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Regulatory Changes to the Mortgage Brokerages, Lenders and Administrators Act, 2006: Increased Brokerage Obligations for Non-Qualified Syndicated Mortgage Transactions

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Regulatory amendments that became effective on July 1, 2018 significantly expand the disclosure and information-gathering obligations – and, in practice, potential liability – of mortgage brokerages dealing in non-qualified syndicated mortgage transactions. These expanded obligations include:

a) collecting specified information from each investor-lender, including personal, employment and financial data and investment profile;

b) completing an extensive suitability assessment for each investor-lender, covering financial circumstances, investment needs, level of financial knowledge and investment experience;

c) presenting only suitable mortgage investments to each investor-lender and providing extensive disclosure about each such opportunity, including the disclosure of material risks, any fees or remuneration being received or paid by the brokerage and the brokerage's relationship with each party to the transaction;

d) reflecting all the above on lengthy new forms approved by the Superintendent, which must be signed by the investor-lender and brokerage for accuracy and completeness; and

e) implementing a mechanism for resolving complaints from the public, and reporting such complaints directly to the Superintendent within ten days of receipt.

These expanded obligations apply to all non-qualified syndicated mortgage transactions, being a significant component of the syndicated mortgage industry that includes *any* of the following:

a) where the mortgaged property is not primarily residential (and, in any event, where it includes more than one commercial unit or more than four units of any type);

b) where the amount of debt secured by the mortgaged property, excluding only debt that ranks behind the syndicated mortgage, exceeds 90% of the mortgaged property's fair market value (without regard to potential future development of the property); and

c) where the syndicated mortgage secures a debt obligation incurred for the construction or development of a property.

The Financial Services Group at Aird & Berlis LLP is currently engaged in several high-profile mandates helping stakeholders navigate through – and recover from – failed syndicated mortgages. If you have any questions about the impact of the new regulations or syndicated mortgage transactions more generally, please contact one of the insolvency and restructuring members of our Financial Services Group.

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