



September 21, 2020

Ms. Gina Stephens
Senior Policy Advisor
Financial Services Policy Division
Ministry of Finance
95 Grosvenor St. – 4th Floor Toronto, ON M7A 1Z1

CC: Huston Loke, FSRA; David Surat, OSC

Re: Comments requested by FSRA, OSC and Ministry of Finance on changes to the supervisory approach for Non-Qualified Syndicated Mortgages (“NQSMI”)

Dear Ms. Stephens,

This letter is in response to your request for comments on the following:

1. Draft regulations under the Mortgage Brokerages, Lenders and Administrators Act, 2006 that outline how non-qualified syndicated mortgages presented to sophisticated investors will be regulated by the Financial Services Regulatory Authority of Ontario (FSRA) going forward.
2. FSRA’s draft Guidance document that lays out how FSRA would interpret these draft regulations should they be approved by Cabinet and what this would mean for their enforcement activities in relation to affected licensees.
3. The Ontario Securities Commission’s draft rules relating to the regulation of non-qualified syndicated mortgages presented to retail investors.

Firstly, we would like to thank you for the opportunity to provide feedback. We appreciate the dialogue with all stakeholders involved and are encouraged by the efforts of policy makers and regulators to reduce the regulatory burden.

At the highest level we maintain a preference for one regulator, but in the absence of this outcome we agree and appreciate that policy makers, FSRA and the OSC have taken a reasonable approach as it relates to regulatory burden reduction.

Response to request for comments

Draft regs under MBLAA:

We are supportive of the addition of the definition of Permitted Clients and, naturally, agree with the reduction in disclosure requirements for these sophisticated entities.

FSRA’s draft guidance:

We are supportive of FSRA’s proposed approach as it relates to data-driven judgment, being proactive and employing a targeted risk-based approach.



We believe the industry will benefit from a practical and empowered regulator. FSRA has proven to be proactive and collaborative in our dealings to-date. We encourage policies that will allow FSRA to migrate to a principles-based approach with the abilities to enforce and provide exemptive relief.

Renewals:

Currently, when a NQSMI is renewed it is treated as a new distribution and a new filing is triggered. It is our understanding that under OSC rules, this would no longer be the case. We would appreciate clarification from FSRA regarding filing expectations for NQSMI that are renewed at maturity.

OSC's draft rules:

We welcome the migration to a principles-based regime that does not require prescribed forms for accredited clients. Our concerns with NQSMI for non-permitted clients under a second regulator are primarily focused on the increased fee burden.

Increase in fee burden from Reports of Exempt Distribution:

Our syndications focus on accredited and permitted clients. It is likely that, absent an increase in regulatory costs that force us to exclude accredited investors, our syndications would include both accredited and permitted investors. Based on our current syndication volumes we estimate that the cost of filing the Reports of Exempt Distribution will increase by \$10,000 to \$20,000 per year. This is assuming we need to pay \$500 per report. The exempt distribution reporting regime is being examined in a separate burden reduction initiative and for this effort **we strongly encourage a reduction in the frequency of reporting, the cost of filings or, ideally, both.**

We would also like further clarification that a lender can file a Report of Exempt Distribution that covers the distributions of multiple NQSMI made during a 10-day period. The recent responses from the OSC to comments seems to suggest this is the case. If it is not the case, our estimated increased cost from filing the reports could exceed \$30,000.

From a policy perspective a significant increase in filing costs could encourage us to reduce syndication to accredited investors which would hurt our business and the availability of capital for borrowers who are creating new housing supply while constraining investment opportunities for accredited investors in a time when interest rates are declining and they are seeking alternative fixed income investments.

Clarifying what is subject to capital market participation fees:

On the question of the increased cost burden of OSC regulation for lenders we would like to point out that there is confusion as to whether an OSC registrant who is engaging in the brokerage of mortgages would be subject to capital market participation fees on mortgage brokerage revenue. The brokerage has nothing to do with capital market activity. The distribution of the securities is the capital market piece but it does not generate revenue. There have been instances where the OSC has required some, but not all, lenders to include their brokerage revenue in their capital market participation fee calculation which leads to a significant increase in fees. Given that more lenders will be registering as EMDs we ask that the OSC publish clear guidance on what revenues will be considered capital markets related. We would argue that



mortgage brokerage revenue (fees paid by borrowers to mortgage brokers) are not capital market activities and should not be included in the calculation.

General Comments

Audited Financial Statements Requirement

The current requirement for audited financial statements for a borrower in a NQSMI is not practical and should be removed.

Appraisal Requirement

It is our understanding that the Appraisal requirement is only applicable to distributions of NQSMI that rely on the OM exemption. We focus on distributions to accredited and permitted clients so do not believe the appraisal requirement is applicable to our lending. However, we would like to point out that a 6-month or 12-month updated appraisal requirement is not practical on construction projects. We typically obtain “as-is” and “as-complete” appraisals at the start of a project. To obtain an appraisal on a project in progress is costly and we do not know who would bear the cost. It is unlikely the borrower or investor would be willing to bear these costs. Furthermore, it is extraordinarily difficult to value a project during construction because the universe of potential buyers is reduced.

We require appraisals on all our properties prior to approving a loan. We agree this is reasonable and responsible and no prudent lender should lend without an appraisal from an accredited provider. However, it does not seem practicable to require further appraisals on construction projects in progress.

Concluding Thoughts

Overall, we are encouraged with your philosophy of a reduction of regulatory burden, while still enhancing protections for investors. We ask that you consider additional steps to further reduce the regulatory burden to the extent that syndications cover Accredited and Permitted but NOT retail investors.

We look forward to continued collaboration with the OSC, FSRA and the Ministry of Finance as you work to finalize the changes. We believe that strong regulatory bodies that allow the good actors to thrive while catching the bad actors is in the best interests of investors and capital markets participants alike.

Most of the proposed changes will help in this regard. We simply ask that you do your best not to increase the cost burden as you work to achieve the best public policy objectives.

Kind regards,

Evan Cooperman CEO

Ricky Dogon CCO