

AUTHORIZED PARTICIPANTS IN A LOAN SYNDICATION

Background

This Advisory outlines the limitations set out in the *Credit Unions and Caisses Populaires Act 1994* (the “Act”) and provides guidance on confirming compliance with the provisions of the Act. It also outlines other considerations on mortgage loans and reciprocity agreements between provinces.

Limitations

As outlined in subsection 190 (1) of the Act, a credit union may only lend to its members or by participating in a loan syndication in which the borrower is a member of a participating “credit union”. As defined in the Act, a “credit union” is limited to a corporation incorporated or continued as a credit union or caisse populaire in Ontario (“Ontario credit union”).

Permitted parties to a loan syndication agreement are restricted to prescribed organizations as outlined in subsection 56 of Ontario Regulations 237/09. These include: credit unions chartered or continued in Ontario, including their subsidiaries or affiliates; a league, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec, La Caisse centrale Desjardins du Québec or Credit Union Central of Canada; and/or a financial institution (See definition in Appendix 1) other than a securities dealer. A credit union that is not an Ontario credit union is not included as a prescribed organization.

Mortgage Loans Security Registration

Where a loan being syndicated is a mortgage loan, the Mortgage Brokers Act (the “MBA Act”) applies. The MBA Act restricts persons who may carry on mortgage business or trade in mortgages in Ontario to a person who has a brokerage licence or is exempted from the requirement to have such a licence. A person or entity is defined as a mortgage lender in Ontario when he, she or it lends money in Ontario on the security of real property, or holds themselves out as doing so. Every financial institution is exempted from the requirement to have a brokerage licence or a mortgage administrator’s licence.

The definition of a financial institution under the MBA Act also includes only Ontario credit unions.

Existing reciprocity agreement with other provinces or territories

In May 1982, the Ontario government entered into the Registration in Ontario of Manitoba Credit Unions Agreement (the “Reciprocity Agreement”) with Manitoba to register and act upon security registered in each respective province pursuant to subsection 332 (1) of the Act. However, the Reciprocity Agreement does not provide the ability for Ontario or Manitoba credit unions to provide loans in the province of the other.

Guidance

Participants in a loan syndication are limited to organizations as prescribed under legislation. Credit Unions should ensure that participants in existing or planned loan syndications qualify to participate. Where a credit union has a loan syndication with a non qualified lender, they should contact their Regional Manager to discuss plans to achieve compliance. Credit unions should also ensure that they comply with the requirements outlined in the Mortgage Brokers Act and consider the restrictions of any reciprocity agreements.

DICO’s examination process will include a review of syndicated loans portfolio to confirm that all legislative requirements are met.

Please refer to Appendix 1 regarding supporting legislative authority.

If you have any questions, please contact your Regional Manager at DICO.

APPENDIX 1

Legislative Authority

The Caisses populaires and Credit Union Act, 1994

Section 1- Definitions

“credit union” means a corporation incorporated or continued as a credit union or caisse populaire under this Act or a predecessor of this Act;

“financial institution” means,

- a) a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada),
- b) an insurer licensed under the *Insurance Act*,
- c) a corporation registered under the *Loan and Trust Corporations Act*,
- d) an entity that is,
- e) incorporated or formed by or under an Act of the Parliament of Canada or of the legislature of a province, and
- f) primarily engaged in dealing in securities, including portfolio management and investment counseling,
- g) a credit union,
- h) a league,
- i) a retail association as defined under the *Cooperative Credit Associations Act* (Canada), and
- j) such other entities or classes of entities as may be prescribed.

Note: No other entities have been prescribed.

Subsection 190 (1).

190. (1) A credit union shall loan money only,

- (a) to its members; or
- (b) by participating in a loan syndication in which the borrower is a member of a credit union that is one of the lenders in the loan syndicate.

Ontario Regulation 237/09

Syndicated loan

56. A syndicated loan is a loan including any related credit facilities made under a syndicated loan agreement by a credit union, a league, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec, La Caisse centrale Desjardins du Québec or Credit Union Central of Canada acting as the syndicating credit union where:

1. The parties to the syndicated loan agreement are the borrower, the syndicating credit union and one or more of the following:
 - i. Another credit union or its subsidiary or affiliate.
 - ii. A league, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec, La Caisse centrale Desjardins du Québec or Credit Union Central of Canada.
 - iii. A financial institution other than a securities dealer.

The Mortgage Brokerages, Lenders and Administrators Act, 2006

Section 1- Definitions

“financial institution” means a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), a credit union or caisse populaire to which the *Credit Unions and Caisses Populaires Act, 1994* applies including a league within the meaning of that Act, an insurer licensed under the *Insurance Act*, a corporation registered under the *Loan and Trust Corporations Act* or a retail association as defined under the *Cooperative Credit Associations Act* (Canada).