Interpretation

Effective Date Posting: December 5, 2019
Identifier: No. MB0038INT

Amended Disclosure Forms 3.0, 3.1 and 3.2 for Non-Qualified Syndicated Mortgages (for Transactions prior to July 1, 2021)

Purpose

This Interpretation describes how the Financial Services Regulatory Authority of Ontario (FSRA), with the introduction of amended disclosure Forms 3.0, 3.1 and 3.2, is reducing burden for mortgage brokerages when managing non-qualified syndicated mortgages for sophisticated investors.

Scope

The Interpretation applies to mortgage brokerages transacting in non-qualified syndicated mortgages prior to July 1, 2021.

Rationale and context

The *Mortgage Brokerages, Lenders and Administrators Act, 2006* (MBLAA) sets out the requirements that must be met by those wishing to conduct mortgage brokering activities, including syndicated mortgage investments, in Ontario.

To strengthen investor protections relating to syndicated mortgages, the Ministry of Finance made amendments to Ontario Regulation 188/08 – Mortgage Brokerages: Standards of Practice (O. Reg. 188/08) under the MBLAA effective July 1, 2018. The amendments placed additional responsibilities on mortgage brokerages for transactions related to the selling of non-qualified syndicated mortgages, including the requirement to complete enhanced disclosures as found in Forms 3.0, 3.1 and 3.2.

Since the introduction of the disclosure forms in July 2018, some industry participants expressed that Forms 3.0, 3.1 and 3.2 create burden for mortgage brokerages that have effective disclosure frameworks in place, frameworks that meet the requirements of O. Reg. 188/08.

FSRA consulted with industry to better understand their concerns with Forms 3.0, 3.1 and 3.2, and responded with the introduction of amended forms which aim to reduce burden for mortgage brokerages.

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FSRA's Authority

FSRA's Chief Executive Officer (CEO) has the authority to approve forms in accordance with subsection 54(1) of the MBLAA.

Mortgage Brokerages' Obligations

The July 2018 amendments to O. Reg. 188/08 placed expanded obligations on mortgage brokerages dealing with non-qualified syndicated mortgages[1], including the introduction of Forms 3.0, 3.1 and 3.2 pursuant to O. Reg. 188/08 s. 24(1)1.

Consistent with FSRA's mandate and the authority granted to the CEO for approving forms, the CEO amended Forms 3.0, 3.1 and 3.2. With the amended disclosure forms, mortgage brokerages working with sophisticated investors complete fewer sections of the forms, as the forms are complemented by the use of their own disclosure documents, to meet the requirements under O. Reg. 188/08.

Sophisticated investors are generally more knowledgeable and experienced with complex investments. A sophisticated investor is a member of a designated class[2] who is a/an (i) non-individual; or (ii) individual who, alone or together with his or her spouse, beneficially owns financial assets[3] that have an aggregate realizable value that, before taxes but net of any related liabilities, **exceeds $5 million** and who provides written confirmation of this to the brokerage.

Compliance expectations

Mortgage brokerages working with sophisticated investors are required to complete shorter versions of Forms 3.0, 3.1 and 3.2 to complement their own disclosure documents to meet the requirements under O. Reg. 188/08.

Mortgage brokerages working with non-sophisticated investors must continue to complete the required sections of Forms 3.0, 3.1 and 3.2, to meet the disclosure requirements under O. Reg. 188/08. FSRA will periodically conduct reviews to assess compliance with requirements related to non-sophisticated investors and will take regulatory action where appropriate.

Mortgage brokerages are expected to comply with this Interpretation, along with the MBLAA and its regulations, when dealing with syndicated mortgage investments. Failure to comply may result in enforcement or supervisory action. These enforcement options include suspension or revocation of licence and/or Administrative Monetary Penalty (AMP).

Background

Under the MBLAA, mortgage brokerages are required to take reasonable steps to ensure that a mortgage or an investment in a mortgage is suitable for a client (i.e., borrower, lender or investor) based on the needs and circumstances of the client. Brokerages are also required to provide clients with certain disclosures, including written disclosure of the material risks of a mortgage or investment in a mortgage.

In order to enhance consumer protection for syndicated mortgage investments, the Ministry of

Finance strengthened investor protections under the MBLAA. The July 1, 2018 amendments made to O. Reg. 188/08 require mortgage brokerages that deal with non-qualified syndicated mortgage transactions to complete the following prescribed forms:

- Form 3.0 – Information about Investor/Lender in a Non-Qualified Syndicated Mortgage
- Form 3.1 – Suitability Assessment for Investor/Lender in a Non-Qualified Syndicated Mortgage
- Form 3.2 – Disclosure Statement for Investor/Lender in a Non-Qualified Syndicated Mortgage

Effective date and future review

This Interpretation Guidance was effective December 5, 2019. It was updated on March 10, 2021 to update its application period in order to reflect the transfer of non-qualified syndicated mortgages with non-Permitted Clients to the Ontario Securities Commission effective July 1, 2021.

The latest possible date for FSRA to initiate a review of this Interpretation will be March 1, 2024.

About this guidance

Interpretation documents set out FSRA's view of requirements under its legislative mandate (i.e. legislation, regulations and rules). Visit FSRA's Guidance Framework to learn more.

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Updated: March 10, 2021

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[1] A non-qualified syndicated mortgage is a syndicated mortgage that does not meet the definition of a qualified syndicated mortgage pursuant to subsection 1(2) of O. Reg. 188/08, and is not incurred for the construction or development of property pursuant to subsection 1(3) of O. Reg. 188/08.

[2] The designated classes of investors are defined in Section 2 of Ontario Regulation 188/08 (Mortgage Brokerages: Standards of Practice). These include classes for individuals who have net income before taxes and net financial assets above a defined limit.

[3] Financial assets being cash, securities within the meaning of the *Securities Act*, the cash surrender value of a life insurance contract; a deposit or evidence of a deposit.