited to existing properties that are primarily residential.</p> <p>The above jurisdictions do not agree that a definition that would include development projects, or commercial and industrial properties, is appropriate.</p> <p>In addition, it is not necessary to require that the mortgages be negotiated by or arranged through a mortgage broker as an element of the definition of qualified syndicated mortgage, because the involvement of a registered mortgage broker is required as a condition of the exemptions for qualified syndicated mortgages.</p> <p>The exemptions for qualified syndicated mortgages do not preclude fees being charged, as long as they are disclosed to the investor.</p>

Number	Comment	Response
18.	<p>One commenter suggests that the category of non-qualified syndicated mortgages includes many types of investments that should be regulated differently. For example, the commenter notes that construction and development financing raise different concerns than financing of stabilized assets, raw land or residential properties and should be treated differently. The commenter notes that the multiple funding draws involved in construction financing raise unique issues that are not present for mortgages on existing properties.</p>	<p>The fact that syndicated mortgages include a wide range of types of investments, with potentially different characteristics, supports removing them from the general prospectus and registration exemptions for mortgages, in Ontario, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon.</p>
19.	<p>One commenter suggests that any syndicated mortgage that is not for a development project of 5 or more units should be a qualified syndicated mortgage. The commenter also suggests that only loans where the future value of the property is projected to be something different than the current value or loans where the lender's priority can change without their knowledge or consent should be excluded from being a qualified syndicated mortgage.</p>	<p>The narrow definition of qualified syndicated mortgages is deliberate. They are intended to be secured by a more straightforward type of existing property (primarily residential). It is not appropriate that the definition be broadened to include other types of property or projects, such as development projects or commercial or industrial property. Please refer to Annex F for details regarding the specific terms of the applicable definition of qualified syndicated mortgage.</p>
20.	<p>One commenter suggests that there is no reason to consider commercial or industrial properties as riskier investments than residential properties and questions their exclusion from the definition of a qualified syndicated mortgage.</p>	<p>Investments in properties that are primarily commercial or industrial are more likely to require an understanding of the risks relating to an operating business and have not been included in the definition of qualified syndicated mortgage for this reason.</p>
21.	<p>One commenter suggests that small construction projects, such as infill homes or renovations, should not be excluded from being a qualified syndicated mortgage, because these are not speculative development projects that may never be built.</p>	<p>As noted by commenters, there are complexities associated with development projects. Accordingly, development projects, even of a small number of units, should not be included in the definition of qualified syndicated mortgage.</p>

Number	Comment	Response
22.	<p>One commenter suggests allowing mortgage brokerages who are not syndicating equity or high-risk debt investments to be regulated by one regulator. The commenter also suggests adopting the following definitions of “syndicated mortgage” and “qualified syndicated mortgage”:</p> <p>“syndicated mortgage” should be defined as a mortgage debt investment that a mortgage brokerage would allocate to more than one investor who is not</p> <ul style="list-style-type: none"> (i) a regulated financial institution; (ii) public reporting issuers; (iii) pooled mortgage funds, mortgage corporation or mutual fund trust that have a board of directors approving investments; and (iv) board of directors, members of management, employees and related parties, including related corporate entities to individuals affiliated with the mortgage brokerage and to the entities under (i), (ii), and (iii). <p>“qualified syndicated mortgage” should be defined as not being a non-qualified syndicated mortgage. The commenter suggests that this term should include a syndicated mortgage investment that for all intents and purposes represents the required equity for a real estate development that has been disguised and treated as mortgage debt security, if a mortgage brokerage has been paid a commission to solicit investors.</p>	<p>The definition of syndicated mortgage is an existing definition that is used in securities legislation, including NI 45-106 and NI 31-103. In addition, the current definition of syndicated mortgage corresponds with the ordinary meaning of the term and it would not be appropriate to define the security by reference to the type of potential investors.</p> <p>We note that the classes of investors that are referred to by the commenter substantially correspond to the investors that would be able to purchase a syndicated mortgage under the accredited investor prospectus exemption or the family, friends and business associates prospectus exemption.</p> <p>As discussed above, it is not appropriate to include all syndicated mortgages, other than the highest-risk investments, within the definition of qualified syndicated mortgage because some of these investments are more appropriately regulated in the same manner as other securities offered in the prospectus exempt market.</p>

Number	Comment	Response
23.	<p>One commenter notes that there will be differences in the exemptions for qualified syndicated mortgages across the country as a result of the differences in provincial mortgage regulation. They encourage the CSA to seek harmonization of prospectus exemptions whenever possible to help ease the compliance burden on issuers and improve understanding of the exempt market amongst investors.</p>	<p>We acknowledge that there will be differences in the exemptions for qualified syndicated mortgages due, in part, to differences in provincial mortgage legislation and the manner in which mortgage investments are overseen in the different jurisdictions. However, the definitions of qualified syndicated mortgages are substantially harmonized.</p>

Number	Comment	Response
<i>Reports of Exempt Distribution</i>		
24.	<p>Four commenters suggest that the administrative burden of complying with the requirement to file reports of exempt distribution for the distribution of syndicated mortgage investments is a significant financial and administrative cost. These commenters also request clarification as to why the timing of the filing of a report of exempt distribution is outside the scope of this project.</p>	<p>The requirement to file a report of exempt distribution in connection with the use of certain prospectus exemptions is a routine and longstanding requirement of securities law in Canada.</p> <p>Generally, we do not see any policy reason to treat the distribution of syndicated mortgage investments differently from distributions of other types of investments, such as investments in mortgage investment entities, real estate investment trusts and investment entities that invest in real estate development projects.</p> <p>The report of exempt distribution provides Canadian securities regulators with important information about financing activities being conducted in their jurisdictions and serves an important investor protection function in that it allows the securities regulators to monitor the use of these exemptions for compliance with the securities law requirements.</p> <p>The CSA is considering potential changes to the timing for the filing of reports of exempt distribution as a separate initiative.</p> <p>Please refer to Annex F for details regarding additional exemptions in certain jurisdictions that do not require reports of exempt distribution.</p>

Number	Comment	Response
25.	<p>Four commenters note that construction mortgages have different draws and different investors participate at each stage, which could trigger multiple reports of exempt distribution.</p>	<p>We note that multiple draws are a feature of many types of offerings in the prospectus exempt market and are not aware of any reason to treat the timing of the filing of a report of exempt distribution for a syndicated mortgage investment differently from other types of investments, such as investments in mortgage investment entities, real estate investment trusts and investment entities that invest in real estate development projects.</p>
26.	<p>Four commenters suggest that:</p> <ul style="list-style-type: none"> • Construction mortgages should require one filing at an initial funding and subsequent advances should not trigger additional reports of exempt distribution. • Reports of exempt distribution should be filed on a monthly basis and reflect all activities in the month. • If the 10-day filing timeline is maintained, issuers should be able to batch all activities in the 10-day period into a single report. • The filing fees should be reduced. • Trades involving permitted investors should not trigger a report of exempt distribution. 	<p>We thank the commenters for these suggestions. We note that depending on the structure of the transaction, subsequent advances of funds under a mortgage may constitute a new distribution of securities and trigger a report of exempt distribution.</p> <p>We confirm that issuers are free to disclose all distributions made in a 10-day period in a single report under the current requirements.</p> <p>In most CSA jurisdictions, a distribution of a non-qualified syndicated mortgage to an accredited investor will trigger a report of exempt distribution, including investors that are permitted clients as defined in NI 31-103. However, this is not required in certain jurisdictions as described in Annex F for those jurisdictions.</p>

Number	Comment	Response
<i>Identifying the issuer of a syndicated mortgage</i>		
27.	Four commenters suggest that establishing the issuer of a syndicated mortgage remains unclear and further clarification should be provided.	<p>We note that the need to determine who is the issuer of a debt security is not a new obligation, as issuers and other market participants have needed to identify the issuer of a debt security under other prospectus exemptions for purposes such as filing reports of exempt distribution.</p> <p>We recognize that there may be a variety of industry practices in terms of how syndicated mortgages are structured and offered to investors and we have included the guidance in section 3.8 of the Companion Policy to NI 45-106 to assist market participants in this regard.</p> <p>If a market participant is having difficulty in identifying the issuer of a syndicated mortgage in connection with a particular transaction, we recommend that they consult with CSA staff in their jurisdiction.</p> <p>CSA staff have established and regularly consult with various advisory committees in relation to issues of concern to market participants and are willing to consult with mortgage industry market participants if there is a continuing concern on this point.</p> <p>CSA staff may also publish staff guidance in the form of frequently asked questions if we continue to receive questions on this point.</p>

Number	Comment	Response
<i>Exemptions for mortgage funds and sophisticated investors</i>		
28.	Four commenters suggest that mortgage funds and sophisticated syndicated mortgage investors do not need additional protections and a specific prospectus exemption should be provided for these investors.	<p>To the extent that a mortgage fund or a sophisticated mortgage investor meets the definition of “accredited investor” in section 1.1 of NI 45-106 or section 73.3 of the <i>Securities Act</i> (Ontario), an issuer may distribute a syndicated mortgage to such an investor in reliance on the accredited investor prospectus exemption.</p> <p>Certain jurisdictions are proposing local exemptions that may apply to the types of investors identified by the commenters. Please refer to the applicable Annex F for additional details.</p>
<i>Appraisals</i>		
29.	Two commenters support the change to the proposed appraisal requirement under the offering memorandum exemption that would require an issuer to deliver an appraisal that was prepared within 6 months of the date it is delivered to a prospective purchaser, instead of within 12 months, because markets can change drastically in a short period of time.	We thank the commenters for their support and input.

Number	Comment	Response
30.	<p>One commenter suggests consideration of whether a new appraisal should be triggered if there is an event that has a material adverse impact on the value of the property.</p>	<p>We changed the requirement for an appraisal to value the property as of a date that is within 6 months of the date that the appraisal is delivered to the purchaser from the original proposal of 12 months to address potential changes in the value of a property.</p> <p>In addition, an event that has a material adverse impact on the value of the property related to a syndicated mortgage would likely be a material fact that is required to be disclosed to potential investors. The offering memorandum prospectus exemption requires that the offering memorandum not contain a misrepresentation, including a misrepresentation by omission. An issuer would not be able to continue to rely on the exemption to distribute securities if the appraised value disclosed under item 8 of Form 45-106F18 in the offering memorandum materially misstated the value of the property.</p>
31.	<p>One commenter suggests that the requirement under subsection 2.9(19.3) of NI 45-106 to disclose the material factors or assumptions used to determine any value other than the appraised value, should also require a description of the inherent risks and limitations of the assumptions relied upon.</p>	<p>Once disclosed, investors will be able to assess the risks and limitations associated with the assumptions used. The other requirements of subsection (19.3) such as the requirement to disclose the fair market value set out in the appraisal, and the independence or lack of independence of the party that determined the value put forward by the issuer, will allow investors to make an informed investment decision.</p>

Number	Comment	Response
32.	One commenter suggests that the proposed appraisal requirement overstates the importance of an “as is” valuation in construction or development projects. The commenter suggests that a more comprehensive leverage schedule that reflects the value-added activities over the course of the project would be more appropriate than a simple loan-to-value ratio based on the current value.	There is no prohibition on updating appraisals as frequently as desired. In addition, alternative values may be provided under the offering memorandum prospectus exemption provided that certain requirements are met.
33.	One commenter notes that for mortgage defaults for uncompleted construction or development projects, liquidating the project is not likely in the best interests of the mortgage investors, because it will come with a significant discount that cannot be determined in advance. The commenter suggests there should be a mechanism that allows existing investors to advance further funds to complete the project.	We note that there is no limitation that would prevent additional distributions to raise additional financing for distressed projects. However, if the issuer is relying on the offering memorandum prospectus exemption, it would likely be required to provide an amended offering memorandum to the new investors and satisfy the appraisal requirement.
<i>Qualified appraiser</i>		
34.	One commenter suggests that qualified appraisers should be required to have professional liability insurance appropriate to the valuation assignment.	We expect that professional associations will set standards for their members regarding appropriate liability insurance. We do not see this as a function of securities regulation.
<i>Professional association</i>		
35.	One commenter suggests that the element of the definition of “professional association” that a professional association “disciplines, suspends or expels its members if misconduct occurs” may be too narrow. They suggest a change to refer instead to “having the power to discipline, suspend or expel its members if it becomes aware that misconduct has occurred.”	We have revised the definition to require that the professional association have the ability to suspend or expel a member.

Number	Comment	Response
36.	One commenter notes that, in Québec, a professional order is different than a professional association because orders are delegated a public mandate by the Minister of Justice. The commenter suggested adding a specific reference to professional orders to the prior version of the proposed definition of professional association.	We have broadened the language used in the definition of professional association to make it clear that a professional order may be included. As indicated in the proposed guidance included in the Companion Policy to NI 45-106, we consider that l'Ordre des évaluateurs agréés du Québec falls within the definition of a professional association.
<i>Independence</i>		
37.	One commenter notes that proposed subsection 2.9(19) of NI 45-106 states that: “For the purposes of subsections (19.1) and (19.3), a qualified appraiser is independent of an issuer of a syndicated mortgage if there is no circumstance that, in the opinion of a reasonable person aware of all the relevant facts, could interfere with the qualified appraiser’s judgment regarding the preparation of an appraisal for a property.” They suggest explicitly referring to circumstances which could reasonably be perceived to potentially interfere with the appraiser’s judgment.	The current interpretation of independence is consistent with the interpretation of independence under National Instrument 43-101 <i>Standards of Disclosure for Mineral Projects</i> and National Instrument 51-101 <i>Standards of Disclosure for Oil and Gas Activities</i> . The test for independence has generally worked well under those instruments and additional examples do not appear to be necessary.
38.	One commenter recommends expanding the proposed guidance in subsection 3.8(13) of the Companion Policy to NI 45-106 on determining independence to include additional relationships that could compromise independence, such as whether additional services are provided by the valuation firm or services are provided by a related entity.	We agree that additional services provided by the valuation firm or services provided by a related entity could be circumstances that would disqualify a qualified appraiser from being independent. The examples provided in the Companion Policy guidance are not exhaustive and are consistent with the guidance provided in other instruments.

Number	Comment	Response
<i>Audited financial statements</i>		
39.	<p>One commenter questions the value of audited financial statements for distributions of syndicated mortgages given the following:</p> <ul style="list-style-type: none"> • Lenders are primarily asset-based and focused on the value of the security supporting the mortgage. • Additional value gained from an audit may be limited, particularly if the borrower is a newly created special purpose vehicle. The requirement could lead to structuring to limit the borrowers that are party to the loan and the security for the mortgage. • Audited financial statements are not required where the lenders are OSFI-regulated entities, which erodes the competitive position of non-bank lenders. • IFRS financial statements may be overly burdensome since most companies use accounting standards for private enterprises. 	<p>We note that audited financial statements are required to be provided only for syndicated mortgages distributed under the offering memorandum exemption. We do not see any reason why syndicated mortgages should be treated differently than other securities distributed under this exemption. For distributions under other exemptions, such as the accredited investor exemption, the issuer has the flexibility to determine what disclosure will be provided to satisfy the requirements of prospective investors.</p>
<i>Proposed Form 45-106F18 Supplemental Offering Memorandum Disclosure for Syndicated Mortgages (Form 45-106F18)</i>		
40.	<p>One commenter notes that the addition of Form 45-106F18 is useful because it requires the addition of disclosure of the speculative nature of an investment in a syndicated mortgage. However, they are concerned that the risk disclosure does still not go far enough because many retail investors lack sufficient financial literacy to be proficient in financial matters associated with investments in syndicated mortgages. They suggest that there should be clear instructions and notations about the risks involved in investing in syndicated mortgages.</p>	<p>Item 3 of Form 45-106F18 requires a bold statement concerning the risk of syndicated mortgages together with a description of any risk factors associated with the offering.</p>

Number	Comment	Response
41.	<p>One commenter suggests that subsection (1) of Item 2 of proposed Form 45-106F18, which requires disclosure of the period over which funds will be raised and the factors that determine when they will be raised, should also require disclosure of committed capital amounts, as well as a prior cash call schedule, if ongoing capital raises include progress draw mortgages or investments subject to cash calls. The commenter notes that such disclosure is consistent with suggested client reporting practices as set out in <i>ASC Notice 33-705 Exempt Market Dealer Sweep</i>, May 10, 2017 (ASC Notice 33-705) under the heading “Reporting to Clients”.</p>	<p>We note that an obligation to advance future payments in connection with an investment is a material term that would be required to be disclosed in an offering memorandum used under the offering memorandum prospectus exemption, regardless of the specific nature of the security offered. Accordingly, a specific requirement for syndicated mortgages is not necessary. However, we agree that it may be appropriate for a dealer to stress the potential impact of future cash calls in client disclosure and discussions regarding the suitability of an investment.</p>
42.	<p>One commenter suggests adding mandatory disclosure of additional items about the mortgage and loan terms as well as disclosure of related risks and potential mitigation efforts.</p> <p>The commenter suggests that additional risk-related disclosure is needed because issuers may engage in high credit risk transactions such as unsecured lending and lending that involves high interest rate spreads over risk-free bond rates.</p>	<p>We note that the examples of the potential risk factors described in the instructions to Item 3 of Form 45-106F18 are not exhaustive and issuers are required to disclose all material risk factors. We have added additional examples corresponding to certain of the suggested risk factors.</p> <p>We also note that the Amendments are aimed at syndicated mortgages, which are secured against real property. The amendments are not intended to address unsecured lending or other debt products.</p>
43.	<p>One commenter proposes an explicit requirement to state any connection or relationship under Item 4 [Administration of the Mortgage] of proposed Form 45-106F18, in addition to the qualifications of the service provider. If any known conflicts of interest or operational risks exist, such as those that may relate to the servicing of the loan, they can be disclosed here in addition to the risk disclosure section under Item 3.</p>	<p>Conflicts of this nature are addressed in Item 16 of Form 45-106F18.</p>

Number	Comment	Response
44.	<p>One commenter suggests that the description of the property in Item 6 of proposed Form 45-106F18 should include disclosure for any past material adjustments to valuations of the property and the reasons for such adjustments. These material adjustments may occur for various reasons, including changes in the valuation firm or changes to the underlying assumptions (i.e., cap rate/discount rates) used.</p>	<p>We expect that a current valuation prepared by a qualified appraiser will include adequate disclosure regarding the material factors and assumptions underlying the valuation, including a discussion of changes in value if appropriate. We have not made the proposed change in order to avoid any potential conflicts with the standards prescribed by the applicable professional association.</p>

Number	Comment	Response
45.	<p data-bbox="345 254 837 432">One commenter suggests specific requirements to disclose the following factors in the description of the syndicated mortgage under Item 7 of proposed Form 45-106F18:</p> <ul data-bbox="394 453 889 1587" style="list-style-type: none"> <li data-bbox="394 453 889 705">• Information that may result in an impairment of the mortgage loan security, the debt service ratio, and material events that may impact the payments, such as availability of insurance for natural disasters, if applicable. <li data-bbox="394 716 889 1293">• The Form will require disclosure of the loan-to-value (LTV) ratio of the property, calculated on an aggregate basis using the loan value of the syndicated mortgage and all other mortgages or encumbrances with priority over the syndicated mortgage and the appraised value of the property. Perhaps in the future, the CSA may wish to build on terms such as LTV in order to harmonize risk methodology for syndicated mortgages that will allow investors to better assess the viability of the mortgage. <li data-bbox="394 1304 889 1514">• Duration of leases. By including such a term, the issuer will be able to better evaluate a lender's suitability and investment horizon by matching it to the duration or length of the lease. <li data-bbox="394 1524 889 1587">• Explain high credit risk in plain language to investors. 	<p data-bbox="917 254 1401 495">We believe that required risk factor disclosure addresses these concerns. However, we have mandated additional disclosure under Item 7 of Form 46-106F18 to address the concerns raised regarding the loan-to-value ratio.</p>

Number	Comment	Response
46.	<p>One commenter suggests stress testing assumptions should be a required factor in an appraisal. We are of the opinion that stress testing assumptions provide valuable information to potential investors. In connection with a firm’s KYP responsibility, ASC Notice 33-705 suggests that stress testing encompasses economic and financial variables that may have an impact on the issuer’s performance (e.g., interest rate levels, unemployment rate, commodity prices and exchange rates).</p>	<p>We acknowledge the commenter’s concerns. However, we believe the specific methodologies for an appraisal should be prescribed by the professional association or order to which the qualified appraiser belongs.</p>
<i>Common administration software</i>		
47.	<p>One commenter suggests that ideally the regulator needs the industry to operate on an administration software tailored to manage, track and distribute required information (both initial underwriting information and ongoing reporting requirements) for all stakeholders involved.</p>	<p>We acknowledge the benefit of common standards that such administration software could provide. However, we do not believe that it would be appropriate for securities regulators to mandate the use of specific software in these circumstances.</p>

ANNEX B

AMENDMENTS TO NATIONAL INSTRUMENT 45-106 *PROSPECTUS EXEMPTIONS*

1. *National Instrument 45-106 Prospectus Exemptions is amended by this Instrument.*
2. *Section 1.1 is amended by adding the following definitions:*

“professional association” means an association or other organization, whether incorporated or not, of real property appraisers that

- (a) has its head office in Canada,
- (b) admits its members on the basis of their academic qualifications, experience and ethical fitness,
- (c) requires its members to meet standards of competence and comply with a code of ethics it has established or endorsed,
- (d) requires or encourages its members to engage in continuing professional development, and
- (e) under the powers conferred by statute or under an agreement, may suspend or expel its members if misconduct occurs;

“qualified appraiser” means an individual who

- (a) regularly performs property appraisals for compensation,
- (b) is a member of a professional association and holds the designation, certification or licence to act as an appraiser for the class of property appraised, and
- (c) is in good standing with the professional association referred to in paragraph (b);

“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 2.4 is amended by*
 - (a) *adding “or a syndicated mortgage” after “a short-term securitized product” in subsection (4), and*
 - (b) *adding the following subsection:*
 - (6) In Ontario, subsection 73.4(2) of the *Securities Act* (Ontario) does not apply to a distribution of a short-term securitized product or a syndicated mortgage..

4. **Subsection 2.5(3) is amended by deleting “ or, in Ontario, a distribution under subsection 73.4(2) of the *Securities Act* (Ontario)”.**

5. **Section 2.9 is amended by**

(a) **replacing “10” in paragraph (11.1)(d) with “(10)”, and**

(b) **adding the following subsections:**

(19) For the purposes of subsections (19.1) and (19.3), a qualified appraiser is independent of an issuer of a syndicated mortgage if there is no circumstance that, in the opinion of a reasonable person aware of all the relevant facts, could interfere with the qualified appraiser’s judgment regarding the preparation of an appraisal for a property.

(19.1) Subsections (1), (2) and (2.1) do not apply to a distribution of a syndicated mortgage by an issuer unless, at the same time or before the issuer delivers an offering memorandum to the purchaser in accordance with subsections (1), (2) or (2.1), the issuer delivers to the purchaser an appraisal of the property subject to the syndicated mortgage that

- (a) is prepared by a qualified appraiser who is independent of the issuer,
- (b) includes a certificate signed by the qualified appraiser stating that the appraisal is prepared in accordance with the standards and the code of ethics established or endorsed by the professional association of which the qualified appraiser is a member,
- (c) provides the appraised fair market value of the property subject to the syndicated mortgage, without considering any proposed improvements or proposed development, and
- (d) provides the appraised fair market value of the property as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.

(19.2) An issuer of a syndicated mortgage relying on an exemption set out in subsection (1), (2) or (2.1) must not make a representation of, or give an opinion as to, the value of a property subject to the syndicated mortgage in any communication related to the distribution under the exemption, unless the issuer has a reasonable basis for that value.

(19.3) If an issuer of a syndicated mortgage relying on an exemption set out in subsection (1), (2) or (2.1) discloses in any communication related to the distribution under the exemption any representation of, or opinion as to, the value of a property subject to the syndicated mortgage, other than the appraised fair

market value disclosed in the appraisal referred to in subsection (19.1), the issuer must also disclose in that communication,

- (a) with equal or greater prominence as the representation or opinion, the appraised fair market value referred to in subsection (19.1),
- (b) the material factors or assumptions used to determine the representation or opinion, and
- (c) whether or not the representation or opinion was determined by a qualified appraiser who is independent of the issuer.

(19.4) The issuer must file a copy of an appraisal delivered under subsection (19.1) with the securities regulatory authority concurrently with the filing of the offering memorandum..

6. Section 2.36 is amended by

- (a) *repealing subsection (1),*
- (b) *replacing “Except in Ontario, and subject” in subsection (2) with “Subject”, and*
- (c) *replacing subsection (3) with the following:*
 - (3)** Subsection (2) does not apply to the distribution of a syndicated mortgage..

7. Section 6.4 is amended by adding the following subsection

(3) Despite subsections (1) and (2), an offering memorandum for the distribution of a syndicated mortgage under section 2.9 [*Offering memorandum*] must be prepared in accordance with Form 45-106F2 and Form 45-106F18..

8. The following form is added after Form 45-106F17:

Form 45-106F18

Supplemental Offering Memorandum Disclosure for Syndicated Mortgages

INSTRUCTIONS:

1. Provide all disclosure required under Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers, as supplemented by this form, including information about the borrower under the syndicated mortgage. Where the headings in Form 45-106F2 and this form are the same, provide all of the required disclosure under the Form 45-106F2 heading.

2. *You do not need to follow the order of items in this form. Information required in this form that has already been disclosed in response to the requirements of Form 45-106F2 need not be repeated.*

3. *You do not need to respond to any item in this form that is inapplicable.*

4. *Certain items in this form require disclosure about the issuer of a syndicated mortgage and the borrower under a syndicated mortgage. In some cases, the borrower is the issuer of the syndicated mortgage. In these circumstances, the terms “issuer” and “borrower” are interchangeable and there is no requirement to duplicate information.*

5. *In this form, the distribution of a syndicated mortgage is also referred to as the “offering”. The lenders or investors in a syndicated mortgage are also referred to in this form as the “purchasers”.*

6. *In this form, “principal holder” means each person who beneficially owns, or directly or indirectly has control or direction over, 10% or more of any class of voting securities of another person. If a principal holder is not an individual, in addition to the other disclosure requirements, provide the information required for the principal holder for any person that beneficially owns, or directly or indirectly has control or direction over more than 50% of the voting rights of the principal holder.*

7. *In this form, “related party” has the meaning set out in the General Instructions to Form 45-106F2.*

8. *Where this form requires an issuer to indicate that copies of a document are available on request, the issuer must provide a copy of such document when requested.*

Item 1 – Description of the Offering

(1) Provide the following information about the investment being offered and the legal rights of the purchaser:

- (a) the nature of the investment, i.e., whether it is a participation in a mortgage, an assignment of a participation in a mortgage, a mortgage unit or some other direct or indirect interest or participation in a mortgage over real property and the legal rights of the purchaser attaching to the investment;
- (b) the rights of the purchaser on default by the borrower and the rights of the purchaser to share in the proceeds of any recovery from the borrower, in particular the purchaser’s voting rights and whether the purchaser has the right to institute individual legal action against the borrower and, if not, the person or persons who may institute or coordinate the institution of legal action against the borrower;
- (c) if the issuer of the syndicated mortgage is not the borrower under the syndicated mortgage, the rights of the purchaser against the issuer of the syndicated mortgage on default by the borrower, if any;
- (d) any other material information about the investment or the legal rights of the purchaser.

(2) Describe the project and the plans for the use of the funds.

Item 2 – Raising of Funds

(1) If the funds to be raised through the offering are required to be raised in stages, disclose the period over which the funds will be raised and the factors that determine when they will be raised.

(2) If there are any arrangements under which any part of the funds raised will only become available to the borrower if certain conditions are fulfilled, describe those conditions, the procedure for the return of funds to the purchaser if the conditions are not met and any deduction or penalty imposed on the borrower or any other person for not meeting the conditions. Disclose details of the arrangements made for, and the persons responsible for, the supervision of the trust or escrow account or the investment of unreleased funds, and the investment policy to be followed.

Item 3 – Other Risk Factors Specific to Syndicated Mortgages

(1) State in bold:

Investments in syndicated mortgages are speculative and involve a high degree of risk. You should be aware that this investment has not only the usual risks associated with the financial ability of the borrower to make repayments, but also additional risks associated with syndication.

(2) If the syndicated mortgage includes a personal covenant, guarantee or other financial commitment, state in bold:

The ability of the person providing the personal covenant, guarantee or other financial commitment to perform under the personal covenant, guarantee or other financial commitment will depend on the financial strength of the person. There is no assurance that the person will have the financial ability to be able to satisfy the person's obligations under the personal covenant, guarantee or other financial commitment. You might not receive any return from your investment or the initial amount invested.

(3) Disclose any material risk factors associated with the offering.

INSTRUCTIONS:

Potential risk factors include, but are not limited to, any of the following:

- (a) the reliance on the ability of the borrower to make payments under the mortgage;*
- (b) the financial strength of any person offering a personal covenant, guarantee or other financial commitment;*
- (c) the ability to raise further funds as progress in development or construction takes place;*
- (d) changes in land value;*

- (e) unanticipated construction and development costs or delays;*
- (f) the expertise of the parties involved in administering the syndicated mortgage or operations involving the property;*
- (g) the ability to recover one's investment in the event of foreclosure;*
- (h) operational risks involving the businesses of any tenants of the property;*
- (i) restrictions on the ability of purchasers to take action individually if the borrower defaults;*
- (j) whether there are other liabilities secured against the mortgaged property and their maturity schedule;*
- (k) the ranking of the syndicated mortgage in relation to other mortgages and liabilities secured against the mortgaged property, including any potential for future subordination;*
- (l) conflicts of interest between the borrower, purchasers, issuer or others involved in the offering;*
- (m) inadequate insurance coverage;*
- (n) inability to change the trustee (if any);*
- (o) the restrictions imposed by securities legislation on the resale of the syndicated mortgage and the resulting lack of liquidity.*

Item 4 – Administration of the Mortgage

- (1) Describe how the syndicated mortgage will be administered as well as all parties involved, including the name, address, contact person and any relevant licences or registration held by each party.
- (2) Provide the following information about the specific responsibilities of all parties involved in the administration of the syndicated mortgage:
 - (a) collection responsibility for payments due under the syndicated mortgage;
 - (b) commencement of legal action on default;
 - (c) follow-up on insurance expirations or cancellations;
 - (d) all other material matters of administration to be provided by the person administering the syndicated mortgage.
- (3) Describe the material terms of any administration agreement related to the syndicated mortgage.
- (4) Disclose all fees and expenses to be charged to the purchaser under the administration agreement and how they are to be calculated.
- (5) Disclose that copies of the administration agreement are available from the issuer on request and explain how to request a copy.

Item 5 – Trust or Other Agreement

- (1) Disclose whether there is any trust or other agreement that provides for any person to make advances of the funds to the borrower and to distribute the proceeds of repayments made by the borrower.

(2) Provide the following information about any agreement disclosed under subsection (1):

- (a) whether the purchaser is required to grant a power of attorney to the trustee and the terms of that power of attorney;
- (b) all fees and expenses to be charged to the purchaser under the agreement;
- (c) the specific responsibilities of all parties to the agreement regarding the following:
 - (i) the opening of a trust account into which all investment proceeds must be paid until advanced to the borrower and into which all proceeds received in repayment of the syndicated mortgage must be paid before distribution to the purchasers;
 - (ii) details of how payments related to the syndicated mortgage will be made;
 - (iii) the mechanism for replacing the trustee and the procedures for dispute resolution;
- (d) any other material terms of the agreement.

(3) Disclose that copies of any agreement disclosed under subsection (1) are available from the issuer on request and explain how to request a copy.

Item 6 – Property Subject to the Mortgage

Provide the following information about the property subject to the mortgage:

- (a) the address and legal description;
- (b) the past, current and intended use;
- (c) any proposed improvements;
- (d) the date of acquisition of the property and the purchase price paid;
- (e) the details, including the purchase price, of any other transactions involving the property known to the borrower, any related party of the borrower or any of their respective partners, directors, officers or principal holders;
- (f) if the borrower is not the issuer of the syndicated mortgage, the details, including the purchase price, of any other transactions involving the property known to the issuer, any related party of the issuer or any of their respective partners, directors, officers or principal holders;
- (g) any material contractual arrangements relating to the property;
- (h) any insurance policies applicable to the property and their status;
- (i) any material claims or litigation;
- (j) any known contamination or environmental concerns;
- (k) any other material facts.

Item 7 – Description of the Syndicated Mortgage

(1) Provide the following information about the syndicated mortgage:

- (a) the principal amount, term, amortization period, interest rate, maturity date, any prepayment entitlement, the ranking of the syndicated mortgage (i.e., first, second, etc.) and any ability of the borrower to subordinate the syndicated

- mortgage to other indebtedness or to require the purchaser to consent to the subordination of the syndicated mortgage;
- (b) the material terms and relative priority of any other mortgages or liabilities secured against the mortgaged property;
 - (c) the loan-to-value ratio of the property, calculated on an aggregate basis using the following formula:

$$A \div B$$

where A is the aggregate of the following:

- (i) the loan value of the syndicated mortgage and
- (ii) the loan value of all other mortgages or liabilities secured against the mortgaged property with priority that is equal to or greater than the syndicated mortgage, assuming in all cases that the maximum amount of any such mortgage or liability is fully drawn,

and B is the appraised value of the property described under item 8;

- (d) the impact on the loan-to-value ratio of any potential future subordination of the syndicated mortgage;
- (e) the aggregate dollar amount of the funds being raised under the offering;
- (f) the status of the syndicated mortgage, including whether there are any arrears and, if so, the amount and due dates of outstanding payments;
- (g) the means by which the repayments by the borrower will be distributed and the procedure for establishing the proportion to which each purchaser is entitled to share in the distribution;
- (h) the source of funds that the borrower will use to make payments on the syndicated mortgage, including any reserve accounts or other fund maintained by the borrower or any other person;
- (i) any other material terms.

(2) Describe the material terms of any commitment letter, or other commitment document, that sets out the terms of the commitment to advance funds to the borrower.

(3) Disclose that copies of the commitment letter, or other commitment document, are available from the issuer on request and explain how to request a copy.

Item 8 – Appraisal

(1) Provide the following information about the most recent appraisal of the value of the property subject to the mortgage, prepared by a qualified appraiser in accordance with subsection 2.9(19.1) of National Instrument 45-106 *Prospectus Exemptions*:

- (a) the method used;
- (b) all assumptions made;
- (c) any qualifications or limitations;
- (d) the date of the valuation.

(2) Describe the most recent assessment of the property subject to the mortgage, including existing improvements by any provincial or municipal assessment authority.

Item 9 – Exemptions

Disclose any statutory or discretionary exemption from the registration requirement that is being relied upon by any person involved in the offering of the syndicated mortgage.

Item 10 – Guarantees or Other Similar Financial Commitments

(1) Summarize the terms of any personal covenant, guarantee or other financial commitment provided in connection with the syndicated mortgage. Explain how the personal covenant, guarantee or financial commitment works.

(2) Disclose that copies of the personal covenant, guarantee or other financial commitment are available from the issuer on request and explain how to request a copy.

(3) Describe the business experience of the person providing any personal covenant, guarantee or other financial commitment.

(4) Describe the financial resources of the person providing the personal covenant, guarantee or other financial commitment. The description must enable a reasonable purchaser applying reasonable effort to understand the person's ability to meet the obligations under the personal covenant, guarantee or other financial commitment.

(5) Disclose whether the purchasers will be entitled to ongoing disclosure of the financial position of the person providing any personal covenant, guarantee or other financial commitment during the period of the personal covenant, guarantee or other financial commitment, and the nature, verification, timing and frequency of any disclosure that will be provided to purchasers.

Item 11 – Organization of Mortgage Broker, Mortgage Brokerage or Mortgage Agency

State the laws under which any firm acting as a mortgage broker, mortgage brokerage or mortgage agency is organized and the date of formation of the mortgage broker, mortgage brokerage or mortgage agency.

Item 12 – Borrower Information

If the borrower is not the issuer of the syndicated mortgage, provide the disclosure required under items 2, 3, 4 and 12 of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* as if the borrower were the issuer of the syndicated mortgage.

Item 13 – Developer

If the property subject to the syndicated mortgage is being developed, state the laws under which the developer is organized and the date of formation of the developer.

Describe the business of the developer and any prior experience of the developer in similar projects.

Item 14 – Mortgage Broker, Mortgage Brokerage or Mortgage Agency, Partners, Directors, Officers and Principal Holders

(1) Disclose the name, municipality of residence and principal occupation for the 5 years preceding the date of the offering memorandum of any individual mortgage broker involved in the offering and the partners, directors, officers and any principal holders of any firm acting as a mortgage broker, mortgage brokerage or mortgage agency involved in the offering.

(2) Disclose any penalty or sanction, including the reason for it and whether it is currently in effect, that has been in effect during the 10 years preceding the date of the offering memorandum, or any cease trade order that has been in effect for a period of more than 30 consecutive days during the 10 years preceding the date of the offering memorandum against any of the following:

- (a) a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;
- (b) a director, officer or principal holder of a firm acting as a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;
- (c) any issuer of which a person referred to above was a director, officer or principal holder at the time of the penalty or sanction.

(3) Disclose any declaration of bankruptcy, voluntary assignment in bankruptcy, proposal under any bankruptcy or insolvency legislation, proceedings, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets that has been in effect during the 10 years preceding the date of the offering memorandum with respect to any of the following:

- (a) a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;
- (b) a director, officer or principal holder of a firm acting as a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;
- (c) any issuer of which a person referred to above was a director, officer or principal holder at the time of the declaration, assignment, proposal, proceedings, arrangement, compromise or appointment.

Item 15 – Developer, Partners, Directors, Officers and Principal Holders

(1) Disclose the name and address of any developer of the property subject to the syndicated mortgage.

(2) Disclose any penalty or sanction, including the reason for it and whether it is currently in effect, that has been in effect during the 10 years preceding the date of the offering memorandum, or any cease trade order that has been in effect for a period of more than

30 consecutive days during the 10 years preceding the date of the offering memorandum against any of the following:

- (a) a developer of the property subject to the syndicated mortgage;
- (b) a director, officer or principal holder of a developer of the property subject to the syndicated mortgage;
- (c) any issuer of which a person referred to above was a director, officer or principal holder at the time of the penalty or sanction.

(3) Disclose any declaration of bankruptcy, voluntary assignment in bankruptcy, proposal under any bankruptcy or insolvency legislation, proceedings, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets that has been in effect during the 10 years preceding the date of the offering memorandum with respect to any of the following:

- (a) a developer of the property subject to the syndicated mortgage;
- (b) a director, officer or principal holder of a developer of the property subject to the syndicated mortgage;
- (c) any issuer of which a person referred to above was a director, officer or principal holder at the time of the declaration, assignment, proposal, proceedings, arrangement, compromise or appointment.

Item 16 – Conflicts of Interest

(1) Describe any existing or potential conflicts of interest among any of the following:

- (a) the borrower;
- (b) the issuer;
- (c) a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;
- (d) a developer of the property subject to the syndicated mortgage;
- (e) any partners, directors, officers or principal holders of the borrower, issuer, mortgage broker, mortgage brokerage or mortgage agency, or developer;
- (f) the trustee, administrator of the mortgage, or any other person providing goods or services to the borrower, issuer, mortgage broker, mortgage brokerage or mortgage agency or developer in connection with the syndicated mortgage.

(2) Describe any direct or indirect interest in the property subject to the syndicated mortgage, the borrower or the business of the borrower held by any of the following:

- (a) any mortgage broker, mortgage brokerage or mortgage agency, developer, trustee or administrator involved in the offering;
- (b) a director, officer or principal holder of a person or company listed above.

Item 17 – Material Contracts

(1) To the extent not already disclosed elsewhere in the offering memorandum, describe each material contract relating to the offering or the syndicated mortgage that is in force

or is to be entered into by the borrower, issuer, mortgage broker, mortgage brokerage, mortgage agency or developer, or any related party of the foregoing.

(2) Disclose that copies of the material contracts are available from the issuer on request and explain how to request a copy.

Item 18 – Disclosure of Fees

(1) Disclose whether a mortgage broker, mortgage brokerage or mortgage agency has provided a disclosure statement under mortgage legislation to the borrower concerning all fees, by whatever name those fees are called, to be charged to the borrower. Disclose that copies of the disclosure statement are available from the issuer on request and explain how to request a copy.

(2) If no mortgage broker, mortgage brokerage or mortgage agency has provided a disclosure statement to the borrower, describe the fees, by whatever name those fees are called, that are to be charged to the borrower, how they are to be calculated and paid and when any person involved in the distribution is entitled to payment.

(3) Disclose all fees, by whatever name those fees are called, to be paid by the purchaser, directly or indirectly, in connection with the syndicated mortgage.

Item 19 – Registration Documentation

State:

In addition to all other documentation received, the purchaser should request from the borrower, issuer or any mortgage broker, mortgage brokerage or mortgage agency involved in the distribution, the following documentation:

- (a) a copy of the certificate of mortgage interest or assignment of the mortgage or any other document evidencing the investment;
 - (b) a copy of any confirmation signed by any secured party with priority over the syndicated mortgage confirming the outstanding balance of its encumbrance over the property and confirming that the borrower is not in arrears with any payments;
 - (c) written confirmation of valid insurance on the property and disclosure of the interest of the purchaser in the insurance;
 - (d) written confirmation that there are no outstanding arrears or delinquent municipal property taxes on the property;
 - (e) a state of title certificate or equivalent, showing the registration of the syndicated mortgage;
 - (f) a copy of any administration agreement or trust indenture;
 - (g) a copy of any agreement the purchaser entered into in connection with the distribution of the syndicated mortgage..
9. (1) This Instrument comes into force on March 1, 2021.

(2) In Ontario, despite subsection (1), this Instrument comes into force on the later of the following:

(a) March 1, 2021; and

(b) the day on which sections 4 and 5 of Schedule 37 to Bill 177, *Stronger, Fairer Ontario Act (Budget Measures), 2017* are proclaimed into force.

(3) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after March 1, 2021, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

ANNEX C

CHANGES TO COMPANION POLICY 45-106CP PROSPECTUS EXEMPTIONS

1. *Companion Policy 45-106CP Prospectus Exemptions is changed by this Document.*
2. *Section 3.8 is changed by adding the following subsections:*

(11) Issuer of a syndicated mortgage

The offering memorandum exemption may only be used by an issuer to distribute a security of its own issue. Accordingly, only the issuer of a syndicated mortgage may use the offering memorandum exemption to distribute the syndicated mortgage.

Where a borrower enters into a mortgage with two or more persons participating as lenders under the debt obligation secured by the mortgage or enters into a mortgage with a view to the subsequent syndication of that mortgage to two or more purchasers, lenders or investors, the borrower is the issuer of the syndicated mortgage. Consequently, the obligations to comply with the conditions of the exemption and reporting requirements (including the filing of a report of exempt distribution) would fall on the borrower.

There may be circumstances where a person other than the borrower may be an issuer of a syndicated mortgage. For example, where an existing or committed mortgage is syndicated among lenders by a party not acting on behalf of the borrower, that party will generally be an issuer of the syndicated mortgage. The determination of the identity of the issuer, or issuers, of a syndicated mortgage will depend on the facts and circumstances of the transaction.

Where a person other than the borrower is the issuer of a syndicated mortgage, the ability of the issuer to rely on the offering memorandum exemption for the distribution of the syndicated mortgage will be dependent upon the issuer providing the required information regarding the borrower, including financial statements, in the offering memorandum. The issuer's certificate that the offering memorandum does not contain a misrepresentation will extend to any information provided about the borrower under the syndicated mortgage.

(12) Professional association

The definition of "qualified appraiser" in section 1.1 of the Instrument requires a qualified appraiser to be a member of a professional association. The Appraisal Institute of Canada, The Canadian National Association of Real Estate Appraisers and l'Ordre des évaluateurs agréés du Québec are examples of organizations that meet the definition of "professional association" in section 1.1 of the Instrument.

(13) Independent qualified appraiser for syndicated mortgages

Subsection 2.9(19) of the Instrument provides the test that the issuer of a syndicated mortgage and a qualified appraiser must apply to determine whether a qualified appraiser is independent of the issuer. The following are examples of when we would consider that a qualified appraiser is not independent. These examples are not a complete list. We would consider that a qualified appraiser is not independent of an issuer if the qualified appraiser satisfies any of the following:

- (a) is an employee, insider or director of the issuer;
- (b) is an employee, insider or director of a related party of the issuer;
- (c) is a partner of any person in paragraph (a) or (b);
- (d) holds or expects to hold securities, either directly or indirectly, of the issuer or a related party of the issuer;
- (e) holds or expects to hold securities, either directly or indirectly, in another issuer that has a direct or indirect interest in the property that is the subject of the appraisal or in an adjacent property;
- (f) is an employee, insider or director of another issuer that has a direct or indirect interest in the property that is the subject of the appraisal or in an adjacent property;
- (g) has or expects to have, directly or indirectly, an ownership, royalty or other interest in the property that is the subject of the appraisal or in an adjacent property;
- (h) has received the majority of their income, either directly or indirectly, in the three years preceding the date of the appraisal from the issuer or a related party of the issuer.

(14) Appraisals

Subsection 2.9(19.1) of the Instrument requires the issuer to deliver an appraisal of the property subject to a syndicated mortgage. The appraisal must disclose the fair market value of the property, without taking into account any proposed improvements or proposed development. The fair market value of the property, as it currently exists, is important information for prospective purchasers to understand the protection afforded by the security interest in the property subject to the syndicated mortgage in the event of a default by the borrower..

3. Section 4.7 is changed by deleting the first paragraph.

4. (1) These changes become effective on March 1, 2021.
- (2) In Ontario, despite subsection (1), the changes become effective on the later of the following:
 - (a) March 1, 2021; and
 - (b) the day on which sections 4 and 5 of Schedule 37 to Bill 177, *Stronger, Fairer Ontario Act (Budget Measures), 2017* are proclaimed into force.

ANNEX D

**AMENDMENTS TO
NATIONAL INSTRUMENT 31-103 *REGISTRATION REQUIREMENTS, EXEMPTIONS
AND ONGOING REGISTRANT OBLIGATIONS***

1. *National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by this Instrument.*
2. *Section 8.12 is amended by:*
 - (a) *replacing* “In Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan, subsection (2)” *in subsection (3) with* “Subsection (2)”, *and*
 - (b) *repealing subsection (4).*
3. (1) This Instrument comes into force on March 1, 2021.

(2) In Ontario, despite subsection (1), this Instrument comes into force on the later of the following:
 - (a) March 1, 2021; and
 - (b) the day on which sections 4 and 5 of Schedule 37 to Bill 177, *Stronger, Fairer Ontario Act (Budget Measures), 2017* are proclaimed into force.
- (3) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after March 1, 2021, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

ANNEX E

CHANGES TO COMPANION POLICY 31-103CP *REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS*

1. *Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations is changed by this Document.*
2. *Section 3.3 is changed by adding the following to the end of Relevant securities industry experience:*

In limited circumstances, relevant securities industry experience may include experience obtained during employment at a firm that has relied on a registration exemption. For example, experience obtained at a registered or licensed mortgage broker, mortgage brokerage, mortgage agency or mortgage dealer under applicable legislation may be considered relevant if the experience can be demonstrated to be relevant to the category applied for. In these circumstances, the regulator may also impose terms and conditions on the individual or the registered firm sponsoring the individual in order to limit their specific activities..

3. (1) These changes become effective on March 1, 2021.
- (2) In Ontario, despite subsection (1), the changes become effective on the later of the following:
 - (a) March 1, 2021; and
 - (b) the day on which sections 4 and 5 of Schedule 37 to Bill 177, *Stronger, Fairer Ontario Act (Budget Measures), 2017* are proclaimed into force.

ANNEX F

LOCAL MATTERS (NEW BRUNSWICK)

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 Commission 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 Schedule 1 to this Annex.

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 Schedule 1 to this Annex.

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 Comments

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

SCHEDULE 1 TO ANNEX F

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:*

Syndicated Mortgages

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 [*].*