

Firm Capital Corporation

Mortgage Banking • Real Estate Capital
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August 22nd, 2019

Financial Services Regulatory Authority
Attn: Mortgage Brokering Sector
5160 Yonge Street, 4th Floor
Toronto ON M2N 6L9

Via: Online submission

**RE: PROPOSED SUPERVISION APPROACH FOR HIGH-RISK
SYNDICATED MORTGAGE INVESTMENTS**

BACKGROUND:

Since obtaining its mortgage license in 1988, Firm Capital Corporation (“FCC”) has been in the business of origination, underwriting and lending bridge financing mortgages on behalf of clients. In 1999, FCC took Firm Capital Mortgage Investment Corporation (“MIC”) public on the Toronto Stock Exchange. This entity, in conjunction with other lending entities are managed by FCC. FCC does not syndicate high risk mortgages to retail investors. All investors who are not the MIC’s are members of management, the board of directors, or high net worth experienced real estate parties who have a real estate relationship with FCC.

We submit the following in response to the request by FSRA for industry comment;

Form 3.2.1, Form 3.0, Form 3.1 and Form 3.2 are collectively hereafter referred to as the “Forms”.

FORM 3.2.1:

FCC welcomes the introduction of Form 3.2.1 for each investor that is not part of the designated class. We are very pleased to see that our proposal to recommend that investors obtain appropriate independent legal advice was partially accepted and incorporated into the Form 3.2.1. We feel that those investors should be required to annually obtain independent legal advice before investing in High-Risk Syndicated Mortgages.

We have the following recommendation on the Form format under the table in Section 1;

- A second column box should be inserted called Completed Value; the existing box header should be called; As Is Value;
- Item “B” and “C” should have day one advance for the As Is loan to value and Completed Loan to Value for the end calculation;
- The objective is to show the “As Is” exposure on closing and the full advanced exposure at the time of completion of the project. The current presentation has the request to show the full priority debt even though it may not be advanced. A better way to present it is to have a “Source and Use of Funds” for the As Is day one advance and the Completed Value at the time of full advance;
- A new box should be inserted showing the Sponsors cash equity in the project

This Form should be incorporated by reference as an addendum to Form 3.2 for those investors that it applies to.

FORM 3.0

FCC strongly recommends that Form 3.0 be completed on an annual basis or when notified of significant change in an investor's position. Completing a Form 3.0 for each investment, for active investors several times a month is redundant. Completing the Form 3.0 annually is a practical approach and avoids unnecessary red tape and excessive redundant paperwork. A recital should be inserted that the investor undertakes to advise the Brokerage of any material financial position changes that may occur to the Investor.

FORM 3.1

FCC strongly recommends excluding the designated class of investors (investors who are knowledgeable and experienced) from completing Form 3.1. These investors are highly knowledgeable and sophisticated. The Brokerage should have a duty to provide an underwriting transaction overview summary to the investor explaining the investment.

In the alternative, if the investor receives independent legal advice (“ILA”), prior to dealing with the Brokerage, acknowledging that they understand the risk of mortgage investments, then they should be excluded from completing a Form 3.1. FSRA should prepare a prescribed form for the format of ILA to be given.

We feel that Form 3.1 should be incorporated into Form 3.2 in order to have one document.

FORM 3.2

FCC strongly recommends excluding the designated class of investors from completing Form 3.2. We strongly believe that a better alternative than the existing Form 3.2 would be to impose the requirement to provide an investment summary to each potential investor, with said investment summary being required to adhere to disclosure guidelines mandated by FSRA. A detailed investment summary provides a more efficient medium to properly outline the transaction terms and conditions and outline any risks that are inherent with the transaction, as opposed to the current rigid standardized Form 3.2, which doesn't provide the space to properly detail the risk of a transaction.

As stated above, we feel that Form 3.1 should be incorporated into Form 3.2 to avoid the burden of unnecessary multiple Forms.

DEFINITION OF INVESTORS

FSRA needs to clarify what the definition of an investor in a syndicated mortgage is. The definition should state that an investor is everyone other than;

1. A regulated deposit taking institution, including banks, trust companies, pension funds, life insurance companies and credit unions;
2. Directors, officers, mortgage brokers, mortgage agents and employees of the Brokerage / Administrator;
3. A publicly listed reporting issuer entity;
4. Operating Entities such as MIC's, Trust's, Funds' and LP's, including their officers and directors, that the Brokerage / Administrator has a contract to manage the Operating Entity;

A group of Brokerage managed Mortgage Funds / MIC's, whose operating mandate is to lend money, should not be executing these forms by the Brokerage who manages them and by the Brokerage who issues the Forms, as it serves no purpose.

Once the definition of an Investor has been established, the definition of a syndicated mortgage needs to clarify that the intent is to protect third party, non-managed entity, *retail investors*.

Suggested amendment for the definition of "syndicated mortgage":

FCC Suggest the following definition:

Definition of a "Syndicated Mortgage"; Defined as a mortgage debt investment that a Mortgage Brokerage would allocate to more than one investor who is not; (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).

FCC should not have to produce and sign Forms addressed to the MIC's it manages, and also sign the Forms on behalf of the MIC's. As it serves no consumer protection, the signatories to the Forms are the same parties as the issuer of the Form.

As an example, in FCC's case, if three of our MIC's under our management, pursuant to a management agreement, plus myself and a few Brokerage staff participate in a syndication of a mortgage; we should be exempt from being required to have any Forms, as we are not consumers being protected. We are just exchanging paper amongst ourselves, as we;

- Originate and negotiate the transaction;
- We manage the lending entity; and
- Our MIC board members approve the investment for the lending entity.

An entity such as a MIC, is in the business of lending money. The MIC's, which are managed under a contract by the Brokerage (MIC Manager), and said contract requires the MIC Manager to lend mortgage funds as its primary business, subject to the MIC board approval, should not be required to complete these Forms. That is not a retail one off investor syndication, as the intent was to address syndicating to individual investors (or their corporations) who are not in a segregated structured fund like a MIC. In FCC's case, our MIC board under our contract is permitted to co-invest with the MIC, to show to the MIC shareholders an alignment of interest. So those same directors approve an investment for the MIC and for themselves.

EXEMPTION RELIEF:

With the complexity of what is defined as a syndicated mortgage and who the investors may be (i.e. institution, MIC's, or Brokerage principals), FSRA should have the ability to provide Brokerages with exemption relief in completing Forms when a formal request is made to FSRA.

FCC would ask FSRA to provide us with a ruling, addressing operational and regulatory matters as they relate the management of a public MIC and a Private MIC (in the same manner for 30 years) pursuant to a management contract. If we syndicate to these entities we should be exempt from treating the matter as a syndication, as it relates to the Forms, as the MIC is not a retail investor needing consumer protection and the MIC is managed by the Brokerage. Further, if the investor participants are those defined above under the heading "Definition of an Investors", then they should not be required to complete any Forms.

As an example, if FCC does a \$10 million mortgage, and our public MIC invests \$6 million, our private MIC invests \$2 million, and I, as a Principal Broker invest \$2 million – based on what is being asked, I as the officer of FCC, the two MIC's and myself, sign the Forms for all sides. It is redundant and illogical.

We strongly believe that an exemption by a regulator under above mentioned circumstances, would seem reasonable.

Thank you for giving us the opportunity to submit our thoughts on these matters.

Yours truly,

FIRM CAPITAL CORPORATION

PER:



Eli Dadouch
President

ED/ns

C.C. – Mark White

Chief Executive Officer

Financial Services Regulatory Authority of Ontario

C.C. – Huston Loke
Executive Vice President, Market Conduct
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C.C. – Kevin Cohen
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