



ASC NOTICE
AMENDMENTS TO ALBERTA SECURITIES
COMMISSION RULE 45-511 LOCAL PROSPECTUS
EXEMPTIONS AND RELATED REQUIREMENTS
RELATING TO SYNDICATED MORTGAGES

January 27, 2021

Proposed Alberta prospectus exemptions related to syndicated mortgages were published for comment on March 15, 2019 as part of a Canadian Securities Administrators project in respect of syndicated mortgages (the **Project**). A slightly revised form of those exemptions was published for comment in the local annex of the Project's August 6, 2020 publication. No comments were received in response to either publication.

The Alberta Securities Commission is making the amendments (the **Amendments**), in substantially the same form in which they were published August 6, 2020.

A brief summary of the Amendments follows.

Prospectus Exemption for Qualified Syndicated Mortgages

We are making a prospectus exemption for qualified syndicated mortgages, as set out in the Schedule.

The definition of qualified syndicated mortgage excludes a debt obligation that is incurred for the construction or development of property. Qualified syndicated mortgages are likely more similar to conventional mortgages. Accordingly, we believe that qualified syndicated mortgages do not present the same investor protection concerns that the bulk of the Project is intended to address.

Prospectus Exemption for Syndicated Mortgages Distributed to Permitted Clients

We are making a prospectus exemption (the **Permitted Clients Prospectus Exemption**) for syndicated mortgages distributed to "permitted clients", as that term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

This is based on comments received that noted that because syndicated mortgages are excluded from section 2.36 of National Instrument 45-106 *Prospectus Exemptions (NI 45-106)*, this means that a different prospectus exemption must be utilized for these transactions. The other prospectus exemptions that may be available require reporting and fees (unless the issuer is a "Canadian financial institution" or a "Schedule III bank", each as defined in NI 45-106). The comments raised concerns about the burden imposed on these transactions by reporting and fees. The comments suggested that if the lenders are "permitted clients", there should be a prospectus exemption that does not require reporting and fees. The Permitted Clients Prospectus Exemption responds to this request.

Please refer your questions to either of the following:

Jan Bagh
Senior Legal Counsel
Corporate Finance
Alberta Securities Commission
403-355-2804
jan.bagh@asc.ca

Lanion Beck
Senior Legal Counsel
Corporate Finance
Alberta Securities Commission
403.355.3884
lanion.beck@asc.ca

SCHEDULE
AMENDMENTS TO
ALBERTA SECURITIES COMMISSION RULE 45-511 LOCAL PROSPECTUS
EXEMPTIONS AND RELATED REQUIREMENTS

1. *Alberta Securities Commission Rule 45-511 Local Prospectus Exemptions and Related Requirements is amended by this Instrument.*
2. *Part 1 is replaced by the following:*

Part 1: Definitions

1.1 In this rule

“Act” means the *Securities Act*, R.S.A. 2000, c. S-4, as amended;

“jurisdiction” or “jurisdiction of Canada” means a province or territory of Canada;

“permitted client” has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“prospectus requirement” means the requirement in the Act that prohibits a person or company from distributing a security unless a preliminary prospectus and a prospectus for the security have been filed and the Executive Director has issued receipts for them;

“qualifying issuer” has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*;

“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 the consent of each lender;

“registration requirement” means the requirement in the Act that prohibits a person or company from acting as a dealer, adviser or investment fund manager unless the person or company is registered in accordance with Alberta securities laws;

“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.

1.2 Unless defined in this rule, terms defined in section 1 of the Act apply..

3. *Part 2 is amended by adding the following sections:*

2.2 Qualified syndicated mortgages

The prospectus requirement does not apply to a distribution of a qualified syndicated mortgage on real property in a jurisdiction of Canada by a person or company that is registered or licensed, or exempted from registration or licensing, under legislation governing mortgage brokers in Alberta.

2.3 Syndicated mortgages distributed to permitted clients

- (1) The prospectus requirement does not apply to a distribution of a syndicated mortgage on real property in a jurisdiction of Canada to a permitted client by a person or company that is registered or licensed, or exempted from registration or licensing, under legislation governing mortgage brokers in Alberta.
- (2) The first trade in a security acquired under subsection (1) is a distribution..

4. *Paragraph 3.1(a) and clause 3.4(2)(a)(ii)(B) are each amended by replacing “Securities Act (Alberta)” with “Act”, wherever it occurs.*

5. *Subparagraph (ii) of paragraph 3.1(f) is replaced by the following:*

- (ii) a sale made under an exemption from the prospectus requirement and the registration requirement..

6. **Section 3.4 is amended by replacing** “National Instrument 45-106 *Prospectus and Registration Exemptions*” **wherever it occurs with** “National Instrument 45-106 *Prospectus Exemptions*”.
7. **Subsection 3.4(3) is amended by replacing** “and has been filed under the *Securities Act* (Alberta)” **with** “, and that has been filed under Alberta securities laws”.
8. This Instrument comes into force on March 1, 2021.