



MCAP

200 King Street West
Suite 400
Toronto, ON M5H 3T4
Tel 416 847-2665

1 800 387-4405
www.mcap.com

June 5, 2018

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

WITH DELIVERY TO:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22^e étage C.P.
246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-6381
Consultation-en-cours@lautorite.qc.ca

Re: Proposed Amendments to National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations relating to Syndicated Mortgages and Proposed Changes to Companion Policy 45-106CP Prospectus Exemptions (collectively, the "Proposals")

Dear Sirs/Madam,

I am writing on behalf of MCAP Commercial LP and its affiliates (collectively, "MCAP"). MCAP is in the business of originating, underwriting, selling, securitizing and servicing residential, commercial and construction mortgages across Canada. In the course of its activities, MCAP sells and services mortgages on behalf of institutional investors, the NHA MBS Program, the Canada Mortgage Bond Program, and bank-administered conduits, with virtually all of those institutional investors qualifying as federally regulated financial institutions ("FRFIs") subject to supervision by the Superintendent of Financial Institutions ("OSFI"). MCAP originates approximately \$15.5 billion in residential, commercial and construction mortgages in a calendar year, expects to renew approximately an additional \$3.6 billion in mortgages this calendar year and currently services and administrators approximately \$70 billion in mortgages for institutional investors. In the course of their activities, MCAP entities are regulated by Canada Mortgage Housing Corporation ("CMHC"), the applicable provincial mortgage brokerage regulators across Canada and, in order to underwrite, service and administer mortgages for or on behalf of its FRFI clients, applicable MCAP entities are also required to meet OSFI guidelines notwithstanding none of the MCAP entities are FRFIs. MCAP is also effectively monitored and regulated by mortgage insurers, including CMHC, Genworth Financial Mortgage Insurance Company Canada and Canada Guaranty Mortgage Insurance Company under the *National Housing Act* (Canada), the *Protection of Residential Mortgage or Hypothecary Insurance Act* (Canada) and OSFI Guidelines B-10 (outsourcing of business activities, functions and processes) and B-21 (residential mortgage insurance underwriting practices and procedures).

MCAP understands that there has been a significant increase in the offering of "syndicated mortgages" for real estate construction and development to retail investors in Ontario and that there are legitimate investor protection concerns with respect to these "syndicated mortgages", particularly with respect to the complexities of development and construction financing which may not be apparent to a retail investor base. While MCAP does not participate in this "retail" part of the development and construction mortgage market (MCAP participates solely in the institutional component of the development and construction mortgage market), MCAP agrees with and understands the concerns that are applicable in relation to retail investors. MCAP further understands that, while these concerns have traditionally been addressed under mortgage brokerage regulation, there is a broader policy movement to suggest that certain aspects of this function should be transferred to securities regulators.

Simply put, MCAP supports regulatory efforts aimed at protecting and informing retail investors about the risks and complications involved in development and construction financing. On the other hand, however, MCAP does not support or see a benefit to measures to further regulate mortgage brokers involved with institutional investors in development and construction financing since this part of the market raises no public policy concerns under the present regulatory regime. **To achieve the public policy goals of the Proposals, and to protect the efficient functioning of capital markets for mortgage brokers and institutional investors involved in development and construction financing, we suggest that the definition of "syndicated mortgage" and the Proposals only be applicable if both the following two conditions are satisfied: (i) an entity that is a developer is the borrower in relation to a real estate development and construction mortgage; and (ii) the real estate development and construction mortgage security is being distributed to retail investors. Accordingly, our submission exempts residential and commercial lending and it also exempts real estate development and construction mortgages that are distributed exclusively to institutional investors. We believe that**

these alterations will best achieve the public policy goals of the Proposal, while minimizing unnecessary complexity and costs in a well-functioning institutional investor mortgage marketplace. The remainder of our submission will provide the rationale for our suggestions and some of the details that need to be addressed in implementing our suggestions.

While MCAP agrees with the need to protect retail investors investing in development and construction mortgages, MCAP has substantive concerns with respect to the impact of the Proposals on the operation of Canadian mortgage markets more generally. MCAP believes that the definition of “syndicated mortgage” in combination with the removal of the Mortgage Exemptions for prospectuses goes well beyond the policy objectives of the Proposals and creates a series of unintended and undesirable consequences and complications with respect to the future relationship between mortgage brokerage regulation, securities regulation and banking regulation for mortgage-related products. After setting out problems that will be created by the Proposals, including the interaction of the Proposals with existing mortgage brokerage regulation and banking regulation, our submission addresses some specific features of the Proposals. The submission then provides commentary in response to some of the specific questions raised by the Proposals. The submission closes with our suggestions for changes to the Proposals to meet the policy objectives of the Proposals, while addressing the concerns and problems we have raised in this submission.

(1) Interaction of the Proposals with mortgage brokerage regulation, banking regulation and the existing securities law rules for residential mortgage-backed securities (“RMBS”), commercial mortgage-backed securities (“CMBS”) and mortgage investment corporations (“MICs”): The Proposals, and specifically the definition of “syndicated mortgage” in combination with the removal of the Mortgage Exemption, creates substantial and unnecessary problems and complications for the institutional investor mortgage markets. To begin, the definition of “syndicated mortgage” impact trades and distributions of mortgage-related products well beyond real estate development and construction mortgages (at times in this submission, we will refer to a “construction mortgage” as a short-hand reference to a “development and construction mortgage”). Specifically, the definition of “syndicated mortgage” applies to any trade or distribution involving any type of mortgage (including residential, commercial and construction mortgages) and further does not differentiate between retail investors and institutional investors. The broad application of the definition of “syndicated mortgage” to all residential, commercial and construction mortgages and to both the retail and accredited investor marketplaces, raise a series of complex questions and problems, including the following:

- a. To start, there is a question of the interplay between the Proposals and mortgage brokerage regulation. Ostensibly, mortgage brokerage regulation already comprehensively governs the distribution and trading in syndicated mortgages. With the Proposals, however, it would appear that the distribution and trading of residential, commercial and construction mortgages would be governed by both the mortgage brokerage regulation and securities law regulation. However, there is no need for a complete replication of regulatory regimes given the narrow focus of public policy concerns that have elicited the Proposals. The policy concerns that have elicited the Proposals are premised on the offering of real estate development and construction mortgages to retail investors. With this policy focus, and to demarcate mortgage

brokerage regulation from securities regulation, mortgage brokerage regulation should still continue to exclusively apply to the distribution and trading of residential, commercial and construction mortgages that are offered by mortgage brokers to institutional investors that qualify as accredited investors. To achieve this objective, and as noted above, we suggest that this could be accomplished by restricting the definition of “syndicated mortgages” and the Proposals such that they would only be applicable to development and construction mortgage securities that are distributed to retail investors.

- b. A further complication involves the inter-play between the Proposals and the banking regulatory framework. As is well known, the federal government and OSFI have spent considerable time and effort in focusing on the real-estate related activities of FRFIs and on the general topic of mortgage lending. In the OSFI context, part of this activity can be seen in the proliferation of guidelines involving real estate lending. These include the calibration of stress tests for residential real estate lending and the various guidelines published by OSFI in relation to real estate lending and the enhanced risk management measures that apply to real estate. What is important to understand is that the OSFI guidelines do not only apply to FRFIs. They also apply to entities and mortgage brokers that enter into contractual relationships with FRFIs in relation to the origination, underwriting, sale and servicing of residential, commercial and construction mortgages, and the outsourcing of mortgage-related activities from FRFIs to these entities and mortgage brokers. Accordingly, mortgage brokers that originate, sell or service mortgages, or perform various outsourcing duties, on behalf of FRFIs have to meet the requirements of OSFI guidelines, notwithstanding that these mortgage brokers are not directly regulated by OSFI. The indirect, but nonetheless concrete application, of OSFI Guidelines to non-FRFI entities is a feature of various OSFI Guidelines, including OSFI Guideline B-10 (outsourcing of business activities, functions and processes), and Guideline B-20 (residential mortgage underwriting practices and procedures). MCAP submits that mortgage brokerages that distribute and sell “syndicated mortgages” to FRFIs are already subject to comprehensive regulation as a requirement to carry on business with FRFIs and, accordingly, the application of the Proposals to this part of the market is unnecessary and would not accomplish any meaningful public policy objectives. If the Proposals do not apply to the sale or distribution of residential, commercial or construction mortgages by mortgage brokers to accredited investors, mortgage brokerage regulation (and banking regulation where the accredited investors are FRFIs) would nonetheless continue to apply;
- c. A further problematic area involves the inter-action of the definition of “syndicated mortgages” and the proposed amendments to NI 45-106 Prospectus Exemptions with the issuance of CMBS, RMBS and MICs pursuant to offering memorandums. With respect to investors, CMBS and RMBS transactions are designed to either provide investors with a co-ownership interest in the mortgage pool or a debt instrument that is secured by a mortgage pool. In either event, the definition of “syndicated mortgage” would be applicable since the definition of “syndicated mortgage” applies to any residential or commercial mortgage where there are multiple investors. With this in

mind, the proposed amendments to NI 45-106 prospectus exemptions apply to CMBS and RMBS transactions. Notwithstanding the application of the proposed amendment to the NI 45-106 Prospectus Exemptions, the features and requirements of these Prospectus Exemptions do not properly apply to CMBS and RMBS transactions involving ordinary residential or commercial mortgages. As an example, and with respect to risk factors, a requirement under the NI 45-106 Prospectus Exemptions includes a statement in bold that “Investments in syndicated mortgages are speculative and involve a high degree of risk...”. We believe this requirement has very little merit involving a CMBS or RMBS transaction where “AAA” or “AA” securities are offered to investors. More generally, we submit that the NI 45-106 Prospectus Exemptions, as drafted in the Proposal, should not apply to CMBS, RMBS or MICs involving residential or commercial mortgages. For CMBS, RMBS and MICs that feature residential and commercial mortgages, the present scheme of securities regulation can continue to apply without modification by the Proposals, including the sale of RMBS, CMBS and MICs to retail investors that are accredited investors. The proposed NI 45-106 Prospectus Exemptions should only be applicable to real estate development and construction mortgages that are distributed to retail investors under the accredited investor exemption (while we provide a definition later in our submission, our concept of a real estate development and construction mortgage would be a mortgage provided to a “developer” (as such term will be discussed below) for land servicing, land development, the development or construction of more than one residence or the development or construction of one or more commercial or industrial buildings or properties for resale to other persons after completion of the development or construction).

The reason for the somewhat technical distinction set out in the above paragraph in relation to CMBS, RMBS and MIC transactions is based on the fact that an ordinary commercial or residential mortgage may be used by the borrower for purposes of construction or improvement. While lenders grant residential and commercial loans with the understanding that proceeds may be used for renovation or construction, , there are lending products, such as lines of credit, where the lender may not necessarily know in advance that proceeds will be used for renovation or construction purposes by the borrower. Accordingly and to deal with this feature of ordinary residential and commercial mortgages, our suggestion is that, in applying the definition of “syndicated mortgages” to real estate development and construction mortgages, the definition of “syndicated mortgage” should not include residential mortgage loans and commercial loans made in the ordinary course where proceeds could be used for renovation, construction or improvement. While there is not a neat and easy analytical separation involved with respect to the distinction we are trying to make between mortgages for real property development and construction versus ordinary course commercial or residential mortgages where the proceeds may be used by a borrower for renovation, construction or improvement, there is nonetheless a very real difference in operation. Mortgages which raise public policy concerns for purposes of the Proposals are those mortgages distributed to retail investors which are made to a developer so that the developer may engage in land servicing, land development, the development or construction of more than one residence or the development or construction of one or

more commercial or industrial buildings or properties for resale to other persons after completion of the development or construction. In furtherance of the distinction we are attempting to make, the submission provides a decision tree for application of our suggested changes to the Proposals and a working definition of “syndicated mortgage”;

- d. There are further problems caused by the present definition of “syndicated mortgage”. For similar reasons given in (c) above in terms of the definition of “syndicated mortgage” applying to ordinary CMBS and RMBS transactions, the definition of “syndicated mortgage” could also apply in relation to the sale of residential mortgages or commercial mortgages into the CMHC NHA MBS Program. Whether or not this is the case would depend on whether the sale of mortgages into the CMHC NHA MBS Program is characterized as a sale to CMHC or is characterized as a sale to multiple investors (with CMHC acting as a nominee of behalf of the investors). We would submit that the transaction is best characterized as a sale to multiple investors, thereby fitting such a sale within the definition of “syndicated mortgage”. We do note that there is a standard, prospectus exemption in securities regulation for the sale of securities issued or guaranteed by the Government of Canada and that this exemption would be applicable. However, one is still left with the potential requirement for the seller of mortgages into the NHA MBS Program to be registered as an “exempt market dealer”. This would be inappropriate insofar as the NHA MBS Program Guide has comprehensive requirements set out by CMHC with respect to initial and on-going requirements for mortgage sellers to be eligible to participate in the NHA MBS Program.

(2) Specific Comments on features of the Proposals: Apart from the over-broad definition of “syndicated mortgages” and the problematic interaction of the Proposals with existing mortgage brokerage regulation and banking regulation as a result, some specific comments can be made with respect to the ambit of the Proposals. These comments address: (a) the institutional versus retail markets; (b) a discussion of prospectus exemptions for syndicated mortgages; and (c) a discussion of the exempt market dealer regime as envisaged by the Proposals. The intent of our commentary on these points is to provide further assistance in shaping the Proposals to meet the public policy concerns with respect to property development and construction mortgage products offered to retail investors.

- a. As noted above, the Proposals apply to all mortgage products distributed to both the institutional and retail investors. Previously, the Mortgage Exemption went to the opposite extreme in exempting mortgage brokers from securities regulation in relation to trades and distributions of all mortgage products to both the institutional and retail investors. In view of the public policy objectives of the Proposals, we would submit that the Proposals represent an over-inclusive regulatory regime and the Mortgage Exemption represented an under-inclusive regulatory regime. We suggest a middle path to achieve the public policy objectives animating the Proposals. Specifically, we suggest that the Proposals retain an exemption for accredited investors that are institutional investors as opposed to retail investors. Mortgage-related markets for institutional, accredited investors in Canada have not raised any public policy concerns. The institutional mortgage market in Canada consists of FRFIs, sophisticated and well

capitalized mortgage brokerages, pension funds and large insurers. This market has functioned efficiently and effectively to facilitate the financing of residential, commercial and construction mortgages with mortgage brokerage regulation (and now banking regulation). While technically governed by mortgage brokerage regulation in relation to the sale or distribution of syndicated mortgages by mortgage brokers, the practical reality is that the practice, information disclosure, covenants and monitoring requirements of institutional purchasers in the Canadian mortgage markets are well in excess of what would otherwise be applicable in terms of mortgage brokerage regulation or the Proposals. The imposition of banking regulation through OSFI guidelines that apply to mortgage brokers that deal with FRFIs in relation to mortgages has only further elevated the regulatory requirements for the Canadian institutional mortgage market. Moreover, institutional investor purchasers of mortgage products (whether or not they are FRFIs) have direct and extensive experience in the origination, management and servicing of residential, commercial and construction mortgages. Institutional investors are well-placed in analyzing, pricing and overseeing the underwriting, origination and servicing of mortgage-related products. The requirements of applicable securities law regulation, through prospectus requirements and a requirement that a mortgage broker register as an exempt market dealer, would not add any protections or address any public policy concerns arising out of or related to the Canadian institutional mortgage market, including that part of the market focused on development and construction financing. Further, and if the Proposals did not apply to the institutional component of the market for distributions of “syndicated mortgages”, the applicable mortgage brokerage regulation and banking regulation as discussed above would still be applicable with respect to institutional investors.

- b. In relation to the proposed amendments to NI 45-106 Prospectus Exemptions, and as we noted above, we believe that the Proposals should only be applicable to the sale or distribution of syndicated mortgages where the investors are not exclusively accredited investors and where “syndicated mortgages” are defined as mortgages provided to developers for purposes of land servicing, land development, the development or construction of more than one residence, or the development or construction of one or more commercial or industrial buildings or properties for resale to other persons after completion of the development or construction. As noted above, the design and specific requirements set out in the proposed amendments to NI 45-106 Prospectus Exemptions only make sense in this specific context.
- c. Based on our comments above, a specific discussion of the Proposals in relation to the requirement that mortgage brokers may have to register as “exempt market dealers” is appropriate. The Proposals note that “market participants that are in the business of trading syndicated mortgages would be required to consider whether the registration requirement applies to them” and further note that “some of these firms will be required to become registered as a dealer or to rely on a registration exemption.” The Proposals observe that for “firms that are currently in the business of trading in syndicated mortgages and are licensed under mortgage broker legislation, the transition to registration as an exempt market dealer could potentially involve significant costs.

These firms would be subject to new requirements and would be required to adopt new policies and procedures.” In recognition of these difficulties, the Proposals suggest that the changes to registration exemption for mortgages will take effect one year later than the other Proposed Amendments to minimize the immediate impact on these firms.

We note that, if “syndicated mortgages” are “securities”, and under the current configuration of exemptions provided under the Proposals, a mortgage broker would also have to be registered as an “exempt market dealer” under NI 31-103 in order to distribute “syndicated mortgages” under the accredited investor exemption for the prospectus requirement. This would ostensibly require mortgage brokers who participate exclusively in the institutional, accredited investor space with respect to residential, commercial or construction mortgages to register as an “exempt market dealer” under NI 31-103. We do not believe that this would be a beneficial result for a variety of reasons. First, we do not believe that there is a public policy requirement or need to replace the application of mortgage brokerage regulation with the Proposals as it relates to the institutional investor market in relation to residential, commercial or construction mortgages. In this respect, we note that while the Proposals point “particularly” to the need for investor protection in the context of the retail market, the Proposals provide no indication that there are any concerns with respect to any part of the institutional investor marketplace with respect to mortgage-related products. The public policy concerns are best addressed by targeting the Proposals to cover retail investors (notwithstanding some retail investors may be accredited investors). Second, there is no public policy objective in requiring a mortgage broker to register as an exempt market dealer in relation to the sale and distribution of residential and commercial mortgages. From a policy perspective, registration as an “exempt market dealer” should only be a requirement with respect to trades and distributions by a mortgage broker of mortgages made to developers for land servicing, land development, the development or construction of more than one residence or the development or construction of one or more commercial or industrial buildings or properties for resale to other persons after completion of the development or construction where the investors include retail investors (thereby excluding trades or distributions solely involving institutional investors that are accredited investors). Additionally, trades or distributions involving ordinary residential or commercial mortgages through RMBS, CMBS or mortgage investment company private placements offered by mortgage brokers and other persons to accredited investors (including retail investors) should continue to be addressed by the current, applicable securities law requirements.

While the CSA recognizes the duplication of costs, regulation and administration that will occur as a result of the application of both mortgage brokerage and securities regulation to mortgage brokers, and while we agree with these comments and concerns, there are some additional points that can be usefully made in relation to this general topic. The first is that the costs and concerns extend beyond corporate procedures and compliance. There are also concerns with respect to the licensing of personnel. If a mortgage broker is required to also be registered as an “exempt market

dealer”, this would also likely entail the requirement to duplicate the registration of mortgage brokerage personnel who are currently licensed as “mortgage associates”, “mortgage salespersons”, “mortgage agents” or similar designations as “dealing representatives” under NI 31-103. While a mortgage brokerage may find a person that meets the requirements of a “chief compliance officer” under NI 31-103, there are substantial concerns about qualifying mortgage brokerage personnel as “dealing representatives” under NI 31-103. Specifically, the educational and experience requirements for “dealing representatives” are different from those required under mortgage brokerage regulation. We are concerned about the employability of personnel that do not successfully complete the initial and on-going educational requirements to be a “dealing representative” of an “exempt market dealer”. We would also add that the regulatory concerns relating to interacting with institutional investor clients is comprehensively addressed under mortgage brokerage regulation, and that for these purposes, the “clients” are all large sophisticated banking, insurance and pension clients that qualify as accredited investors. We do not see any practical benefit in requiring mortgage brokers that exclusively sell residential, commercial and construction mortgages to institutional investors to be registered as “exempt market dealers” and we further see no benefit in having personnel of these mortgage brokerages register as “dealing representatives”. There will simply be additional costs and complications for all mortgage brokers serving institutional investor clients, with the unnecessary costs passed on to investors and then ultimately to consumers.

(3) Requested Comments on the Proposals: The Proposals requested comments with respect to a number of features. This part of the letter will address the specific topics on which the Proposals asked for commentary that are relevant for purposes of our submission. In this respect, questions 5 through 7 asked by the CSA are relevant to our submission. Our answers in response to these questions are as follows:

- a. Answer to Question 5 (should alternative prospectus exemptions be provided to facilitate the distribution of specific classes of syndicated mortgages where the investor protection concerns may not be as pronounced?): In our submission, and in relation to “syndicated mortgages”, the only specific area that raises investor protection concerns involves development and construction mortgages offered to the retail market. In this respect, we note that the Proposals also provide no indication that there are any problematic aspects with respect to the operation of the institutional investor mortgage marketplace and we further note that the proposed amendments to NI 45-106 Prospectus Exemptions only make sense as it relates to development and construction mortgages. As noted above, institutional investors that purchase residential, commercial and construction loans are experienced in the origination, underwriting, valuation and servicing of these mortgage products and, in view of the application of mortgage brokerage regulation (and now banking regulation to a mortgage broker that is involved with a FRFI in relation to the origination, underwriting or servicing of any type of mortgage product) to the institutional investor marketplace, we believe that there are compelling reasons to provide additional exemptions to specifically focus the Proposals on a very specific part of the mortgage market that raise investor protection

concerns, being the retail part of the market as it relates to development and construction mortgages. We further believe that the definition of “syndicated mortgages” should be tweaked so that they exclude ordinary residential and commercial mortgages which may be used for real property improvement.

- b. Answer to Question 6 (should we consider adopting an exemption for the distribution of syndicated mortgages on existing residential properties similar to the exemption for “qualified syndicated mortgages” under British Columbia Securities Commission Rule 45-501 Mortgages?): In defining the concept of a “qualified syndicated mortgage”, BC Rule 45-501 addresses a “syndicated mortgage”: (i) sold through a mortgage broker; (ii) that secures a debt obligation on property used solely for residential purposes and containing no more than four residential dwelling units; and (iii) does not secure a debt obligation incurred for the construction or development of property (amongst other criteria). Within the confines of BC Rule 45-501, the mortgage broker does not have to rely on a prospectus exemption and does not have to be an exempt market dealer with respect to a trade or distribution involving institutional investors. While we believe that BC Rule 45-501 moves in the right direction, we believe that it has a number of problems. First, as indicated above, we believe that the distribution of both residential and commercial mortgages by mortgage brokers to institutional investors through co-ownership agreements, participations or other agreements in which there is more than one “lender” should not be subject to securities regulation for the reasons outlined above. As drafted, BC Rule 45-501 only covers residential mortgages. Second, and while we understand why the drafting included the proviso that a “syndicated mortgage does not secure a debt obligation incurred for the construction or development of property”, we have concerns about this mechanism for purposes of limiting the exemption. As we previously noted, and in the ordinary course, the proceeds of some residential and commercial mortgages may be used for property improvement or redevelopment. We would suggest that these mortgages are different from and should be distinguished from syndicated mortgages provided to developers for property development and construction financing. Amongst the salient differences, BC Rule 45-501 captures renovations and improvements by property owners in relation to their own properties. BC Rule 45-501 is not restricted to developers that are in the construction and development business who perform construction and development activities for resale. Further, and as indicated, and for certain lending products such as lines of credit, a lender may not know whether an owner will use the proceeds to perform construction or renovation on their property. Given this, and also given the fact that construction and renovation may be an incidental feature of ordinary residential and commercial loans, the application of BC Rule 45-501 complicates the inclusion of ordinary residential and commercial mortgages which may be used for construction and renovation in RMBS and CMBS transactions and in MICs. Third, BC Rule 45-501 does not distinguish between situations where real property and development mortgages are distributed or sold by mortgage brokers exclusively to institutional investors as accredited investors versus situations in which these products could be sold by mortgage brokers to the retail investors through an accredited investor exemption or other exemptions. We believe that trades and distributions of

development and construction mortgages by mortgage brokers to exclusively institutional accredited investors should remain outside of the scope of “syndicated mortgages” and the Proposal. The definition of “syndicated mortgages” should only capture situations in which development and construction mortgages are to be sold or distributed by mortgage brokers to retail investors, whether through the accredited investor exemption or other existing exemptions.

- c. Should an exemption be provided for the distribution of a syndicated mortgage to a small number of lenders on a property that is used for residential or business purposes by the mortgagor? If so, should the exemption be subject to conditions? For example, should the exemption be available only for a distribution: (i) by an individual; and/or (ii) relating to a residential property; and/or (iii) involving a specified maximum number of lenders?): We believe we have answered this question in the body of our submissions. As noted, we believe that residential, commercial and construction mortgages sold by mortgage brokers to institutional investors that are accredited investors should continue to be governed by mortgage brokerage regulation (and banking regulation to the extent that a mortgage broker is dealing with a FRFI). The definition of “syndicated mortgage” and the Proposals should only apply to development and construction mortgages made to developers and distributed to retail investors.. With this in mind, and as we noted above, our references to “construction” or “development and construction mortgages” are meant to refer to mortgages specifically provided to developers for land servicing, land development, the development or construction of more than one residence or the development or construction of one or more commercial or industrial buildings or properties for resale to other persons after completion of the development or construction. As noted, the term “developer” could be defined to only include an entity engaged in the business of land servicing, land development, the development or construction of more than one residence or the development or construction of one or more commercial or industrial buildings or properties for resale to other persons after completion of the development or construction. The intention of referring to a “developer” would be to exclude an owner of a residential or commercial property that performs construction, renovation or development activity on their own property for their own use.

(4) Summary of Recommendations: In closing, we would like to take the opportunity to provide a decision tree for purposes of the application of the Proposals. In our submission, the definition of “syndicated mortgage” and the Proposals would apply where both conditions (1) and (2) set out below are satisfied::

1) Is the mortgage a development and construction mortgage?

A development and construction mortgage would have the following features:

- a) It is a loan made to a “developer”. A “developer” would be an entity engaged in the business of land servicing, land development, the development or construction of more than one residence or the

development or construction of one or more commercial or industrial buildings or properties for resale to other persons after completion of the development or construction;

- b) It is a loan made for the specific purpose of the developer engaging in the business described in (a) above.

If the answers to both (1)(a) and (b) are yes, proceed to (2).

If the answer to either (1)(a) or (b) is no, it is not a "syndicated mortgage" and the Proposals do not apply.

2) Is the mortgage distributed to retail investors in whole or in part?

If the answers to question (1) and question (2) are yes, it is a "syndicated mortgage" and the Proposals apply.

If the answer to either question (1) or question (2) is no, it is not a "syndicated mortgage" and the Proposals do not apply.

On our submission, and if (1) and (2) above are applicable to the definition of a "syndicated mortgage", a working definition of "syndicated mortgage" could read as follows: "a mortgage made to a developer for purposes of land servicing, land development, the development or construction of more than one residence or the development or construction of one or more commercial or industrial buildings or properties for resale to other persons after completion of the development or construction and in which two or more persons (excluding accredited investors that are institutions) participate, directly or indirectly, as a lender in a debt obligation that is secured by such mortgage." The definition of a "developer" would be an entity engaged in the business of land servicing, land development, the development or construction of more than one residence, or the development or construction of one or more commercial or industrial buildings or properties for resale to other persons after completion of the development or construction.

We thank you for the invitation to participate and provide commentary on the Proposals and we are happy to discuss our submissions with you at your request.

Yours truly,



Mark Adams
General Counsel
MCAP Commercial LP