

Canadian Association of Private Lenders

Via email: samanthagale098@gmail.com

March 10, 2022

Financial Services Regulatory Authority of Ontario
25 Sheppard Avenue West, Suite 100
Toronto, ON
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Submitted electronically via feedback form

Re: Feedback on Proposed Guidance No. MB0047INT – New Private Mortgage Broker and Agent Sub-Class

We write on behalf of the newly formed Canadian Association of Private Lenders, which represents the interests of private mortgage lenders, investors and administrators across Canada. One of the rationales for establishing this association is to focus private lending dialogue on regulatory reform.

More specifically, we are writing to provide comments on the Financial Services Regulatory Authority of Ontario's (the "Authority's") proposed guidance No. MB0047INT which sets out requirements for a new *Mortgage Brokerage, Lenders and Administrators Act* (MBLAA) license subclass for brokers and agents dealing with and trading in private mortgage loans. A 2019 report to the Ontario Ministry of Finance on the Legislative Review of the MBLAA recommended, among other matters, red tape reduction and that licenses be streamlined so that activities requiring different skills are developed through different educational requirements. We wholly support the goals of the Ministry of Finance and the Authority to protect consumers of private mortgage transactions by creating required specialized education and practice standards for private mortgages through the deployment of new licensing categories.

We have reviewed the proposed guidance document No. MB0047INT in addition to proposed new regulations O. Reg. 409/07 and O. Reg 187/08 and proposed "Transition Requirements for Existing Licensees". The new regulations require brokers and agents to obtain additional educational qualifications in order to qualify for a new license, called "Level 2" which will authorize them to deal with and trade in private mortgage loans. Brokers and agents who do not qualify for the new license will only be able to deal with and trade in conventional or institutional mortgage loans under a "Level 1" license.

These changes are effected through two new regulations without any amendments to the MBLAA. Authority to create new regulations exists within section 55(1)(6) of the MBLAA which enables the Authority to make rules "Providing for transitional matters relating to the requirements to be satisfied for issuance of licences." In addition, section

55(2)(d) enables regulations to be made to establish “classes of licences” and to govern “the requirements, including standards of practice, applicable to each class of licence”.

Current Status of Licensees and Grandfathering

Presently, there are no statutory restrictions on dealing or trading activities which limit brokers and agents to dealing and trading with only conventional or level 1 listed lenders. All duly licensed brokers and agents under the MBLAA are therefore currently authorized to deal with private or Level 2 lenders. In a notional sense, as no MBLAA regulation amendments have yet been passed, all incumbent mortgage agents and brokers are currently both Level 1 and Level 2 agents and brokers. However, the proposed regulation changes and the other consultation documents do not appear to recognize the current status of incumbent MBLAA licensees.

For example, the language deployed in the transition chart applies different language to the proposed changes to current licensees as follows:

- 1) To *maintain* Mortgage Agent Level license 1....., and
- 2) To *transition* to a Mortgage Agent Level license 2

The use of the word “maintain” in relation to Level 1 implies that current licensees are only qualified to engage in Level 1 activity, while the word “transition” suggests that current licensees are not currently qualified to engage in Level 2 activity and therefore need to qualify to obtain this new authorization of trading and dealing. The characterization of the current authorization of brokers and agents, for the reasons stated above, is not accurate. In addition, there does not appear to be any proposed statutory or regulation amendments which would strip brokers and agents of this currently held authorization. By the operation of the MBLAA, brokers and agents are therefore already qualified to perform Level 2 activities and in our view after reviewing the proposed new regulations, will retain this status after new license subclasses are introduced.

We therefore recommend that the current Level 2 status of all brokers and agents be appropriately recognized and that all brokers and agents should, accordingly, be viewed as “grandfathered” into Level 2 licensing. The Authority can ensure that current grandfathered licensees are brought up to speed on private lender issues at the time of renewal through mandatory continuing education.

Proposed Exemption for Unlicensed Entities acting Through Level 2 Licensees

Section 15 of the MBLAA Regulation, *Exemptions from the Requirements to be Licensed*, enables unlicensed lenders to lend if regulated lending activities are carried out through a licensed brokerage. This exemption recognizes modern sandbox and outsourcing concepts, in which fully regulated entities partner with unregulated third

parties. Sandboxes and outsourcing services have become popular compliance models designed to encourage the development of innovation and efficiency in the delivery of financial services while also reducing red tape and keeping regulatory burdens on the unregulated third party to a minimum. Compliance requirements for all regulated activities, including those performed by unregulated third parties, are ensured by the regulated entity.

This concept can be readily applied to Level 2 licensing requirements by creating a Level 2 licensing exemption for entities if they partner with Level 2 licensees to deal or trade in private mortgages. For instance, a Level 1 mortgage agent may have a long term conventional borrower client, who may have to turn to private financing for any number of reasons. That agent, rather than terminate their long-term relationship with the client could approach a Level 2 broker (which includes a lender under a licensed brokerage) to arrange a private mortgage, if there was an available exemption similar to that of section 15. In this scenario, the Level 2 broker would ensure the fulfillment of all compliance requirements for the private mortgage transaction.

A Level 2 licensing exemption for Level 1 licensees or unlicensed parties acting through a Level 2 licensee would serve the Ministry's dual goals of reducing regulatory burdens and ensuring that members of the public are protected through strengthened private mortgage compliance requirements. Accordingly, we ask that you and the Ministry of Finance consider introducing such an exemption for parties acting through Level 2 licensees.

We support the Authority's focus on strengthening consumer protection in the area of private mortgages, and in particular, the new education and licensing requirements for brokers and agents dealing and trading in private mortgages. Thank you for the opportunity to provide comments on this important transition. Please know that we are available to discuss these issues and our recommendations more fully if you wish.

Yours truly,

Samantha Gale

