Significant changes to regulatory framework for syndicated mortgage transactions

March 12, 2021

After several years of consultation, significant changes to the Canadian regulatory framework applicable to syndicated mortgage transactions became effective on March 1, 2021 in all provinces other than Ontario and Québec (see here and here). Changes in Ontario and in Québec are expected to become effective on July 1, 2021 (see here).[1] The changes are focused on amendments to the registration and prospectus exemptions applicable to the distribution of syndicated mortgages under securities laws that are designed to enhance investor protection for investors in syndicated mortgages and bring significant (but not complete) harmonization to the rules of the Canadian Securities Administrators (CSA) in this area. In Ontario, these amendments are accompanied by a transfer of primary regulatory oversight over certain non-qualified syndicated mortgages from the Financial Services Regulatory Authority of Ontario (FSRA) to the Ontario Securities Commission (OSC). Although the changes will impact all Canadian jurisdictions, they will have the biggest impact in Ontario, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and the Yukon. The new rules will require parties involved in syndicated mortgage transactions to carefully review their activities and, in some cases, adjust their activities to ensure compliance with available prospectus exemptions and securities law registration requirements, in addition to the requirements under mortgage brokerage and dealer licensing and registration legislation (for example, see FSRA guidance updated March 10, 2021).

Background – Why do securities laws apply to mortgage transactions?

The CSA define a “syndicated mortgage” as a mortgage in which two or more persons participate, directly or indirectly, as lenders in the debt obligation that is secured by the mortgage. Although it may come as a surprise to some, a mortgage is a “security” within the meaning of Canadian securities laws. As such, a syndicated mortgage transaction will involve the distribution of a security and must therefore either be qualified for distribution under a prospectus filed with securities regulators or, more typically, be issued pursuant to an exemption from applicable prospectus requirements. In addition, any person or company involved in a syndicated mortgage transaction who is considered to be in the business of trading or dealing in securities must either be registered or exempt from registration as a dealer (or a dealing representative of a

registered dealer) in an appropriate category of registration in the jurisdiction in which the syndicated mortgage is issued or traded.

The application of the above concepts to a particular syndicated mortgage transaction can be challenging.

> *Who is the "issuer" of a syndicated mortgage?* **–** Under securities laws, the issuer of a security is principally responsible for ensuring compliance with applicable prospectus requirements or exemptions and related reporting requirements. In a typical private placement transaction where a company raises capital through the issuance of its shares, it is clear that the company is the issuer of the shares; however, identifying the "issuer" of a syndicated mortgage can be more complicated. Guidance from the CSA indicates that, 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 mortgage. However, the CSA also states that 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 acting on behalf of the borrower, that party will generally be an issuer of the syndicated mortgage. Accordingly, the determination of the identity of the issuer or issuers of a syndicated mortgage will depend on the facts and circumstances of each transaction.
>
> *Do the parties involved require dealer registration (in addition to any required mortgage broker or dealer licensing or registration)?* – In some cases it may be unclear whether the parties involved in a syndicated mortgage transaction will be considered to be in the business of trading or dealing in securities such that registration or an exemption from dealer registration is required, a determination that is made independent of the application of mortgage brokerage and dealer licensing and registration requirements. The assessment of whether dealer registration is required is a principle-based assessment that some will find difficult to apply in the context of syndicated mortgage transactions, in particular in situations where the parties involved may view themselves simply as "co-lenders" rather than acting in the capacity of a dealer. As a result of the amendments described, certain exemptions previously available in connection with syndicated mortgage transactions have been removed, as described below. In some circumstances, dealer registration under securities legislation and licensing or registration under mortgage brokerage or dealer legislation may be required.

Pre-implementation treatment of syndicated mortgages under Canadian securities laws

Securities laws in all Canadian jurisdictions contain exemptions from the prospectus requirement and the dealer registration requirement that apply to any transaction involving a trade in a mortgage on real property made by a person or company registered or licensed or exempt from registration or licensing under mortgage brokerage or dealer legislation in the jurisdiction where the mortgaged property is located (the "mortgage exemptions").[2] While the mortgage exemptions are available in

all Canadian jurisdictions, under the rules existing prior to the changes described in this bulletin the availability of the exemptions for syndicated mortgage transactions differed from one jurisdiction to another.

In Ontario, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and the Yukon (the Group 1 Jurisdictions), the mortgage exemptions existing prior to the changes described in this bulletin apply to the offering of any type of mortgage transaction, whether one lender or multiple lenders are involved. Accordingly, in the Group 1 Jurisdictions prior to these changes, prospectus and registration exemptions are available for any mortgage transaction involving a person or company registered or licensed or exempt from registration or licensing as a mortgage broker or dealer, regardless of the details of the particular mortgage or purchasers involved.

In contrast, in Alberta, British Columbia, Saskatchewan, Manitoba, Québec and New Brunswick (the Group 2 Jurisdictions), the mortgage exemptions are only available to mortgage transactions involving a single lender and are not available for mortgage transactions where two or more persons participate, directly or indirectly, as lenders. As a result, in the Group 2 Jurisdictions, parties involved in a syndicated mortgage transaction may not rely on the mortgage exemptions and must ensure that an alternative prospectus exemption is available and, where applicable, either rely upon an alternative dealer registration exemption or involve a registered dealer. In certain of these jurisdictions, including British Columbia and Alberta, local prospectus exemptions and in some cases, registration exemptions are available for transactions involving certain types of syndicated mortgages or purchasers.

What is changing and how will it impact market participants?

Effective March 1, 2021 (except in Ontario and in Québec where the changes are expected to become effective on July 1, 2021), the regulatory framework applicable to syndicated mortgage transactions in Canada has changed (or in the case of Ontario and Québec, will change) in the following ways:

1. General mortgage prospectus and dealer registration exemptions no longer available

In the Group 1 Jurisdictions, the mortgage exemptions described above will no longer be available for syndicated mortgage transactions. As a result, in these and all other Canadian jurisdictions the parties involved in a syndicated mortgage transaction may not rely on the mortgage exemptions and must ensure that an alternative prospectus exemption is available and, where applicable, either rely upon an alternative dealer registration exemption or involve a registered dealer. Of note, in most cases, the alternative prospectus exemptions relied upon will require the issuer to file with the relevant regulatory authority(ies), a report of exempt distribution disclosing details of the transaction and pay the applicable regulatory filing fees within 10 days of each transaction. Further, the parties involved in facilitating syndicated mortgage transactions in the Group 1 Jurisdictions will need to carefully consider whether their activities will trigger the application of securities law dealer registration requirements. Parties involved in syndicated mortgage transactions as part of their business may be required to apply

for and obtain registration as a dealer or engage the services of an appropriately registered dealer. The transition could result in a material increase in costs and trigger the application of the full range of regulatory requirements applicable to registered firms and individuals.

2. "Private issuer" prospectus exemption no longer available

In all jurisdictions, the "private issuer" prospectus exemption found in section 2.4 of National Instrument 45-106, which does not require the filing of a report of exempt distribution or payment of applicable regulatory fees, will no longer be available in connection with the distribution of a syndicated mortgage. By prohibiting reliance on the private issuer exemption and therefore requiring reliance on exemptions that include a reporting requirement, the CSA hopes to gather additional information about the syndicated mortgage market to enable them to better monitor and regulate this market going forward.

3. Changes to "offering memorandum" prospectus exemption

In all jurisdictions, the "offering memorandum" prospectus exemption found in section 2.9 of National Instrument 45-106 will be amended to introduce a number of additional requirements that apply when the exemption is used to distribute syndicated mortgages. Among other things, these amendments will require the use of a modified form of offering memorandum and the delivery of an appraisal of the current fair market value of the property.

4. Introduction of new (or amendments to existing) local exemptions for certain transactions

In conjunction with the above changes, securities regulators in certain jurisdictions will introduce or amend local prospectus and/or dealer registration exemptions applicable to certain syndicated mortgage transactions.[3] Although these local exemptions have been substantially harmonized, the details vary by jurisdiction. In general, they provide prospectus exemptions and in some cases, dealer registration exemptions (a) for syndicated mortgages purchased by certain types of institutional or high net worth investors (generally referred to either as "permitted clients" or "institutional investors"), or (b) for certain types of syndicated mortgages viewed as being lower risk (referred to as "qualified syndicated mortgages"). Participants in syndicated mortgage transactions will need to carefully review and understand these exemptions to confirm their application to their activities. Of note, except in certain limited circumstances, these exemptions will require the filing of a report of exempt distribution and payment of regulatory filing fees. In addition, in certain jurisdictions these local exemptions provide exemptions only from applicable prospectus requirements and securities law dealer registration requirements will continue to apply.

In Ontario, implementation of the changes to securities laws described above will be enacted concurrently with changes to the regulations under the Ontario *Mortgage Brokerages, Lenders and Administrators Act, 2006* (MBLAA). The combined effect of these changes is that the FSRA will retain oversight over distributions of "qualified syndicated mortgages" (as defined by OSC Rule 45-501), and of other syndicated mortgages to "permitted clients" (as defined under National Instrument 31-103) under

the MBLAA regime, and the OSC will assume oversight over other syndicated mortgage transactions under Ontario securities laws. In some circumstances, the OSC and FSRA will share oversight.

Key takeaways

All parties participating in syndicated mortgage transactions in Canada should carefully review their practices to ensure compliance with securities laws, in addition to the requirements under mortgage brokerage and dealer licensing and registration legislation. In some cases, the new rules will require material changes to existing business practices, involve significant additional costs and require compliance with a range of new regulatory requirements. We expect securities regulators to monitor this market closely moving forward to ensure compliance with the new rules.

On March 29, 2021, the staff of the Compliance and Registrant Regulation Branch of the OSC is holding a virtual seminar that will provide an overview of the upcoming changes to the syndicated mortgages rules in Ontario including the registration and key compliance requirements for market participants that intend to trade in syndicated mortgages. If you are interested in attending, you can register here.

For further information, please contact the authors of this bulletin.

[1] In Ontario, the changes will become effective on the later of: (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. The proclamation, and therefore the effective date, of the changes in Ontario is expected to be July 1, 2021.

In Québec, subject to requisite approvals, the changes are expected to take effect on July 1, 2021, at the earliest. A local notice confirming the exact effective date of the changes will be published, when determined.

[2] See section 2.36 of National Instrument 45-106 *Prospectus Exemptions* and section 8.12 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, respectively.

[3] For example, see Alberta Securities Commission Rule 45-511 *Local Prospectus Exemptions and Related Requirements* (found here), British Columbia Rule 45-501 *Mortgages* (amendments found here), OSC Rule 45-501 *Prospectus Exemptions* (amendments found here) and proposed Québec *Regulation respecting the distribution of qualified syndicated mortgages.*

By

Jason Brooks, Donna Spagnolo, Olivier Busque

Expertise

Investment Management, Capital Markets, Registrant Regulation & Markets

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.