



March 14, 2022

Financial Services Regulatory Authority of Ontario
5160 Yonge Street, 16th Floor
Toronto, ON M2N 6L9

Re: Consultation on proposed new licensing requirements guidance for mortgage agents and brokers [2022-002]

We welcome the opportunity to provide comments to the Financial Services Regulatory Authority of Ontario (FSRA) with respect to the consultation on the above-proposed guidance (**Proposed Guidance**). The Proposed Guidance corresponds with the draft proposed amendments to Ontario Regulation 409/07 under the *Mortgage Brokerages, Lenders and Administrators Act* (MBLAA), which are also currently out for separate consultation with the Ministry of Finance (**Proposed Regulation**).

1. Overview of KingSett Mortgage Corporation and the KingSett Group of Funds

The KingSett funds are highly regarded as among the leading real estate private equity investors in Canada as evidenced by, among other things, the high quality of institutional investors that have invested in funds managed by the KingSett group. In addition to these recognized institutional investors, many prominent Canadian high net worth families have invested in KingSett-managed funds directly or indirectly through recognized Canadian wealth management firms. These investors have collectively entrusted the KingSett group with more than \$12 billion of investment capital to date.

KingSett Mortgage Corporation (KMC) is licensed as a mortgage brokerage (License #11330) and a mortgage administrator (License #11897) in Ontario and is a Canada Mortgage and Housing Corporation (CMHC) approved lender and issuer under the National Housing Act (NHA). KMC's senior management team and its employees have extensive investment and operations experience in the real estate and mortgage markets across Canada.

2. General Comments

In general, we support FSRA's overall policy objectives of ensuring broker and agent education and competency requirements are aligned with the demands of the mortgage market, enhancing consumer protection for borrowers, and promoting confidence in the mortgage brokering industry. However, we seek greater clarity regarding the scope of the authorizations granted under the proposed license levels, and propose the adoption of a qualifying experience equivalency framework that would recognize a Level 2 Mortgage Agent or Mortgage Broker

license applicant's prior mortgage experience gained at a financial institution, as defined in section 1 of the MBLAA, or at a CMHC-approved lender.

3. Comments on Specific Aspects of the Proposed Guidance

Scope of meaning of “provided by” under the new licensing classes

We are seeking clarity on what is meant by “provided by” as that phrase is used under the heading “New licensing classes” at page 5 of the Proposed Guidance, in light of the rationale and background set out in the Proposed Guidance and the wording of the Proposed Regulations.

In the Proposed Guidance at page 3, FSRA notes that:

Private mortgages may have terms and conditions that pose unfamiliar risks to consumers, given that they are not underwritten in the same way as those offered by more traditional financial institutions. Mortgage agents and brokers must have the appropriate expertise to recommend products that meet consumers' needs. They must take reasonable steps to properly understand, assess and inform consumers of any potential risks associated with private mortgages or mortgage investments.

We take this to mean that the focus of the proposed licensing classes is ensuring that mortgage agents understand the nature of the product that is being offered, and the classes are not intended to restrict mortgage agents from dealing with certain types of investors or borrowers.

With this in mind, we turn to the wording of the new licensing classes under the Proposed Guidance at page 5, which for a Level 1 Mortgage Agent reads as follows:

Mortgage agent level 1 license authorizes licensees to deal and trade in mortgages provided by:

- Financial institutions, as defined in section 1 of the MBLAA
- Lenders approved by [CMHC] under the [NHA].

Taking this wording together with the rationale and background in the Proposed Guidance, we read this to mean that a Level 1 Mortgage Agent may only deal and trade in mortgages that are provided by a financial institution or a CMHC-approved lender (for example, the financial institution or CMHC-approved lender is the lender noted on the commitment letter) but the Level 1 Mortgage Agent is not restricted as to who the borrower, investor, or subsequent purchaser of such mortgages might be. In other words, the borrower, investor or subsequent purchaser does not also have to be a financial institution or CMHC-approved lender.

This interpretation would, for example, permit a KMC employee who has a Level 1 Mortgage Agent designation to offer a mortgage where KMC is the lender as shown on the commitment letter to investors who are high-net-worth individuals. We believe that this is the correct

interpretation as the focus is on the ability of the KMC mortgage agent to understand and appropriately describe the risks of the mortgage product in accordance with the rationale described by FSRA.

However, we note that there is some uncertainty of interpretation given the wording of the Proposed Regulation.

Under the Proposed Regulation, a Level 1 Mortgage Agent license permits the licence holder to:

deal or trade in mortgages exclusively with lenders that are financial institutions or that are approved lenders under the National Housing Act (Canada) (Proposed Regulation, s. 5.0.1(3)(1)).

The language of the Proposed Regulation is ambiguous: it could be interpreted to mean that a Level 1 Mortgage Agent cannot deal with any parties except financial institutions or CMHC-approved lenders, such that, to take our example above, the Level 1 Mortgage Agent who is a KMC employee could only offer the KMC mortgages to another CMHC-approved lender or a financial institution. This appears overly restrictive in our view.

Alternatively, the Proposed Regulation could be interpreted to mean that the phrase “exclusively with lenders that are financial institutions ...” applies only to the mortgages themselves and not to the dealing or trading activities. This interpretation would be consistent with FSRA’s rationale and our interpretation of the Proposed Guidance.

We would appreciate FSRA’s confirmation that our interpretation is correct and we suggest that clarifications be made in the Proposed Guidance to reflect this position, for example, by stating that “provided by” a lender means that the lender has originated the loan or is the lender as stated on the commitment letter or other loan documents.

Please note that we will be providing separate commentary on the Ministry of Finance’s Proposal Number 22-MOF002, which seeks input regarding the Proposed Regulation. In particular, we will recommend that the Ministry of Finance consider revising section 5.0.1(3)(1) of the Proposed Regulation to align with FSRA’s Proposed Guidance by specifically allowing Level 1 Mortgage Agents to “exclusively deal or trade in mortgages that are provided by or on behalf of lenders that are financial institutions or that are approved lenders under the *National Housing Act (Canada)*”.

CMHC mortgage loans

As FSRA is aware, CMHC mortgage loans that are eligible for the various NHA programs are sold to various third parties, who may be financial institutions but could also be non-deposit-taking affiliates of financial institutions (e.g. a non-bank affiliate of a Schedule I bank), or a

wide range of investors. Further to our discussion above, we would appreciate FSRA's confirmation that such downstream transactions would be permitted to be handled by a Level 1 Mortgage Agent.

Qualifying experience criteria for Mortgage Agent Level 2 License

We recommend that FSRA consider additional qualifying experience as eligibility criteria for the Level 2 Mortgage Agent and Mortgage Broker licence classes. This would allow applicants with significant and relevant experience gained at financial institutions in mortgage underwriting, administration or origination to directly obtain licenses as Level 2 Mortgage Agents or as Mortgage Brokers.

KMC frequently hires employees from financial institutions with extensive experience in underwriting, administering and originating mortgages. Because financial institutions are exempt from the application of the MBLAA, however, such employees are likewise exempt from mortgage agent and mortgage broker licensure requirements. In our experience, employees with the benefit of this background experience – some of whom have years or even decades of experience dealing in mortgages – are highly sophisticated, qualified and well-suited to acting as mortgage agents and brokers.

Under the Proposed Guidance, however, all Level 2 Mortgage Agent applicants must have at least 12 months' experience over the preceding 24 months as a Level 1 Mortgage Agent. The Proposed Guidance does not take into account other relevant experience in order to allow qualified professionals to bypass this one-year waiting period. While this makes sense for newly practicing Mortgage Agents, this 12-month restriction is less understandable when applied against skilled and experienced professionals who have been acting as mortgage specialists on behalf of sophisticated and highly regulated financial institutions for many years. The same issue arises for Mortgage Brokers.

While the Proposed Guidance indicates that there will be a process for FSRA to consider education equivalency requests for individual license applicants with relevant experience and education in a related field but not in the mortgage brokering sector, this process is time-consuming for both the applicant and for FSRA. It is also unnecessary in the context of individuals with significant mortgage experience at a financial institution: for such applicants, their experience is already in the same field of mortgage brokering, not merely a "related field" – these individuals simply gained their mortgage experience in the license-exempt context.

We encourage FSRA to consider an additional table of equivalency rules for license applicants in order to allow applicants with one or more years' experience underwriting, administering or originating mortgages while employed at a financial institution to meet the experience qualifications for a Level 2 Mortgage Agent license or Mortgage Broker. Alternatively, FSRA should consider a partial exemption and allow applicants with a longer period of experience to meet the experience criteria for Level 2 Mortgage Agent or Mortgage Broker licenses. For



example, FSRA could approve applicants with 24 months of mortgage experience at a financial institution for the Level 2 Mortgage Agent license.

Level 2 Mortgage Agent (and Mortgage Broker) applicants with prior financial institution experience would still, of course, be expected to meet all licensing education or challenge exam requirements that FSRA deems appropriate in the context, ensuring that all applicants meet the same high standards set out by FSRA.

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We welcome the opportunity to discuss our comments and recommendations further with FSRA and would be pleased to work further with you on this topic.

Your truly,

A handwritten signature in blue ink that reads "Scott Coates".

Scott Coates
Principal Broker, #M08009411
KingSett Mortgage Corporation, Brokerage License #11330