

**December 14<sup>th</sup>, 2015**

**Subject: Comments on Draft Initial Regulations for the CMA**

**About the BC MIC Managers Association (BCMMA)**

The purpose of the BCMMA is to facilitate the exchange of information and ideas with the goal of assisting our members in the management of their organizations, to present a common voice to regulators in an effort to further the understanding of the significant role that our industry plays in BC and to set and uphold industry standards for ethics and professionalism. In the operation of our businesses, our members remain accountable to Canada Revenue Agency (CRA) and the Income Tax Act, the Financial Institutions Commissions (FICOM) and the British Columbia Securities Commissions (BCSC).

As an association, the BCMMA consists of 25 members, managing 38 MICs with almost \$2 Billion in mortgage funds currently under administration. A significant portion of these funds turn over every 18-24 months, permitting the continual servicing of new borrowers throughout BC. As the BCMMA currently only represents the 25 active members, we would suggest that our industry here in BC provides well over \$3 Billion in economic impact.

**Draft Initial Regulations for the Cooperative Capital Markets (CCM) Regulatory System**

On August 25, 2015 the Ministers responsible for capital markets regulation in British Columbia, Ontario, Saskatchewan, New Brunswick, Prince Edward Island and Yukon announced the publication for [comment](#) of a revised consultation draft of the uniform provincial/territorial [Capital Markets Act \(CMA\)](#), draft [initial regulations](#) and related materials. The CMA and the regulations would together constitute the single set of provincial/territorial laws under the Cooperative Capital Markets Regulatory System (Cooperative System) of which British Columbia is a participant.

As we understand, participating jurisdictions are actively engaged in finalizing proposed legislation to establish jointly the Capital Markets Regulatory Authority which would administer the CMA, the federal Capital Markets Stability Act and the initial regulations. In addition, implementation legislation is also being developed to ensure a smooth transition to the new regime and to integrate the new regime into the general laws of each participating province and territory.

**BCMMA Comments on the Draft Initial Regulations for the CCM Regulatory System**

Given the above, the BCMMA would like to provide comment relating to an offering memorandum exemption (OM exemption) on page 5 of the "*Draft Initial Regulations for the Cooperative Capital Markets Regulatory System*" published August 25, 2015.

*"While the OM exemption is currently available in some CMR Jurisdictions, it will represent a new prospectus exemption in Ontario that will enable issuers to raise capital from a broad investor base. As currently contemplated, there will be no limit on the offering size. However there will be investment limits that will vary depending on the income or assets of the purchaser and on whether the purchaser has received suitability advice from a registrant that is a portfolio manager, a member of the Investment Industry Regulatory Organization of Canada or an exempt market dealer. The registrant will not have to be independent of the issuer."*

From this paragraph we wish to comment on the following:

1. *“there will be investment limits that will vary depending on the income or assets of the purchaser and on whether the purchaser has received suitability advice from a registrant that is a portfolio manager, a member of the Investment Industry Regulatory Organization of Canada or an exempt market dealer.”*

Without including the specific proposed investment limits or income and asset amounts in the draft initial regulations for comment, the BCMMA is submitting our recommendation. It appears there will be income or asset tests coupled with 2 prescribed investment limits under the OM exemption, one for those that have received suitability advice from a registrant and one for those that have not.

- i.) Income or asset requirements. BCMMA recommends the income or assets requirements be based on the proposed Ontario model for “eligible investor.” If investing more than \$10,000, the investor should meet eligibility requirements as defined by the Ontario Securities Commission.

“Eligible investor” means

(a) a person whose

(i) net assets, alone or with a spouse, in the case of an individual, exceed \$400 000,

(ii) net income before taxes exceeded \$75 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year, or

(iii) net income before taxes, alone or with a spouse, in the case of an individual, exceeded \$125 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year,

- ii.) Suitability advice received. For eligible investors relying on the OM exemption that have received suitability advice from a registrant, the BCMMA recommends an investment limit of \$100,000 annually or \$200,000 annually if investing jointly with a spouse.
- iii.) No Suitability advice received. For eligible investors relying on the OM exemption that do not receive suitability advice from a registrant, the BCMMA recommends an investment limit of \$50,000 annually or \$100,000 annually if investing jointly with a spouse.

2. *“The registrant will not have to be independent of the issuer.”*

The BCMMA strongly supports this draft initial regulation stating the registrant does not have to be independent of the issuer as we feel this is the most significant item addressed.

3. Further, BCMMA would like to provide comment regarding MIE’s as they relate to Investment Fund Managers (IFM).

As originators of mortgage business, members of BCMMA are not in the business of trading in securities and strongly support legislation contained in BC Instrument 32-517 as well as CSA and OSC Notices 31-232 and 81-722 respectively confirming that Mortgage Investment Entities (MIEs) are not Investment Fund Managers. The BCMMA submits that MIE’s are not Investment Fund Managers and should be expressly permitted to rely on the OM exemption within the regulations. The BCMMA recommends that MIEs be “carved in” to this legislation and expressly permitted to rely on the OM exemption.

4. Finally, BCMMA would like to comment on implementation legislation being developed to ensure a smooth transition to the new regime.

Currently, Mortgage Investment Entities are exempt from registration until December 31<sup>st</sup>, 2016. Should no further extension be granted, the BCMMA recommends an implementation phase of this draft legislation until December 31<sup>st</sup>, 2018 to permit a 2 year implementation phase for adequate time to comply. Further, the BCMMA requests that the finalized legislation be specific to new investment activity only and provide for a “grandfathering” of existing investors. (An example of this would be a current investor that would not qualify as an “eligible investor” yet has consistently reinvested his/her annual dividends in excess of \$30,000 or \$50,000/year and wishes to continue to do so).

While we view certain points of the Memorandum of Agreement as a positive step in preserving the MIE industry here in BC, specifically that the registrant will not have to be independent of the issuer, concern still remains with respect to prescribed annual investment limits.

The BCMMA respectfully submits this comment paper on behalf of our members and ask that you value the input and recommendations.

Respectfully,

**BC MIC Managers Association (BCMMA)**

By way of:

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