Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia

A. Scope of Overview Report

1. This overview report outlines the landscape of the real estate sector in British Columbia. Its purpose is to identify industry sectors, the principal players in each sector, and the legislative and regulatory regime attaching to each in the Province.

2. "Real estate", when used to describe a part of the BC economy, has a broad meaning, and includes a number of business areas and professionals. It includes construction and development, the selling, renting and leasing of real estate, and lending related to real estate, among others. And although much of the work and reporting that has been done prior to the Commission was struck addresses money laundering in the residential real estate sector, commercial and industrial properties are also an important part of the real estate sector.

B. Jurisdiction over "real estate"

3. "Real estate" is a matter within provincial jurisdiction falling within "property and civil rights in the province".[1] Accordingly, most of the enactments and entities involved and described in this overview report are provincial. Some actors in the real estate industry also have reporting requirements to the federal financial intelligence unit, FINTRAC.

C. History of Real Estate Regulation in British Columbia

4. Prior to 2005, the real estate sector in British Columbia was governed by the Real Estate Act (REA).[2] Under REA, the regulatory structure of real estate in BC comprised the Real Estate Council of BC (RECBC) and the Office of the Superintendent of Real Estate ("the Superintendent", which will include the office's function). RECBC was responsible for the licensing and education of real estate professionals and the Superintendent, which was part of the Financial Institutions Commission ("FICOM"), was responsible for enforcing regulatory requirements related to real estate licensing. The

[1] *British North America Act*, 1867, 30-31 Vict., c. 3 (U.K.), s. 92(13)
[2] Perrin, Dan, *Real Estate Regulatory Structure Review* (2018), pg. 8.

majority of RECBC council members were elected by real estate licensees and over time, the Council took on a greater role in regulatory enforcement in the sector.[3]

5. In 2005, *the Real Estate Act* was repealed and in its place the government introduced the *Real Estate Services Act* (RESA) and the *Real Estate Development Marketing Act* (REDMA).[4] As part of the new RESA, the RECBC became a self-regulated agency independent from government. RECBC's board of governors was composed primarily of members of the real estate industry (i.e. 13 of 17 board members were elected by licensees), the Council was given rule-making authority and was responsible for licensing, education, and regulatory enforcement.[5] During this period, the Superintendent was responsible for regulating unlicensed activity in the sector and for intervening in licensed activity when it was in the public interest, as well as for approving disclosures under REDMA.[6]

6. In February 2016, amid public concerns about RECBC's self-regulation in the face of rising house prices in BC, the Independent Advisory Group on Conduct and Practices in the Real Estate Industry in British Columbia (IAG) was established to examine whether the existing regulatory regime adequately protected real estate consumers in BC. While the IAG's terms of reference did not include studying the self-regulatory nature of RECBC, the government responded to IAG's final report by changing the regulatory structure of the real estate sector.[7] This restructuring included changing the governance of RECBC so that its board was entirely comprised of government-appointed members and moving the Superintendent out of FICOM to create a stand-alone Office of the Superintendent of Real Estate. RECBC's rule-making power was transferred to the newly created Office of the Superintendent of Real Estate.[8].

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[3] Perrin, pg. 8.
[4] British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 37th Parl,5th Sess, Vol 25, No 5 (6 May 2004) at 10913-4 (Hon G Abbott).
[5] Perrin, pg. 8.
[6] British Columbia Ministry of Finance Briefing Document, *Single Regulator for Real Estate*, Sept. 17, 2019.
[7] Perrin, pg. 10-11.
[8] Perrin, pp. 10-11.

7. In 2018, the Ministry of Finance commissioned Dan Perrin to conduct a review of the structure of real estate regulation in British Columbia. The terms of reference for Mr. Perrin's review were to consider the existing roles and responsibilities of the Superintendent and what changes could be made to increase effectiveness.[9] The review reached the conclusion that OSRE and RECBC were not functioning effectively as two distinct regulatory bodies, which was hindering the development of consistent provincial real estate policy.[10] A key recommendation from the report was that the dual regulatory body structure of OSRE and RECBC be replaced by a single regulator.

8. On November 12, 2019, the Ministry of Finance announced that FICOM was becoming the British Columbia Financial Services Authority (BCFSA), an independent Crown Corporation, and that BCFSA would be assuming the regulatory functions of OSRE and RECBC, creating a single regulatory body for real estate in British Columbia. The government stated its intention to bring forward new legislation in the fall of 2020, with an integrated regulator for the real estate and financial services sectors established in the spring of 2021.[11] These deadlines were delayed.[12] At the time of writing, legislation was expected to be released in Spring 2021, with implementation in Fall 2021.

D. Entities and their respective regulation

i. Provincial Government

a. BC Assessment

9. BC Assessment is a Crown corporation that independently assesses the value of all properties in British Columbia. These property assessments are used to calculate the Province's tax base, as well as to determine property ownership and tax liability. BC Assessment was established in 1974 with a legislative mandate to create and maintain uniform property assessments across the Province.[13] It takes its current shape from the

[9] Perrin, pg. 6.
[10] Perrin, pg. 2.
[11] BC Gov News, "Single real estate regulator protects people, combats money laundering," accessed November 28, 2020, https://news.gov.bc.ca/releases/2019FIN0115-002149, at Appendix A
[12] We are advised that this delay was occasioned by the BC Provincial Election in Fall 2020.
[13] BC Assessment, "About BC Assessment," accessed November 28, 2020, https://info.bcassessment.ca/About-Us/about-BC-Assessment.

Assessment Authority Act, RSBC 1996, c. 21, and conducts its work pursuant to the *Assessment Act,* RSBC 1996, c 20. It is financed through a levy on all properties in BC.

10. The *Assessment Act* requires that the value of all BC properties be assessed by July 1st of each year. To do this, BC Assessment appraises the Province's properties and produces assessment information annually to provide tax authorities with a tax base and other information collected about a property. [14]

b. BC Housing

11. The British Columbia Housing Management Housing ("BC Housing") is a Crown corporation established in 1967 by an order-in-council under the *Ministry of Lands, Parks and Housing Act,* RSBC 1996, c 307 to deliver on the provincial government's commitment to the development, management and administration of subsidized throughout the province. In 1998, its obligations were expanded to include strengthening consumer protection for new homebuyers and improving the quality of residential construction comes pursuant to the *Homeowner Protection Act*, SBC 1998, c 31.[15]

12. BC Housing works in partnership with the private and non-profit sectors, provincial health authorities and ministries, other levels of government and community groups to develop a range of housing options to develop, manage and administer a wide range of subsidized housing options across the Province. It seeks to address gaps in housing, from emergency shelter and rent assistance in the private market to affordable home ownership. It also administers licenses to residential builders, administers owner builder authorizations and carries out research and education in relation to the residential construction industry and consumers.[16]

13. BC Housing also administers the Provincial Rental Housing Corporation (PRHC), created in 1961, which holds BC property for social and other low-cost housing.

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[14] BC Assessment, "How BC Assessment works," accessed November 28, 2020, https://info.bcassessment.ca/About-Us/how-bc-assessment-works.
[15] BC Housing, "Our Organization," accessed November 28, 2020, https://www.bchousing.org/about/our-organization.
[16] BC Housing, "Our Organization"

c. British Columbia Financial Services Authority

14. The British Columbia Financial Services Authority (BCFSA) was established on November 1, 2019, replacing the Financial Institutions Commission (FICOM).[17] The BCFSA is an independent Crown agency that regulates credit unions, insurance and trust companies, pensions and mortgage brokers. The BCFSA's mandate is to safeguard confidence and stability in BC's financial sector by protecting consumers from undue loss and unfair market conduct. The BCFSA supervises and regulates financial institutions and pension plans to determine whether they are in sound financial condition and are complying with their governing laws and supervisory standards. [18] The BCFSA is governed by a board of directors that are appointed by the Lieutenant Governor in Council.[19] It derives its power from the *Financial Services Authority Act,* SBC 2019, c 14, and the *Financial Institutions Act*, RSBC 1996, c 141.[20] It is self-funded.

15. The BCFSA has four pillars of responsibility: pension plans, mortgage brokers, financial institutions (including credit unions, insurance and trust companies) and the Credit Union Deposit Insurance Corporation.

16. BCFSA's mandate includes the regulation of mortgage and submortgage brokers in the province, which is carried out by the Registrar of Mortgage Brokers. The Registrar is appointed by BCFSA's board of directors[21] and keeps a register of all mortgage and submortgage brokers, called the Mortgage Brokers Register.[22] The Registrar's role is to protect the public and enhance mortgage broker industry integrity by enforcing mortgage broker suitability requirements and reducing and preventing market misconduct under the *Mortgage Brokers Act* and Regulations. Section 3 of MBA outlines the Registrar's function. The Registrar has powers under the *Mortgage Brokers Act* to enforce the Act,

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[17] BC Financial Services Authority, "About us," accessed November 28, 2020, https://www.bcfsa.ca/index.aspx?p=about_us/index.
[18] BC Financial Services Authority, "About us"
[19] BC Financial Services Authority, "Governance," accessed November 28, 2020, https://www.bcfsa.ca/index.aspx?p=about_us/organizational_structure, at Appendix B
[20] *Financial Services Authority Act*, SBC 2019, c 14, s. 6.
[21] *Mortgage Brokers Act*, RSBC 1996, c. 313, s. 1.1
[22] MBA s. 3(1)

including powers of investigation, power to issue orders, and to hold hearings and impose penalties.

d. Land Title and Survey Authority

17. The Land Title and Survey Authority of British Columbia (LTSA) is a publicly accountable, statutory corporation formed in 2005. The LTSA is responsible for managing, operating, and maintaining the land title and survey systems of BC, which includes the Land Owner Transparency Register and the Condo and Strata Assignment Integrity Register. These systems provide a reliable public record of all land ownership in the Province.[23] More particularly, the LTSA is tasked with delivering secure land titles through timely, efficient registration of land title interests and survey records.[24]

18. The LTSA's mandate, responsibilities and performance standards are set out in the *Land Title and Survey Authority Act,* SBC 2004, c 66 and an Operating Agreement with the Province. The Act states that the purpose of the Authority is to "a) manage, operate, and maintain land title and survey systems of British Columbia, b) facilitate the execution of Crown grants, and c) carry on other necessary or advisable activities related to land title or survey systems."[25] The Operating Agreement also establishes the requirements for land title and survey service fees. The LTSA is funded through revenue generated by these service fees. The BC government ministries, central agencies, and certain government organizations are exempt from paying LTSA fees.[26]

19. The LTSA's services are primarily accessed by lawyers, notaries public, land surveyors, certain statutory offices and BC Commissioners, registry agents, and other professionals who provide property-related services to their clients. By using legal professionals to submit changes to land titles, the system is designed to minimize the risk

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[23] Maureen Maloney, Tsur Somerville, & Brigitte Unger. *Combatting Money Laundering in BC Real Estate: Expert Panel on Money Laundering in BC Real Estate*, 2019. Pg. 93.
[24] BC Land Title and Survey Authority, "Our Mandate," accessed November 28, 2020, https://ltsa.ca/about-ltsa/ltsa-mandate/
[25] *Land Title and Survey Authority Act,* SBC 2004, c 66, s. 4(1)
[26] LTSA, "Fee Exempt Entities" (https://ltsa.ca/fees/fee-exempt-entities); *Land Title Act* s. 386 (7.1)

to the public of fraudulent activity against titles. Vigilance on the part of legal and other professionals is intended to enhance the security of the land title system.[27]

20. The following table is excerpted from the LTSA's 2015 "Ten Year Operations Report" that demonstrates patterns of use of the LTSA's database.[28]

Table 1. Land Title Division: Primary Business Activities and Performance

Land Title Division	2013/14	2012/13	2011/12	2010/11	2009/10	2008/09	2007/08	2006/07	2005/06	LTSA Performance Targets
Number of applications to register land title documents and plans	670,000	680,000	1.0M	1.07M	1.12M	1.14M	1.36M	1.33M	1.23M	**n/a**
Average processing time for registering land title instruments*	3.7 days	5.3 days	3.4 days	4.7 days	4.8 days	4.3 days	4.3 days	4.5 days	4.6 days	**6 business days**
Number of online business transactions**	3.8M	3.3M	3.5M	3.4M	3.8M	4.4M	4.3M	3.7M	3.6M	**n/a**
Percent of land title document registrations submitted electronically	92%	89.2%	66.6%	55.8%	53.9%	38.6%	34.7%	26.8%	19.5%	**n/a**
Percent of land title plans submitted electronically***	96%	85%	58%	41%	26%	10%	-	-	-	-

e. British Columbia Ministry of Finance

21. The Ministry of Finance is the provincial government agency that is primarily responsible for establishing, implementing and reviewing government's economic, fiscal, financial management and taxation policies.

22. A key responsibility of the Ministry is to audit performance and financial management of ministry, agency and Crown corporation programs and functions to help improve efficiency and ensure governance, management, and control systems are operating effectively. The Ministry's responsibilities also include policy development, regulation and enforcement for financial services, capital markets, pension plans,

[27] Land Title and Survey Authority, "LTSA's Customers", https://ltsa.ca/about-ltsa/ltsa-mandate
[28] Land Title and Survey Authority, "Ten year Operations Report: 2005-2015, March 23, 2015. Pg. 9

mortgage broker sectors, real estate services and societies. The Ministry also administers statutes that provide regulatory oversight of pension plans, mortgage brokers, deposit taking institutions (credit unions), trust companies and insurers in BC[29].

f. Office of the Superintendent of Real Estate

23. The Office of the Superintendent of Real Estate (the Superintendent) is a regulatory agency of the BC government that is mandated to protect the public interest and prevent harm to real estate consumers. The Superintendent provides oversight and regulation of the real estate industry in BC. Under the *Real Estate Services Act*, SBC 2004, c 42, the *Real Estate Development Marketing Act*, SBC 2004, c 41, and the *Strata Property Act*, SBC 1998, c 43, the Superintendent exercises statutory jurisdiction and takes enforcement action against misconduct.[30]

24. The Superintendent is one of two regulators responsible for regulating the real estate industry in BC, along with the RECBC. The Superintendent is responsible for two key areas of oversight. First, under the *Real Estate Services Act* (RESA), the Superintendent oversees the activities of RECBC, regulates unlicensed real estate activity, including real estate trading services, and develops Rules related to the activities of real estate licensees. The second area that falls under the Superintendent's purview is the administration of the *Real Estate Development Marketing Act* (REDMA), which regulates the marketing activity of residential real estate developers, including requiring disclosure statements to be filed and provided to prospective buyers, and that deposits be held in trust.[31]

g. Real Estate Council of BC

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[29] Ministry of Finance, 2018/19 Annual Service Plan Report, https://www.bcbudget.gov.bc.ca/Annual_Reports/2018_2019/pdf/ministry/fin.pdf, at Appendix C, pg. 5
[30] British Columbia, "Office of the Superintendent of Real Estate," accessed November 29, 2020, https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/central-government-agencies/office-of-the-Superintendent-of-real-estate.
[31] British Columbia, "Real Estate Development Marketing," accessed November 28, 2020, https://www2.gov.bc.ca/gov/content/housing-tenancy/real-estate-bc/real-estate-development-marketing, at Appendix D.

25. The Real Estate Council of British Columbia ("RECBC") is the regulator of real estate professionals licensed under RESA. It seeks to protect the public interest by enforcing the licensing and licensee conduct requirements of the *Real Estate Services Act*, SBC 2004, c 42. It licenses individuals and brokerages engaged in various aspects of the real estate industry, including real estate sales, rental and strata property management.[32] RECBC also sets entry qualifications, investigates complaints against licensees and imposes disciplinary sanctions under the *Real Estate Services Act*. Additionally, the Council advises government on real estate industry issues.

26. Most providers of real estate services in B.C. must be licensed with the RECBC. RECBC ensures that its licensees, among other things, meet educational and professional standards; manage their funds through trust accounts; and carry errors and omissions insurance.

E. Legislation

i. Provincial Legislation

a. Real Estate Services Act

27. Providers of real estate services must be licensed unless otherwise exempted. The *Real Estate Services Act* provides the framework for the regulation of licensed real estate agents. It also establishes two regulatory oversight bodies, the Office of the Superintendent of Real Estate (the Superintendent) and RECBC.

28. The Act defines "real estate services" as comprising three categories:

29. (1) rental property management services, which involves managing the rental of a property on behalf of a property owner;

30. (2) strata management services, which involves overseeing a property's finances and management on behalf of a strata corporation;

[32] British Columbia, "Real Estate Council of BC," accessed November 28, 2020, https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/crown-corporations/real-estate-council-of-bc.

31. (3) trading services, which includes assisting parties in selling and buying property.[33]

32. In 2016, the *RESA* was amended to reflect the changes to RECBC's regulatory structure, including the shift from a partially industry-elected board to an appointed one, and the transference of rule-making power to the Superintendent of Real Estate.[34]

b. Real Estate Development Marketing Act

33. The *Real Estate Development Marketing Act*, SBC 2004, c. 41, applies to developers who market development property. The Act defines "market" as:[35]

a. to sell or lease,
b. to offer to sell or lease, and
c. to engage in any transaction or other activity that will or is likely to lead to a sale or lease.

34. It defines "development property" as any of the following:[36]

a. 5 or more subdivision lots in a subdivision, unless each lot is 64.7 ha or more in size;
b. 5 or more bare land strata lots in a bare land strata plan;
c. 5 or more strata lots in a stratified building;
d. 2 or more cooperative interests in a cooperative association;
e. 5 or more time share interests in a time share plan;
f. 2 or more shared interests in land in the same parcel or parcels of land;
g. 5 or more leasehold units in a residential leasehold complex.

35. The *Real Estate Development Marketing Act* requires developers to take certain steps in relation to the development of property. In particular, the Act requires that the developer has made arrangements to ensure that the title and services will be in place at the time of transfer, and that the developer deals with purchasers' deposits appropriately.

36. Additionally, the *Real Estate Development Marketing Act* requires that developers disclose specific information about the development property to prospective purchasers.

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[33] *Real Estate Services Act*, SBC 2004 c. 42, s. 1
[34] Perrin, pg. 11.
[35] *Real Estate Development Marketing Act*, SBC 2004, c 41, s. 1
[36] *Ibid.*

To fulfil this requirement, developers must file a Disclosure Statement with the Superintendent of Real Estate prior to marketing a development property and must provide a copy of the Disclosure Statement to prospective purchasers prior to entering into a purchase agreement.[37]

37. The *Real Estate Development Marketing Act* is administered by the Office of the Superintendent of Real Estate. Developers who fail to comply with *REDMA*'s requirements may be subject to regulatory action by the Superintendent.[38]

38. In 2018, the *REDMA* was amended to add Part 20.1, which introduced requirements for developers to collect and report information related to the assignment of purchase agreements to the property tax administrator[39].

c. Property Transfer Tax Act

39. The Property *Transfer Tax Act*, RSBC 1996, c 378, governs the taxes due on property owned in BC. When real property is transferred from one person or entity to another, the transferee must file a return and pay a general tax, which is calculated accordingly:[40]

a. 1% of the taxable transaction's fair market value that does not exceed $200 000;
b. 2% of that fair market value that exceeds $200 000 but does not exceed $2 000 000;
c. 3% of that fair market value that exceeds $2 000 000;
d. if section 3.01 applies in respect of the taxable transaction, the amount determined under subsection (4) of that section, i.e. 2% of the amount by which the residential property value exceeds $3 000 000.

40. The tax is calculated based on the fair market value of the property (land and improvements) at the date of registration with the Land Title Office, unless the property

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[37] *Real Estate Development Marketing Act*, SBC 2004, c 41, s. 14 and 15
[38] British Columbia, "Requirements for Marketing Real Estate Developments," accessed November 29, 2020, https://www2.gov.bc.ca/gov/content/housing-tenancy/real-estate-bc/real-estate-development-marketing/developers, at Appendix E.
[39] Real Estate Development Marketing Amendment Act, SBC 2018, c 24
[40] *Property Transfer Tax Act*, RSBC 1996, c 78, ss 3, 3.01.

qualifies for an exemption (such as the first-time home buyers' exemption[41]) or is a pre-sold strata unit. On February 17, 2016, the Act was amended to include an exemption from general tax for newly built homes.[42]

41. On June 10, 2016, the Act was amended to require transferees to provide additional information in the tax return upon a property transfer, *viz*. for individuals, their citizenship status; for corporations, the identify of director(s), and their respective citizenship status(es); for bare trustees, the identity of the settlor(s) and beneficiary(ies), and their respective citizenship status(es). [43]

42. The Act gives the administrator the power to make a determination of fair market value or tax owing, and to issue an assessment accordingly.[44] There is a process to object to the assessment, which includes appeal rights and the opportunity for arbitration. The Act also sets out special transitional rules for transfers on or before 1987.[45]

43. Additionally, the Act makes provision for attachment of property and enforcement procedures, and establishes certain breaches of the Act as regulatory offences. It is an offence to make a false or deceptive statement in a return, and it is an offence to wilfully evade compliance with the Act.[46]

Additional Property Transfer Tax for foreign entities

44. Section 2.02 of the *Property Transfer Tax Act* requires additional tax to be paid on the transfer of residential property where the buyer is a foreign national, foreign corporation or taxable trustee. This section was added in 2018.[47] The tax to be paid is a function of the buyer's interest in the residential property. For property transfers that took place between August 2, 2016 and February 21, 2018, the tax amounts to 15% of the buyer's acquired interest. For property transfers that took place on or after February 21,

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[41] *Property Transfer Tax Act*, *supra*, at ss 5-10; see also ss. 14-16.
[42] *Budget Measures Implementation Act, 2016* RSBC 2016 c. 3 s. 54
[43] Supra, s. 56
[44] *Property Transfer Tax Act*, supra, s. 18
[45] Supra, s. 38
[46] Supra, s. 34
[47] British Columbia, "Additional Property Transfer Tax for Foreign Entities & Taxable Trustees," accessed November 29, 2020, https://www2.gov.bc.ca/gov/content/taxes/property-taxes/property-transfer-tax/additional-property-transfer-tax#specified-areas, at Appendix F.

2018, the tax increased to 20% of the buyer's acquired interest. The tax only applies to certain geographic areas of the Province: Metro Vancouver Regional District, the Capital Regional District, the Fraser Valley Regional District, the Regional District of Central Okanagan, and the Regional District of Nanaimo.[48]

Information Collection Regulation

45. The *Information Collection Regulation*, BC Reg 166/2018 is a regulation subject to the *Property Transfer Tax Act*, RSBC 1996, c 378. It requires trustees and corporations that acquire property to identify all individuals with a beneficial interest in the trust or significant interest in the corporation on the property transfer tax return.[49]

46. Each individual identified must provide their:

- **a.** Name
- **b.** Date of birth
- **c.** Citizenship information
- **d.** Contact details
- **e.** Tax identifiers: Social Insurance Number (SIN), Individual Tax Number (ITN)

47. Beneficiaries of trusts who are corporations must include the relevant information for each director.

d. Speculation and Vacancy Tax Act, SBC 2018, c 46

48. On November 27, 2018,[50] the *Speculation and Vacancy Tax Act*, SBC 2018, c 46 came into force. The Act applies only to property in specified, mostly urban, regions of BC: Metro Vancouver, Abbotsford, Mission, Chilliwack, Kelowna, Nanaimo, and the Capital Regional District (i.e., Victoria and its surroundings). All owners of residential property in these regions must complete an annual declaration, although most property

[48] British Columbia, "Additional Property Transfer Tax"
[49] *Information Collection Regulation*, B.C. Reg. 166/2018 s. 8 & 9
[50] *Speculation and Vacancy Tax Act*, SBC 2018, c 46 Royal Assent on Nov 27 2018.

is exempt from the tax. If an owner fails to submit a declaration, they will be subject to the tax.

49. Tax becomes owing on all residential property in the province, subject to numerous exemptions.[51] Primary residences are exempt from the tax, even where vacant for an extended time.[52] Property that is owned by a Canadian citizen and is rented for a minimum of six months a year is exempt, with some restrictions.[53]

50. The legislation establishes a tiered tax scheme, with different types of property owners paying different percentages of tax, all of which are a percentage on the assessed value of the property according to BC Assessment. Canadian residents pay 0.5% on vacant property but may receive a credit for secondary properties.[54] Foreign owners and satellite families pay 2%.[55]

51. Where a property has multiple owners, the tax is applied in percentages according to the owners' respective eligibility. Corporations, partnerships, and trusts pay tax according to the highest applicable rate facing the entity's interest holders or beneficial owners, according to the aforementioned tiers.

52. The Act also contains penalties for failure to comply with its provisions, including a fine for individuals who seek to evade the tax, which is the equivalent to the amount of tax sought to be evaded, plus up to $100,000.[56] For corporations, the penalty range increases to the amount sought to be evaded plus up to $200,000.[57]

e. Land Owner Transparency Act

53. In tandem with the *Property Transfer Tax Act*, which collects information on beneficial ownership to support tax audits and enforcement, the *Land Owner Transparency Act,* SBC 2019, c. 23, creates a beneficial ownership registry that is publicly

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[51] Exempted owners are set out at s. 20 of the *Speculation and Vacancy Tax Act*. Other exemptions appear throughout the Act.
[52] *Speculation and Vacancy Tax Act*, SBC 2018, c 46, ss 29-34
[53] Supra, s 38
[54] Supra, ss. 16-17
[55] Supra, s. 15
[56] Supra, s. 132(1)
[57] Supra, s. 132(2)

accessible. The Act received Royal Assent on May 16, 2019 and will be brought into force by regulation of the Lieutenant Governor in Council.[58] The Act came into force in part on November 30, 2020, with another part of the Act coming into force on April 30, 2021 by regulation of the Lieutenant Governor in Council.[59]

54. The express purpose of the Act is to increase transparency of landownership in BC by disclosing the identity of individuals who own land through shell corporations, trusts, and partnerships. The Act requires corporations, trustees and partners to identify the individuals that have a beneficial interest in land, that have a significant interest in a landowning corporation, or that have an interest in land via a partnership. The Act creates the Land Owner Transparency Registry, a publicly accessible beneficial ownership registry that will be administered by the Land Title and Survey Authority of British Columbia (LTSA).[60]

55. The Act requires this disclosure of beneficial ownership for all land in BC unless the reporting body is specifically excluded.[61] Schedule 1 of the Act lists excluded corporations and limited liability companies, and Schedule 2 of the Act lists excluded trusts.[62]

f. Property Law Act

56. The *Property Law Act*, RSBC 1996, c 377, codifies and revises a number of aspects of British Columbia land title practice and real property law, such as relations between vendor and purchaser, co-ownership, instruments, transfers of interests in land, charges, mortgages, covenants, and leases.[63] The Act also sets out rules and obligations surrounding the use and alteration of mortgages.[64]

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[58] *Land Owner Transparency Act*, SBC 2019 c. 23, s. 128
[59] The British Columbia Gazette, Part II, Volume 63, No. 18, 250/2020
[60] Land Owner Transparency Registry, accessed November 29, 2020, https://landtransparency.ca/
[61] Certain specified corporations and trusts are excluded from being "reporting bodies" (meaning that they would not need to file a transparency report, but would still be required to file a transparency declaration).
[62] *Land Owner Transparency Act,* SBC 2019, c. 23, Schedules 1 & 2
[63] Continuing Legal Education Society of British Columbia, 'Chapter 50: Property Law Act, R.S.B.C. 1996, Chapter 377 Overview [§50.1]', in Alexander et als, ed, *Land Title Practice Manual*, (Canada, 2018), at Appendix G.
[64] Supra, ss 28-33

57. Importantly, the Act provides that when transferring land, the transferor has an obligation to provide the transferee with a registrable instrument[65], and/or to provide any further description, plan, other instrument, or conveyance, as required by the registrar.[66]

58. The Act also provides that any person can acquire and dispose of land in British Columbia regardless of citizenship, and must not be disturbed in possession of land due to citizenship status of the owner of the property.[67]

g. Mortgage Brokers Act

59. Mortgage brokers in British Columbia are governed by the *Mortgage Brokers Act* RSBC 1996, c. 313 and associated Regulations. The Act defines a mortgage broker as a person who does any of the following:

a. carries on a business of lending money secured in whole or in part by mortgages, whether the money is the mortgage broker's own or that of another person;
b. holds himself or herself out as, or by an advertisement, notice or sign indicates that he or she is, a mortgage broker;
c. carries on a business of buying and selling mortgages or agreements for sale;
d. in any one year, receives an amount of $1000 or more in fees or other consideration, excluding legal fees for arranging mortgages for other persons;
e. during any one year, lends money on the security of 10 or more mortgages;
f. carries on a business of collecting money secured by mortgages.[68]

60. The Act sets out the legislative scheme for individuals engaged in mortgage broker activities, requiring that they be registered with the Registrar of Mortgage Brokers and identifying specific regulatory standards. The Act also sets out obligations with respect to disclosure of conflicts of interest.[69]

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[65] *Property Law Act*, RSBC 1996, c 377, s 5
[66] Supra, s 7
[67] Supra, s 29. This provision was enacted with the original passing of the *Property Law Act* in 1979.
[68] *Mortgage Brokers Act*, R.S.B.C. 1996 c. 313, s. 1
[69] Supra, Part 2

61. The Registrar of Mortgage Brokers is appointed by the board of directors of the BCFSA.[70]

62. The Act does not pertain to private mortgage lenders who are not "in the business" of lending money secured by a mortgage.

63. For the purposes of the Commission, it is notable that mortgage brokers are not designated as reporting entities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*'s Suspicious Transaction Reporting Regulations.[71] Mortgage brokers are therefore not required to submit suspicious transaction reports (or any other reports) to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).

64. In 2018, the Expert Panel on Money Laundering in BC Real Estate described the MBA as antiquated and identified areas where the Act had not kept pace with national and international consumer protection standards, changes in the financial services market, and issues such as money laundering in the real estate market.[72] The Expert Panel recommended that the MBA be replaced with new legislation. In response to this recommendation, the Ministry of Finance began a public consultation process in January 2020 to elicit feedback on the modernization of the MBA[73]. As one recommendation, the CMBA-BC suggested licensees obtain a mortgage license that permits various types of activities, noting that mortgage brokering involves a very different set of activities than mortgage lending or mortgage administrating.[74]

Mortgage Brokers Act Regulations

65. Pursuant to the *Mortgage Brokers Act Regulations*, a person licensed under the *Real Estate Services Act* who facilitates a vendor take back mortgage "if that activity is ancillary to the person's role in the transaction that gave rise to the vendor take-back

[70] Supra, s. 1.1
[71] *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations (SOR/2001-317)*, Part 2
[72] Maloney, Somerville & Unger, pg. 79; Ministry of Finance "Mortgage Brokers Act Review: Public Consultation Paper", Jan. 2020, pg. 1, at Appendix H.
[73] Ministry of Finance "Mortgage Brokers Act Review: Public Consultation Paper", Jan. 2020.
[74] CMBA-BC, Briefing Note: License Types, issued April 27, 2020.

mortgage" is also not required to be registered under the Act.[75] However, as noted by RECBC, licensees wishing to take advantage of this exemption must still comply with all other provisions of the *Mortgage Brokers Act* and Regulations.[76]

66. The regulations elaborate on the disclosure of conflicts of interest requirements set out in the *Mortgage Brokers Act*, as well as sets out exceptions to the disclosure requirements in the Act.

67. As of March 12, 2020, there were 1,295 mortgage brokers and 4,564 sub-brokers registered with the BCFSA.

h. Mortgage lending regulation in securities law

Securities Act and the BC Securities Commission

68. The *BC Securities Act* applies to mortgage lenders that raise capital through issuing securities, advise on buying/selling/investing in mortgages, or manage investment portfolios that include mortgages.[77] The Act is administered by the BC Securities Commission ("BCSC"), which has a mandate to protect investors and the integrity of BC's capital markets.[78]

69. The BCSC and other Canadian securities regulators use the term Mortgage Investment Entity ("MIE") to describe private lenders that are covered by the *Securities Act.* A MIE is defined by the Canadian Securities Administrators ("CSA") as:[79]

> a person or company whose purpose is to directly or indirectly invest substantially all of its assets in debts owing to it that are secured by mortgages, hypothecs or in any other manner on real property … and whose other assets are limited to:

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[75] *Mortgage Brokers Act Regulations*, B.C. Reg. 100/73, s. 19
[76] Real Estate Council of British Columbia, "Acting for Buyers: Exemption from Mortgage Broker Registration," https://www.recbc.ca/professionals/knowledge-base/guidelines/acting-buyers, at Appendix I.
[77] Canadian Securities Administrators (CSA) guidance 31-323, relating to the registration obligations of mortgage investment entities, February 25, 2011 at Appendix J.
[78] BCSC website, accessed December 14, 2020, https://www.bcsc.bc.ca/about/what-we-do/mission-values-benefits
[79] Canadian Securities Administrators (CSA) guidance 31-323, relating to the registration obligations of mortgage investment entities, February 25, 2011, at Appendix J.

- deposits with a bank or other financial institution
- cash
- debt securities…
- real property which is directly or indirectly held on a temporary basis as a result of action taken to enforce its rights as a secured lender
- instruments intended solely to hedge specific risks relating to the debts owing to it that are secured by mortgages, hypothecs or in any other manner on real property.

70. In August 2010, the BCSC issued an exemption for MIEs from registering as investment fund managers, advisers and/or exempt market dealers.[80] The exemption was repeatedly extended until February 15, 2019, at which point MIEs were required to register. The exemption expired on February 18, 2020.[81]

71. Under BCSC regulations,[82] mortgage lenders conducting business in BC may need to register in one or more of the following three regulatory categories:[83]

a. **Exempt market dealers and dealing representatives**: firms that trade in the securities of an MIE need to register as exempt market dealers (i.e. dealers selling investment products without a prospectus). Individual trading for those firms must register as dealing representatives.[84]

b. **Investment fund managers**: an MIE is considered an investment fund if its "primary activity is managing an investment portfolio that includes

[80] Ibid. That exemption took effect in BC on December 3, 2010.
[81] BCSC instrument 32-517, "Exemption from dealer registration requirement for trades in securities of mortgage investment entities", 15 August 2018;, at Appendix K.
[82] BCSC Companion Policy 31-103CP "Registration Requirements, Exemptions and Ongoing Registrant Obligations, February 2012, at Appendix L.
[83] Some MIEs may opt to use third parties for fundraising, in which case those third parties must be registered with the BCSC and will likely be registered with the Investment Industry Regulatory Organization of Canada ("IIROC"), which regulates broker-dealers. In such situations the IIROC-registered dealer would have PCMLTFAR obligations relating to accepting funds for the investment firm. *See* IIROC AML compliance.
[84] BCSC notice 2019/1, "Expiry of BC Instrument 32-517…", January 21, 2019, at Appendix M.

mortgages" (e.g. Mortgage Investment Corporations ("MICs")). In that case, individuals or entities managing that MIE must register as investment fund managers. If an MIE's "primary activity is mortgage lending, that is, by operating a business that creates and manages mortgages" (i.e. mortgage finance companies / monoline lenders) then their managers do not need to register as investment fund managers.[85]

c. **Investment advisers**: individuals or companies that advise MIEs qualifying as investment funds (as above) on matters relating to buying, selling or investing in mortgages or other securities must register as investment advisers.[86]

72. MIEs that are registered with the BCSC (as well as their registered managers and advisers) have responsibilities with respect to KYC due diligence. That KYC process is intended to determine "whether trades in securities are suitable for investors … [to] protect the client, the registrant and the integrity of the capital markets".[87] Ascertaining source of funds and mitigating money laundering risk are not explicit objectives of due diligence under the Securities Act.

73. However, MIEs that are registered as exempt market dealers, investment fund managers or investment advisers appear to meet the definition of 'securities dealer' under the PCMLTFA and are therefore subject to the Act and its regulations.

74. As issuers of securities, MICs are regulated by provincial securities commissions and are expected to comply with relevant securities legislation where they operate (e.g. the *BC Securities Act*). In BC, MICs must also be registered under the MBA and are

[85] Canadian Securities Administrators (CSA) guidance 31-323, relating to the registration obligations of mortgage investment entities, February 25, 2011, at Appendix N.
[86] Canadian Securities Administrators (CSA) guidance 31-323, relating to the registration obligations of mortgage investment entities, 25 February 2011, at Appendix N.
[87] BCSC, "BC Notice 2019/1: expiry of BC Instrument 32-517…", January 21, 2019 at Appendix O.; BCSC, "Companion policy 31-103 CP: registration requirements, exemptions and ongoing registrant obligations," February 2012, (p.37)., at Appendix P.

regulated by the BCFSA,[88] which oversees compliance with the MBA's brokering and lending activities.

75. While MICs are subject to some regulation, neither the BCSC nor the BC Registrar of Mortgage Brokers ("RMB") has an AML mandate. For its part, the BCSC regulates capital-raising and dealings with investors. The BCSC's focus is on "protecting investors and the integrity of BC's capital markets",[89] while the RMB and the broader BCFSA are concerned with consumer protection and the stability of the province's financial services sector.[90] As of 2021, the BCFSA will also assume oversight responsibilities for real estate "licensing, conduct, investigations and discipline", within its overall mandate of protecting consumers and the public interest.[91]

76. MICs also have operating requirements set under the *Income Tax Act*, which states that any MIC: must have at least 20 shareholders, none of whom can hold more than 10% of its equity; must hold at least half of its assets in residential mortgages, cash, and/or insured deposits; must not develop land or be involved in construction, though it can invest up to 25% of its assets in property titles; and must have its annual financial statements audited.[92] With respect to investments, a MIC can accept international funds but can only invest within Canada.[93] It can take on debt to fund mortgages in addition to using its own capital, though there are legislated caps on debt-to-equity.[94]

i. Land Title Act

77. British Columbia operates under a modified Torrens system. A Torrens system of land title registration is based on the principles of indefeasibility, registration, and abolition of notice and assurance.[95] In British Columbia, a person who has registered title has an

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[88] Formerly the Financial Institutions Commission (FICOM)
[89] BCSC website, accessed December 14, 2020, https://www.bcsc.bc.ca/about/what-we-do/mission-values-benefits
[90] BCFSA mandate letter, accessed December 14, 2020, https://www.bcfsa.ca/index.aspx?p=about_us/mandate ,
[91] BC Ministry of Finance news release, November 12, 2019, at Appendix Q.
[92] *Income Tax Act*, (R.S.C., 1985, c.1 (5th Supp.)), S.130.1(6)
[93] *Ibid.*
[94] *Ibid.*
[95] Land Title and Survey Authority, "History of BC's Land Title System," accessed November 29, 2020, https://ltsa.ca/property-owners/about-land-records/history-of-bcs-land-title-

indefeasible right to the subject property.[96] This almost entirely eliminates the need to make inquiry into the validity of title or interest, and a purchaser may rely exclusively on the information registered with the Land Title and Survey Authority. This system also means that any beneficial interests in a property that are not registered are not easily traceable.[97] British Columbia is sometimes referred to as a "modified" Torrens system because the indefeasibility of title is subject to certain exceptions set out in the *Land Title Act*.[98]

j. Land Act

78. The *Land Act,* RSBC 1996 c. 245 is the primary article of legislation that is used by the government to convey Crown land to the public for community, industrial and business use. The Act allows the granting of land, and the issuance of Crown land tenure in the form of leases, licences, permits and rights-of-way[99].

79. The Act sets out the requirements under which an application for the disposition of Crown land may be approved, as well as exceptions. The Ministry of Forests, Lands, Natural Resource Operations and Rural Development administers the Act and is responsible for the sale, lease, and license of Crown lands in the Province.

k. Strata Property Act

80. The *Strata Property Act*, SBC 1998 c. 43 and regulations provide the legal framework under which all strata corporations and strata owners must operate in British Columbia. The Act sets out the legal structure of a strata corporation and the responsibilities of the property developer before and after the property is conveyed to the

system/#:~:text=The%20modified%20Torrens%20system%2C%20as,the%20seller%20and%20the%20purchaser, at Appendix R.

[96] *Land Title Act*, R.S.B.C. 1996, c. 250, s. 23(2)

[97] See *Land Title Act*, R.S.B.C. 1996, c. 250, s. 29(2)-(3) for the limited exceptions to this principle.

[98] *Land Title Act*, R.S.B.C. 1996, c. 250, s. 23(2)

[99] British Columbia, "Acts & Regulations," accessed November 29, 2020, https://www2.gov.bc.ca/gov/content/industry/crown-land-water/crown-land/legislation-agreements/acts-regulations.

strata corporation.[100] The Act also sets out the requirements for strata corporation governance and for physical and financial management of a strata property.[101]

81. On June 23, 2020, in response to rising costs of strata corporation insurance across the province, the provincial government introduced legislation to amend the Act's insurance provisions.[102] The proposed amendments introduce new rules for the strata insurance industry and insurance guidelines for strata corporations.

ii. Municipal by-laws

a. Vacancy Tax By-law No. 11674, City of Vancouver, July 2017

82. On November 16, 2016, Vancouver City Council enacted the *Vacancy Tax Bylaw*, which imposes an Empty Homes tax on vacant Class 1 residential property within the City of Vancouver.[103]

83. All homeowners are required to submit a declaration as to whether the property is empty. Properties deemed empty will be subject to an annual tax of 1% of the property's assessed taxable value.

84. The tax does not apply to principal residences or homes rented for at least six months of the year.

F. Regulation of Actors in Real Estate

a. Managing Brokers, Associate Brokers, and Representatives

85. In British Columbia, professionals who engage in real estate services generally fall into three licensed categories: managing brokers, associate brokers, and representatives. There is also a fourth category of license for real estate brokerages. All four categories are licensed by the RECBC and are governed by the *Real Estate Services Act* (RESA) and its subordinate legislation, including the Real Estate Services Regulations and the

[100] *Strata Property Act*, SBC 1998, c. 43, Part 2 & 3
[101] Supra., Parts 4, 5, & 6
[102] Municipal Affairs and Housing Statutes Amendment Act (No. 2), 2020 (Bill 14 - 2020)
[103] City of Vancouver, "Empty Homes Tax Annual Report January 1, 2019 to December 31, 2019 Tax Year" https://vancouver.ca/files/cov/vancouver-2020-empty-homes-tax-annual-report.pdf p.1, at Appendix S.

Real Estate Rules. Each category of professional has different licensing requirements and different duties under the governing legislation. Rule 3-3 of the Real Estate Rules sets out the duties owed by all licensees to their clients, including that they must act in their client's best interests[104] and must take reasonable steps to avoid conflicts of interest.[105]

86. Managing brokers are responsible for exercising the rights and performing the duties of a real estate brokerage, a licensed entity through which real estate services are provided.[106] Every brokerage must have a licensed managing broker. The managing broker acts on behalf of the brokerage for all purposes and is responsible for the control and conduct of the brokerage's real estate business, including supervision of the associate brokers and representatives licensed in relation to the brokerage.[107] Rule 3-1 of the Real Estate Rules sets out the responsibilities of managing brokers, including their responsibility to ensure that all business is carried out in accordance with the governing legislation. The rules also require that managing brokers ensure that all related licensees and staff, including associate brokers and representatives, have adequate supervision and are familiar with the Rules.[108] A managing broker that has knowledge of improper conduct or conduct unbecoming a licensee on the part of another licensee or a brokerage employee is required to take reasonable steps to deal with the matter.[109]

87. Associate brokers are licensees who meet the educational and experience requirements to be a managing broker, but who are providing real estate services under the supervision of a managing broker.[110] Representatives, commonly referred to as real estate agents or realtors when providing trading services, are licensed to provide real estate services under the supervision of a managing broker.[111] The obligations of both licensed associate brokers and representatives are set out in Rule 3-2. They are required

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[104] Real Estate Rule 3-3(a)
[105] Ibid, Rule 3-3 (i)
[106] RECBC, "Brokerage Responsibilities", https://www.recbc.ca/professionals/knowledge-base/guidelines/brokerage-responsibilities, at Appendix T.
[107] *Real Estate Services Act*, s. 6(2)(c)
[108] Real Estate Rules 3-1(1)(c)
[109] Ibid, 3-1(2)
[110] *Real Estate Services Act* s. 5(c)
[111] *Real Estate Services Act* s. 5(d)

to keep their managing broker informed of the real estate services that they are providing and must respond promptly to any inquiries from the managing broker. Both categories of licensee are responsible for promptly informing their managing broker if they become aware of improper conduct, either on their own behalf or on the behalf of another person for whom the managing broker has responsibility.[112]

88. All licensees are also subject to discipline proceedings if they commit misconduct. Section 35 of RESA sets out that misconduct includes professional misconduct and conduct unbecoming a licensee. Professional misconduct includes conduct that:

a) contravenes this Act, the regulations or the rules;
b) breaches a restriction or condition of their licence;
c) does anything that constitutes wrongful taking or deceptive dealing;
d) demonstrates incompetence in performing any activity for which a licence is required;
e) fails or refuses to cooperate with an investigation under section 37 [investigation by council] or 48 [investigations by Superintendent];
f) fails to comply with an order of the real estate council, a discipline committee or the Superintendent;
g) makes or allows to be made any false or misleading statement in a document that is required or authorized to be produced or submitted under this Act.[113]

89. S. 35(2) states that "A licensee commits conduct unbecoming a licensee if the licensee engages in conduct that, in the judgment of a discipline committee,

a) is contrary to the best interests of the public,
b) undermines public confidence in the real estate industry, or
c) brings the real estate industry into disrepute."[114]

[112] Real Estate Rules 3-2
[113] *Real Estate Services Act* s. 35(1)
[114] *Real Estate Services Act* s. 35(2)

90. RECBC is the entity responsible for investigating allegations of misconduct against licensees under RESA.[115] As part of its investigatory powers under the Act, RECBC may inspect and copy records located on the business premises of the licensee under investigation, and may require the licensee to meet with investigators, answer inquiries, and produce information and record for examination.[116] RECBC may also apply to the Supreme Court for an order authorizing the seizure of records or other evidence belonging to the licensee outside of the licensee's business premises.[117]

91. RECBC is also responsible for conducting discipline proceedings against a licensee who is subject to allegations of misconduct. Sections 39 to 42 of the Act outline the statutory provisions of discipline proceedings, including the establishment of a discipline committee, and provisions requiring RECBC to provide notice of the allegations against the licensee and providing timelines for the discipline proceedings.[118]

92. If it is determined that a licensee has committed misconduct under s. 35 of the Act, the discipline committee has a range of discipline orders available to them under s. 43 of the Act. The discipline committee must do one or more of the following:

a) reprimand the licensee;
b) suspend the licensee's licence for the period of time the committee considers appropriate or until specified conditions are fulfilled;
c) cancel the licensee's licence;
d) impose restrictions or conditions on the licensee's licence or vary any restrictions or conditions applicable to the licence;
e) require the licensee to cease or to carry out any specified activity related to the licensee's real estate business;
f) require the licensee to enrol in and complete a course of studies or training specified in the order;
g) prohibit the licensee from applying for a licence for a specified period of time or until specified conditions are fulfilled;

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[115] *Real Estate Services Act* s. 37. Recall that the Office of the Superintendent of Real Estate ("OSRE") also has authority to investigate misconduct detrimental to the public interest.
[116] *Real Estate Services Act* s.37(a) and (b)
[117] *Real Estate Services Act* s.38
[118] *Real Estate Services Act* s. 39-42

h) require the licensee to pay amounts in accordance with section 44 (1) and (2) *[recovery of enforcement expenses]*;
i) require the licensee to pay a discipline penalty in an amount of
    i. not more than $500 000, in the case of a brokerage or former brokerage, or
    ii. not more than $250 000, in any other case;
j) require the licensee to pay an additional penalty up to the amount of the remuneration accepted by the licensee for the real estate services in respect of which the contravention occurred.[119]

93. The Superintendent of Real Estate also has disciplinary powers under *RESA* and may conduct an investigation to determine whether:

a) a person who does not hold a licence has engaged in any activity for which a licence under the Act is required, or
b) a licensee has, in a way that is seriously detrimental to the public interest,
    i. contravened the Act, the regulations or the rules,
    ii. breached a restriction or condition of their licence, or
    iii. done anything that constitutes wrongful taking or deceptive dealing.[120]

94. In such circumstances, pursuant to s. 48(4) of the Act, the Superintendent takes on the investigatory powers available to the RECBC. Exercising the authorities under s. 37-46 of the Act, the Superintendent has a number of orders available to him or her that vary depending on whether the party under investigation is unlicensed or licensed. If the Superintendent determines that the person under investigation did not hold a license at the time that they engaged in a real estate activity, the Superintendent may order one or more of the following:

a) require the person to cease the activity;
b) require the person to carry out specified actions that the Superintendent considers necessary to remedy the situation;

[119] *Real Estate Services Act* s. 43 (2)
[120] *Real Estate Services Act* s. 48(1)

c) require the person to pay amounts in accordance with section 44 (1) and (2) [*recovery of enforcement expenses*];
d) require the person to pay a penalty in an amount of
    i. not more than $500 000, in the case of a corporation or partnership, or
    ii. not more than $250 000, in the case of an individual;
e) require the person to pay an additional penalty up to the amount of the remuneration accepted by the person for the real estate services in respect of which the contravention occurred.[121]

95. If a licensee that is under investigation by the Superintendent is determined to have committed conduct that is seriously detrimental to the public interest, the Superintendent may order one or more of the following:

a) suspend the licensee's licence for the period of time the Superintendent considers appropriate or until specified conditions are fulfilled;
b) cancel the licensee's licence;
c) impose restrictions or conditions on the licensee's licence or vary any restrictions or conditions applicable to the licence;
d) require the licensee to cease or to carry out any specified activity related to the licensee's real estate business;
e) require the licensee to pay amounts in accordance with section 44 (1) and (2) [*recovery of enforcement expenses*];
f) require the licensee to pay a penalty in an amount of
    i. not more than $500 000, in the case of a brokerage or former brokerage, or
    ii. not more than $250 000, in any other case;
g) require the licensee to pay an additional penalty up to the amount of the remuneration accepted by the licensee for the real estate services in respect of which the contravention occurred.

96. The Act also stipulates that a licensee commits an offence if they contravenes s. 3 [requirement for licence to provide real estate services]; s. 27 [payment into trust account]; s. 30 [withdrawals from trust account]; s. 37(4) [interference with investigation];

[121] *Real Estate Services Act* s. 49(2)

fails to comply with an order of RECBC or the Superintendent; or makes a false or misleading statement in a record required under the Act.[122]

97. The penalties for committing an offence under the Act are as follows:

1) A corporation that commits an offence under section 118 [offences] is liable
    a) on a first conviction, to a fine of not more than $1.25 million, and
    b) on each subsequent conviction, to a fine of not more than $2.5 million.
2) An individual who commits an offence under section 118 [offences] is liable
    a) on a first conviction, to a fine of not more than $1.25 million, or to imprisonment for not more than 2 years, or to both, and
    b) on each subsequent conviction, to a fine of not more than $2.5 million, or to imprisonment for not more than 2 years, or to both.[123]

b. Mortgage Brokers and Submortgage Brokers

98. In British Columbia, a mortgage broker is defined as someone who carries on a mortgage broker business (see definition above at para. 54). A submortgage broker is anyone who engages in mortgage broker activities and is employed by a mortgage broker. Both categories of professionals are regulated by the Registrar of Mortgage Brokers, whose office falls under the British Columbia Financial Services Authority (BCFSA). The registrar is responsible for keeping a register of every mortgage and submortgage broker registered under the Act, called The Mortgage Brokers Register.[124]

99. The governing legislation for mortgage and submortgage brokers is the *Mortgage Brokers Act* (MBA) and the Mortgage Brokers Act Regulations.

100. The MBA sets out a number of obligations for mortgage brokers, including:

a. Prohibiting a person from withholding, destroying, concealing, or refusing any information or records required by the registrar for inquiry;[125]

[122] *Real Estate Services Act* s. 118 (1)
[123] *Real Estate Services Act* s. 119
[124] *Mortgage Brokers Act* s. 3(1)
[125] *Mortgage Brokers Act* s. 6(7.5)

b. Prohibiting a mortgage broker or submortgage broker from making any false, misleading, or deceptive statements;[126]

c. Requiring the mortgage broker to disclose any conflicts of interest the mortgage broker or any of their associates or related parties may have to investors and lenders,[127] and to borrowers;[128]

d. That they not be party to a mortgage transaction that is hard and unconscionable or otherwise inequitable;[129] and

e. An obligation to "not engage in conduct prejudicial to the public interest."

101. The registrar has the power to investigate mortgage and submortgage brokers who are in violation of their obligations under the Act, or against whom a sworn complaint has been made.[130] After giving the registered party an opportunity to be heard, if the registrar if of the opinion that the mortgage or submortgage broker has violated their obligations under the Act, he or she may a) suspend the person's registration; b) cancel the person's registration; c) order the person to cease a specified activity; or d) order the person to carry out specified actions that the registrar considers necessary to remedy the situation.[131]

102. As well, if a mortgage broker contravenes any of the obligations listed in the Act, they have committed an offence under the Act and are subject to penalties. Depending on which section of the Act the mortgage broker has contravened, the penalties can range from $2000[132] to $200,000, or imprisonment for not more than 2 years, or both.[133]

103. It is also considered an offence under the MBA for a person not registered as a mortgage or submortgage broker to carry on a business as a mortgage broker.[134] The

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[126] *Mortgage Brokers Act* s. 14(1)
[127] *Mortgage Brokers Act* s. 17.1 and 17.4
[128] *Mortgage Brokers Act* s. 17.3
[129] *Mortgage Brokers Act* s. 8(1)(g)
[130] *Mortgage Brokers Act* s. 5
[131] *Mortgage Brokers Act* s. 8(1)
[132] *Mortgage Brokers Act* s. 22(3)(b)
[133] *Mortgage Brokers Act* s. 22(2)(b)(ii)
[134] *Mortgage Brokers Act* s. 21(a)

registrar has the power to investigate such persons, and if, in his or her opinion, the registrar determines that the person has been carrying on such business without being registered under the Act, the registrar has the power to a) order the person to cease a specified activity; b) order the person to carry out specified actions that the registrar considers necessary to remedy the situation; or c) order the person to pay an administrative penalty of not more than $50,000.[135]

c. Property Developers

104. Property development in British Columbia is governed by the *Real Estate Development Marketing Act* (REDMA), which applies to any developer who markets a multi-unit residential development unit. A developer is defined in the Act as "a person who, directly or indirectly, owns, leases, or has a right to acquire or dispose of development property, unless the person is, or is in a class of persons, excluded by regulation."[136] A development property means any of the following:

a) 5 or more subdivision lots in a subdivision, unless each lot is 64.7 ha or more in size;
b) 5 or more bare land strata lots in a bare land strata plan;
c) 5 or more strata lots in a stratified building;
d) 2 or more cooperative interests in a cooperative association;
e) 5 or more time share interests in a time share plan;
f) 2 or more shared interests in land in the same parcel or parcels of land;
g) 5 or more leasehold units in a residential leasehold complex[137]

105. REDMA is intended to protect the public by ensuring that developers involved in property development have the necessary approvals and financing.[138] REDMA does not provide for a licensing regime for developers,[139] but the Office of the Superintendent of

[135] *Mortgage Brokers Act* s. 8(1.4)
[136] *Real Estate Development Marketing Act* S.B.C 2005, c. 14, s. 1
[137] *Real Estate Development Marketing Act* S.B.C 2005, c. 14, s. 1
[138] Real Estate Council of British Columbia, "Real Estate Development Marketing Act," accessed November 29, 2020, https://www.recbc.ca/professionals/knowledge-base/guidelines/real-estate-development-marketing-act, at Appendix U.
[139] The Crown corporation BC Housing provides licensing for builders. Some developers are builders, and are licensed by BC Housing, and some are not.

Real Estate (the Superintendent) is responsible for regulating developers and ensuring that they provide full information and deposit protection to consumers.[140]

106. REDMA sets out a number of obligations for developers who are marketing a development property. Prior to marketing a property, a developer must prepare a disclosure statement for consumers that plainly discloses all material facts related to the property and sets out the purchaser's rights to rescission under the Act.[141] This disclosure statement must be filed with the Superintendent, along with any records required to support any claims made in the disclosure statement.[142] If the developer becomes aware that the disclosure statement contains an omission or a false or misleading statement, the developer must file a new disclosure statement or an amendment to the disclosure statement.[143] The Act requires developers to provide purchasers of a sale or lease of a development unit with a copy of the disclosure statements prior to entering into a purchase agreement.[144] If a developer breaches their obligations related to disclosure statements, the purchase agreement is deemed not enforceable.[145]

107. In 2019, the Government of BC brought in additional obligations for developers under REDMA related to the assignment of development units.[146] Assignments, commonly called presale assignments, are defined in the Act as "a transfer of some or all of the rights, obligations and benefits under a purchase agreement made in respect of a strata lot in a development property, whether the transfer is made by the purchaser under the purchase agreement to another person or is a subsequent transfer."[147]

108. The provisions governing assignments were introduced to create assignment reporting requirements for developers. Prior to the amendment to the Act, the rights to a presale development could be transferred multiple times and the collection of

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[140] BC Government, "Office of the Superintendent of Real Estate", https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/central-government-agencies/office-of-the-superintendent-of-real-estate
[141] *Real Estate Development Marketing Act* S.B.C 2005, c. 14, s. 14(1) –14(2)
[142] Supra, s. 14(1)(b) & (14)(3)
[143] Supra, s. 16(1) –16(4)
[144] Supra, s. 15(1)
[145] Supra, s. 23(1)
[146] Supra, Table of Legislative Changes (3rd Edition)
[147] Supra, s. 20.1

comprehensive information about such transfers was not mandated or routine.[148] Under the new provisions, the developer may choose to prohibit or allow the assignment of a development property in the purchase agreement. In the event the developer does allow assignments, the Act requires that developers include the following language in the purchase agreement:

> a) a term prohibiting any assignment of the purchase agreement without the prior consent of the developer;
>
> b) a notice that, before the developer consents to an assignment of the purchase agreement, the developer will be required to collect from the proposed parties to the assignment agreement the information and records referred to in subsection (2);
>
> c) a term requiring all proposed parties to an assignment agreement to give to the developer the information and records referred to in subsection (2).[149]

109. Subsection (2) requires the developer to collect, from each party to the assignment agreement, information on the party's identity, contact and business information, and the terms of the assignment agreement.[150] The 2019 amendments to REDMA also requires that the developer file the collected information with the administrator under the *Property Transfer Tax Act.*[151]

110. Where a developer may have been non-compliant with their obligations under REDMA, the Superintendent of Real Estate has enforcement and disciplinary powers under the Act to respond to any noncompliance with REDMA on the part of developers. The Superintendent may investigate the developer, which investigation can include inspecting records located on the developer's business premises,[152] or applying for a court order authorizing the search and seizure of records located elsewhere.[153] The

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[148] British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 41st Parl, 3rd Sess, Issue No. 123 (24 April 2018) at 1020 (Hon C James)
[149] *Real Estate Development Marketing Act* S.B.C 2005, c. 14, s. 20.3(1)
[150] Supra, s. 20.3(2)
[151] Supra, s. 20.4
[152] Supra, s. 25
[153] Supra, s. 26

Superintendent may also hold a hearing to determine if the developer has been noncompliant with the Act.[154]

111. Should the Superintendent determine the developer has been non-compliant, he or she has a number of orders available. The Superintendent may:

> a) order the developer to cease or refrain from marketing one or more development units;
>
> b) order the developer to carry out a specified activity related to marketing;
>
> b.1) order the developer to comply, or to carry out a specified activity for the purpose of complying, with a prohibition or requirement of
>
> i. Part 2.1 [*Assignment Reporting Requirements*], or
>
> ii. a regulation made for the purpose of Part 2.1;
>
> c) order the developer to pay amounts in accordance with section 31 [*recovery of enforcement expenses*];
>
> d) order the developer to pay an administrative penalty in an amount of
>
> i. not more than $500 000, in the case of a corporation, or
>
> ii. not more than $250 000, in the case of an individual.[155]

112. The Superintendent is required to publish each order of the Superintendent made under the Act.[156] The Superintendent also has the power to apply to the Supreme Court for an injunction restraining a person from contravening, or requiring a person to comply with, the Act or an order of the Superintendent under the Act.[157]

113. A developer who is found to have contravened the Act or an order of the Superintendent has committed an offence and is liable for the following penalties under the Act:

> a. in the case of a corporation,
>
> i. on a first conviction, to a fine of not more than $1.25 million, and

[154] Supra, s. 29
[155] Supra, s. 30
[156] Supra, s. 33
[157] Supra, s. 35(1)

ii. on each subsequent conviction, to a fine of not more than $2.5 million, and,

b. in the case of an individual,

i. on a first conviction, to a fine of not more than $1.25 million or to imprisonment for not more than 2 years, or to both, and

ii. on each subsequent conviction, to a fine of not more than $2.5 million or to imprisonment for not more than 2 years, or to both.

114. Not all actors involved in property development are captured by British Columbia's regulatory regime, however. The Real Estate Services Regulations exempts individuals from being licensed under RESA if the real estate services they engage in are provided in respect of a development unit.[158] The Regulation also exempts employees of developers and those who engage in real estate services on behalf of a developer.[159] These exemptions mean that salespeople who work for developers are not governed by RESA and are not subject to regulation and enforcement by either RECBC or the Superintendent.

d. Lawyers

115. In British Columbia, lawyers play a significant role in real estate transactions. This includes ensuring there are no encumbrances on the title before a transfer takes place and registering the transfer of the property title with the Land Title and Survey Authority.[160] In BC, this function is performed by either a lawyer or a notary.

116. Section 3(3)(f) of the *Real Estate Services Act* exempts practising lawyers who provide real estate services in the course of their legal practice from the requirement to be licensed under RESA, and that as a result they are not subject to the licensing requirements and regulatory enforcement of RECBC. Lawyers are instead regulated by

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[158] Real Estate Services Regulation, s. 2.5(1)
[159] Supra, s. 2.5(2) & (3)
[160] The Law Society of British Columbia, *Professional Legal Training Course 2020: Practice Manual - Real Estate* (September 2020), online: https://www.lawsociety.bc.ca/Website/media/Shared/docs/becoming/material/RealEstate.pdf pp. 1-2, at Appendix V.

the Law Society of British Columbia, a self-regulatory organization,[161] and are governed by the *Legal Profession Act,*[162] the Law Society Rules, and the Code of Professional Conduct for British Columbia.

117. In recent years, the legal profession has been impugned as being highly vulnerable to the facilitation of money laundering in real estate due to the protections provided by solicitor-client privilege and the existence of legal trust accounts which could be used to shelter large amounts of money, including proceeds of crime.[163] Although the Law Society is not subject to the reporting requirements in the PCMLTFA, it is has enacted rules to, among other things, require lawyers to conduct client identification and verification, or know your client rules;[164] prohibiting lawyers from accepting cash in sums greater than $7,500 in most circumstances;[165] and introducing rules allowing trust accounts to be used for legal services only.[166]

118. The *Legal Profession Act* and the Law Society Rules provide a regulatory regime for lawyers who contravene the Act or Rules, or who have committed professional misconduct or conduct unbecoming the profession.[167] The Act allows the Law Society to investigate a lawyer, examine their records, conduct discipline hearings, and, where a lawyer has been determined to be in contravention of the Act or Rules or has committed misconduct, apply sanctions such as a suspension, disbarment, the imposition of practice restrictions, and fines.[168] The Act and Rules set out the procedures for such disciplinary proceedings.[169]

e. Notaries

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[161] Maureen Maloney, Tsur Somerville, & Brigitte Unger. *Combatting Money Laundering in BC Real Estate: Expert Panel on Money Laundering in BC Real Estate*, 2019. Pg. 173.
[162] *Legal Profession Act*, S.B.C. 1998, c. 9
[163] "Dirty Money – Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing" (the "Second German Report"), *BC Gov News* (8 April 2019), online: <https://news.gov.bc.ca/releases/2019AG0031-000599, Chapter 2-4
[164] Law Society Rules, Part 3 – Protection of the Public.
[165] Ibid, Rule 3-59 (Cash Transactions)
[166] Ibid, Rule 3-58.1 (Trust Account Only for Legal Services)
[167] *Legal Profession Act*, s. 26(1)
[168] Supra, Part 4
[169] Law Society Rules, Part 4 & 5

119. In British Columbia, notaries public are authorised to provide certain services related to real estate transactions in place of lawyers, including conveyancing transactions and property title registrations with the Land Title and Survey Authority.[170]

120. Under the Real Estate Services Regulation, notaries who engage in real estate services are exempt from RESA's licensing requirements.[171] Instead, notaries are governed by the *Notaries Act*.[172] Notaries are regulated by the Society of Notaries Public of British Columbia, a self-regulatory body, and in addition to the Act, they are governed by the Rules of the Society.

121. The Rules set out professional conduct standards for notaries, which include a general duty to clients, a conflict of interest provision that recommends that notaries do not act for more than one party to a conveyance transaction, and a requirement that notaries obtain informed consent from parties where there is or might reasonably be a conflict of interest.[173]

122. The Act and the Rules also set out a disciplinary regime for notaries who are in contravention of their obligations under the Act or Rules. The regime allows for the Society's discipline committee to investigate whether a member is guilty of any of the following:

a) misappropriation or wrongful conversion by the person of money or other property entrusted to or received by the person in the person's capacity as a member of the society;
b) incompetence;
c) other professional misconduct;
d) a breach of a provision of this Act or a regulation or rule made under it, or of a bylaw of the society.[174]

123. The discipline committee may hold an inquiry or hearing into the member's conduct, then submits a written report of their findings to the directors of the Society. Upon

[170] Society of Notaries Public, "Services BC Notaries Provide", https://find.notaries.bc.ca/resources/showContent.rails?page=Services%20BC%20Notaries%20Provide
[171] Real Estate Services Regulation, s. 2.6
[172] Notaries Act, R.S.B.C. 1996, c. 334, s. 18(a)
[173] The Society of Notaries Public of British Columbia Rules of the Society, s. 11
[174] *Notaries Act*, s. 28(1)

conclusion of the inquiry, if it is found that the member did engage in misconduct, the directors may undertake any one of the following resolutions:

i. reprimand the member and, in addition, fine the member an amount of not more than $5 000,
ii. suspend the member for the period and subject to the conditions of practice they think fit and, in addition, fine the member an amount of not more than $5 000, or
iii. order that the membership of the member be terminated.[175]

G. ENFORCEMENT, STAFFING AND RESOURCES

124. This section provides an overview on the resources available to the regulatory agencies overseeing real estate in British Columbia. Information on staffing, resources, number of complaints and investigations, and outcomes of disciplinary proceedings was gathered from interviews with the relevant agency's staff and reviewing agency websites, service plans and publications.

iii. British Columbia Financial Services Authority

125. The British Columbia Financial Services Authority (BCFSA) is managed by a board of 11 directors and has one CEO who oversees a team of approximately 177 individuals.[176]

126. In its 2020/21-2022/23 Service Plan, BCFSA identified that 10 opportunities to strengthen BCFSA's AML role would be identified and implemented in 20/21.[177]

a. Registrar of Mortgage Brokers

127. The scope of BCFSA's mandate includes the Registrar of Mortgage Brokers, which regulates over 5,600 mortgage brokers (called "submortgage brokers" under the *Mortgage Brokers Act*) and brokerages (called "mortgage brokers" under the Act).[178]

[175] Supra, s. 35(2)(b)
[176] BCFSA 2020/21-2022/23 Service Plan, February 2020, pg.2, at Appendix W.
[177] Ibid, pg. 16
[178] Ibid, pg. 2

128. According to BCFSA, as of January 2021, the Registrar of Mortgage Broker's office consisted of 14 dedicated staff. This includes a team responsible for the registration of mortgage and submortgage brokers, and a compliance team responsible for handling complaints, examinations, and investigations.

i. Licensing and Registration

129. Two categories of licenses exist with respect to mortgage brokering activity: one for individuals and one for brokerages. The licensing process involves setting qualification criteria, against which criteria staff conduct a suitability review for each application for registration. For example, brokers must meet certain education requirements to be eligible for registration.[179] A criminal record check is required as part of this suitability review.

130. During the registration of mortgage brokers, the team conducts a suitability review of each applicant by verifying the applicant's credentials, reviewing open-source material, and assessing the individual's past criminal and regulatory history with other regulators.[180]

ii. Designated Individuals

1. Each mortgage broker (i.e. a brokerage) which is a corporation, partnership or sole proprietorship must have a registered sub-mortgage broker who acts as its "Designated Individual", which person is responsible for ensuring employees involved in arranging mortgages are properly registered, aware of regulatory obligations, and appropriately supervised; that brokerage financial records kept are accurate and up to date, that year-end financial filings are provided on time and in the form required, that registration information is kept accurate and timely, and that applications submitted through the MB E-filing system are complete and accurate.[181]

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[179] BC Financial Services Agency, "Education Requirements", accessed 20 January 2021, online: https://www.bcfsa.ca/pdf/mortgagebrokers_Registered/Edu.pdf, at Appendix W-1
[180] Letter from C. Rajotte dated December 14, 2020.
[181] BC Financial Services Agency, "Mortgage Broker Registrations", accessed 20 January 2021, online: https://www.bcfsa.ca/pdf/mortgagebrokers_Registered/Registrations.pdf, p. 2, at Appendix W-2

2. To qualify as a Designated Individual a broker must have a minimum of 2 years registration as a mortgage broker and no record of material regulatory issues. Each brokerage in BC has one designated individual, regardless of its size. As at February, 2020, 96% of designated individuals were responsible for 20 or less mortgage brokers. Only 1.2% (11 designated individuals in total) were responsible for overseeing 50 or more mortgage brokers.

3. The role of a Designated Individual, which is similar to a managing broker in the real estate agent context, or a compliance officer in the banking context, is a role that does not involve a separate registration. Obligations of a designated individual are not a legislative creation, but rather flow from policy developed by the BC Financial Services Agency. Designated individuals are subject to enhanced obligations, such as a requirement to properly execute.

iii. Complaints, Examinations, and Investigations

4. The Registrar of Mortgage Brokers investigates potential contraventions of the *Mortgage Brokers Act* and its regulations, and policy set out by the BCFSA, with respect to both registered mortgage brokers and unregistered mortgage brokering activity.

131. The Registrar receives complaints from the public and from other industry professionals.[182] A complaint initiates a review process, which includes assessment of the role of individuals involved, including any designated individual responsible for overseeing those named in the complaint.

132. In addition to assessments initiated by complaints, the Registrar of Mortgage Brokers' compliance team also conducts proactive examinations. As of February 2020, approximately 50% of mortgage broker case files are proactive examinations. The Registrar's office has identified that the following additional information sources would be helpful in identifying examinations targetsused to conduct these examinations include:

a. Government sources:

[182] Letter from C. Rajotte dated December 14, 2020.

i. Enhanced ability to search court records on BC Court Services Online (CSO).
ii. Enhanced ability to search BC's Corporate Registry, for example, to undertake reverse director and shareholder information searches.
iii. Enhanced ability to search Insurance Corporation of BC driver's license (including photo) and registered owner data.
iv. Access to CSO and Corporate Registry equivalents in other provinces.
v. Provincial Sales Tax data.
vi. Medical Services Plan data.
vii. Canadian Police Information Centre (CPIC) data.
viii. Police Records Information Environment (PRIME) data.
ix. Canada Revenue Agency taxpayer (line 150) data.

b. Private sources:
i. Commercial international anti-money laundering and politically exposed persons data.
ii. Canadian Bankers Association SIFT network (dismissed bank employees) data.
iii. Multiple Listing Service data.

133. Where appropriate, examinations and complaints may lead to an investigation.[183] In the 2018-2019 fiscal year, the Registrar of Mortgage Brokers opened 181 complaints, conducted 83 suitability reviews, conducted 37 examinations, and concluded 61 investigations.[184]

134. The largest administrative monetary penalty issued by the Registrar of Mortgage Brokers is $50,000, which penalty has been issued on three occasions: once in 2004, and twice in 2018.[185]

135. There are two branches of disciplinary proceedings that the Registrar can pursue when a mortgage or submortgage broker is suspected to have violated their obligations under the *Mortgage Brokers Act*. The first is to apply administrative penalties against the broker, while the second is to pursue a provincial offence. This requires a referral to the BC Prosecution Service. The issuance of administrative penalties is more frequent than

[183] Letter from C. Rajotte dated December 14, 2020.
[184] Letter from C. Rajotte dated December 14, 2020. Additionally, between April 1, 2018 and December 31, 2020, the Registrar of Mortgage Brokers opened 354 complaints, conducted 194 suitability reviews, conducted 80 examinations, and concluded 74 investigations.
[185] Letter from C. Rajotte dated April 9, 2020; see also Overview Report - Registrar of Mortgage Broker Orders.

a referral for a provincial offence. As at Fall 2020, two investigations into misconduct by the Registrar have resulted in the laying of a provincial offence, which investigations occurred in 2004 and 2010 and were investigations into repeated unlicensed activity.

iv. Office of the Superintendent of Real Estate

136. Prior to 2016, the Office of the Superintendent of Real Estate (the Superintendent) fell under the auspices of FICOM. In 2016, the government created a standalone office and gave the Superintendent rule-making authority, increasing the Superintendent's mandate and authority.

i. Mandate of the Superintendent

137. Prior to these legislative changes, the Superintendent's key regulatory areas entailed investigating unlicensed real estate activity and enforcing the *Real Estate Development Marketing Act*. After the standalone office was created, the Superintendent continued these regulatory activities but was also tasked with overseeing RECBC and investigating infractions by licensed real estate professionals deemed to be "seriously detrimental to the public interest".[186] As of January 2020, the Superintendent assumed responsibility for monitoring compliance with the Condo and Strata Assignment Registry. The Superintendent does not have an explicit responsibility to consider or investigate potential money laundering activity.

138. The Superintendent has the ability to share information with other regulatory and law enforcement agencies pursuant to an exemption in the *Freedom of Information and Protection of Privacy Act*.[187]

139. The Superintendent's investigations staff is comprised of 8 individuals, two of whom have obtained an Association of Certified Anti-Money Laundering Specialists ("ACAMS") certification. These staff review complaints from the public (the vast majority of which relate to unlicensed real estate services) and conduct proactive examinations.

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[186] Real Estate Services Act, s. 48. Note that the "seriously detrimental" authority existed before OSRE became a standalone office.
[187] *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, s. 76.

Where appropriate, these investigations lead to an investigation report being submitted to the Superintendent's designate to make a decision on which prescribed step to take, including issuing a notice of hearing.[188] Following a notice of hearing, the Superintendent may issue a variety of orders, including an order that the person cease activity, or an administrative penalty of up to $500,000.[189]

ii. Complaints and Investigations

140. Despite the addition of s. 48 of RESA, which assigned the Superintendent the investigation of serious infractions by licensees, the majority of the Superintendent's investigations continue to be investigations into unlicensed real estate activity. Between 2017 and 2019, the subject matter of the Superintendent investigations was as follows[190]:

Subject matter of investigations	Number of investigations	% of total investigations
RESA – Licensee conduct – Trading Services	42	12.9%
RESA – Unlicensed Activity – Trading Services	143	43.9%
RESA – Licensee conduct – Rental Property	4	1.2%
RESA – Unlicensed Activity – Rental Property	95	29.1%
RESA – Licensee conduct - Strata	1	0.3%
RESA – Unlicensed Activity – Strata	0	0%
REDMA – Marketing, Disclosure, and Deposit Trust Protection	41	12.6%

141. In terms of the source of investigations, between 2017 and 2019, 42.6% came from the public and 32.2% came from industry professionals such as agents and brokers. The remaining complaints were internally generated (8.3%), received anonymously (6.7%), or came from RECBC, a Real Estate Board, or the BC Securities Commission (7.6%). 2.5% of complaints were subject to privilege or immunity.[191]

[188] *Real Estate Development Marketing Act*, s. 27
[189] REDMA, s. 30
[190] June 9, 2020 Letter from Chantelle Rajotte to Cullen Commission Counsel, pg. 3-4
[191] June 9, 2020 Letter from OSRE to Cullen Commission Counsel, pg. 2-3

142. The number of complaints received by the Superintendent between 2009 and 2019 are as follows[192]:

Year	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009
#	165	174	217	264	203	158	172	191	199	279	413

143. The number of investigations conducted by the Superintendent between 2009 and 2019 are as follows[193]:

Year	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009
#	98	106	122	147	81	67	108	112	132	230	325

144. Between 2006 and 2020, the Superintendent issued 46 REDMA orders to developers, including consent orders, cease marketing orders, refrain from marketing orders, and cease and desist orders.[194] In that same time period, 7 notices of hearings and amended notices of hearings were issued.[195] Between 2006 and 2020, the Superintendent issued 42 RESA orders to persons providing real estate services, including consent orders, freeze orders and cease and desist orders.[196]

145. Additionally, the Superintendent may accept statutory undertakings to cease activity where it has obtained evidence of noncompliance with legislation. The number of statutory undertakings to cease activity accepted by the Superintendent between 2014 and 2019 are as follows:[197]

Year	2019	2018	2017	2016	2015	2014
#	147	67	202	182	142	91

[192] Ibid, pg. 1
[193] Ibid
[194] BC Government Website, "Real Estate Development Marketing Enforcement Action", https://www2.gov.bc.ca/gov/content/housing-tenancy/real-estate-bc/real-estate-development-marketing/enforcement, at Appendix X.
[195] Ibid
[196] BC Government Website, "Real Estate Services Enforcement Action", https://www2.gov.bc.ca/gov/content/housing-tenancy/real-estate-bc/real-estate-services/enforcement, at Appendix X-1
[197] Statistics provided by Ministry of the Attorney General counsel on January 14, 2021.

iii. Conduct seriously detrimental to the public interest

146. As of the time of drafting this report, and since becoming a stand-alone office in 2016, the Superintendent has never issued a discipline order following an investigation pursuant to s. 48 of the *Real Estate Services Act*, i.e. to investigate conduct that is "seriously detrimental to the public interest."

147. Under historical agreements, RECBC would refer certain complaints of a serious nature to OSRE for investigation, until approximately 2013, when the previous Superintendent of Real Estate ended the practice.

148. OSRE became a stand-alone office in 2016 and three FICOM staff (non-investigative) were transferred to OSRE. OSRE's investigative department was rebuilt over time. By 2019 OSRE's investigations unit had sufficiently grown to allow it to engage in s.48 investigations in respect of real estate licensees.

149. In 2019 OSRE initiated three investigations to determine whether a licensee had conducted themselves in a manner seriously detrimental to the public interest. All three investigations related to active investigations anchored in OSRE's core mandate to investigate developer and unlicensed real estate services misconduct. Two investigations are ongoing, and one was resolved following an investigation and a referral to RECBC.

150. In December of 2019, following an increase in OSRE's enforcement capacity, OSRE and RECBC entered into a memorandum of understanding to formalize RECBC's sharing of complaint files with OSRE related to alleged wrongdoing or misconduct by real estate licensees that may be seriously detrimental to the public interest. OSRE has since accepted 17 referrals under this memorandum of understanding. Six are ongoing, and ten have been resolved following an investigational finding of "unsubstantiated." One file was referred back to RECBC for enforcement (e.g. an order or notice of discipline hearing) following an investigation by OSRE.

v. Real Estate Council of British Columbia

151. As described in section "D.(I)(g)" above, RECBC is responsible for the regulation of licensees under the *Real Estate Services Act*. There are two teams under RECBC that

are responsible for compliance: the audit team and the investigations team. Brokerages are audited by the audit team at least every 5-6 years. Individuals are also assessed at the time of their re-licensing, which occurs every two years. Any issues or adverse information that has emerged relating to a licensee during that period may result in conditions on licensing, or transfer to a hearing with a possibility of denial of relicensing.

152. Between April 2018 and June 2020, RECBC audited 356 brokerages.[198] In 2019/2020, 92% of audits did not result in administrative penalties or disciplinary proceedings.[199] To provide context to these statistics, RECBC noted that in-person brokerage audits were suspended in March 2020 due to the COVID-19 pandemic. As a result, RECBC shifted its audit model to risk-based assessment and outreach. Out of 1,101 licenced brokerages, a total of 370 (34%), including those assessed as highest risk, were assessed and contacted by RECBC auditors between April and September 2020. Of these, 113 were identified for further investigation, and 21 resulted in a full audit. This risk-based audit model continues with virtual office audits having started again in September 2020. RECBC also advised that its response to COVID included extension of various filing and application deadlines, which led to a modified approach to issuance of administrative penalties, and fewer penalties.

153. The investigation team responds to complaints received by RECBC and investigates whether licensees are complying with their obligations under legislation. Complaints are received from real estate clients, agents, RECBC's anonymous tip line, and occasionally managing brokers. RECBC may also undertake proactive examinations flowing from public reports or court decisions, or as a result of its audit findings.

154. Between April 2018 and June 2020, RECBC received 1661 complaints and 813 anonymous tips. Of the 1661 complaints received in that period, 66.8% came from a consumer, 13.5% came from a real estate professional, 14.2% were initiated by RECBC,

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[198] Statistics gathered from Real Estate Council of BC Quarterly Statistics for 2020/2021 (https://www.recbc.ca/about-us/licensing-and-enforcement-statistics), at Appendix Y ("RECBC 2020/21 Stats"); 2019/2020 at Appendix Z ("RECBC 2019/2020 Stats"). and 2018/2019 at Appendix AA ("RECBC 2018/2019 Stats")

[199] Real Estate Council of BC 2020/21-2022/23 Service Plan, February 2020 ("RECBC Service Plan"). Pg. 15, at Appendix BB.

0.7% were referred to RECBC by a local Real Estate Board, 0.8% were referred by another regulator, and 3.9% came from "other".[200]

155. Only a portion of the complaints that RECBC receives each year are investigated and proceed to disciplinary measures. Measures available to RECBC to respond to a licensee misconduct include conducting investigations, holding disciplinary hearings, issuing "letters of advisement,"[201] fines and administrative penalties, and cancelling or suspending a license issued under the Act.[202] RECBC advised that its administrative penalty regime will involve higher fines and more potential contraventions as of February 1, 2021. The published statistics on disciplinary actions for 2018-2019, 2019-2020, and the 2020-2021 (April to June) are as follows:[203]

Disciplinary Action	2018-2019	2019-2020	2020-2021 (April to June)	Total
Consent Order Issued	78	52	9	139
Disciplinary Hearings Held	6	7	5	18
Fines & Admin Penalties Issued	212	160	6	378
Suspension Issued	16	1	-	17
Letters of Advisement Issued	88	68	1	157
License Surrenders	3	1	-	4
Total	403	289	21	713

156. The total amount of fines and administrative penalties issued in 2018/2019 amounted to $361,625. In 2019/2020, the total was $343,525. In the first reported quarter of 2020/2021 (April to June), the amount was $15,375.[204]

[200] RECBC 2020/21 Stats; RECBC 2019/2020 Stats; and RECBC 2018/2019 Stats.
[201] Letters of Advisement are often a type of warning letter.
[202] RESA, Division 2 – Discipline Proceedings.
[203] RECBC 2020/21 Stats; RECBC 2019/2020 Stats; and RECBC 2018/2019 Stats. RECBC noted that these numbers were significantly affected by COVID-19 and the transition to remote operations.
[204] RECBC 2020/21 Stats; RECBC 2019/2020 Stats; and RECBC 2018/2019 Stats.

157. RECBC has experienced an increase in the volume of complaints over the past five years, which resulted in an increase in the number of ongoing investigations. In 2018/2019, RECBC had 700 open investigations. In order to reduce this inventory of active investigations, RECBC took the following steps:

a. Recruited additional investigators to expand the capacity of the compliance department;

b. Streamlined the file review process to increase the efficiency of investigations; and

c. Improved the timelines of RECBC's responses to consumer complaints.

158. These changes were successful in reducing the inventory of active investigations, and in 2020/2021 RECBC was on track to have an inventory of 400 open investigations.[205]

159. According to RECBC's 2020/21-2022/23 Service Plan, the average number of days it took to complete a complaint investigation in 2017/2018 was 310 days. By 2019/2020, the Council had decreased that to 245 days and was on track to reduce the length of investigations by more than 5% in 2020/2021.[206]

160. In 2020/2021, RECBC forecast a $2.2 million increase in staffing costs to support additional full-time employees for compliance, audit and operations functions, as well as increased employee benefit costs.[207]

vi. Law Society of British Columbia

161. As stated above at paragraph 116, the legal profession in British Columbia is regulated by the Law Society of British Columbia. Information on the Law Society's staffing, resources and statistics on the number of investigations and disciplinary hearings

[205] RECBC Service Plan, pg. 9. RECBC advised that the number of complaint matters it currently has open that have an originating date of 1 April 2019 or earlier is 170.
[206] RECBC Service Plan, pg. 9. RECBC advised that as of the end of the last fiscal year, this number had been reduced to 218.
[207] Ibid, pg. 18

can be found in "Overview Report on the Regulation of Legal Professionals in British Columbia," entered as exhibit 192.[208]

vii. Society of Notaries Public of British Columbia

162. As described above, Notaries provide services for non-contentious legal services, including real estate. The Society of Notaries Public of British Columbia ("the Society of Notaries") enforces the *Notaries Act,* RSBC 1996, c 334. There are currently 396 practicing notaries in the Province serving clients and communities, which conducted 88,956 real estate transactions involving trust funds in the 12 months preceding Feb. 15, 2020.[209]

163. Notaries are reporting entities under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (the Act), and as such have "know your client" obligations, and are subject to FINTRAC audits.[210] To date no B.C. Notary has been subject to a penalty imposed under the PCMLTFA.[211]

164. Notaries are also bound by the privacy provisions of the *Personal Information Protection Act*, SBC 2003, c 63, and other privacy legislation. Unlike lawyers, notaries' client communications are not subject to solicitor/client privilege. Notaries are additionally subject to compliance with the Society's Rules, Bylaws, and the Society's "Principles for ethical and professional conduct guideline."[212]

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[208] https://cullencommission.ca/data/exhibits/192%20-%20V2%20Overview%20Report%20on%20the%20Regulation%20of%20Legal%20Professionals%20in%20BC%20-%20Nov%2015,%202020.pdf
[209] Society of Notaries' Opening Statement
[210] Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations, SOR/2002-184, s. 1.
[211] Society of Notaries' Opening Statement
[212] Society of Notaries' Opening Statement

Appendix A

Single real estate regulator protects people, combats money laundering
BC Gov News

British Columbia News

Single real estate regulator protects people, combats money laundering

https://news.gov.bc.ca/20971
Tuesday, November 12, 2019 8:30 AM

Victoria - British Columbians can buy and sell their homes with renewed confidence and protection as the BC Financial Services Authority (BCFSA) takes its first steps toward becoming the single regulator for real estate.

“Buying a home is one of the most significant purchases people make in their lifetime, and by working together, the BC Financial Services Authority, Office of the Superintendent of Real Estate and the Real Estate Council of BC can combine their expertise to better protect consumers,” said Carole James, Minister of Finance. “Through legislation, we are giving people the assurance they deserve, while continuing to create world-leading protections against money laundering and other criminal activity in our real estate sector.”

Creating a single regulator was one of the central recommendations from Dan Perrin’s Real Estate Regulatory Structure Review in September 2018 and was echoed in the Expert Panel on Money Laundering Report in May 2019.

As the single regulator, the BCFSA will take responsibility over real estate licensing, conduct, investigations and discipline.

“Bringing real estate regulation within the new BC Financial Services Authority is an important step towards modern, effective and efficient regulation,” said Stanley Hamilton, chair of BCFSA. “This announcement builds on the important work already in progress at the BCFSA and positions consumers to be able to benefit from an unprecedented depth of expertise and experience.”

The BCFSA, which officially became a new Crown agency on Nov. 1, 2019, is currently responsible for regulating mortgage brokers, private pension plans and financial institutions. By including real estate regulation within the responsibility of the BCFSA, the Ministry of Finance is simplifying and integrating regulation of the B.C. financial services sector, resulting in increased consumer confidence and opportunities to streamline investigations and enforcement.

Since 2016, the Office of the Superintendent of Real Estate (OSRE) and the Real Estate Council of British Columbia (RECBC) have both played a vital role in overseeing the real estate industry. Moving forward, both agencies will be integrated within the BCFSA, building off the work that has already been done.

“We welcome the changes announced today to ensure that the regulatory framework provides effective consumer protection and to increase public confidence in the broader financial services sector,” said Micheal Noseworthy, superintendent of OSRE.

Elain Duvall, chair of RECBC, said, “Today’s announcement is good news for both real estate consumers and the sector as we combine expertise in one regulator. As we work towards the establishment of a single regulator, public protection will continue to be the Real Estate Council of British Columbia’s primary focus.”

The Ministry of Finance is targeting fall 2020 to bring forward new legislation, while establishing an integrated real estate and financial services sector regulator is anticipated in spring 2021.

Learn More:

To read the Real Estate Regulatory Structure Review (Perrin report), visit:
https://news.gov.bc.ca/files/Real_Estate_Regulatory_Structure_Review_Report_2018.pdf

To read the Expert Panel on Money Laundering in BC Real Estate report, visit:
https://news.gov.bc.ca/files/Combatting_Money_Laundering_Report.pdf

To learn more about the British Columbia Financial Services Authority, visit: https://www.bcfsa.ca/pdf/news/News20191101.pdf

Media Contacts

Ministry of Finance
Media Relations
778 974-3341

Appendix A

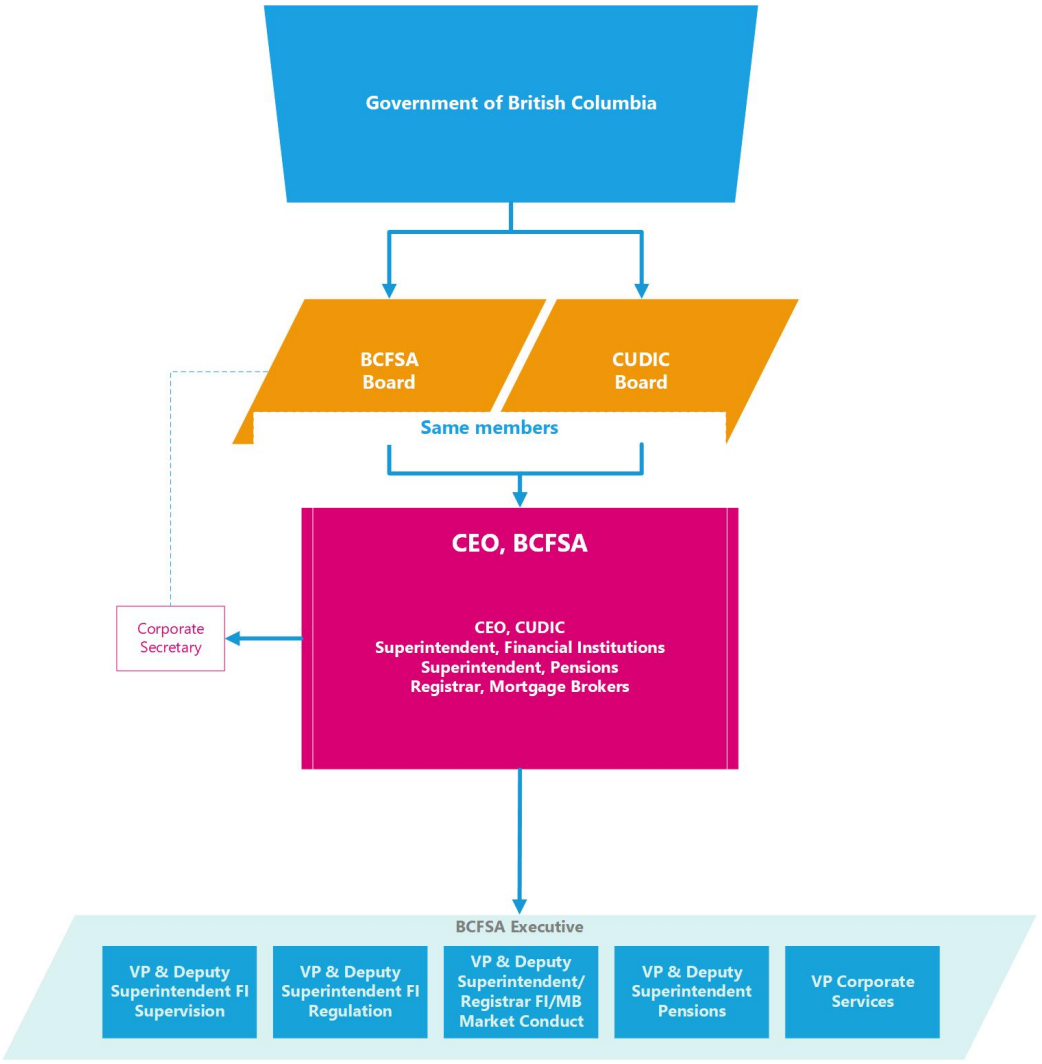
Appendix B

BCFSA – About Us – Organizational Structure

BC FINANCIAL SERVICES AUTHORITY

About Us

Governance



The Structure of the BCFSA

The BC Financial Services Authority is BC's newest regulator.

The Lieutenant Governor in Council (the provincial cabinet with the approval of the Lieutenant Governor) appoints between 2 and 11 Board Members to oversee the BC Financial Services Authority. Under the provisions of the Financial Services Authority Act 2019, the Lieutenant Governor in Council also appoints a Board Chair and Vice Chair. This Board of Directors is responsible for appointing the CEO of the BCFSA.

The CEO serves in several statutory capacities including Superintendent of Financial Institutions, Superintendent of Pensions, Registrar of Mortgage Brokers and CEO of the Credit Union Deposit Insurance Corporation (CUDIC) under the corresponding legislation.

Day-to-day regulatory and operational decisions are administered by the CEO and approximately 150 staff hired for their financial services and regulatory expertise.

BCFSA's executive team structure focuses on specific areas of expertise: A Vice President and Deputy Superintendent of Pensions, Vice Presidents who serve as Deputy Superintendents of Financial Institutions (FI) Supervision and FI Regulation, a Vice President who is Deputy Superintendent of FI Market Conduct and also Deputy Registrar of Mortgage Brokers, and a Vice President of Corporate Services providing support to all the core business areas.

Appendix B

Blair Morrison, CEO of BCFSA

Blair Morrison was appointed CEO of FICOM and the BCFSA effective July 22, 2019. In that capacity, Mr. Morrison is BC's Superintendent of Financial Institutions, Superintendent of Pensions, Registrar of Mortgage Brokers and CEO of the Credit Union Deposit Insurance Corporation (CUDIC). His FICOM role was phased out with the full transition to the BCFSA on November 1, 2019.

BCFSA CEO Blair Morrison

The CEO has the power to appoint the executive officers and employees of the Authority and determine their remuneration and the terms and conditions of their employment subject to the Board's resolutions and bylaws.

Role of the BC Financial Services Authority Board of Directors

The Board of Directors exercises powers and carries out duties assigned to it under the Financial Services Authority Act 2019, the Financial Institutions Act (FIA), and the Credit Union Incorporation Act (CUIA) relating to the regulation and supervision of provincially licensed insurance companies, trust companies and credit unions. It does not have statutory powers under the Mortgage Brokers Act or the Pension Benefits Standards Act. Two other pieces of legislation, the Insurance Act, and the Insurance (Captive Company) Act are also administered by the BCFSA although the Board is not referenced in those Acts.

BCFSA Chair Dr. Stanley Hamilton

BCFSA Vice Chair Wilma van Norden

Through the exercise of FSSA, FIA and CUIA powers, the Board makes major regulatory decisions regarding incorporations, business authorizations, amalgamations, liquidations and windups. The BCFSA Board of Directors also serves as the Credit Union Deposit Insurance Corporation Board of Directors with oversight of CUDIC policy and operations. The Lieutenant Governor in Council makes regulations under current legislation. The BCFSA does not have rule making powers at this time.

Chair Dr. Stanley W. Hamilton

Dr. Hamilton is an emeritus professor at UBC's Sauder School of Business. During his career at UBC Dr. Hamilton taught and conducted research in real estate valuation and investments, institutional investments, pension fund governance and the real estate

brokerage industry. He also served in a number of senior administrator roles at UBC.

Vice Chair Wilma van Norden

Vice Chair Wilma van Norden is a Chartered Professional Accountant. Previously, Ms. van Norden was a Managing Director and Senior Supervisor for Office of the Superintendent of Financial Institutions Canada. Her 35-year career involved working in and regulating financial institutions, including banks, trust companies, insurance companies, pension plans and credit union system entities.

For details on the Board of Directors.

Fees, Budgets, Transparency

The Authority must not incur or budget for a deficit but may borrow in order to exercise its powers or perform its duties when authorized by the Lieutenant Governor in Council and the Minister of Finance. The BC Government has retained the authority to approve any changes to the existing fee structure for the BCFSA. BCFSA consults to gather industry feedback when proposing fee changes and these proposals are included in a submission to Treasury Board requesting approval. Cabinet approval is required to implement fee changes through regulation.

As a Crown agency, the B.C. financial services authority will receive a mandate letter from the B.C. government and must maintain a service plan and other transparent reporting requirements. The fiscal year of the Authority begins on April 1 in each year and ends on March 31 in the following year.

Dissolution of the Financial Institutions Commission (FICOM)

For thirty years, FICOM was BC's integrated regulator of financial services. With the full implementation of the BC financial Services Authority, FICOM has been dissolved. Proceedings and other activities that were commenced or conducted by FICOM prior to its dissolution, or to which the Commission was a party, are deemed to be proceedings and other activities commenced or conducted by the BC Financial Services Authority. A ruling, order or judgment in favour of or against the Commission may be enforced by or against the BCFSA.

Appendix C

Ministry of Finance 2018/19 Annual Service Plan Report

Ministry of Finance

2018/19 Annual Service Plan Report

Appendix C

For more information on the Ministry of Finance contact:

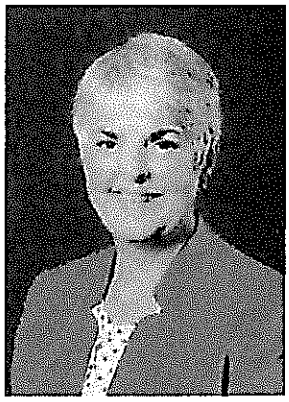
PO BOX 9417
STN PROV GOVT
VICTORIA, BC
V8W 9V1

1-800-663-7867

Or visit our website at
www.fin.gov.bc.ca

Published by the Ministry of Finance

Minister's Message and Accountability Statement



Our government is building a strong, sustainable economy that benefits all British Columbians, not just the few at the top. We're focused on investing in our greatest resource — the people who power our province. As Minister of Finance, I am proud of the bold steps we have taken to make life more affordable, improve the services people rely on and invest in a strong, sustainable economy. Our plan to put people first and build a brighter future will make life better for years to come.

Two years ago, we set the province on the path to universal child care with historic investments in a made-in-B.C. child care plan. We have made significant progress on our 30-point housing plan, building new supply and introducing measures to ensure affordable housing is within people's reach — and we're seeing results.

British Columbia is an economic leader across Canada, our budget is balanced and we're making investments in people and services that are helping everyone, from families to businesses, get ahead. B.C. continues to lead the country as the only province with an 'AAA' credit rating from all three international credit rating agencies, we have had the lowest unemployment rate for 23 consecutive months and we also eliminated the operating debt for the first time in 40 years.

The Sustainable Services Negotiating Mandate is underway, with more than 220,000 public sector employees currently covered by tentative or ratified agreements. The mandate focuses on improving services for people and ensuring fair and affordable compensation. The mandate is consistent with province's commitment to balanced budgets and sound fiscal management.

Our government is committed to advancing gender equality and bringing a gender equity lens into the policies and programs government provides. This means working to advance women's economic and political empowerment, eliminating systemic barriers and ending gender-based violence. Our approach will help us make decisions that are reflective of the diverse people who contribute to our province.

I wish to thank the incredibly professional and dedicated staff in the Ministry of Finance. It is my honour to work with them every day to help make life better for British Columbians, and I am grateful for their unwavering commitment to serving the people of this province.

The Ministry of Finance *2018/19 Annual Service Plan Report* compares the Ministry's actual results to the expected results identified in the *2018/19 – 2020/21 Service Plan* created in February 2018. I am accountable for those results as reported.

Honourable Carole James
Minister of Finance

Table of Contents

Purpose of the Annual Service Plan Report

The Annual Service Plan Report (ASPR) is designed to meet the requirements of the *Budget Transparency and Accountability Act* (BTAA), which sets out the legislative framework for planning, reporting and accountability for Government organizations. Under the BTAA, the Minister is required to report on the actual results of the Ministry's performance related to the forecasted targets documented in the previous year's Service Plan.

Purpose of the Ministry

The Ministry of Finance plays a central role in managing Government's fiscal, financial and taxation policies. Key responsibilities of the Ministry include:

- Developing forecasts of the provincial economy; developing and monitoring Government's capital plan and three-year fiscal plan; and managing significant risks and opportunities relating to the plan.
- Oversight for government's financial, procurement and administrative governance as well as banking, corporate accounting, insurance, risk and debt management services.
- Performance and financial management audits of ministry, agency and Crown corporation programs and functions to help improve efficiency and ensure governance, management and control systems are operating effectively.
- Policy development, regulation and enforcement for financial services, capital markets, pension plans, mortgage broker sectors, real estate services and societies.
- Providing policy advice with respect to federal-provincial fiscal arrangements and developments and the stewardship of the Canada Pension Plan.
- Identifying and collecting amounts owed to the government in relation to statutes the Ministry directly administers, as well as statutes administered by other ministries.
- Administer statutes that provide regulatory oversight of pension plans, mortgage brokers, deposit taking institutions (credit unions), trust companies and insurers in B.C.
- Oversight of governance, corporate accountability and appointments to all Crown corporations, agencies, boards and commissions.
- Lead the implementation of Gender-Based Analysis Plus (GBA+) across the public service and coordinate cross-government action on gender issues, including gender-based violence, gender equity and economic and political empowerment.
- Oversight of strategic coordination of bargaining and labour relations, total compensation planning and human resource management for the broader public sector.
- Operation of the Government House and accountability for the BC Securities Commission, Partnerships BC, and Real Estate Council of BC.

Strategic Direction

The strategic direction set by Government in 2017 and expanded upon in the Minister's Mandate Letter shaped the *Ministry of Finance 2018/19 – 2020/21 Service Plan* and the results reported in this ASPR.

The following table highlights the key goals, objectives or strategies that support the key priorities of Government identified in the 2018/19 Ministry of Finance Service Plan:

Government Priorities	Ministry of Finance Aligns with These Priorities By:
Making life more affordable	• Providing a modern and fair tax system and a robust regulatory environment (Objective 2.1)
Delivering the services people count on	• Delivering accountable, efficient and transparent financial and program management across government (Objective 1.3) • Providing responsive, effective and fair revenue, tax and benefit administration that funds provincial programs and services (Objective 2.2) • Enhancing public confidence in B.C.'s housing market (Objective 2.3) • Maintaining confidence in public sector organizations (Goal 3)
A strong, sustainable economy	• Ensuring effective management of government's fiscal plan (Objective 1.1) • Ensuring effective management of government's finances (Objective 1.2) • Providing a modern and fair tax system and a robust regulatory environment (Objective 2.1)

Operating Environment

Across government, ministries worked to make life more affordable, improve the services people count on, and build a strong, sustainable economy in every corner of the province. Our government made investments in child care and housing, in education and health care and in the skilled workers and infrastructure B.C. needs.

Within the Ministry of Finance, these priorities were reflected in actions that included continuing to take steps to address housing affordability and making our tax system more progressive and fairer for people. Concrete action on housing affordability included the introduction of the Speculation and Vacancy Tax. This was a key component of Government's plan to tackle the housing crisis by discouraging speculation and leaving homes vacant. The Ministry also implemented new real estate rules to further protect home buyers and enhance transparency and fairness in the housing market.

The Ministry successfully eliminated the Province's direct operating debt, balanced the budget through prudent fiscal management of public funds, and maintained the province's triple-A credit rating. These actions served to keep borrowing costs low and supported increased trade and investment in B.C. Effective management of government's fiscal plan included the ongoing commitment to the identification and collection of amounts owed to government in a manner that is fair and respectful to citizens and taxpayers.

British Columbia's real GDP increased by 2.4 per cent in 2018 (according to preliminary GDP by industry data from Statistics Canada), compared to 2 per cent nationally. Employment in B.C. grew by 1.1 per cent. Labour market conditions tightened further, with B.C.'s unemployment rate falling from 5.1 per cent in 2017 to 4.7 per cent in 2018, which was again the lowest unemployment rate among Canadian provinces. Average weekly wages grew by 4.1 per cent – the highest rate since 2008. The B.C. consumer price index in 2018 rose 2.7 per cent, so this increase in average wages translated into an increase in real wages following two years of decline. Domestic spending slowed somewhat, reflected by slower growth in retail sales and further moderation in housing activity, particularly home sales. Residential construction was strong with housing starts well above the historical average. Meanwhile, foreign demand overseas helped to support solid growth overall in B.C.'s merchandise exports.

Despite global economic risks – particularly surrounding trade tensions, political and economic uncertainty and slowing global growth – the province remains on strong and stable fiscal footing. The Ministry will continue to monitor and respond to the changing global environment and will ensure government is able to prudently invest in progressive policies that make life more affordable, improve services and contribute to a strong and sustainable economy. Government's fiscal plan has improved the lives of British Columbians and will continue to pay dividends in the years to come.

Report on Performance

This section reflects performance related to the goals and objectives contained in the *Ministry of Finance 2018/19 – 2020/21 Service Plan*. In developing and reporting on performance measures and targets in the Annual Service Plan Report, the Ministry incorporates input and data from reliable independent and government sources. These data sources include Ministry financial and business information systems, major credit rating agencies, Public Accounts, and provincial statutes. Comparable information from prior years is provided for historical comparison.

Goals, Objectives, Measures and Targets

Goal 1: Sound and transparent management of government finances

Objective 1.1: Effective management of government's fiscal plan

Government's ability to achieve a sustainable fiscal environment relies on the development and maintenance of a prudent and resilient fiscal plan. The Ministry plays a critical role in overseeing the fiscal plan and works closely with the federal government, provincial ministries and other public sector partners to ensure that revenue, as well as operating and capital expenditure targets are met, and government priorities are reflected.

Key Highlights:

- An improvement of $1,161 million in the fiscal surplus from the Third Quarterly Report for 2018/19.
- Taxpayer-supported debt remained affordable, declining in 2018/19 to 14.5 per cent, better than expected at Budget.
- British Columbia's economy grew by an estimated 2.4% in the 2018 calendar year, stronger than anticipated at Budget. B.C. maintained the lowest provincial unemployment rate in Canada, while wages and salaries continued to increase

Performance Measure	2016/17 Actuals	2017/18 Actuals	2018/19 Target	2018/19 Actuals	2019/20 Target	2020/21 Target
1.1a Balanced budget	$2,727M surplus	$301M surplus	$219M surplus	$1,535M surplus	As set out in budget and fiscal plan	As set out in budget and fiscal plan

Data Source: *British Columbia Budget and Fiscal Plan.*

Discussion

The 2018/19 *Public Accounts* were released on July 18, 2019.

Objective 1.2: Effective management of government's finances

The government's ability to achieve a strong and stable economy relies on the prudent management of government finances. The Ministry plays a critical role in managing the province's borrowing, financing needs and banking needs.

Key Highlights:

- Eliminated the Province's direct operating debt.
- Executed new and innovative arrangements with major financial institutions to provide banking services to the government's new retail cannabis business.
- Facilitated the creation of the Central Agency Risk Committee as part of the government's Enterprise Wide Risk Management framework and added a new level of oversight and lens on risk management.
- Implemented the Social Services Group Liability Program providing general liability to service providers who deliver social program services on behalf of ministries and government corporations.

Performance Measure	2016/17 Actuals	2017/18 Actuals	2018/19 Target	2018/19 Actuals	2019/20 Target	2020/21 Target
1.2a Provincial credit rating	triple-A	triple-A	triple-A	triple-A	triple-A	triple-A

Data Source: Moody's Investor Service and/or Standard and Poor's (Credit Rating Agencies).

Discussion

This measure is the provincial credit rating determined by Moody's Investors Service (Moody's) or Standard and Poor's (S&P), both recognized as independent rating agencies. This credit rating influences the interest rate that the Province is charged when it borrows in domestic and international capital markets. In general, credit ratings are provided in descending range from AAA to C with triple-A being the highest and assigned to those public and private sector organizations that are assessed as borrowers with excellent financial security and low risk for investor loss. Organizations with a triple-A credit rating are generally offered the lowest interest rates when borrowing.

In determining the Province's credit rating, rating agencies evaluate debt as a percentage of Gross Domestic Product (GDP) and of revenues, and interest owing as a percentage of gross receipts. Agencies also consider the government's track record in meeting its fiscal targets, its transparency in budgeting and reporting, overall economic outlook, and business and consumer confidence in the economy.

With government's continued focus on prudent fiscal management, the Province maintained its triple-A credit rating from Moody's and S&P. British Columbia has maintained a triple-A rating from Moody's for the last eleven years and the last ten years for S&P. British Columbia has the distinction as the only province rated triple-A by both international credit rating agencies.

Objective 1.3: Accountable, efficient and transparent financial and program management across government

The Ministry supports accountability and transparency through the public release of financial and program information, and a variety of governance frameworks that apply to ministries and the broader public sector. The successful implementation of effective governance frameworks supports increased value for use of public funds and contributes to public confidence in government.

Key Highlights:

- Implemented an ongoing, structured approach to keep governments Core Policy current, relevant and responsive to change.
- Implemented PayBC with the Road Safety Initiative, resulting in over 50% of traffic violations ($1.6 million) being paid through this portal.
- Implemented a risk-based compliance model to strengthen internal controls, build financial capacity, mitigate financial risk and improve program outcomes in government.
- Implemented a 5-year internal audit plan focussed on reducing risk in government and enhancing value for British Columbians.
- Consolidated and released financial results for each quarter of fiscal 2018/19 supporting government's transparency and accountability to the public.

Performance Measure	2016/17 Actuals	2017/18 Actuals	2018/19 Target	2018/19 Actuals	2019/20 Target	2020/21 Target
1.3a Audit opinion provided by the Office of the Auditor General	Qualified but positive audit opinion from the Auditor General	Qualified but positive audit opinion from the Auditor General	Public Accounts in compliance with GAAP	Qualified but positive audit opinion from the Auditor General	Public Accounts in compliance with GAAP	Public Accounts in compliance with GAAP

Data Source: *Public Accounts.*

Discussion

The Ministry provides detailed commentary on the findings of the Office of the Auditor General in *Public Accounts*. These comments can be viewed online.

Goal 2: A strong, sustainable and innovative economy

Objective 2.1: A modern and fair tax system and a robust regulatory environment

A fair tax system for British Columbians increases their confidence and trust in government. Furthermore, the Province's ability to support a strong economy depends on a regulatory environment that is benchmarked nationally and internationally. Jurisdictions with fair and competitive tax regimes, coupled with fair and efficient regulatory frameworks are critical to attracting and retaining personal and business investment.

Key Highlights:

- Introduced the Speculation and Vacancy Tax. This is a key component of Government's plan to tackle the housing crisis by discouraging speculation and leaving homes vacant.
- Created the Condo and Strata Assignment Integrity Register that tracks assignments of pre-sale strata contracts to ensure people pay their fair share of taxes. The previous real estate regime in B.C. was vulnerable to those involved in flipping pre-sale condo assignments without paying the appropriate taxes.
- Developed legislation that would create a publicly accessible registry of beneficial owners in land, the first of its kind in the world.
- Completed a review of the province's real estate regulatory structure that examined the roles and responsibilities of the Real Estate Council of British Columbia and the Office of the Superintendent of Real Estate.

Performance Measures		2016/17 Actuals	2017/18 Actuals	2018/19 Target	2018/19 Actuals	2019/20 Target	2020/21 Target
2.1a	Provincial ranking of corporate income tax rates	Lowest	Third lowest	Remain in the lowest four	Third lowest	Remain in the lowest four	Remain in the lowest four
2.1b	Provincial ranking of personal income tax rates for the bottom tax bracket	Second lowest	Second lowest	Remain in the lowest two	Second lowest	Remain in the lowest two	Remain in the lowest two
2.1c	Provincial ranking of personal income tax rates for the second-from-bottom tax bracket	Lowest	Lowest	Remain in the lowest two	Lowest	Remain in the lowest two	Remain in the lowest two

Data Source: Published legislation and budgets from all 10 provinces.

Discussion

The measure of the provincial ranking of corporate income tax rates compares the general corporate income tax rate in B.C., as of March 31 each year, to those of other provinces in Canada. The targets reflect government's commitment to maintaining a competitive tax environment that fosters economic

growth by encouraging business investment and promoting a business-friendly environment. As of March 31, 2019, B.C. was tied for the third lowest corporate income tax rate among provinces in Canada.

The two measures of the provincial ranking of personal income tax rates compare B.C.'s personal income tax rates for the bottom two tax brackets, as of March 31 each year, with those of the other nine provinces. These targets demonstrate government's commitment to maintaining low tax rates for individuals and families living and working in B.C.

In 2018/19, B.C. met or exceeded the performance targets, providing fair and competitive income tax rates for businesses, individuals and families.

Objective 2.2: Responsive, effective and fair revenue, tax and benefit administration that funds provincial programs and services

The Ministry manages revenue in relation to statutes it directly administers, as well as statutes administered by other ministries. These revenues support the provision of important government programs and services such as health care, education, social services and transportation infrastructure for British Columbians. The Ministry is committed to identifying and collecting amounts owed to government in a manner that is fair and respectful to citizens and taxpayers.

Key Highlights:

- Implemented programs in the Taxpayer Administration & Compliance Services system and other online portals to assist individuals and businesses to understand their obligations and pay on time.
- Increased coordination between systems, business processes and programs to reduce overhead and administration costs.
- Managed effective overarching tax administration strategies, while maintaining program and statute requirements.
- Implemented Employer Health Tax and Speculation and Vacancy Tax.

Performance Measures		2018/19 Baseline	2019/20 Target	2020/21 Target
2.2a	Percentage of on-time payments	96%	Upward trend	Upward trend
2.2b	Cost to collect one dollar of tax revenue	$0.0054	Downward trend	Downward trend
2.2c	Accounts receivable as a percentage of total tax revenue	1.48%	Downward trend	Downward trend

Data Source: Revenue Services Division information systems.

Note: These are new measures for the Ministry. Baselines for all three measures were established in 2018/19 and targets for the 2019/20 – 2021-22 period are included in the 2019/20 Ministry Service Plan.

Discussion

These measures report on the efficacy of the Ministry's revenue collection programs. The measures were introduced in the 2018/19 Service Plan with the intent of establishing baselines in 2018/19 and setting targets for outgoing years.

The percentage of on-time payments measure tracks the remittance of tax payments and other revenues received on or before their legislated due date. It provides an indication of citizens' and taxpayers' understanding of their financial obligations and their willingness to pay.

The cost to collect revenue measure reflects the cost incurred to collect amounts owed to government. Information on the cost to collect revenue helps guide decision making on managing productivity and efficiency.

The accounts receivable as a percentage of total revenue measure reports on the success of collecting amounts owed to government and administered by the Ministry of Finance. These amounts may be billed by the Ministry, self-assessed by individuals and businesses, or identified through audit and compliance activities.

Objective 2.3: Public confidence in B.C.'s housing market

The Office of the Superintendent of Real Estate (OSRE) is a regulatory agency of the B.C. government that is mandated to protect the public interest and prevent harm to real estate consumers. OSRE provides oversight and regulation of the real estate industry in B.C., pursuant to the *Real Estate Services Act*, *Real Estate Development Marketing Act* and *Strata Property Act*. The Superintendent of Real Estate may oversee and direct the Real Estate Council of British Columbia to establish professional conduct requirements for real estate licensees through the Real Estate Rules. OSRE is also responsible for regulating the marketing of multi-unit development properties, such as condos and townhouses, and investigates allegations of unlicensed real estate activity in B.C.

Key Highlights:

- Commissioned the Real Estate Regulatory Structure Review that made recommendations on how to strengthen the regulation of the real estate sector in B.C.
- Implemented new Rules related to agency and enhanced consumer disclosures, making B.C. the first jurisdiction in Canada to ban dual agency except in limited circumstances.
- Developed and implemented the Condo and Strata Assignment Integrity Register (CSAIR), which requires developers to report information about the assignment of purchase agreements for residential condos.
- Worked with cross-government partners to share information and best practices regarding money laundering, illegal flows of money, market abuse and tax evasion in the real estate sector.

Performance Measure	2018/19 Target	2018/19 Actual	2019/20 Target	2020/21 Target
2.3a Real estate development disclosures and strata rental disclosures are reviewed within 20 business days of receipt	90%	98.6%	90%	90%

Data Source: Real Estate Tracking System.

Note: This measure was established in the 2018/19 Ministry Service Plan. A baseline has been established and targets for the 2019/20 – 2021-22 period are included in the 2019/20 Ministry Service Plan.

Discussion

This measure indicates OSRE's success in reviewing developer marketing disclosures and rental rights disclosures in accordance with *the Real Estate Development Marketing Act* and the *Strata Property Act*. A 20-day timeframe for review and receipt ensures that disclosures are promptly finalized by developers and provided to purchasers and allows a reasonable period for the regulatory review. Marketing may begin upon delivery of the disclosure and, if necessary, the disclosure may subsequently be amended. In 2018/19, OSRE received 806 disclosure statements for review. OSRE is forecasting a decrease in disclosures in 2019/20 as activity in the real estate market moderates.

Goal 3: Confidence in public sector organizations

Objective 3.1: Government has effective oversight of public sector organizations

Public sector organizations are established by government to serve the public interest and to advance overall public policy objectives. These include Crown corporations, post-secondary institutions, health authorities, school districts, commissions, and councils. Collectively, these organizations manage billions of dollars in assets and liabilities and operate in many sectors of the provincial economy, including transportation, energy and resources, and oversee the delivery of core services such as health care, education, and public utilities.

Effective oversight of these organizations is critical to protect taxpayers, ensure strategic alignment with government's priorities and preserve public confidence in the management of public sector programs and services. To support this work the Ministry has developed and delivered workshops and training programs for Board Chairs and other public sector appointees that promote effective governance, ensure alignment with the priorities of government and increase transparency and accountability.

Government is also committed to creating a fairer and more inclusive society and supports greater diversity on public sector organization boards. Provincial appointments that represent the diversity of B.C. will better serve and support the population at large including visible minorities, people with disabilities, women, Indigenous people and the LGBTQ2S+ community.

Key Highlights:

- Successfully supported ministries in the creation of Crown Corporations and other Crown agencies such as BC Infrastructure Benefits and the Poverty Reduction Advisory Committee.
- Facilitated the appointment of 1,239 members to various government agencies, boards and commissions.
- Held the annual Crown Corporation Board Chair workshop to support good governance practices and promote alignment with government priorities.

Performance Measure	Baseline[1]	2017/18 Actuals[2]	2018/19 Target	2018/19 Actuals	2019/20 Target[3]	2020/21 Target
3.1a Women make up a minimum of 45% of government-appointed members on public sector organization boards by 2021	41.5%	43.1%	43%	49.1%	44%	45%

Data Source: Crown Agencies and Board Resourcing Office's Agency Management System. Actuals are as at March 31 of the respective fiscal year.

[1] Baseline was established in Q1 of 2017/18.

[2] 2017/18 Actuals were not available until March 31, 2018 and therefore were not included in the 2018/19 Service Plan tabled in February.

[3] Future targets will be revised based on 2018/19 actuals for the 2020/21 Service Plan.

Discussion

One way to measure the effectiveness of Government's oversight of public sector organizations is by tracking how representative boards are of the diversity of B.C. The proportion of men and women appointed by Government to public sector organizations was first tracked in July 2017. It is the starting point from which Government may begin to measure progress towards greater diversity and inclusion on public sector boards. Government's commitment to diversity and inclusion will be reflected over time in board appointments. Recruitment strategies are underway to increase participation from visible minorities, people with disabilities, women, Indigenous people and the LGBTQ2S+ communities. Strategies will also be developed to measure participation across the boards.

Financial Report

Resource Summary

	Estimated	Other Authorizations[1]	Total Estimated	Actual	Variance
Operating Expenses ($000)					
Treasury Board Staff	7,026		7,026	6,747	(279)
Office of the Comptroller General	21,266	1,138	22,404	20,724	(1,680)
Treasury	1		1	0	(1)
Revenue Division	90,545	211,703	302,248	306,952	4,704
Policy and Legislation	6,283		6,283	5,604	(679)
Public Sector Employers' Council Secretariat	16,839	2,300	19,139	18,874	(265)
Crown Agencies and Board Resourcing Office	855		855	1,496	641
Executive and Support Services	29,766	1,225	30,991	28,550	(2,441)
Insurance and Risk Management Account	4,493		4,493	2,559	(1,934)
Provincial Home Acquisition Wind Up special account	10		10	0	(10)
Housing Priority Initiatives special account	283,225	37,500	320,725	320,725	0
Sub-Total	**460,309**	**253,866**	**714,175**	**712,231**	**(1,944)**
Teachers' Pension Plan Prior Year Accrual[2]	0		0	(53,421)	(53,421)
Insurance and Risk Management Account Prior Year Accrual[2]	0		0	(25,780)	(25,780)
Other Adjustments of Prior Year Accrual[2]	0		0	(446)	(446)
Total	**460,309**	**253,866**	**714,175**	**632,584**	**(81,591)**
Ministry Capital Expenditures (Consolidated Revenue Fund) ($000)					
Executive and Support Services[3]	644		644	164	(480)
Total	**644**	**0**	**644**	**164**	**(480)**

	Estimated	Other Authorizations[1]	Total Estimated	Actual	Variance
Other Financing Transactions ($000)					
Reconstruction Loan Portfolio (*Homeowner Protection Act* Loan Program)					
Receipts	(3,500)	0	(3,500)	(3,443)	57
Disbursements	15	0	15	0	(15)
Net Cash Requirement (Source)	**(3,485)**	**0**	**(3,485)**	**(3,443)**	**42**
Student Aid BC Loan Program					
Receipts	(115,000)		(115,000)	(150,052)	(35,052)
Disbursements	230,000		230,000	197,561	(32,439)
Net Cash Requirement (Source)	**115,000**	**0**	**115,000**	**47,508**	**(67,491)**
International Fuel Tax Agreement (*Motor Fuel Tax Act*)					
Receipts	(14,500)		(14,500)	(13,435)	1,065
Disbursements	3,000		3,000	4,129	1,129
Net Cash Requirement (Source)	**(11,500)**	**0**	**(11,500)**	**(9,306)**	**2,194**
Land Tax Deferment Act					
Receipts	(70,000)		(70,000)	(63,748)	6,252
Disbursements	145,000		145,000	242,281	97,281
Net Cash Requirement (Source)	**75,000**	**0**	**75,000**	**178,533**	**103,533**
Improvement District Loans (*Local Government Act*)					
Receipts	(1,498)		(1,498)	(1,235)	263
Disbursements	1,500		1,500	1,020	(480)
Net Cash Requirement (Source)	**2**	**0**	**2**	**(215)**	**(217)**
Ad-Hoc Loans and Investments					
Receipts	0	0	0	(168)	(168)
Disbursements	0	0	0	0	0
Net Cash Requirement (Source)	**0**	**0**	**0**	**(168)**	**(168)**
Total Receipts	**(204,498)**	**0**	**(204,498)**	**(232,081)**	**(27,583)**
Total Disbursements	**379,515**	**0**	**379,515**	**444,991**	**65,476**
Total Net Cash Requirement (Source)	**175,017**	**0**	**175,017**	**212,910**	**37,893**

1 "Other Authorizations" include Supplementary Estimates, Statutory Appropriations and approved funding from the Contingencies Vote. In 2018/19, other authorizations included:
   - Statutory appropriation under section 17(3) of the *Financial Administration Act* for costs related to the BC Student Loans Program interest elimination ($199.357 million);
   - Approved funding from the Contingencies Vote ($17.009 million) consisting of $9.481 million for ministry operations cost pressures, $4.740 million for the Liquified Natural Gas system valuation, $2.300 million for operating grants to Health Employers' Association of BC, and $0.489 million for the Parliamentary Secretary for Gender Equity; and
   - Statutory appropriation under section 9.7(3) of the *Special Accounts Appropriation and Control Act* for the acceleration of Budget 2018 grant payments in 2018/19 to increase the affordability of existing housing projects ($37.5 million).
2 Represents the reversal of accruals in the previous year.
3 Capital budget is used to purchase assets on a needs basis.

Appendix A: Financial Institutions Commission

Purpose of the Organization

The Financial Institutions Commission (FICOM) is a regulatory agency of the provincial Ministry of Finance. FICOM is responsible for administering statutes that provide regulatory oversight of pension plans, mortgage brokers, deposit taking institutions (credit unions), trust companies and insurers in B.C. The primary focus of this regulatory framework is to ensure that:

- Institutions and pension plans in these sectors remain solvent.
- Market conduct requirements for these sectors are respected.
- Unsuitable individuals do not participate in financial service markets.

FICOM also administers a deposit insurance program for B.C. credit unions through the Credit Union Deposit Insurance Corporation (CUDIC).

Strategic Direction

The strategic direction set by Government in 2017 and expanded upon in the Minister's Mandate Letter shaped the 2018/19 Service Plan and the results reported in this Annual Service Plan Report.

The following table highlights the key goals, objectives or strategies that support the key priorities of Government identified in the 2018/19 Ministry of Finance Service Plan:

Government Priorities	FICOM Aligns with These Priorities By:
Making life more affordable	• FICOM addresses misconduct in the real estate marketplace both directly and in partnership with other regulators and agencies.
Delivering the services people count on	• As a provincial financial services regulator, we protect the public from undue loss and unfair market conduct for those areas we regulate. We do this through a public centric regulatory approach.
A strong, sustainable economy	• We build confidence and trust in the financial services sector for the benefit of British Columbians by regulating the institutions, pension plans, and mortgage brokers we oversee.

Operating Environment

FICOM experienced significant change in 2018/19 because of both internal and external factors.

Internally, this included planning activities to transition FICOM to Crown Agency status. The transition will provide a range of benefits to support the organization in delivering against its mandate. Attracting and retaining talent remains a focus and while vacancy rates have improved

significantly, ongoing focus is required to ensure FICOM can provide the necessary regulatory oversight in the rapidly changing financial services sectors in B.C.

Externally, FICOM responded to current and emerging issues to consumers in the mortgage broker and insurance sectors and continued to strengthen oversight of the credit union and pensions sectors and its administration of the deposit insurance fund. FICOM is monitoring a range of issues including a softening real estate market, consumer debt levels, fintech developments, and is committed to proactive responses to such issues. The transition to Crown Agency will enable FICOM with a modern governance model that aligns with international best practices and strengthens our ability to protect British Columbians.

Report on Performance

Goals, Objectives, Measures and Targets

Goal 1: Enhance interaction with the public

Objective 1.1: More effective communication with consumers and the public

Key Highlights:

- Proactive media engagement strategy increased public and industry awareness of the regulator and its expectations, including television, print, and industry publication coverage of speeches, policy positions, and enforcement actions.
- Enforcement actions demonstrated that FICOM treats mortgage and insurance industry conduct seriously, with multiple public orders addressing fraud, "shadow" mortgage brokering, private lending, and home warranty insurance.

Discussion

Beginning in 2018/19 FICOM increased its public visibility through a proactive media outreach, which builds understanding of FICOM's regulatory mandate and encourages more British Columbians to contact us with their issues related to the financial services sectors. We leveraged partnerships with other regulators to address issues that are important to B.C. and continued to implement regulatory standards that respond to both international best practices and the expectations of consumers (for example, fair treatment standards).

Goal 2: Invest in our people and organizational capabilities

Objective 2.1: Strengthen FICOM's culture of supporting an engaged and knowledgeable workforce with enhanced tools and technology

Key Highlights:

- Successfully reduced organization vacancy rate from 27% to less than 18% during this fiscal.
- Successfully stabilized organization turnover rate of 17%, after a significant reduction from 33% in 2017/18.
- Work Environment Survey (WES) employee engagement score improved from 64% to 68%.

Performance Measure 1: Organization Vacancy Rate

Performance Measure	2016/17 Actuals	2017/18 Actuals	2018/19 Target	2018/19 Actuals	2019/20 Target	2020/21 Target
FICOM employee vacancy rate (%)	37%	27%	18%	15%	9%	8%

Data Source: Human Resources Information Management System.

Discussion

FICOM has traditionally experienced high organization vacancy rates and turnover rates. The inability to retain and attract talent has impacted FICOM's ability to effectively deliver on its mandate and has negatively impacted employee engagement. Actions to drive improvements in staff turnover and vacancy rates will provide increased stability in the organization and reinforce an engaged and knowledgeable workforce culture. In fiscal 2018/19, we achieved the target performance measure for vacancy rate and lowered staff turnover rate in the organization.

Goal 3: Continuously improve and enhance FICOM's framework for risk management

Objective 3.1: FICOM regulates their respective industries and organizations using a mature risk-based management (supervisory) framework

Key Highlights:

- At the end of 2018/19, while several credit unions, insurance companies, and trust companies were subject to formal supervisory intervention and elevated monitoring and engagement, the clear majority of provincially regulated financial institutions were not subject to intervention.
- FICOM's supervisory reviews remained focussed on assessing risks and strengthening risk management and controls in institutions where weaknesses have been identified and bringing institutions within the three-year onsite target identified below.

Performance Measure 2: Number of Onsite/Assessments Completed

Performance Measure	2016/17 Actuals	2017/18 Actuals	2018/19 Target	2018/19 Actuals	2019/20 Target	2020/21 Target
Supervisory reviews complete for financial institutions within three years	75%	85%	70%	72%	Under review	Under review

Data Source: Financial Institutions Division (FID) Supervision Information Management System.

Discussion

All financial institutions are routinely monitored for risk as part of normal supervisory activities. Those activities are supplemented by in-depth onsite reviews when specific risks are identified and as part of a regular onsite schedule, tailored to the size of the institution. FICOM has maintained the intensity of its ongoing monitoring and onsite program, and increased is regulatory visibility more broadly through increased participation in Annual General Meetings, industry meetings, and in bilateral engagements with Boards and senior management. FICOM remains committed to bringing institutions within a three-year onsite schedule, but not at the expense of protecting depositors and policyholders at individual institutions through elevated regulatory intervention when heightened risk is identified.

In 2018/19 the performance measure was achieved. As described in the Ministry's Service Plan, an onsite review acts as a proxy for completion of a supervisory review. In addition, as described in the Plan, in 2018/19 several institutions that had onsite reviews in 2015 have now fallen outside of the three-year supervisory review target (represented by a lowering of the coverage target between 2017/18 and 2018/19).

As part of its transition to Crown agency, FICOM is reviewing its supervisory review measures and targets. The goal of the review is to develop a more sophisticated set of performance measures that capture FICOM's continuous monitoring activities (outside of onsite), the timeliness of communications with industry, reflect risk based regulatory principles, and respond to international supervisory best practices established by bodies such as the International Monetary Fund.

Objective 3.2: Work together across regulatory functions to effectively deliver on our regulatory mandate

Key Highlights:

- FICOM achieved its regulatory approval timelines in 2018/19 for all financial services sectors including financial institutions, pensions and mortgage brokers.
- Targets for regulatory approvals and registrations are important to ensure that applicants receive a reasonable turnaround (defined by the service standard) on regulatory decisions.
- FICOM continues to enhance its operational efficiency through investments in technology, process improvements and stakeholder communications.

Performance Measure 3: Regulatory Application Timelines

Performance Measure	2016/17 Actuals	2017/18 Actuals	2018/19 Target	2018/19 Actuals	2019/20 Target	2020/21 Target
Timelines for statutory approval applications, within established service standards, upon receipt of all required documentation:						
▪ Financial Institutions within published timelines	n/a	80%	80%	Achieved	80%	80%
▪ Mortgage Broker within 14 Calendar Days	n/a	90%	90%	Not Achieved	Under review	90%
▪ Pensions within 90 Calendar Days	n/a	80%	80%	95%	80%	80%

Data Source: Consolidated data across Financial Institutions Division (FID), Pensions and Mortgage Brokers' Information Management System database.

Discussion

Under the various pieces of legislation that it administers, FICOM is responsible for receiving and reviewing regulatory filings from industry, and making recomendations on a wide range of approvals and authorizations. Those approvals and authorizations can range from business authorizations to insurance companies, to registration of mortgage brokers, and registrations or terminations of pension plans.

FICOM has established service standards by business line for regulatory processing and recommendations to decision makers. These standards balance the need for timely and complete decision making that enables industry to do business and at the same time protects the public.

In relation to the mortgage broker program, in 2018/19 a range of factors impacted FICOM's ability to achieve performance targets, including increased transaction volumes, enhanced due diligence on certain applications, and human resource turnover. FICOM is committed to achieving the 90% target in 2021/20, and will implement a range of improvements and monitor the impact of those actions in 2019/20.

Appendix B: Government Communications and Public Engagement

Purpose of the Organization

Government Communications and Public Engagement (GCPE) informs British Columbians about government policies and programs in a timely, relevant and accessible way.

GCPE plays a critical role in helping government achieve its key priorities: make life more affordable, deliver the services people count on; and build a strong, sustainable economy that works for everyone by informing British Columbians about government actions to achieve these priorities, and about the programs and services available.

GCPE provides dedicated communications support to government ministries. Each communications office provides a full range of communications services from communications planning, to media relations, writing and editing.

A central GCPE team provides event services, advertising and marketing, digital services, issues management, writing and editing, corporate planning, media monitoring, and strategic communications support to ministries across government.

GCPE also coordinates direct engagement with citizens, including face-to-face public engagement and websites and social media platforms that enhance the citizen experience within government.

Strategic Direction

The strategic direction set by Government in 2018/19 and expanded upon in the Minister's Mandate Letter shaped the 2018/19 Service Plan and the results reported in this Annual Service Plan Report.

The following table highlights the key goals, objectives or strategies that support the key priorities of Government identified in the 2018/19 Ministry of Finance Service Plan:

Government Priorities	Government Communication and Public Engagement Aligns with These Priorities By:
Making life more affordable	• Help increase British Columbians' access to the public services they need.
Delivering the services people count on	• Expand government's reach in communicating with British Columbians via direct (social media) and filtered (media) communications.

Report on Performance

Goals, Objectives, Measures and Targets

Goal 1: Inform and engage British Columbians on government initiatives to connect them more directly to the information and services they need

Objective 1.1: Expand government's reach in communicating with British Columbians via direct (social media) and filtered (media) communications

Key Highlights:

- The Government of B.C.'s Twitter and Facebook accounts generated 27.8 million impressions and 18.7 million video viewings from April 1, 2018 – March 31, 2019.
- Services provided were through an organic/paid strategy using a combination of various visual content (photos, graphics, animations, videos), carefully crafted social media copy, and news release/article shares.

Performance Measure	2016/17 Actuals	2017/18 Actuals	2018/19 Target	2018/19 Actuals	2019/20 Target	2020/21 Target
1.1a Facebook engagement rate[1]	N/A	N/A	16%	N/A	N/A	N/A
1.1b Timely response to media inquiries	85%	83%	97%	81%	97%	97%

Data Source: GCPE

1. Facebook discontinued providing statistics on the rate of engagement.

Discussion

The data used to report out on the engagement rate is no longer available. Therefore, the original 2018/19 – 2020/21 performance measure has been discontinued.

Objective 1.2: Help increase British Columbians' access to the public services they need

Key Highlights:

- GCPE provided support to the Ministry of Children and Family Development to implement the Affordable Childcare Benefit by conducting user research with parents and service providers, testing content with users and improving readability and mobility of online content by describing the new benefit, helping parents determine their eligibility for the benefit and how to apply for the benefit.

- Working with ministry partners, GCPE facilitated public engagements to help inform government policies and program development.
- GCPE led and developed online and supporting materials on ministers' mandate letters. Corporate initiatives included: climate change (i.e. CleanBC), Electoral Reform and the Legalization of Cannabis.
- Working in collaboration with the Ministry of Citizen Services, improved wayfinding at Service BC offices across the Province with improved signage by developing through research and testing at Service BC locations with staff and citizens.

Performance Measure	2016/17 Actuals	2017/18 Actuals	2018/19 Target	2018/19 Actuals	2019/20 Target	2020/21 Target
1.2a Improve web content and search results on gov.bc.ca	N/A	48%	55%	36%	40%	43%

Data Source: GCPE

Discussion

The methodology to determine the measure of Objective 1.2a caused an issue for the users of gov.bc.ca which required a change to how the data was collected. The projected targets for 2020/21 and 2021/22 have been revised in the baseline to reflect the new data collection methodology. The data was collected from server logs supporting gov.bc.ca. The analysis was performed by the product manager for gov.bc.ca with support from subject matter experts on search, technical architecture and log files.

Resource Summary

	Estimated	Other Authorizations[1]	Total Estimated	Actual	Variance
Operating Expenses ($000)					
Government Communications	27,030	5,822	32,852	32,852	**0**
Government Digital Experience	8,354	543	8,897	8,897	**0**
Sub-Total	**35,384**	**6,365**	**41,749**	**41,749**	**0**
Other Adjustments of Prior Year Accrual	0		0	0	0
Total	**35,384**	**6,365**	**41,749**	**41,749**	**0**

1. "Other Authorizations" include Supplementary Estimates, Statutory Appropriations and Contingencies. Amounts in this column are not related to the "estimated amount" under sections 5(1) and 6(1) of the *Balanced Budget and Ministerial Accountability Act* for ministerial accountability for operating expenses under the Act. Approved funding from the Contingencies Vote include:
   - $1,346K Contingency approved for the Clean BC Communication Strategy - Climate Action Plan.
   - $1,995K Contingency approved for operating costs (including staffing pressures).
   - $2,481K Contingency approved for Cannabis legalization public awareness Campaign.
   - $543K Contingency approved for funding the Personalized Digital Services Strategy

Appendix C: Public Sector Employers' Council Secretariat

Purpose of the Organization

Public Sector Employers' Council Secretariat

Total compensation for the provincial public sector's 430,000 employees accounts for about $30.4 billion annually or equivalent to more than half of the Province's budget. Government must meet its commitment to citizens in providing sustainable public services in balance with fair and affordable compensation for the employees providing them. This balance is achieved through the authority of the *Public Sector Employers Act* and the Public Sector Employers' Council both of which fall under the responsibility of the Minister of Finance. The Public Sector Employers' Council Secretariat (PSEC Secretariat) reports to the Minister of Finance as the central agency responsible for supporting government's strategic direction in human resource management and labour relations, including the administration, development and implementation of labour relations policies for the broader provincial public sector. The PSEC Secretariat also supports the Minister of Finance in directing employers to create compensation plans for excluded and executive employees. It also represents government in its role as a partner in four pension plans[1], working with other partners to ensure plan sustainability, monitor risk exposure and provide policy advice to both government and public sector employers. Its authority related to pension plans is based on the *Public Sector Pension Plans Act* and joint trust agreements.

Employers' Associations

The mandates and purposes of employers' associations include coordinating compensation, benefit administration, bargaining and labour relations within their respective sectors, as outlined in sections 6 and 7 of the *Public Sector Employers Act*. There are six public sector employers' associations:

- British Columbia Public School Employers' Association (BCPSEA)
- Community Social Services Employers' Association (CSSEA)
- Crown Corporations Employers' Association (CCEA)
- Health Employers Association of British Columbia (HEABC)
- Post-Secondary Employers' Association (PSEA)
- University Public Sector Employers' Association (UPSEA)

BCPSEA, CSSEA, HEABC, and PSEA serve as the accredited employer bargaining agents for their respective sectors and their funding is provided by the PSEC Secretariat. CCEA and UPSEA play a coordination and information-sharing role but do not serve as bargaining agents for their member-employers. The BC Public Service Agency, established under the *Public Service Act*, serves as the employers' association for B.C.'s core public service.

[1] The four pension plans contained in the *Public Sector Pensions Plan Act* are: College Pension Plan, Municipal Pension Plan, Public Service Pension Plan, and Teachers' Pension Plan. For more information see PensionsBC.ca

Strategic Direction

The strategic direction set by Government in 2017 and expanded upon in the Minister's Mandate Letter shaped the 2018/19 Service Plan and the results reported in this Annual Service Plan Report.

The following table highlights the key goals, objectives or strategies that support the key priorities of Government identified in the 2018/19 Ministry of Finance Service Plan:

Government Priorities	The Public Sector Employers' Council Secretariat Aligns with These Priorities By:
Making life more affordable	• Union employees working across the provincial public sector covered by settlements reached under the Sustainable Services Negotiating Mandate will receive fair and affordable wage increases that are supporting public sector workers and their families, while also ensuring the cost of public services is carefully managed.
Delivering the services people count on	• The Service Improvement Allocation (SIA) under the Sustainable Services Negotiating Mandate provides the opportunity for parties to negotiate this conditional element to create tangible enhancements to service delivery for both parties.
A strong, sustainable economy	• By facilitating the centralized provincial public sector bargaining mandate, government can meet its commitment to providing sustainable services the public relies on through affordable agreements that are in keeping with the fiscal plan.

Operating Environment

Currently, there are over 430,000 people in B.C.'s public sector working in the core public service, at Crown corporations and agencies, in health and community social services, K-12 public education, post-secondary, and research universities. Of those people, more than 330,000 are unionized employees covered by approximately 183 collective agreements. The government and provincial public sector employers spend about $30.4 billion on compensation. This makes up more than half of the Province's budget. An increase of 1% in total compensation for all employees, including union, non-union, and management employees costs approximately $304 million.

Negotiations under the Sustainable Services Negotiating Mandate began in April 2018 and resulted in early agreements covering more than 55,000 employees working in the public service, community health and community social services. The focus of the mandate is on improving the delivery of services for people in B.C. and balancing the need for fair and reasonable wage increases with outcomes that are affordable and managed within the fiscal plan. These goals are being achieved through collaborative, respectful, outcome-focused negotiations that rely on "give and take" at the bargaining table.

The 2019 mandate applies to all public sector employers with collective agreements that expire on or after December 31, 2018. The elements of the mandate include a three-year term with general wage increases of 2% in each year, plus the ability to negotiate conditional and modest funding that can be used to drive tangible service improvements for British Columbians through the SIA. An example would be targeted funds to address existing, chronic labour market challenges where employers need to meet service delivery commitments or changes that achieve service enhancements such as innovations, modernization or efficiencies.

Appendix D: Public Service Agency

Purpose of the Organization

The BC Public Service Agency (Agency) provides human resource leadership, expertise, services and programs that contribute to better business performance of ministries and government as a whole.

Strategic Direction

The strategic direction set by Government in 2018/19 and expanded upon in the Minister's Mandate Letter shaped the 2018/19 Service Plan and the results reported in this ASPR.

The following table highlights the key goals, objectives or strategies that support the key priorities of Government identified in the 2018/19 Ministry of Finance Service Plan:

Government Priorities	Public Service Agency Aligns with These Priorities By:
Delivering the services people count on	• Support the BC Public Service to develop the commitment, capacity and capability in the workforce to meet business needs.
A strong, sustainable economy	• Support public service workplaces to be healthy, inclusive and productive.

Operating Environment

The Agency continued to support growth and shifts in the BC Public Service workforce in 2018/19. There are now 30,750 full time equivalent staff in the public service which represents a 5% increase from 2017/18. With a significant increase in retirements the BC Public Service has the second highest turnover rate of any Canadian jurisdiction. The recruitment of younger employees means one-third of employees have been in their current job for less than one year. These changes to the demographic make-up of the BC Public Service and workforce mobility continues to result in increased demand on core human resource services such as recruiting, succession management, and professional development.

At the same time, the Agency is implementing significant new initiatives to support the goals of government and the needs of a modern public service. Following through on Cabinet direction, in 2018/19 the Agency began fully implementing the Diversity and Inclusion Action Plan to help ensure the public service is an inclusive employer that reflects the province it serves. Similarly, the Agency dedicated significant effort and resources to the introduction and implementation of the *Public Interest Disclosure Act* in partnership with the Ministry of Attorney General and the Office of the Ombudsperson.

Report on Performance

Goals, Objectives, Measures and Targets

Goal 1: A Public Service that attracts, enables, develops and retains a highly skilled and professional workforce

Objective 1.1: Support the BC Public Service to develop the commitment, capacity and capability in the workforce to meet business needs

Key Highlights:

- In 2018/19 the Agency supported a 14 per cent increase in hiring activity across the BC Public Service, resulting from continued growth and rising turnover rates.
- The Agency successfully represented government in negotiating a collective agreement with the BCGEU within the provided mandate. The agreement was ratified in August 2018.
- In 2018/19, the Agency focused on building capacity through the training, collection and analysis of succession plans for succession priority (critical) positions. In addition, the Agency developed analytics, workplans and governance to build capacity in specific key work streams (IT, Finance, Policy and Procurement).

Objective 1.2: Support public service workplaces to be healthy, inclusive and productive

Key Highlights:

- The implementation of the Diversity and Inclusion Action Plan saw significant progress in 2018/19, with eight of the 15 actions implemented in the first full year of the three-year action plan. The remaining actions are well underway, as well as the development of a broader Diversity and Inclusion Strategy to further the BC Public Service's progress to becoming a fully inclusive employer.
- Continued to implement specialized health programming that takes a proactive and preventative approach in supporting a healthy and productive workforce and avoiding BC Public Service benefit cost increases due to illness and disability.
- Diversified our occupational health clinical team with professionals focused on supporting employees recovering from physical injuries.
- Piloted specific mental health programming aimed at assisting individuals with depression and supporting individuals post trauma; continued to provide recovery support programming helping individuals achieve sustained recovery.
- Partnered with the Ministry of Forests, Lands, Natural Resource Operations and Rural Development to audit safety practices and confirm continued compliance with ministry Safety Management System requirements and standards outlined by the BC Forest Safety Council.

Performance Measure 1: **Absences related to illness and injury days per Full Time Equivalent (FTE)**

Performance Measure	2016/17 Actuals	2017/18 Actuals	2018/19 Target	2018/19 Actuals	2019/20 Target	2020/21 Target
Absences related to illness & injury days per FTE[1]	9.3 days	9.4 days	9.3 days	9.0 days	9.3 days	9.3 days

Data Source: BC Public Service Agency.

[1] For the purpose of this performance measure, absences refer to short term illness and non-occupational injuries.

Discussion

The BC Public Service recognizes when employees are supported to optimize their health, the workforce improves safety performance, enjoys greater operating efficiency, and better service to the public is provided. However, a workforce with changing demographics and the rising prevalence of chronic disease in the population in general are challenges faced not only by the BC Public Service, but by all employers in B.C.

This measure identifies the number of days lost due to illness and injury. At 9.0 days per FTE, the BC Public Service continues to compare favorably against the Canadian provincial public sector average of 11.7 days and the federal public sector at 12.5 days[2]. The difference reflects our ongoing focus on health promotion and prevention services, at-work supports for employees with illnesses or injuries, and timely rehabilitation and return to work for employees who are off work due to an illness or injury.

An audit of sick leave controls by the Office of the Auditor General in 2018/19 concluded the BC Public Service is effectively applying controls to support employees' appropriate use of the Short-Term Illness and Injury Plan, has systems in place to prevent errors, and provides training and health and wellness supports.

Performance Measures 2 and 3: **Workforce utilization**

Performance Measures	2016/17 Actuals	2017/18 Actuals	2018/19 Target	2018/19 Actuals	2019/20 Target	2020/21 Target
FTE Utilization in the Public Service	27,940	29,291	29,400	30,750	31,350	31,400
Auxiliaries as a percentage of the workforce	7.6%	8.5%	8.0%	9.4%	8.0%	8.0%

Data Source: BC Public Service Agency.

[2] Data Source: Statistics Canada

Discussion

Full-time equivalent (FTE) staff utilization in core government ministries increased from 29,291 FTEs in 2017/18 to 30,750 FTEs in 2018/19. This was needed to increase staffing for child care and housing investments as well as for front-line service positions including sheriffs, court services staff, staff to deliver social assistance services and conservation officers. The increase in FTEs is also explained in part by new staffing to support activities related to cannabis legalization, enhanced support for workers and employers in matters related to WorkSafeBC, wildfire recovery efforts, land use planning and environmental management.

FTE utilization is projected to increase slightly to 31,350 FTEs in 2019/20 due to the continued hiring of program staff to implement CleanBC programming, Employment Standards and Temporary Foreign Worker Registry Transformation initiatives, mental health services, coast forest sector revitalization, and independent oversight of mining and other professions before stabilizing in 2020/21.

The projected increase in FTEs is also due in part to continued implementation of road safety programs, the Civil Resolution Tribunal, cannabis legalization, commercial vehicle and safety enforcement, and staff to support reconciliation with First Nations.

The hiring of auxiliaries is intended to fill short-term business needs, either for an interim, cyclical or seasonal basis. Monitoring the proportion of auxiliaries in the workforce helps to ensure hiring levels support BC Public Service FTE utilization targets by maintaining an optimal balance between the permanent and temporary components of our workforce. The higher than forecasted percentage of auxiliary hiring was used to provide staff in a timely manner to support the programs mentioned above.

Financial Report

Financial Report Summary Table

	Estimated	Other Authorizations[1]	Total Estimated	Actual	Variance
Operating Expenses ($000)					
Agency Operations	56,268	0	56,268	56,217	51
Benefits	1	0	1	1	0
Long Term Disability Special Account	66,750	0	66,750	54,846	11,904
Sub-Total	**123,019**	**0**	**123,019**	**111,063**	**11,956**
Adjustment of Prior Year Accrual[2]	0	0	0	(11,450)	(11,450)
Total	0	0	0	(11,450)	(11,450)
Ministry Capital Expenditures (Consolidated Revenue Fund) ($000)					
By Core Business	10	91	101	101	0
Total	**10**	**91**	**101**	**101**	**0**

1. "Other Authorizations" include Supplementary Estimates, Statutory Appropriations and Contingencies. Amounts in this column are not related to the "estimated amount" under sections 5(1) and 6(1) of the *Balanced Budget and Ministerial Accountability Act* for ministerial accountability for operating expenses under the Act.
2. The Adjustment of Prior Year Accrual of $11,450 million is a reversal of accruals in the previous year.

Appendix E: Other Agencies, Boards, Commissions and Tribunals

Crown Corporations

- BC Infrastructure Benefits: www.bcib.ca
- BC Securities Commission: www.bcsc.bc.ca
- Partnerships BC: www.partnershipsbc.ca
- Real Estate Council of BC: www.recbc.ca

Public Sector Employers' Council and Employers' Associations

- Public Sector Employers' Council (PSEC)
- British Columbia Public School Employers' Association (BCPSEA)
- Community Social Services Employers' Association (CSSEA)
- Crown Corporations Employers' Association (CCEA)
- Health Employers Association of British Columbia (HEABC)
- Post-Secondary Employers' Association (PSEA)
- University Public Sector Employers' Association (UPSEA)

Boards, Commissions and Other Key Organizations

- BC Investment Management Corporation: www.bcimc.com
- BC Pension Corporation: www.pensionsbc.ca
- Credit Union Deposit Insurance Corporation: www.cudicbc.ca
- Financial Institutions Commission: www.fic.gov.bc.ca
- Government House: www.ltgov.bc.ca
- Insurance Council of BC: www.insurancecouncilofbc.com
- Office of the Superintendent of Real Estate (OSRE)
- Real Estate Foundation of BC: www.refbc.com

Appendix D

Real Estate Development Marketing – Province of British Columbia

Real Estate Development Marketing

Multi-unit development properties, such as condos and townhouses, are a popular option when buying a home in B.C. Real estate developers are responsible for providing full information and deposit protection to consumers when marketing their developments.

The Office of the Superintendent of Real Estate helps purchasers understand their rights and takes enforcement action if developers do not meet legislated requirements.

Real estate developers must meet the requirements of the *Real Estate Development Marketing Act* when marketing multi-unit development properties.

A multi-unit development property can be any of the following:

- Five (5) or more subdivision lots, unless each lot is 64.7 hectares or larger
- Five (5) or more bare land strata lots
- Five (5) or more strata lots in a stratified building
- Two (2) or more cooperative interests
- Five (5) or more time share interests
- Two (2) or more shared interests in land
- Five (5) or more residential leasehold units

The Office of the Superintendent of Real Estate (OSRE) is responsible for ensuring transparency between developers and consumers.

Rights of Purchasers

Real estate purchasers are entitled to full information and deposit protection when entering into a purchase agreement for a development unit in British Columbia. Learn how purchasers are protected:

- Real Estate Development Purchaser Rights

A purchaser's rights are governed by contract law and the purchase agreement. Under contract law, a purchaser may ask a court to order compensation or may ask a court to rescind the purchase agreement, as a remedy for any breach of contract. Although OSRE cannot enforce a purchaser's rights, they can investigate complaints and take regulatory action against the developer.

Requirements for Developers

Real estate developers must abide by provincial legislation when offering, selling or leasing development units in B.C. unless otherwise exempted. Learn how to meet the legislated requirements:

- Requirements for Marketing Real Estate Developments

Any failure to comply with the requirements may result in a cease marketing order, administrative penalty or other regulatory action by OSRE.

The Superintendent of Real Estate may grant individual exemptions from some or all of the legislated requirements.

Properties Located Outside of B.C.

In the Province of British Columbia, the *Real Estate Development Marketing Act* also governs the marketing of development properties located anywhere in the world. Local and foreign developments must meet similar requirements in order to be marketable in the province.

Appendix D

Foreign property regimes may be different from B.C.'s property regime and may not be familiar to purchasers here. Therefore, the required disclosure of development approvals, land title, and land-use restrictions is especially important for foreign developments. Additionally, all deposits received from British Columbian purchasers must be held in trust inside the Province of British Columbia.

Property Transfer Tax

In 2016, the Province introduced an additional Property Transfer Tax of 15% on residential property transfers to foreign entities in the Greater Vancouver Regional District. Failing to pay the additional tax, or providing incorrect information to avoid the tax, could result in significant fines and/or imprisonment.

Developers and consumers should obtain professional advice to determine if their existing or proposed trade in real estate will be subject to the additional Property Transfer Tax.

Make a Complaint

The Office of the Superintendent of Real Estate regulates the marketing of multi-unit real estate developments.

- Make a complaint against misconduct (PDF)

Marketing Services

Developers can use either a licensed broker, or a person who is exempt from licensing requirements such as a salesperson, to market development units. Licensing information is available from the Real Estate Council of British Columbia:

- Search for Real Estate Licensees

Resources

- Real Estate Development Marketing Act
- Office of the Superintendent of Real Estate
- BC Housing Licensing & Consumer Services (formerly Homeowner Protection Office)
- B.C. Real Estate Association
- Real Estate Institute of B.C.
- Real Estate Foundation of B.C.
- Industry & Consumer Guides

Contact Information

Contact the Office of the Superintendent of Real Estate:

Office:
604 660-1883

Street:
2800 - 555 West Hastings, Vancouver BC, V6B 4N6

Email:
realestate@gov.bc.ca

Appendix D

Appendix E

Requirements for Marketing Real Estate Developments – Province of British Columbia

Requirements for Marketing Real Estate Developments

Common types of multi-unit development properties are subject to the *Real Estate Development Marketing Act*. Before a real estate developer can offer, sell or lease a development unit in British Columbia, they must:

- Meet preliminary approval requirements
- Adequately assure title, utilities and services
- File and provide a disclosure statement
- Appropriately handle deposits, if any

The Office of the Superintendent of Real Estate (OSRE) may grant individual exemptions to these requirements. Failure to comply with the requirements may result in regulatory action by OSRE.

Approvals

Learn about the preliminary approval requirements:

- Policy Statement 5 - Early Marketing - Development Approval (PDF, DOCX)
- Policy Statement 17 - Extension of Early Marketing Period (PDF, DOCX)

Arrangements

Learn how to adequately assure title, utilities and services:

- Policy Statement 4 - Adequate Arrangements - Title (PDF, DOC)
- Policy Statement 6 - Adequate Arrangements - Utilities & Services (PDF, DOC)
- Policy Statement 17 - Extension of Early Marketing Period (PDF, DOCX)

Disclosure Statements

Developers provide disclosure statements to describe what they are building for consumers. Disclosure statements should plainly and accurately represent all material facts about the development.

OSRE can issue orders and levies against a developer if a disclosure statement is found to be inadequate.

The following guidance is intended to clarify disclosure requirements for developers, enabling them to provide clearer, simpler disclosure for purchasers.

Expand All | Collapse All

Form & Content

Amendments

Sign-off

Filing

Distribution

Appendix E

Undertakings

Deposits

Developers may receive a deposit from a purchaser of a development unit. The deposit must promptly be placed with a brokerage, lawyer, notary public or prescribed person who must hold the deposit in a trust account in a B.C. savings institution.

Deposits should not be used to construct and market the development units unless authorized deposit insurance has been obtained. This ensures adequate deposit protection for the purchaser.

Assignments

Assignment of purchase agreements of all residential condo and strata lots in B.C., including both pre-sale lots and completed lots, must be recorded in the Condo and Strata Assignment Integrity Register (CSAIR).

- CSAIR Form of Undertaking (PDF, DOC)

Exemptions

OSRE may exempt developers from any part of the requirements above, as well as suspend or cancel any exemption.

- Current Individual Exemptions

Fees for filing applications for exemption are based on the total number of development units in the development property. See payment options.

Schedule of Fees

Developers must file a disclosure statement with the Office of the Superintendent of Real Estate (OSRE) and provide a copy to each purchaser.

Fee for filing an application for an exemption, or filing a disclosure statement for:

a. 9 or fewer units: $900
b. 10 to 49 units: $1,800
c. 50 to 99 units: $3,600
d. 100 or more units: $5,400

Fee to file an amendment to a disclosure statement: $600
Fee to request a retrieval of a filing: $38
Fee for a copy of a public filing: $1 per page

All OSRE fees are payable to the Minister of Finance and are non-refundable. Learn about payment options.

Marketing Services

Developers can use either a licensed broker, or a person who is exempt from licensing requirements such as a salesperson, to market development units. Licensing information is available from the Real Estate Council of British Columbia:

- Search for Real Estate Licensees

Resources

- Real Estate Development Marketing Act
- Office of the Superintendent of Real Estate

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- Financial Services Tribunal
- B.C. Real Estate Association
- Real Estate Institute of B.C.
- Real Estate Foundation of B.C.
- Association of Real Estate License Law Officials
- UBC Real Estate Division
- Industry & Consumer Guides

Contact Information

Contact the Office of the Superintendent of Real Estate:

Office:
604 660-1883

Address:
Suite 2800 - 555 West Hastings Street
Vancouver, BC V6B 4N6

Email:
realestate@gov.bc.ca

Appendix E

Appendix F

Additional Property Transfer Tax for Foreign Entities & Taxable Trustees – Province of British Columbia

Additional Property Transfer Tax for Foreign Entities & Taxable Trustees

In addition to the property transfer tax, if you're a foreign national, foreign corporation or taxable trustee, you must pay the additional property transfer tax on your proportionate share of a residential property's fair market value if the property is within specified areas of B.C.

Your proportionate share is the percentage of interest that you're registering on title with the Land Title Office. For example, if you're a foreign entity (foreign national or foreign corporation) acquiring a 70% interest in a property, you pay the additional property transfer tax on 70% of the residential property's fair market value.

Tax Amount and Specified B.C. Areas

If the property transfer is within the following areas, the tax rate is 20% on the fair market value of your proportionate share:

- Capital Regional District
- Fraser Valley Regional District
- Metro Vancouver Regional District
- Regional District of Central Okanagan
- Regional District of Nanaimo

The additional property transfer tax doesn't apply to properties located on Tsawwassen First Nation treaty lands.

Transitional Rules

If the property is located in the Capital Regional District, Fraser Valley Regional District, Regional District of Central Okanagan or Nanaimo Regional District and the property transfer is registered on or after February 21, 2018, you don't have to pay the additional property transfer tax and your property can be registered at any time if:

- The property transfer is subject to a court order dated on or before February 20, 2018
- The property transfer is subject to an Order Nisi of Foreclosure dated on or before February 20, 2018
- The property transfer is subject to a written separation agreement under the Family Law Act made on or before February 20, 2018
- The property transfer is from the personal representative of a deceased's estate to the beneficiary and the death of the deceased occurred on or before February 20, 2018
- The property transfer is to a surviving joint tenant when the death of the deceased occurred on or before February 20, 2018

Tax on Residential Portion of Property

The additional property transfer tax applies on only the fair market value of the residential portion of a property located in the specified areas of B.C. There are three types of properties where this may occur:

- Property entirely classified as residential (class 1) by BC Assessment. You pay the additional tax based on the fair market value of the entire property
- Property classified as farm land by BC Assessment because it's used for an owner's dwelling or a farmer's dwelling. You pay the additional tax on the value of the residential improvement plus 0.5 hectares of land.
- Mixed class property that includes a residential property, such as a residential condo in a building (class 1) with comm space (class 6). You pay the additional tax on the fair market value of the residential property (land and improvement) on

Appendix F

Exemptions

In some circumstances, you may be exempt from the additional property transfer tax if you're:

- Exempt from property transfer tax
- A confirmed B.C. Provincial Nominee
- Acquiring a property on behalf of a Canadian-controlled limited partnership

Some transfers will still be subject to the additional property transfer tax even when exempt of the property transfer tax. These include:

- A transfer resulting from an amalgamation made under the Business Corporations Act, the Canada Business Corporations Act (Canada) or a similar provision of Canada or a province
- A transfer to a surviving joint tenant as a result of the death of a joint tenant
- A transfer to change the registered trustee(s) for reasons that do not directly or indirectly relate to a change in beneficiaries, class of beneficiaries or trust terms

The additional property transfer tax **doesn't apply** to registration of trusts that are mutual fund trusts, real estate investment trusts or specified investment flow-through trusts.

B.C. Provincial Nominees

If you're a foreign national individual who receives confirmation under the B.C. Provincial Nominee Program, you do not pay the additional property transfer tax if you claim the exemption.

To qualify for this exemption:

- You must be a confirmed B.C. Provincial Nominee when the property transfer is registered with the Land Title Office
- The property must be used as your principal residence
- The property transfer must be made to an individual

You may claim this exemption only once. If you purchase another property, you must pay the additional property transfer tax. Qualifications for every exemption claimed are reviewed.

To claim the exemption, your legal professional must attach a copy of your B.C. Provincial Nominee confirmation letter together with the property transfer tax return.

Note: A B.C. Provincial Nominee Candidate in the entrepreneurial immigration stream to permanent residency is not the same as a confirmed BC Provincial Nominee. A nominee candidate has to pay the additional property transfer tax.

Canadian-controlled Limited Partnerships

If you're a general partner who's a Canadian citizen, permanent resident of Canada or a corporation that's not a foreign corporation and you're acquiring a property on behalf of a qualifying Canadian-controlled limited partnership, you may be exempt from paying the additional property transfer tax.

Note: For the purpose of this exemption, "general partner" and "limited partner" have the same meaning as section 51 or section 80 of the Partnership Act.

To qualify for this exemption, the property (land and improvements) transfer must be registered at the Land Title Office on or after June 1, 2020 and:

- Each general partner must be a Canadian citizen, a permanent resident of Canada or a corporation that's not a foreign corporation
- Each general partner and each limited partner must be a resident of Canada for income tax purposes throughout the tax year in which the transfer occurs

Appendix F

- The combined interest of all foreign limited partners in the limited partnership must account for less than half of the entitlement of all partners to share in the profits of the limited partnership

You may claim this exemption through the web-based property transfer tax return.

Refunds

If you paid the additional property transfer tax, you may be eligible for a refund in certain circumstances.

Audits

All property transfer transactions are subject to an audit.

Find out what you can expect if you are audited.

Property Classification

B.C. Assessment uses a classification system to define the type and use of each property. Find out more.

Contact Information

Toll Free:
1-888-355-2700

Office:
250-387-0555

Email:
ATTENQ@gov.bc.ca

Appendix F

Appendix G

Land Title Practice Manual - CLEBC

PRACTICE MADE PERFECT CLE BC THE CONTINUING LEGAL EDUCATION SOCIETY OF BRITISH COLUMBIA

Land Title Practice Manual

November 01 2019

Chapter 50: Property Law Act, R.S.B.C. 1996, Chapter 377

I. Overview [§50.1]

The Act codifies and revises a number of aspects of British Columbia land title practice and real property law, such as relations between vendor and purchaser, co-ownership, instruments, transfers of interests in land, charges, mortgages, covenants, and leases.

A. Case Law [§50.2]

The following materials cite only cases that specifically interpret sections of the Property Law Act relevant to land title practice.

B. Section 1 [§50.3]

Definitions

1 In this Act, the following words and phrases have the meanings assigned to them in the *Land Title Act*:

"charge";

"encumbrance";

"instrument";

"lease or agreement for lease for a term not exceeding 3 years where there is actual occupation under the lease or agreement";

"owner";

"register";

"registered owner";

"registrar";

"statutory right of way";

"transfer";

"transferee".

1979-340-1.

1. Cross References and Other Sources of Information [§50.4]

a. Interpretation of Words and Phrases [§50.5]

See the discussion on the "Interpretation of Words and Phrases" at the "Introduction" Tab in this Manual.

Section 2 [§50.6]

Rights in completing sale of land

2 In a contract for the sale of land and in an action on it, unless otherwise agreed, the rights and obligations of the vendor and purchaser are regulated by the following rules:

(a) recitals of facts, statements and matters, and descriptions of parties in instruments or statutory declarations over 20 years old at the date of the contract are, unless the contrary is proved, sufficient evidence of their truth;

(b) the inability of a vendor to give a purchaser a legal covenant to produce and furnish copies of documents of title is not an objection to the title if the purchaser has, on the completion of the contract, an equitable right to the production of the copies that affirmatively prove his or her title.

1979-340-2.

D. Section 3 [§50.7]

Summary application to court

3 (1) A vendor or purchaser of an interest in land may apply in a summary way to the Supreme Court about a requisition, an objection, a claim for compensation or any other question, relating to the contract, except a question affecting its existence or validity.

(2) The court must make the order it considers proper, by reference to a registrar or otherwise, and must order how and by whom the costs of the application will be paid.

1979-340-3.

1. Case Law [§50.8]

a. Application [§50.9]

Where a vendor refused to complete upon tender of final payment and a registrable instrument, the purchasers applied under s. 3 for registration of the agreement for sale. The court held that the section was inapplicable in the circumstances but indicated that the purchasers could institute proceedings to compel delivery of an executed deed and seek summary judgment (Stryer v. Corlett, [1977] B.C.D. Civ. (6 July 1977) (S.C.)).

E. Section 4 [§50.10]

Vendor to deliver registrable instrument

4 A person making an agreement, or assignment of an agreement, for sale of land, if the purchase price is payable by instalments or at a future time, must deliver to the person buying the land an instrument in a form, executed by the parties, that allows the title of the purchaser under the instrument to be registrable under the *Land Title Act*.

1979-340-4; 2016-5-Sch.6.

1. Case Law [§50.11]

a. Refusal to Deliver Instrument [§50.12]

On a petition to foreclose a purchaser's interest in an agreement for sale, a vendor sought a one-month period of redemption because the amount due under the agreement for sale with interest was approximately equal to the value of the property including its timber. In spite of the purchaser's demands for a registrable copy of the agreement for sale, the vendor had for some time refused to deliver one. Without a registrable document, to which the purchaser was entitled under s. 4 of the Act, he was impeded in his efforts to refinance the property. It was therefore inequitable to grant a shortened period of redemption and the court ordered the usual six months (Chu v. Columbia River Ranches Ltd. (1986), 10 B.C.L.R. (2d) 72 (S.C.)).

F. Section 5 [§50.13]

Transferor to deliver registrable instrument

5 (1) A person transferring land in fee simple must deliver to the transferee a transfer registrable under the *Land Title Act*.

(2) A person who, as landlord or intended landlord, makes a lease or agreement for a lease, other than a lease or agreement for a term not exceeding 3 years where there is actual occupation under the lease or agreement, must, unless the contrary is agreed in it, deliver an instrument creating the lease or agreement to the tenant or intended tenant in form registrable under the *Land Title Act*.

1979-340-5.

1. Cross References and Other Sources of Information [§50.14]

a. Secondary Sources [§50.15]

See Di Castri, *Registration of Title to Land*, vol. 1, para. 148 and vol. 3, para. 886.

2. Case Law [§50.16]

a. Preparation of Registrable Transfer [§50.17]

There has grown up a practice of the purchaser's solicitor preparing the transfer from the vendor to the purchaser. That practice was not so well developed at the time that Stewart v. Friedrichsen ((1960), 24 D.L.R. (2d) 477 (B.C.C.A.)) (annotated under s. 6 of the Act) was decided. The rules are now as follows. First, where the cost of conveyance is to be borne by the purchaser, it is for the purchaser to prepare the transfer. It is for the vendor to be ready to execute it. Second, the first rule does not apply in any circumstances where title to the lands is not registered in the land title office in the name of the vendor. Where the vendor must first register title in his or her name, (for example, where there is an agreement for sale), he or she must prepare the documents. Although the first rule was not the rule at common law, it is a rule perfectly apt to our system of registration of land title and has the virtue of simplicity. Because the vendor must execute the transfer and have his or her execution attested, the vendor may find himself or herself having to attend at the time and place fixed for completion. Of course, if the instrument does not provide for the purchaser to bear the costs of the transfer, then the common law rule applies (Shaw Industries Ltd. v. Greenland Enterprises Ltd. (1991), 54 B.C.L.R. (2d) 264 (C.A.)).

Section 5(1) of the Property Law Act does not require the vendor to prepare the transfer documents but to deliver to the purchaser a transfer in registrable form under the Land Title Act. The section is concerned with the nature of title to be transferred and the form in which the transfer is to be expressed. In this case, the purchaser was in default by deliberately failing to prepare and tender the transfer documents, thereby depriving the vendors of the ability to satisfy their obligation to execute the documents (Kioussis v. Coil (1992), 17 B.C.L.R. (2d) 78 (C.A.), reversing (1990), 52 B.C.L.R. (2d) 326 (S.C.)).

b. Registrable Leases [§50.18]

Because the Land Registry Act only recognized registrable interests, there was implicit in every contract to lease land for over three years an agreement to give a registrable document so that the tenant had a marketable interest or security of tenure (Me-N-Ed's Pizza Parlour Ltd. v. Franterra Developments Ltd. (1975), 62 D.L.R. (3d) 148 (B.C.S.C.); note that this case was decided before the enactment of s. 5 of the Property Law Act). See also the annotation under s. 73.1 of the Land Title Act in vol. 1 of this Manual for Idle-O Apartments Inc. v. Charlyn Investments Ltd., 2010 BCSC 132, varied 2014 BCCA 451.

G. Section 6 [§50.19]

Vendor or transferor to register own title

6 (1) A person who transfers land, or who makes an agreement, or assignment of an agreement, for the sale of land by which the purchase price is payable by instalments or at a future time, must register his or her own title in order that a person to whom all or part of the land is transferred and a person claiming under the agreement or assignment can register their instrument under the *Land Title Act*.

(2) An action must not be brought on the agreement or assignment referred to in subsection (1) by a person who fails to comply with this section.

1979-340-6; 2016-5-Sch.6.

1. Case Law [§50.20]

a. Vendor Holds Agreement For Sale [§50.21]

The vendors (who were not registered owners but who had an enforceable agreement for sale) covenanted to convey property to the purchaser. Under the covenant, the purchaser had the right to demand a conveyance from these vendors and to refuse a conveyance from a third person. Under the obligations imposed under the agreement, and by virtue of s. 6 of the Property Law Act, the vendors were obliged to get title into their own names so they could complete by their own conveyance, without the need of conveyance from any third person, and also to get their title in sufficient time to enable them to complete by registrable conveyance on the completion date (Stewart v. Friedrichsen (1960), 24 D.L.R. (2d) 477 (B.C.C.A.)).

P made an offer to purchase to D, which was acting as receiver manager of N. N held an agreement for sale of the subject property from the registered owners. The transfer tendered to P was executed by N and the registered owners as transferors. Having refused to complete, P argued that it was not obliged to accept such a transfer and pointed to s. 6 in support of its argument. The court held that s. 6 had no application in the circumstances. P's agreement was neither an agreement for sale nor one by which the purchase price was payable by instalments. Furthermore, the transfer was duly executed by N by its receiver manager, the party to the purchase offer. The fact that the registered owners were additional co-covenantors was no ground for objection because P received the covenant contracted for. The presence of additional covenantors did not detract from that. Finally, P's agreement was for the conveyance of "all of the vendor's rights, title and interest". The vendor's interest was under an agreement for sale and the document tendered would have been effective to transfer that interest (Pan Pacific Specialties Ltd. v. Deloitte & Touche Inc. (1996), 50 R.P.R. (2d) 56 (B.C.S.C.)).

Appendix H

Mortgage Brokers Act Review Public Consultation Paper
January 2020 Ministry of Finance

Mortgage Brokers Act

Review

Public Consultation Paper

January 2020

BRITISH COLUMBIA | Ministry of Finance

MORTAGE BROKERS ACT REVIEW

PUBLIC CONSULTATION PAPER

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INTRODUCTION

The *Mortgage Brokers Act* (MBA) was originally enacted in 1972 as consumer protection legislation in response to an increased number of mortgage brokers and complaints of gross and unconscionable interest rates and fees. At the time, mortgage brokers were considered the lenders of last resort; however, over the years the industry has changed and has become part of the mainstream financial market.

Although it has been amended several times since its enactment, the MBA has not kept pace with evolving national and international standards in consumer protection, changes in the financial services market and emerging issues such as money laundering in the real estate market.

The 2018 Expert Panel on Money Laundering in BC Real Estate described the MBA as antiquated and recommended replacing the MBA with a modern statute to regulate all those in the business of mortgage lending, with few exceptions.

Purpose of MBA Consultation Paper

The purpose of this consultation is to elicit discussion and feedback from stakeholders on the Expert Panel on Money Laundering in Real Estate's recommendation[1] to replace the MBA with modern legislation that would:

- establish business authorization requirements for all mortgage lenders, with the possible exception of individuals lending to a small number of friends and family;
- make a distinction between regulation of the intermediary function and the lending function, with appropriate provisions for both aspects of the industry;
- establish a governance structure with designated management responsible for compliance within mortgage intermediaries and mortgage lenders, as well as compliance requirements placed on employees within the organization; and
- include modern regulatory powers and requirements.

After the consultation period, Ministry staff will analyze feedback and prepare policy proposals for the consideration of government. Ultimately, the replacement of the MBA is subject to consideration and approval by the Minister of Finance and Cabinet, and approval of the Legislature of British Columbia.

How to Provide Input

Submissions and comments must be received by March 13, 2020 and may be transmitted electronically to mbareview@gov.bc.ca.

[1] See Appendix A

Submissions and comments may also be mailed to:

Attn: Policy & Legislation Division
MBA Review
Ministry of Finance
PO Box 9418 Stn Prov Govt
Victoria BC V8W 9V1

Public Nature of Consultation Process

Please note that this is a public consultation process and, unless confidentiality is specifically requested, comments and submissions may be disclosed to other interested parties or made publicly available.

If certain comments should not be shared publicly with other parties, please clearly indicate that in the submission or covering letter. However, please note that all submissions received are subject to the *Freedom of Information and Protection of Privacy Act* and, even where confidentiality is requested, this legislation may require the Ministry to make information available to those requesting such access.

BACKGROUND AND CONTEXT

Legislative and Regulatory Framework – The *Mortgage Brokers Act* (MBA)

The MBA provides a framework for the regulation of mortgage brokers in BC and creates a Registrar of Mortgage Brokers (the Registrar). The Registrar was a part of the Financial Institutions Commission and has now become a part of the BC Financial Services Authority (see below). The MBA provides the Registrar with the power to investigate complaints and to suspend and cancel registrations.

Although the MBA has been amended several times, most notably in 1998 to protect investors following discovery of the Eron Mortgage fraud, the financial services market has changed profoundly. Examples of the degree of change include the type of mortgage products available, securitization of mortgage pools (i.e. asset-backed commercial paper), reverse mortgages, syndicated mortgage investments, the emergence of non-traditional mortgage lenders and the increased role of mortgage brokers as intermediaries in arranging mainstream residential mortgages.

Many provinces that first enacted mortgage broker legislation in the 1970s have since modernized their legislation. Manitoba rewrote their MBA in 1987, Ontario in 2006, Saskatchewan in 2007 and New Brunswick in 2016.

The results of a recent review of Ontario's legislation, published in September 2019 focussed on streamlining processes and reducing regulatory costs. Specific recommendations from the review

would raise the sector's professional and education standards, boost protections for homebuyers and assist in the fight against money laundering.

Adopting best practices and promoting legislative consistency across provinces where feasible ensures consumer protection and promotes a fair and stable market across jurisdictions, helping to create certainty in the market place.

The BC Financial Services Authority (BCFSA)

The *Financial Services Authority Act*, which received Royal Assent May 16, 2019, established the BC Financial Services Authority (BCFSA) as a new Crown entity that replaces the Financial Institutions Commission (FICOM). On November 1, 2019, FICOM was dissolved and the Authority took on all of FICOM's regulatory responsibilities, including the regulation of mortgage brokers.

The establishment of the BCFSA reflects government's commitment to building a modern, efficient, and effective regulatory framework to respond to a rapidly changing financial services industry and new risks to consumers.

The Ministry is targeting fall 2020 to bring forward new legislation to include real estate in BCFSA's mandate by spring 2021. The BCFSA will fully leverage expertise and best practices across regulated industries, including mortgage brokers, real estate, insurance, trusts, credit unions, and pensions.

Objectives of the MBA Review

Financial sector stability and consumer protection remain core priorities for government. These priorities are balanced with the need to ensure that the industry is not unduly burdened and that regulations do not stifle innovation or create barriers to new entrants.

The ultimate goal is a regulatory framework that helps to ensure that British Columbians continue to benefit from a financial services sector that is strong, stable, and inspires public confidence and trust.

The following objectives provide a framework to guide the analysis of issues during the review to:

- Reflect recognized national and international standards, while respecting the context of the BC marketplace including the size, scope and diversity of the industry.
- Enable early detection, timely intervention and resolution of issues.
- Promote clear, consistent and harmonized regulation.

- Foster an environment that promotes industry growth, innovation, and responsible business conduct.

Broadly speaking, the Ministry is proposing to meet these objectives by developing legislation that clearly sets out current best practices by:

- Requiring licensing of all mortgage brokering with limited exemptions.
- Providing for minimum standards of conduct and a duty of care to consumers.
- Requiring transparency and disclosure in mortgage transactions.
- Providing enhanced disclosure and reporting requirements for more complex products.
- Reducing regulatory gaps, leveraging work done in other provinces and respecting existing inter-jurisdictional agreements.

DISCUSSION OF KEY ISSUES AND AREAS FOR PUBLIC INPUT

Overview

The remainder of this paper sets out in summary form what replacing the current MBA with more modern provincial legislation could look like. For each issue, a description of the current approach and possible changes are discussed. Please note that the issues have been numbered for ease of reading and discussion and do not reflect any sort of ranking.

In addition to the issues listed below, the government is also seeking feedback on any other reforms that could be considered or aspects of the MBA that are working well and that should be retained.

MORTGAGE BROKER REGISTRATION OR LICENCING REQUIREMENTS

Building on national and international best practices, a modern MBA would establish business authorization requirements for all mortgage brokers and lenders except in circumstances of low consumer risk, such as individuals lending to a small number of friends and family. The authorization requirements would be supplemented by targeted consumer protection measures relevant to the borrower, lender or investor.

Ideally, the governance structure would impose clear accountability, requiring a brokerage to designate an individual responsible for managing the conduct of the business and supervision of employees and place compliance requirements on both the brokerage and the employees.

Issue 1: Scope of the MBA

As noted in the 2012 consultation paper, the original goal of the MBA was to protect consumers from harsh and unconscionable mortgage transactions. At the time, less reputable brokers were tacking on fees to the face rate of a mortgage without disclosing the impact of the fees on the true cost of borrowing. To address this, the MBA required persons carrying on activities captured by the definition of "mortgage broker" to register their business address and provide borrowers with true cost of borrowing disclosure if the mortgage broker charged a finder's fee or other charge.

Under the current MBA, a mortgage broker is a person who engages in any of the following activities:

(a) carries on a business of lending money secured in whole or in part by mortgages, whether the money is the mortgage broker's own or that of another person;

(b) holds himself or herself out as, or by an advertisement, notice or sign indicates that he or she is, a mortgage broker;

(c) carries on a business of buying and selling mortgages or agreements for sale;

(d) in any one year, receives an amount of $1,000 or more in fees or other consideration, excluding legal fees for arranging mortgages for other persons;

(e) during any one year, lends money on the security of 10 or more mortgages;

(f) carries on a business of collecting money secured by mortgages.

Mortgage broker legislation differs from province to province but, broadly speaking, most mortgage broker legislation fulfills a consumer protection mandate by regulating all business activity carried on within the province in respect of:

- lending money secured by a mortgage,
- soliciting a mortgage loan or investment,
- negotiating and arranging a mortgage loan or an investment,
- administering mortgage loans and investments and
- holding one's self out to be a mortgage broker.

While the existing definitions of a mortgage, mortgage broker, and submortgage broker in the MBA captures much of the spirit of the above, there are gaps in the existing legislation.

The key differences between the current MBA and modern mortgage broker legislation are:

- The current definition of "mortgage" is limited to mortgages on real property located in BC and is only expanded to include all mortgages in limited circumstances, such as the disclosures required to be made to lenders. If the intent of the MBA is to ensure all mortgage brokering transactions that include a BC person, or that are carried on in BC, are

regulated[2] the current legislation is not clear. This creates potential gaps in the regulatory framework.

- "Carrying on business" is not defined separately from, but is integral to, the definition of a "mortgage broker." Modern legislation more clearly provides that persons are within the scope of the legislation and are regulated if they meet a two-part test: 1) the person must be "carrying on business;" and, 2) the business activities must be "mortgage brokering activities" or "mortgage administration activities." Such a test would provide more clarity than the current MBA, which sets thresholds of either $1,000 or more in fees or lending money on the security of 10 or more mortgages above either of which a person is considered a "mortgage broker."

- The MBA does not allow definitions to be expanded to include new business activities as the industry changes without changing the Act. Modern legislation provides the ability to expand the scope of the legislation by regulation. Providing the ability to bring new business activities or ways of doing business by regulation allows the legislative framework to meet the changing needs of consumers and the marketplace in a more timely fashion.

With the current definitions private mortgage lenders may not be regulated unless they meet the existing thresholds. This is the case even if the lender is otherwise lending money secured by mortgages in BC. An estimated 5% of mortgages are originated by unregulated mortgage lenders, or private lenders. This activity can expose consumers to risks that should be mitigated by the MBA.

Questions:

1) Are there any unintended consequences or concerns with amending the scope of the MBA legislation to align with other modern provincial MBA legislation?
2) To what extent should private lending be regulated?
3) Are there any other mortgage broker or lending activities that should be subject to regulatory oversight?

Issue 2: Types of Licences and Related Obligations

Currently, the MBA requires persons to register as either mortgage brokers or submortgage brokers. A submortgage broker is an employee of a particular mortgage broker and may carry on the same activities as a mortgage broker.

The MBA places most statutory duties and obligations on the business entity registered as a mortgage broker, while imposing fewer duties on the individuals employed as submortgage brokers.

[2] Other than federally regulated transactions.

To more clearly define the responsibility of mortgage brokers and their relationship with employees, the Registrar requires each mortgage broker, as a condition of registration, to have a submortgage broker act as a designated individual, who is responsible for the conduct of the business entity and all of its submortgage brokers.

Today, mortgage brokers carry out a number of different mortgage related activities, each with different associated risks to the consumer and public. The different risks are not always addressed with the current broad categories of registration. Modern mortgage legislation addresses this issue, at least in part, by distinguishing between persons carrying out different mortgage brokering activities and imposing duties and obligations specific to those activities. Licences are grouped as follows:

- "mortgage brokerage" – a business entity that is a corporation, partnership or sole proprietorship that brokers mortgages,
- "mortgage administrator" – a corporation that provides administrative services in respect of mortgages, including receiving mortgage payments from borrowers for the benefit of lenders or investors,
- "mortgage associate" – an individual who brokers mortgages on behalf of a mortgage brokerage, and
- "managing mortgage broker" – an individual who brokers mortgages on behalf of a mortgage brokerage and meets criteria to supervise mortgage associates,

While statutory obligations and responsibilities could vary by license type, all licensees should be required to apply for a licence, pay an annual fee, and comply with the terms of their license and the legislation.

Another possible change from the current application of the MBA in BC is licenses could be continuous. This would eliminate licence renewals, though licences could still be suspended or cancelled.

Under modern mortgage legislation in other jurisdictions, mortgage administrators and brokerages are required to establish policy and procedures to ensure compliance with the legislation. They also have a duty to appoint a managing mortgage broker as a representative in all dealings under the legislation.

Questions:

1) What are the challenges associated with moving to a more modern licencing regime described above?
2) Are there disadvantages to continuous licensing the government should consider?

Issue 3: Exemptions from Registration or Licencing

Currently, the MBA provides exemptions from registration to persons who are otherwise subject to equivalent regulation under another Act, including the following persons:

- insurance companies,
- savings institutions (banks, credit unions, extraprovincial trust corporations and subsidiaries of banks that are loan companies),
- a member of the Law Society of British Columbia,
- an employee, or director, of an insurance company or savings institution,
- persons registered under the *Securities Act*, other than exempt dealers, that offer for sale securities of syndicated mortgages and
- a person licensed under the *Real Estate Services Act*, in respect of vendor take-back mortgages.

Additional exemptions are available for:

- persons acting for the government or for an agency of the government,
- a liquidator, receiver, trustee in bankruptcy or a person acting under the authority of any court or an executor or trustee acting under the terms of a will or marriage settlement.
- a person lending money, directly or indirectly, on the security of land to provide housing for the person's employees,
- any other person or class of persons exempted by the Registrar from registration.

Modern mortgage legislation tends to provide similar exemptions from licensing. However, additional exemptions are also provided, including exemptions for:

- persons acting on behalf of a Crown corporation or agency of any Canadian jurisdiction,
- persons registered under the *Securities Act* of any Canadian jurisdiction,
- persons that provide simple referrals, and
- mortgage lenders who only lend through a licensed brokerage or an otherwise exempt broker.

Questions:

1) In your view, what are the costs or benefits of matching the MBA registration exemptions to parallel modern mortgage legislation?
2) Is the exemption from registration for persons lending money on the security of land to provide housing for the person's employees still relevant?
3) Are there any other persons currently exempted from registration either under the MBA or modern legislation that should not be exempted?
4) Are there any other persons that should be exempted from registration under the MBA?

DUTIES OF ALL REGISTERED OR LICENCED PERSONS

The MBA requires mortgage brokers and submortgage brokers to register by filing an application to the Registrar. The required form, any additional requirements, and the fee are set out in the regulation and in guidelines. Applicants are subject to a suitability review.

Modern mortgage legislation, sets out directly in the legislation, duties and obligations that apply to all licensed persons, including the following:

- a duty to act fairly, honestly and in good faith in carrying out licensed activities,
- comply with errors and omission insurance requirements,
- record keeping and retention requirements,
- restrictions on tied selling and
- working capital requirements for persons who handle trust funds.

The legislation is supplemented by regulations or rules that set out how the legislated duties and obligations are to be achieved.

Issue 1: Duty to Act Fairly, Honestly and in Good Faith

The MBA does not legislate a duty to act fairly, honestly and in good faith.

Generally, financial services providers in the areas of securities, insurance, and real estate should have as an objective, to work fairly and honestly and to exercise good faith in their dealings. This duty already cuts across sectors in BC. BC requires a positive obligation or duty to act honestly in rules created under the *Real Estate Services Act* and the Insurance Council of BC requires good faith as a fundamental aspect of conduct.

Modern mortgage legislation tends to contain such a duty that is consistent with the duties imposed across the financial sector. In addition, to further promote responsible business conduct, the MBA could place a positive obligation or duty for licencees to report industry member misconduct to the regulator.

Questions:

1) Do you have any concerns with matching modern mortgage legislation to include a duty to act fairly, honestly and in good faith?
2) Should a positive obligation to require reporting misconduct be legislated?

Issue 2: Insurance

Errors and omissions (E&O) insurance is not currently required in BC under the MBA. This is inconsistent with modern mortgage legislation as well as the requirements placed on other regulated persons (e.g., insurance agents, real estate brokers). E&O insurance is a significant tool in

consumer protection regimes to ensure funds are available to pay for consumer losses caused by an agent's negligence.

The Mortgage Brokers Regulator's Council of Canada[3] (MBRCC) is currently developing national standards for E&O insurance for mortgage brokering activities.[4] As the national standards are developed, a new MBA would require insurance with a goal to harmonize with other jurisdictions and adopt the national standards for E&O insurance developed by the MBRCC for the protection of consumers.

Questions:

1) If you are a mortgage broker, do you currently have E&O insurance?
2) If you are a mortgage broker, what are your reasons for having or not having E&O insurance?
3) Is there any reason why E&O insurance should not be required?

DUTY TO BORROWERS

In addition to the general duty to act fairly, honestly and in good faith in carrying out licensed activities, licencees under some modern mortgage legislation have a specific duty to act in the best interest of a borrower.

Acting in the best interest of a borrower means a broker must:

- verify the identity of the borrower, lender or private investor and determine the suitability of mortgage products available to the borrower by taking into account specified factors, including the interest rate, term, amortization period and any other distinguishing features of the mortgage,
- provide information about the brokerage business that a borrower may want to consider in their dealings with the brokerage, including ownership by a mortgage lender or private lender, the name and number of lenders they work with, the fees and remuneration or penalties payable by the borrower,
- disclose all direct or indirect compensation receivable by the brokerage from others, or payable by the brokerage if the borrower enters into the specific mortgage.

The brokerage must keep a record that the above steps took place and obtain acknowledgement, in writing, from the borrower that the steps took place.

[3] The MBRCC is comprised of the provincial regulators that are responsible for administering mortgage broker legislation and regulating the industry across Canada. The MBRCC aims to balance consumer protection with an open and fair marketplace and works cooperatively to improve information sharing, promote harmonized regulatory practices and to develop a unified approach to engaging stakeholders on common issues.

[4] In support of this initiative, the MBRCC E&O Committee consulted with mortgage brokering stakeholders across Canada. The consultation period closed April 1, 2019.

Further, the above measures are typically supplemented by additional requirements to disclose the cost of credit and prohibitions against deceptive or unconscionable acts or practices.

Issue 1: Duty to Act in Borrowers' Best Interest and Mortgage Suitability

The current MBA does not place a duty on a broker to act in the best interest of the borrower nor does it place a duty on a broker to determine if a mortgage product is suitable for the borrower.

The duty to act in the best interest of the borrower is common in modern mortgage legislation and is not unique to Canada. The European Union mortgage credit directive (MCD) sets out a duty to act honestly, fairly, transparently and professionally, considering the rights and interest of the consumer. The United Kingdom, in adopting the MCD, further specifies actions that will tend to show a contravention of the customer's best interest.

The current MBA is out of step with international standards and may create a gap in consumer protection by not requiring a broker to act in the borrower's best interest. Unethical actors may continue to work as brokers and remediation must be sought through other, often more costly channels.

Questions:

1) What do you consider to be acting in the best interest of the borrower? What parts of that should be required by legislation?
2) If a duty is placed on a broker to determine suitability of a mortgage product for a borrower, what factors should a broker consider when determining suitability?
3) Are there borrowers who do not require the protection offered by a duty to determine mortgage suitability?

Issue 2: Disclosure of Brokerage Information

The current MBA does not require brokerages to provide basic brokerage business information beyond requiring disclosure of potential conflicts of interest (discussed below in Issue 3).

Most modern legislation recognizes that information about the brokerage and the type of services offered, in addition to disclosing potential conflicts of interest, is required to ensure transparency and enable the borrower to make an informed decision. Basic brokerage information that must be provided to a borrower and maintained on record would include the following:

- if the brokerage is owned by a mortgage lender or private investor, the name of that mortgage lender or private investor;
- the name and number of lenders or private investors,
- the steps that the brokerage took to confirm the identity of the lender and private investor,

- the fees, remuneration or penalties payable by the borrower in connection with the services offered by the mortgage brokerage, and
- potential conflicts of interest, (i.e., where the brokerage or a related person has an interest in the mortgage).

Question:

1) Is there information that should or should not be included in disclosures to borrowers?

Issue 3: Disclosure of Compensation Receivable or Payable

Under the MBA, mortgage brokers are required to disclose interests in transactions. The disclosure must be made to the borrower and lender on a prescribed form (Form 10).[5]

The MBA does not prescribe the detailed information required to be disclosed to borrowers. As a result, the Registrar has published the Mortgage Broker Conflict of Interest Disclosure Guidelines and Frequently Asked Questions, which provides that brokers must disclose in dollar terms the commission and volume bonuses, plus other rewards, that a broker may receive.

Modernizing the legislation would include providing the Registrar with the ability to determine the form and manner of all filings including any required information to be disclosed to consumers. The legislation would allow the Registrar to be more responsive to changes in the industry and adjust the required forms as needed.

Question:

1) Are there any specific concerns with providing the Registrar with the flexibility to strengthen the MBA disclosure requirements as needed?

Issue 4: Disclosure of Cost of Credit for Home Equity Loans

The *Business Practices and Consumer Protection Act* (BPCPA) amalgamated a number of consumer protection statutes and the *Cost of Consumer Credit Disclosure Act*. The consumer credit disclosure requirements were developed as a federal-provincial-territorial initiative to harmonize laws concerning the cost of consumer credit disclosure. The BPCPA requires mortgage brokers and lenders to provide disclosure to individuals who borrow primarily for personal, family or household purposes, regardless of whether the broker or lender is charging additional fees or expenses.[6]

[5] The form is not required if the borrower received the required information as part of an offering memorandum or prospectus.
[6] By referencing the BPCPA, the MBA adopts the provisions that deal with the disclosure of the cost of borrowing and broker conduct rules.

While the MBA does not require that the cost of borrowing disclosure be provided to individuals who use their home equity to secure a business loan, this gap may create unnecessary risk to the residential housing market.

Question:

1) Is there a reason why disclosure of the cost of borrowing should not be required in every instance where an individual takes out a mortgage secured against residential property?

Issue 5: Reverse Mortgages

While the MBA applies to reverse mortgages, it does not require any enhanced disclosure, which may be needed to protect the vulnerable populations most likely to access these products. In 2006, the British Columbia Law Institute and the Canadian Centre for Elder Law published a report on reverse mortgages. The report recommended that legislation should specifically address reverse mortgages, with a focus on enhanced disclosure requirements, an extended cooling-off period and independent counselling.

In surveying best practices across Canada, New Brunswick, Ontario and Saskatchewan currently require independent legal advice before a borrower can take out a reverse mortgage. The *Mortgage Act* of Manitoba sets rules for reverse mortgages to limit fees, provides for an extended cooling-off period and requires disclosure that highlights the effect of an interest rate change on the mortgage balance.

Questions:

1) What are the benefits and costs of requiring independent legal advice before taking out a reverse mortgage?
2) What is an appropriate extended cooling off period for reverse mortgages?
3) Should disclosure of the effects of an interest rate change on the mortgage balance be required for reverse mortgages?
4) Are there other disclosures or requirements that could better protect consumers not contemplated here?

DUTY TO LENDERS AND INVESTORS

The current MBA does not place a duty to act in the best interest of a lender or private investor on mortgage brokers. The MBA also does not place a duty to determine if the mortgage is a suitable investment for an investor.

Under modern mortgage legislation, in addition to the general duty to act fairly, honestly and in good faith in carrying out licensed activities, licencees that solicit, negotiate, arrange or provide advice to private investors in respect of an investment in a mortgage have a duty to act in the best interest of the private investor.

As an example, a private investor in New Brunswick, meaning everyone other than a corporation with $5M or more in net realizable assets, a trustee of a registered pension plan, another mortgage broker or a government entity must act in a private lender's best interests.

A broker required to act in the best interest of a private investor must take reasonable steps to verify the identity of the investor, ensure the mortgage investment is suitable and provide the investor with:

- disclosure in respect of mortgage investment information,
- disclosure of material risks, and
- disclosure of potential conflicts of interest.

Issue 1: Suitability of Investment

The MBA requires disclosure of mortgage investment information (via Form 9) to all lenders and private investors, except if:

- the borrower or the investor is a sophisticated person[7],
- an offering memorandum or a prospectus has been provided in accordance with the *Securities Act,* or
- in the case of a mortgage that is part of a pool of mortgages, an interest in the pool is being offered as a security, as defined in the *Securities Act,* and the mortgage is fully guaranteed by the government of Canada or a province.

In contrast, under modern mortgage legislation, the suitability of the investment and related disclosure requirements are intended to apply only in respect of private investors. The disclosure requirements are focused on protecting persons who are the most likely to benefit from standard disclosure in respect of the mortgage investment.

Questions:

1) Should the duty to disclose mortgage information be amended and limited to private investors?
2) Should the mortgage broker duty to a private investor include determining mortgage investment suitability?

[7]A sophisticated person is defined and includes government bodies, banks, credit unions, insurance companies, trusts companies, mortgage brokers, registered investment dealers, portfolio managers and certain transactions with persons registered under the *Securities Act.*

Issue 2: Best Interest of Private Investor

The current MBA does not include a duty to act in the best interest of an investor or lender nor does it limit a brokerage from simultaneously acting for both the borrower and the investor.

Modern mortgage legislation would set out that mortgage brokerages that solicit, negotiate, arrange or provide advice to private investors in respect of an investment in a mortgage have a duty to act in the best interest of the private investor, if the private investor is not represented by another brokerage. Additionally, some jurisdictions require that if a mortgage brokerage has a duty to act in the best interest of a private investor, the brokerage must ensure that the borrower is represented by another brokerage.

Questions:

1) Are there potential conflicts between the duties to a borrower as outlined above and acting in the best interest of a private investor?
2) What would be the effect, if any, on your mortgage brokerage business if you are prohibited from acting for both the borrower and the private investor in a mortgage transaction?

Issue 3: *The Securities Act*

Since the late 1980's, the mortgage investment market has become increasingly complex, attracting both sophisticated and unsophisticated investors. Because mortgages sold as investments are generally securities within the meaning of the *Securities Act*, both the MBA and the *Securities Act* can apply to a person registered as a mortgage broker in BC.

The intent underlying the *Securities Act* is to protect investors and support fair capital markets by regulating companies, firms or individuals that issue, trade or provide advice on securities. To assist investors, companies offering securities for sale must generally file a prospectus and meet extensive continuous disclosure requirements, unless an exemption exists. In addition, firms and individuals trading or advising on securities must be registered under the *Securities Act*, unless an exemption exists.

Beginning January 1, 2019, mortgage investment entities (MIE)[8] are now subject to the dealer registration regime, including 'know your client' and suitability requirements relating to:

- the general investment needs and objectives of their client and any other factors necessary for them to be able to determine whether a proposed purchase or sale is suitable ('know your client' or KYC); and
- the attributes and associated risks of the products they are recommending to clients (commonly referred to as know your product or KYP).

[8] Mortgage investment entities include both mortgage investment corporations and mortgage syndications.

Although a MIE must be registered under the MBA when lending, the Registrar has limited authority to regulate the capital raising activities of the MIE as that falls under the BC Securities Commission (investors buy shares in the MIE and not mortgages).

Question:

1) Does the current division of regulatory oversight between the *Securities Act* and the MBA create gaps or unnecessary duplication in regulation or oversight?

Issue 4: Disclosure of Compensation Receivable or Payable

As discussed above, under the MBA, mortgage brokers are required to disclose interests in transactions to all borrowers and lenders. (via Form 10).

In contrast, modern mortgage broker legislation requires brokers to disclose actual or potential conflicts of interest only to private investors, so that the private investor may make an informed decision.

Question:

1) Should the disclosure to lenders of potential conflict of interests be limited and only required if the lender is a private investor?

MODERN REGULATORY REQUIREMENTS AND POWERS

As noted above, the new Financial Services Authority has taken on all regulatory responsibilities relating to the credit union, insurance, trust, mortgage broker and pension sectors. Additionally, the Authority will become the sole regulator for real estate services by spring 2021.

Ensuring the Authority's regulatory powers are harmonized across the sectors (where appropriate) would increase efficiency and transparency across the broader financial services sector.

Issue 1: Regulations and Rule Making Powers

The current MBA provides broad regulation making powers to the Lieutenant Governor in Council and more limited powers to the registrar.

Modern mortgage legislation provides rule making power to the regulator, for example in New Brunswick the Financial and Consumer Services Commission is given broad rule making power. Similarly, formal rule making power is provided to the Superintendent under the *Real Estate Services Act*, respecting licensing and regulating the provisions of real estate services and it

is expected the Authority will take on this power once it becomes the sole regulator for real estate services in BC.

Before making or amending specific rules, the Minister's consent would be required.

Question:

1) Please, provide your views on the Authority being provided with the power to make rules under the MBA?

Issue 2: Annual Information Returns

Currently, annual filing requirements under the MBA are limited. A mortgage broker is required to file either a declaration that they do not handle trust funds, or to file a report on the trust funds, including an accountant's report.

Modern mortgage legislation requires mortgage brokerages and administrators to file annual information returns, which are then used by regulators to identify, assess and monitor risk. The filings are completed by the managing broker and typically include the following information:

- Contact information including all locations and an address for service,
- Types of licensed activities carried on during the year,
- Number of brokers and broker associates,
- Number and dollar amount of mortgages placed, by type of mortgage and by type of lender,
- Errors and omission insurance coverage, claims and payouts, and
- A description of any complaints made to the brokerage regarding the brokerage or any of its associated brokers.

If the brokerage does not handle trust funds, a declaration to that effect would be filed. If the brokerage handles trust funds, audited financial statements would be filed.

The annual information filings would support the continuous licensing system and provide the regulator with up to date information on the industry.

The audited financial statements would support the prudential supervision of those mortgage brokerages and administrators that handle trust funds. For example, licencees in New Brunswick that hold trust funds must maintain at least $25,000 in working capital.

Questions:

1) What concerns, if any, would you have with requiring an annual information return from all brokerages and administrators?

2) What are the expected impacts to your business in requiring audited financial statements in place of an accountant's report on trust funds.

Issue 3: Enforcement and the BPCPA

The MBA not only adopts by reference provisions of the BPCPA that deal with the disclosure of the cost of borrowing and broker conduct rules, it also adopts the related BPCPA enforcement provisions. The Registrar may exercise the BPCPA enforcement provisions in respect of inspections, undertakings, freeze orders, administrative penalties and court proceedings. Navigating the requirements under the MBA is made more complex where the same or similar enforcement powers are dealt with in both the MBA and the BPCPA.

Modern mortgage legislation would provide for enforcement provisions based on their specific jurisdiction. In Ontario, for example, the regulatory framework provides for all enforcement powers within the mortgage legislation. In contrast, New Brunswick mortgage transactions may be subject to both the mortgage legislation and the *Cost of Credit Disclosure and Payday Loans Act*.

Questions:

1) Would the administrative and enforcement provisions be clearer if they were all embedded directly in the MBA, and not split between the MBA and the BPCPA?
2) If enforcement provisions continue to be split, are there clarifications that could be made in the MBA to reduce complexity and uncertainty?

Issue 4: Enforcement

The MBA provides the Registrar with enforcement powers to take effective action against non-compliant mortgage brokers. Specifically, the Registrar may investigate, summon witnesses, and inspect the affairs and records of a person and may:

- suspend or cancel a registration;
- issue orders requiring a person to take specified actions;
- levy administrative penalties of up to $50,000;
- issue cease and desist orders and
- enforce orders by filing them with the courts.

Mortgage brokers and submortgage brokers are generally entitled to a hearing before these powers are enforced. A person affected by a direction, decision or order of the Registrar is entitled to be heard and can make an appeal to the Financial Services Tribunal. The Tribunal's decisions are final, but subject to judicial review.

The maximum dollar amount of administrative penalties imposed to deter non-compliance in other consumer protection statutes have been substantially increased. For example, the *Real Estate*

Services Act maximum administrative penalty was increased from $20,000 to $500,000 for brokerages and from $10,000 to $250,000 in any other case.

Questions:

1) Do you have any suggestions on ways to further improve enforcement powers and remedies?
2) Given the significant monetary value of mortgages and the significant increase to penalties provided in other legislation that regulates real estate services is the current $50,000 limit on the administrative penalties still appropriate?

CONCLUDING REMARKS

Thank you for taking the time to read through this paper and engage with the ideas and issues it addresses. Your input will help inform government's decision on replacing the MBA with modern legislation.

Please send your comments to MBAReview@gov.bc.ca or:

Attn: Policy and Legislation Division
MBA Review
Ministry of Finance
PO BOX 9418 Stn Prov Govt
Victoria, BC
V8W 9W1

The consultation period is open until March 13, 2019.

Public Nature of Consultation Process

The Ministry of Finance will share comments it receives with other branches of government, specifically the BC Financial Services Authority, who is responsible for the administration of the MBA.

Freedom of information legislation may require that responses be made available to members of the public who request access.

GLOSSARY

"BCFSA" is the BC Financial Services Authority established under the *Financial Services Authority Act* a new Crown entity that replaces FICOM.

"BPCPA" is the *Business Practices and Consumer Protection Act*, a consumer protection statute.

"Expert Panel" is the Expert Panel on Money Laundering in BC Real Estate appointed by the Minister of Finance in September 2018 to review money laundering in the real estate sector after two independent reports revealed that B.C.'s real estate market is vulnerable to criminal activity and market manipulation.

"FICOM" refers to the Financial Institutions Commission appointed by the Lieutenant Governor in Council which had statutory authority for the regulation of financial institutions in BC.

"FINTRAC" Financial Transaction Reporting and Analysis Centre: federal financial intelligence unit

"modern mortgage legislation" include the New Brunswick, Ontario and Saskatchewan mortgage legislation that provides the regulatory framework for mortgage brokers.

"MBA" is the *Mortgage Brokers Act*, the BC legislation that provides the regulatory framework for mortgage brokers.

"MCD" is the European Commission Mortgage Credit - Directive 2014/17

"PCMLTFA" – *Proceeds of Crime (Money Laundering) and Terrorist Financing Act:* federal anti-money laundering legislation

APPENDIX A – EXPERT PANEL AND RECOMMENDATIONS

The *Mortgage Broker Act* (MBA) is not a modern statute and does not provide a solid basis for the regulation of the industry, especially mortgage lenders that are not financial institutions. Currently it is unclear exactly which lenders are subject to the Act, and many that should be regulated are not registered. The Act should be replaced.

New legislation would:

- establish business authorization requirements for all mortgage lenders except individuals lending to a small number of friends and family;
- include modern regulatory powers and requirements;
- establish a governance structure with designated management responsible for compliance within mortgage intermediaries and mortgage lenders, as well as compliance requirements placed on employees within the organization; and
- make a distinction between regulation of the intermediary function and the lending function, with appropriate provisions for both aspects of the industry.

Those using mortgages as a money laundering tool either directly or through currently unregulated lenders should be subject to regulatory action under the new act, which would also enhance the market conduct public protection that the MBA was originally intended to provide.
A modern MBA would require additional regulatory resources to be effective, and this should be funded on a user-pay basis by regulated entities. The Panel recognizes that FICOM is currently undergoing considerable change. Implementing a new MBA would place additional change-management responsibilities on the organization. A new MBA would also place additional compliance costs on those currently registered under the MBA and those who would be regulated for the first time.

Recommendation 9: Replace the MBA with a modern regulatory statute that is effective in regulating all those in the business of mortgage lending, with few exceptions

Recommendation 19: The BC government should require BC regulators of reporting entities to enforce compliance with PCMLTFA requirements and provide training and education to assist them in doing so, in cooperation with FINTRAC.

Recommendation 25: The BC government should ensure that all those in the mortgage lending business should be required under provincial legislation to conduct and maintain know-your-customer records and records of the source of mortgage payment funds from borrowers, until such requirements are placed on mortgage lending businesses by the federal government

APPENDIX B – REFERENCES

British Columbia - BCFSA - Mortgage Brokers
(https://www.bcfsa.ca/index.aspx?p=mortgage_brokers/industry)

Combatting Money Laundering Report
(https://news.gov.bc.ca/files/Combatting_Money_Laundering_Report.pdf)

G20 High-level Principles on Financial Consumer Protection
(https://www.oecd.org/daf/fin/financial-markets/48892010.pdf)

Manitoba - Securities Commission - Mortgage Brokers
(http://www.mbrealestate.ca/home_buyers/index.html)

Mortgage credit - Directive 2014/17/EU | European Commission
(https://ec.europa.eu/info/law/mortgage-credit-directive-2014-17-eu_en)

New Brunswick - Financial and Consumer Services Commission - Mortgage Brokers
(http://www.fcnb.ca/industry-mortgage-brokers.html)

Ontario - Financial Services Commission of Ontario - Mortgage Brokering
(https://www.fsco.gov.on.ca/en/mortgage/Pages/industry.aspx)

Saskatchewan - Financial and Consumer Affairs Authority - Mortgage-Brokerages
(https://fcaa.gov.sk.ca/regulated-businesses-persons/businesses/mortgage-brokerages)

Appendix I

RECBC Professional Standards Manual – Acting for Buyers

Acting For Buyers

Published on 18 January, 2020 - Professional Standards Manual

GO TO

All licensees have a duty to establish their agency responsibilities as early as possible, and to fully explain this relationship to their clients. In buyer agency, this process should include:

- determining what type of property and location the buyer is interested in buying;
- discussing the services you are offering to the buyer to locate and assist them in purchasing such properties;
- discussing the value of that service, including the minimum compensation you will accept;
- discussing the fact that some properties may be offered for sale which could meet the buyer's needs, but which do not offer sufficient compensation for your services;
- discussing options that may be available to address such circumstances **before they arise**, e.g.,
    - buyer agrees to sign an exclusive buyer agency agreement that confirms the amount of compensation the buyer's agent will receive,
    - buyer agrees whether such properties should be brought to their attention,

- buyer will make up any shortfall to a pre-determined amount, and
- buyer will attempt to negotiate through the contract of purchase and sale to have the pre-determined shortfall paid to the agent's brokerage out of the proceeds of the sale;

- ensuring the buyer understands whatever course of action is being agreed to; and
- committing that agreement to writing and having the buyer sign the agreement. Of the foregoing options, RECBC believes that entering into an exclusive buyer's agency agreement is the most comprehensive.

In keeping with their buyer agency responsibilities, licensees must act in the best interest of their clients, and avoid conflicts of interest. With this in mind, is it proper for a buyer's agent, without their client's knowledge, to avoid showing a buyer a property offered for sale, or other wise "steer" a buyer away from such a property, simply because the buyer's agent is not being offered as much remuneration as they wish to receive? The answer, clearly, is no! A buyer's agent has an obligation to not allow their own personal interests to interfere with the best interests of their client. Service fees are negotiable, and there is no requirement for a seller, or a brokerage representing a seller, to offer sufficient compensation to satisfy any and all buyer's agents.

This does not mean that a buyer's agent should work for less than satisfactory compensation, but it does mean that buyer's agents who are not prepared to provide their services without some certainty about their level of compensation need to discuss this fact with their buyer clients.

Buyer's agents provide a valuable service to their buyers. A well informed buyer will understand the value of that service, and will realize that a buyer's agent cannot be expected to provide that service without being reasonably compensated.

If you are concerned that some properties offered for sale will not provide you with the amount of compensation desired, you should discuss this with your buyer clients before the situation arises, and come to an understanding about what will happen if that occurs. This process is similar to the one a licensee would use in making a listing presentation.

Most licensees have determined what fee they expect when listing a property for sale. That is discussed with prospective sellers during listing presentations, and the agreed-to fee is documented in the listing contract. A buyer's agent who does not have this type of discussion reaching some form of agreement with their buyers, and who simply chooses to ignore or steer buyers away from properties offered for sale which do not offer enough compensation for his or her liking, is not acting in the best interest of those clients. This could lead to disciplinary action and/or civil proceedings.

Listing Agreements Must be Amended if Commission is to be

Increased or Decreased

[07/23/2011 The following section was added to the Professional Standards Manual]

As licensees are aware, there are all sorts of commission rates and fees charged by different licensees and brokerages. Licensees who are working as buyers' agents need to discuss what they charge and how they get paid at the start of their relationship with a buyer, to avoid misunderstandings and controversy in the event that the property that suits the buyer does not offer a selling commission that suits the buyer's agent. Such a situation creates a conflict between the buyer's interest in acquiring the property and the buyer's agent's interest in being paid what they expect. In this scenario licensees must be aware that the interests of their client in acquiring the property trump the licensee's interest in earning a commission.

The use of a buyer agency agreement can facilitate commission discussions and put the relationship with a buyer on a professional, contractual footing.

As described above, it is not uncommon for a listing agent to have contracted with a seller to offer a selling portion of commission that is lower than what a buyer's agent expects to receive. When this happens, typically the buyer's agent either gets the buyer to top up the difference, (easily done if a buyer agency agreement is in place) or with the buyer's consent, the buyer's agent drafts a clause in the offer whereby the buyer and seller agree that the seller will pay commission to the buyer's agent's brokerage equal to the amount agreed to between the buyer and the buyer's agent. In some instances the buyer's agent presents a fee agreement setting out that the seller agrees to pay a specific amount to the buyer's agent's brokerage.

Licensees should be mindful that the use of a fee agreement creates a separate contractual relationship between the buyer's agent and the seller not contemplated in the listing agreement, and that agreement in no way modifies the terms of the listing agreement. Further, the buyer's agent's brokerage will have to collect the fee from the seller and not look to the seller's agent's brokerage for payment.

This being said, a seller's agent must be careful not to put their seller in the position of potentially being contractually obliged to pay more commission than they actually intend. When it is the intention of the parties that the selling portion reflected in the listing agreement is being replaced by the amount set out in the fee agreement, the listing agreement must be amended accordingly. If this is not done the seller is contractually obligated to pay the total of the commission set out in the listing agreement, (paragraph 5 A. of the BCREA MLS® contract) plus the amount set out in the fee agreement.

On a case by case basis, when a change in the buyer's agent's commission is agreed to by the buyer and the seller in the Contract of Purchase and Sale, the listing agreement should also be amended to reflect the change to the overall commission.

A listing amendment provides certainty as to the intentions and obligations of the seller and the listing brokerage to pay the increased amount of commission to the buyer's agent, thus avoiding any misunderstandings at the time of completion of the trade.

Buyers' agents should be aware that if the listing is not amended to reflect the amount agreed to in the Contract of Purchase and Sale and the seller decides not to live up to their agreement in the Contract of Purchase and Sale to pay the buyer's agent the extra amount of commission, it is the buyer, not the buyer's agent's brokerage, who would have to successfully sue the seller to enforce that agreement. A buyer is not likely to do that. Further, the buyer's agent could not look to the seller's agent's brokerage for that amount as the brokerage is not a party to the Contract of Purchase and Sale.

In all matters contractual unintended consequences may arise when licensees, for the sake of expediency, do not properly amend agreements to fully reflect the intentions of the parties. The failure of a licensee to protect the interests of their clients in this regard, by not applying reasonable care and skill, are contraventions of the Real Estate Services Act and the Rules, which may result in a licensee being subject to professional discipline, should a complaint arise.

Obligations of a Buyer's Agent

When working with a buyer, a licensee is responsible for checking all information that he or she knows, or ought to know, is important to the buyer.

It is not sufficient for a buyer's agent to rely on representations regarding room measurements, if, for example, a buyer has indicated that a room must be of a certain size to accommodate the buyer's furniture. Similarly, for all matters of significance to a buyer, the buyer's agent should either confirm the information or advise the buyer, in writing, to obtain professional advice.

When a buyer is purchasing a strata titled property, the buyer's agent should clarify with the buyer the extent to which they will be reviewing the minutes, bylaws, and all other information that the buyer obtains from the seller.

Following is a checklist licensees can use when working with a buyer:

❒ Disclosure of Representation in Trading Services made to consumer
❒ exclusive Buyer Agency Agreement/Fee Agreement signed/oral agreement made
❒ buyer qualified for mortgage and referred to financial institution
❒ buyer qualified for motivation, needs versus wants
❒ buyer qualified for area, type of property, etc.
❒ buyer educated about dealing with other licensees
❒ buyer has lawyer (yes or no)
❒ buyer has accountant (yes or no)
❒ buyer needs approval/assistance of family member before buying (yes or no)
❒ the "finding a property" process explained to buyer
❒ blank Contract of Purchase and Sale reviewed with buyer including back page outlining costs, i.e., PTT and legal fees
❒ the offer and completion process reviewed with buyer
❒ comparative Market Analysis of desired type of property given to buyer

❒ buyer provided with area information kit (schools, parks, amenities, peculiarities of zoning, map of the area, area concerns)
❒ when suitable property found, ensure that the buyer has been or will be, as a condition of the contract, provided with:
— Comparative Market Analysis (CMA),
— title search, information on easements, covenants, etc.,
— survey map of street (legal map),
— the appropriate Property Disclosure Statement, if available,
— rules, regulations, bylaws, financial statements, meeting minutes,
— profit and loss statement, balance sheet and other relevant documents related to the sale of a business.

Having first established and disclosed the nature of the agency relationship, but before preparing the offer, the licensee should take some time to consider all aspects of the transaction. For example:

- How are the buyers paying for it? Which clauses do you need to explain financing?
- What kind of deposit are you dealing with? Will it be increased when "subject to" clauses are removed? Will you have it in your company's trust account long enough for them to earn interest?
- Is it a strata property (or a co-op)? If yes, what clauses are needed related to bylaws, financial statements, minutes, parking/storage lockers, engineers reports, etc.?

After writing the offer, the licensee should go back and check it. Did he or she remember to:

- date it?
- insert the full legal names of all of the parties?
- use the legal description of the property?
- consider the appropriate form of deposit?
- ensure that each "subject to" clause is designated to the benefit of the seller or the buyer as appropriate and that there is a subject removal date included
- ensure that everything that was agreed to is in writing?
- ensure that the completion date is not a weekend or holiday?
- list all of the inclusions and exclusions to the sale, including dealing with any leased items such as alarm systems and water coolers?

The licensee should also review the offer to ensure that all items that should be included in the real estate transaction are listed. See the "Included/Excluded" section for a list of possible items to consider.

[updated 06/15/2018]

Establishing Market Value

A buyer's agent has a duty to inform the buyer as to current market conditions and provide information regarding the approximate value of the property being considered. This can be done with a Comparative Market Analysis (CMA), a copy of which should be retained in the trade file.

Disclosure of Remuneration

As a licensee, you may not accept any form of remuneration in a transaction from a party other than your client without disclosing to the client that you have received this compensation.

Section 5-11 of the Rules requires a buyer's agent to disclose all remuneration that the buyer's agent receives that is not paid by the buyer. Section 5-8(1.1) of the Rules permits remuneration from a party other than a client to be disclosed in the service agreement and/or in a record other than an agreement giving effect to a trade in real estate that is separate from the service agreement. This means that the disclosure of remuneration cannot be made, for example, in a contract of purchase and sale, because that is an agreement giving effect to a trade in real estate.

As a buyer's agent, you must disclose all remuneration that the brokerage receives, whether from the listing brokerage or from the seller. You must also disclose all other remuneration, including referral fees, that as the buyer's agent you have received or anticipate receiving in relation to the real estate services.

Section 5-11 requires you to make this disclosure to the client promptly. The common law requires that such disclosures are:

- timely,
- occur before any potential conflict of interest has arisen, and
- occur when the disclosure has some meaning.

Disclosing Remuneration paid to Cooperating Brokerages

For example, consider what would be timely and effective disclosure by a licensee, acting as a buyer's agent, who anticipates receiving remuneration by way of the amount offered to cooperating brokerages by the listing brokerage? This is not remuneration that will be paid directly by the buyer/client: therefore, the disclosure requirements of section 5-11 apply.

Step 1: To begin the process of disclosure, as a licensee you should have a general discussion about remuneration with a prospective buyer/client at the same time as you are describing the services you will provide.

Step 2: You must still disclose the amount (or the likely amount, or the method of calculating the amount). One effective way would be to provide a buyer/client with a copy of the MLS® information respecting the properties under consideration that includes the remuneration being offered to a cooperating brokerage. This would constitute effective disclosure so long as the full amount or method of calculation of the full amount is clear (e.g. any bonus or additional amount being offered is included in the information). Having the buyer/client initial that information would be a useful acknowledgment. Obviously, some other method of disclosure would be necessary if a property being considered was not listed on MLS®.

Step 3: To satisfy the common law requirement that disclosure is made when it has meaning, the very latest time you could make this disclosure is before an offer is to be written.

Disclosing Remuneration from Other Service Providers

The above only addresses a buyer's agent's remuneration with respect to the actual trade in real estate that is not to be paid directly by the buyer. The requirements of sections 5-11(b) and (c) to disclose remuneration as a result of recommending other service providers or a client to another service provider are not typically connected to the writing of an offer; nor are they limited to buyer's agents. However, the requirement that disclosure be "prompt" also exists in those instances. Again, this means you must make the disclosure

- before any conflict of interest arises (e.g., if you use that mortgage broker I will receive some benefit), and
- when it has meaning (i.e., at a time when the information can be used in considering whether to use the service provider to whom they have been referred).

Disclosure of Remuneration Form

RECBC provides a Disclosure of Remuneration – Trading Services form for use in situations where a brokerage is to receive remuneration or a licensee of the related brokerage is to receive remuneration that is not paid by the client. For information on using the form correctly, please see:
Disclosing Remuneration Under Designated Agency, What to Disclose, to Whom, and Why in the April 2015 Report from Council newsletter.

For more information on Disclosure of Remuneration, see
General Information – Disclosures.

[updated 06/15/2018]

Disclosure of Mortgage Referral Fees

Real estate licensees who may be paid a referral fee, or any other remuneration, as a result of the referral must advise their client of this fact, in writing, as required by section 5-11 of the Rules. For a buyer's agent, this requirement most frequently applies to the payment of remuneration in relation to mortgage referrals.

Section 7 of RESA provides that a licensee must not accept remuneration in relation to real estate services from any person other than the brokerage in relation to which he or she is licensed. In order for a licensee to receive remuneration, such as a referral fee for referring a buyer to a financial institution or mortgage broker, the remuneration must first be paid to the brokerage.

The definition of remuneration in RESA is any form of remuneration including any commission, fee, gain or reward, whether the remuneration is received, or is to be received, directly or indirectly.

Remuneration includes not only the payment of fees, but any other gain, or reward, such as bonus points, air miles, the chance to win a trip or other item, or any other such benefit. As a result, a buyer's agent must ensure that the buyer is advised of all remuneration that a buyer's agent may receive as a result of the referral.

As indicated previously, a sample form that licensees may use when making disclosure of remuneration is located on RECBC's website.

Referral Policy

As noted previously under the section "Directing Business to Other Professionals", making specific recommendations of other professionals can put a licensee at risk for liability if something goes wrong.RECBC has established guidelines relating to licensees making referrals to other professionals. This policy applies to all types of referrals that licensees make and includes referrals to other real estate licensees, home inspectors, lawyers, notaries public, and mortgage brokers or financial institutions.RECBC advises licensees to provide a list of several professionals. The client should then select the professional independently. In keeping with RECBC's guidelines, all licensees who choose to refer a client to a financial institution or mortgage broker should provide the client with a list of several choices (at least three) from which the client could then choose.

Mortgage Broker Registration

When Mortgage Registration Is Required

Mortgage broker registration is required for all those who fall within the definition of mortgage broker as contained in the Mortgage Brokers Act (except for the exemption noted below). The Mortgage Brokers Act defines mortgage broker as follows:

"mortgage broker" means a person who does any of the following:
(a) carries on a business of lending money secured in whole or in part by mortgages, whether the money is the mortgage broker's own or that of another person;
(b) holds himself or herself out as, or by an advertisement, notice or sign indicates that he or she is, a mortgage broker;
(c) carries on a business of buying and selling mortgages or agreements for sale;
(d) in any one year, receives an amount of $1,000 or more in fees or other consideration, excluding legal fees for arranging mortgages for other persons;
(e) during any one year, lends money on the security of 10 or more mortgages;
(f) carries on a business of collecting money secured by mortgages.

Although licensees should be cautious that they do not meet any of the requirements of the definition of mortgage broker without having obtained mortgage broker registration, the two aspects of the definition of "mortgage broker" that are most likely to apply to licensees are subsections (d) and (f).

Subsection (d) requires registration if the licensee arranges mortgages and receives $1,000 or more in a year in fees or other consideration. When a licensee refers a client to a financial institution or a mortgage broker, the Registrar of Mortgage Brokers has determined that the licensee will be considered to have arranged the mortgage if the licensee does anything more than provide a name and contact information. If the licensee has any discussion with the client regarding mortgage terms, amounts, interest rates, etc., the licensee may be considered to have arranged the mortgage. If the licensee is found to have arranged mortgages and, in any one year, the licensee has received $1,000 or more in fees, the licensee may be found to be in violation of the registration requirements of the Mortgage Brokers Act.

If a client requests a licensee to provide a referral to a financial institution or a mortgage broker, the licensee should be very careful to avoid all discussion about possible mortgages.

RECBC policy regarding referrals is that a licensee should provide the names of a number of professionals, including financial institutions or mortgage brokers. However, even if a number of mortgage brokers are recommended, a licensee may still be in violation of the registration requirements of the Mortgage Brokers Act if the licensee discusses the mortgage with the client.

Subsection (f) was previously included in the definition of agent in the former Real Estate Act. As a result, licensees were permitted to administer mortgages and collect mortgage payments under their licence. RESA does not include the collection of money secured by a mortgage in the definition of trading services. **As a result, a licence under RESA is not sufficient to permit an individual to collect mortgage payments and administer mortgages. Instead, registration under the Mortgage Brokers Act is now required.**

For assistance with specific questions regarding mortgage broker registration, please call the Registrar of Mortgage Brokers' office at 604-953-5300.

Exemption from Mortgage Broker Registration

The Regulations to the Mortgage Brokers Act contain the following exemption for individuals licensed under RESA. Effective January 1, 2001,

… a person licensed under the Real Estate Services Act is exempt from the registration provisions of the Mortgage Brokers Act if the person would otherwise be required to be registered only as a result of the person's activity in facilitating the sale of a vendor take-back mortgage if that activity is ancillary to the person's role in the transaction that gave rise to the vendor take-back mortgage.

Thus, mortgage broker registration is not required if a real estate licensee carries out the activity of facilitating the sale of a vendor take-back mortgage, where the mortgage was arranged as part of a trade in real estate in which the licensee was involved.

Licensees wishing to take advantage of this exemption should note that they must still comply with all other provisions of the Mortgage Brokers Act and Business Practices and Consumer Protection Act, such as the requirement to provide the necessary disclosure statements, and conflict of interest forms.

Disclosure Statements — Mortgage Brokers Act

The Mortgage Brokers Act requires mortgage brokers to provide borrowers with disclosure in cases where a borrower is required to pay a fee to the mortgage broker for the mortgage. A Disclosure Statement, in a form prescribed by regulation under the Mortgage Brokers Act, must be furnished to a borrower before the signing of the mortgage:Where there is an amount by way of bonus, commission, discount, finder's fee, brokerage fee or amount of a similar kind, by whatever name called, required to be paid by the borrower, in addition to interest and reasonable appraisal, survey and legal fees, as part of the cost of obtaining the amount paid to the borrower or on the borrower's account.

List Back Agreements

Licensees are sometimes asked by buyers who intend to buy (perhaps rebuild) and resell a property, to relist the property for sale for the buyers. Such arrangements are referred to as list back agreements. In addition, they are also sometimes asked to waive or transfer their commission on the first transaction to reduce the purchase price or to provide a benefit to the buyers, in exchange for the licensee receiving a commission on the resale instead.

Licensees must be conscious of their agency role in list back arrangements. Unless acting as an agent for the buyer (i.e., single agency for the buyer), a licensee would be in a position of conflict with a list back. A licensee acting as an agent for the seller and the buyer would be required to disclose the list back arrangement in writing to the seller, prior to entering into a negotiation. A buyer's agent has no duty to disclose to the seller. Furthermore, to comply with section 5-1 of the Rules, which requires a written service agreement where a brokerage offers real estate for sale, any such list back agreements with the buyer should be executed in writing between the licensee and the buyer on a proper Listing Contract, containing all information as required in section 5-1 of the Rules and both the buyer and the licensee must receive a copy of that listing contract.

Assignment of Contracts

For information about contract assignments, please see:

- Assignments
- Contract Assignment FAQ

Contract Clauses — Assignments

Assignments

[05/16/2016 the following section updated]

a) Real Estate Contract Assignments
A contract assignment occurs when a buyer transfers the contract to buy property to someone else before the completion date. The buyer can transfer the contract for any price, even for a higher price than they paid for the property. The buyer does not have to pay the seller any additional money if they make money from selling the contract.

Real estate contracts are assignable under the law unless the contract expressly forbids it. Section 36 of the *Law and Equity Act* provides that the seller's consent to the assignment is not required, provided that notice in writing of the assignment is given to the seller.

b) Provincial Requirements for Licensees Relating to Real Estate Contract Assignments
On May 16, 2016, requirements relating to the assignment of real estate contracts came into force in BC. These requirements apply in all transactions where a licensee is acting for the seller and/or the prospective buyer of real estate (except where the contract is for the sale of a development unit by a developer, as those terms are defined in section 1 of the *Real Estate Development Marketing Act*).

All licensees providing trading services should carefully review the amendments to the Regulation .

The amendments provide that a licensee preparing a proposed contract for the purchase and sale of real estate (an "offer") must include the following terms (the "Standard Assignment Terms") unless otherwise instructed in writing by the person to whom they are providing trading services:

(1) this contract must not be assigned without the written consent of the seller; and

(2) the seller is entitled to any profit resulting from an assignment of the contract by the buyer or any subsequent assignee.

The amendments further provide that licensees must take certain steps if they are involved in a potential real estate transaction where an offer to be presented to the seller does not include the Standard Assignment Terms. These requirements are further discussed below.

c) Licensees Acting for Buyers

Notice to Seller Regarding Assignment Terms
If you are acting for a buyer and you are aware that an offer to be presented to the seller:

- does not include one or both of the Standard Assignment Terms;
- alters either of the Standard Assignment Terms;
- or creates a new assignment term that is in any way different from the Standard Assignment Terms;

you must notify the seller's licensee (or the seller, if the seller is unrepresented) using the Notice to Seller Regarding Assignment Terms form, available on RECBC's Forms page under the subheading "Disclosure Forms".

Provide the form to the seller's licensee at the same time the offer is presented.

For More Information

- Contract Assignment FAQ: Guidance for Licensees Acting for Buyers

You must use RECBC's form entitled Notice to Seller Regarding Assignment Terms, which is available on RECBC's website under the heading "Forms and Fees" and the subheading "Disclosure Forms". You must provide the Notice to Seller Regarding Assignment Terms form to the seller or the seller's licensee at the same time the offer is presented.

The same obligations apply to you if you are acting on your own behalf or on behalf of an associate as a buyer (directly or indirectly) in a real estate transaction. If you are aware that an offer to be presented to a seller does not include one or both of the Standard Assignment Terms, alters either of the Standard Assignment Terms, or creates a new assignment term that is in any way different from the Standard Assignment Terms you must provide the Notice to Seller Regarding Assignment Terms form to the seller or the seller's licensee at the same time the offer is presented. These notice obligations are in addition to your obligation to disclose your interest in trade to the seller.

Advice to Buyers Regarding Assignment Terms and Conditions in Offers
When you are acting for a buyer and advising the buyer on whether to include the Standard Assignment Terms (or other terms and conditions relating to the assignment of the contract) in an offer, you should carefully consider and discuss with the buyer what may be best for them. For example:

- Consider the market conditions: is it a buyers market? A seller's market?
- Consider the buyer's circumstances.
- Carefully review Contract Assignments: What to do When You Need to Add or Change a Buyer.
- Discuss your obligations under the regulations and the Notice to Seller Regarding Assignment Terms form when appropriate.
- If there are any issues outside of your expertise, advise your client to seek independent legal advice.

In every case, when acting for a buyer you must be guided by your duties to your client. This includes your duties to act in the best interests of the client and in accordance with the client's lawful instructions, and to advise the client to seek independent professional advice on matters outside of your expertise.

Assignment Option Clause
Where the buyer wishes to have an express right to assign the contract to any third party, you should ensure they strike the default clauses from the Contract of Purchase and Sale (if the standard contract form is used) and consider using the following clause in the contract:

> **Assignment Option Clause**
> The Buyer reserves the right to assign this contract in whole or in part to any third party without further notice to the Seller; said assignment not to relieve the Buyer from his or her obligation to complete the terms and conditions of this contract should the assignee default.

In preparing an offer where the assignment of the contract of purchase and sale is contemplated, you should not use clauses such as "and/or nominee" or "and/or assignee" to describe the buyer. Arguments could be made that contracts containing such phrases in

the description of the buyer are unenforceable due to uncertainty in the identity of the buyer.

Additional Buyer Assignment Clause
Where the buyer wishes to have an express right to assign the contract by adding a specific buyer prior to closing (e.g. a spouse or family member), consider using the Additional Buyer Assignment clause in the contract, and provide the Notice to Seller Regarding Assignment Terms form to the seller or the seller's licensee at the same time the offer is presented:

> **Additional Buyer Assignment Clause**
> Notwithstanding Section 20A of the Contract, the Parties agree that the Buyer may, without the consent of the Seller, add (insert name of specific party/parties) as an additional buyer to the contract prior to closing. The Seller's consent does not release the Buyer from liability under this Contract.

In preparing an offer where the assignment of the contract of purchase and sale is contemplated, you should not use clauses such as "and/or nominee" or "and/or assignee" to describe the buyer. Arguments could be made that contracts containing such phrases in the description of the buyer are unenforceable due to uncertainty in the identity of the buyer.

Licensees Acting for the Assignor or Assignee of a Contract
If you are asked to represent an assignor (original buyer) or assignee (ultimate buyer) pursuant to a Contract of Purchase and Sale, you should, as a minimum, ensure that:

(1) the assignor has the right to assign and the assignee has the right to receive a valid assignment by referring to the original contract;

(2) a proper assignment is drafted and validly executed (BCREA has created two forms entitled "Assignment of Contract of Purchase and Sale — New Development" and "Assignment of Contract of Purchase and Sale — Non-Development", both available on Webforms);

(3) the assignor is aware of their obligation to provide the seller with notice in writing of the assignment (unless the clause in the Assignment Option Clause has been used);

(4) the identities of the parties are clear and verified (e.g., proper photo identification, passport, etc., especially when the assignment involves parties with whom the seller may not be familiar); licensees acting for assignors should be particularly careful to establish the identity of the assignor. Licensees should confirm through acceptable identification that the person asking that the contract be assigned is the purchaser on the contract;

(5) the assignor's and the assignee's rights to the initial deposit under the original contract, if any, are dealt with; and

(6) in the event that an assignor or assignee is a corporate party, the individual signing on behalf of the corporate entity has the authority to bind the corporation (this may involve conducting a company search and obtaining a copy of the corporate resolution allowing that individual to execute the assignment on the company's behalf).

For More Information

- Contract Assignment FAQ: Guidance for Licensees Acting for Buyers
- Contract Assignments: What to Do When You Need to Add or Change a Buyer

Assignors should determine whether GST applies as a result of the assignment. As a licensee, you should advise your clients to seek independent professional advice on that issue.

Because the procedure and documentation for assignment can be complex and fraught with difficulties, it is in everyone's best interest to advise all parties to seek legal advice in the drafting of effective and enforceable assignments of any Contract of Purchase and Sale. You should document having provided this advice. Members of real estate boards/associations may also wish to refer to the additional information about assignments of contracts (e.g., BCREA Assignment of Contract of Purchase and Sale — Q&A Guide and "A REALTOR's Guide to the BCREA-CBA Assignment Agreement") found on the REALTORLink website.

d) Licensees Acting for Sellers
If an offer presented to a seller does not include one or both of the Standard Assignment Terms, as the seller's licensee you must do the following, before the seller accepts the offer:

For More Information

- Contract Assignment FAQ: Guidance for Licensees Acting for Sellers
- Contract Assignment FAQ: Using the New Notice to Seller Regarding Assignment Terms form

a) Provide the seller with the Notice to Seller Regarding Assignment Terms form presented by the buyer's licensee;

b) Inform the seller that the offer before them is missing the Standard Assignment Term(s);

c) Advise the seller whether the offer provides that the contract may be assigned;

d) If the offer provides that the contract may be assigned, advise the seller:

i. about any conditions on the right of assignment of the contract, and
ii. about the seller's entitlement under the contract to any profit resulting from an assignment of the contract, if applicable.

The goal of the these requirements is to ensure that before they enter into a contract for the purchase and sale of their property, the seller understands and accepts the terms and conditions that will govern any assignment of the contract by the buyer, regardless of whether:

- the offer contains the Standard Assignment Terms;
- the offer is silent with respect to assignments; or
- the offer contains assignment terms that differ from the Standard Assignment Terms.

When you are advising the seller on whether or not to insist that an offer include the Standard Assignment Terms (or other terms and conditions relating to the assignment of the contract), you should carefully consider and discuss with the seller what may be in their best interests. For example:

- Consider the market conditions: is it a buyers market? A seller's market?
- Consider the seller's circumstances.
- Discuss your obligations under the regulations and the Notice to Seller Regarding Assignment Terms form, when appropriate.
- If there are any issues outside of your expertise, advise your client to seek independent legal advice.

As a licensee, you have an obligation to discuss everything material to the transaction with your client, including the subject of assignments. If the seller is uncertain about any of the terms in the contract they should be advised to seek legal advice.

In every case, as a licensee acting for a seller you should be guided by your duties to your client. This includes the duty to act in the best interests of the client and in accordance with the client's lawful instructions, and to advise the client to seek independent professional advice on matters outside of your expertise.

e) Requirements for Brokerages

For More Information

- Contract Assignment FAQ: Guidance in other situations

Brokerages are required by section 8-4(1) of the Rules to keep copies of Notice to Seller Regarding Assignment Terms forms.

These copies must be provided to the brokerage by licensees who:

- act for a buyer,
- act for themselves as a buyer, or
- act for a seller.

FAQ: Contract Assignment Requirements

In May 2016, provincial requirements relating to the assignment of real estate contracts came into force. The provincial government amended the Real Estate Services Regulation (the "Regulation"), putting in place requirements that apply in all transactions where a real estate professional is working with the seller and/or the prospective buyer of real estate.

To find out more about contract assignments and these requirements, check out the questions and answers in the FAQ categories below:

- **About Contract Assignments**
- **Guidance for Real Estate Professionals Working with Buyers**
- **Guidance for Real Estate Professionals Working with Sellers**
- **Using the Notice to Seller Regarding Assignment Terms form**
- **Guidance in Other Situations**

About Contract Assignments

1. What is a contract assignment?

A contract assignment occurs when a buyer transfers the contract to buy property to someone else before the completion date. The buyer can transfer the contract for any price, even for a higher price than they paid for the property.

2. Are contract assignments legal?

Yes. Real estate contracts are assignable under the law unless the contract expressly forbids it. Section 36 of the *Law and Equity Act* provides that the seller's consent to the assignment is not required, provided that notice in writing of the assignment is given to the seller.

3. Why has the government issued requirements relating to contract assignments?

The requirements that came into force in 2016 are designed to prevent situations in which a buyer purchases a property, only to reassign the contract at a higher price before the closing date, without the seller's knowledge.

The Regulation requires that standards terms be included by default in any offer to purchase real estate, unless the client instructs otherwise. These requirements are intended to protect sellers' interests.

4. What are the requirements for real estate professionals relating to assignments?

A real estate professional preparing a proposed contract for the purchase and sale of real estate (an "offer") must include the following terms (the "Standard Assignment Terms") unless otherwise instructed in writing by the person to whom they are providing trading services:

(1) this contract must not be assigned without the written consent of the seller; and

(2) the seller is entitled to any profit resulting from an assignment of the contract by the buyer or any subsequent assignee.

The British Columbia Real Estate Association has developed a revised version of the standard Contract of Purchase of Sale that includes the Standard Assignment Terms. The Contract of Purchase and Sale is available on WEBForms.

Real estate professionals must take certain steps if they are involved in a potential real estate transaction where an offer to be presented to the seller does not include the Standard Assignment Terms. See the questions below for details on those steps.

5. What constitutes "profit" for the purpose of the Regulation?

The Regulation does not address the meaning of "profit." If you are working with a buyer or seller who has any questions or concerns about the "profit" arising from an assignment, you should advise your client to seek independent legal advice before consenting to the assignment.The Regulation does not address how or when a "profit" is to be paid to the seller, so these issues may be resolved by negotiation between the buyer and seller.

Guidance for Real Estate Professionals Working with Buyers

1. I am a real estate professional working with a buyer and the seller is represented by another real estate professional. What are my obligations?

If you are aware that an offer to be presented to the seller:

- does not include one or both of the Standard Assignment Terms;
- alters either of the Standard Assignment Terms; or
- creates a new assignment term that is in any way different from the Standard Assignment Terms;

you must notify the seller, using the Notice to Seller Regarding Assignment Terms form, available on RECBC's Forms page under the subheading "Disclosure Forms".

Provide the form to the seller's real estate professional at the same time the offer is presented.

2. I am a real estate professional working with a buyer and the seller is unrepresented. What are my obligations?

If you are aware that an offer to be presented to the unrepresented seller:

- does not include one or both of the Standard Assignment Terms;
- alters either of the Standard Assignment Terms; or
- creates a new assignment term that is in any way different from the Standard Assignment Terms;

you must notify the seller, using the Notice to Seller Regarding Assignment Terms form.

Provide the form to the seller at the same time the offer is presented. At that time, you must also inform the seller:

- that the offer does not include or alters a Standard Assignment Term,
- whether the proposed contract may be assigned, and
- if the proposed contract may be assigned,
    - about any conditions in the contract on the right of assignment of the contract, and
    - about the seller's entitlement under the contract to any profit resulting from an assignment of the contract, if applicable.

3. I am a real estate professional acting on my own behalf to acquire real estate (directly or indirectly). What are my obligations?

If you are aware that an offer to be presented to the seller:

- does not include one or both of the Standard Assignment Terms;
- alters either of the Standard Assignment Terms;

- or creates a new assignment term that is in any way different from the Standard Assignment Terms;

you must notify the seller's real estate professional (or the seller, if the seller is unrepresented) using the Notice to Seller Regarding Assignment Terms form.

Provide the form to the seller's real estate professional(or to the seller, if they are unrepresented) at the same time the offer is presented.These notice obligations are in addition to your responsibility to disclose your interest in trade to the seller.

4. I am preparing an offer for a buyer who may wish to add a specific buyer (e.g. their spouse or family member) to the contract prior to closing. What should I do?

Ensure that you:

- review the *Report from Council* article, Contract Assignments: What to do when you need to add or change a Buyer,
- discuss section 20A (Restriction on Assignment of Contract) and the *Contract Information Page* with your clients, and
- follow your client's lawful instructions about how they would like to proceed.

If simple changes are likely, include the following clause in the contract. This clause is recommended for use ONLY in situations when your buyer may wish to add a specific additional buyer (for example, their spouse) to the contract before completion.

Notwithstanding Section 20A of the Contract, the Parties agree that the Buyer may, without the consent of the Seller, add (insert name of specific party/parties) as an additional buyer to the contract prior to closing. The Seller's consent does not release the Buyer from liability under this Contract. As set out above, when using this clause, you must provide the Notice to Seller Regarding Assignment Terms form to the seller or seller's real estate professional at the same time the offer is presented.

5. I am preparing an offer for a buyer who may wish to have title to the property transferred to the name of another party (e.g. a numbered company) on closing. What should I do?

Advise your client to obtain independent legal advice on how their offer may be structured to achieve their goal. This is a legal question that should be answered by a lawyer.

If the buyer decides they wish to retain a right to assign the contract without the consent of the seller, and instructs you to strike or alter a Standard Assignment Term in the offer you are preparing on their behalf, or to add an additional term that would alter the effect of a Standard Assignment Term, then you must provide the Notice to Seller Regarding Assignment Terms form to the seller or seller's real estate professional at the same time the offer is presented.

If the buyer asks you to add a term to an offer, and you are not sure whether the term will alter the effect of a Standard Assignment Term, the safest course will always be to provide

the Notice to Seller Regarding Assignment Terms form to the seller or seller's real estate professional at the same time the offer is presented.

6. I am a real estate professional working with a buyer under a contract of purchase and sale that expressly permits assignments. If the buyer wished to "sell" their interest in the contract to another party (i.e an assignee), will the buyer be a "seller" entitled to the protections of the Regulation?

No. The requirements only apply to proposed contracts for the purchase and sale of real estate. They do not apply to proposed assignment agreements. The requirements are intended to protect sellers of real estate, not sellers of real estate contracts.

7. I am working with a buyer who is contractually obligated to pay the seller the "profit" of an assignment. How and when must my client pay the seller that profit?

If you are working with a buyer/assignor or a subsequent buyer/assignee of a contract that provides that "the vendor is entitled to any profit resulting from an assignment of the contract by the purchaser or any subsequent assignee", and there is any question as to whether the assignment is for a "profit", you should advise your client to seek independent legal advice on:

- Whether the assignment will result in a "profit"; and
- How and when that profit should be paid to the seller.

8. I am working with a buyer who has entered into a contract of purchase and sale that contains both of the Standard Assignment Terms. The buyer wishes to add their spouse an as additional buyer under the contract by way of an amendment. Will I be required to provide a *Notice to Seller Regarding Assignment Terms* form to the seller?

No. The Regulation imposes requirements on real estate professionals who are dealing with assignment terms in "proposed contracts of purchase and sale" (i.e. offers). Once an offer is accepted, and a contract of purchase and sale is entered into, the disclosure requirements in section 8.2 of the Regulation will not be triggered by a subsequent amendment of the contract.However, you should alert the buyer that there are risks to consider when amending the terms of an accepted contract. (For more on those risks, see the The Practice of Adding New Terms on a Subject Removal Addendum in the *Professional Standards Manual*.) You should advise your client to obtain independent legal advice so they may understand their options in this regard.

Guidance for Real Estate Professionals Working with Sellers

1. I am a real estate professional working with a seller and the buyer is unrepresented. What are my obligations?

If an unrepresented buyer presents an offer that:

- does not include one or both of the Standard Assignment Terms;
- alters either of the Standard Assignment Terms;

- or creates a new assignment term that is in any way different from the Standard Assignment Terms;

neither you nor the unrepresented buyer will be required to provide the seller with a Notice to Seller Regarding Assignment Terms form.

However, you must inform the seller:

- that the offer does not include or alters a Standard Assignment Term,
- whether the proposed contract may be assigned, and
- if the proposed contract may be assigned,
    - about any conditions in the contract on the right of assignment of the contract, and
    - about the seller's entitlement under the contract to any profit resulting from an assignment of the contract, if applicable.

If you are working with a seller and an unrepresented buyer asks you to draft an offer that:

- does not include one or both of the Standard Assignment Terms;
- alters either of the Standard Assignment Terms; or
- creates a new assignment term that is in any way different from the Standard Assignment Terms;

before drafting the offer you must obtain the unrepresented buyer's instruction in writing not to include or vary the Standard Assignment Terms.

If you present an offer from an unrepresented buyer to a seller for consideration that does not include or varies the Standard Assignment Terms, you must provide the seller with the Notice to Seller Regarding Assignment Terms form, inform the seller that the contract does not include or alters a Standard Assignment Term, and inform the seller:

- whether the proposed contract may be assigned, and
- if the proposed contract may be assigned,
    - about any conditions in the contract on the right of assignment of the contract, and
    - about the seller's entitlement under the contract to any profit resulting from an assignment of the contract, if applicable.

2. I am a real estate professional working with a seller and the buyer has a real estate professional. What are my obligations?

If an offer from a represented buyer to be presented to the seller:

- does not include one or both of the Standard Assignment Terms;
- alters either of the Standard Assignment Terms;

- or creates a new assignment term that is in any way different from the Standard Assignment Terms;the buyer's real estate professional must notify the seller of that fact using the Notice to Seller Regarding Assignment Terms form. The buyer's real estate professional is required to provide the form to you at the same time the offer is presented.

You are then required to take the following steps:

- provide the form to the seller at the same time you present the offer;
- inform the seller that:
    - the offer does not include or alters a Standard Assignment Term,
    - whether the proposed contract may be assigned, and
    - if the proposed contract may be assigned,
        - about any conditions in the contract on the right of assignment of the contract, and
        - about the seller's entitlement under the contract to any profit resulting from an assignment of the contract, if applicable.

3. I am a real estate professional working with a seller. I just received an offer from a buyer's real estate professional that alters or strikes out a Standard Assignment term. The buyer's real estate professional has not provided me with a Notice Regarding Assignment Terms form. What do I do?

First, ask the buyer's real estate professional to provide the form. If they refuse to do so, you should report the matter to your managing broker (who should ensure that it is brought to RECBC's attention). Advise the seller:

- that the offer does not include or alters a Standard Assignment Term;
- that the buyer's real estate professional has failed to provide a Notice Regarding Assignment Terms form in accordance with the Regulation;
- whether the proposed contract may be assigned, and
- if the proposed contract may be assigned,
- about any conditions in the contract on the right of assignment of the contract, and
- about the seller's entitlement under the contract to any profit resulting from an assignment of the contract, if applicable.

The seller can then instruct you on how they wish to proceed.

4. I am working with a seller who is contractually entitled to "any profit resulting from an assignment." How and when will my client receive that "profit"?

If you are working with a seller who has entered into a contract of purchase and sale that contains both of the Standard Assignment Terms, and the buyer proposes an assignment

of the contract, you should advise the seller that **before** consenting to the assignment, they should clearly understand:

- the amount that the buyer is suggesting is "profit",
- the basis for the buyer's calculation of that amount; and
- how and when that amount will be paid to the seller.

If the seller has any questions or concerns, you should advise them to seek independent legal advice **before** they consent to the assignment. The Regulation does not address how or when a "profit" is to be paid to the seller, so these issues may be resolved by negotiation between the buyer and seller.

5. What remedies are available to the seller if they do not receive the "profit" from an assignment?

The Regulation does not address how a seller is to enforce a contractual right to receive "profit" resulting from an assignment of the contract.If you are working with a seller who has questions about the remedies available to them if the buyer refuses to pay them the "profit" component of an assignment, you should advise them to seek independent legal advice.

Using the Notice to Seller Regarding Assignment Terms form

1. Are sellers required to sign the Notice Regarding Assignment Terms form?

No. Sellers are not required by the Regulation to sign the Notice Regarding Assignment Terms form. However, real estate professionals must use their best efforts to obtain the seller's signature as confirmation that the seller has received and read the form. This provides proof that the real estate professional has complied with the Regulation.

2. Who is responsible for seeking the seller's signature on Part B of the Notice Regarding Assignment Terms form?

Where a buyer's real estate professional is providing the form directly to an unrepresented seller, the buyer's real estate professional must use best efforts to obtain the seller's signature on the form.

Where a seller's real estate professional has received the form on behalf of the seller, and is providing the form to the seller, the seller's real estate professional must use best efforts to obtain the seller's signature on the form.

3. Once the form has been presented to the seller, who else receives a copy?

If the seller is working with a real estate professional: Once the form has been provided to the seller, the real estate professional must provide a copy (preferably one that has been

signed by the seller) of the form to the buyer's real estate professional, and the managing broker for the seller's real estate professional.

If the seller is unrepresented: Once the form has been provided to the seller by the buyer's real estate professional, the buyer's real estate professional must provide a copy of the form (preferably one that has been signed by the seller) to the managing broker of the buyer's real estate professional.

4. What are the requirements for brokerages?

Section 3-2(a) of the Rules requires both listing and selling real estate professional licensees to submit to their managing broker copies of each Notice to Seller Regarding Assignment Terms form provided to a seller.

Brokerages are required under section 8-4(1)(d) of the Rules to retain copies of the forms.

5. Which brokerage should complete the "Brokerage Use Only" section of the Notice Regarding Assignment Terms form?Any managing broker, or their designate, whose licensees have been involved in an offer in which the form has been required, must fill out the "Brokerage Use Only" section and retain a copy of the form in the brokerage's records. If the offer was accepted, the form should be kept in the related deal file. If the offer was not accepted, the form should be kept in a general file.

Guidance in Other Situations

1. How will the requirements affect transactions where contracts were entered into before the contract assignment requirements came into force?

The requirements do not apply to transactions where a Contract of Purchase of Sale was fully executed by all parties prior to May 16, 2016 (the date the Regulation came into force).

An offer that was presented but not accepted in writing by all parties prior to May 16, 2016 must be brought into compliance with the requirements.

2. Do the requirements apply to sales by buyers after closing?

The requirements will not impact a buyer who takes title to a property and then re-lists it or transfers title for a higher price, as that scenario does not involve the assignment of a Contract of Purchase and Sale.

3. Are there exceptions to the requirements?

The requirements apply in all transactions involving a real estate professional, except where the contract is for the sale of a development unit by a developer, as those terms are defined in section 1 of the *Real Estate Development Marketing Act.*

4. How can I find out more about the requirements? To learn more, please review:

- Section 8.2 of the Real Estate Services Regulation
- A video presentation on "BC's New Contract Assignment Rules" by Professional Standards Advisor Maureen Coleman (length: 32 minutes):

Disclosures of Interest in Trade Related to the Assignment of Contracts of Purchase and Sale

[01/16/2011 The following section was added to the Professional Standards Manual]

What disclosures are required, and to whom must those disclosures be made, if a licensee is involved in the acquisition or disposition of real estate by way of an assignment?

Section 5-9 of the Rules requires a licensee, except in the limited circumstances described in subsection (2.1), to disclose certain information if, under a trade in real estate,

(1) the licensee is to directly or indirectly acquire real estate,

(2) an associate of the licensee is to directly or indirectly acquire real estate and the licensee is providing real estate services to the associate,

(3) the licensee is to dispose of real estate, or

(4) an associate of the licensee is to dispose of real estate and the licensee is providing trading services to the associate.

Where disclosure is required to be made, it must be made in a form approved by RECBC. RECBC has posted a Disclosure of Interest in Trade form, to be used for these purposes, on its website at www.recbc.ca.

These same disclosure requirements apply when the acquisition or disposition of the real estate is by way of an assignment. The following examples detail how these disclosure requirements apply in a variety of assignment scenarios:

Scenario 1

A seller enters into a Contract of Purchase and Sale with buyer A for the sale of the seller's home. Prior to completion, Henry, who is a real estate licensee, approaches the buyer enquiring whether the buyer would like to assign their interest in the contract to Henry. Must Henry make a Disclosure of Interest in Trade, and, if yes, to whom?

Yes. Henry, the real estate licensee, must complete and provide a Disclosure of Interest in Trade form to the buyer prior to any assignment agreement is entered into. So long as there was not an intention from the outset that the buyer was acquiring the property for the specific purpose of assigning it to Henry, Henry is not obliged to provide the seller with a Disclosure of Interest in Trade.

Scenario 2

A seller enters in a Contract of Purchase and Sale with a buyer for the sale of the seller's apartment building, conditional on the buyer being able to obtain financing. The buyer is unable to obtain the total financing necessary and locates Randi, who agrees to have the buyer's interest in the contract assigned to her. Randi is married to a real estate licensee, Paul, who is asked to prepare the necessary assignment documents. Must Paul make a Disclosure of Interest in Trade and, if yes, to whom?

Yes. Section 5-9 of the Rules requires the licensee, who is providing real estate services to an associate (his wife) in relation to the assignment, which is a trade in real estate, to make a Disclosure of Interest in Trade to the buyer. As in scenario 1 above, so long as there was not an intention from the outset that the buyer was acquiring the property for the specific purpose of assigning it to Randi, Paul is not obliged to provide the seller with a Disclosure of Interest in Trade.

Scenario 3

Mary, a real estate licensee, has always wanted to buy her neighbour's house, but she and her neighbour are not on good speaking terms. When a 'For Sale' sign goes up on the neighbour's front lawn, Mary wants to make an offer but knows that her neighbour will not sell to Mary. Mary convinces a friend to make an offer, which is accepted by the neighbour, with the understanding that the friend will assign the contract to Mary prior to completion. Just to be certain that the neighbour won't be able to obstruct the assignment, the offer includes the following clause:

"The Buyer reserves the right to assign this contract in whole or in part to any third party without further notice to the Seller; said assignment not to relieve the Buyer from his or her obligation to complete the terms and conditions of this contract should the assignee default."

Must Mary make a Disclosure of Interest in Trade and, if yes, to whom?

Yes. Section 5-9(2) requires the disclosure of a licensee's interest in an acquisition of real estate "if a licensee or an associate intends to acquire real estate currently owned by another person through acquisition by a third party who is subsequently to dispose of the real estate to the licensee or associate." In this instance, the Disclosure of Interest in Trade must be provided to both the original seller (the neighbour) and the original buyer (Mary's friend), and this disclosure must be made prior to the friend's offer being made to the neighbour. As with other forms of disclosure, the purpose is to provide relevant information to a person who has a right to know that information, at a time when that information can be used in order to make an informed decision.

Scenario 4

Vijay is a licensee who has purchased a vacant lot with the intention of having a home built. Prior to completion of the lot purchase, Vijay finds a finished home which meets his family's needs and decides that he wants to assign his contract to purchase the vacant lot. He finds a buyer who is interested in entering into an assignment agreement. Must Vijay make a Disclosure of Interest in Trade and, if yes, to whom?

Yes. Vijay had an obligation to make a Disclosure of Interest in Trade to the seller of the vacant lot prior to presenting his offer to purchase that lot. Now that he intends to assign his interest to the new buyer, he must also provide that buyer with a Disclosure of Interest in Trade prior to entering into the assignment agreement.

Licensees should also be aware of conflicts of interest which arise related to licensees buying and selling real estate if a licensee attempts to act as an agent and a principal in the same transaction. Guidelines in relation to these conflicts may be found at this link.

Fraudulent Practices

Real estate transactions **must not** be structured to mislead mortgage lenders as to the amount of equity (if any) being provided by buyers. **This is fraud. Licensees who participate are subject to a wide range of penalties**.

Fraud includes contracts that state that some amount of money is to be paid directly to the seller to finish a basement when the basement is already finished and the seller never receives these funds; gift letters from family members where no gift funds are ever paid over; or a separate addendum to the contract crediting back funds to the buyer. The implications of a licensee participating in these types of deceptions are serious.

Do not confuse acting in the best interest of clients with facilitating fraudulent mortgage applications.

Listing agents must ensure that the Contract of Purchase and Sale spells out the proposed equity and financing being sought, in order to protect the interests of the seller. This may involve rewriting the financing section of the contract. All applicable financial information must be contained within the same contract. "Altered" Contracts of Purchase and Sale, which seek to mislead a lender and a seller, are fraudulent and can be deemed criminal.

100% Financing Programs

RECBC has, over the years, cautioned licensees about participating in, or advising consumers that they participate in, schemes that claim that home ownership may be easily available to individuals even though they may not qualify for conventional financing.

RECBC is aware of 100% financing schemes that involve a failure on the part of a borrower to provide complete and accurate financial information to lenders, or that involve a substantial increase in borrowing costs as compared to conventional financing.

In the first instance, obtaining financing based on providing inaccurate or incomplete financial information to a lender may amount to mortgage fraud. Similarly, borrowers who are not aware of the full extent of borrowing costs may be put at financial risk. Licensees must be diligent in ensuring that consumers are not innocently placed in positions of legal or financial risk.

Financial institutions have marketed "No Down Payment" mortgages. These mortgages are designed for people who have no down payment for a home but have excellent credit ratings and repayment capacity.RECBC believes that licensees who may be promoting these programs have an obligation both to be aware of any requirements or qualification criteria and not to mislead consumers, as a form of inducement, by implying that such programs may be available to a broader segment of the public than they are.Additionally, as indicated above, once a licensee enters into a discussion with a buyer regarding mortgages, the licensee is at risk of being found to have violated the registration requirements of the *Mortgage Brokers Act.* Licensees should not, unless they are registered as a mortgage broker or sub-mortgage broker, enter into any discussion with clients regarding mortgage terms.

Sale of the Buyer's Property

In some cases, it may be necessary to include in the Contract of Purchase and Sale, a subject clause which permits the buyer to sell their own property.

The following clause may be used:

Sale of the Buyer's Property Clause
Subject to the Buyer entering into an unconditional agreement to sell the Buyer's property at (address) on or before (date) .
This condition is for the sole benefit of the Buyer.

If not using the standard form Contract of Purchase and Sale, refer to " Contracts under Seal".

If the buyer has entered into a Contract of Purchase and Sale, the following subject clause may be used to allow time for the contract to become unconditional:

Confirmation of the Sale of Buyer's Property Clause
Subject to the sale of the Buyer's property at (address) becoming unconditional on or before (date).

The condition is for the sole benefit of the buyer.

Items Affecting a Property

Issues Affecting an Owner's Interests

Many types of rights in favour of governmental and other agencies may affect a given piece of property. The following are some of the most common issues that arise. Licensees are expected to be familiar with these issues where they are common in the market area or segment in which they practice.

(1) Dedications, Restrictions and Expropriations

Not included on most title searches or plans are the Ministry of Transportation's "takings" as a result of expropriation or dedication. Sizes of parcels indicated on B.C. Assessment records may not reflect the net size. Rights-of-way for passage or road widening may not have been surveyed or registered. Driveways and culverts may not be constructed on any public roads without the permission of the Ministry of Transportation. Permission could also be denied on limited-access roads. On cliffs and adjacent to bodies of water (including streams, rivers, oceans or lakes), there may be building setback requirements or other restrictions to preserve the water or uplands habitat. One hundred-year flood plains, requiring minimum elevations of main floors, may be far removed from the relevant body of water. See your local Highways Department or local government office for information.

(2) Air Space Rights and Railway Lines

The *Aeronautics Act* limits construction and controls heights of structures in a wide arc around all airports. Properties with railway lines passing through pose a real challenge to the developer as no less than four agencies become involved for the approval of drainage, subterranean crossing of service lines, and level crossings.

(3) Agricultural Land Reserve (ALR)

The Agricultural Land Reserve, in addition to limiting development, may also take precedence over municipal zoning.

(4) Islands Trust

Those Gulf Islands that come under the jurisdiction of the Islands Trust must adhere to the development and land use approved by that body. Foreshore leases for oysters, water lots for fish farms and log booming grounds may not be indicated on the title but will certainly impact on the view or use of the waterfront landowner.

(5) Heritage Conservation Act

While the intent of the *Heritage Conservation Act* with respect to archaeological sites is to balance a respect for heritage and a property owner's right to develop, some private landowners may face costly archaeological studies and/or limited use of their land.

The *Heritage Conservation Act* is concerned with activities that may alter heritage sites automatically protected under the legislation. While it is not likely to affect properties where there is no intended change of use, it could have an impact where a change in that use is contemplated (e.g., subdivision, new construction, construction of an addition or pool).

If the intent of a property owner or potential buyer is to subdivide the property, then, as part of the process of subdivision, the proposal may be referred by the local municipality or regional district to the Archaeology Branch (of the Ministry of Tourism, Culture and the Arts) to determine if an archaeological assessment is recommended. The cost of such an assessment would be borne by the property owner and can be substantial.

Further, the *Local Government Act* gives municipalities and regional districts the power to pass bylaws to withhold the issuance of building permits if they would result in an alteration to protected heritage property.

Licensees should be aware that archaeological sites are not at this time commonly noted on the title of affected properties. However, the statute applies regardless of whether or not the notice is registered on title.

What significance does this have for licensees? Based on court decisions in similar situations, it is likely that a court would find a licensee has a duty to know whether there are archaeologically sensitive areas in the community in which they work and, if so, whether a search for archaeological sites may provide necessary information for a seller or a buyer.

The first potential source of that information is the local municipality or regional district. However, not all municipalities and regional districts maintain up-to-date information respecting archaeological sites. The second source is the Archaeology Branch. Its website (www.for.gov.bc.ca/archaeology/index.htm) contains a broad range of information on the Heritage Conservation Act and its application, including a Data Request Form for requesting information about specific sites. Most requests for information about a specific site can be answered within four to five days. More detailed enquiries may require up to two weeks.

Licensees can also request from the Archaeology Branch a copy of a map that identifies registered sites in a specific region of the province. These sites are more likely to be clustered around existing urban areas, major rivers or other waterways, and other areas that are most attractive for human habitation.

A prudent licensee working with a buyer who becomes interested in a particular property will want to determine if the proposed use or redevelopment of that property will result in ground alteration that might be affected by *Heritage Conservation Act*. If the buyer does intend to alter the use, the following clause should be incorporated into the Contract of Purchase and Sale:

Heritage Conservation Act Clause
Subject to the Buyer satisfying himself/herself on or before(date) regarding the potential effect of the Heritage Conservation Act on the use and/or development of the property. This condition is for the sole benefit of the Buyer.

If not using the standard form Contract of Purchase and Sale, refer to " Contracts under Seal".

The Archaeology Branch may be contacted as follows:

Ministry of Tourism, Culture and the Arts Archaeology Branch

PO Box 9375, Stn. Prov. Govt.

Victoria, B.C. V8W 9M5

Tel: 250-952-5021

Fax: 250-952-4188

Website: www.for.gov.bc.ca/archaeology/index.htm

(6) Fish Protection Act — Riparian Areas Regulation

[12/18/2012 The following section was amended with updated information]

The *Riparian Areas Regulation* under the *Riparian Areas Protection Act* is intended to protect riparian fish habitat, while facilitating urban development that exhibits high standards of environmental stewardship.

A licensee acting for a buyer or seller in a transaction that involves a "stream" (as defined below) on the subject property or neighboring property should be aware that the Riparian Areas Regulation (RAR) could have a significant effect on the value and potential use or development of the property because of legislated building/development setbacks and other requirements protecting riparian areas, including riparian vegetation and fish habitat.

A "stream" in the province of BC is broadly defined in the RAR to include the following that provides fish habitat:

- (a) a watercourse, whether it usually contains water or not;
- (b) a pond, lake, river, creek or brook;
- (c) a ditch, spring or wetland that is connected by surface flow to something referred to in paragraph (a) or (b);

Riparian vegetation and streams are protected by the *Federal Fisheries Act*; the *Provincial Riparian Areas Protection Act*, and the *Water Act.* Municipal bylaws may also apply.

While licensees are not expected to be experts in the Riparian Areas Regulation, they are expected to be alert to the implications of RAR and are obliged to advise clients who are buying, selling or developing property that is impacted by the legislation to seek independent professional advice.

In instances where a "stream", as defined above is present, licensees drafting contracts of purchase and sale should incorporate the following clause:

***Riparian Areas Protection Act* Clause**
Subject to the Buyer receiving and approving independent professional advice concerning any limitations on the use and/or development of the property resulting from the Riparian Areas Protection Act, on or before (date) .
This condition is for the sole benefit of the Buyer.

If not using the standard form Contract of Purchase and Sale, refer to " Contracts under Seal".

If the RAR applies to a property, the local government will require the riparian area and development to first be assessed by a Qualified Environmental Professional (QEP) such as a Registered Professional Biologist (R.P.Bio.) to determine a Streamside Protection and Enhancement Area (SPEA), which is defined as a setback that protects degradation of fish habitat. The SPEA is delineated by a QEP as part of RAR to protect fish habitat from land alteration including consideration of sediment and erosion control; damage or alteration of vegetation, and trails and landscaping.

For a list of regional districts and municipalities where the RAR applies visit:

www.env.gov.bc.ca/habitat/fish_protection_act/riparian/documents/applicable_regulations_table.pdf

For more information about riparian areas visit:

- www.env.gov.bc.ca/habitat/fish_protection_act/riparian/riparian_areas.html
- www.stewardshipcentrebc.ca

(7) Ground Water Protection Regulation

On November 1, 2005, the Ground Water Protection Regulation took effect. The Regulation is intended to protect groundwater and wells from contamination. The Regulation imposes duties on well drillers and pump installers as well as owners of land containing a well.

The property owner must:

- maintain the integrity of the wellhead and surface seal;
- engage a qualified well driller if alterations to, or closure of, the well are contemplated;
- ensure the well identification plate remains visible and not damaged or lost;
- deactivate or permanently close a well that has been out of service; and
- ensure the well is securely capped or covered.

Licensees should advise buyers that the Regulation will impose obligations on them if they purchase the property containing the well. Additionally, buyers should determine the extent that the seller has complied with the Regulation.

Additional information on the Ground Water Protection Regulation can be obtained from the BC Laws website at www.bclaws.ca .

(8) The Effect on Property Taxes of Harvesting Timber

Where private land is classified for property tax purposes such as forest land, and has as its highest and best use the production and harvesting of timber, B.C. Assessment values the land using a two-step process. First, they assess bare land value based on factors such as soil quality, accessibility, parcel size and location. Secondly, after timber has been harvested, BC Assessment adds the assessed value of the cut timber to the bare land value of the land.

BC Assessment provides the following example of this two-step assessment process:

For example, timber harvested in the calendar year 2015 will show up as added value on the assessment notice of a forest land property for the 2017 Assessment Roll. For property taxes payable in the summer of 2017, part of the value may come from the harvesting of trees two years previously.

Prospective purchasers of property classed as forest land are advised to enquire about previous harvesting on the property, and its possible property tax implications.

For more information, see:

- How Managed Forest Land is Assessed
- Managed Forest Land: A Warning to Potential Purchasers

(9) First Nations Lands

The Superintendent of Real Estate has advised that in his view RESA applies to the real estate services provided in respect of First Nations land located in British Columbia. Thus, the licensing and other requirements of RESA would be applicable.

In the Superintendent's view, the *Real Estate Development Marketing Act* would generally not apply to development properties located on First Nations land in British Columbia. However, depending on the specific terms of any land settlement agreement, such as the Nisga'a Agreement, it is possible for First Nations land to be governed by the *Real Estate Development Marketing Act*. A licensee acting in respect of development property located on First Nations land may wish to obtain legal advice in any situation where it is not clear whether the *Real Estate Development Marketing Act* would be applicable.

Licensees should advise consumers that the *Real Estate Development Marketing Act* does not apply and that the purchasers are not entitled to a disclosure statement, rescission rights or other benefits of the *Real Estate Development Marketing Act.*

Although the *Strata Property Act* generally does not apply to developments on First Nations land, depending on the specific terms of any land settlement agreement, such as the Nisga'a Agreement, it is possible for a strata development on First Nations land to be governed by the *Strata Property Act* .

Other issues that buyers should consider include:

- any potential land claims that may involve the property; and
- the potential for discovery of significant aboriginal archaeological sites on the property (see *Heritage Conservation Act* for more information).

In areas where First Nations have developed land for sale on a leasehold basis, licensees acting on behalf of either the buyer or seller of the improvements on that land should ensure they are aware of leasehold issues. Licensees are encouraged to advise their clients to seek independent legal advice.

Traditional remedies for contractual disputes may not be available as provincial courts or appeal panels may have no jurisdiction.

(10) Invasive Species

Many local governments have enacted bylaws pertaining to noxious weeds or invasive plants. These bylaws specifically require property owners to ensure that certain listed species are not growing on their property, or are controlled from spreading from their property.

The Invasive Species Council of British Columbia has developed the I*nvasive Species Toolkit for Local Government: Information for Local Government, Developers and Real Estate Professionals*, which includes information on:

- Recommendations and tools available to developers and real estate professionals regarding invasive species on private lands;
- Local government jurisdiction and enabling legislation for local invasive species control programs;
- Determining responsibility and management of private property impacted by invasive species, and
- Key resources and reporting tools available on invasive species in BC.

-

More Information:

Invasive Species Council of BC: http://bcinvasives.ca/

Invasive Species Toolkit for Local Government: Information for Local Government, Developers and Real Estate Professionals: http://bcinvasives.ca/documents/Govt_Toolkit_Final_WEB_09_10_2014.pdf

(11) Leasehold Interests

Leasehold interests may include rental of real property of any description, strata title properties on leasehold land (prepaid or ongoing), co-operatives on leasehold land (rental leases), manufactured home pads in manufactured home parks, water lot leases for floating homes or moorages, etc. This is a complex area where the public should be urged to obtain legal advice.Terms, renewal procedures, rate reviews, and assignability are elements of the lease which must be reviewed by the buyer with advice from a lawyer competent in leases. The licensee should not assume all leases from a common lessor are identical. The licensee should search the title and obtain a copy of the head lease in every case. He or she should become acquainted with the provision of services such as water, sewer, garbage, and snow removal. Are they provided by the landlord or contracted to third parties? How are property taxes collected? The licensee should insist that buyers make their own enquiries at the local city or municipal hall or at the band administration offices, if applicable, and provide adequate time within the Contract of Purchase and Sale for these enquiries to take place.

A case that clearly illustrated the duties of buyers' agents to their clients is the case of Rieger v. Croft & Finlay 69

B.C.L.R. (2d) 288. In 1983, Ms. Rieger purchased a unit in a housing cooperative on leased land. The purchaser was not informed that the head lease provided for a rent revision every 22 years. A rent revision occurred in 1990. The purchaser sued various parties, including the selling agent and the conveyancing solicitors. The judge found the selling agent and the conveyancing solicitors negligent. The judge found the selling agent's negligence warranted a higher proportion of fault and apportioned the fault 60/40 between the selling agent and the solicitors.

With respect to the selling agent's duty, the judge stated that the selling agent owed a duty to the purchaser to know the product he was selling. The judge found that the selling agent knew the land was leased and ought to have found out whether the lease was constant, prepaid, or variable, and how long the lease term was. The judge held that alternatively, the selling agent should have made the transfer subject to a solicitor's review of the lease or title documents. The judge found the selling agent failed in his duty and was therefore liable to the purchaser.

The judge commented that the agents for the seller did not owe a duty to the purchaser. Although they did not know of the rent revision, the judge found that nothing that the agents for the seller did was misleading. The judge also rejected the argument that the rent revision clause was a "defect" in title and was required to be disclosed by the agents for the seller.

Title Insurance

Although fairly common in the United States, title insurance is a relatively new consideration for real estate transactions in British Columbia. This is likely because B.C.'s Land Title registration system is regarded as being one of the most definitive in North America. With only a few exceptions, the B.C. Land Title registration system guarantees the title to a property.

Title insurance offers coverage for lenders or buyers against a loss as a result of acquiring a property, or an interest in a property, with a defective title. A defect could be characterized as the existence of an interest in a particular property that was unknown at the time of the transaction. In essence, title insurance covers against losses sustained due to the condition of the title being other than as registered with the Land Title Office.

While title insurance is most often used by commercial real estate lenders and purchasers, there may also be certain situations where it could be useful to a buyer of a residential property, particularly as the scope of insurance coverage expands. In addition, some lending institutions may require title insurance as a condition of approving a mortgage loan secured by residential property.

Licensees wishing to learn more about title insurance and its application to residential and commercial transactions are encouraged to refer to the B.C. Real Estate Association's three-part Legally Speaking series (Articles 321, 322 and 323) that deals with this topic. Past issues of Legally Speaking are available on the Association's page on the REALTORLink™ website.

Floating Homes

If a floating home or houseboat includes an interest in land (e.g., as part of a strata lot) or is sold in conjunction with a strata lot (water lot), it qualifies as real estate and can be advertised and sold as such. Without an interest in land, it remains simply a "boat", that is, a chattel and can only be advertised and sold as such.

Farm Land Classification

Licensees must keep in mind that, for those clients who are purchasing land classified as farm land for property tax purposes, specific requirements must be met for that property to continue to qualify for farm classification. Those requirements are set out in the Assessment Act.

The regulation requires a specified amount of "primary agricultural products" to be produced and sold by October 31 to qualify the land for farm class in the following year.

The regulation also requires the completion of an application form by October 31 for any new farm to enable farm class to be granted the next tax year. The assessor may require new owners of existing farms to file an application for farm class. Also, at any time during the year, the assessor may require the provision of farm income details or other information to support the continuation of farm class.

If requirements are not met, the assessor is required to deny or remove farm classification for the following year. Typically, this means the land will change to Class 1 (residential) or Class 6 (business and other). These classes typically have higher tax rates and higher land values than farm land. Land classified as farm is valued by rates set by the assessment commissioner, reflecting only the value of the land in farm use, not necessarily highest and best use.

Further information on farm assessment can be obtained from the B.C. Assessment website at www.bcassessment.ca , through a local assessor, or by contacting the farm appraiser in Cost and Legislated Assessment Services, B.C. Assessment head office at 250-595-6211.

Related Links

Acting For Sellers →

Contract Clauses →

RECBC

We regulate real estate professionals
in the public interest.

Our offices are located on traditional Coast Salish territory of the Musqueam, Squamish, and Tsleil-Waututh Nations.

ABOUT US →

QUICK LINKS

REPORT A CONCERN →

FIND A PROFESSIONAL →

KNOWLEDGE BASE →

CAREERS AT RECBC →

PROFESSIONAL LOGIN →

WHERE WE ARE

Real Estate Council of British Columbia
900-750 West Pender Street
Vancouver, BC V6C 2T8
604.683.9664
Toll-free: 1.877.683.9664

Privacy Policy

Appendix J

CSA Staff Notice 31 – 323
Guidance Relating to the Registration Obligations of Mortgage Investment Facilities – February 25, 2011

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 31-323

Guidance Relating to the Registration Obligations of Mortgage Investment Entities

February 25, 2011

On August 20, 2010, each of the members of the Canadian Securities Administrators (the CSA or we) issued parallel orders providing exemptive relief for mortgage investment entities (MIEs) from the investment fund manager registration requirement and the adviser registration requirement under securities legislation until December 31, 2010. This relief was granted to allow each of the CSA members to review the requirement for MIEs to register as investment fund managers and advisers.

On December 3, 2010, all jurisdictions except British Columbia extended the relief until March 31, 2011. British Columbia extended the relief until June 30, 2011.

This Notice is to clarify the registration requirements that apply to MIEs in each of the CSA jurisdictions pursuant to the requirements of National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103).

Definition of MIE

In this guidance, the term MIE refers to a person or company whose purpose is to directly or indirectly invest substantially all of its assets in debts owing to it that are secured by mortgages, hypothecs or in any other manner on real property (collectively, *mortgages* for purposes of this guidance), and whose other assets are limited to:

- deposits with a bank or other financial institution
- cash
- debt securities referenced in section 8.21 *[Specified debt]* of NI 31-103
- real property which is directly or indirectly held on a temporary basis as a result of action taken to enforce its rights as a secured lender
- instruments intended solely to hedge specific risks relating to the debts owing to it that are secured by mortgages, hypothecs or in any other manner on real property

Mortgage syndications

A MIE holding an interest in a single mortgage will not typically be subject to the investment fund manager registration requirement where that MIE or a related entity had a role in the creation or syndication of that mortgage (such MIEs are commonly referred to as mortgage syndications).

Pooled MIEs

Investment Fund Manager registration
The applicability of the investment fund manager registration requirement to a MIE managing a portfolio of mortgages (Pooled MIE) varies in different CSA jurisdictions. Pooled MIEs commonly include *mortgage investment corporations* as defined in the *Income Tax Act* (Canada).

(a) In jurisdictions other than Alberta
In all CSA jurisdictions other than Alberta, a Pooled MIE may or may not be subject to the investment fund manager registration requirement based on the criteria below.

A Pooled MIE will be considered to be an *investment fund* if its primary activity is managing an investment portfolio that includes mortgages. Factors that we would consider relevant to this determination include:

- the Pooled MIE does not take an active role in originating the mortgages that become part of the investment portfolio, and
- the Pooled MIE buys or sells mortgages in accordance with a stated portfolio investment strategy.

A Pooled MIE that is an investment fund must ensure that the person or company that directs its business, operations or affairs is registered as an investment fund manager.

A Pooled MIE will not be considered to be an *investment fund* if its primary activity is mortgage lending, that is, by operating a business that creates and manages mortgages. Factors that we would consider relevant to this determination include:

- the Pooled MIE originates the mortgages in the name of the Pooled MIE directly or through an agent retained by the Pooled MIE and acting on its behalf
- the Pooled MIE funds the mortgages
- the Pooled MIE enters into the mortgage agreements as the mortgagee, and
- the Pooled MIE administers the mortgages, either directly or through an agent acting on its behalf.

The investment fund manager registration requirement will not typically apply in respect of a Pooled MIE that is not an investment fund.

(b) In Alberta
For a Pooled MIE whose principal jurisdiction is Alberta, the above stated analysis with respect to determining whether a Pooled MIE is subject to the investment fund registration requirement does not apply. Instead, a Pooled MIE that has the power to direct and exercises the responsibility of directing the affairs of an *investment fund* as defined in the *Securities Act* (Alberta) will be required to register as an investment fund manager. A Pooled MIE that does not have the power to direct and does not exercise the responsibility of directing the affairs of an investment fund will not be subject to the investment fund manager registration requirement.

If an entity is uncertain about whether it is subject to the investment fund manager registration requirement, it should consider whether the Pooled MIE is an *investment fund* for the purposes of securities legislation. Sections 7.3 of Companion Policy 31-103CP *Registration Requirements and Exemptions* (31-103CP) and 1.2 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* provide guidance on the general nature of investment funds.

Adviser registration

A person or company that advises a Pooled MIE that is an investment fund about investing in or buying or selling mortgages or other securities will be subject to the adviser registration requirement if it is in the business of advising in securities. A person or company that advises a Pooled MIE that is not an investment fund should consider whether it is in the business of advising in securities as outlined in the guidance in section 1.3 of 31-103CP and, on that basis, required to register.

We will consider applications from advisers to Pooled MIEs for discretionary exemptions from the prescribed portfolio manager proficiencies. If exempted, an adviser will typically be registered as a restricted portfolio manager, with terms and conditions limiting its registration to advising in respect of the Pooled MIE's activities.

In jurisdictions where mortgage broker legislation prescribes proficiency requirements for MIEs, we may consider those to be acceptable alternatives to the proficiency requirements in securities legislation. Such exemptions from the proficiency requirements will also be considered in jurisdictions that do not have mortgage broker legislation that prescribes proficiency requirements applicable to MIEs.

Dealer registration

In all CSA jurisdictions except British Columbia, a MIE or any other person or company trading its securities will be subject to the dealer registration requirement if it is in the business of trading in securities. If a MIE or any other person or company trading its securities is uncertain about whether it must register as a dealer, it should consider whether it is in the business of trading in securities as outlined in the guidance in section 1.3 of 31-103CP.

In British Columbia, a MIE will not be subject to dealer registration until BC Instrument 32-517 in British Columbia expires on June 30, 2011. The British Columbia Securities Commission will issue further guidance about the dealer registration requirement for MIEs in British Columbia prior to June 30, 2011.

Questions

If you have questions about this Notice please direct them to any of the following:

Michael Brady
Senior Legal Counsel, Capital Markets Regulation
British Columbia Securities Commission
Tel: 604-899-6561
1-800-373-6393
mbrady@bcsc.bc.ca

Navdeep Gill
Legal Counsel, Market Regulation
Alberta Securities Commission
Tel: 403-355-9043
navdeep.gill@asc.ca

Curtis Brezinski
Compliance Auditor
Saskatchewan Financial Services Commission
Tel: 306-787-5876
curtis.brezinski@gov.sk.ca

Chris Besko
Legal Counsel, Deputy Director
The Manitoba Securities Commission
Tel. 204-945-2561
Toll Free (Manitoba only) 1-800-655-5244
chris.besko@gov.mb.ca

Christopher Jepson
Senior Legal Counsel
Compliance and Registrant Regulation
Ontario Securities Commission
Tel: 416-593-2379
cjepson@osc.gov.on.ca

Sophie Jean
Conseillère en réglementation
Surintendance de l'assistance à la clientèle, de l'indemnisation et de la distribution
Autorité des marchés financiers
Tel: 514-395-0337, ext. 4786
Toll-free: 1-877-525-0337
sophie.jean@lautorite.qc.ca

Brian W. Murphy
Deputy Director, Capital Markets
Nova Scotia Securities Commission
Tel: 902-424-4592
murphybw@gov.ns.ca

Susan Powell
Senior Legal Counsel
New Brunswick Securities Commission
Tel: 506-643-7697
susan.powell@nbsc-cvmnb.ca

Katharine Tummon
Superintendent of Securities
Prince Edward Island Securities Office
Tel: 902-368-4542
kptummon@gov.pe.ca

Craig Whalen
Manager of Licensing, Registration and Compliance
Office of the Superintendent of Securities
Government of Newfoundland and Labrador
Tel: 709-729-5661
cwhalen@gov.nl.ca

Louis Arki, Director, Legal Registries
Department of Justice, Government of Nunavut
Tel: 867-975-6587
larki@gov.nu.ca

Donn MacDougall
Deputy Superintendent, Legal & Enforcement
Office of the Superintendent of Securities
Government of the Northwest Territories
Tel: 867-920-8984
donald.macdougall@gov.nt.ca

Frederik J. Pretorius
Manager Corporate Affairs (C-6)
Department of Community Services
Government of Yukon
Tel: 867-667-5225
Fred.Pretorius@gov.yk.ca

Appendix K

Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities BC Instrument 32-517

British Columbia Securities Commission August 15, 2018

British Columbia Securities Commission

BC Instrument 32-517

Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities

The British Columbia Securities Commission, considering that to do so would not be prejudicial to the public interest, orders that effective August 15, 2018, BC Instrument 32-517 *Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities* is revoked and replaced, so that the instrument reads as attached.

August 15, 2018

Brenda M. Leong
Chair

(This part is for administrative purposes only and is not part of the Order)
Authority under which Order is made:
Act and sections: *Securities Act*, sections 48(1), 171 and 172

BC Instrument 32-517

Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities

Order under section 48(1) of the Securities Act

Definitions

1. Terms defined in the *Securities Act*, R.S.B.C. 1996, c. 418, as amended (the **Act**) or in National Instrument 14-101 *Definitions* and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) will have the same meaning in this order.

2. In this order, *mortgage investment entity* means a person whose purpose is to invest substantially all of its assets in debts owing to it that are secured by mortgages, hypothecs or in any other manner on real property and whose other assets are limited to:

    (a) deposits standing to its credit in the records of:

        (i) a bank or other corporation whose deposits are insured by the Canada Deposit Insurance Corporation or the Autorité des marches financiers;

        or

        (ii) a credit union;

    (b) cash;

    (c) securities listed in subsection 8.21(2) of NI 31-103;

    (d) real property in Canada which is directly or indirectly held on a temporary basis as a result of action taken to enforce its rights as a secured lender; and

    (e) instruments held solely to hedge specific risks relating to the debts owing to it that are secured by mortgages, hypothecs or in any other manner on real property.

Background

3. Persons trading the securities of a mortgage investment entity may be required to register pursuant to section 34 of the Act and comply with the requirements set out in NI 31-103.

4. NI 31-103 prescribes conditions of registration and other requirements and restrictions applicable to dealers.

5. National Instrument 45-106 *Prospectus Exemptions* provides exemptions from the prospectus requirement for certain transactions.

6. Commencing December 3, 2010, the Commission granted limited relief from the dealer registration requirements for mortgage investment entities.

7. The Commission intends to revoke that limited relief and give transitional relief to persons or companies required to seek registration as a result of the revocation.

Order

8. The Commission orders, under section 48(1) of the Act, that the dealer registration requirement does not apply to a trade in a security of a mortgage investment entity issued under an exemption from the prospectus requirement, provided that:

   (a) the person is not registered under provincial or territorial securities legislation;

   (b) the person is not registered under the securities legislation of a foreign jurisdiction;

   (c) prior to the trade, the person does not advise, recommend or otherwise represent to the purchaser that the security being traded is suitable to the purchaser, with regard to the purchaser's:

      (i) investment needs and objectives,

      (ii) financial circumstances; or

      (iii) risk tolerance;

   (d) at or before the time the purchaser enters into an agreement to purchase the security, the person obtains from the purchaser a signed Risk Acknowledgement Form in the form prescribed in Appendix A; and

   (e) the person has electronically filed with the Commission a current information report in the form prescribed in Appendix B, or has filed an update of a previously filed information report, on or before the 10th day after the prospectus-exempt distribution.

9. The dealer registration exemption in section 8 will expire February 15, 2019, except for a person that satisfies the following conditions:

   (a) by February 15, 2019, for that person, the Commission has received:

(i) where the person is not an individual, a substantially complete 33-109F6 *Firm Registration* (including fees) seeking registration as a dealer, or

(ii) where the person is an individual, a substantially complete Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (including fees) seeking registration in the category of dealing representative, in combination with an application referred to in (i);

(b) the Commission has not yet accepted or refused the person's registration application referred to in subsection 9(a);

(c) on February 15, 2019, the person was relying on, and in compliance with, the dealer registration exemption in section 8; and

(d) the person is in compliance with the dealer registration exemption in section 8.

10. This order will expire February 18, 2020.

Appendix A to BCI 32-517

Risk Acknowledgement under BCI 32-517 *Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities*

Name of Issuer: _____

Name of Seller: _____

I acknowledge that

- the person selling me these securities is not registered with a securities regulatory authority and is prohibited from telling me that this investment is suitable for me;
- the person selling me these securities does not act for me;
- this is a risky investment and I could lose all of my money;
- I am investing entirely at my own risk.

_____ _____

Date Signature of Purchaser

_____

Print Name of Purchaser

_____

Name of salesperson
acting on behalf of the seller

Sign two copies of this document. Keep one for your records.

National Instrument 45-106 *Prospectus Exemptions* may require you to sign an additional risk acknowledgement form.

If you want advice about the merits of this investment and whether these securities are a suitable investment for you, contact a registered adviser or dealer.

Appendix B to BCI 32-517

Information report under BC Instrument 32-517
Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities

[Date]

To: British Columbia Securities Commission

_____
[Name of firm or, if a sole proprietor, individual owner's name and any related trade names]
INSTRUCTION: State the full name of the firm or individual. Add "32-517" after the firm name.

_____
[Street address]
INSTRUCTION: State the street office for the head office of the firm or proprietorship. Do not include a P.O. box or agent for service.

_____
[Website address for firm]
INSTRUCTION: State the website address for the firm. If there is no website address, state "not applicable".

_____
[Telephone number for firm or, if sole proprietor, individual]

_____
[Name of individual responsible for ensuring conditions to use this registration exemption are met]
INSTRUCTION: State the name of the individual who may be contacted with respect to any questions regarding the contents of this report. This individual should be a senior executive for the firm.

_____
[Telephone number for responsible individual named above]

_____
[E-mail address for responsible individual named above]

Does the firm also carry on business at other office locations? __Yes __No

_____

[Names of salespersons employed by the firm to sell securities]

_____

[Date]

Collection and use of personal information

The personal information submitted in this report is collected on behalf of and used by the securities regulatory authorities or, where applicable, the regulators under the authority granted in securities legislation for the purposes of its administration and enforcement of the securities legislation.

If anyone referred to in this report has any questions about the collection and use of their personal information, they can contact the British Columbia Securities Commission at the address listed below.

British Columbia

British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC V7Y 1L2
Attention: Freedom of Information Officer
Telephone: (604) 899-6500 or (800) 373-6393

Appendix L

Companion Policy 31-103 CP
Registration Requirements, Exemptions and Ongoing Registrant Obligations

Companion Policy 31-103 CP
Registration Requirements, Exemptions and Ongoing Registrant Obligations

Part 1 Definitions and fundamental concepts

1.1 Introduction

Purpose of this Companion Policy

This Companion Policy sets out how the Canadian Securities Administrators (the CSA or we) interpret or apply the provisions of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (*NI 31-103) and related securities legislation.

Numbering system

Except for Part 1, the numbering of Parts, Divisions and sections in this Companion Policy correspond to the numbering in NI 31-103. Any general guidance for a Part or a Division appears immediately after the Part or Division name. Any specific guidance on sections in NI 31-103 follows any general guidance. If there is no guidance for a Part, Division or section, the numbering in this Companion Policy will skip to the next provision that does have guidance.

All references in this Companion Policy to sections, Parts and Divisions are to NI 31-103, unless otherwise noted.

Additional requirements applicable to registrants

For additional requirements that may apply to them, registrants should refer to:

- National Instrument 31-102 *National Registration Database* (NI 31-102) and the Companion Policy to NI 31-102
- National Instrument 33-109 *Registration Information* (NI 33-109) and the Companion Policy to NI 33-109
- National Policy 11-204 *Process for Registration in Multiple Jurisdictions* (NP 11-204), and
- securities and derivatives legislation in their jurisdiction

Registrants that are members of a self-regulatory organization (SRO) must also comply with their SRO's requirements.

Disclosure and notices

Delivering disclosure and notices to the principal regulator

Under section 1.3, registrants must deliver all disclosure and notices required under NI 31-103 to the registrant's principal regulator. This does not apply to notices under sections:

- 8.18 *International dealer*
- 8.26 *International adviser*
- 11.9 *Registrant acquiring a registered firm's securities or assets*, and
- 11.10 *Registered firm whose securities are acquired*

Registrants must deliver these notices to the regulator in each jurisdiction where they are registered or relying on an exemption from registration.

Electronic delivery of documents

These documents may be delivered electronically. Registrants should refer to National Policy 11-201 *Delivery of Documents by Electronic Means* and, in Québec, Notice 11-201 *Delivery of Documents by Electronic Means*.

See Appendix A for contact information for each regulator.

Clear and meaningful disclosure to clients

We expect registrants to present disclosure information to clients in a clear and meaningful manner in order to ensure clients understand the information presented. Registrants should ensure that investors can readily understand the information. These requirements are consistent with the obligation to deal fairly, honestly and in good faith with clients.

1.2 Definitions

Unless defined in NI 31-103, terms used in NI 31-103 and in this Companion Policy have the meaning given to them in the securities legislation of each jurisdiction or in National Instrument 14-101 *Definitions*. See Appendix B for a list of some terms that are not defined in NI 31-103 or this Companion Policy but are defined in other securities legislation.

In this Companion Policy "regulator" means the regulator or securities regulatory authority in a jurisdiction.

Permitted client

The following discussion provides guidance on the term "permitted client", which is defined in section 1.1.

"Permitted client" is used in the following sections:

- 8.18 *International dealer*
- 8.26 *International adviser*
- 13.2 *Know your client*
- 13.3 *Suitability*
- 13.13 *Disclosure when recommending the use of borrowed money*
- 14.2 *Relationship disclosure information,* and
- 14.4 *When the firm has a relationship with a financial institution*

Exemptions from registration when dealing with permitted clients

NI 31-103 exempts international dealers and international advisers from the registration requirement if they deal with certain permitted clients and meet certain other conditions.

Exemptions from other requirements when dealing with permitted clients

Under section 13.3, permitted clients may waive their right to have a registrant determine that a trade is suitable. In order to rely on this exemption, the registrant must determine that a client is a permitted client at the time the client waives their right to suitability.

Under sections 13.13, 14.2 and 14.4, registrants do not have to provide certain disclosures to permitted clients. In order to rely on these exemptions, registrants must determine that a client is a permitted client at the time the client opens an account.

Determining assets

The definition of permitted client includes monetary thresholds based on the value of the client's assets. The monetary thresholds in paragraphs (o) and (q) of the definition are intended to create "bright-line" standards. Investors who do not satisfy these thresholds do not qualify as permitted clients under the applicable paragraph.

Paragraph (o) of the definition

Paragraph (o) refers to an individual who beneficially owns financial assets with an aggregate realizable value that exceeds $5 million, before taxes but net of any related liabilities.

In general, determining whether financial assets are beneficially owned by an individual should be straightforward. However, this determination may be more difficult if financial assets are held in a trust or in other types of investment vehicles for the benefit of an individual.

Factors indicating beneficial ownership of financial assets include:

- possession of evidence of ownership of the financial asset
- entitlement to receive any income generated by the financial asset
- risk of loss of the value of the financial asset, and
- the ability to dispose of the financial asset or otherwise deal with it as the individual sees fit

For example, securities held in a self-directed RRSP for the sole benefit of an individual are beneficially owned by that individual. Securities held in a group RRSP are not beneficially owned if the individual cannot acquire and deal with the securities directly.

"Financial assets" is defined in section 1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106).

Realizable value is typically the amount that would be received by selling an asset.

Paragraph (q) of the definition

Paragraph (q) refers to a person or company that has net assets of at least $25 million, as shown on its last financial statements. "Net assets" under this paragraph is total assets minus total liabilities.

1.3 Fundamental concepts

This section describes the fundamental concepts that form the basis of the registration regime:

- requirement to register
- business trigger for trading and advising, and
- fitness for registration

A registered firm is responsible for the conduct of the individuals whose registration it sponsors. A registered firm

- must undertake due diligence before sponsoring an individual to be registered to act on its behalf (see further guidance in Part 4 *Due diligence by firms* of the Companion Policy to NI 33-109)
- has an ongoing obligation to monitor and supervise its registered individuals in an effective manner (see further guidance in section 11.1 of this Companion Policy)

Failure of a registered firm to take reasonable steps to discharge these responsibilities may be relevant to the firm's own continued fitness for registration.

Requirement to register

The requirement to register is found in securities legislation. Firms must register if they are:

- in the business of trading
- in the business of advising
- holding themselves out as being in the business of trading or advising
- acting as an underwriter, or
- acting as an investment fund manager

Individuals must register if they trade, underwrite or advise on behalf of a registered dealer or adviser, or act as the ultimate designated person (UDP) or chief compliance officer (CCO) of a registered firm. Except for the UDP and the CCO, individuals who act on behalf of a registered investment fund manager do not have to register.

However, all permitted individuals of any registrant must file Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (Form 33-109F4).

There is no renewal requirement for registration, but fees must be paid every year to maintain registration.

Multiple categories

Registration in more than one category may be necessary. For example, an adviser that also manages an investment fund may have to register as a portfolio manager and an investment fund manager. An adviser that manages a portfolio and distributes units of an investment fund may have to register as a portfolio manager and as a dealer.

Registration exemptions

NI 31-103 provides exemptions from the registration requirement. There may be additional exemptions in securities legislation. Some exemptions do not need to be applied for if the conditions of the exemption are met. In other cases, on receipt of an application, the regulator has discretion to grant exemptions for specified dealers, advisers or investment fund managers, or activities carried out by them if registration is required but specific circumstances indicate that it is not otherwise necessary for investor protection or market integrity.

Business trigger for trading and advising

We refer to trading or advising in securities for a business purpose as the "business trigger" for registration.

We look at the type of activity and whether it is carried out for a business purpose to determine if an individual or firm must register. We consider the factors set out below, among others, to determine if the activity is for a business purpose. For the most part, these factors are from case law and regulatory decisions that have interpreted the business purpose test for securities matters.

Factors in determining business purpose

This section describes factors that we consider relevant in determining whether an individual or firm is trading or advising in securities for a business purpose and, therefore, subject to the dealer or adviser registration requirement.

This is not a complete list. We do not automatically assume that any one of these factors on its own will determine whether an individual or firm is in the business of trading or advising in securities.

(a) Engaging in activities similar to a registrant

We usually consider an individual or firm engaging in activities similar to those of a registrant to be trading or advising for a business purpose. Examples include promoting securities or stating in any way that the individual or firm will buy or sell securities. If an individual or firm sets up a business to carry out any of these activities, we may consider them to be trading or advising for a business purpose.

(b) Intermediating trades or acting as a market maker

In general, we consider intermediating a trade between a seller and a buyer of securities to be trading for a business purpose. This typically takes the form of the business commonly referred to as a broker. Making a market in securities is also generally considered to be trading for a business purpose.

(c) Directly or indirectly carrying on the activity with repetition, regularity or continuity

Frequent or regular transactions are a common indicator that an individual or firm may be engaged in trading or advising for a business purpose. The activity does not have to be their sole or even primary endeavour for them to be in the business.

We consider regularly trading or advising in any way that produces, or is intended to produce, profits to be for a business purpose. We also consider any other sources of income and how much time an individual or firm spends on all activities associated with the trading or advising.

(d) Being, or expecting to be, remunerated or compensated

Receiving, or expecting to receive, any form of compensation for carrying on the activity, including whether the compensation is transaction or value based, indicates a business purpose. It does not matter if the individual or firm actually receives compensation or in what form. Having the capacity or the ability to carry on the activity to produce profit is also a relevant factor.

(e) Directly or indirectly soliciting

Contacting anyone to solicit securities transactions or to offer advice may reflect a business purpose. Solicitation includes contacting someone by any means, including advertising that proposes buying or selling securities or participating in a securities transaction, or that offers services or advice for these purposes.

Business trigger examples

This section explains how the business trigger might apply to some common situations.

(a) Securities issuers

A securities issuer is an entity that issues or trades in its own securities. In general, securities issuers with an active non-securities business do not have to register as a dealer if they:

- do not hold themselves out as being in the business of trading in securities
- trade in securities infrequently
- are not, or do not expect to be, compensated for trading in securities
- do not act as intermediaries, and
- do not produce, or intend to produce, a profit from trading in securities

However, securities issuers may have to register as a dealer if they:

- frequently trade in securities

- employ or otherwise contract individuals to perform activities on their behalf that are similar to those performed by a registrant (other than underwriting in the normal course of a distribution or trading for their own account)

- solicit investors actively, or

- act as an intermediary by investing client money in securities

For example, an investment fund manager that carries out the activities described above may have to register as a dealer.

Securities issuers that are in the business of trading should consider whether they qualify for the exemption from the registration requirement for trades through a registered dealer in section 8.5.

In most cases, securities issuers are subject to the prospectus requirements in securities legislation. Regulators have the discretionary authority to require an underwriter for a prospectus distribution.

(b) Venture capital and private equity

This guidance does not apply to labour sponsored or venture capital funds as defined in National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106).

Venture capital and private equity investing are distinguished from other forms of investing by the role played by venture capital and private equity management companies (collectively, VCs). This type of investing includes a range of activities that may require registration.

VCs typically raise money under one of the prospectus exemptions in NI 45-106, including for trades to "accredited investors". The investors typically agree that their money will remain invested for a period of time. The VC uses this money to invest in securities of companies that are not publicly traded. The VC usually becomes actively involved in the management of the company, often over several years.

Examples of active management in a company include the VC having:

- representation on the board of directors

- direct involvement in the appointment of managers

- a say in material management decisions

The VC looks to realize on the investment either through a public offering of the company's securities, or a sale of the business. At this point, the investors' money can be returned to them, along with any profit.

Investors rely on the VC's expertise in selecting and managing the companies it invests in. In return, the VC receives a management fee or "carried interest" in the profits generated from these investments. They do not receive compensation for raising capital or trading in securities.

Applying the business trigger factors to the VC activities as described above, there would be no requirement for the VC to register as:

- a portfolio manager, if the advice provided in connection with the purchase and sale of companies is incidental to the VC's active management of these companies, or

- a dealer, if both the raising of money from investors and the investing of that money in companies are occasional and uncompensated activities

If the VC is actively involved in the management of the companies it invests in, the investment portfolio would generally not be considered an investment fund. As result, the VC would not need to register as an investment fund manager.

The business trigger factors and investment fund manager analysis may apply differently if the VC engages in activities other than those described above.

(c) One-time activities

In general, we do not require registration for one-time trading or advising activities. This includes trading or advising that:

- is carried out by an individual or firm acting as a trustee, executor, administrator, personal or other legal representative, or
- relates to the sale of a business

(d) Incidental activities

If trading or advising activity is incidental to a firm's primary business, we may not consider it to be for a business purpose.

For example, merger and acquisition specialists that advise the parties to a transaction between companies are not normally required to register as dealers or advisers in connection with that activity, even though the transaction may result in trades in securities and they will be compensated for the advice. If the transaction results in trades in the securities of the company to an acquirer, this is considered incidental to the acquisition transaction. However, if the merger and acquisition specialists also engage in capital raising from prospective investors (including private placements), they will need to consider whether such activity would be in the business of trading and require registration.

Another example is professionals, such as lawyers, accountants, engineers, geologists and teachers, who may provide advice on securities in the normal course of their professional activities. We do not consider them to be advising on securities for a business purpose. For the most part, any advice on securities will be incidental to their professional activities. This is because they:

- do not regularly advise on securities
- are not compensated separately for advising on securities
- do not solicit clients on the basis of their securities advice, and
- do not hold themselves out as being in the business of advising on securities

Registration trigger for investment fund managers

Investment fund managers are subject to a registration trigger. This means that if a firm carries on the activities of an investment fund manager, it must register. However, investment fund managers are not subject to the business trigger.

Fitness for registration

The regulator will only register an applicant if they appear to be fit for registration. Following registration, individuals and firms must maintain their fitness in order to remain registered. If the regulator determines that a registrant has become unfit for registration, the regulator may suspend or revoke the registration. See Part 6 of this Companion Policy for guidance on suspension and revocation of individual registration. See Part 10 of this Companion Policy for guidance on suspension and revocation of firm registration.

Terms and conditions

The regulator may impose terms and conditions on a registration at the time of registration or at any time after registration. Terms and conditions imposed at the time of registration are generally permanent, for example, in the case of a restricted dealer who is limited to specific activities. Terms and conditions imposed after registration are generally temporary. For example, if a registrant does not maintain the required capital, it may have to file monthly financial statements and capital calculations until the regulator's concerns are addressed.

Opportunity to be heard

Applicants and registrants have an opportunity to be heard by the regulator before their application for registration is denied. They also have an opportunity to be heard before the regulator imposes terms and conditions on their registration if they disagree with the terms and conditions.

Assessing fitness for registration - firms

We assess whether a firm is or remains fit for registration through the information it is required to provide on registration application forms and as a registrant, and through compliance reviews. Based on this information, we consider whether the firm is able to carry out its obligations under securities legislation. For example, registered firms must be financially viable. A firm that is insolvent or has a history of bankruptcy may not be fit for registration.

In addition, when determining whether a firm whose head office is outside Canada is, and remains, fit for registration, we will consider whether the firm maintains registration or regulatory organization membership in the foreign jurisdiction that is appropriate for the securities business it carries out there.

Assessing fitness for registration - individuals

We use three fundamental criteria to assess whether an individual is or remains fit for registration:

- proficiency
- integrity, and
- solvency

(a) Proficiency

Individual applicants must meet the applicable education, training and experience requirements prescribed by securities legislation and demonstrate knowledge of securities legislation and the securities they recommend.

Registered individuals should continually update their knowledge and training to keep pace with new securities, services and developments in the industry that are relevant to their business. See Part 3 of this Companion Policy for more specific guidance on proficiency.

(b) Integrity

Registered individuals must conduct themselves with integrity and have an honest character. The regulator will assess the integrity of individuals through the information they are required to provide on registration application forms and as registrants, and through compliance reviews. For example, applicants are required to disclose information about conflicts of interest, such as other employment or partnerships, service as a member of a board of directors, or relationships with affiliates, and about any regulatory or legal actions against them.

(c) Solvency

The regulator will assess the overall financial condition of an individual applicant or registrant. An individual that is insolvent or has a history of bankruptcy may not be fit for registration. Depending on the circumstances, the regulator may consider the individual's contingent liabilities. The regulator may take into account an individual's bankruptcy or insolvency when assessing their continuing fitness for registration.

Part 2 Categories of registration for individuals

2.1 Individual categories

Multiple individual categories

Individuals who carry on more than one activity requiring registration on behalf of a registered firm must:

- register in all applicable categories, and
- meet the proficiency requirements of each category

For example, an advising representative of a portfolio manager who is also the firm's CCO must register in the categories of advising representative and CCO. They must meet the proficiency requirements of both of these categories.

Individual registered in a firm category

An individual can be registered in both a firm and individual category. For example, a sole proprietor who is registered in the firm category of portfolio manager must also be registered in the individual category of advising representative.

2.2 Client mobility exemption – individuals

Conditions of the exemption

The mobility exemption in section 2.2 allows registered individuals to continue dealing with and advising clients who move to another jurisdiction, without registering in that other jurisdiction. Section 8.30 *Client mobility exemption – firms* contains a similar exemption for registered firms.

The exemption becomes available when the client (not the registrant) moves to another jurisdiction. An individual may deal with up to five "eligible" clients in each other jurisdiction. Each of the client, their spouse and any children are an eligible client.

An individual may only rely on the exemption if:

- they and their sponsoring firm are registered in their principal jurisdiction
- they and their sponsoring firm only act as a dealer, underwriter or adviser in the other jurisdiction as permitted under their registration in their principal jurisdiction
- they comply with Part 13 *Dealing with clients – individuals and firms*
- they act fairly, honestly and in good faith in their dealings with the eligible client, and
- their sponsoring firm has disclosed to the eligible client that the individual and if applicable, their sponsoring firm, are exempt from registration in the other jurisdiction and are not subject to the requirements of securities legislation in that jurisdiction

As soon as possible after an individual first relies on this exemption, their sponsoring firm must complete and file Form 31-103F3 *Use of mobility exemption* (Form 31-103F3) with the other jurisdiction.

Limits on the number of clients

Sections 2.2 and 8.30 are independent of each other: individuals may rely on the exemption from registration in section 2.2 even though their sponsoring firm is registered in the local jurisdiction (and is not relying on the exemption from registration in section 8.30). The limits in sections 2.2 and 8.30 are per jurisdiction.

For example a firm using the exemption in section 8.30 could have 10 clients in each of several local jurisdictions where it is not registered. An individual may also use the exemption in section 2.2 to have 5 clients in each of several jurisdictions where the individual is not registered.

The individual limits are per individual. For example several individuals working for the same firm could each have 5 clients in the same local jurisdiction and each individual could still rely on the exemption in section 2.2. However, the firm may not exceed its 10 client limit if it wants to rely on the exemption in section 8.30. If the firm exceeds the 10 client limit, the firm must be registered in the local jurisdiction.

Part 3 Registration requirements – individuals

Division 1 General proficiency requirements

Application of proficiency requirements

Part 3 sets out the initial and ongoing proficiency requirements for

- dealing representatives and chief compliance officers of mutual fund dealers, scholarship plan dealers and exempt-market dealers respectively
- advising representatives, associate advising representatives and chief compliance officers of portfolio managers
- chief compliance officers of investment fund managers

The regulator is required to determine the individual's fitness for registration and may exercise discretion in doing so.

Section 3.3 does not provide proficiency requirements for dealing representatives of investment dealers since the IIROC Rules provide those requirements for the individuals who are approved persons of IIROC member firms.

Exam based requirements

Individuals must pass exams – not courses – to meet the education requirements in Part 3. For example, an individual must pass the Canadian Securities Course Exam, but does not have to complete the Canadian Securities Course. Individuals are responsible for completing the necessary preparation to pass an exam and for proficiency in all areas covered by the exam.

3.3 Time limits on examination requirements

Under section 3.3, there is a time limit on the validity of exams prescribed in Part 3. Individuals must pass an exam within 36 months before they apply for registration. However, this time limit does not apply if the individual:

- was registered in an active capacity (i.e., not suspended), in the same category in a jurisdiction of Canada at any time during the 36-month period before the date of their application; or
- has gained relevant securities industry experience for a total of 12 months during the 36-month period before the date of their application: these months do not have to be consecutive, or with the same firm or organization

These time limits do not apply to the CFA Charter or the CIM designation, since we do not expect the holders of these designations to have to retake the courses forming part of the requirements applicable to these designations. However, if the individual no longer has the right to use the CFA Charter or the CIM designation, by reason of revocation of the designation or otherwise, we may consider the reasons for such a revocation to be relevant in determining an individual's fitness for registration. Registered individuals are required to notify the regulator of any change in the status of the CFA Charter or the CIM designation within 10 days of the change, by submitting Form 33-109F5 *Change of Registration Information* in accordance with National Instrument 31-102 *National Registration Database.*

When assessing an individual's fitness for registration, the regulator may consider

- the date on which the relevant examination was passed, and
- the length of time between any suspension and reinstatement of registration during the 36 month period

See Part 6 of this Companion Policy for guidance on the meaning of "suspension" and "reinstatement".

Relevant securities industry experience

The securities industry experience under subsection 3.3(2)(b) should be relevant to the category applied for. It may include experience acquired:

- during employment at a registered dealer, a registered adviser or an investment fund manager
- in related investment fields, such as investment banking, securities trading on behalf of a financial institution, securities research, portfolio management, investment advisory services or supervision of those activities
- in legal, accounting or consulting practices related to the securities industry
- in other professional service fields that relate to the securities industry, or
- in a securities-related business in a foreign jurisdiction

Division 2 Education and experience requirements

See Appendix C for a chart that sets out the proficiency requirements for each individual category of registration.

Granting exemptions

The regulator may grant an exemption from any of the education and experience requirements in Division 2 if it is satisfied that an individual has qualifications or relevant experience that is equivalent to, or more appropriate in the circumstances than, the prescribed requirements.

Proficiency for representatives of restricted dealers and restricted portfolio managers

The regulator will decide on a case-by-case basis what education and experience are required for registration as:

- a dealing representative or CCO of a restricted dealer, and
- an advising representative or CCO of a restricted portfolio manager

The regulator will determine these requirements when it assesses the individual's fitness for registration.

3.4 Proficiency – initial and ongoing

Proficiency principle

Under section 3.4, registered individuals must not perform an activity that requires registration unless they have the education, training and experience that a reasonable person would consider necessary to perform the activity competently, including understanding the structure, features and risks of each security they recommend to a client (also referred to as know-your-product or KYP).

The requirement to understand the structure, features and risks of each security recommended to a client is a proficiency requirement. This requirement is in addition to the suitability obligation in section 13.3 and applies even where there is an exemption from the suitability obligation such as, for example, the exemption in subsection 13.3(4) in respect of permitted clients.

CCOs must also not perform an activity that requires registration unless they have the education, training and experience that a reasonable person would consider necessary to perform the activity competently.

Responsibility of the firm

The responsibility of registered firms to oversee the compliance of registered individuals acting on their behalf extends to ensuring that they are proficient at all times. A registered firm must not permit an individual they sponsor to perform an activity if the proficiency requirements are not met.

Firms should perform their own analysis of all securities they recommend to clients and provide product training to ensure their registered representatives have a sufficient understanding of the securities and their risks to meet their suitability obligations under section 13.3. Similarly, registered individuals should have a thorough understanding of a security before they recommend it to a client (also referred to as know-your-product or KYP).

3.11 Portfolio manager – advising representative
3.12 Portfolio manager – associate advising representative

The 12 months of relevant investment management experience referred to in section 3.11 and 24 months of relevant investment management experience referred to in section 3.12 do not have to be consecutive, or with the same firm or organization. The individual must obtain a total of this experience within the 36-month period before the date they apply for registration.

For individuals with a CFA charter, the regulator will decide on a case-by-case basis whether the experience they gained to earn the charter qualifies as relevant investment management experience.

Relevant investment management experience

Relevant investment management experience under sections 3.11 and 3.12 may vary according to the level of specialization of the individual. It may include:

- securities research and analysis experience, demonstrating an ability in, and understanding of, portfolio analysis or portfolio security selection, or
- management of investment portfolios on a discretionary basis, including investment decision making, rebalancing and evaluating performance

Advising representatives

Advising representatives may acquire relevant investment management experience during employment in a portfolio management capacity with a registered investment dealer or adviser firm.

Associate advising representatives

Relevant investment management experience for associate advising representatives may include working at:

- an unregistered portfolio manager of a Canadian financial institution
- an adviser that is registered in another jurisdiction of Canada, or
- an adviser in a foreign jurisdiction

Division 3 Membership in a self-regulatory organization

3.16 Exemptions from certain requirements for SRO approved persons

Section 3.16 exempts registered individuals who are dealing representatives of IIROC or MFDA members from the requirements in NI 31-103 for suitability and disclosure when recommending the use of borrowed money. This is because IIROC and the MFDA have their own rules for these matters.

In Québec, these requirements do not apply to dealing representatives of a mutual fund dealer to the extent that equivalent requirements are applicable to those dealing representatives under regulations in Québec.

This section also exempts registered individuals who are dealing representatives of IIROC from the know your client obligations in section 13.2.

We expect registered individuals who are dealing representatives of IIROC or MFDA members to comply with the by-laws, rules, regulations and policies of IIROC or the MFDA, as applicable (SRO provisions). These individuals cannot rely on the exemptions in section 3.16 unless they are complying with the corresponding SRO provisions specified in NI 31-103. We regard compliance with IIROC or MFDA procedures, interpretations, notices, bulletins and practices as relevant to compliance with the applicable SRO provisions.

For these purposes, an individual that has an exemption from an SRO provision and complies with the terms of that exemption would be considered to have complied with that SRO provision.

Part 4 Restrictions on registered individuals

4.1 Restrictions on acting for another registered firm

We will consider exemption applications on a case by case basis. When reviewing a registered firm's application for relief from this restriction, we will consider:

- there are valid business reasons for the individual to be registered with both firms
- the individual will have sufficient time to adequately serve both firms
- the applicant's sponsoring firms have demonstrated that they have policies and procedures addressing any conflicts of interest that may arise as a result of the dual registration, and
- the sponsoring firms will be able to deal with these conflicts, including supervising how the individual will deal with these conflicts

In the case of 4.1(1)(b), namely a dealing, advising or associate advising representative acting for another registered firm, affiliation of the firms may be one of the factors that we would consider in respect of an exemption application.

We note that the prohibitions in section 4.1 are in addition to the conflicts of interest provisions set out in section 13.4 [*Identifying and responding to conflicts of interest*]. See section 13.4 for further guidance on individuals who serve on boards of directors.

4.2 Associate advising representatives – pre-approval of advice

The associate advising representative category is primarily meant to be an apprentice category for individuals who intend to become an advising representative but who do not meet the education or experience requirements for that category when they apply for registration. It allows an individual to work at a registered adviser while completing the proficiency requirements for an advising representative. For example, a previously registered advising representative could work in an advising capacity while acquiring the relevant work experience required for an advising representative under section 3.11.

However, associate advising representatives are not required to subsequently register as a full advising representative. They can remain as an associate advising representative indefinitely. This category also accommodates, for example, individuals who provide specific advice to clients, but do not manage client portfolios without supervision.

As required by section 4.2, registered firms must designate an advising representative to approve the advice provided by an associate advising representative. The designated advising representative must approve the advice before the associate advising representative gives it to the client. The appropriate processes for approving the advice will depend on the circumstances, including the associate advising representative's level of experience.

Registered firms that have associate advising representatives must:

- document their policies and procedures for meeting the supervision and approval obligations as required under section 11.1
- implement controls as required under section 11.1
- maintain records as required under section 11.5, and
- notify the regulator of the names of the advising representative and the associate advising representative whose advice they are approving no later than the seventh day after the advising representative is designated

Part 5 Ultimate designated person and chief compliance officer

Sections 11.2 and 11.3 require registered firms to designate a UDP and a CCO. The UDP and CCO must be registered and perform the compliance functions set out in sections 5.1 and 5.2. While the UDP and CCO have specific compliance functions, they are not solely responsible for compliance – it is the responsibility of the firm as a whole.

The same person as UDP and CCO

The UDP and the CCO can be the same person if they meet the requirements for both registration categories. We prefer firms to separate these functions, but we recognize that it might not be practical for some registered firms.

UDP or CCO as advising or dealing representative

The UDP or CCO may also be registered in trading or advising categories. For example, a small registered firm might conclude that one individual can adequately function as UDP and CCO, while also carrying on advising and trading activities. We may have concerns about the ability of a UDP or CCO of a large firm to conduct these additional activities and carry out their UDP, CCO and advising responsibilities at the same time.

5.1 Responsibilities of the ultimate designated person

The UDP is responsible for promoting a culture of compliance and overseeing the effectiveness of the firm's compliance system. They do not have to be involved in the day to day management of the compliance group. There are no specific education or experience requirements for the UDP. However, they are subject to the proficiency principle in section 3.4.

5.2 Responsibilities of the chief compliance officer

The CCO is an operating officer who is responsible for the monitoring and oversight of the firm's compliance system. This includes:

- establishing or updating policies and procedures for the firm's compliance system, and
- managing the firm's compliance monitoring and reporting according to the policies and procedures

At the firm's discretion, the CCO may also have authority to take supervisory or other action to resolve compliance issues.

The CCO must meet the proficiency requirements set out in Part 3. No other compliance staff have to be registered unless they are also advising or trading. The CCO may set the knowledge and skills necessary or desirable for individuals who report to them.

If a firm is registered in multiple categories, the CCO must meet the most stringent of the proficiency requirements of the firm's categories of registration.

Firms must designate one CCO. However, in large firms, the scale and kind of activities carried out by different operating divisions may warrant the designation of more than one CCO. We will consider

applications, on a case-by-case basis, for different individuals to act as the CCO of a firm's operating divisions.

We will not usually register the same person as CCO of more than one firm unless the firms are affiliated, and the scale and kind of activities carried out make it reasonable for the same person to act as CCO of more than one firm. We will consider applications, on a case-by-case basis, for the CCO of one registered firm to act as the CCO of another registered firm.

Subsection 5.2(c) requires the CCO to report to the UDP any instances of non-compliance with securities legislation that:

- create a reasonable risk of harm to a client or to the market, or
- are part of a pattern of non-compliance

The CCO should report non-compliance to the UDP even if it has been corrected.

Subsection 5.2(d) requires the CCO to submit an annual report to the board of directors.

Part 6 Suspension and revocation of registration – individuals

The requirements for surrendering registration and additional requirements for suspending and revoking registration are found in the securities legislation of each jurisdiction. The guidance for Part 6 relates to requirements under both securities legislation and NI 31-103.

There is no renewal requirement for registration. A registered individual may carry on the activities for which they are registered until their registration is:

- suspended automatically under NI 31-103
- suspended by the regulator under certain circumstances, or
- surrendered by the individual

6.1 If individual ceases to have authority to act for firm

Under section 6.1, if a registered individual ceases to have authority to act on behalf of their sponsoring firm because their working relationship with the firm ends or changes, the individual's registration with the registered firm is suspended until reinstated or revoked under securities legislation. This applies whether the individual or the firm ends the relationship.

If a registered firm terminates its working relationship with a registered individual for any reason, the firm must complete and file a notice of termination on Form 33-109F1 *Notice of Termination of Registered Individuals and Permitted Individuals* (Form 33-109F1) no later than ten days after the effective date of the individual's termination. This includes when an individual resigns, is dismissed or retires.

The firm must file additional information about the individual's termination prescribed in Part 5 of Form 33-109F1 (except where the individual is deceased), no later than 30 days after the date of termination. The regulator uses this information to determine if there are any concerns about the individual's conduct that may be relevant to their ongoing fitness for registration. Under NI 33-109, the firm must provide this information to the individual on request.

Suspension

An individual whose registration is suspended must not carry on the activity they are registered for. The individual otherwise remains a registrant and is subject to the jurisdiction of the regulator. A suspension remains in effect until the regulator reinstates or revokes the individual's registration.

If an individual who is registered in more than one category is suspended in one of the categories, the regulator will consider whether to suspend the individual's registration in other categories or to impose terms and conditions, subject to an opportunity to be heard.

Automatic suspension

An individual's registration will automatically be suspended if:

- they cease to have a working relationship with their sponsoring firm
- the registration of their sponsoring firm is suspended or revoked, or
- they cease to be an approved person of an SRO

An individual must have a sponsoring firm to be registered. If an individual leaves their sponsoring firm for any reason, their registration is automatically suspended. Automatic suspension is effective on the day that an individual no longer has authority to act on behalf of their sponsoring firm.

Individuals do not have an opportunity to be heard by the regulator in the case of any automatic suspension.

Suspension in the public interest

An individual's registration may be suspended if the regulator exercises its power under securities legislation and determines that it is no longer in the public interest for the individual to be registered. The regulator may do this if it has serious concerns about the ongoing fitness of the individual. For example, this may be the case if an individual is charged with a crime, in particular fraud or theft.

Reinstatement

"Reinstatement" means that a suspension on a registration has been lifted. Once reinstated, an individual may resume carrying on the activity they are registered for. If a suspended individual joins a new sponsoring firm, they will have to apply for reinstatement under the process set out in NI 33-109. In certain cases, the reinstatement or transfer to the new firm will be automatic.

Automatic transfers

Subject to certain conditions set out in NI 33-109, an individual's registration may be automatically reinstated if they:

- transfer directly from one sponsoring firm to another registered firm in the same jurisdiction
- join the new sponsoring firm within 90 days of leaving their former sponsoring firm
- seek registration in the same category as the one previously held, and
- complete and file Form 33-109F7 *Reinstatement of Registered Individuals and Permitted Individuals* (Form 33-109F7)

This allows individuals to engage in activities requiring registration from their first day with the new sponsoring firm.

Individuals are not eligible for an automatic reinstatement if they:

- have new information to disclose regarding regulatory, criminal, civil or financial matters as described in Item 9 of Form 33-109F7, or
- as a result of allegations of criminal activity, breach of securities legislation or breach of SRO rules:
    - were dismissed by their former sponsoring firm, or
    - were asked by their former sponsoring firm to resign

In these cases, the individual must apply to have their registration reinstated under NI 33-109 using Form 33-109F4.

6.2 If IIROC approval is revoked or suspended

6.3 If MFDA approval is revoked or suspended

Registered individuals acting on behalf of member firms of an SRO are required to be an approved person of the SRO.

If an SRO suspends or revokes its approval of an individual, the individual's registration in the category requiring SRO approval will be automatically suspended. This automatic suspension of individuals does not apply to mutual fund dealers registered only in Québec.

If an SRO suspends an individual for reasons that do not involve significant regulatory concerns and subsequently reinstates the individual's approval, the individual's registration will usually be reinstated by the regulator as soon as possible.

Revocation

6.6 Revocation of a suspended registration – individual

If an individual's registration has been suspended under Part 6 but not reinstated, it will be automatically revoked on the second anniversary of the suspension.

"Revocation" means that the regulator has terminated the individual's registration. An individual whose registration has been revoked must submit a new application if they want to be registered again.

Surrender or termination of registration

If an individual wants to terminate their registration in one or more of the non-principal jurisdictions where the individual is registered, the individual may apply to surrender their registration at any time by completing Form 33-109F2 *Change or Surrender of Individual Categories* (Form 33-109F2) and having their sponsoring firm file it.

If an individual wants to terminate their registration in their principal jurisdiction, Form 33-109F1 must be filed by the individual's sponsoring firm. Once Form 33-109F1 is filed, the individual's termination of registration will be reflected in all jurisdictions.

Part 7 Categories of registration for firms

The categories of registration for firms have two main purposes:

- to specify the type of business that the firm may conduct, and
- to provide a framework for the requirements the registrant must meet

Firms registered in more than one category

A firm may be required to register in more than one category. For example, a portfolio manager that manages an investment fund must register both as a portfolio manager and as an investment fund manager.

Individual registered in a firm category

An individual can be registered in both a firm and individual category. For example, a sole proprietor who is registered in the firm category of portfolio manager must also be registered in the individual category of advising representative.

7.1 Dealer categories

Underwriting is a subset of dealing activity for specified categories. Investment dealers may underwrite any securities. Exempt market dealers may underwrite securities in limited circumstances.

Exempt market dealer

Under subsection 7.1(2)(d), exempt market dealers may only act as a dealer in the "exempt market". The permitted activities of an exempt market dealer are determined with reference to the prospectus exemptions

in NI 45-106 and include trades to “accredited investors” and purchasers of at least $150,000 of a security and trades to anyone under the offering memorandum exemption.

Exempt market dealers can sell investment funds (whether or not they are prospectus-qualified) under these exemptions without registering as a mutual fund dealer or being a member of the MFDA.

Restricted dealer

The restricted dealer category in subsection 7.1(2)(e) permits specialized dealers that may not qualify under another dealer category to carry on a limited trading business. It is intended to be used only if there is a compelling case for the proposed trading to take place outside the other registration categories.

The regulator will impose terms and conditions that restrict the dealer’s activities. The CSA will co-ordinate terms and conditions for restricted dealers.

7.2 Adviser categories

The registration requirement in section 7.2 applies to advisers who give “specific advice”. Advice is specific when it is tailored to the needs and circumstances of a client or potential client. For example, an adviser who recommends a security to a client is giving specific advice.

Restricted portfolio manager

The restricted portfolio manager category in subsection 7.2(2)(b) permits individuals or firms to advise in specific securities, classes of securities or securities of a class of issuers.

The regulator will impose terms and conditions on a restricted portfolio manager’s registration that limit the manager’s activities. For example, a restricted portfolio manager might be limited to advising in respect of a specific sector, such as securities of oil and gas issuers.

7.3 Investment fund manager category

Investment fund managers direct the business, operations or affairs of an investment fund. They organize the fund and are responsible for its management and administration. If an entity is uncertain about whether it must register as an investment fund manager, it should consider whether the fund is an “investment fund” for the purposes of securities legislation. See section 1.2 of the Companion Policy to NI 81-106 for guidance on the general nature of investment funds.

An investment fund manager may:

- advertise to the general public a fund it manages without being registered as an adviser, and
- promote the fund to registered dealers without being registered as a dealer

If an investment fund manager acts as portfolio manager for a fund it manages, it should consider whether it may have to be registered as an adviser. If it distributes units of the fund directly to investors, it should consider whether it may have to be registered as a dealer.

In most fund structures, the investment fund manager is a separate legal entity from the fund itself. However, in situations where the board of directors or the trustee(s) of an investment fund direct the business, operations or affairs of the investment fund, the fund itself may be required to register in the investment fund manager category. To address the investor protection concerns that may arise from the investment fund manager and the fund being the same legal entity, and the practical issues of applying the ongoing requirements of a registrant on the fund, terms and conditions may be imposed.

An investment fund manager may delegate or outsource certain functions to other service providers. However, the investment fund manager is responsible for these functions and must supervise the service provider. See Part 11 of this Companion Policy for more guidance on outsourcing.

Investment fund complexes or groups with more than one investment fund manager

Some investment fund complexes or groups may have more than one entity within the fund complex that can be considered as directing the business, operations or affairs of an investment fund. For example, structures where investment funds are organized as limited partnerships may have multiple entities within the fund complex that could require investment fund manager registration. Although the investment fund manager functions are often delegated to one entity within the fund complex, there may be more than one entity in the group subject to investment fund manager registration, absent an exemption from registration.

We will consider exemption applications on a case-by-case basis to allow only one investment fund manager within the fund complex to be registered. We will typically consider the following factors when reviewing such applications:

- there is a management agreement in place delegating all or substantially all of the investment fund management function from the investment fund manager seeking the relief to an affiliate (or to an entity whose mind and management is the same) that is registered as an investment fund manager
- the majority of the investment fund management functions are performed by the registered affiliate (or entity whose mind and management is the same)
- the investment fund manager seeking the relief and the registered affiliate have directors and officers in common

Part 8 Exemptions from the requirement to register

NI 31-103 provides several exemptions from the registration requirement. There may be additional exemptions in securities legislation. If a firm is exempt from registration, the individuals acting on its behalf are also exempt from registration.

Division 1 Exemptions from dealer and underwriter registration

We provide no specific guidance for the following exemptions because there is guidance on them in the Companion Policy to NI 45-106:

- 8.12 *Mortgages*
- 8.17 *Reinvestment plan*
- 8.20 *Exchange contract – Alberta, British Columbia, New Brunswick and Saskatchewan*

8.5 Trades through or to a registered dealer

Section 8.5 provides an exemption from the dealer registration requirement for trades made

- solely through an agent who is an appropriately registered dealer, or
- to an appropriately registered dealer that is purchasing for that dealer's account

This exemption is available in respect of a trade made by a person through a registered dealer so long as there is no intervening trading activity by that person for which that person is not appropriately registered or otherwise exempt from the dealer registration requirement. This would typically be the case where an individual trades through their account with an investment dealer or a company issues its own securities through an investment dealer.

This exemption is, however, not available where a person or company conducts trading activities for which they are not registered or exempt from registration and then directs the execution of that trade through a registered dealer. Such trading activities could involve directly contacting persons in the local jurisdiction to solicit their purchase of securities or marketing the securities in the local jurisdiction. For example:

- if an individual acts in furtherance of a sale of securities by soliciting potential purchasers of securities (sometimes referred to as a finder) and then the sale to the purchaser is executed through a registered dealer, the individual would not qualify for this exemption.

- if a person who is registered in the local jurisdiction, or operates under an exemption for their trading activities in that local jurisdiction, proposes to rely on this exemption for their trading activities in another jurisdiction of Canada, the person would need to utilize an appropriately registered dealer to solicit purchases in the other jurisdiction, since that person could not interact directly with purchasers in the other jurisdiction (without being appropriately registered or exempt from registration in that other jurisdiction).

Cross-border transactions ("jitneys")

All trading activity in reliance upon this exemption that occurs within the local jurisdiction should be done through or to a registered dealer in that jurisdiction. On that basis, the execution of a trade through or to an appropriately registered dealer by a dealer located in another jurisdiction would qualify under this exemption. However, if the dealer in the other jurisdiction engages in other trading activities in the local jurisdiction in connection with the transaction, the trade is no longer a trade made solely through or to a registered dealer and this exemption would not be available.

A trade is not considered to be solely through a registered dealer if the dealer in the other jurisdiction interacts directly with the purchaser in the local jurisdiction. For example, if a dealer in the United States that is not registered in Alberta contacts a potential purchaser in Alberta to solicit the purchase of securities, this trade does not qualify for this exemption. The dealer in the United States must instead solicit the purchase by contacting a dealer registered in Alberta, and have that dealer contact potential purchasers in Alberta.

Plan administrators

A plan administrator can rely on this exemption to place sell orders with dealers in respect of shares of issuers held by plan participants. Section 8.16 [*Plan administrator*] covers the activity of the plan administrator receiving sell orders from plan participants.

8.6 Investment fund trades by adviser to managed account

Registered advisers often create and use investment funds as a way to efficiently invest their clients' money. In issuing units of those funds to managed account clients, they are in the business of trading in securities. Under the exemption in section 8.6, a registered adviser does not have to register as a dealer does for a trade in a security of an investment fund if they:

- act as the fund's adviser and investment fund manager, and

- distribute units of the fund only into their clients' managed accounts

The exemption is also available to those who qualify for the international adviser exemption under section 8.26.

Subsection 8.6(2) limits the availability of this exemption to legitimate managed accounts. We do not intend for the exemption to be used to distribute the adviser's investment funds on a retail basis.

8.18 International dealer

General principle

This exemption allows international dealers to provide limited services to Canadian permitted clients,as defined in section 8.18, without having to register in Canada. International dealers that seek wider access to Canadian investors must register in an appropriate category. Both the terms *Canadian permitted client* and *permitted client* are used in this section. As mentioned above, the term Canadian permitted client is defined in section 8.18. The term permitted client is defined in section 1.1.

Notice requirement

If a firm is relying on the exemption in more than one jurisdiction, it must provide an initial notice by filing a Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service* (Form 31-103F2) with the regulator in each jurisdiction where it relies on the exemption. If there is any change to the information in the firm's Form 31-103F2, it must update it by filing a replacement Form 31-103F2 with them.

So long as the firm continues to rely on the exemption, it must file an annual notice with each regulator. Subsection 8.18(5) does not prescribe a form of annual notice. An email or letter will therefore be acceptable.

In Ontario, compliance with the filing and fee payment requirements applicable to an unregistered exempt international dealer under Ontario Securities Commission Rule 13-502 *Fees* satisfies the annual notification requirement in subsection (5).

8.19 Self-directed registered education savings plan

We consider the creation of a self-directed registered education savings plan, as defined in section 8.19, to be a trade in a security, whether or not the assets held in the plan are securities. This is because the definition of "security" in securities legislation of most jurisdictions includes "any document constituting evidence of an interest in a scholarship or educational plan or trust".

Section 8.19 provides an exemption from the dealer registration requirement for the trade when the plan is created but only under the conditions described in subsection 8.19(2).

Division 2 Exemptions from adviser registration

8.25 Advising generally

Section 8.25 contains an exemption from the requirement to register as an adviser if the advice is not tailored to the needs of the recipient.

In general, we would not consider advice about specific securities to be tailored to the needs of the recipient if it:

- is a general discussion of the merits and risks of the security
- is delivered through investment newsletters, articles in general circulation newspapers or magazines, websites, e-mail, Internet chat rooms, bulletin boards, television or radio, and
- does not claim to be tailored to the needs and circumstances of any recipient

This type of general advice can also be given at conferences. However, if a purpose of the conference is to solicit the audience and generate specific trades in specific securities, we may consider the advice to be tailored or we may consider the individual or firm giving the advice to be engaged in trading activity.

Under subsection 8.25(3), if an individual or firm relying on the exemption has a financial or other interest in the securities they recommend, they must disclose the interest to the recipient when they make the recommendation.

8.26 International adviser

This exemption allows international advisers to provide limited services to Canadian permitted clients, as defined in section 8.26, without having to register in Canada. International advisers that seek wider access to Canadian investors must register in an appropriate category. Unlike the exemption for international dealers in section 8.18, this exemption is not available where the client is registered under securities legislation of Canada as an adviser or dealer.

Incidental advice on Canadian securities

An international adviser relying on the exemption in section 8.26 may advise in Canada on foreign securities without having to register. It may also advise in Canada on securities of Canadian issuers, but only to the extent that the advice is incidental to its acting as an adviser for foreign securities.

However, this is not an exception or a "carve-out" that allows some portion of a permitted client's portfolio to be made up of Canadian securities chosen by the international adviser without restriction. Any advice with respect to Canadian securities must be directly related to the activity of advising on foreign securities. Permissible incidental advice would include, for example:

- an international adviser, when advising on a portfolio with a particular investment objective, such as gold mining companies, could advise on securities of a Canadian gold mining company within that portfolio, provided that the portfolio is otherwise made up of foreign securities

- an international adviser, having a mandate to advise on equities traded on European exchanges could advise with respect to the securities of a Canadian corporation traded on a European exchange, to the extent that Canadian corporation forms part of the mandate

Revenue derived in Canada

An international adviser is only permitted to undertake a prescribed amount of business in Canada. In making the calculation required under paragraph 8.26(4)(d), it is necessary to include all revenues derived from portfolio management activities in Canada, which would include any sub-adviser arrangements. However, the calculation of aggregate consolidated gross revenue derived in Canada does not include the gross revenue of affiliates that are registered in a jurisdiction of Canada.

An international adviser is not required to monitor Canadian revenue on an ongoing basis. Eligibility for the exemption is assessed with reference to revenues as of the end of the adviser's last financial year. The 10% threshold in paragraph 8.26(4)(d) is determined by looking back at the revenue of the firm and its affiliates "during its most recently completed financial year".

Notice requirement

If a firm is relying on the exemption in more than one jurisdiction, it must provide an initial notice by filing a Form 31-103F2 with the regulator in each jurisdiction where it relies on the exemption. If there is any change to the information in the firm's Form 31-103F2, it must update it by filing a replacement Form 31-103F2 with them.

So long as the firm continues to rely on the exemption, it must file an annual notice with each regulator. Subsection 8.26(5) does not prescribe a form of annual notice. An email or letter will therefore be acceptable.

In Ontario, compliance with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees* satisfies the annual notification requirement in subsection (5).

Division 3 Exemptions from investment fund manager registration

8.28 Capital accumulation plan exemption

Section 8.28 provides an exemption from the investment fund manager registration requirement to an individual or firm that administers a capital accumulation plan. If an investment fund manager is also required to register as a dealer or adviser, this exemption only applies to their activities as an investment fund manager.

Division 4 Mobility exemption – firms

8.30 Client mobility exemption – firms

The mobility exemption in section 8.30 allows registered firms to continue dealing with and advising clients who move to another jurisdiction, without registering in that other jurisdiction. Section 2.2 *Client mobility exemption – individuals* contains a similar exemption for registered individuals.

The exemption becomes available when the client (not the registrant) moves to another jurisdiction. A registered firm may deal with up to 10 "eligible" clients in each other jurisdiction. Each of the client, their spouse and any children are an eligible client.

A firm may only rely on the exemption if:

- it is registered in its principal jurisdiction
- it only acts as a dealer, underwriter or adviser in the other jurisdiction as permitted under its registration in its principal jurisdiction
- the individual acting on its behalf is eligible for the exemption in section 2.2
- it complies with Parts 13 [*Dealing with clients – individuals and firms*] and 14 [*Handling client accounts – firms*], and
- it acts fairly, honestly and in good faith in its dealings with the eligible client

Firm's responsibilities for individuals relying on the exemption

In order for a registered individual to rely on the exemption in section 2.2, their sponsoring firm must disclose to the eligible client that the individual and if applicable, the firm, are exempt from registration in the other jurisdiction and are not subject to the requirements of securities legislation in that jurisdiction.

As soon as possible after an individual first relies on the exemption in section 2.2, their sponsoring firm must complete and file Form 31-103F3 in the other jurisdiction.

The registered firm must have appropriate policies and procedures for supervising individuals who rely on a mobility exemption. Registered firms must also keep appropriate records to demonstrate they are complying with the conditions of the mobility exemption.

See the guidance in section 2.2 of this Companion Policy on the client mobility exemption available to individuals.

Part 9 Membership in a self-regulatory organization

9.3 Exemptions from certain requirements for IIROC members
9.4 Exemptions from certain requirements for MFDA members

NI 31-103 now has two distinct sections, section 9.3 and 9.4, which distinguish the exemptions which are available on the basis of whether or not the member of IIROC or the MFDA is registered in another category. This clarifies our intent with respect to the exemptions for SRO members and recognizes that IIROC and the MFDA have rules in these areas.

Sections 9.3 and 9.4 contain exemptions from certain requirements for investment dealers that are IIROC members, for mutual fund dealers that are MFDA members and in Québec, for mutual fund dealers to the extent equivalent requirements are applicable under the regulations in Québec.

However, if an SRO member is registered in another category, these sections do not exempt them from their obligations as a registrant in that category. For example, if a firm is registered as an investment fund

manager and as an investment dealer with IIROC, section 9.3 does not exempt them from their obligations as an investment fund manager under NI 31-103.

However SRO members that are registered in multiple categories may use the forms prescribed by the SROs, on certain conditions. See sections 12.1, 12.12 and 12.14 for requirements on calculating working capital and the delivery of working capital calculations for SRO members that are registered in multiple categories.

We expect registered firms that are members of IIROC or the MFDA to comply with the by-laws, rules, regulations and policies of IIROC or the MFDA, as applicable (SRO provisions). These firms cannot rely on the exemptions in Part 9 unless they are complying with the corresponding SRO provisions specified in NI 31-103. We regard compliance with IIROC or MFDA procedures, interpretations, notices, bulletins and practices as relevant to compliance with the applicable SRO provisions.

For these purposes, a firm that has an exemption from an SRO provision and complies with the terms of that exemption would be considered to have complied with that SRO provision.

Part 10 Suspension and revocation of registration – firms

The requirements for surrendering registration and additional requirements for suspending and revoking registration are found in the securities legislation of each jurisdiction. The guidance for Part 10 relates to requirements under both securities legislation and NI 31-103.

There is no renewal requirement for registration but firms must pay fees every year to maintain their registration and the registration of individuals acting on their behalf. A registered firm may carry on the activities for which it is registered until its registration is:

- suspended automatically under NI 31-103
- suspended by the regulator under certain circumstances, or
- surrendered by the firm

Division 1 When a firm's registration is suspended

Suspension

A firm whose registration has been suspended must not carry on the activity it is registered for. The firm otherwise remains a registrant and is subject to the jurisdiction of the regulator. A suspension remains in effect until the regulator reinstates or revokes the firm's registration.

If a firm that is registered in more than one category is suspended in one of the categories, the regulator will consider whether to suspend the firm's registration in other categories or to impose terms and conditions, subject to an opportunity to be heard.

Automatic suspension

A firm's registration will automatically be suspended if:

- it fails to pay its annual fees within 30 days of the due date
- it ceases to be a member of IIROC, or
- except in Québec, it ceases to be a member of the MFDA

Firms do not have an opportunity to be heard by the regulator in the case of any automatic suspension.

10.1 Failure to pay fees

Under section 10.1, a firm's registration will be automatically suspended if it has not paid its annual fees within 30 days of the due date.

10.2 If IIROC membership is revoked or suspended

Under section 10.2, if IIROC suspends or revokes a firm's membership, the firm's registration as an investment dealer is suspended until reinstated or revoked.

10.3 If MFDA membership is revoked or suspended

Under section 10.3, if the MFDA suspends or revokes a firm's membership, the firm's registration as a mutual fund dealer is suspended until reinstated or revoked. Section 10.3 does not apply in Québec.

Suspension in the public interest

A firm's registration may be suspended if the regulator exercises its power under securities legislation and determines that it is no longer in the public interest for the firm to be registered. The regulator may do this if it has serious concerns about the ongoing fitness of the firm or any of its registered individuals. For example, this may be the case if a firm or one or more of its registered or permitted individuals is charged with a crime, in particular fraud or theft.

Reinstatement

"Reinstatement" means that a suspension on a registration has been lifted. Once reinstated, a firm may resume carrying on the activity it is registered for.

Division 2 Revoking a firm's registration

Revocation

10.5 Revocation of a suspended registration – firm
10.6 Exception for firms involved in a hearing

Under sections 10.5 and 10.6, if a firm's registration has been suspended under Part 10 and has not been reinstated, it is revoked on the second anniversary of the suspension, except if a hearing or proceeding concerning the suspended registrant has commenced. In this case the registration remains suspended.

"Revocation" means that the regulator has terminated the firm's registration. A firm whose registration has been revoked must submit a new application if it wants to be registered again.

Surrender

A firm may apply to surrender its registration in one or more categories at any time. There is no prescribed form for an application to surrender. A firm should file an application to surrender registration with its principal regulator. If Ontario is a non-principal jurisdiction, it should also file the application with the regulator in Ontario. See the Companion Policy to Multilateral Instrument 11-102 *Passport System* for more details on filing an application to surrender.

Before the regulator accepts a firm's application to surrender registration, the firm must provide the regulator with evidence that the firm's clients have been dealt with appropriately. This evidence does not have to be provided when a registered individual applies to surrender registration. This is because the sponsoring firm will continue to be responsible for meeting obligations to clients who may have been served by the individual.

The regulator does not have to accept a firm's application to surrender its registration. Instead, the regulator can act in the public interest by suspending, or imposing terms and conditions on, the firm's registration.

When considering a registered firm's application to surrender its registration, the regulator typically considers the firm's actions, the completeness of the application and the supporting documentation.

The firm's actions

The regulator may consider whether the firm:

- has stopped carrying on activity requiring registration
- proposes an effective date to stop carrying on activity requiring registration that is within six months of the date of the application to surrender, and
- has paid any outstanding fees and submitted any outstanding filings at the time of filing the application to surrender

Completeness of the application

Among other things, the regulator may look for:

- the firm's reasons for ceasing to carry on activity requiring registration
- satisfactory evidence that the firm has given all of its clients reasonable notice of its intention to stop carrying on activity requiring registration, including an explanation of how it will affect them in practical terms, and
- satisfactory evidence that the firm has given appropriate notice to the SRO, if applicable

Supporting documentation

The regulator may look for:

- evidence that the firm has resolved all outstanding client complaints, settled all litigation, satisfied all judgments or made reasonable arrangements to deal with and fund any payments relating to them, and any subsequent client complaints, settlements or liabilities
- confirmation that all money or securities owed to clients has been returned or transferred to another registrant, where possible, according to client instructions
- up-to-date audited financial statements with an auditor's comfort letter
- evidence that the firm has satisfied any SRO requirements for withdrawing membership, and
- an officer's or partner's certificate supporting these documents

Part 11 Internal controls and systems

General business practices – outsourcing

Registered firms are responsible and accountable for all functions that they outsource to a service provider. Firms should have a written, legally binding contract that includes the expectations of the parties to the outsourcing arrangement.

Registered firms should follow prudent business practices and conduct a due diligence analysis of prospective third-party service providers. This includes third-party service providers that are affiliates of the firm. Due diligence should include an assessment of the service provider's reputation, financial stability, relevant internal controls and ability to deliver the services.

Firms should also:

- ensure that third-party service providers have adequate safeguards for keeping information confidential and, where appropriate, disaster recovery capabilities
- conduct ongoing reviews of the quality of outsourced services

- develop and test a business continuity plan to minimize disruption to the firm's business and its clients if the third-party service provider does not deliver its services satisfactorily, and

- note that other legal requirements, such as privacy laws, may apply when entering into outsourcing arrangements

The regulator, the registered firm and the firm's auditors should have the same access to the work product of a third-party service provider as they would if the firm itself performed the activities. Firms should ensure this access is provided and include a provision requiring it in the contract with the service provider, if necessary.

Division 1 Compliance

11.1 Compliance system

General principles

Section 11.1 requires registered firms to establish, maintain and apply policies and procedures that establish a system of controls and supervision (a compliance system) that:

- provides assurance that the firm and individuals acting on its behalf comply with securities legislation, and

- manages the risks associated with the firm's business in accordance with prudent business practices

Operating an effective compliance system is essential to a registered firm's continuing fitness for registration. It provides reasonable assurance that the firm is meeting, and will continue to meet, all requirements of applicable securities laws and SRO rules and is managing risk in accordance with prudent business practices. A compliance system should include internal controls and monitoring systems that are reasonably likely to identify non-compliance at an early stage and supervisory systems that allow the firm to correct non-compliant conduct in a timely manner.

The responsibilities of the UDP are set out in section 5.1 and those of the CCO in section 5.2 . However, compliance is not only a responsibility of a specific individual or a compliance department of the firm, but rather is a firm-wide responsibility and an integral part of the firm's activities. Everyone in the firm should understand the standards of conduct for their role. This includes the board of directors, partners, management, employees and agents, whether or not they are registered.

Having a UDP and CCO, and in larger firms, a compliance group and other supervisory staff, does not relieve anyone else in the firm of the obligation to report and act on compliance issues. A compliance system should identify those who will act as alternates in the absence of the UDP or CCO.

Elements of an effective compliance system

While policies and procedures are essential, they do not make an acceptable compliance system on their own. An effective compliance system also includes internal controls, day to day and systemic monitoring, and supervision elements.

Internal controls

Internal controls are an important part of a firm's compliance system. They should mitigate risk and protect firm and client assets. They should be designed to assist firms in monitoring compliance with securities legislation and managing the risks that affect their business, including risks that may relate to:

- safeguarding of client and firm assets

- accuracy of books and records

- trading, including personal and proprietary trading

- conflicts of interest

- money laundering
- business interruption
- hedging strategies
- marketing and sales practices, and
- the firm's overall financial viability

Monitoring and supervision

Monitoring and supervision are essential elements of a firm's compliance system. They consist of day to day monitoring and supervision, and overall systemic monitoring.

(a) Day to day monitoring and supervision

In our view, an effective monitoring and supervision system includes:

- monitoring to identify specific cases of non-compliance or internal control weaknesses that might lead to non-compliance
- referring non-compliance or internal control weaknesses to management or other individuals with authority to take supervisory action to correct them
- taking supervisory action to correct them, and
- minimizing the compliance risk in key areas of a firm's operations

In our view, effective day to day monitoring should include, among other things

- approving new account documents
- reviewing and, in some cases, approving transactions
- approving marketing materials, and
- preventing inappropriate use or disclosure of non-public information.

Firms can use a risk-based approach to monitoring, such as reviewing an appropriate sample of transactions.

The firm's management is responsible for the supervisory element of correcting non-compliance or internal control weaknesses. However, at a firm's discretion, its CCO may be given supervisory authority, but this is not a necessary component of the CCO's role.

Anyone who supervises registered individuals has a responsibility on behalf of the firm to take all reasonable measures to ensure that each of these individuals:

- deals fairly, honestly and in good faith with their clients
- complies with securities legislation
- complies with the firm's policies and procedures, and
- maintains an appropriate level of proficiency

(b) Systemic monitoring

Systemic monitoring involves assessing, and advising and reporting on the effectiveness of the firm's compliance system. This includes ensuring that:

- the firm's day to day supervision is reasonably effective in identifying and promptly correcting cases of non-compliance and internal control weaknesses
- policies and procedures are enforced and kept up to date, and
- everyone at the firm generally understands and complies with the policies and procedures, and with securities legislation

Specific elements

More specific elements of an effective compliance system include:

(a) Visible commitment

Senior management and the board of directors or partners should demonstrate a visible commitment to compliance.

(b) Sufficient resources and training

The firm should have sufficient resources to operate an effective compliance system. Qualified individuals (including anyone acting as an alternate during absences) should have the responsibility and authority to monitor the firm's compliance, identify any instances of non-compliance and take supervisory action to correct them.

The firm should provide training to ensure that everyone at the firm understands the standards of conduct and their role in the compliance system, including ongoing communication and training on changes in regulatory requirements or the firm's policies and procedures.

(c) Detailed policies and procedures

The firm should have detailed written policies and procedures that:

- identify the internal controls the firm will use to ensure compliance with legislation and manage risk
- set out the firm's standards of conduct for compliance with securities and other applicable legislation and the systems for monitoring and enforcing compliance with those standards
- clearly outline who is expected to do what, when and how
- are readily accessible by everyone who is expected to know and follow them
- are updated when regulatory requirements and the firm's business practices change, and
- take into consideration the firm's obligation under securities legislation to deal fairly, honestly and in good faith with its clients

(d) Detailed records

The firm should keep records of activities conducted to identify compliance deficiencies and the action taken to correct them.

Setting up a compliance system

It is up to each registered firm to determine the most appropriate compliance system for its operations. Registered firms should consider the size and scope of their operations, including products, types of clients or counterparties, risks and compensating controls, and any other relevant factors.

For example, a large registered firm with diverse operations may require a large team of compliance professionals with several divisional heads of compliance reporting to a CCO dedicated entirely to a compliance role.

All firms must have policies, procedures and systems to demonstrate compliance. However, some of the elements noted above may be unnecessary or impractical for smaller registered firms.

We encourage firms to meet or exceed industry best practices in complying with regulatory requirements.

11.2 Designating an ultimate designated person

Under subsection 11.2(1), registered firms must designate an individual to be the UDP. Firms should ensure that the individual understands and is able to perform the obligations of a UDP under section 5.1.The UDP must be:

- the chief executive officer (CEO) of the registered firm or the individual acting in a similar capacity, if the firm does not have a CEO. The person acting in a similar capacity to a CEO is the most senior decision maker in the firm, who might have the title of managing partner or president, for example
- the sole proprietor of the registered firm, or
- the officer in charge of a division of the firm that carries on all of the registerable activity if the firm also has significant other business activities, such as insurance, conducted in different divisions. This is not an option if the core business of the firm is trading or advising in securities and it only has some other minor operations conducted in other divisions. In this case, the UDP must be the CEO or equivalent.

To designate someone else as the UDP requires an exemptive relief order. Given that the intention of section 11.2 is to ensure that responsibility for its compliance system rests at the very top of a firm, we will only grant relief in rare cases.

We note that in larger organizations, the UDP is sometimes supported by an officer who has a compliance oversight role and title within the organization and who is more senior than the CCO. We have no objection to such arrangements, but it must be understood that they can in no way diminish the UDP's regulatory responsibilities.

If the person designated as the UDP no longer meets these requirements, and the registered firm is unable to designate another UDP, the firm should promptly advise the regulator of the actions it is taking to designate a new UDP who meets these requirements.

11.3 Designating a chief compliance officer

Under subsection 11.3(1), registered firms must designate an individual to be the CCO. Firms should ensure that the individual understands and is able to perform the obligations of a CCO under section 5.2.

The CCO must meet the applicable proficiency requirements in Part 3 and be:

- an officer or partner of the registered firm, or
- the sole proprietor of the registered firm

If the CCO no longer meets any of the above conditions and the registered firm is unable to designate another CCO, the firm should promptly advise the regulator of the actions it is taking to designate an appropriate CCO.

Division 2 Books and records

Under securities legislation, the regulator may access, examine and take copies of a registered firm's records. The regulator may also conduct regular and unscheduled compliance reviews of registered firms.

11.5 General requirements for records

Under subsection 11.5(1), registered firms must maintain records to accurately record their business activities, financial affairs and client transactions, and demonstrate compliance with securities legislation.

The following discussion provides guidance for the various elements of the records described in subsection 11.5(2).

Financial affairs

The records required under subsections 11.5(2)(a), (b) and (c) are records firms must maintain to help ensure they are able to prepare and file financial information, determine their capital position, including the calculation of excess working capital, and generally demonstrate compliance with the capital and insurance requirements.

Client transactions

The records required under subsections 11.5(2)(g), (h), (i), (l) and (n) are records firms must maintain to accurately and fully document transactions entered into on behalf of a client. We expect firms to maintain notes of communications that could have an impact on the client's account or the client's relationship with the firm. These communications include

- oral communications
- all e-mail, regular mail, fax and other written communications

While we do not expect registered firms to save every voicemail or e-mail, or to record all telephone conversations with clients, we do expect that registered firms maintain records of all communications relating to orders received from their clients.

The records required under subsection 11.5(2)(g) should document buy and sell transactions, referrals, margin transactions and any other activities relating to a client's account. They include records of all actions leading to trade execution, settlement and clearance, such as trades on exchanges, alternative trading systems, over-the-counter markets, debt markets, and distributions and trades in the prospectus-exempt market.

Examples of these records are:

- trade confirmation statements
- summary information about account activity
- communications between a registrant and its client about particular transactions, and
- records of transactions resulting from securities a client holds, such as dividends or interest paid, or dividend reinvestment program activity

Subsection 11.5(2)(l) requires firms to maintain records that demonstrate compliance with the know your client obligations in section 13.2 and the suitability obligations in section 13.3. This includes records for unsuitable trades in subsection 13.3(2).

Client relationship

The records required under subsection 11.5(2)(k) and (m) should document information about a registered firm's relationship with its client and relationships that any representatives have with that client.

These records include:

- communication between the firm and its clients, such as disclosure provided to clients and agreements between the registrant and its clients

- account opening information
- change of status information provided by the client
- disclosure and other relationship information provided by the firm
- margin account agreements
- communications regarding a complaint made by the client
- actions taken by the firm regarding a complaint
- communications that do not relate to a particular transaction, and
- conflicts records

Each record required under subsection 11.5(2)(k) should clearly indicate the name of the accountholder and the account the record refers to. A record should include information only about the accounts of the same accountholder or group. For example, registrants should have separate records for an individual's personal accounts and for accounts of a legal entity that the individual owns or jointly holds with another party.

Where applicable, the financial details should note whether the information is for an individual or a family. This includes spousal income and net worth. The financial details for accounts of a legal entity should note whether the information refers to the entity or to the owner(s) of the entity.

If the registered firm permits clients to complete new account forms themselves, the forms should use language that is clear and avoids terminology that may be unfamiliar to unsophisticated clients.

Internal controls

The records required under subsection 11.5(2)(d), (e), (f), (j) and (o) are records firms must maintain to support the internal controls and supervision components of their compliance system.

11.6 Form, accessibility and retention of records

Third party access to records

Subsection 11.6(1)(b) requires registered firms to keep their records in a safe location. This includes ensuring that no one has unauthorized access to information, particularly confidential client information. Registered firms should be particularly vigilant if they maintain books and records in a location that may be accessible by a third party. In this case, the firm should have a confidentiality agreement with the third party.

Division 3 Certain business transactions

11.8 Tied selling

Section 11.8 prohibits an individual or firm from engaging in abusive sales practices such as selling a security on the condition that the client purchase another product or service from the registrant or one of its affiliates. These types of practices are known as "tied selling". In our view, this section would be contravened if, for example, a financial institution agreed to lend money to a client only if the client acquired securities of mutual funds sponsored by the financial institution.

However, section 11.8 is not intended to prohibit relationship pricing or other beneficial selling arrangements similar to relationship pricing. Relationship pricing refers to the practice of industry participants offering financial incentives or advantages to certain clients.

11.9 Registrant acquiring a registered firm's securities or assets

Under section 11.9, registrants must give the regulator notice if they propose to purchase securities or assets of a registered firm or the parent of a registered firm. For purposes of this section, a registered firm's

book of business would be a substantial part of the assets of the registered firm. This notice gives the regulator an opportunity to consider ownership issues that may affect a firm's fitness for registration.

Subsection 11.9(4) does not apply in British Columbia. However, the regulator in British Columbia may exercise discretion under section 36 or 161 of the BC *Securities Act* (BCSA) to impose conditions, restrictions or requirements on the registrant's registration or to suspend or revoke the registration if it decides that an acquisition would affect the registrant's fitness for registration or be prejudicial to the public interest. In these circumstances, the registrant would be entitled to an opportunity to be heard, except if the regulator issues a temporary order under section 161 of the BCSA.

11.10 Registered firm whose securities are acquired

Under section 11.10, registered firms must notify the regulator if they know or have reason to believe that any individual or firm is about to purchase more than 10% of the voting securities of the firm or the firm's parent. This notice gives the regulator an opportunity to consider ownership issues that may affect a firm's fitness for registration. We expect this notice to be sent as soon as the registered firm knows or has reason to believe such a transaction is going to take place.

We expect any individual or firm that buys assets of a registered firm and is not already a registrant will have to apply for registration. We will assess their fitness for registration when they apply.

Subsection 11.10(5) does not apply in British Columbia. However, the regulator in British Columbia may exercise discretion under section 36 or 161 of the BCSA to impose conditions, restrictions or requirements on the registrant's registration or to suspend or revoke the registration if it decides that an acquisition would affect the registrant's fitness for registration or be prejudicial to the public interest. In these circumstances, the registrant would be entitled to an opportunity to be heard, except if the regulator issues a temporary order under section 161 of the BCSA.

Part 12 Financial condition

Division 1 Working capital

12.1 Capital requirements

Frequency of working capital calculations

Section 12.1 requires registered firms to notify the regulator as soon as possible if their excess working capital is less than zero.

Registered firms should know their working capital position at all times. This may require a firm to calculate its working capital every day. The frequency of working capital calculations depends on many factors, including the size of the firm, the nature of its business and the stability of the components of its working capital. For example, it may be sufficient for a sole proprietor firm with a dedicated and stable source of working capital to do the calculation on a monthly basis.

Form 31-103F1 - *Calculation of excess working capital*

Application of NI 52-107 Acceptable Accounting Principles and Auditing Standards

Form 31-103F1 – *Calculation of Excess Working Capital* (Form 31-103F1) must be prepared using the accounting principles used to prepare their financial statements in accordance with National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107). Refer to section 12.10 of this Companion Policy and Companion Policy 52-107 *Acceptable Accounting Principles and Auditing Standards* (52-107CP) for further guidance on audited financial statements.

IIROC and MFDA member firms that are also registered in another category

IIROC and MFDA member firms that are also registered in a category that does not require SRO membership must still comply with the financial filing requirements in Part 12 [*Financial condition*], even if they are relying on the exemptions in sections 9.3 and 9.4. Provided certain conditions are met, SRO

members that are registered in other categories may be permitted to calculate their working capital in accordance with the SRO forms and file the SRO forms instead of Form 31-103F1 .

For example, if the SRO firm is also an investment fund manager, it will need to report any net asset value (NAV) adjustments quarterly in order to comply with the investment fund manager requirements, notwithstanding that its SRO has no such requirements. However, they may be permitted to calculate their working capital in accordance with the SRO forms and file the SRO forms instead of Form 31-103F1. See sections 12.1, 12.12 and 12.14 for the requirements on delivery of working capital calculations for SRO members that are registered in multiple categories.

Working capital requirements are not cumulative

The working capital requirements for registered firms set out in section 12.1 are not cumulative. If a firm is registered in more than one category, it must meet the highest capital requirement of its categories of registration, except for those investment fund managers who are also registered as portfolio managers and meet the requirements of the exemption in section 8.6. These investment fund managers need only meet the lower capital requirement for portfolio managers.

If a registrant becomes insolvent or declares bankruptcy

The regulator will review the circumstances of a registrant's insolvency or bankruptcy on a case-by-case basis. If the regulator has concerns, it may impose terms and conditions on the registrant's registration, such as close supervision and delivering progress reports to the regulator, or it may suspend the registrant's registration.

12.2 Subordination agreements

Long-term related party debt must be deducted from a firm's working capital on Form 31-103F1, unless the firm and the lender have executed a subordination agreement in the form set out in Appendix B of NI 31-103 and delivered a copy of that agreement with the regulator.

Division 2 Insurance

Insurance coverage limits

Registrants must maintain bonding or insurance that provides for a "double aggregate limit" or a "full reinstatement of coverage" (also known as "no aggregate limit"). The insurance provisions state that the registered firm must "maintain" bonding or insurance in the amounts specified. We do not expect that the calculation would differ materially from day to day. If there is a material change in a firm's circumstances, it should consider the potential impact on its ability to meet its insurance requirements.

Most insurers offer aggregate limit policies that contain limits based on a single loss and on the number or value of losses that occur during the coverage period.

Double aggregate limit policies have a specified limit for each claim. The total amount that may be claimed during the coverage period is twice that limit. For example, if an adviser maintains a financial institution bond of $50,000 for each clause with a double aggregate limit, the adviser's coverage is $50,000 for any one claim and $100,000 for all claims during the coverage period.

Full reinstatement of coverage policies and no aggregate limit policies have a specified limit for each claim but no limit on the number of claims or losses during the coverage period. For example, if an adviser maintains a financial institution bond of $50,000 for each clause with a full reinstatement of coverage provision, the adviser's maximum coverage is $50,000 for any one claim, but there is no limit on the total amount that can be claimed under the bond during the coverage period.

Insurance requirements are not cumulative

Insurance requirements are not cumulative. For example, a firm registered in the categories of portfolio manager and investment fund manager need only maintain insurance coverage for the higher of the amounts required for each registration category. Despite being registered as both a portfolio manager and

an investment fund manager, when calculating the investment fund manager insurance requirement under subsection 12.5(2), an investment fund manager should only include the total assets under management of its own investment funds. It is only with respect to its own funds that the registrant is acting as an investment fund manager.

12.4 Insurance – adviser

The insurance requirements for advisers depend in part on whether the adviser holds or has access to client assets.

An adviser will be considered to hold or have access to client assets if they do any of the following:

- hold client securities or cash for any period
- accept funds from clients, for example, a cheque made payable to the registrant
- accept client money from a custodian, for example, client money that is deposited in the registrant's bank or trust accounts before the registrant issues a cheque to the client
- have the ability to gain access to client assets
- have, in any capacity, legal ownership of, or access to, client funds or securities
- have the authority, such as under a power of attorney, to withdraw funds or securities from client accounts
- have authority to debit client accounts to pay bills other than investment management fees
- act as a trustee for clients, or
- act as fund manager or general partner for investment funds

12.6 Global bonding or insurance

Registered firms may be covered under a global insurance policy. Under this type of policy, the firm is insured under a parent company's policy that covers the parent and its subsidiaries or affiliates. Firms should ensure that the claims of other entities covered under a global insurance policy do not affect the limits or coverage applicable to the firm.

Division 4 Financial reporting

12.10 Annual financial statements and interim financial information

Accounting Principles

Registrants are required to deliver annual financial statements and interim financial information that comply with NI 52-107. Depending on the financial year, a registrant will look to different parts of NI 52-107 to determine which accounting principles and auditing standards apply:

- Part 3 of NI 52-107 applies for financial years beginning on or after January 1, 2011;
- Part 4 of NI 52-107 applies to financial years beginning before January 1, 2011.

Part 3 of NI 52-107 refers to Canadian GAAP applicable to publicly accountable enterprises, which is IFRS as incorporated into the Handbook. Under Part 3 of NI 52-107, annual financial statements and interim financial information delivered by a registrant must be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises except that any investments in subsidiaries, jointly controlled entities and associates must be accounted for as specified for separate financial statements in International Accounting Standard 27 Consolidated and Separate Financial Statements. Separate financial statements are sometimes referred to as non-consolidated financial statements.

Section 3.2(3) of NI 52-107 requires annual financial statements to include a statement and description about this required financial reporting framework. Section 2.7 of 52-107CP provides guidance on section 3.2(3). We remind registrants to refer to these provisions in NI 52-107 and 52-107CP in preparing their annual financial statements and interim financial information.

Part 4 of NI 52-107 refers to Canadian GAAP for public enterprises, which is Canadian GAAP as it existed before the mandatory effective date for the adoption of IFRS, included in the Handbook as Part V. Under Part 4 of NI 52-107, annual financial statements and interim financial information delivered by a registrant must be prepared in accordance with Canadian GAAP for public enterprises except that the financial statements and interim financial information must be prepared on a non-consolidated basis.

Changeover to International Financial Reporting Standards

When preparing annual financial statements, interim financial information or Form 31-103F1 for a financial year beginning in 2011 or for interim periods relating to a financial year beginning in 2011, registrants may rely on the exemption in subsection 12.15(1) and exclude comparative information for the preceding financial year. Section 3.2(4) of NI 52-107 provides a corresponding exemption for the accounting principles used by registrants. If a registrant relies on these exemptions, its date of transition to IFRS will be the first day of its financial year beginning in 2011. Section 2.7 of 52-107CP provides further guidance on this topic. We remind registrants to refer to the provisions in NI 52-107 and 52-107CP in preparing their financial statements and interim financial information for a financial period beginning in 2011.

12.14 Delivering financial information – investment fund manager

NAV errors and adjustments

Section 12.14 requires investment fund managers to periodically deliver to the regulator, among other things, a description of any NAV adjustment. A NAV adjustment is necessary when there has been a material error and the NAV per unit does not accurately reflect the actual NAV per unit at the time of computation.

Some examples of the causes of NAV errors are:

- mispricing of a security
- corporate action recorded incorrectly
- incorrect numbers used for issued and outstanding units
- incorrect expenses and income used or accrued
- incorrect foreign exchange rates used in the valuation, and
- human error, such as inputting an incorrect value

We expect investment fund managers to have policies that clearly define what constitutes a material error that requires an adjustment, including threshold levels, and how to correct material errors. If an investment fund manager does not have a threshold in place, it may wish to consider the threshold in IFIC Bulletin Number 22 *Correcting Portfolio NAV Errors* or adopt a more stringent policy.

Part 13 Dealing with clients – individuals and firms

Division 1 Know your client and suitability

13.2 Know your client

General principles

Registrants act as gatekeepers of the integrity of the capital markets. They should not, by act or omission, facilitate conduct that brings the market into disrepute. As part of their gatekeeper role, registrants are

required to establish the identity of, and conduct due diligence on, their clients under the know your client (KYC) obligation in section 13.2. Complying with the KYC obligation can help ensure that trades are completed in accordance with securities laws.

KYC information forms the basis for determining whether trades in securities are suitable for investors. This helps protect the client, the registrant and the integrity of the capital markets. The KYC obligation requires registrants to take reasonable steps to obtain and periodically update information about their clients.

Verifying a client's reputation

Subsection 13.2(2)(a) requires registrants to make inquiries if they have cause for concern about a client's reputation. The registrant must make all reasonable inquiries necessary to resolve the concern. This includes making a reasonable effort to determine, for example, the nature of the client's business or the identity of beneficial owners where the client is a corporation, partnership or trust. See subsection 13.2(3) for additional guidance on identifying clients that are corporations, partnerships or trusts.

Identifying insiders

Under subsection 13.2(2)(b), a registrant must take reasonable steps to establish whether the client is an insider of a reporting issuer or any other issuer whose securities are publicly traded.

We consider "reasonable steps" to include explaining to the client what an insider is and what it means for securities to be publicly traded.

For purposes of this paragraph, "reporting issuer" has the meaning given to it in securities legislation and "other issuer" means any issuer whose securities are traded in any public market. This includes domestic, foreign, exchange-listed and over-the-counter markets. This definition does not include issuers whose securities have been distributed through a private placement and are not freely tradeable.

A registrant need not ascertain whether the client is an insider if the only securities traded for the client are mutual fund securities and scholarship plan securities referred to in sections 7.1(2)(b) and 7.1(2)(c). However, we encourage firms, when selling highly concentrated pooled funds, to enquire as to whether a client is an insider of the issuer of any securities held by the fund, notwithstanding the exemption provided in subsection 13.2(7). In addition, we remind registrants that they remain subject to the requirement in section 13.2(2)(b) when they trade any other securities than those listed in sections 7.1(2)(b) and 7.1(2)(c).

This exemption does not change an insider's reporting and conduct responsibilities.

Clients that are corporations, partnerships or trusts

Subsection 13.2(3) requires registrants to establish the identity of any person who owns or controls 25% or more of the shares of a client that is a corporation or exercises control over the affairs of a client that is a partnership or trust. We remind registrants that this is in addition to the requirement in subsection 13.2(2)(a) which requires registrants to make inquiries if they have cause for concern about a client's reputation. If a registrant has cause for concern about a particular client that is a corporation, partnership or trust, they may need to identify all beneficial owners of such entity.

Keeping KYC information current

Under subsection 13.2(4), registrants are required to make reasonable efforts to keep their clients' KYC information current.

We consider information to be current if it is sufficiently up-to-date to support a suitability determination. For example, a portfolio manager with discretionary authority should update its clients' KYC information frequently. A dealer that only occasionally recommends trades to a client should ensure that the client's KYC information is up-to-date at the time a proposed trade or recommendation is made.

13.3 Suitability

Suitability obligation

Subsection 13.3(1) requires registrants to take reasonable steps to ensure that a proposed trade is suitable for a client before making a recommendation or accepting instructions from the client. To meet this suitability obligation, registrants should have in-depth knowledge of all securities that they buy and sell for, or recommend to, their clients. This is often referred to as the "know your product" or KYP obligation.

Registrants should know each security well enough to understand and explain to their clients the security's risks, key features, and initial and ongoing costs and fees. Having the registered firm's approval for representatives to sell a product does not mean that the product will be suitable for all clients. Individual registrants must still determine the suitability of each transaction for every client.

Registrants should also be aware of, and act in compliance with, the terms of any exemption being relied on for the trade or distribution of the security.

In all cases, we expect registrants to be able to demonstrate a process for making suitability determinations that are appropriate in the circumstances.

Suitability obligations cannot be delegated

Registrants may not:

- delegate their suitability obligations to anyone else, or
- satisfy the suitability obligation by simply disclosing the risks involved with a trade

Only permitted clients may waive their right to a suitability determination. Registrants must make a suitability determination for all other clients. If a client instructs a registrant to make a trade that is unsuitable, the registrant may not allow the trade to be completed until they warn the client as required under subsection 13.3(2).

KYC information for suitability depends on circumstances

The extent of KYC information a registrant needs to determine suitability of a trade will depend on the:

- client's circumstances
- type of security
- client's relationship to the registrant, and
- registrant's business model

In some cases, the registrant will need extensive KYC information, for example, if the registrant is a portfolio manager with discretionary authority. In these cases, the registrant should have a comprehensive understanding of the client's:

- investment needs and objectives, including the client's time horizon for their investments
- overall financial circumstances, including net worth, income, current investment holdings and employment status, and
- risk tolerance for various types of securities and investment portfolios, taking into account the client's investment knowledge

In other cases, the registrant may need less KYC information, for example, if the registrant only occasionally deals with a client who makes small investments relative to their overall financial position.

If the registrant recommends securities traded under the prospectus exemption for accredited investors in NI 45-106, the registrant should determine whether the client qualifies as an accredited investor.

If a client is opening more than one account, the registrant should indicate whether the client's investment objectives and risk tolerance apply to a particular account or to the client's whole portfolio of accounts.

Registered firm and financial institution clients

Under subsection 13.3(3), there is no obligation to make a suitability determination for a client that is a registered firm, a Canadian financial institution or a Schedule III bank.

Permitted clients

Under subsection 13.3(4), registrants do not have to make a suitability determination for a permitted client if:

- the permitted client has waived their right to suitability in writing, and
- the registrant does not act as an adviser for a managed account of the permitted client

A permitted client may waive their right to suitability for all trades under a blanket waiver.

SRO exemptions

SRO rules may also provide conditional exemptions from the suitability obligation, for example, for dealers who offer order execution only services.

Division 2 Conflicts of interest

13.4 Identifying and responding to conflicts of interest

Section 13.4 covers a broad range of conflicts of interest. It requires registered firms to take reasonable steps to identify existing material conflicts of interest and material conflicts that the firm reasonably expects to arise between the firm and a client. As part of identifying these conflicts, a firm should collect information from the individuals acting on its behalf regarding the conflicts they expect to arise with their clients.

We consider a conflict of interest to be any circumstance where the interests of different parties, such as the interests of a client and those of a registrant, are inconsistent or divergent.

Responding to conflicts interest

A registered firm's policies and procedures for managing conflicts should allow the firm and its staff to:

- identify conflicts of interest that should be avoided
- determine the level of risk that a conflict of interest raises, and
- respond appropriately to conflicts of interest

When responding to any conflict of interest, registrants should consider their standard of care for dealing with clients and apply consistent criteria to similar types of conflicts of interest.

In general, three methods are used to respond to conflicts of interest:

- avoidance
- control, and
- disclosure

If a registrant allows a serious conflict of interest to continue, there is a high risk of harm to clients or to the market. If the risk of harming a client or the integrity of the markets is too high, the conflict needs to be

avoided. If a registered firm does not avoid a conflict of interest, it should take steps to control or disclose the conflict, or both. The firm should also consider what internal structures or policies and procedures it should use or have to reasonably respond to the conflict of interest.

Avoiding conflicts of interest

Registrants must avoid all conflicts of interest that are prohibited by law. If a conflict of interest is not prohibited by law, registrants should avoid the conflict if it is sufficiently contrary to the interests of a client that there can be no other reasonable response.

For example, some conflicts of interest are so contrary to another person's or company's interest that a registrant cannot use controls or disclosure to respond to them. In these cases, the registrant should avoid the conflict, stop providing the service or stop dealing with the client.

Controlling conflicts of interest

Registered firms should design their organizational structures, lines of reporting and physical locations to control conflicts of interest effectively. For example, the following situations would likely raise a conflict of interest:

- advisory staff reporting to marketing staff
- compliance or internal audit staff reporting to a business unit, and
- registered representatives and investment banking staff in the same physical location

Depending on the conflict of interest, registered firms may control the conflict by:

- assigning a different representative to provide a service to the particular client
- creating a group or committee to review, develop or approve responses
- monitoring trading activity, or
- using information barriers for certain internal communication

Disclosing conflicts of interest

(a) When disclosure is appropriate

Registered firms should ensure that their clients are adequately informed about any conflicts of interest that may affect the services the firm provides to them. This is in addition to any other methods the registered firm may use to manage the conflict.

(b) Timing of disclosure

Under subsection 13.4(3), if a reasonable investor would expect to be informed of a conflict, a registered firm must disclose the conflict in a timely manner. Registered firms and their representatives should disclose conflicts of interest to their clients before or at the time they recommend the transaction or provide the service that gives rise to the conflict. This is to give clients a reasonable amount of time to assess the conflict.

We note that where this disclosure is provided to a client before the transaction takes place, we expect the disclosure to be provided shortly before the transaction takes place. For example, if it was initially provided with the client's account opening documentation months or years previously we expect that a registered representative would also disclose this conflict to the client shortly before the transaction or at the time the transaction is recommended.

For example, if a registered individual recommends a security that they own, this may constitute a material conflict which should be disclosed to the client before or at the time of the recommendation.

(c) When disclosure is not appropriate

Disclosure may not be appropriate if a conflict of interest involves confidential or commercially sensitive information, or the information amounts to "inside information" under insider trading provisions in securities legislation.

In these situations, registered firms will need to assess whether there are other methods to adequately respond to the conflict of interest. If not, the firm may have to decline to provide the service to avoid the conflict of interest.

Registered firms should also have specific procedures for responding to conflicts of interest that involve inside information and for complying with insider trading provisions.

(d) How to disclose a conflict of interest

Registered firms should provide disclosure about material conflicts of interest to their clients if a reasonable investor would expect to be informed about them. When a registered firm provides this disclosure, it should:

- be prominent, specific, clear and meaningful to the client, and
- explain the conflict of interest and how it could affect the service the client is being offered

Registered firms should not:

- provide generic disclosure
- give partial disclosure that could mislead their clients, or
- obscure conflicts of interest in overly detailed disclosure

Examples of conflicts of interest

This section describes specific situations where a registrant could be in a conflict of interest and how to manage the conflict.

Relationships with related or connected issuers

When a registered firm trades in, or recommends securities of, a related or connected issuer, it should respond to the resulting conflict of interest by disclosing it to the client.

To provide disclosure about conflicts with related issuers, a registered firm may maintain a list of the related issuers for which it acts as a dealer or adviser. It may make the list available to clients by:

- posting the list on its website and keeping it updated
- providing the list to the client at the time of account opening, or
- explaining to the client at the time of account opening how to contact the firm to request a copy of the list free of charge

The list may include examples of the types of issuers that are related or connected and the nature of the firm's relationship with those issuers. For example, a firm could generally describe the nature of its relationship with an investment fund within a family of investment funds. This would mean that the firm may not have to update the list when a new fund is added to that fund family.

However, this type of disclosure may not meet the expectations of a reasonable investor when a specific conflict with a related or connected issuer arises, for example, when a registered individual recommends a trade in the securities of a related issuer. In these circumstances, a registered firm should provide the client with disclosure about the specific conflict with that issuer. This disclosure should include a description of the nature of the firm's relationship with the issuer.

Like all disclosure, information regarding a conflict with a related or connected issuer should be made available to clients before or at the time of the advice or trade giving rise to the conflict, so that clients have a reasonable amount of time to assess it. Registrants should use their judgment for the best way and time to inform clients about these conflicts. Previous disclosure may no longer be relevant to, or remembered by, a client, while disclosure of the same conflict more than once in a short time may be unnecessary and confusing.

Firms do not have to disclose to clients their relationship with a related or connected issuer that is a mutual fund managed by an affiliate of the firm if the names of the firm and the fund are similar enough that a reasonable person would conclude they are affiliated.

Relationships with other issuers

Firms should assess whether conflicts of interest may arise in relationships with issuers that do not fall within the definitions of related or connected issuers. Examples include non-corporate issuers such as a trust, partnership or special purpose entity or conduit issuing asset-backed commercial paper. This is especially important if a registered firm or its affiliates are involved in sponsoring, manufacturing, underwriting or distributing these securities.

The registered firm should disclose the relationship with these types of issuers if it may give rise to a conflict of interest that a reasonable client would expect to be informed about.

Competing interests of clients

If clients of a registered firm have competing interests, the firm should make reasonable efforts to be fair to all clients. Firms should have internal systems to evaluate the balance of these interests.

For example, a conflict of interest can arise between investment banking clients, who want the highest price, lowest interest rate or best terms in general for their issuances of securities, and retail clients who will buy the product. The firm should consider whether the product meets the needs of retail clients and is competitive with alternatives available in the market.

Individuals who serve on a board of directors

(*a*) ***Board of directors of another registered firm***

Under section 4.1, a registered individual must not act as a director of another registered firm that is not an affiliate of the individual's sponsoring firm.

(*b*) ***Board of directors of non registered persons or companies***

Section 4.1 does not apply to registered individuals who act as directors of unregistered firms. However, significant conflicts of interest can arise when a registered individual serves on a board of directors. Examples include conflicting fiduciary duties owed to the company and to a registered firm or client, possible receipt of inside information and conflicting demands on the representative's time.

Registered firms should consider controlling the conflict by:

- requiring their representatives to seek permission from the firm to serve on the board of directors of an issuer, and

- having policies for board participation that identify the circumstances where the activity would not be in the best interests of the firm or its clients

The regulator will take into account the potential conflicts of interest that may arise when an individual serves on a board of directors when assessing that individual's application for registration or continuing fitness for registration.

Individuals who have outside business activities

Conflicts can arise when registered individuals are involved in outside business activities, for example, because of the compensation they receive for these activities or because of the nature of the relationship

between the individual and the outside entity. Before approving any of these activities, registered firms should consider potential conflicts of interest. If the firm cannot properly control a potential conflict of interest, it should not permit the outside activity.

The regulator will take into account the potential conflicts of interest that may arise as a result of an individual's outside business activities when assessing that individual's application for registration or continuing fitness for registration.

Compensation practices

Registered firms should consider whether any particular benefits, compensation or remuneration practices are inconsistent with their obligations to clients, especially if the firm relies heavily on commission-based remuneration. For example, if there is a complex product that carries a high commission, the firm may decide that it is not appropriate to offer that product.

13.5 Restrictions on certain managed account transactions

Section 13.5 prohibits a registered adviser from engaging in certain transactions in investment portfolios it manages for clients on a discretionary basis where the relationship may give rise to a conflict of interest or a perceived conflict of interest. The prohibited transactions include trades in securities in which a responsible person or an associate of a responsible person may have an interest or over which they may have influence or control.

Disclosure when responsible person is partner, director or officer of issuer

Subsection 13.5(2)(a) prohibits a registered adviser from purchasing securities of an issuer in which a responsible person or an associate of a responsible person is a partner, officer or director for a client's managed account. The prohibition applies unless the conflict is disclosed to the client and the client's written consent is obtained prior to the purchase.

If the client is an investment fund, the disclosure should be provided to, and the consent obtained from, each security holder of the investment fund in order for it to be meaningful. This disclosure may be provided in the offering memorandum that is provided to security holders. Like all disclosure about conflicts, it should be prominent, specific, clear and meaningful to the client. Consent may be obtained in the investment management agreement signed by the clients of the adviser that are also security holders of the investment fund.

This approach may not be practical for prospectus qualified mutual funds. Investment fund managers and advisers of these funds should also consider the specific exemption from the prohibition under section 6.2 of National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107) for prospectus-qualified investment funds.

Restrictions on trades with certain investment portfolios

Subsection 13.5(2)(b) prohibits certain trades, including, for example, those between the managed account of a client and the managed account of:

- a spouse of the adviser
- a trust for which a responsible person is the trustee, or
- a corporation in which a responsible person beneficially owns 10% or more of the voting securities

It also prohibits inter-fund trades. An inter-fund trade occurs when the adviser for an investment fund knowingly directs a trade in portfolio securities to another investment fund that it acts for or instructs the dealer to execute the trade with the other investment fund. Investment fund managers and their advisers should also consider the exemption from the prohibition that exists for inter-fund trades by public investment funds under section 6.1 of NI 81-107.

Section 13.5(2)(b) is not intended to prohibit a responsible person from purchasing units in the investment fund itself, nor is it intended to prohibit one investment fund from purchasing units of another fund in situations where they have the same adviser.

In instances where an IIROC dealer, who is also an adviser to a managed account, trades between its inventory account and the managed account, the dealer is expected to have policies and procedures that sufficiently mitigate the conflicts of interest inherent in such transactions. Generally, we expect these policies and procedures to ensure that:

- the trades achieve best execution as referenced in National Instrument 23-101 *Trading Rules*, while ensuring that the trades are consistent with the objectives of the managed account
- reasonable steps are taken to access information, including marketplace quotations or quotes provided by arms-length parties, to ensure that the trade is executed at a fair price
- there is appropriate oversight and a compliance mechanism to monitor this trading activity in order to ensure that it complies with applicable regulatory requirements, including the requirements referred to above.

13.6 Disclosure when recommending related or connected securities

Section 13.6 restricts the ability of a registered firm to recommend a trade in a security of a related or connected issuer. The restrictions apply to recommendations made in any medium of communication. This includes recommendations in newsletters, articles in general circulation newspapers or magazines, websites, e-mail, Internet chat rooms, bulletin boards, television and radio.

It does not apply to oral recommendations made by registered individuals to their clients. These recommendations are subject to the requirements of section 13.4.

Division 3 Referral arrangements

Division 3 sets out the requirements for permitted referral arrangements. Regulators want to ensure that under any referral arrangements:

- individuals and firms that engage in registerable activities are appropriately registered
- the roles and responsibilities of the parties to the written agreement are clear, including responsibility for compliance with securities legislation, and
- clients are provided with disclosure about the referral arrangement to help them evaluate the referral arrangement and the extent of any conflicts of interest

Registered firms have a responsibility to monitor and supervise all of their referral arrangements to ensure that they comply with the requirements of NI 31-103 and other applicable securities laws and continue to comply for so long as the arrangement remains in place.

Obligations to clients

A client who is referred to an individual or firm becomes the client of that individual or firm for the purposes of the services provided under the referral arrangement.

The registrant receiving a referral must meet all of its obligations as a registrant toward its referred clients, including know your client and suitability determinations.

Registrants involved in referral arrangements should manage any related conflicts of interest in accordance with the applicable provisions of Part 13 *Dealing with clients – individuals and firms*. For example, if the registered firm is not satisfied that the referral fee is reasonable, it should assess whether an unreasonably high fee may create a conflict that could motivate its representatives to act contrary to their duties toward their clients.

13.7 Definitions – referral arrangements

Section 13.7 defines “referral arrangement” in broad terms. Referral arrangement means an arrangement in which a registrant agrees to pay or receive a referral fee. The definition is not limited to referrals for providing investment products, financial services or services requiring registration. It also includes receiving a referral fee for providing a client name and contact information to an individual or firm. “Referral fee” is also

broadly defined. It includes sharing or splitting any commission resulting from the purchase or sale of a security.

In situations where there is no expectation of reward or compensation, we would not consider the receipt of an unexpected gift of appreciation to fall within the scope of a referral arrangement. One of the key elements of the referral arrangement is that the registrant agrees to pay or receive a referral fee for the referral of a client. This agreement or understanding is absent in the case of unexpected gifts.

13.8 Permitted referral arrangements

Under section 13.8, parties to a referral arrangement are required to set out the terms of the arrangement in a written agreement. This is intended to ensure that each party's roles and responsibilities are made clear. This includes obligations for registered firms involved in referral arrangements to keep records of referral fees. Payments do not necessarily have to go through a registered firm, but a record of all payments related to a referral arrangement must be kept.

We expect referral agreements to include:

- the roles and responsibilities of each party
- limitations on any party that is not a registrant (to ensure that it is not engaging in any activities requiring registration)
- the disclosure to be provided to referred clients, and
- who provides the disclosure to referred clients

If the individual or firm receiving the referral is a registrant, they are responsible for:

- carrying out all activity requiring registration that results from the referral arrangement, and
- communicating with referred clients

Registered firms are required to be parties to referral agreements. This ensures that they are aware of these arrangements so they can adequately supervise their representatives and monitor compliance with the agreements. This does not preclude the individual registrant from also being a party to the agreement.

A party to a referral arrangement may need to be registered depending on the activities that the party carries out. Registrants cannot use a referral arrangement to assign, contract out of or otherwise avoid their regulatory obligations.

13.9 Verifying the qualifications of the person or company receiving the referral

Section 13.9 requires the registrant making a referral to satisfy itself that the party receiving the referral is appropriately qualified to perform the services, and if applicable, is appropriately registered. The registrant is responsible for determining the steps that are appropriate in the particular circumstances. For example, this may include an assessment of the types of clients that the referred services would be appropriate for.

13.10 Disclosing referral arrangements to clients

The disclosure of information to clients required under section 13.10 is intended to help clients make an informed decision about the referral arrangement and to assess any conflicts of interest. The disclosure should be provided to clients before or at the time the referred services are provided. A registered firm, and any registered individuals who are directly participating in the referral arrangement, should take reasonable steps to ensure that clients understand:

- which entity they are dealing with
- what they can expect that entity to provide to them
- the registrant's key responsibilities to them
- the limitations of the registrant's registration category

- any relevant terms and conditions imposed on the registrant's registration
- the extent of the referrer's financial interest in the referral arrangement, and
- the nature of any potential or actual conflict of interest that may arise from the referral arrangement

Division 4 Loans and margin

13.12 Restriction on lending to clients

The purpose of section 13.12 is intended to limit the financial exposure of a registered firm. To the extent that products sold to clients are structured in a way that would result in the registrant becoming a lender to the clients, including the registrant extending margin to the client, we would consider the registrant to not be in compliance with section 13.12.

Section 13.12 prohibits registrants from lending money, extending credit or providing margin to clients as we consider that this activity creates a conflict of interest which cannot be easily managed.

We note that SROs are exempt from section 13.12 as they have their own rules or prohibitions on lending, extending credit and providing margin to clients. Direct lending to clients (margin) is reserved for IIROC members. The MFDA has its own rules prohibiting margining and, except in specific limited circumstances, lending.

Division 5 Complaints

Registered firms in Québec must comply with sections 168.1.1 to 168.1.3 of the Québec *Securities Act*, which has provided a substantially similar regime since 2002. The guidance in Division 5 if this Companion Policy applies to firms registered in any jurisdiction, including Québec.

13.15 Handling complaints

General duty to document and respond to complaints

Section 13.15 requires registered firms to document complaints, and to effectively and fairly respond to them. We are of the view that registered firms should document and respond to all complaints received from a client, a former client or a prospective client who has dealt with the registered firm (complainant).

Firms are reminded that they are required to maintain records which demonstrate compliance with complaint handling requirements under subsection 11.5(2)(m).

Complaint handling policies

An effective complaint system should deal with all formal and informal complaints or disputes in a timely and fair manner. To achieve the objective of handling complaints fairly, the firm's complaint system should include standards allowing for objective factual investigation and analysis of the matters specific to the complaint.

We take the view that registered firms should take a balanced approach to the gathering of facts that objectively considers the interests of

- the complainant
- the registered representative, and
- the firm

Registered firms should not limit their consideration and handling of complaints to those relating to possible violations of securities legislation.

Complaint monitoring

The firm's complaint handling policy should provide for specific procedures for reporting the complaints to superiors, in order to allow the detection of frequent and repetitive complaints made with respect to the same matter which may, on a cumulative basis, indicate a serious problem. Firms should take appropriate measures to deal with such problems as they arise.

Responding to complaints

Types of complaints

All complaints relating to one of the following matters should be responded to by the firm by providing an initial and substantive response, both in writing and within a reasonable time:

- a trading or advising activity
- a breach of client confidentiality
- theft, fraud, misappropriation or forgery
- misrepresentation
- an undisclosed or prohibited conflict of interest, or
- personal financial dealings with a client

Firms may determine that a complaint relating to matters other than the matters listed above is nevertheless of a sufficiently serious nature to be responded in the manner described below. This determination should be made, in all cases, by considering if an investor, acting reasonably, would expect a written response to their complaint.

When complaints are not made in writing

We would not expect that complaints relating to matters other than those listed above, when made verbally and when not otherwise considered serious based on an investor's reasonable expectation, would need to responded to in writing. However, we do expect that verbal complaints be given as much attention as written complaints. If a complaint is made verbally and is not clearly expressed, the firm may request the complainant to put the complaint in writing and we expect firms to offer reasonable assistance to do so.

Firms are entitled to expect the complainant to put unclear verbal issues into written format in order to try to resolve confusion about the nature of the issue. If the verbal complaint is clearly frivolous, we do not expect firms to offer assistance to put the complaint in writing. The firm may nonetheless ask the complainant to put the complaint in writing on his or her own.

Timeline for responding to complaints

Firms should

- promptly send an initial written response to a complainant: we consider that an initial response should be provided to the complainant within five business days of receipt of the complaint
- provide a substantive response to all complaints relating to the matters listed under "Types of complaints" above, indicating the firm's decision on the complaint

We encourage firms to resolve complaints relating to the matters listed above within 90 days.

13.16 Dispute resolution service

A registered firm must ensure that the complainant is aware of the dispute resolution or mediation services that are available to them and that the firm will pay for the services. Registered firms should know all

applicable mechanisms and processes for dealing with different types of complaints, including those prescribed by the applicable SRO.

In Québec, registrants must inform each complainant, in writing and without delay, that if the complainant is dissatisfied with how the complaint is handled or with the outcome, they may request the registrant to forward a copy of the complaint file to the Autorité des marchés financiers. The registrant must forward a copy of the complaint file to the Autorité des marchés financiers, which will examine the complaint. The Autorité des marchés financiers may act as a mediator if it considers it appropriate to do so and the parties agree.

Registrants who do business in other sectors

Some registrants are also registered or licensed to do business in other sectors, such as insurance. These registrants should inform their clients of the complaint mechanisms for each sector in which they do business and how to use them.

Part 14 Handling client accounts – firms

Division 2 Disclosure to clients

Registrants should ensure that clients understand who they are dealing with. They should carry on all registerable activities in their full legal or registered trade name. Contracts, confirmation and account statements, among other documents, should contain the registrant's full legal name.

14.2 Relationship disclosure information

Content of relationship disclosure information

There is no prescribed form for the relationship disclosure information required under section 14.2. A registered firm may provide this information in a single document or in separate documents, which together give the client the prescribed information.

Disclosure of costs

Under subsection 14.2(2)(g), registered firms must provide clients with a description of the costs they will pay in making, holding and selling investments. We expect this description to include all costs a client may pay during the course of holding a particular investment. For example, for a mutual fund, the description should briefly explain each of the following and how they may affect the investment:

- the management expense ratio
- the sales charge options available to the client
- the trailing commission
- any short-term trading fees
- any switch or change fees

Permitted clients

Under subsection 14.2(6), registrants do not have to provide relationship disclosure information to permitted clients if:

- the permitted client has waived the requirements in writing, and
- the registrant does not act as an adviser for a managed account of the permitted client

Promoting client participation

Registered firms should help their clients understand the registrant-client relationship. They should encourage clients to actively participate in the relationship and provide them with clear, relevant and timely information and communications.

In particular, registered firms should encourage clients to:

- Keep the firm up to date. Clients should provide full and accurate information to the firm and the registered individuals acting for the firm. Clients should promptly inform the firm of any change to information that could reasonably result in a change to the types of investments appropriate for them, such as a change to their income, investment objectives, risk tolerance, time horizon or net worth.

- Be informed. Clients should understand the potential risks and returns on investments. They should carefully review sales literature provided by the firm. Where appropriate, clients should consult professionals, such as a lawyer or an accountant, for legal or tax advice.

- Ask questions. Clients should ask questions and request information from the firm to resolve questions about their account, transactions or investments, or their relationship with the firm or a registered individual acting for the firm.

- Stay on top of their investments. Clients should pay for securities purchases by the settlement date. They should review all account documentation provided by the firm and regularly review portfolio holdings and performance.

14.4 When the firm has a relationship with a financial institution

As part of their duty to clients, registrants who have a relationship with a financial institution should ensure that their clients understand which legal entity they are dealing with. In particular, clients may be confused if more than one financial services firm is carrying on business in the same location. Registrants may differentiate themselves through various methods, including signage and disclosure.

Division 3 Client assets

14.6 Holding client assets in trust

Section 14.6 requires a registered firm to segregate client assets and hold them in trust. We consider it prudent for registrants who are not members of an SRO to hold client assets in client name only. This is because the capital requirements for non-SRO members are not designed to reflect the added risk of holding client assets in nominee name.

Division 4 Client accounts

14.10 Allocating investment opportunities fairly

If the adviser allocates investment opportunities among its clients, the firm's fairness policy should, at a minimum, indicate the method used to allocate the following:

- price and commission among client orders when trades are bunched or blocked

- block trades and initial public offerings among client accounts

- block trades and initial public offerings among client orders that are partially filled, such as on a pro-rata basis

The fairness policy should also address any other situation where investment opportunities must be allocated.

Each trade should be reported in the currency in which it was executed. If a trade is executed in a foreign currency through a Canadian account, the exchange rate should be reported to the client.

14.12 Content and delivery of trade confirmation

Section 14.12 requires registered dealers to deliver trade confirmations. A dealer may enter into an outsourcing arrangement for the sending of trade confirmations to its clients. Like all outsourcing arrangements, the registrant is ultimately responsible for the function and must supervise the service provider. See Part 11 of this Companion Policy for more guidance on outsourcing.

14.14 Account statements

Section 14.14 requires registered dealers and advisers to deliver statements to clients at least once every three months. There is no prescribed form for these statements but they must contain the information in subsections 14.14(4) and (5). The types of transactions that must be disclosed in an account statement include any purchase, sale or transfer of securities, dividend or interest payment received or reinvested, any fee or charge, and any other account activity.

We expect all dealers and advisers to provide client account statements. For example, an exempt market dealer should provide an account statement that contains the information prescribed for all transactions the exempt market dealer has entered into or arranged on a client's behalf.

The requirement to produce and deliver an account statement may be outsourced. Portfolio managers frequently enter into outsourcing arrangements for the production and delivery of account statements. Third-party pricing providers may also be used to value securities for the purpose of account statements. Like all outsourcing arrangements, the registrant is ultimately responsible for the function and must supervise the service provider. See Part 11 of this Companion Policy for more guidance on outsourcing.

Appendix A
Contact information

Jurisdiction	E-mail	Fax	Address
Alberta	registration@asc.ca	(403) 297-4113	Alberta Securities Commission, Suite 600, 250–5th St. SW Calgary, AB T2P 0R4 Attention: Registration
British Columbia	registration@bcsc.bc.ca	(604) 899-6506	British Columbia Securities Commission P.O. Box 10142, Pacific Centre 701 West Georgia Street Vancouver, BC V7Y 1L2 Attention: Registration
Manitoba	registrationmsc@gov.mb.ca	(204) 945-0330	The Manitoba Securities Commission 500-400 St. Mary Avenue Winnipeg, MB R3C 4K5 Attention: Registrations
New Brunswick	nrs@nbsc-cvmnb.ca	(506) 658-3059	New Brunswick Securities Commission Suite 300, 85 Charlotte Street Saint John, NB E2L 2J2 Attention: Registration Officer
Newfoundland & Labrador	scon@gov.nl.ca	(709) 729-6187	Financial Services Regulation Division Department of Government Services Government of Newfoundland and Labrador P.O. Box 8700, 2nd Floor, West Block Confederation Building St. John's, NL A1B 4J6 Attention: Registration Section
Northwest Territories	SecuritiesRegistry@gov.nt.ca	(867) 873-0243	Government of the Northwest Territories P.O. Box 1320 Yellowknife, NWT X1A 2L9 Attention: Deputy Superintendent of Securities
Nova Scotia	nrs@gov.ns.ca	(902) 424-4625	Nova Scotia Securities Commission 2nd Floor, Joseph Howe Building 1690 Hollis Street P.O. Box 458 Halifax, NS B3J 2P8 Attention: Deputy Director, Capital Markets
Nunavut	CorporateRegistrations@gov.nu.ca	(867) 975-6590 (Faxing to NU is unreliable. The preferred method is e-mail.)	Legal Registries Division Department of Justice Government of Nunavut P.O. Box 1000 Station 570 Iqaluit, NU X0A 0H0 Attention: Deputy Registrar
Ontario	registration@osc.gov.on.ca	(416) 593-8283	Ontario Securities Commission Suite 1903, Box 55 20 Queen Street West Toronto, ON M5H 3S8 Attention: Compliance and Registrant Regulation
Prince Edward Island	ccis@gov.pe.ca	(902) 368-6288	Consumer and Corporate Services Division, Office of the Attorney General P.O. Box 2000, 95 Rochford Street Charlottetown, PE C1A 7N8 Attention: Superintendent of Securities

Jurisdiction	E-mail	Fax	Address
Québec	inscription@lautorite.qc.ca	(514) 873-3090	Autorité des marchés financiers Service de l'encadrement des intermédiaires 800 square Victoria, 22e étage C.P 246, Tour de la Bourse Montréal (Québec) H4Z 1G3
Saskatchewan	registrationsfsc@gov.sk.ca	(306) 787-5899	Saskatchewan Financial Services Commission Suite 601 1919 Saskatchewan Drive Regina, SK S4P 4H2 Attention: Registration
Yukon	corporateaffairs@gov.yk.ca	(867) 393-6251	Department of Community Services Yukon Yukon Securities Office P.O. Box 2703 C-6 Whitehorse, YT Y1A 2C6 Attention: Superintendent of Securities

Appendix B
Terms not defined in NI 31-103 or this Companion Policy

Terms defined in National Instrument 14-101 *Definitions*:

- adviser registration requirement
- Canadian securities regulatory authority
- dealer registration requirement
- foreign jurisdiction
- jurisdiction or jurisdiction of Canada
- local jurisdiction
- investment fund manager registration requirement
- prospectus requirement
- registration requirement
- regulator
- securities directions
- securities legislation
- securities regulatory authority
- SRO
- underwriter registration requirement

Terms defined in National Instrument 45-106 *Prospectus and Registration Exemptions:*

- accredited investor
- eligibility adviser
- financial assets

Terms defined in National Instrument 81-102 *Mutual Funds:*

- money market fund

Terms defined in the Securities Act of most jurisdictions:

- adviser
- associate
- company
- control person
- dealer
- director
- distribution
- exchange contract (BC, AB, SK and NB only)
- insider
- individual
- investment fund
- investment fund manager
- issuer
- mutual fund
- officer
- person
- promoter
- records
- registrant
- reporting issuer
- security
- trade
- underwriter

Appendix C
Proficiency requirements for individuals acting on behalf of a registered firm

The tables in this Appendix set out the education and experience requirements, by firm registration category, for individuals who are applying for registration under securities legislation.

An individual must not perform an activity that requires registration unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently, including, in the case of registered representatives, understanding the structure, features and risks of each security the individual recommends.

CCOs must also not perform an activity set out in section 5.2 unless they have the education, training and experience that a reasonable person would consider necessary to perform the activity competently.

Acronyms used in the tables

BMP: Branch Manager Proficiency Exam

CA: Chartered Accountant

CCO: Chief Compliance Officer

CCOQ: Chief Compliance Officers Qualifying Exam

CFA: CFA Charter

CGA: Certified General Accountant Exam/Partners, Directors

CMA: Certified Management Accountant

CIF: Canadian Investment Funds Course Exam

CIM: Canadian Investment Manager designation

CSC: Canadian Securities Course Exam

EMP: Exempt Market Products Exam

IFIC: Investment Funds in Canada Course

MFDC: Mutual Funds Dealer Compliance Exam

PDO: Officers', Partners' and Directors' and Senior Officers Course Exam

SRP: Sales Representative Proficiency Exam

Investment dealer	
Dealing representative	**CCO**
Proficiency requirements set by IIROC	Proficiency requirements set by IIROC
Mutual fund dealer	
Dealing representative	**CCO**
One of these five options: 1. CIF 2. CSC 3. IFIC 4. CFA Charter and 12 months of relevant securities industries experience in the 36-months before applying for registration 5. Advising representative requirements – portfolio manager or exempt from these under section 16.10(1)	One of these two options: 1. CIF, CSC or IFIC; and PDO, MFDC or CCOQ 2. CCO requirements – portfolio manager or exempt from these under section 16.9(2)
Exempt market dealer	
Dealing representative	**CCO**

One of these four options: 1. CSC 2. EMP 3. CFA Charter and 12 months of relevant securities industries experience in the 36-months before applying for registration 4. Advising representative requirements – portfolio manager or exempt from these under section 16.10(1)	One of these two options: 1. PDO or CCOQ and EMP or CSC 2. CCO requirements – portfolio manager or exempt from these under section 16.9(2)
Scholarship plan dealer	
Dealing representative	**CCO**
SRP	SRP, BMP, and PDO or CCOQ
Restricted dealer	
Dealing representative	**CCO**
Regulator to determine on a case-by-case basis	Regulator to determine on a case-by-case basis

Portfolio manager		
Advising representative	**Associate advising representative**	**CCO**
One of these two options: 1. CFA and 12 months of relevant investment management experience in the 36-month period before applying for registration 2. CIM and 48 months of relevant investment management experience (12 months gained in the 36-month period before applying for registration)	One of these two options: 1. Level 1 of the CFA and 24 months of relevant investment management experience 2. CIM and 24 months of relevant investment management experience	One of these three options: 1. CSC except if the individual has the CFA or CIM designation, PDO or CCOQ, and CFA or a professional designation as a lawyer, CA, CGA, CMA, notary in Quebec or the equivalent in a foreign jurisdiction, and: • 36 months of relevant securities experience working at an investment dealer, registered adviser or investment fund manager, or • 36 months providing professional services to the securities industry and 12 months working at a registered dealer, registered adviser or investment fund manager, for a total of 48 months 2. CSC except if the individual has the CFA or CIM designation, PDO or CCOQ and five years working at: • an investment dealer or a registered adviser (including 36 months in a compliance capacity), or • a Canadian financial institution in a compliance capacity relating to portfolio management and 12 months at

		a registered dealer or registered adviser, for a total of six years 3. PDO or CCOQ and advising representative requirements – portfolio manager
Restricted portfolio manager		
Advising representative	**Associate advising representative**	**CCO**
Regulator to determine on case-by-case basis	Regulator to determine on case-by-case basis	Regulator to determine on case-by-case basis
Investment fund manager		
CCO		
One of these three options: 1. CSC except if the individual has the CFA or CIM designation, PDO or CCOQ, and CFA or a professional designation as a lawyer, CA, CGA, CMA, notary in Quebec or the equivalent in a foreign jurisdiction, and: • 36 months of relevant securities experience working at a registered dealer, registered adviser or investment fund manager, or • 36 months providing professional services in the securities industry and 12 months working in a relevant capacity at an investment fund manager, for a total of 48 months 2. CIF, CSC or IFIC; PDO or CCOQ and five years of relevant securities experience working at a registered dealer, registered adviser or an investment fund manager (including 36 months in a compliance capacity) 3. CCO requirements for portfolio manager or exempt from these requirements under section 16.9(2)		

Appendix M

BCSC BC Notice 2019/01

Expiry of BC Instrument 32-517 *Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities* and registration requirements for persons relying on BCI 32-517 on February 15, 2019

British Columbia Securities Commission

P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver BC V7Y 1L2
Canada
Telephone: (604) 899-6500
Fax: (604) 899-6506
(BC only) 1-800-373-6393

BC Notice 2019/01

Expiry of BC Instrument 32-517 *Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities* and registration requirements for persons relying on BCI 32-517 on February 15, 2019

Frequently Asked Questions

Background

On February 15, 2019, the dealer registration exemption in section 8 of BC Instrument 32-517 *Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities* (BCI 32-517) will expire. The British Columbia Securities Commission (BCSC) staff have compiled these frequently asked questions (the FAQs) and their responses from the inquiries staff received concerning BCI 32-517 and the registration requirements for persons trading or intending to trade securities of mortgage investment entities (MIEs) in BC.

In this notice: **NI 31-103** means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, **EMD** means exempt market dealer, **IFM** means investment fund manager, **CCO** means chief compliance officer, **UDP** means ultimate designate person and **DR** means dealing representative.

NI 31-103 and its Companion Policy 31-103CP can be found under the "Documents" tab at https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/Group/?group=31%20103.

FREQUENTLY ASKED QUESTIONS

QUESTION	ANSWER
1. Transition for persons relying on BCI 32-517	
The dealer registration exemption in section 8 of BCI 32-517 (**the registration exemption**) will expire on February 15, 2019, subject to certain transitions (**the transitional relief**) for persons complying with	Transitional relief will only be available for a person that satisfies the following conditions: (a) By February 15, 2019, for that person, the BCSC has received: (i) Where the person is not an individual, a substantially complete 33-109F6 *Firm Registration* (including fees) seeking registration as a dealer, or (ii) Where the person is an individual, a substantially complete Form 33-109F4 *Registration of Individuals and*

QUESTION	ANSWER
the registration exemption. BCI 32-517 is set to fully expire on February 18, 2020. What transitional relief is available to market participants that trade in securities of a MIE in reliance of the registration exemption? Does the transitional relief apply automatically upon meeting the conditions or does one have to apply for the transitional relief?	*Review of Permitted Individuals* (including fees) seeking registration in the category of a DR, in combination with an application referred to in (i); (b) The BCSC has not yet accepted or refused the person's registration application referred to in subsection 9(a) of BCI 32-517; (c) On February 15, 2019, the person was relying on, and in compliance with, the registration exemption; and (d) The person is in compliance with the registration exemption. For persons that meet these conditions, they can continue to rely on the dealer registration exemption until February 18, 2020. The transitional relief applies automatically upon meeting the conditions.
BCI 31-103	
2. Firm size and multiple categories of registration	
What if a firm is only operated by one or two individuals? Is that firm expected to hire more individuals as part of their registration requirements?	An individual may register in multiple categories of registration where necessary. This is common for small firms operated by one or two individuals.
3. UDP	
What is a UDP of a firm expected to do? Where the applicant firm has a parent company, can a director of the parent company be the designated UDP of the registered firm?	See section 5.1 of NI 31-103 for the required duties of an UDP. Section 5.1 of Companion Policy 31-103CP provides guidance about the UDP's functions. See subsections 11.2(2) and 11.2(3) of NI 31-103 for the requirements on designating a UDP for a registered firm. Section 11.2 of Companion Policy 31-103CP provides guidance on designating an UDP.
4. Registration, proficiency and ongoing business conduct requirements for a person trading or advising in prospectus exempt securities	
What are the registration, proficiency and ongoing business conduct	NI 31-103 sets out the registration requirements, exemptions from the requirement to register and ongoing registrant obligations. It also sets out minimum proficiency, financial, and

QUESTION	ANSWER
requirements for a person trading or advising in prospectus exempt securities?	ongoing business conduct requirements.
5. Registration application process and fees	
Where can I find the required forms for registration?	National Instrument 33-109 *Registration Information* (NI 33-109) sets out the information required for registration. The Appendices to NI 33-109 are the various forms related to registration. The link to NI 33-109 is: https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/Group/?group=33%20109
What is the application process for firm registration?	A firm seeking registration must be registered at the Corporate Registry in Victoria. The website of the Corporate Registry can be found at www.corporateonline.gov.bc.ca. The firm seeking registration must submit each of the following to the regulator: (a) A completed Form 33-109F6 *Firm Registration* (the F6) and the required supporting documents by email to: registration@bcsc.bc.ca. The link to the F6 is https://www.bcsc.bc.ca/33-109F6_[F]_06122018/ (b) For each business location of the applicant in the local jurisdiction, other than the applicant's head office, a completed Form 33-109F3 *Business Locations Other than Head Office* in accordance with National Instrument 31-102 *National Registration Database* (NI 31-102) The link to NI 31-102 is: https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/PDF/31-102__NI___updated_January_17__2014/ A registered firm must designate an individual who is registered in the category of CCO. A registered firm must also designate an individual who is registered in the category of UDP. The responsibilities of the CCO and UDP can be found at Part 5 of NI 31-103.
What is the application process for individual registration?	Part 2 of NI 31-103 describes the categories of registration for individuals, and the functions each type of registered individual may provide on behalf of the registered firm. An individual who applies for registration must submit a completed Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* in accordance with NI 31-102. The link to the form is: https://www.bcsc.bc.ca/33-109F4_[F]_110115/

QUESTION	ANSWER
What are the application fees?	At the time the registration application is filed, the individual who applies for registration as a DR or advising representative or a CCO must meet the **minimum proficiency** requirements set out in Part 3 of NI 31-103. For further questions, see the "Proficiency" section of the FAQs. Apart from the F6 filing, all other filings with respect to registration information under NI 33-109 are required to be submitted through the National Registration Database (NRD). NI 31-102 sets out the process in Part 3 for NRD submissions and in Part 4 for payment of fees through NRD. To enrol on NRD please visit: https://www.nrd-info.ca/ Application fees effective December 30, 2018 are: • $2500 for a firm application • $350 for each dealing or advising representative application The fee schedule is set out in section 22 of the *Securities Regulations*. The link to the *Securities Regulations* is http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/58_196_97
6. Categories of registration for MIEs	
What registration categories should firms and individuals previously relying on the registration exemption register in? Aside from the EMD category, are there other categories of registration that may apply to MIEs?	A firm that trades in the securities of a MIE will need to register in the category of EMD - see Part 7 of NI 31-103. An individual conducting this trading activity for the firm will need to register in the category of a DR - see Part 2 of NI 31-103. CSA Staff Notice 31-323 *Guidance Relating to Registration Obligations of Mortgage Investment Entities* (SN 31-323) provides guidance on the registration requirements that apply to MIEs pursuant to the requirements of NI 31-103. In particular, SN 31-323 provides guidance on when firms may need to register as IFMs or advisers with regards to MIEs. SN 31-323 also provides guidance on how the IFM registration requirement may differ between Alberta and other CSA jurisdictions. SN 31-323 can be found at https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/Group/?group=31%20323

QUESTION	ANSWER
7. Insurance	
What are the insurance and bonding requirements for EMDs? Where can one obtain insurance or the global bonding required in Part 12 of NI 31-103?	Section 12.3 of NI 31-103 sets out the insurance requirements for a dealer. Appendix A to NI 31-103 sets out the bonding and insurance clauses that should be included in the dealer's insurance and bonding coverage. Certain insurance brokers or underwriters offer bonding and insurance coverage to securities dealers or advisers that include clauses set out in Appendix A to NI 31-103. Please conduct your own inquiries and due diligence on the insurance providers before obtaining the required coverage. We do not make recommendations on specific insurance brokers or underwriters.
8. Supporting Documents	
What documents would you require in support of the Form 33-109F6 *Firm Registration* (the F6)?	• Schedule B to the F6 – *Submission to jurisdiction and appointment of agent for service* for each jurisdiction where the firm is seeking registration • Schedule C to the F6 – Form 31-103F1 *Calculation of Excess Working Capital* • Business plan • Policies and Procedures Manual • Client agreements (except Ontario) • Constating documents • Organization chart • Ownership chart • Directors' resolution approving insurance • Audited financial statements (for further questions, see the "Audited Financial Statements" section of the FAQs) • Subordination agreement(s) (if any) • Letter of direction to auditors • Insurance and bonding policy • Client facing documents including account opening documents, relationship disclosure document and the Know Your Client Form (BC only) • Letterhead and sample business cards (BC only) • Standard employment agreements (BC only) • Any other documents requested by registration staff
9. Policies and Procedures Manual	
What is a policies and procedures manual (PPM)?	A PPM is an information resource on what a firm does, its functions, its operational structure, its internal controls, who is responsible for what functions and the firm's process to carry out each function. Every company has policies (its own principles)

QUESTION	ANSWER
	on which it operates - this is normally reflected in its code of ethics, client relationship policies, principles or policies on marketing and advertising, policies on hiring, policies on internal controls and supervision, etc. The PPM also identifies business and operational risks and how these are to be avoided, controlled or managed. The PPM is a code on how the firm operates. The PPM should be kept up to date, to accurately reflect the firm's operations, functions, policies, procedures and applicable regulatory changes. It is a live document. A corporate function should be founded on a specific corporate policy and supported by detailed procedures on how this function is to be carried out and by whom. Policies are based on the company's regulatory and compliance obligations. Corporate policies and principles should form part of the corporate culture. The PPM should be written in detail so that any person is able to seek guidance from the manual on how a particular function in the organization is carried out. It promotes transparency and makes it possible for every employee to understand the policies of the company and the procedures set out to carry out the functions that make up the operations of the company.
Is there a template available for the PPM?	We do not have a template for a PPM because policies and procedures are unique to a business. The following link includes some questions a firm should ask when developing its PPM. https://www.bcsc.bc.ca/For_Registrants/Compliance_Toolkit/Questions_to_Ask_when_Preparing_a_Policies___Procedures_Manual_(PPM)
10. Business Plan	
What does the BCSC mean by "business plan"?	A business plan is a blueprint of the firm's business. It is a formal statement of the firm's business goals, the reasons why they are believed to be attainable, and the plan for reaching those goals. It should contain background information about the organization (including its shareholders and principals, affiliates and holding companies) and about the team attempting to reach those goals. As applicant, you have intimate knowledge of the firm's business, vision, operational strategies and objectives, business risks and controls. We need to understand the firm's business, its strategies and objectives in relation to its business and how it intends to achieve them. We want to know whether the firm has identified its business and operational risks and how the firm

QUESTION	ANSWER
	intends to address, mitigate, avoid or control these risks. Your business plan should include: • Executive Summary • Nature of the Business • Mission statement (philosophy) • A full list of shareholders, affiliates, related parties, management and permitted individuals • Background on management and permitted individuals • Organizational chart and ownership chart • Related party chart • Business objectives (short and long term) • Market analysis • Target market • Business goals and strategies (short and long term on how objectives will be achieved) • Operational analysis • Marketing (what and how) • Policies and procedures (Set out in a separate PPM) • Human Resources plan (recruitment, training and staffing) • Financial Plans (3-year financial projection) • Risk management (identify business and operational risks and how they will be addressed) • Timetables and milestones • Strategy implementation • Evaluation and control
11. Audited Financial Statements	
What financial statements are required to accompany a firm's registration application? If a firm applicant has a December 31 year end, do you expect historical IFRS compliant or future IFRS compliant audited financials?	See Section 5.13 of Form 33-109F6 *Firm Registration* for the required financial statements. Registrants are required to deliver annual financial statements and interim financial information that comply with National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*. Section 12.11 of Companion Policy 31-103CP provides guidance on the accounting principles.
12. Proficiency	
Should the DRs and CCO	Individuals applying for registration may not meet the full

QUESTION	ANSWER
be fully qualified (passed the necessary courses) before the EMD registration application is submitted?	proficiency requirements at the time they submit their application, and may be in the process of obtaining the required proficiencies. We will work with individual applicants on a case by case basis. Where applicable and if the applicant is otherwise fit and proper for registration, we may grant registration subject to terms and conditions that require the individual to complete the required courses within 3 to 6 months from the date of registration.
What are the proficiency requirements for CCOs and DRs?	Proficiency requirements for individual categories of registration are set out in Part 3 of NI 31-103. https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/Group/?group=31%20103
13. Share Distributions	
Can a MIE continue to operate without registration, if they do not make any further share distributions (until such time as they become registered)?	Unless the MIE distributes its securities or permits its shareholders to reinvest their dividends on or after February 15, 2019, it will generally not be required to register as an EMD. If the MIE is an investment fund, the person that directs the business, operations and affairs of the MIE must register as an IFM irrespective of the MIE distributing its securities or permitting its shareholders to reinvest their dividends.
14. Reinvestment of dividends	
Will a MIE be required to register for permitting quarterly reinvestment of dividends?	Reinvestment of dividends are trades in securities, and a MIE permitting reinvestment of dividends may need to register if it is in the business of trading securities. See section 1.3 of Companion Policy 31-103CP for guidance on the business trigger for registration. Section 8.17 of NI 31-103 provides an exemption from the dealer registration requirement for trades in securities of the issuer's own issue if a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the issuer's securities is applied to the purchase of the securities, providing the conditions in the section are met.
15. New Investments	
Would a MIE be required to register if infrequently and without solicitation, a new investor requests to purchase shares in the MIE?	An MIE may need to register if it is in the business of trading securities. See section 1.3 of Companion Policy 31-103CP for guidance on the business trigger for registration.

QUESTION	ANSWER
16. KYC and Suitability	
When is a registered firm required to conduct 'know your client' (KYC)?	See section 13.2 of NI 31-103 for the KYC requirements. As well, section 13.2 of 31-103CP and CSA Staff Notice 31-336 *Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know-Your-Client, Know-Your-Product and Suitability Obligations* (SN 31-336) provide guidance on the KYC requirement. SN 31-336 can be found at https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/Group/?group=31%20336
When is a registered firm required to conduct suitability with respect to a client?	See section 13.3 of NI 31-103 for the suitability requirements. As well, section 13.3 of Companion Policy 31-103CP and SN 31-336 provide guidance on the suitability requirement. Reinvestment of dividends in the securities of an issuer are trades in securities. For registered firms, these trades are subject to the suitability requirement.
17. Captive Dealers / Related or Connected Issuers	
Can a captive dealer meet its KYP and suitability obligations if it offers the securities of a related or connected issuer without sending the offering to an external KYP assessment or review?	If a captive dealer meets its KYC and KYP obligations, it may be able to properly determine whether trades in the securities it is offering are suitable for its clients without obtaining an external assessment or review. For further detail, please read the guidance in CSA Staff Notice 31-336 *Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know-Your-Client, Know-Your-Product and Suitability Obligations*, which can be found at *https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/PDF/31-336__CSA_Staff_Notice__January_9_2014/*
Are there other particular considerations for captive dealers?	Under section 13.4 of NI 31-103, all registered firms must identify and respond appropriately to existing and expected material conflicts of interest. Because captive dealers offer securities of related or connected issuers, there are serious concerns about the potential conflicts of interest that arise with these business models. Further guidance on this topic can be found in CSA Staff Notice 31-343 *Conflicts of Interest in Distributing Securities of Related or Connected Issuers*, which can be found at https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/PDF/31-343__CSA_Notice___November_19__2015/

QUESTION	ANSWER
18. Marketing by MIEs and trades through registered dealers	
Suppose an MIE enters into a relationship with an EMD on an arm's length basis. The EMD will conduct all registrable services except the MIE will actively market its securities. Will the MIE trip the dealer registration requirement?	Marketing of securities is identical to soliciting for trades in securities, which is a relevant factor in determining business purpose for the registration requirement. The definition of 'trade' in the Securities Act (BC) includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade. For further guidance on the registration trigger, please see section 1.3 of Companion Policy 31-103CP.
Are there any registration exemptions available for trades conducted by persons through registered dealers?	Section 8.5 of NI 31-103 provides an exemption to a person or company in respect of a trade in a security if the trade is made through a registered dealer, if the dealer is registered in a category that permits that trade. However, this exemption is not available if, in furtherance of the trade, the person or company seeking the exemption solicits or contacts directly any purchaser or prospective purchaser in relation to the trade.

Questions
If you have questions regarding this notice, please refer them to any of the following:

Zach Masum
Manager Legal Services
Capital Markets Regulation
British Columbia Securities Commission
604-899-6869
ZMasum@bcsc.bc.ca

Mark French
Manager Registration & Dealer Compliance
Capital Markets Regulation
British Columbia Securities Commission
604-899-6856
mfrench@bcsc.bc.ca

January 21, 2019

Peter J. Brady
Executive Director

Appendix N

CSA Staff Notice 31-323

Guidance Relating to the Registration Obligations of Mortgage Investment Entities

February 25, 2011

CSA Staff Notice 31-323

Guidance Relating to the Registration Obligations of Mortgage Investment Entities

February 25, 2011

On August 20, 2010, each of the members of the Canadian Securities Administrators (the CSA or we) issued parallel orders providing exemptive relief for mortgage investment entities (MIEs) from the investment fund manager registration requirement and the adviser registration requirement under securities legislation until December 31, 2010. This relief was granted to allow each of the CSA members to review the requirement for MIEs to register as investment fund managers and advisers.

On December 3, 2010, all jurisdictions except British Columbia extended the relief until March 31, 2011. British Columbia extended the relief until June 30, 2011.

This Notice is to clarify the registration requirements that apply to MIEs in each of the CSA jurisdictions pursuant to the requirements of National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103).

Definition of MIE

In this guidance, the term MIE refers to a person or company whose purpose is to directly or indirectly invest substantially all of its assets in debts owing to it that are secured by mortgages, hypothecs or in any other manner on real property (collectively, *mortgages* for purposes of this guidance), and whose other assets are limited to:

- deposits with a bank or other financial institution
- cash
- debt securities referenced in section 8.21 *[Specified debt]* of NI 31-103
- real property which is directly or indirectly held on a temporary basis as a result of action taken to enforce its rights as a secured lender
- instruments intended solely to hedge specific risks relating to the debts owing to it that are secured by mortgages, hypothecs or in any other manner on real property

Mortgage syndications

A MIE holding an interest in a single mortgage will not typically be subject to the investment fund manager registration requirement where that MIE or a related entity had a role in the creation or syndication of that mortgage (such MIEs are commonly referred to as mortgage syndications).

Pooled MIEs

Investment Fund Manager registration
The applicability of the investment fund manager registration requirement to a MIE managing a portfolio of mortgages (Pooled MIE) varies in different CSA jurisdictions. Pooled MIEs commonly include *mortgage investment corporations* as defined in the *Income Tax Act* (Canada).

(a) In jurisdictions other than Alberta
In all CSA jurisdictions other than Alberta, a Pooled MIE may or may not be subject to the investment fund manager registration requirement based on the criteria below.

A Pooled MIE will be considered to be an *investment fund* if its primary activity is managing an investment portfolio that includes mortgages. Factors that we would consider relevant to this determination include:

- the Pooled MIE does not take an active role in originating the mortgages that become part of the investment portfolio, and
- the Pooled MIE buys or sells mortgages in accordance with a stated portfolio investment strategy.

A Pooled MIE that is an investment fund must ensure that the person or company that directs its business, operations or affairs is registered as an investment fund manager.

A Pooled MIE will not be considered to be an *investment fund* if its primary activity is mortgage lending, that is, by operating a business that creates and manages mortgages. Factors that we would consider relevant to this determination include:

- the Pooled MIE originates the mortgages in the name of the Pooled MIE directly or through an agent retained by the Pooled MIE and acting on its behalf
- the Pooled MIE funds the mortgages
- the Pooled MIE enters into the mortgage agreements as the mortgagee, and
- the Pooled MIE administers the mortgages, either directly or through an agent acting on its behalf.

The investment fund manager registration requirement will not typically apply in respect of a Pooled MIE that is not an investment fund.

(b) In Alberta
For a Pooled MIE whose principal jurisdiction is Alberta, the above stated analysis with respect to determining whether a Pooled MIE is subject to the investment fund registration requirement does not apply. Instead, a Pooled MIE that has the power to direct and exercises the responsibility of directing the affairs of an *investment fund* as defined in the *Securities Act* (Alberta) will be required to register as an investment fund manager. A Pooled MIE that does not have the power to direct and does not exercise the responsibility of directing the affairs of an investment fund will not be subject to the investment fund manager registration requirement.

If an entity is uncertain about whether it is subject to the investment fund manager registration requirement, it should consider whether the Pooled MIE is an *investment fund* for the purposes of securities legislation. Sections 7.3 of Companion Policy 31-103CP *Registration Requirements and Exemptions* (31-103CP) and 1.2 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* provide guidance on the general nature of investment funds.

Adviser registration

A person or company that advises a Pooled MIE that is an investment fund about investing in or buying or selling mortgages or other securities will be subject to the adviser registration requirement if it is in the business of advising in securities. A person or company that advises a Pooled MIE that is not an investment fund should consider whether it is in the business of advising in securities as outlined in the guidance in section 1.3 of 31-103CP and, on that basis, required to register.

We will consider applications from advisers to Pooled MIEs for discretionary exemptions from the prescribed portfolio manager proficiencies. If exempted, an adviser will typically be registered as a restricted portfolio manager, with terms and conditions limiting its registration to advising in respect of the Pooled MIE's activities.

In jurisdictions where mortgage broker legislation prescribes proficiency requirements for MIEs, we may consider those to be acceptable alternatives to the proficiency requirements in securities legislation. Such exemptions from the proficiency requirements will also be considered in jurisdictions that do not have mortgage broker legislation that prescribes proficiency requirements applicable to MIEs.

Dealer registration

In all CSA jurisdictions except British Columbia, a MIE or any other person or company trading its securities will be subject to the dealer registration requirement if it is in the business of trading in securities. If a MIE or any other person or company trading its securities is uncertain about whether it must register as a dealer, it should consider whether it is in the business of trading in securities as outlined in the guidance in section 1.3 of 31-103CP.

In British Columbia, a MIE will not be subject to dealer registration until BC Instrument 32-517 in British Columbia expires on June 30, 2011. The British Columbia Securities Commission will issue further guidance about the dealer registration requirement for MIEs in British Columbia prior to June 30, 2011.

Questions

If you have questions about this Notice please direct them to any of the following:

Michael Brady
Senior Legal Counsel, Capital Markets Regulation
British Columbia Securities Commission
Tel: 604-899-6561
1-800-373-6393
mbrady@bcsc.bc.ca

Navdeep Gill
Legal Counsel, Market Regulation
Alberta Securities Commission
Tel: 403-355-9043
navdeep.gill@asc.ca

Curtis Brezinski
Compliance Auditor
Saskatchewan Financial Services Commission
Tel: 306-787-5876
curtis.brezinski@gov.sk.ca

Chris Besko
Legal Counsel, Deputy Director
The Manitoba Securities Commission
Tel. 204-945-2561
Toll Free (Manitoba only) 1-800-655-5244
chris.besko@gov.mb.ca

Christopher Jepson
Senior Legal Counsel
Compliance and Registrant Regulation
Ontario Securities Commission
Tel: 416-593-2379
cjepson@osc.gov.on.ca

Sophie Jean
Conseillère en réglementation
Surintendance de l'assistance à la clientèle, de l'indemnisation et de la distribution
Autorité des marchés financiers
Tel: 514-395-0337, ext. 4786
Toll-free: 1-877-525-0337
sophie.jean@lautorite.qc.ca

Brian W. Murphy
Deputy Director, Capital Markets
Nova Scotia Securities Commission
Tel: 902-424-4592
murphybw@gov.ns.ca

Susan Powell
Senior Legal Counsel
New Brunswick Securities Commission
Tel: 506-643-7697
susan.powell@nbsc-cvmnb.ca

Katharine Tummon
Superintendent of Securities
Prince Edward Island Securities Office
Tel: 902-368-4542
kptummon@gov.pe.ca

Craig Whalen
Manager of Licensing, Registration and Compliance
Office of the Superintendent of Securities
Government of Newfoundland and Labrador
Tel: 709-729-5661
cwhalen@gov.nl.ca

Louis Arki, Director, Legal Registries
Department of Justice, Government of Nunavut
Tel: 867-975-6587
larki@gov.nu.ca

Donn MacDougall
Deputy Superintendent, Legal & Enforcement
Office of the Superintendent of Securities
Government of the Northwest Territories
Tel: 867-920-8984
donald.macdougall@gov.nt.ca

Frederik J. Pretorius
Manager Corporate Affairs (C-6)
Department of Community Services
Government of Yukon
Tel: 867-667-5225
Fred.Pretorius@gov.yk.ca

Appendix O

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P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver BC V7Y 1L2
Canada
Telephone: (604) 899-6500
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What if a firm is only operated by one or two individuals? Is that firm expected to hire more individuals as part of their registration requirements?	An individual may register in multiple categories of registration where necessary. This is common for small firms operated by one or two individuals.
3. UDP	
What is a UDP of a firm expected to do? Where the applicant firm has a parent company, can a director of the parent company be the designated UDP of the registered firm?	See section 5.1 of NI 31-103 for the required duties of an UDP. Section 5.1 of Companion Policy 31-103CP provides guidance about the UDP's functions. See subsections 11.2(2) and 11.2(3) of NI 31-103 for the requirements on designating a UDP for a registered firm. Section 11.2 of Companion Policy 31-103CP provides guidance on designating an UDP.
4. Registration, proficiency and ongoing business conduct requirements for a person trading or advising in prospectus exempt securities	
What are the registration, proficiency and ongoing business conduct	NI 31-103 sets out the registration requirements, exemptions from the requirement to register and ongoing registrant obligations. It also sets out minimum proficiency, financial, and

QUESTION	ANSWER
requirements for a person trading or advising in prospectus exempt securities?	ongoing business conduct requirements.
5. Registration application process and fees	
Where can I find the required forms for registration?	National Instrument 33-109 *Registration Information* (NI 33-109) sets out the information required for registration. The Appendices to NI 33-109 are the various forms related to registration. The link to NI 33-109 is: https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/Group/?group=33%20109
What is the application process for firm registration?	A firm seeking registration must be registered at the Corporate Registry in Victoria. The website of the Corporate Registry can be found at www.corporateonline.gov.bc.ca. The firm seeking registration must submit each of the following to the regulator: (a) A completed Form 33-109F6 *Firm Registration* (the F6) and the required supporting documents by email to: registration@bcsc.bc.ca. The link to the F6 is https://www.bcsc.bc.ca/33-109F6_[F]_06122018/ (b) For each business location of the applicant in the local jurisdiction, other than the applicant's head office, a completed Form 33-109F3 *Business Locations Other than Head Office* in accordance with National Instrument 31-102 *National Registration Database* (NI 31-102) The link to NI 31-102 is: https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/PDF/31-102__NI___updated_January_17__2014/ A registered firm must designate an individual who is registered in the category of CCO. A registered firm must also designate an individual who is registered in the category of UDP. The responsibilities of the CCO and UDP can be found at Part 5 of NI 31-103.
What is the application process for individual registration?	Part 2 of NI 31-103 describes the categories of registration for individuals, and the functions each type of registered individual may provide on behalf of the registered firm. An individual who applies for registration must submit a completed Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* in accordance with NI 31-102. The link to the form is: https://www.bcsc.bc.ca/33-109F4_[F]_110115/

QUESTION	ANSWER
What are the application fees?	At the time the registration application is filed, the individual who applies for registration as a DR or advising representative or a CCO must meet the **minimum proficiency** requirements set out in Part 3 of NI 31-103. For further questions, see the "Proficiency" section of the FAQs. Apart from the F6 filing, all other filings with respect to registration information under NI 33-109 are required to be submitted through the National Registration Database (NRD). NI 31-102 sets out the process in Part 3 for NRD submissions and in Part 4 for payment of fees through NRD. To enrol on NRD please visit: https://www.nrd-info.ca/ Application fees effective December 30, 2018 are: • $2500 for a firm application • $350 for each dealing or advising representative application The fee schedule is set out in section 22 of the *Securities Regulations*. The link to the *Securities Regulations* is http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/58_196_97
6. Categories of registration for MIEs	
What registration categories should firms and individuals previously relying on the registration exemption register in? Aside from the EMD category, are there other categories of registration that may apply to MIEs?	A firm that trades in the securities of a MIE will need to register in the category of EMD - see Part 7 of NI 31-103. An individual conducting this trading activity for the firm will need to register in the category of a DR - see Part 2 of NI 31-103. CSA Staff Notice 31-323 *Guidance Relating to Registration Obligations of Mortgage Investment Entities* (SN 31-323) provides guidance on the registration requirements that apply to MIEs pursuant to the requirements of NI 31-103. In particular, SN 31-323 provides guidance on when firms may need to register as IFMs or advisers with regards to MIEs. SN 31-323 also provides guidance on how the IFM registration requirement may differ between Alberta and other CSA jurisdictions. SN 31-323 can be found at https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/Group/?group=31%20323

QUESTION	ANSWER
7. Insurance	
What are the insurance and bonding requirements for EMDs? Where can one obtain insurance or the global bonding required in Part 12 of NI 31-103?	Section 12.3 of NI 31-103 sets out the insurance requirements for a dealer. Appendix A to NI 31-103 sets out the bonding and insurance clauses that should be included in the dealer's insurance and bonding coverage. Certain insurance brokers or underwriters offer bonding and insurance coverage to securities dealers or advisers that include clauses set out in Appendix A to NI 31-103. Please conduct your own inquiries and due diligence on the insurance providers before obtaining the required coverage. We do not make recommendations on specific insurance brokers or underwriters.
8. Supporting Documents	
What documents would you require in support of the Form 33-109F6 *Firm Registration* (the F6)?	• Schedule B to the F6 – *Submission to jurisdiction and appointment of agent for service* for each jurisdiction where the firm is seeking registration • Schedule C to the F6 – Form 31-103F1 *Calculation of Excess Working Capital* • Business plan • Policies and Procedures Manual • Client agreements (except Ontario) • Constating documents • Organization chart • Ownership chart • Directors' resolution approving insurance • Audited financial statements (for further questions, see the "Audited Financial Statements" section of the FAQs) • Subordination agreement(s) (if any) • Letter of direction to auditors • Insurance and bonding policy • Client facing documents including account opening documents, relationship disclosure document and the Know Your Client Form (BC only) • Letterhead and sample business cards (BC only) • Standard employment agreements (BC only) • Any other documents requested by registration staff
9. Policies and Procedures Manual	
What is a policies and procedures manual (PPM)?	A PPM is an information resource on what a firm does, its functions, its operational structure, its internal controls, who is responsible for what functions and the firm's process to carry out each function. Every company has policies (its own principles)

QUESTION	ANSWER
	on which it operates - this is normally reflected in its code of ethics, client relationship policies, principles or policies on marketing and advertising, policies on hiring, policies on internal controls and supervision, etc. The PPM also identifies business and operational risks and how these are to be avoided, controlled or managed. The PPM is a code on how the firm operates. The PPM should be kept up to date, to accurately reflect the firm's operations, functions, policies, procedures and applicable regulatory changes. It is a live document. A corporate function should be founded on a specific corporate policy and supported by detailed procedures on how this function is to be carried out and by whom. Policies are based on the company's regulatory and compliance obligations. Corporate policies and principles should form part of the corporate culture. The PPM should be written in detail so that any person is able to seek guidance from the manual on how a particular function in the organization is carried out. It promotes transparency and makes it possible for every employee to understand the policies of the company and the procedures set out to carry out the functions that make up the operations of the company.
Is there a template available for the PPM?	We do not have a template for a PPM because policies and procedures are unique to a business. The following link includes some questions a firm should ask when developing its PPM. https://www.bcsc.bc.ca/For_Registrants/Compliance_Toolkit/Questions_to_Ask_when_Preparing_a_Policies___Procedures_Manual_(PPM)
10. Business Plan	
What does the BCSC mean by "business plan"?	A business plan is a blueprint of the firm's business. It is a formal statement of the firm's business goals, the reasons why they are believed to be attainable, and the plan for reaching those goals. It should contain background information about the organization (including its shareholders and principals, affiliates and holding companies) and about the team attempting to reach those goals. As applicant, you have intimate knowledge of the firm's business, vision, operational strategies and objectives, business risks and controls. We need to understand the firm's business, its strategies and objectives in relation to its business and how it intends to achieve them. We want to know whether the firm has identified its business and operational risks and how the firm

QUESTION	ANSWER
	intends to address, mitigate, avoid or control these risks. Your business plan should include: • Executive Summary • Nature of the Business • Mission statement (philosophy) • A full list of shareholders, affiliates, related parties, management and permitted individuals • Background on management and permitted individuals • Organizational chart and ownership chart • Related party chart • Business objectives (short and long term) • Market analysis • Target market • Business goals and strategies (short and long term on how objectives will be achieved) • Operational analysis • Marketing (what and how) • Policies and procedures (Set out in a separate PPM) • Human Resources plan (recruitment, training and staffing) • Financial Plans (3-year financial projection) • Risk management (identify business and operational risks and how they will be addressed) • Timetables and milestones • Strategy implementation • Evaluation and control
11. Audited Financial Statements	
What financial statements are required to accompany a firm's registration application? If a firm applicant has a December 31 year end, do you expect historical IFRS compliant or future IFRS compliant audited financials?	See Section 5.13 of Form 33-109F6 *Firm Registration* for the required financial statements. Registrants are required to deliver annual financial statements and interim financial information that comply with National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*. Section 12.11 of Companion Policy 31-103CP provides guidance on the accounting principles.
12. Proficiency	
Should the DRs and CCO	Individuals applying for registration may not meet the full

QUESTION	ANSWER
be fully qualified (passed the necessary courses) before the EMD registration application is submitted?	proficiency requirements at the time they submit their application, and may be in the process of obtaining the required proficiencies. We will work with individual applicants on a case by case basis. Where applicable and if the applicant is otherwise fit and proper for registration, we may grant registration subject to terms and conditions that require the individual to complete the required courses within 3 to 6 months from the date of registration.
What are the proficiency requirements for CCOs and DRs?	Proficiency requirements for individual categories of registration are set out in Part 3 of NI 31-103. https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/Group/?group=31%20103
13. Share Distributions	
Can a MIE continue to operate without registration, if they do not make any further share distributions (until such time as they become registered)?	Unless the MIE distributes its securities or permits its shareholders to reinvest their dividends on or after February 15, 2019, it will generally not be required to register as an EMD. If the MIE is an investment fund, the person that directs the business, operations and affairs of the MIE must register as an IFM irrespective of the MIE distributing its securities or permitting its shareholders to reinvest their dividends.
14. Reinvestment of dividends	
Will a MIE be required to register for permitting quarterly reinvestment of dividends?	Reinvestment of dividends are trades in securities, and a MIE permitting reinvestment of dividends may need to register if it is in the business of trading securities. See section 1.3 of Companion Policy 31-103CP for guidance on the business trigger for registration. Section 8.17 of NI 31-103 provides an exemption from the dealer registration requirement for trades in securities of the issuer's own issue if a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the issuer's securities is applied to the purchase of the securities, providing the conditions in the section are met.
15. New Investments	
Would a MIE be required to register if infrequently and without solicitation, a new investor requests to purchase shares in the MIE?	An MIE may need to register if it is in the business of trading securities. See section 1.3 of Companion Policy 31-103CP for guidance on the business trigger for registration.

QUESTION	ANSWER
16. KYC and Suitability	
When is a registered firm required to conduct 'know your client' (KYC)?	See section 13.2 of NI 31-103 for the KYC requirements. As well, section 13.2 of 31-103CP and CSA Staff Notice 31-336 *Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know-Your-Client, Know-Your-Product and Suitability Obligations* (SN 31-336) provide guidance on the KYC requirement. SN 31-336 can be found at https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/Group/?group=31%20336
When is a registered firm required to conduct suitability with respect to a client?	See section 13.3 of NI 31-103 for the suitability requirements. As well, section 13.3 of Companion Policy 31-103CP and SN 31-336 provide guidance on the suitability requirement. Reinvestment of dividends in the securities of an issuer are trades in securities. For registered firms, these trades are subject to the suitability requirement.
17. Captive Dealers / Related or Connected Issuers	
Can a captive dealer meet its KYP and suitability obligations if it offers the securities of a related or connected issuer without sending the offering to an external KYP assessment or review?	If a captive dealer meets its KYC and KYP obligations, it may be able to properly determine whether trades in the securities it is offering are suitable for its clients without obtaining an external assessment or review. For further detail, please read the guidance in CSA Staff Notice 31-336 *Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know-Your-Client, Know-Your-Product and Suitability Obligations*, which can be found at *https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/PDF/31-336__CSA_Staff_Notice__January_9_2014/*
Are there other particular considerations for captive dealers?	Under section 13.4 of NI 31-103, all registered firms must identify and respond appropriately to existing and expected material conflicts of interest. Because captive dealers offer securities of related or connected issuers, there are serious concerns about the potential conflicts of interest that arise with these business models. Further guidance on this topic can be found in CSA Staff Notice 31-343 *Conflicts of Interest in Distributing Securities of Related or Connected Issuers*, which can be found at https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/PDF/31-343__CSA_Notice___November_19__2015/

QUESTION	ANSWER
18. Marketing by MIEs and trades through registered dealers	
Suppose an MIE enters into a relationship with an EMD on an arm's length basis. The EMD will conduct all registrable services except the MIE will actively market its securities. Will the MIE trip the dealer registration requirement?	Marketing of securities is identical to soliciting for trades in securities, which is a relevant factor in determining business purpose for the registration requirement. The definition of 'trade' in the Securities Act (BC) includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade. For further guidance on the registration trigger, please see section 1.3 of Companion Policy 31-103CP.
Are there any registration exemptions available for trades conducted by persons through registered dealers?	Section 8.5 of NI 31-103 provides an exemption to a person or company in respect of a trade in a security if the trade is made through a registered dealer, if the dealer is registered in a category that permits that trade. However, this exemption is not available if, in furtherance of the trade, the person or company seeking the exemption solicits or contacts directly any purchaser or prospective purchaser in relation to the trade.

Questions
If you have questions regarding this notice, please refer them to any of the following:

Zach Masum
Manager Legal Services
Capital Markets Regulation
British Columbia Securities Commission
604-899-6869
ZMasum@bcsc.bc.ca

Mark French
Manager Registration & Dealer Compliance
Capital Markets Regulation
British Columbia Securities Commission
604-899-6856
mfrench@bcsc.bc.ca

January 21, 2019

Peter J. Brady
Executive Director

Appendix P

Companion Policy 31-103 CP
Registration Requirements, Exemptions and Ongoing Registrant Obligations

Companion Policy 31-103 CP
Registration Requirements, Exemptions and Ongoing Registrant Obligations

Part 1 Definitions and fundamental concepts

1.1 Introduction

Purpose of this Companion Policy

This Companion Policy sets out how the Canadian Securities Administrators (the CSA or we) interpret or apply the provisions of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (*NI 31-103) and related securities legislation.

Numbering system

Except for Part 1, the numbering of Parts, Divisions and sections in this Companion Policy correspond to the numbering in NI 31-103. Any general guidance for a Part or a Division appears immediately after the Part or Division name. Any specific guidance on sections in NI 31-103 follows any general guidance. If there is no guidance for a Part, Division or section, the numbering in this Companion Policy will skip to the next provision that does have guidance.

All references in this Companion Policy to sections, Parts and Divisions are to NI 31-103, unless otherwise noted.

Additional requirements applicable to registrants

For additional requirements that may apply to them, registrants should refer to:

- National Instrument 31-102 *National Registration Database* (NI 31-102) and the Companion Policy to NI 31-102
- National Instrument 33-109 *Registration Information* (NI 33-109) and the Companion Policy to NI 33-109
- National Policy 11-204 *Process for Registration in Multiple Jurisdictions* (NP 11-204), and
- securities and derivatives legislation in their jurisdiction

Registrants that are members of a self-regulatory organization (SRO) must also comply with their SRO's requirements.

Disclosure and notices

Delivering disclosure and notices to the principal regulator

Under section 1.3, registrants must deliver all disclosure and notices required under NI 31-103 to the registrant's principal regulator. This does not apply to notices under sections:

- 8.18 *International dealer*
- 8.26 *International adviser*
- 11.9 *Registrant acquiring a registered firm's securities or assets*, and
- 11.10 *Registered firm whose securities are acquired*

Registrants must deliver these notices to the regulator in each jurisdiction where they are registered or relying on an exemption from registration.

Electronic delivery of documents

These documents may be delivered electronically. Registrants should refer to National Policy 11-201 *Delivery of Documents by Electronic Means* and, in Québec, Notice 11-201 *Delivery of Documents by Electronic Means*.

See Appendix A for contact information for each regulator.

Clear and meaningful disclosure to clients

We expect registrants to present disclosure information to clients in a clear and meaningful manner in order to ensure clients understand the information presented. Registrants should ensure that investors can readily understand the information. These requirements are consistent with the obligation to deal fairly, honestly and in good faith with clients.

1.2 Definitions

Unless defined in NI 31-103, terms used in NI 31-103 and in this Companion Policy have the meaning given to them in the securities legislation of each jurisdiction or in National Instrument 14-101 *Definitions*. See Appendix B for a list of some terms that are not defined in NI 31-103 or this Companion Policy but are defined in other securities legislation.

In this Companion Policy "regulator" means the regulator or securities regulatory authority in a jurisdiction.

Permitted client

The following discussion provides guidance on the term "permitted client", which is defined in section 1.1.

"Permitted client" is used in the following sections:

- 8.18 *International dealer*
- 8.26 *International adviser*
- 13.2 *Know your client*
- 13.3 *Suitability*
- 13.13 *Disclosure when recommending the use of borrowed money*
- 14.2 *Relationship disclosure information,* and
- 14.4 *When the firm has a relationship with a financial institution*

Exemptions from registration when dealing with permitted clients

NI 31-103 exempts international dealers and international advisers from the registration requirement if they deal with certain permitted clients and meet certain other conditions.

Exemptions from other requirements when dealing with permitted clients

Under section 13.3, permitted clients may waive their right to have a registrant determine that a trade is suitable. In order to rely on this exemption, the registrant must determine that a client is a permitted client at the time the client waives their right to suitability.

Under sections 13.13, 14.2 and 14.4, registrants do not have to provide certain disclosures to permitted clients. In order to rely on these exemptions, registrants must determine that a client is a permitted client at the time the client opens an account.

Determining assets

The definition of permitted client includes monetary thresholds based on the value of the client's assets. The monetary thresholds in paragraphs (o) and (q) of the definition are intended to create "bright-line" standards. Investors who do not satisfy these thresholds do not qualify as permitted clients under the applicable paragraph.

Paragraph (o) of the definition

Paragraph (o) refers to an individual who beneficially owns financial assets with an aggregate realizable value that exceeds $5 million, before taxes but net of any related liabilities.

In general, determining whether financial assets are beneficially owned by an individual should be straightforward. However, this determination may be more difficult if financial assets are held in a trust or in other types of investment vehicles for the benefit of an individual.

Factors indicating beneficial ownership of financial assets include:

- possession of evidence of ownership of the financial asset
- entitlement to receive any income generated by the financial asset
- risk of loss of the value of the financial asset, and
- the ability to dispose of the financial asset or otherwise deal with it as the individual sees fit

For example, securities held in a self-directed RRSP for the sole benefit of an individual are beneficially owned by that individual. Securities held in a group RRSP are not beneficially owned if the individual cannot acquire and deal with the securities directly.

"Financial assets" is defined in section 1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106).

Realizable value is typically the amount that would be received by selling an asset.

Paragraph (q) of the definition

Paragraph (q) refers to a person or company that has net assets of at least $25 million, as shown on its last financial statements. "Net assets" under this paragraph is total assets minus total liabilities.

1.3 Fundamental concepts

This section describes the fundamental concepts that form the basis of the registration regime:

- requirement to register
- business trigger for trading and advising, and
- fitness for registration

A registered firm is responsible for the conduct of the individuals whose registration it sponsors. A registered firm

- must undertake due diligence before sponsoring an individual to be registered to act on its behalf (see further guidance in Part 4 *Due diligence by firms* of the Companion Policy to NI 33-109)
- has an ongoing obligation to monitor and supervise its registered individuals in an effective manner (see further guidance in section 11.1 of this Companion Policy)

Failure of a registered firm to take reasonable steps to discharge these responsibilities may be relevant to the firm's own continued fitness for registration.

Requirement to register

The requirement to register is found in securities legislation. Firms must register if they are:

- in the business of trading
- in the business of advising
- holding themselves out as being in the business of trading or advising
- acting as an underwriter, or
- acting as an investment fund manager

Individuals must register if they trade, underwrite or advise on behalf of a registered dealer or adviser, or act as the ultimate designated person (UDP) or chief compliance officer (CCO) of a registered firm. Except for the UDP and the CCO, individuals who act on behalf of a registered investment fund manager do not have to register.

However, all permitted individuals of any registrant must file Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (Form 33-109F4).

There is no renewal requirement for registration, but fees must be paid every year to maintain registration.

Multiple categories

Registration in more than one category may be necessary. For example, an adviser that also manages an investment fund may have to register as a portfolio manager and an investment fund manager. An adviser that manages a portfolio and distributes units of an investment fund may have to register as a portfolio manager and as a dealer.

Registration exemptions

NI 31-103 provides exemptions from the registration requirement. There may be additional exemptions in securities legislation. Some exemptions do not need to be applied for if the conditions of the exemption are met. In other cases, on receipt of an application, the regulator has discretion to grant exemptions for specified dealers, advisers or investment fund managers, or activities carried out by them if registration is required but specific circumstances indicate that it is not otherwise necessary for investor protection or market integrity.

Business trigger for trading and advising

We refer to trading or advising in securities for a business purpose as the "business trigger" for registration.

We look at the type of activity and whether it is carried out for a business purpose to determine if an individual or firm must register. We consider the factors set out below, among others, to determine if the activity is for a business purpose. For the most part, these factors are from case law and regulatory decisions that have interpreted the business purpose test for securities matters.

Factors in determining business purpose

This section describes factors that we consider relevant in determining whether an individual or firm is trading or advising in securities for a business purpose and, therefore, subject to the dealer or adviser registration requirement.

This is not a complete list. We do not automatically assume that any one of these factors on its own will determine whether an individual or firm is in the business of trading or advising in securities.

(a) Engaging in activities similar to a registrant

We usually consider an individual or firm engaging in activities similar to those of a registrant to be trading or advising for a business purpose. Examples include promoting securities or stating in any way that the individual or firm will buy or sell securities. If an individual or firm sets up a business to carry out any of these activities, we may consider them to be trading or advising for a business purpose.

(b) Intermediating trades or acting as a market maker

In general, we consider intermediating a trade between a seller and a buyer of securities to be trading for a business purpose. This typically takes the form of the business commonly referred to as a broker. Making a market in securities is also generally considered to be trading for a business purpose.

(c) Directly or indirectly carrying on the activity with repetition, regularity or continuity

Frequent or regular transactions are a common indicator that an individual or firm may be engaged in trading or advising for a business purpose. The activity does not have to be their sole or even primary endeavour for them to be in the business.

We consider regularly trading or advising in any way that produces, or is intended to produce, profits to be for a business purpose. We also consider any other sources of income and how much time an individual or firm spends on all activities associated with the trading or advising.

(d) Being, or expecting to be, remunerated or compensated

Receiving, or expecting to receive, any form of compensation for carrying on the activity, including whether the compensation is transaction or value based, indicates a business purpose. It does not matter if the individual or firm actually receives compensation or in what form. Having the capacity or the ability to carry on the activity to produce profit is also a relevant factor.

(e) Directly or indirectly soliciting

Contacting anyone to solicit securities transactions or to offer advice may reflect a business purpose. Solicitation includes contacting someone by any means, including advertising that proposes buying or selling securities or participating in a securities transaction, or that offers services or advice for these purposes.

Business trigger examples

This section explains how the business trigger might apply to some common situations.

(a) Securities issuers

A securities issuer is an entity that issues or trades in its own securities. In general, securities issuers with an active non-securities business do not have to register as a dealer if they:

- do not hold themselves out as being in the business of trading in securities
- trade in securities infrequently
- are not, or do not expect to be, compensated for trading in securities
- do not act as intermediaries, and
- do not produce, or intend to produce, a profit from trading in securities

However, securities issuers may have to register as a dealer if they:

- frequently trade in securities

- employ or otherwise contract individuals to perform activities on their behalf that are similar to those performed by a registrant (other than underwriting in the normal course of a distribution or trading for their own account)

- solicit investors actively, or

- act as an intermediary by investing client money in securities

For example, an investment fund manager that carries out the activities described above may have to register as a dealer.

Securities issuers that are in the business of trading should consider whether they qualify for the exemption from the registration requirement for trades through a registered dealer in section 8.5.

In most cases, securities issuers are subject to the prospectus requirements in securities legislation. Regulators have the discretionary authority to require an underwriter for a prospectus distribution.

(b) Venture capital and private equity

This guidance does not apply to labour sponsored or venture capital funds as defined in National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106).

Venture capital and private equity investing are distinguished from other forms of investing by the role played by venture capital and private equity management companies (collectively, VCs). This type of investing includes a range of activities that may require registration.

VCs typically raise money under one of the prospectus exemptions in NI 45-106, including for trades to "accredited investors". The investors typically agree that their money will remain invested for a period of time. The VC uses this money to invest in securities of companies that are not publicly traded. The VC usually becomes actively involved in the management of the company, often over several years.

Examples of active management in a company include the VC having:

- representation on the board of directors

- direct involvement in the appointment of managers

- a say in material management decisions

The VC looks to realize on the investment either through a public offering of the company's securities, or a sale of the business. At this point, the investors' money can be returned to them, along with any profit.

Investors rely on the VC's expertise in selecting and managing the companies it invests in. In return, the VC receives a management fee or "carried interest" in the profits generated from these investments. They do not receive compensation for raising capital or trading in securities.

Applying the business trigger factors to the VC activities as described above, there would be no requirement for the VC to register as:

- a portfolio manager, if the advice provided in connection with the purchase and sale of companies is incidental to the VC's active management of these companies, or

- a dealer, if both the raising of money from investors and the investing of that money in companies are occasional and uncompensated activities

If the VC is actively involved in the management of the companies it invests in, the investment portfolio would generally not be considered an investment fund. As result, the VC would not need to register as an investment fund manager.

The business trigger factors and investment fund manager analysis may apply differently if the VC engages in activities other than those described above.

(c) One-time activities

In general, we do not require registration for one-time trading or advising activities. This includes trading or advising that:

- is carried out by an individual or firm acting as a trustee, executor, administrator, personal or other legal representative, or
- relates to the sale of a business

(d) Incidental activities

If trading or advising activity is incidental to a firm's primary business, we may not consider it to be for a business purpose.

For example, merger and acquisition specialists that advise the parties to a transaction between companies are not normally required to register as dealers or advisers in connection with that activity, even though the transaction may result in trades in securities and they will be compensated for the advice. If the transaction results in trades in the securities of the company to an acquirer, this is considered incidental to the acquisition transaction. However, if the merger and acquisition specialists also engage in capital raising from prospective investors (including private placements), they will need to consider whether such activity would be in the business of trading and require registration.

Another example is professionals, such as lawyers, accountants, engineers, geologists and teachers, who may provide advice on securities in the normal course of their professional activities. We do not consider them to be advising on securities for a business purpose. For the most part, any advice on securities will be incidental to their professional activities. This is because they:

- do not regularly advise on securities
- are not compensated separately for advising on securities
- do not solicit clients on the basis of their securities advice, and
- do not hold themselves out as being in the business of advising on securities

Registration trigger for investment fund managers

Investment fund managers are subject to a registration trigger. This means that if a firm carries on the activities of an investment fund manager, it must register. However, investment fund managers are not subject to the business trigger.

Fitness for registration

The regulator will only register an applicant if they appear to be fit for registration. Following registration, individuals and firms must maintain their fitness in order to remain registered. If the regulator determines that a registrant has become unfit for registration, the regulator may suspend or revoke the registration. See Part 6 of this Companion Policy for guidance on suspension and revocation of individual registration. See Part 10 of this Companion Policy for guidance on suspension and revocation of firm registration.

Terms and conditions

The regulator may impose terms and conditions on a registration at the time of registration or at any time after registration. Terms and conditions imposed at the time of registration are generally permanent, for example, in the case of a restricted dealer who is limited to specific activities. Terms and conditions imposed after registration are generally temporary. For example, if a registrant does not maintain the required capital, it may have to file monthly financial statements and capital calculations until the regulator's concerns are addressed.

Opportunity to be heard

Applicants and registrants have an opportunity to be heard by the regulator before their application for registration is denied. They also have an opportunity to be heard before the regulator imposes terms and conditions on their registration if they disagree with the terms and conditions.

Assessing fitness for registration - firms

We assess whether a firm is or remains fit for registration through the information it is required to provide on registration application forms and as a registrant, and through compliance reviews. Based on this information, we consider whether the firm is able to carry out its obligations under securities legislation. For example, registered firms must be financially viable. A firm that is insolvent or has a history of bankruptcy may not be fit for registration.

In addition, when determining whether a firm whose head office is outside Canada is, and remains, fit for registration, we will consider whether the firm maintains registration or regulatory organization membership in the foreign jurisdiction that is appropriate for the securities business it carries out there.

Assessing fitness for registration - individuals

We use three fundamental criteria to assess whether an individual is or remains fit for registration:

- proficiency
- integrity, and
- solvency

(a) Proficiency

Individual applicants must meet the applicable education, training and experience requirements prescribed by securities legislation and demonstrate knowledge of securities legislation and the securities they recommend.

Registered individuals should continually update their knowledge and training to keep pace with new securities, services and developments in the industry that are relevant to their business. See Part 3 of this Companion Policy for more specific guidance on proficiency.

(b) Integrity

Registered individuals must conduct themselves with integrity and have an honest character. The regulator will assess the integrity of individuals through the information they are required to provide on registration application forms and as registrants, and through compliance reviews. For example, applicants are required to disclose information about conflicts of interest, such as other employment or partnerships, service as a member of a board of directors, or relationships with affiliates, and about any regulatory or legal actions against them.

(c) Solvency

The regulator will assess the overall financial condition of an individual applicant or registrant. An individual that is insolvent or has a history of bankruptcy may not be fit for registration. Depending on the circumstances, the regulator may consider the individual's contingent liabilities. The regulator may take into account an individual's bankruptcy or insolvency when assessing their continuing fitness for registration.

Part 2 Categories of registration for individuals

2.1 Individual categories

Multiple individual categories

Individuals who carry on more than one activity requiring registration on behalf of a registered firm must:

- register in all applicable categories, and
- meet the proficiency requirements of each category

For example, an advising representative of a portfolio manager who is also the firm's CCO must register in the categories of advising representative and CCO. They must meet the proficiency requirements of both of these categories.

Individual registered in a firm category

An individual can be registered in both a firm and individual category. For example, a sole proprietor who is registered in the firm category of portfolio manager must also be registered in the individual category of advising representative.

2.2 Client mobility exemption – individuals

Conditions of the exemption

The mobility exemption in section 2.2 allows registered individuals to continue dealing with and advising clients who move to another jurisdiction, without registering in that other jurisdiction. Section 8.30 *Client mobility exemption – firms* contains a similar exemption for registered firms.

The exemption becomes available when the client (not the registrant) moves to another jurisdiction. An individual may deal with up to five "eligible" clients in each other jurisdiction. Each of the client, their spouse and any children are an eligible client.

An individual may only rely on the exemption if:

- they and their sponsoring firm are registered in their principal jurisdiction
- they and their sponsoring firm only act as a dealer, underwriter or adviser in the other jurisdiction as permitted under their registration in their principal jurisdiction
- they comply with Part 13 *Dealing with clients – individuals and firms*
- they act fairly, honestly and in good faith in their dealings with the eligible client, and
- their sponsoring firm has disclosed to the eligible client that the individual and if applicable, their sponsoring firm, are exempt from registration in the other jurisdiction and are not subject to the requirements of securities legislation in that jurisdiction

As soon as possible after an individual first relies on this exemption, their sponsoring firm must complete and file Form 31-103F3 *Use of mobility exemption* (Form 31-103F3) with the other jurisdiction.

Limits on the number of clients

Sections 2.2 and 8.30 are independent of each other: individuals may rely on the exemption from registration in section 2.2 even though their sponsoring firm is registered in the local jurisdiction (and is not relying on the exemption from registration in section 8.30). The limits in sections 2.2 and 8.30 are per jurisdiction.

For example a firm using the exemption in section 8.30 could have 10 clients in each of several local jurisdictions where it is not registered. An individual may also use the exemption in section 2.2 to have 5 clients in each of several jurisdictions where the individual is not registered.

The individual limits are per individual. For example several individuals working for the same firm could each have 5 clients in the same local jurisdiction and each individual could still rely on the exemption in section 2.2. However, the firm may not exceed its 10 client limit if it wants to rely on the exemption in section 8.30. If the firm exceeds the 10 client limit, the firm must be registered in the local jurisdiction.

Part 3 Registration requirements – individuals

Division 1 General proficiency requirements

Application of proficiency requirements

Part 3 sets out the initial and ongoing proficiency requirements for

- dealing representatives and chief compliance officers of mutual fund dealers, scholarship plan dealers and exempt-market dealers respectively
- advising representatives, associate advising representatives and chief compliance officers of portfolio managers
- chief compliance officers of investment fund managers

The regulator is required to determine the individual's fitness for registration and may exercise discretion in doing so.

Section 3.3 does not provide proficiency requirements for dealing representatives of investment dealers since the IIROC Rules provide those requirements for the individuals who are approved persons of IIROC member firms.

Exam based requirements

Individuals must pass exams – not courses – to meet the education requirements in Part 3. For example, an individual must pass the Canadian Securities Course Exam, but does not have to complete the Canadian Securities Course. Individuals are responsible for completing the necessary preparation to pass an exam and for proficiency in all areas covered by the exam.

3.3 Time limits on examination requirements

Under section 3.3, there is a time limit on the validity of exams prescribed in Part 3. Individuals must pass an exam within 36 months before they apply for registration. However, this time limit does not apply if the individual:

- was registered in an active capacity (i.e., not suspended), in the same category in a jurisdiction of Canada at any time during the 36-month period before the date of their application; or
- has gained relevant securities industry experience for a total of 12 months during the 36-month period before the date of their application: these months do not have to be consecutive, or with the same firm or organization

These time limits do not apply to the CFA Charter or the CIM designation, since we do not expect the holders of these designations to have to retake the courses forming part of the requirements applicable to these designations. However, if the individual no longer has the right to use the CFA Charter or the CIM designation, by reason of revocation of the designation or otherwise, we may consider the reasons for such a revocation to be relevant in determining an individual's fitness for registration. Registered individuals are required to notify the regulator of any change in the status of the CFA Charter or the CIM designation within 10 days of the change, by submitting Form 33-109F5 *Change of Registration Information* in accordance with National Instrument 31-102 *National Registration Database.*

When assessing an individual's fitness for registration, the regulator may consider

- the date on which the relevant examination was passed, and
- the length of time between any suspension and reinstatement of registration during the 36 month period

See Part 6 of this Companion Policy for guidance on the meaning of "suspension" and "reinstatement".

Relevant securities industry experience

The securities industry experience under subsection 3.3(2)(b) should be relevant to the category applied for. It may include experience acquired:

- during employment at a registered dealer, a registered adviser or an investment fund manager
- in related investment fields, such as investment banking, securities trading on behalf of a financial institution, securities research, portfolio management, investment advisory services or supervision of those activities
- in legal, accounting or consulting practices related to the securities industry
- in other professional service fields that relate to the securities industry, or
- in a securities-related business in a foreign jurisdiction

Division 2 Education and experience requirements

See Appendix C for a chart that sets out the proficiency requirements for each individual category of registration.

Granting exemptions

The regulator may grant an exemption from any of the education and experience requirements in Division 2 if it is satisfied that an individual has qualifications or relevant experience that is equivalent to, or more appropriate in the circumstances than, the prescribed requirements.

Proficiency for representatives of restricted dealers and restricted portfolio managers

The regulator will decide on a case-by-case basis what education and experience are required for registration as:

- a dealing representative or CCO of a restricted dealer, and
- an advising representative or CCO of a restricted portfolio manager

The regulator will determine these requirements when it assesses the individual's fitness for registration.

3.4 Proficiency – initial and ongoing

Proficiency principle

Under section 3.4, registered individuals must not perform an activity that requires registration unless they have the education, training and experience that a reasonable person would consider necessary to perform the activity competently, including understanding the structure, features and risks of each security they recommend to a client (also referred to as know-your-product or KYP).

The requirement to understand the structure, features and risks of each security recommended to a client is a proficiency requirement. This requirement is in addition to the suitability obligation in section 13.3 and applies even where there is an exemption from the suitability obligation such as, for example, the exemption in subsection 13.3(4) in respect of permitted clients.

CCOs must also not perform an activity that requires registration unless they have the education, training and experience that a reasonable person would consider necessary to perform the activity competently.

Responsibility of the firm

The responsibility of registered firms to oversee the compliance of registered individuals acting on their behalf extends to ensuring that they are proficient at all times. A registered firm must not permit an individual they sponsor to perform an activity if the proficiency requirements are not met.

Firms should perform their own analysis of all securities they recommend to clients and provide product training to ensure their registered representatives have a sufficient understanding of the securities and their risks to meet their suitability obligations under section 13.3. Similarly, registered individuals should have a thorough understanding of a security before they recommend it to a client (also referred to as know-your-product or KYP).

3.11 Portfolio manager – advising representative
3.12 Portfolio manager – associate advising representative

The 12 months of relevant investment management experience referred to in section 3.11 and 24 months of relevant investment management experience referred to in section 3.12 do not have to be consecutive, or with the same firm or organization. The individual must obtain a total of this experience within the 36-month period before the date they apply for registration.

For individuals with a CFA charter, the regulator will decide on a case-by-case basis whether the experience they gained to earn the charter qualifies as relevant investment management experience.

Relevant investment management experience

Relevant investment management experience under sections 3.11 and 3.12 may vary according to the level of specialization of the individual. It may include:

- securities research and analysis experience, demonstrating an ability in, and understanding of, portfolio analysis or portfolio security selection, or
- management of investment portfolios on a discretionary basis, including investment decision making, rebalancing and evaluating performance

Advising representatives

Advising representatives may acquire relevant investment management experience during employment in a portfolio management capacity with a registered investment dealer or adviser firm.

Associate advising representatives

Relevant investment management experience for associate advising representatives may include working at:

- an unregistered portfolio manager of a Canadian financial institution
- an adviser that is registered in another jurisdiction of Canada, or
- an adviser in a foreign jurisdiction

Division 3 Membership in a self-regulatory organization

3.16 Exemptions from certain requirements for SRO approved persons

Section 3.16 exempts registered individuals who are dealing representatives of IIROC or MFDA members from the requirements in NI 31-103 for suitability and disclosure when recommending the use of borrowed money. This is because IIROC and the MFDA have their own rules for these matters.

In Québec, these requirements do not apply to dealing representatives of a mutual fund dealer to the extent that equivalent requirements are applicable to those dealing representatives under regulations in Québec.

This section also exempts registered individuals who are dealing representatives of IIROC from the know your client obligations in section 13.2.

We expect registered individuals who are dealing representatives of IIROC or MFDA members to comply with the by-laws, rules, regulations and policies of IIROC or the MFDA, as applicable (SRO provisions). These individuals cannot rely on the exemptions in section 3.16 unless they are complying with the corresponding SRO provisions specified in NI 31-103. We regard compliance with IIROC or MFDA procedures, interpretations, notices, bulletins and practices as relevant to compliance with the applicable SRO provisions.

For these purposes, an individual that has an exemption from an SRO provision and complies with the terms of that exemption would be considered to have complied with that SRO provision.

Part 4 Restrictions on registered individuals

4.1 Restrictions on acting for another registered firm

We will consider exemption applications on a case by case basis. When reviewing a registered firm's application for relief from this restriction, we will consider:

- there are valid business reasons for the individual to be registered with both firms
- the individual will have sufficient time to adequately serve both firms
- the applicant's sponsoring firms have demonstrated that they have policies and procedures addressing any conflicts of interest that may arise as a result of the dual registration, and
- the sponsoring firms will be able to deal with these conflicts, including supervising how the individual will deal with these conflicts

In the case of 4.1(1)(b), namely a dealing, advising or associate advising representative acting for another registered firm, affiliation of the firms may be one of the factors that we would consider in respect of an exemption application.

We note that the prohibitions in section 4.1 are in addition to the conflicts of interest provisions set out in section 13.4 [*Identifying and responding to conflicts of interest*]. See section 13.4 for further guidance on individuals who serve on boards of directors.

4.2 Associate advising representatives – pre-approval of advice

The associate advising representative category is primarily meant to be an apprentice category for individuals who intend to become an advising representative but who do not meet the education or experience requirements for that category when they apply for registration. It allows an individual to work at a registered adviser while completing the proficiency requirements for an advising representative. For example, a previously registered advising representative could work in an advising capacity while acquiring the relevant work experience required for an advising representative under section 3.11.

However, associate advising representatives are not required to subsequently register as a full advising representative. They can remain as an associate advising representative indefinitely. This category also accommodates, for example, individuals who provide specific advice to clients, but do not manage client portfolios without supervision.

As required by section 4.2, registered firms must designate an advising representative to approve the advice provided by an associate advising representative. The designated advising representative must approve the advice before the associate advising representative gives it to the client. The appropriate processes for approving the advice will depend on the circumstances, including the associate advising representative's level of experience.

Registered firms that have associate advising representatives must:

- document their policies and procedures for meeting the supervision and approval obligations as required under section 11.1
- implement controls as required under section 11.1
- maintain records as required under section 11.5, and
- notify the regulator of the names of the advising representative and the associate advising representative whose advice they are approving no later than the seventh day after the advising representative is designated

Part 5 Ultimate designated person and chief compliance officer

Sections 11.2 and 11.3 require registered firms to designate a UDP and a CCO. The UDP and CCO must be registered and perform the compliance functions set out in sections 5.1 and 5.2. While the UDP and CCO have specific compliance functions, they are not solely responsible for compliance – it is the responsibility of the firm as a whole.

The same person as UDP and CCO

The UDP and the CCO can be the same person if they meet the requirements for both registration categories. We prefer firms to separate these functions, but we recognize that it might not be practical for some registered firms.

UDP or CCO as advising or dealing representative

The UDP or CCO may also be registered in trading or advising categories. For example, a small registered firm might conclude that one individual can adequately function as UDP and CCO, while also carrying on advising and trading activities. We may have concerns about the ability of a UDP or CCO of a large firm to conduct these additional activities and carry out their UDP, CCO and advising responsibilities at the same time.

5.1 Responsibilities of the ultimate designated person

The UDP is responsible for promoting a culture of compliance and overseeing the effectiveness of the firm's compliance system. They do not have to be involved in the day to day management of the compliance group. There are no specific education or experience requirements for the UDP. However, they are subject to the proficiency principle in section 3.4.

5.2 Responsibilities of the chief compliance officer

The CCO is an operating officer who is responsible for the monitoring and oversight of the firm's compliance system. This includes:

- establishing or updating policies and procedures for the firm's compliance system, and
- managing the firm's compliance monitoring and reporting according to the policies and procedures

At the firm's discretion, the CCO may also have authority to take supervisory or other action to resolve compliance issues.

The CCO must meet the proficiency requirements set out in Part 3. No other compliance staff have to be registered unless they are also advising or trading. The CCO may set the knowledge and skills necessary or desirable for individuals who report to them.

If a firm is registered in multiple categories, the CCO must meet the most stringent of the proficiency requirements of the firm's categories of registration.

Firms must designate one CCO. However, in large firms, the scale and kind of activities carried out by different operating divisions may warrant the designation of more than one CCO. We will consider

applications, on a case-by-case basis, for different individuals to act as the CCO of a firm's operating divisions.

We will not usually register the same person as CCO of more than one firm unless the firms are affiliated, and the scale and kind of activities carried out make it reasonable for the same person to act as CCO of more than one firm. We will consider applications, on a case-by-case basis, for the CCO of one registered firm to act as the CCO of another registered firm.

Subsection 5.2(c) requires the CCO to report to the UDP any instances of non-compliance with securities legislation that:

- create a reasonable risk of harm to a client or to the market, or
- are part of a pattern of non-compliance

The CCO should report non-compliance to the UDP even if it has been corrected.

Subsection 5.2(d) requires the CCO to submit an annual report to the board of directors.

Part 6 Suspension and revocation of registration – individuals

The requirements for surrendering registration and additional requirements for suspending and revoking registration are found in the securities legislation of each jurisdiction. The guidance for Part 6 relates to requirements under both securities legislation and NI 31-103.

There is no renewal requirement for registration. A registered individual may carry on the activities for which they are registered until their registration is:

- suspended automatically under NI 31-103
- suspended by the regulator under certain circumstances, or
- surrendered by the individual

6.1 If individual ceases to have authority to act for firm

Under section 6.1, if a registered individual ceases to have authority to act on behalf of their sponsoring firm because their working relationship with the firm ends or changes, the individual's registration with the registered firm is suspended until reinstated or revoked under securities legislation. This applies whether the individual or the firm ends the relationship.

If a registered firm terminates its working relationship with a registered individual for any reason, the firm must complete and file a notice of termination on Form 33-109F1 *Notice of Termination of Registered Individuals and Permitted Individuals* (Form 33-109F1) no later than ten days after the effective date of the individual's termination. This includes when an individual resigns, is dismissed or retires.

The firm must file additional information about the individual's termination prescribed in Part 5 of Form 33-109F1 (except where the individual is deceased), no later than 30 days after the date of termination. The regulator uses this information to determine if there are any concerns about the individual's conduct that may be relevant to their ongoing fitness for registration. Under NI 33-109, the firm must provide this information to the individual on request.

Suspension

An individual whose registration is suspended must not carry on the activity they are registered for. The individual otherwise remains a registrant and is subject to the jurisdiction of the regulator. A suspension remains in effect until the regulator reinstates or revokes the individual's registration.

If an individual who is registered in more than one category is suspended in one of the categories, the regulator will consider whether to suspend the individual's registration in other categories or to impose terms and conditions, subject to an opportunity to be heard.

Automatic suspension

An individual's registration will automatically be suspended if:

- they cease to have a working relationship with their sponsoring firm
- the registration of their sponsoring firm is suspended or revoked, or
- they cease to be an approved person of an SRO

An individual must have a sponsoring firm to be registered. If an individual leaves their sponsoring firm for any reason, their registration is automatically suspended. Automatic suspension is effective on the day that an individual no longer has authority to act on behalf of their sponsoring firm.

Individuals do not have an opportunity to be heard by the regulator in the case of any automatic suspension.

Suspension in the public interest

An individual's registration may be suspended if the regulator exercises its power under securities legislation and determines that it is no longer in the public interest for the individual to be registered. The regulator may do this if it has serious concerns about the ongoing fitness of the individual. For example, this may be the case if an individual is charged with a crime, in particular fraud or theft.

Reinstatement

"Reinstatement" means that a suspension on a registration has been lifted. Once reinstated, an individual may resume carrying on the activity they are registered for. If a suspended individual joins a new sponsoring firm, they will have to apply for reinstatement under the process set out in NI 33-109. In certain cases, the reinstatement or transfer to the new firm will be automatic.

Automatic transfers

Subject to certain conditions set out in NI 33-109, an individual's registration may be automatically reinstated if they:

- transfer directly from one sponsoring firm to another registered firm in the same jurisdiction
- join the new sponsoring firm within 90 days of leaving their former sponsoring firm
- seek registration in the same category as the one previously held, and
- complete and file Form 33-109F7 *Reinstatement of Registered Individuals and Permitted Individuals* (Form 33-109F7)

This allows individuals to engage in activities requiring registration from their first day with the new sponsoring firm.

Individuals are not eligible for an automatic reinstatement if they:

- have new information to disclose regarding regulatory, criminal, civil or financial matters as described in Item 9 of Form 33-109F7, or
- as a result of allegations of criminal activity, breach of securities legislation or breach of SRO rules:
    - were dismissed by their former sponsoring firm, or
    - were asked by their former sponsoring firm to resign

In these cases, the individual must apply to have their registration reinstated under NI 33-109 using Form 33-109F4.

6.2 If IIROC approval is revoked or suspended

6.3 If MFDA approval is revoked or suspended

Registered individuals acting on behalf of member firms of an SRO are required to be an approved person of the SRO.

If an SRO suspends or revokes its approval of an individual, the individual's registration in the category requiring SRO approval will be automatically suspended. This automatic suspension of individuals does not apply to mutual fund dealers registered only in Québec.

If an SRO suspends an individual for reasons that do not involve significant regulatory concerns and subsequently reinstates the individual's approval, the individual's registration will usually be reinstated by the regulator as soon as possible.

Revocation

6.6 Revocation of a suspended registration – individual

If an individual's registration has been suspended under Part 6 but not reinstated, it will be automatically revoked on the second anniversary of the suspension.

"Revocation" means that the regulator has terminated the individual's registration. An individual whose registration has been revoked must submit a new application if they want to be registered again.

Surrender or termination of registration

If an individual wants to terminate their registration in one or more of the non-principal jurisdictions where the individual is registered, the individual may apply to surrender their registration at any time by completing Form 33-109F2 *Change or Surrender of Individual Categories* (Form 33-109F2) and having their sponsoring firm file it.

If an individual wants to terminate their registration in their principal jurisdiction, Form 33-109F1 must be filed by the individual's sponsoring firm. Once Form 33-109F1 is filed, the individual's termination of registration will be reflected in all jurisdictions.

Part 7 Categories of registration for firms

The categories of registration for firms have two main purposes:

- to specify the type of business that the firm may conduct, and
- to provide a framework for the requirements the registrant must meet

Firms registered in more than one category

A firm may be required to register in more than one category. For example, a portfolio manager that manages an investment fund must register both as a portfolio manager and as an investment fund manager.

Individual registered in a firm category

An individual can be registered in both a firm and individual category. For example, a sole proprietor who is registered in the firm category of portfolio manager must also be registered in the individual category of advising representative.

7.1 Dealer categories

Underwriting is a subset of dealing activity for specified categories. Investment dealers may underwrite any securities. Exempt market dealers may underwrite securities in limited circumstances.

Exempt market dealer

Under subsection 7.1(2)(d), exempt market dealers may only act as a dealer in the "exempt market". The permitted activities of an exempt market dealer are determined with reference to the prospectus exemptions

in NI 45-106 and include trades to “accredited investors” and purchasers of at least $150,000 of a security and trades to anyone under the offering memorandum exemption.

Exempt market dealers can sell investment funds (whether or not they are prospectus-qualified) under these exemptions without registering as a mutual fund dealer or being a member of the MFDA.

Restricted dealer

The restricted dealer category in subsection 7.1(2)(e) permits specialized dealers that may not qualify under another dealer category to carry on a limited trading business. It is intended to be used only if there is a compelling case for the proposed trading to take place outside the other registration categories.

The regulator will impose terms and conditions that restrict the dealer’s activities. The CSA will co-ordinate terms and conditions for restricted dealers.

7.2 Adviser categories

The registration requirement in section 7.2 applies to advisers who give “specific advice”. Advice is specific when it is tailored to the needs and circumstances of a client or potential client. For example, an adviser who recommends a security to a client is giving specific advice.

Restricted portfolio manager

The restricted portfolio manager category in subsection 7.2(2)(b) permits individuals or firms to advise in specific securities, classes of securities or securities of a class of issuers.

The regulator will impose terms and conditions on a restricted portfolio manager’s registration that limit the manager’s activities. For example, a restricted portfolio manager might be limited to advising in respect of a specific sector, such as securities of oil and gas issuers.

7.3 Investment fund manager category

Investment fund managers direct the business, operations or affairs of an investment fund. They organize the fund and are responsible for its management and administration. If an entity is uncertain about whether it must register as an investment fund manager, it should consider whether the fund is an “investment fund” for the purposes of securities legislation. See section 1.2 of the Companion Policy to NI 81-106 for guidance on the general nature of investment funds.

An investment fund manager may:

- advertise to the general public a fund it manages without being registered as an adviser, and
- promote the fund to registered dealers without being registered as a dealer

If an investment fund manager acts as portfolio manager for a fund it manages, it should consider whether it may have to be registered as an adviser. If it distributes units of the fund directly to investors, it should consider whether it may have to be registered as a dealer.

In most fund structures, the investment fund manager is a separate legal entity from the fund itself. However, in situations where the board of directors or the trustee(s) of an investment fund direct the business, operations or affairs of the investment fund, the fund itself may be required to register in the investment fund manager category. To address the investor protection concerns that may arise from the investment fund manager and the fund being the same legal entity, and the practical issues of applying the ongoing requirements of a registrant on the fund, terms and conditions may be imposed.

An investment fund manager may delegate or outsource certain functions to other service providers. However, the investment fund manager is responsible for these functions and must supervise the service provider. See Part 11 of this Companion Policy for more guidance on outsourcing.

Investment fund complexes or groups with more than one investment fund manager

Some investment fund complexes or groups may have more than one entity within the fund complex that can be considered as directing the business, operations or affairs of an investment fund. For example, structures where investment funds are organized as limited partnerships may have multiple entities within the fund complex that could require investment fund manager registration. Although the investment fund manager functions are often delegated to one entity within the fund complex, there may be more than one entity in the group subject to investment fund manager registration, absent an exemption from registration.

We will consider exemption applications on a case-by-case basis to allow only one investment fund manager within the fund complex to be registered. We will typically consider the following factors when reviewing such applications:

- there is a management agreement in place delegating all or substantially all of the investment fund management function from the investment fund manager seeking the relief to an affiliate (or to an entity whose mind and management is the same) that is registered as an investment fund manager
- the majority of the investment fund management functions are performed by the registered affiliate (or entity whose mind and management is the same)
- the investment fund manager seeking the relief and the registered affiliate have directors and officers in common

Part 8 Exemptions from the requirement to register

NI 31-103 provides several exemptions from the registration requirement. There may be additional exemptions in securities legislation. If a firm is exempt from registration, the individuals acting on its behalf are also exempt from registration.

Division 1 Exemptions from dealer and underwriter registration

We provide no specific guidance for the following exemptions because there is guidance on them in the Companion Policy to NI 45-106:

- 8.12 *Mortgages*
- 8.17 *Reinvestment plan*
- 8.20 *Exchange contract – Alberta, British Columbia, New Brunswick and Saskatchewan*

8.5 Trades through or to a registered dealer

Section 8.5 provides an exemption from the dealer registration requirement for trades made

- solely through an agent who is an appropriately registered dealer, or
- to an appropriately registered dealer that is purchasing for that dealer's account

This exemption is available in respect of a trade made by a person through a registered dealer so long as there is no intervening trading activity by that person for which that person is not appropriately registered or otherwise exempt from the dealer registration requirement. This would typically be the case where an individual trades through their account with an investment dealer or a company issues its own securities through an investment dealer.

This exemption is, however, not available where a person or company conducts trading activities for which they are not registered or exempt from registration and then directs the execution of that trade through a registered dealer. Such trading activities could involve directly contacting persons in the local jurisdiction to solicit their purchase of securities or marketing the securities in the local jurisdiction. For example:

- if an individual acts in furtherance of a sale of securities by soliciting potential purchasers of securities (sometimes referred to as a finder) and then the sale to the purchaser is executed through a registered dealer, the individual would not qualify for this exemption.

- if a person who is registered in the local jurisdiction, or operates under an exemption for their trading activities in that local jurisdiction, proposes to rely on this exemption for their trading activities in another jurisdiction of Canada, the person would need to utilize an appropriately registered dealer to solicit purchases in the other jurisdiction, since that person could not interact directly with purchasers in the other jurisdiction (without being appropriately registered or exempt from registration in that other jurisdiction).

Cross-border transactions ("jitneys")

All trading activity in reliance upon this exemption that occurs within the local jurisdiction should be done through or to a registered dealer in that jurisdiction. On that basis, the execution of a trade through or to an appropriately registered dealer by a dealer located in another jurisdiction would qualify under this exemption. However, if the dealer in the other jurisdiction engages in other trading activities in the local jurisdiction in connection with the transaction, the trade is no longer a trade made solely through or to a registered dealer and this exemption would not be available.

A trade is not considered to be solely through a registered dealer if the dealer in the other jurisdiction interacts directly with the purchaser in the local jurisdiction. For example, if a dealer in the United States that is not registered in Alberta contacts a potential purchaser in Alberta to solicit the purchase of securities, this trade does not qualify for this exemption. The dealer in the United States must instead solicit the purchase by contacting a dealer registered in Alberta, and have that dealer contact potential purchasers in Alberta.

Plan administrators

A plan administrator can rely on this exemption to place sell orders with dealers in respect of shares of issuers held by plan participants. Section 8.16 [*Plan administrator*] covers the activity of the plan administrator receiving sell orders from plan participants.

8.6 Investment fund trades by adviser to managed account

Registered advisers often create and use investment funds as a way to efficiently invest their clients' money. In issuing units of those funds to managed account clients, they are in the business of trading in securities. Under the exemption in section 8.6, a registered adviser does not have to register as a dealer does for a trade in a security of an investment fund if they:

- act as the fund's adviser and investment fund manager, and

- distribute units of the fund only into their clients' managed accounts

The exemption is also available to those who qualify for the international adviser exemption under section 8.26.

Subsection 8.6(2) limits the availability of this exemption to legitimate managed accounts. We do not intend for the exemption to be used to distribute the adviser's investment funds on a retail basis.

8.18 International dealer

General principle

This exemption allows international dealers to provide limited services to Canadian permitted clients,as defined in section 8.18, without having to register in Canada. International dealers that seek wider access to Canadian investors must register in an appropriate category. Both the terms *Canadian permitted client* and *permitted client* are used in this section. As mentioned above, the term Canadian permitted client is defined in section 8.18. The term permitted client is defined in section 1.1.

Notice requirement

If a firm is relying on the exemption in more than one jurisdiction, it must provide an initial notice by filing a Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service* (Form 31-103F2) with the regulator in each jurisdiction where it relies on the exemption. If there is any change to the information in the firm's Form 31-103F2, it must update it by filing a replacement Form 31-103F2 with them.

So long as the firm continues to rely on the exemption, it must file an annual notice with each regulator. Subsection 8.18(5) does not prescribe a form of annual notice. An email or letter will therefore be acceptable.

In Ontario, compliance with the filing and fee payment requirements applicable to an unregistered exempt international dealer under Ontario Securities Commission Rule 13-502 *Fees* satisfies the annual notification requirement in subsection (5).

8.19 Self-directed registered education savings plan

We consider the creation of a self-directed registered education savings plan, as defined in section 8.19, to be a trade in a security, whether or not the assets held in the plan are securities. This is because the definition of "security" in securities legislation of most jurisdictions includes "any document constituting evidence of an interest in a scholarship or educational plan or trust".

Section 8.19 provides an exemption from the dealer registration requirement for the trade when the plan is created but only under the conditions described in subsection 8.19(2).

Division 2 Exemptions from adviser registration

8.25 Advising generally

Section 8.25 contains an exemption from the requirement to register as an adviser if the advice is not tailored to the needs of the recipient.

In general, we would not consider advice about specific securities to be tailored to the needs of the recipient if it:

- is a general discussion of the merits and risks of the security
- is delivered through investment newsletters, articles in general circulation newspapers or magazines, websites, e-mail, Internet chat rooms, bulletin boards, television or radio, and
- does not claim to be tailored to the needs and circumstances of any recipient

This type of general advice can also be given at conferences. However, if a purpose of the conference is to solicit the audience and generate specific trades in specific securities, we may consider the advice to be tailored or we may consider the individual or firm giving the advice to be engaged in trading activity.

Under subsection 8.25(3), if an individual or firm relying on the exemption has a financial or other interest in the securities they recommend, they must disclose the interest to the recipient when they make the recommendation.

8.26 International adviser

This exemption allows international advisers to provide limited services to Canadian permitted clients, as defined in section 8.26, without having to register in Canada. International advisers that seek wider access to Canadian investors must register in an appropriate category. Unlike the exemption for international dealers in section 8.18, this exemption is not available where the client is registered under securities legislation of Canada as an adviser or dealer.

Incidental advice on Canadian securities

An international adviser relying on the exemption in section 8.26 may advise in Canada on foreign securities without having to register. It may also advise in Canada on securities of Canadian issuers, but only to the extent that the advice is incidental to its acting as an adviser for foreign securities.

However, this is not an exception or a "carve-out" that allows some portion of a permitted client's portfolio to be made up of Canadian securities chosen by the international adviser without restriction. Any advice with respect to Canadian securities must be directly related to the activity of advising on foreign securities. Permissible incidental advice would include, for example:

- an international adviser, when advising on a portfolio with a particular investment objective, such as gold mining companies, could advise on securities of a Canadian gold mining company within that portfolio, provided that the portfolio is otherwise made up of foreign securities

- an international adviser, having a mandate to advise on equities traded on European exchanges could advise with respect to the securities of a Canadian corporation traded on a European exchange, to the extent that Canadian corporation forms part of the mandate

Revenue derived in Canada

An international adviser is only permitted to undertake a prescribed amount of business in Canada. In making the calculation required under paragraph 8.26(4)(d), it is necessary to include all revenues derived from portfolio management activities in Canada, which would include any sub-adviser arrangements. However, the calculation of aggregate consolidated gross revenue derived in Canada does not include the gross revenue of affiliates that are registered in a jurisdiction of Canada.

An international adviser is not required to monitor Canadian revenue on an ongoing basis. Eligibility for the exemption is assessed with reference to revenues as of the end of the adviser's last financial year. The 10% threshold in paragraph 8.26(4)(d) is determined by looking back at the revenue of the firm and its affiliates "during its most recently completed financial year".

Notice requirement

If a firm is relying on the exemption in more than one jurisdiction, it must provide an initial notice by filing a Form 31-103F2 with the regulator in each jurisdiction where it relies on the exemption. If there is any change to the information in the firm's Form 31-103F2, it must update it by filing a replacement Form 31-103F2 with them.

So long as the firm continues to rely on the exemption, it must file an annual notice with each regulator. Subsection 8.26(5) does not prescribe a form of annual notice. An email or letter will therefore be acceptable.

In Ontario, compliance with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees* satisfies the annual notification requirement in subsection (5).

Division 3 Exemptions from investment fund manager registration

8.28 Capital accumulation plan exemption

Section 8.28 provides an exemption from the investment fund manager registration requirement to an individual or firm that administers a capital accumulation plan. If an investment fund manager is also required to register as a dealer or adviser, this exemption only applies to their activities as an investment fund manager.

Division 4 Mobility exemption – firms

8.30 Client mobility exemption – firms

The mobility exemption in section 8.30 allows registered firms to continue dealing with and advising clients who move to another jurisdiction, without registering in that other jurisdiction. Section 2.2 *Client mobility exemption – individuals* contains a similar exemption for registered individuals.

The exemption becomes available when the client (not the registrant) moves to another jurisdiction. A registered firm may deal with up to 10 "eligible" clients in each other jurisdiction. Each of the client, their spouse and any children are an eligible client.

A firm may only rely on the exemption if:

- it is registered in its principal jurisdiction
- it only acts as a dealer, underwriter or adviser in the other jurisdiction as permitted under its registration in its principal jurisdiction
- the individual acting on its behalf is eligible for the exemption in section 2.2
- it complies with Parts 13 [*Dealing with clients – individuals and firms*] and 14 [*Handling client accounts – firms*], and
- it acts fairly, honestly and in good faith in its dealings with the eligible client

Firm's responsibilities for individuals relying on the exemption

In order for a registered individual to rely on the exemption in section 2.2, their sponsoring firm must disclose to the eligible client that the individual and if applicable, the firm, are exempt from registration in the other jurisdiction and are not subject to the requirements of securities legislation in that jurisdiction.

As soon as possible after an individual first relies on the exemption in section 2.2, their sponsoring firm must complete and file Form 31-103F3 in the other jurisdiction.

The registered firm must have appropriate policies and procedures for supervising individuals who rely on a mobility exemption. Registered firms must also keep appropriate records to demonstrate they are complying with the conditions of the mobility exemption.

See the guidance in section 2.2 of this Companion Policy on the client mobility exemption available to individuals.

Part 9 Membership in a self-regulatory organization

9.3 Exemptions from certain requirements for IIROC members
9.4 Exemptions from certain requirements for MFDA members

NI 31-103 now has two distinct sections, section 9.3 and 9.4, which distinguish the exemptions which are available on the basis of whether or not the member of IIROC or the MFDA is registered in another category. This clarifies our intent with respect to the exemptions for SRO members and recognizes that IIROC and the MFDA have rules in these areas.

Sections 9.3 and 9.4 contain exemptions from certain requirements for investment dealers that are IIROC members, for mutual fund dealers that are MFDA members and in Québec, for mutual fund dealers to the extent equivalent requirements are applicable under the regulations in Québec.

However, if an SRO member is registered in another category, these sections do not exempt them from their obligations as a registrant in that category. For example, if a firm is registered as an investment fund

manager and as an investment dealer with IIROC, section 9.3 does not exempt them from their obligations as an investment fund manager under NI 31-103.

However SRO members that are registered in multiple categories may use the forms prescribed by the SROs, on certain conditions. See sections 12.1, 12.12 and 12.14 for requirements on calculating working capital and the delivery of working capital calculations for SRO members that are registered in multiple categories.

We expect registered firms that are members of IIROC or the MFDA to comply with the by-laws, rules, regulations and policies of IIROC or the MFDA, as applicable (SRO provisions). These firms cannot rely on the exemptions in Part 9 unless they are complying with the corresponding SRO provisions specified in NI 31-103. We regard compliance with IIROC or MFDA procedures, interpretations, notices, bulletins and practices as relevant to compliance with the applicable SRO provisions.

For these purposes, a firm that has an exemption from an SRO provision and complies with the terms of that exemption would be considered to have complied with that SRO provision.

Part 10 Suspension and revocation of registration – firms

The requirements for surrendering registration and additional requirements for suspending and revoking registration are found in the securities legislation of each jurisdiction. The guidance for Part 10 relates to requirements under both securities legislation and NI 31-103.

There is no renewal requirement for registration but firms must pay fees every year to maintain their registration and the registration of individuals acting on their behalf. A registered firm may carry on the activities for which it is registered until its registration is:

- suspended automatically under NI 31-103
- suspended by the regulator under certain circumstances, or
- surrendered by the firm

Division 1 When a firm's registration is suspended

Suspension

A firm whose registration has been suspended must not carry on the activity it is registered for. The firm otherwise remains a registrant and is subject to the jurisdiction of the regulator. A suspension remains in effect until the regulator reinstates or revokes the firm's registration.

If a firm that is registered in more than one category is suspended in one of the categories, the regulator will consider whether to suspend the firm's registration in other categories or to impose terms and conditions, subject to an opportunity to be heard.

Automatic suspension

A firm's registration will automatically be suspended if:

- it fails to pay its annual fees within 30 days of the due date
- it ceases to be a member of IIROC, or
- except in Québec, it ceases to be a member of the MFDA

Firms do not have an opportunity to be heard by the regulator in the case of any automatic suspension.

10.1 Failure to pay fees

Under section 10.1, a firm's registration will be automatically suspended if it has not paid its annual fees within 30 days of the due date.

10.2 If IIROC membership is revoked or suspended

Under section 10.2, if IIROC suspends or revokes a firm's membership, the firm's registration as an investment dealer is suspended until reinstated or revoked.

10.3 If MFDA membership is revoked or suspended

Under section 10.3, if the MFDA suspends or revokes a firm's membership, the firm's registration as a mutual fund dealer is suspended until reinstated or revoked. Section 10.3 does not apply in Québec.

Suspension in the public interest

A firm's registration may be suspended if the regulator exercises its power under securities legislation and determines that it is no longer in the public interest for the firm to be registered. The regulator may do this if it has serious concerns about the ongoing fitness of the firm or any of its registered individuals. For example, this may be the case if a firm or one or more of its registered or permitted individuals is charged with a crime, in particular fraud or theft.

Reinstatement

"Reinstatement" means that a suspension on a registration has been lifted. Once reinstated, a firm may resume carrying on the activity it is registered for.

Division 2 Revoking a firm's registration

Revocation

10.5 Revocation of a suspended registration – firm
10.6 Exception for firms involved in a hearing

Under sections 10.5 and 10.6, if a firm's registration has been suspended under Part 10 and has not been reinstated, it is revoked on the second anniversary of the suspension, except if a hearing or proceeding concerning the suspended registrant has commenced. In this case the registration remains suspended.

"Revocation" means that the regulator has terminated the firm's registration. A firm whose registration has been revoked must submit a new application if it wants to be registered again.

Surrender

A firm may apply to surrender its registration in one or more categories at any time. There is no prescribed form for an application to surrender. A firm should file an application to surrender registration with its principal regulator. If Ontario is a non-principal jurisdiction, it should also file the application with the regulator in Ontario. See the Companion Policy to Multilateral Instrument 11-102 *Passport System* for more details on filing an application to surrender.

Before the regulator accepts a firm's application to surrender registration, the firm must provide the regulator with evidence that the firm's clients have been dealt with appropriately. This evidence does not have to be provided when a registered individual applies to surrender registration. This is because the sponsoring firm will continue to be responsible for meeting obligations to clients who may have been served by the individual.

The regulator does not have to accept a firm's application to surrender its registration. Instead, the regulator can act in the public interest by suspending, or imposing terms and conditions on, the firm's registration.

When considering a registered firm's application to surrender its registration, the regulator typically considers the firm's actions, the completeness of the application and the supporting documentation.

The firm's actions

The regulator may consider whether the firm:

- has stopped carrying on activity requiring registration
- proposes an effective date to stop carrying on activity requiring registration that is within six months of the date of the application to surrender, and
- has paid any outstanding fees and submitted any outstanding filings at the time of filing the application to surrender

Completeness of the application

Among other things, the regulator may look for:

- the firm's reasons for ceasing to carry on activity requiring registration
- satisfactory evidence that the firm has given all of its clients reasonable notice of its intention to stop carrying on activity requiring registration, including an explanation of how it will affect them in practical terms, and
- satisfactory evidence that the firm has given appropriate notice to the SRO, if applicable

Supporting documentation

The regulator may look for:

- evidence that the firm has resolved all outstanding client complaints, settled all litigation, satisfied all judgments or made reasonable arrangements to deal with and fund any payments relating to them, and any subsequent client complaints, settlements or liabilities
- confirmation that all money or securities owed to clients has been returned or transferred to another registrant, where possible, according to client instructions
- up-to-date audited financial statements with an auditor's comfort letter
- evidence that the firm has satisfied any SRO requirements for withdrawing membership, and
- an officer's or partner's certificate supporting these documents

Part 11 Internal controls and systems

General business practices – outsourcing

Registered firms are responsible and accountable for all functions that they outsource to a service provider. Firms should have a written, legally binding contract that includes the expectations of the parties to the outsourcing arrangement.

Registered firms should follow prudent business practices and conduct a due diligence analysis of prospective third-party service providers. This includes third-party service providers that are affiliates of the firm. Due diligence should include an assessment of the service provider's reputation, financial stability, relevant internal controls and ability to deliver the services.

Firms should also:

- ensure that third-party service providers have adequate safeguards for keeping information confidential and, where appropriate, disaster recovery capabilities
- conduct ongoing reviews of the quality of outsourced services

- develop and test a business continuity plan to minimize disruption to the firm's business and its clients if the third-party service provider does not deliver its services satisfactorily, and

- note that other legal requirements, such as privacy laws, may apply when entering into outsourcing arrangements

The regulator, the registered firm and the firm's auditors should have the same access to the work product of a third-party service provider as they would if the firm itself performed the activities. Firms should ensure this access is provided and include a provision requiring it in the contract with the service provider, if necessary.

Division 1 Compliance

11.1 Compliance system

General principles

Section 11.1 requires registered firms to establish, maintain and apply policies and procedures that establish a system of controls and supervision (a compliance system) that:

- provides assurance that the firm and individuals acting on its behalf comply with securities legislation, and

- manages the risks associated with the firm's business in accordance with prudent business practices

Operating an effective compliance system is essential to a registered firm's continuing fitness for registration. It provides reasonable assurance that the firm is meeting, and will continue to meet, all requirements of applicable securities laws and SRO rules and is managing risk in accordance with prudent business practices. A compliance system should include internal controls and monitoring systems that are reasonably likely to identify non-compliance at an early stage and supervisory systems that allow the firm to correct non-compliant conduct in a timely manner.

The responsibilities of the UDP are set out in section 5.1 and those of the CCO in section 5.2 . However, compliance is not only a responsibility of a specific individual or a compliance department of the firm, but rather is a firm-wide responsibility and an integral part of the firm's activities. Everyone in the firm should understand the standards of conduct for their role. This includes the board of directors, partners, management, employees and agents, whether or not they are registered.

Having a UDP and CCO, and in larger firms, a compliance group and other supervisory staff, does not relieve anyone else in the firm of the obligation to report and act on compliance issues. A compliance system should identify those who will act as alternates in the absence of the UDP or CCO.

Elements of an effective compliance system

While policies and procedures are essential, they do not make an acceptable compliance system on their own. An effective compliance system also includes internal controls, day to day and systemic monitoring, and supervision elements.

Internal controls

Internal controls are an important part of a firm's compliance system. They should mitigate risk and protect firm and client assets. They should be designed to assist firms in monitoring compliance with securities legislation and managing the risks that affect their business, including risks that may relate to:

- safeguarding of client and firm assets

- accuracy of books and records

- trading, including personal and proprietary trading

- conflicts of interest

- money laundering
- business interruption
- hedging strategies
- marketing and sales practices, and
- the firm's overall financial viability

Monitoring and supervision

Monitoring and supervision are essential elements of a firm's compliance system. They consist of day to day monitoring and supervision, and overall systemic monitoring.

(a) Day to day monitoring and supervision

In our view, an effective monitoring and supervision system includes:

- monitoring to identify specific cases of non-compliance or internal control weaknesses that might lead to non-compliance
- referring non-compliance or internal control weaknesses to management or other individuals with authority to take supervisory action to correct them
- taking supervisory action to correct them, and
- minimizing the compliance risk in key areas of a firm's operations

In our view, effective day to day monitoring should include, among other things

- approving new account documents
- reviewing and, in some cases, approving transactions
- approving marketing materials, and
- preventing inappropriate use or disclosure of non-public information.

Firms can use a risk-based approach to monitoring, such as reviewing an appropriate sample of transactions.

The firm's management is responsible for the supervisory element of correcting non-compliance or internal control weaknesses. However, at a firm's discretion, its CCO may be given supervisory authority, but this is not a necessary component of the CCO's role.

Anyone who supervises registered individuals has a responsibility on behalf of the firm to take all reasonable measures to ensure that each of these individuals:

- deals fairly, honestly and in good faith with their clients
- complies with securities legislation
- complies with the firm's policies and procedures, and
- maintains an appropriate level of proficiency

(b) Systemic monitoring

Systemic monitoring involves assessing, and advising and reporting on the effectiveness of the firm's compliance system. This includes ensuring that:

- the firm's day to day supervision is reasonably effective in identifying and promptly correcting cases of non-compliance and internal control weaknesses
- policies and procedures are enforced and kept up to date, and
- everyone at the firm generally understands and complies with the policies and procedures, and with securities legislation

Specific elements

More specific elements of an effective compliance system include:

(a) Visible commitment

Senior management and the board of directors or partners should demonstrate a visible commitment to compliance.

(b) Sufficient resources and training

The firm should have sufficient resources to operate an effective compliance system. Qualified individuals (including anyone acting as an alternate during absences) should have the responsibility and authority to monitor the firm's compliance, identify any instances of non-compliance and take supervisory action to correct them.

The firm should provide training to ensure that everyone at the firm understands the standards of conduct and their role in the compliance system, including ongoing communication and training on changes in regulatory requirements or the firm's policies and procedures.

(c) Detailed policies and procedures

The firm should have detailed written policies and procedures that:

- identify the internal controls the firm will use to ensure compliance with legislation and manage risk
- set out the firm's standards of conduct for compliance with securities and other applicable legislation and the systems for monitoring and enforcing compliance with those standards
- clearly outline who is expected to do what, when and how
- are readily accessible by everyone who is expected to know and follow them
- are updated when regulatory requirements and the firm's business practices change, and
- take into consideration the firm's obligation under securities legislation to deal fairly, honestly and in good faith with its clients

(d) Detailed records

The firm should keep records of activities conducted to identify compliance deficiencies and the action taken to correct them.

Setting up a compliance system

It is up to each registered firm to determine the most appropriate compliance system for its operations. Registered firms should consider the size and scope of their operations, including products, types of clients or counterparties, risks and compensating controls, and any other relevant factors.

For example, a large registered firm with diverse operations may require a large team of compliance professionals with several divisional heads of compliance reporting to a CCO dedicated entirely to a compliance role.

All firms must have policies, procedures and systems to demonstrate compliance. However, some of the elements noted above may be unnecessary or impractical for smaller registered firms.

We encourage firms to meet or exceed industry best practices in complying with regulatory requirements.

11.2 Designating an ultimate designated person

Under subsection 11.2(1), registered firms must designate an individual to be the UDP. Firms should ensure that the individual understands and is able to perform the obligations of a UDP under section 5.1.The UDP must be:

- the chief executive officer (CEO) of the registered firm or the individual acting in a similar capacity, if the firm does not have a CEO. The person acting in a similar capacity to a CEO is the most senior decision maker in the firm, who might have the title of managing partner or president, for example
- the sole proprietor of the registered firm, or
- the officer in charge of a division of the firm that carries on all of the registerable activity if the firm also has significant other business activities, such as insurance, conducted in different divisions. This is not an option if the core business of the firm is trading or advising in securities and it only has some other minor operations conducted in other divisions. In this case, the UDP must be the CEO or equivalent.

To designate someone else as the UDP requires an exemptive relief order. Given that the intention of section 11.2 is to ensure that responsibility for its compliance system rests at the very top of a firm, we will only grant relief in rare cases.

We note that in larger organizations, the UDP is sometimes supported by an officer who has a compliance oversight role and title within the organization and who is more senior than the CCO. We have no objection to such arrangements, but it must be understood that they can in no way diminish the UDP's regulatory responsibilities.

If the person designated as the UDP no longer meets these requirements, and the registered firm is unable to designate another UDP, the firm should promptly advise the regulator of the actions it is taking to designate a new UDP who meets these requirements.

11.3 Designating a chief compliance officer

Under subsection 11.3(1), registered firms must designate an individual to be the CCO. Firms should ensure that the individual understands and is able to perform the obligations of a CCO under section 5.2.

The CCO must meet the applicable proficiency requirements in Part 3 and be:

- an officer or partner of the registered firm, or
- the sole proprietor of the registered firm

If the CCO no longer meets any of the above conditions and the registered firm is unable to designate another CCO, the firm should promptly advise the regulator of the actions it is taking to designate an appropriate CCO.

Division 2 Books and records

Under securities legislation, the regulator may access, examine and take copies of a registered firm's records. The regulator may also conduct regular and unscheduled compliance reviews of registered firms.

11.5 General requirements for records

Under subsection 11.5(1), registered firms must maintain records to accurately record their business activities, financial affairs and client transactions, and demonstrate compliance with securities legislation.

The following discussion provides guidance for the various elements of the records described in subsection 11.5(2).

Financial affairs

The records required under subsections 11.5(2)(a), (b) and (c) are records firms must maintain to help ensure they are able to prepare and file financial information, determine their capital position, including the calculation of excess working capital, and generally demonstrate compliance with the capital and insurance requirements.

Client transactions

The records required under subsections 11.5(2)(g), (h), (i), (l) and (n) are records firms must maintain to accurately and fully document transactions entered into on behalf of a client. We expect firms to maintain notes of communications that could have an impact on the client's account or the client's relationship with the firm. These communications include

- oral communications
- all e-mail, regular mail, fax and other written communications

While we do not expect registered firms to save every voicemail or e-mail, or to record all telephone conversations with clients, we do expect that registered firms maintain records of all communications relating to orders received from their clients.

The records required under subsection 11.5(2)(g) should document buy and sell transactions, referrals, margin transactions and any other activities relating to a client's account. They include records of all actions leading to trade execution, settlement and clearance, such as trades on exchanges, alternative trading systems, over-the-counter markets, debt markets, and distributions and trades in the prospectus-exempt market.

Examples of these records are:

- trade confirmation statements
- summary information about account activity
- communications between a registrant and its client about particular transactions, and
- records of transactions resulting from securities a client holds, such as dividends or interest paid, or dividend reinvestment program activity

Subsection 11.5(2)(l) requires firms to maintain records that demonstrate compliance with the know your client obligations in section 13.2 and the suitability obligations in section 13.3. This includes records for unsuitable trades in subsection 13.3(2).

Client relationship

The records required under subsection 11.5(2)(k) and (m) should document information about a registered firm's relationship with its client and relationships that any representatives have with that client.

These records include:

- communication between the firm and its clients, such as disclosure provided to clients and agreements between the registrant and its clients

- account opening information
- change of status information provided by the client
- disclosure and other relationship information provided by the firm
- margin account agreements
- communications regarding a complaint made by the client
- actions taken by the firm regarding a complaint
- communications that do not relate to a particular transaction, and
- conflicts records

Each record required under subsection 11.5(2)(k) should clearly indicate the name of the accountholder and the account the record refers to. A record should include information only about the accounts of the same accountholder or group. For example, registrants should have separate records for an individual's personal accounts and for accounts of a legal entity that the individual owns or jointly holds with another party.

Where applicable, the financial details should note whether the information is for an individual or a family. This includes spousal income and net worth. The financial details for accounts of a legal entity should note whether the information refers to the entity or to the owner(s) of the entity.

If the registered firm permits clients to complete new account forms themselves, the forms should use language that is clear and avoids terminology that may be unfamiliar to unsophisticated clients.

Internal controls

The records required under subsection 11.5(2)(d), (e), (f), (j) and (o) are records firms must maintain to support the internal controls and supervision components of their compliance system.

11.6 Form, accessibility and retention of records

Third party access to records

Subsection 11.6(1)(b) requires registered firms to keep their records in a safe location. This includes ensuring that no one has unauthorized access to information, particularly confidential client information. Registered firms should be particularly vigilant if they maintain books and records in a location that may be accessible by a third party. In this case, the firm should have a confidentiality agreement with the third party.

Division 3 Certain business transactions

11.8 Tied selling

Section 11.8 prohibits an individual or firm from engaging in abusive sales practices such as selling a security on the condition that the client purchase another product or service from the registrant or one of its affiliates. These types of practices are known as "tied selling". In our view, this section would be contravened if, for example, a financial institution agreed to lend money to a client only if the client acquired securities of mutual funds sponsored by the financial institution.

However, section 11.8 is not intended to prohibit relationship pricing or other beneficial selling arrangements similar to relationship pricing. Relationship pricing refers to the practice of industry participants offering financial incentives or advantages to certain clients.

11.9 Registrant acquiring a registered firm's securities or assets

Under section 11.9, registrants must give the regulator notice if they propose to purchase securities or assets of a registered firm or the parent of a registered firm. For purposes of this section, a registered firm's

book of business would be a substantial part of the assets of the registered firm. This notice gives the regulator an opportunity to consider ownership issues that may affect a firm's fitness for registration.

Subsection 11.9(4) does not apply in British Columbia. However, the regulator in British Columbia may exercise discretion under section 36 or 161 of the BC *Securities Act* (BCSA) to impose conditions, restrictions or requirements on the registrant's registration or to suspend or revoke the registration if it decides that an acquisition would affect the registrant's fitness for registration or be prejudicial to the public interest. In these circumstances, the registrant would be entitled to an opportunity to be heard, except if the regulator issues a temporary order under section 161 of the BCSA.

11.10 Registered firm whose securities are acquired

Under section 11.10, registered firms must notify the regulator if they know or have reason to believe that any individual or firm is about to purchase more than 10% of the voting securities of the firm or the firm's parent. This notice gives the regulator an opportunity to consider ownership issues that may affect a firm's fitness for registration. We expect this notice to be sent as soon as the registered firm knows or has reason to believe such a transaction is going to take place.

We expect any individual or firm that buys assets of a registered firm and is not already a registrant will have to apply for registration. We will assess their fitness for registration when they apply.

Subsection 11.10(5) does not apply in British Columbia. However, the regulator in British Columbia may exercise discretion under section 36 or 161 of the BCSA to impose conditions, restrictions or requirements on the registrant's registration or to suspend or revoke the registration if it decides that an acquisition would affect the registrant's fitness for registration or be prejudicial to the public interest. In these circumstances, the registrant would be entitled to an opportunity to be heard, except if the regulator issues a temporary order under section 161 of the BCSA.

Part 12 Financial condition

Division 1 Working capital

12.1 Capital requirements

Frequency of working capital calculations

Section 12.1 requires registered firms to notify the regulator as soon as possible if their excess working capital is less than zero.

Registered firms should know their working capital position at all times. This may require a firm to calculate its working capital every day. The frequency of working capital calculations depends on many factors, including the size of the firm, the nature of its business and the stability of the components of its working capital. For example, it may be sufficient for a sole proprietor firm with a dedicated and stable source of working capital to do the calculation on a monthly basis.

Form 31-103F1 - *Calculation of excess working capital*

Application of NI 52-107 Acceptable Accounting Principles and Auditing Standards

Form 31-103F1 – *Calculation of Excess Working Capital* (Form 31-103F1) must be prepared using the accounting principles used to prepare their financial statements in accordance with National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107). Refer to section 12.10 of this Companion Policy and Companion Policy 52-107 *Acceptable Accounting Principles and Auditing Standards* (52-107CP) for further guidance on audited financial statements.

IIROC and MFDA member firms that are also registered in another category

IIROC and MFDA member firms that are also registered in a category that does not require SRO membership must still comply with the financial filing requirements in Part 12 [*Financial condition*], even if they are relying on the exemptions in sections 9.3 and 9.4. Provided certain conditions are met, SRO

members that are registered in other categories may be permitted to calculate their working capital in accordance with the SRO forms and file the SRO forms instead of Form 31-103F1 .

For example, if the SRO firm is also an investment fund manager, it will need to report any net asset value (NAV) adjustments quarterly in order to comply with the investment fund manager requirements, notwithstanding that its SRO has no such requirements. However, they may be permitted to calculate their working capital in accordance with the SRO forms and file the SRO forms instead of Form 31-103F1. See sections 12.1, 12.12 and 12.14 for the requirements on delivery of working capital calculations for SRO members that are registered in multiple categories.

Working capital requirements are not cumulative

The working capital requirements for registered firms set out in section 12.1 are not cumulative. If a firm is registered in more than one category, it must meet the highest capital requirement of its categories of registration, except for those investment fund managers who are also registered as portfolio managers and meet the requirements of the exemption in section 8.6. These investment fund managers need only meet the lower capital requirement for portfolio managers.

If a registrant becomes insolvent or declares bankruptcy

The regulator will review the circumstances of a registrant's insolvency or bankruptcy on a case-by-case basis. If the regulator has concerns, it may impose terms and conditions on the registrant's registration, such as close supervision and delivering progress reports to the regulator, or it may suspend the registrant's registration.

12.2 Subordination agreements

Long-term related party debt must be deducted from a firm's working capital on Form 31-103F1, unless the firm and the lender have executed a subordination agreement in the form set out in Appendix B of NI 31-103 and delivered a copy of that agreement with the regulator.

Division 2 Insurance

Insurance coverage limits

Registrants must maintain bonding or insurance that provides for a "double aggregate limit" or a "full reinstatement of coverage" (also known as "no aggregate limit"). The insurance provisions state that the registered firm must "maintain" bonding or insurance in the amounts specified. We do not expect that the calculation would differ materially from day to day. If there is a material change in a firm's circumstances, it should consider the potential impact on its ability to meet its insurance requirements.

Most insurers offer aggregate limit policies that contain limits based on a single loss and on the number or value of losses that occur during the coverage period.

Double aggregate limit policies have a specified limit for each claim. The total amount that may be claimed during the coverage period is twice that limit. For example, if an adviser maintains a financial institution bond of $50,000 for each clause with a double aggregate limit, the adviser's coverage is $50,000 for any one claim and $100,000 for all claims during the coverage period.

Full reinstatement of coverage policies and no aggregate limit policies have a specified limit for each claim but no limit on the number of claims or losses during the coverage period. For example, if an adviser maintains a financial institution bond of $50,000 for each clause with a full reinstatement of coverage provision, the adviser's maximum coverage is $50,000 for any one claim, but there is no limit on the total amount that can be claimed under the bond during the coverage period.

Insurance requirements are not cumulative

Insurance requirements are not cumulative. For example, a firm registered in the categories of portfolio manager and investment fund manager need only maintain insurance coverage for the higher of the amounts required for each registration category. Despite being registered as both a portfolio manager and

an investment fund manager, when calculating the investment fund manager insurance requirement under subsection 12.5(2), an investment fund manager should only include the total assets under management of its own investment funds. It is only with respect to its own funds that the registrant is acting as an investment fund manager.

12.4 Insurance – adviser

The insurance requirements for advisers depend in part on whether the adviser holds or has access to client assets.

An adviser will be considered to hold or have access to client assets if they do any of the following:

- hold client securities or cash for any period
- accept funds from clients, for example, a cheque made payable to the registrant
- accept client money from a custodian, for example, client money that is deposited in the registrant's bank or trust accounts before the registrant issues a cheque to the client
- have the ability to gain access to client assets
- have, in any capacity, legal ownership of, or access to, client funds or securities
- have the authority, such as under a power of attorney, to withdraw funds or securities from client accounts
- have authority to debit client accounts to pay bills other than investment management fees
- act as a trustee for clients, or
- act as fund manager or general partner for investment funds

12.6 Global bonding or insurance

Registered firms may be covered under a global insurance policy. Under this type of policy, the firm is insured under a parent company's policy that covers the parent and its subsidiaries or affiliates. Firms should ensure that the claims of other entities covered under a global insurance policy do not affect the limits or coverage applicable to the firm.

Division 4 Financial reporting

12.10 Annual financial statements and interim financial information

Accounting Principles

Registrants are required to deliver annual financial statements and interim financial information that comply with NI 52-107. Depending on the financial year, a registrant will look to different parts of NI 52-107 to determine which accounting principles and auditing standards apply:

- Part 3 of NI 52-107 applies for financial years beginning on or after January 1, 2011;
- Part 4 of NI 52-107 applies to financial years beginning before January 1, 2011.

Part 3 of NI 52-107 refers to Canadian GAAP applicable to publicly accountable enterprises, which is IFRS as incorporated into the Handbook. Under Part 3 of NI 52-107, annual financial statements and interim financial information delivered by a registrant must be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises except that any investments in subsidiaries, jointly controlled entities and associates must be accounted for as specified for separate financial statements in International Accounting Standard 27 Consolidated and Separate Financial Statements. Separate financial statements are sometimes referred to as non-consolidated financial statements.

Section 3.2(3) of NI 52-107 requires annual financial statements to include a statement and description about this required financial reporting framework. Section 2.7 of 52-107CP provides guidance on section 3.2(3). We remind registrants to refer to these provisions in NI 52-107 and 52-107CP in preparing their annual financial statements and interim financial information.

Part 4 of NI 52-107 refers to Canadian GAAP for public enterprises, which is Canadian GAAP as it existed before the mandatory effective date for the adoption of IFRS, included in the Handbook as Part V. Under Part 4 of NI 52-107, annual financial statements and interim financial information delivered by a registrant must be prepared in accordance with Canadian GAAP for public enterprises except that the financial statements and interim financial information must be prepared on a non-consolidated basis.

Changeover to International Financial Reporting Standards

When preparing annual financial statements, interim financial information or Form 31-103F1 for a financial year beginning in 2011 or for interim periods relating to a financial year beginning in 2011, registrants may rely on the exemption in subsection 12.15(1) and exclude comparative information for the preceding financial year. Section 3.2(4) of NI 52-107 provides a corresponding exemption for the accounting principles used by registrants. If a registrant relies on these exemptions, its date of transition to IFRS will be the first day of its financial year beginning in 2011. Section 2.7 of 52-107CP provides further guidance on this topic. We remind registrants to refer to the provisions in NI 52-107 and 52-107CP in preparing their financial statements and interim financial information for a financial period beginning in 2011.

12.14 Delivering financial information – investment fund manager

NAV errors and adjustments

Section 12.14 requires investment fund managers to periodically deliver to the regulator, among other things, a description of any NAV adjustment. A NAV adjustment is necessary when there has been a material error and the NAV per unit does not accurately reflect the actual NAV per unit at the time of computation.

Some examples of the causes of NAV errors are:

- mispricing of a security
- corporate action recorded incorrectly
- incorrect numbers used for issued and outstanding units
- incorrect expenses and income used or accrued
- incorrect foreign exchange rates used in the valuation, and
- human error, such as inputting an incorrect value

We expect investment fund managers to have policies that clearly define what constitutes a material error that requires an adjustment, including threshold levels, and how to correct material errors. If an investment fund manager does not have a threshold in place, it may wish to consider the threshold in IFIC Bulletin Number 22 *Correcting Portfolio NAV Errors* or adopt a more stringent policy.

Part 13 Dealing with clients – individuals and firms

Division 1 Know your client and suitability

13.2 Know your client

General principles

Registrants act as gatekeepers of the integrity of the capital markets. They should not, by act or omission, facilitate conduct that brings the market into disrepute. As part of their gatekeeper role, registrants are

required to establish the identity of, and conduct due diligence on, their clients under the know your client (KYC) obligation in section 13.2. Complying with the KYC obligation can help ensure that trades are completed in accordance with securities laws.

KYC information forms the basis for determining whether trades in securities are suitable for investors. This helps protect the client, the registrant and the integrity of the capital markets. The KYC obligation requires registrants to take reasonable steps to obtain and periodically update information about their clients.

Verifying a client's reputation

Subsection 13.2(2)(a) requires registrants to make inquiries if they have cause for concern about a client's reputation. The registrant must make all reasonable inquiries necessary to resolve the concern. This includes making a reasonable effort to determine, for example, the nature of the client's business or the identity of beneficial owners where the client is a corporation, partnership or trust. See subsection 13.2(3) for additional guidance on identifying clients that are corporations, partnerships or trusts.

Identifying insiders

Under subsection 13.2(2)(b), a registrant must take reasonable steps to establish whether the client is an insider of a reporting issuer or any other issuer whose securities are publicly traded.

We consider "reasonable steps" to include explaining to the client what an insider is and what it means for securities to be publicly traded.

For purposes of this paragraph, "reporting issuer" has the meaning given to it in securities legislation and "other issuer" means any issuer whose securities are traded in any public market. This includes domestic, foreign, exchange-listed and over-the-counter markets. This definition does not include issuers whose securities have been distributed through a private placement and are not freely tradeable.

A registrant need not ascertain whether the client is an insider if the only securities traded for the client are mutual fund securities and scholarship plan securities referred to in sections 7.1(2)(b) and 7.1(2)(c). However, we encourage firms, when selling highly concentrated pooled funds, to enquire as to whether a client is an insider of the issuer of any securities held by the fund, notwithstanding the exemption provided in subsection 13.2(7). In addition, we remind registrants that they remain subject to the requirement in section 13.2(2)(b) when they trade any other securities than those listed in sections 7.1(2)(b) and 7.1(2)(c).

This exemption does not change an insider's reporting and conduct responsibilities.

Clients that are corporations, partnerships or trusts

Subsection 13.2(3) requires registrants to establish the identity of any person who owns or controls 25% or more of the shares of a client that is a corporation or exercises control over the affairs of a client that is a partnership or trust. We remind registrants that this is in addition to the requirement in subsection 13.2(2)(a) which requires registrants to make inquiries if they have cause for concern about a client's reputation. If a registrant has cause for concern about a particular client that is a corporation, partnership or trust, they may need to identify all beneficial owners of such entity.

Keeping KYC information current

Under subsection 13.2(4), registrants are required to make reasonable efforts to keep their clients' KYC information current.

We consider information to be current if it is sufficiently up-to-date to support a suitability determination. For example, a portfolio manager with discretionary authority should update its clients' KYC information frequently. A dealer that only occasionally recommends trades to a client should ensure that the client's KYC information is up-to-date at the time a proposed trade or recommendation is made.

13.3 Suitability

Suitability obligation

Subsection 13.3(1) requires registrants to take reasonable steps to ensure that a proposed trade is suitable for a client before making a recommendation or accepting instructions from the client. To meet this suitability obligation, registrants should have in-depth knowledge of all securities that they buy and sell for, or recommend to, their clients. This is often referred to as the "know your product" or KYP obligation.

Registrants should know each security well enough to understand and explain to their clients the security's risks, key features, and initial and ongoing costs and fees. Having the registered firm's approval for representatives to sell a product does not mean that the product will be suitable for all clients. Individual registrants must still determine the suitability of each transaction for every client.

Registrants should also be aware of, and act in compliance with, the terms of any exemption being relied on for the trade or distribution of the security.

In all cases, we expect registrants to be able to demonstrate a process for making suitability determinations that are appropriate in the circumstances.

Suitability obligations cannot be delegated

Registrants may not:

- delegate their suitability obligations to anyone else, or
- satisfy the suitability obligation by simply disclosing the risks involved with a trade

Only permitted clients may waive their right to a suitability determination. Registrants must make a suitability determination for all other clients. If a client instructs a registrant to make a trade that is unsuitable, the registrant may not allow the trade to be completed until they warn the client as required under subsection 13.3(2).

KYC information for suitability depends on circumstances

The extent of KYC information a registrant needs to determine suitability of a trade will depend on the:

- client's circumstances
- type of security
- client's relationship to the registrant, and
- registrant's business model

In some cases, the registrant will need extensive KYC information, for example, if the registrant is a portfolio manager with discretionary authority. In these cases, the registrant should have a comprehensive understanding of the client's:

- investment needs and objectives, including the client's time horizon for their investments
- overall financial circumstances, including net worth, income, current investment holdings and employment status, and
- risk tolerance for various types of securities and investment portfolios, taking into account the client's investment knowledge

In other cases, the registrant may need less KYC information, for example, if the registrant only occasionally deals with a client who makes small investments relative to their overall financial position.

If the registrant recommends securities traded under the prospectus exemption for accredited investors in NI 45-106, the registrant should determine whether the client qualifies as an accredited investor.

If a client is opening more than one account, the registrant should indicate whether the client's investment objectives and risk tolerance apply to a particular account or to the client's whole portfolio of accounts.

Registered firm and financial institution clients

Under subsection 13.3(3), there is no obligation to make a suitability determination for a client that is a registered firm, a Canadian financial institution or a Schedule III bank.

Permitted clients

Under subsection 13.3(4), registrants do not have to make a suitability determination for a permitted client if:

- the permitted client has waived their right to suitability in writing, and
- the registrant does not act as an adviser for a managed account of the permitted client

A permitted client may waive their right to suitability for all trades under a blanket waiver.

SRO exemptions

SRO rules may also provide conditional exemptions from the suitability obligation, for example, for dealers who offer order execution only services.

Division 2 Conflicts of interest

13.4 Identifying and responding to conflicts of interest

Section 13.4 covers a broad range of conflicts of interest. It requires registered firms to take reasonable steps to identify existing material conflicts of interest and material conflicts that the firm reasonably expects to arise between the firm and a client. As part of identifying these conflicts, a firm should collect information from the individuals acting on its behalf regarding the conflicts they expect to arise with their clients.

We consider a conflict of interest to be any circumstance where the interests of different parties, such as the interests of a client and those of a registrant, are inconsistent or divergent.

Responding to conflicts interest

A registered firm's policies and procedures for managing conflicts should allow the firm and its staff to:

- identify conflicts of interest that should be avoided
- determine the level of risk that a conflict of interest raises, and
- respond appropriately to conflicts of interest

When responding to any conflict of interest, registrants should consider their standard of care for dealing with clients and apply consistent criteria to similar types of conflicts of interest.

In general, three methods are used to respond to conflicts of interest:

- avoidance
- control, and
- disclosure

If a registrant allows a serious conflict of interest to continue, there is a high risk of harm to clients or to the market. If the risk of harming a client or the integrity of the markets is too high, the conflict needs to be

avoided. If a registered firm does not avoid a conflict of interest, it should take steps to control or disclose the conflict, or both. The firm should also consider what internal structures or policies and procedures it should use or have to reasonably respond to the conflict of interest.

Avoiding conflicts of interest

Registrants must avoid all conflicts of interest that are prohibited by law. If a conflict of interest is not prohibited by law, registrants should avoid the conflict if it is sufficiently contrary to the interests of a client that there can be no other reasonable response.

For example, some conflicts of interest are so contrary to another person's or company's interest that a registrant cannot use controls or disclosure to respond to them. In these cases, the registrant should avoid the conflict, stop providing the service or stop dealing with the client.

Controlling conflicts of interest

Registered firms should design their organizational structures, lines of reporting and physical locations to control conflicts of interest effectively. For example, the following situations would likely raise a conflict of interest:

- advisory staff reporting to marketing staff
- compliance or internal audit staff reporting to a business unit, and
- registered representatives and investment banking staff in the same physical location

Depending on the conflict of interest, registered firms may control the conflict by:

- assigning a different representative to provide a service to the particular client
- creating a group or committee to review, develop or approve responses
- monitoring trading activity, or
- using information barriers for certain internal communication

Disclosing conflicts of interest

(a) When disclosure is appropriate

Registered firms should ensure that their clients are adequately informed about any conflicts of interest that may affect the services the firm provides to them. This is in addition to any other methods the registered firm may use to manage the conflict.

(b) Timing of disclosure

Under subsection 13.4(3), if a reasonable investor would expect to be informed of a conflict, a registered firm must disclose the conflict in a timely manner. Registered firms and their representatives should disclose conflicts of interest to their clients before or at the time they recommend the transaction or provide the service that gives rise to the conflict. This is to give clients a reasonable amount of time to assess the conflict.

We note that where this disclosure is provided to a client before the transaction takes place, we expect the disclosure to be provided shortly before the transaction takes place. For example, if it was initially provided with the client's account opening documentation months or years previously we expect that a registered representative would also disclose this conflict to the client shortly before the transaction or at the time the transaction is recommended.

For example, if a registered individual recommends a security that they own, this may constitute a material conflict which should be disclosed to the client before or at the time of the recommendation.

(c) When disclosure is not appropriate

Disclosure may not be appropriate if a conflict of interest involves confidential or commercially sensitive information, or the information amounts to "inside information" under insider trading provisions in securities legislation.

In these situations, registered firms will need to assess whether there are other methods to adequately respond to the conflict of interest. If not, the firm may have to decline to provide the service to avoid the conflict of interest.

Registered firms should also have specific procedures for responding to conflicts of interest that involve inside information and for complying with insider trading provisions.

(d) How to disclose a conflict of interest

Registered firms should provide disclosure about material conflicts of interest to their clients if a reasonable investor would expect to be informed about them. When a registered firm provides this disclosure, it should:

- be prominent, specific, clear and meaningful to the client, and
- explain the conflict of interest and how it could affect the service the client is being offered

Registered firms should not:

- provide generic disclosure
- give partial disclosure that could mislead their clients, or
- obscure conflicts of interest in overly detailed disclosure

Examples of conflicts of interest

This section describes specific situations where a registrant could be in a conflict of interest and how to manage the conflict.

Relationships with related or connected issuers

When a registered firm trades in, or recommends securities of, a related or connected issuer, it should respond to the resulting conflict of interest by disclosing it to the client.

To provide disclosure about conflicts with related issuers, a registered firm may maintain a list of the related issuers for which it acts as a dealer or adviser. It may make the list available to clients by:

- posting the list on its website and keeping it updated
- providing the list to the client at the time of account opening, or
- explaining to the client at the time of account opening how to contact the firm to request a copy of the list free of charge

The list may include examples of the types of issuers that are related or connected and the nature of the firm's relationship with those issuers. For example, a firm could generally describe the nature of its relationship with an investment fund within a family of investment funds. This would mean that the firm may not have to update the list when a new fund is added to that fund family.

However, this type of disclosure may not meet the expectations of a reasonable investor when a specific conflict with a related or connected issuer arises, for example, when a registered individual recommends a trade in the securities of a related issuer. In these circumstances, a registered firm should provide the client with disclosure about the specific conflict with that issuer. This disclosure should include a description of the nature of the firm's relationship with the issuer.

Like all disclosure, information regarding a conflict with a related or connected issuer should be made available to clients before or at the time of the advice or trade giving rise to the conflict, so that clients have a reasonable amount of time to assess it. Registrants should use their judgment for the best way and time to inform clients about these conflicts. Previous disclosure may no longer be relevant to, or remembered by, a client, while disclosure of the same conflict more than once in a short time may be unnecessary and confusing.

Firms do not have to disclose to clients their relationship with a related or connected issuer that is a mutual fund managed by an affiliate of the firm if the names of the firm and the fund are similar enough that a reasonable person would conclude they are affiliated.

Relationships with other issuers

Firms should assess whether conflicts of interest may arise in relationships with issuers that do not fall within the definitions of related or connected issuers. Examples include non-corporate issuers such as a trust, partnership or special purpose entity or conduit issuing asset-backed commercial paper. This is especially important if a registered firm or its affiliates are involved in sponsoring, manufacturing, underwriting or distributing these securities.

The registered firm should disclose the relationship with these types of issuers if it may give rise to a conflict of interest that a reasonable client would expect to be informed about.

Competing interests of clients

If clients of a registered firm have competing interests, the firm should make reasonable efforts to be fair to all clients. Firms should have internal systems to evaluate the balance of these interests.

For example, a conflict of interest can arise between investment banking clients, who want the highest price, lowest interest rate or best terms in general for their issuances of securities, and retail clients who will buy the product. The firm should consider whether the product meets the needs of retail clients and is competitive with alternatives available in the market.

Individuals who serve on a board of directors

(*a*) *Board of directors of another registered firm*

Under section 4.1, a registered individual must not act as a director of another registered firm that is not an affiliate of the individual's sponsoring firm.

(*b*) *Board of directors of non registered persons or companies*

Section 4.1 does not apply to registered individuals who act as directors of unregistered firms. However, significant conflicts of interest can arise when a registered individual serves on a board of directors. Examples include conflicting fiduciary duties owed to the company and to a registered firm or client, possible receipt of inside information and conflicting demands on the representative's time.

Registered firms should consider controlling the conflict by:

- requiring their representatives to seek permission from the firm to serve on the board of directors of an issuer, and

- having policies for board participation that identify the circumstances where the activity would not be in the best interests of the firm or its clients

The regulator will take into account the potential conflicts of interest that may arise when an individual serves on a board of directors when assessing that individual's application for registration or continuing fitness for registration.

Individuals who have outside business activities

Conflicts can arise when registered individuals are involved in outside business activities, for example, because of the compensation they receive for these activities or because of the nature of the relationship

between the individual and the outside entity. Before approving any of these activities, registered firms should consider potential conflicts of interest. If the firm cannot properly control a potential conflict of interest, it should not permit the outside activity.

The regulator will take into account the potential conflicts of interest that may arise as a result of an individual's outside business activities when assessing that individual's application for registration or continuing fitness for registration.

Compensation practices

Registered firms should consider whether any particular benefits, compensation or remuneration practices are inconsistent with their obligations to clients, especially if the firm relies heavily on commission-based remuneration. For example, if there is a complex product that carries a high commission, the firm may decide that it is not appropriate to offer that product.

13.5 Restrictions on certain managed account transactions

Section 13.5 prohibits a registered adviser from engaging in certain transactions in investment portfolios it manages for clients on a discretionary basis where the relationship may give rise to a conflict of interest or a perceived conflict of interest. The prohibited transactions include trades in securities in which a responsible person or an associate of a responsible person may have an interest or over which they may have influence or control.

Disclosure when responsible person is partner, director or officer of issuer

Subsection 13.5(2)(a) prohibits a registered adviser from purchasing securities of an issuer in which a responsible person or an associate of a responsible person is a partner, officer or director for a client's managed account. The prohibition applies unless the conflict is disclosed to the client and the client's written consent is obtained prior to the purchase.

If the client is an investment fund, the disclosure should be provided to, and the consent obtained from, each security holder of the investment fund in order for it to be meaningful. This disclosure may be provided in the offering memorandum that is provided to security holders. Like all disclosure about conflicts, it should be prominent, specific, clear and meaningful to the client. Consent may be obtained in the investment management agreement signed by the clients of the adviser that are also security holders of the investment fund.

This approach may not be practical for prospectus qualified mutual funds. Investment fund managers and advisers of these funds should also consider the specific exemption from the prohibition under section 6.2 of National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107) for prospectus-qualified investment funds.

Restrictions on trades with certain investment portfolios

Subsection 13.5(2)(b) prohibits certain trades, including, for example, those between the managed account of a client and the managed account of:

- a spouse of the adviser
- a trust for which a responsible person is the trustee, or
- a corporation in which a responsible person beneficially owns 10% or more of the voting securities

It also prohibits inter-fund trades. An inter-fund trade occurs when the adviser for an investment fund knowingly directs a trade in portfolio securities to another investment fund that it acts for or instructs the dealer to execute the trade with the other investment fund. Investment fund managers and their advisers should also consider the exemption from the prohibition that exists for inter-fund trades by public investment funds under section 6.1 of NI 81-107.

Section 13.5(2)(b) is not intended to prohibit a responsible person from purchasing units in the investment fund itself, nor is it intended to prohibit one investment fund from purchasing units of another fund in situations where they have the same adviser.

In instances where an IIROC dealer, who is also an adviser to a managed account, trades between its inventory account and the managed account, the dealer is expected to have policies and procedures that sufficiently mitigate the conflicts of interest inherent in such transactions. Generally, we expect these policies and procedures to ensure that:

- the trades achieve best execution as referenced in National Instrument 23-101 *Trading Rules*, while ensuring that the trades are consistent with the objectives of the managed account
- reasonable steps are taken to access information, including marketplace quotations or quotes provided by arms-length parties, to ensure that the trade is executed at a fair price
- there is appropriate oversight and a compliance mechanism to monitor this trading activity in order to ensure that it complies with applicable regulatory requirements, including the requirements referred to above.

13.6 Disclosure when recommending related or connected securities

Section 13.6 restricts the ability of a registered firm to recommend a trade in a security of a related or connected issuer. The restrictions apply to recommendations made in any medium of communication. This includes recommendations in newsletters, articles in general circulation newspapers or magazines, websites, e-mail, Internet chat rooms, bulletin boards, television and radio.

It does not apply to oral recommendations made by registered individuals to their clients. These recommendations are subject to the requirements of section 13.4.

Division 3 Referral arrangements

Division 3 sets out the requirements for permitted referral arrangements. Regulators want to ensure that under any referral arrangements:

- individuals and firms that engage in registerable activities are appropriately registered
- the roles and responsibilities of the parties to the written agreement are clear, including responsibility for compliance with securities legislation, and
- clients are provided with disclosure about the referral arrangement to help them evaluate the referral arrangement and the extent of any conflicts of interest

Registered firms have a responsibility to monitor and supervise all of their referral arrangements to ensure that they comply with the requirements of NI 31-103 and other applicable securities laws and continue to comply for so long as the arrangement remains in place.

Obligations to clients

A client who is referred to an individual or firm becomes the client of that individual or firm for the purposes of the services provided under the referral arrangement.

The registrant receiving a referral must meet all of its obligations as a registrant toward its referred clients, including know your client and suitability determinations.

Registrants involved in referral arrangements should manage any related conflicts of interest in accordance with the applicable provisions of Part 13 *Dealing with clients – individuals and firms*. For example, if the registered firm is not satisfied that the referral fee is reasonable, it should assess whether an unreasonably high fee may create a conflict that could motivate its representatives to act contrary to their duties toward their clients.

13.7 Definitions – referral arrangements

Section 13.7 defines “referral arrangement” in broad terms. Referral arrangement means an arrangement in which a registrant agrees to pay or receive a referral fee. The definition is not limited to referrals for providing investment products, financial services or services requiring registration. It also includes receiving a referral fee for providing a client name and contact information to an individual or firm. “Referral fee” is also

broadly defined. It includes sharing or splitting any commission resulting from the purchase or sale of a security.

In situations where there is no expectation of reward or compensation, we would not consider the receipt of an unexpected gift of appreciation to fall within the scope of a referral arrangement. One of the key elements of the referral arrangement is that the registrant agrees to pay or receive a referral fee for the referral of a client. This agreement or understanding is absent in the case of unexpected gifts.

13.8 Permitted referral arrangements

Under section 13.8, parties to a referral arrangement are required to set out the terms of the arrangement in a written agreement. This is intended to ensure that each party's roles and responsibilities are made clear. This includes obligations for registered firms involved in referral arrangements to keep records of referral fees. Payments do not necessarily have to go through a registered firm, but a record of all payments related to a referral arrangement must be kept.

We expect referral agreements to include:

- the roles and responsibilities of each party
- limitations on any party that is not a registrant (to ensure that it is not engaging in any activities requiring registration)
- the disclosure to be provided to referred clients, and
- who provides the disclosure to referred clients

If the individual or firm receiving the referral is a registrant, they are responsible for:

- carrying out all activity requiring registration that results from the referral arrangement, and
- communicating with referred clients

Registered firms are required to be parties to referral agreements. This ensures that they are aware of these arrangements so they can adequately supervise their representatives and monitor compliance with the agreements. This does not preclude the individual registrant from also being a party to the agreement.

A party to a referral arrangement may need to be registered depending on the activities that the party carries out. Registrants cannot use a referral arrangement to assign, contract out of or otherwise avoid their regulatory obligations.

13.9 Verifying the qualifications of the person or company receiving the referral

Section 13.9 requires the registrant making a referral to satisfy itself that the party receiving the referral is appropriately qualified to perform the services, and if applicable, is appropriately registered. The registrant is responsible for determining the steps that are appropriate in the particular circumstances. For example, this may include an assessment of the types of clients that the referred services would be appropriate for.

13.10 Disclosing referral arrangements to clients

The disclosure of information to clients required under section 13.10 is intended to help clients make an informed decision about the referral arrangement and to assess any conflicts of interest. The disclosure should be provided to clients before or at the time the referred services are provided. A registered firm, and any registered individuals who are directly participating in the referral arrangement, should take reasonable steps to ensure that clients understand:

- which entity they are dealing with
- what they can expect that entity to provide to them
- the registrant's key responsibilities to them
- the limitations of the registrant's registration category

- any relevant terms and conditions imposed on the registrant's registration
- the extent of the referrer's financial interest in the referral arrangement, and
- the nature of any potential or actual conflict of interest that may arise from the referral arrangement

Division 4 Loans and margin

13.12 Restriction on lending to clients

The purpose of section 13.12 is intended to limit the financial exposure of a registered firm. To the extent that products sold to clients are structured in a way that would result in the registrant becoming a lender to the clients, including the registrant extending margin to the client, we would consider the registrant to not be in compliance with section 13.12.

Section 13.12 prohibits registrants from lending money, extending credit or providing margin to clients as we consider that this activity creates a conflict of interest which cannot be easily managed.

We note that SROs are exempt from section 13.12 as they have their own rules or prohibitions on lending, extending credit and providing margin to clients. Direct lending to clients (margin) is reserved for IIROC members. The MFDA has its own rules prohibiting margining and, except in specific limited circumstances, lending.

Division 5 Complaints

Registered firms in Québec must comply with sections 168.1.1 to 168.1.3 of the Québec *Securities Act*, which has provided a substantially similar regime since 2002. The guidance in Division 5 if this Companion Policy applies to firms registered in any jurisdiction, including Québec.

13.15 Handling complaints

General duty to document and respond to complaints

Section 13.15 requires registered firms to document complaints, and to effectively and fairly respond to them. We are of the view that registered firms should document and respond to all complaints received from a client, a former client or a prospective client who has dealt with the registered firm (complainant).

Firms are reminded that they are required to maintain records which demonstrate compliance with complaint handling requirements under subsection 11.5(2)(m).

Complaint handling policies

An effective complaint system should deal with all formal and informal complaints or disputes in a timely and fair manner. To achieve the objective of handling complaints fairly, the firm's complaint system should include standards allowing for objective factual investigation and analysis of the matters specific to the complaint.

We take the view that registered firms should take a balanced approach to the gathering of facts that objectively considers the interests of

- the complainant
- the registered representative, and
- the firm

Registered firms should not limit their consideration and handling of complaints to those relating to possible violations of securities legislation.

Complaint monitoring

The firm's complaint handling policy should provide for specific procedures for reporting the complaints to superiors, in order to allow the detection of frequent and repetitive complaints made with respect to the same matter which may, on a cumulative basis, indicate a serious problem. Firms should take appropriate measures to deal with such problems as they arise.

Responding to complaints

Types of complaints

All complaints relating to one of the following matters should be responded to by the firm by providing an initial and substantive response, both in writing and within a reasonable time:

- a trading or advising activity
- a breach of client confidentiality
- theft, fraud, misappropriation or forgery
- misrepresentation
- an undisclosed or prohibited conflict of interest, or
- personal financial dealings with a client

Firms may determine that a complaint relating to matters other than the matters listed above is nevertheless of a sufficiently serious nature to be responded in the manner described below. This determination should be made, in all cases, by considering if an investor, acting reasonably, would expect a written response to their complaint.

When complaints are not made in writing

We would not expect that complaints relating to matters other than those listed above, when made verbally and when not otherwise considered serious based on an investor's reasonable expectation, would need to responded to in writing. However, we do expect that verbal complaints be given as much attention as written complaints. If a complaint is made verbally and is not clearly expressed, the firm may request the complainant to put the complaint in writing and we expect firms to offer reasonable assistance to do so.

Firms are entitled to expect the complainant to put unclear verbal issues into written format in order to try to resolve confusion about the nature of the issue. If the verbal complaint is clearly frivolous, we do not expect firms to offer assistance to put the complaint in writing. The firm may nonetheless ask the complainant to put the complaint in writing on his or her own.

Timeline for responding to complaints

Firms should

- promptly send an initial written response to a complainant: we consider that an initial response should be provided to the complainant within five business days of receipt of the complaint
- provide a substantive response to all complaints relating to the matters listed under "Types of complaints" above, indicating the firm's decision on the complaint

We encourage firms to resolve complaints relating to the matters listed above within 90 days.

13.16 Dispute resolution service

A registered firm must ensure that the complainant is aware of the dispute resolution or mediation services that are available to them and that the firm will pay for the services. Registered firms should know all

applicable mechanisms and processes for dealing with different types of complaints, including those prescribed by the applicable SRO.

In Québec, registrants must inform each complainant, in writing and without delay, that if the complainant is dissatisfied with how the complaint is handled or with the outcome, they may request the registrant to forward a copy of the complaint file to the Autorité des marchés financiers. The registrant must forward a copy of the complaint file to the Autorité des marchés financiers, which will examine the complaint. The Autorité des marchés financiers may act as a mediator if it considers it appropriate to do so and the parties agree.

Registrants who do business in other sectors

Some registrants are also registered or licensed to do business in other sectors, such as insurance. These registrants should inform their clients of the complaint mechanisms for each sector in which they do business and how to use them.

Part 14 Handling client accounts – firms

Division 2 Disclosure to clients

Registrants should ensure that clients understand who they are dealing with. They should carry on all registerable activities in their full legal or registered trade name. Contracts, confirmation and account statements, among other documents, should contain the registrant's full legal name.

14.2 Relationship disclosure information

Content of relationship disclosure information

There is no prescribed form for the relationship disclosure information required under section 14.2. A registered firm may provide this information in a single document or in separate documents, which together give the client the prescribed information.

Disclosure of costs

Under subsection 14.2(2)(g), registered firms must provide clients with a description of the costs they will pay in making, holding and selling investments. We expect this description to include all costs a client may pay during the course of holding a particular investment. For example, for a mutual fund, the description should briefly explain each of the following and how they may affect the investment:

- the management expense ratio
- the sales charge options available to the client
- the trailing commission
- any short-term trading fees
- any switch or change fees

Permitted clients

Under subsection 14.2(6), registrants do not have to provide relationship disclosure information to permitted clients if:

- the permitted client has waived the requirements in writing, and
- the registrant does not act as an adviser for a managed account of the permitted client

Promoting client participation

Registered firms should help their clients understand the registrant-client relationship. They should encourage clients to actively participate in the relationship and provide them with clear, relevant and timely information and communications.

In particular, registered firms should encourage clients to:

- Keep the firm up to date. Clients should provide full and accurate information to the firm and the registered individuals acting for the firm. Clients should promptly inform the firm of any change to information that could reasonably result in a change to the types of investments appropriate for them, such as a change to their income, investment objectives, risk tolerance, time horizon or net worth.

- Be informed. Clients should understand the potential risks and returns on investments. They should carefully review sales literature provided by the firm. Where appropriate, clients should consult professionals, such as a lawyer or an accountant, for legal or tax advice.

- Ask questions. Clients should ask questions and request information from the firm to resolve questions about their account, transactions or investments, or their relationship with the firm or a registered individual acting for the firm.

- Stay on top of their investments. Clients should pay for securities purchases by the settlement date. They should review all account documentation provided by the firm and regularly review portfolio holdings and performance.

14.4 When the firm has a relationship with a financial institution

As part of their duty to clients, registrants who have a relationship with a financial institution should ensure that their clients understand which legal entity they are dealing with. In particular, clients may be confused if more than one financial services firm is carrying on business in the same location. Registrants may differentiate themselves through various methods, including signage and disclosure.

Division 3 Client assets

14.6 Holding client assets in trust

Section 14.6 requires a registered firm to segregate client assets and hold them in trust. We consider it prudent for registrants who are not members of an SRO to hold client assets in client name only. This is because the capital requirements for non-SRO members are not designed to reflect the added risk of holding client assets in nominee name.

Division 4 Client accounts

14.10 Allocating investment opportunities fairly

If the adviser allocates investment opportunities among its clients, the firm's fairness policy should, at a minimum, indicate the method used to allocate the following:

- price and commission among client orders when trades are bunched or blocked

- block trades and initial public offerings among client accounts

- block trades and initial public offerings among client orders that are partially filled, such as on a pro-rata basis

The fairness policy should also address any other situation where investment opportunities must be allocated.

Each trade should be reported in the currency in which it was executed. If a trade is executed in a foreign currency through a Canadian account, the exchange rate should be reported to the client.

14.12 Content and delivery of trade confirmation

Section 14.12 requires registered dealers to deliver trade confirmations. A dealer may enter into an outsourcing arrangement for the sending of trade confirmations to its clients. Like all outsourcing arrangements, the registrant is ultimately responsible for the function and must supervise the service provider. See Part 11 of this Companion Policy for more guidance on outsourcing.

14.14 Account statements

Section 14.14 requires registered dealers and advisers to deliver statements to clients at least once every three months. There is no prescribed form for these statements but they must contain the information in subsections 14.14(4) and (5). The types of transactions that must be disclosed in an account statement include any purchase, sale or transfer of securities, dividend or interest payment received or reinvested, any fee or charge, and any other account activity.

We expect all dealers and advisers to provide client account statements. For example, an exempt market dealer should provide an account statement that contains the information prescribed for all transactions the exempt market dealer has entered into or arranged on a client's behalf.

The requirement to produce and deliver an account statement may be outsourced. Portfolio managers frequently enter into outsourcing arrangements for the production and delivery of account statements. Third-party pricing providers may also be used to value securities for the purpose of account statements. Like all outsourcing arrangements, the registrant is ultimately responsible for the function and must supervise the service provider. See Part 11 of this Companion Policy for more guidance on outsourcing.

Appendix A
Contact information

Jurisdiction	E-mail	Fax	Address
Alberta	registration@asc.ca	(403) 297-4113	Alberta Securities Commission, Suite 600, 250–5th St. SW Calgary, AB T2P 0R4 Attention: Registration
British Columbia	registration@bcsc.bc.ca	(604) 899-6506	British Columbia Securities Commission P.O. Box 10142, Pacific Centre 701 West Georgia Street Vancouver, BC V7Y 1L2 Attention: Registration
Manitoba	registrationmsc@gov.mb.ca	(204) 945-0330	The Manitoba Securities Commission 500-400 St. Mary Avenue Winnipeg, MB R3C 4K5 Attention: Registrations
New Brunswick	nrs@nbsc-cvmnb.ca	(506) 658-3059	New Brunswick Securities Commission Suite 300, 85 Charlotte Street Saint John, NB E2L 2J2 Attention: Registration Officer
Newfoundland & Labrador	scon@gov.nl.ca	(709) 729-6187	Financial Services Regulation Division Department of Government Services Government of Newfoundland and Labrador P.O. Box 8700, 2nd Floor, West Block Confederation Building St. John's, NL A1B 4J6 Attention: Registration Section
Northwest Territories	SecuritiesRegistry@gov.nt.ca	(867) 873-0243	Government of the Northwest Territories P.O. Box 1320 Yellowknife, NWT X1A 2L9 Attention: Deputy Superintendent of Securities
Nova Scotia	nrs@gov.ns.ca	(902) 424-4625	Nova Scotia Securities Commission 2nd Floor, Joseph Howe Building 1690 Hollis Street P.O. Box 458 Halifax, NS B3J 2P8 Attention: Deputy Director, Capital Markets
Nunavut	CorporateRegistrations@gov.nu.ca	(867) 975-6590 (Faxing to NU is unreliable. The preferred method is e-mail.)	Legal Registries Division Department of Justice Government of Nunavut P.O. Box 1000 Station 570 Iqaluit, NU X0A 0H0 Attention: Deputy Registrar
Ontario	registration@osc.gov.on.ca	(416) 593-8283	Ontario Securities Commission Suite 1903, Box 55 20 Queen Street West Toronto, ON M5H 3S8 Attention: Compliance and Registrant Regulation
Prince Edward Island	ccis@gov.pe.ca	(902) 368-6288	Consumer and Corporate Services Division, Office of the Attorney General P.O. Box 2000, 95 Rochford Street Charlottetown, PE C1A 7N8 Attention: Superintendent of Securities

Jurisdiction	E-mail	Fax	Address
Québec	inscription@lautorite.qc.ca	(514) 873-3090	Autorité des marchés financiers Service de l'encadrement des intermédiaires 800 square Victoria, 22e étage C.P 246, Tour de la Bourse Montréal (Québec) H4Z 1G3
Saskatchewan	registrationsfsc@gov.sk.ca	(306) 787-5899	Saskatchewan Financial Services Commission Suite 601 1919 Saskatchewan Drive Regina, SK S4P 4H2 Attention: Registration
Yukon	corporateaffairs@gov.yk.ca	(867) 393-6251	Department of Community Services Yukon Yukon Securities Office P.O. Box 2703 C-6 Whitehorse, YT Y1A 2C6 Attention: Superintendent of Securities

Appendix B
Terms not defined in NI 31-103 or this Companion Policy

Terms defined in National Instrument 14-101 *Definitions*:

- adviser registration requirement
- Canadian securities regulatory authority
- dealer registration requirement
- foreign jurisdiction
- jurisdiction or jurisdiction of Canada
- local jurisdiction
- investment fund manager registration requirement
- prospectus requirement
- registration requirement
- regulator
- securities directions
- securities legislation
- securities regulatory authority
- SRO
- underwriter registration requirement

Terms defined in National Instrument 45-106 *Prospectus and Registration Exemptions:*

- accredited investor
- eligibility adviser
- financial assets

Terms defined in National Instrument 81-102 *Mutual Funds:*

- money market fund

Terms defined in the Securities Act of most jurisdictions:

- adviser
- associate
- company
- control person
- dealer
- director
- distribution
- exchange contract (BC, AB, SK and NB only)
- insider
- individual
- investment fund
- investment fund manager
- issuer
- mutual fund
- officer
- person
- promoter
- records
- registrant
- reporting issuer
- security
- trade
- underwriter

Appendix C
Proficiency requirements for individuals acting on behalf of a registered firm

The tables in this Appendix set out the education and experience requirements, by firm registration category, for individuals who are applying for registration under securities legislation.

An individual must not perform an activity that requires registration unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently, including, in the case of registered representatives, understanding the structure, features and risks of each security the individual recommends.

CCOs must also not perform an activity set out in section 5.2 unless they have the education, training and experience that a reasonable person would consider necessary to perform the activity competently.

Acronyms used in the tables

BMP: Branch Manager Proficiency Exam

CA: Chartered Accountant

CCO: Chief Compliance Officer

CCOQ: Chief Compliance Officers Qualifying Exam

CFA: CFA Charter

CGA: Certified General Accountant Exam/Partners, Directors

CMA: Certified Management Accountant

CIF: Canadian Investment Funds Course Exam

CIM: Canadian Investment Manager designation

CSC: Canadian Securities Course Exam

EMP: Exempt Market Products Exam

IFIC: Investment Funds in Canada Course

MFDC: Mutual Funds Dealer Compliance Exam

PDO: Officers', Partners' and Directors' and Senior Officers Course Exam

SRP: Sales Representative Proficiency Exam

Investment dealer	
Dealing representative	**CCO**
Proficiency requirements set by IIROC	Proficiency requirements set by IIROC
Mutual fund dealer	
Dealing representative	**CCO**
One of these five options: 1. CIF 2. CSC 3. IFIC 4. CFA Charter and 12 months of relevant securities industries experience in the 36-months before applying for registration 5. Advising representative requirements – portfolio manager or exempt from these under section 16.10(1)	One of these two options: 1. CIF, CSC or IFIC; and PDO, MFDC or CCOQ 2. CCO requirements – portfolio manager or exempt from these under section 16.9(2)
Exempt market dealer	
Dealing representative	**CCO**

One of these four options: 1. CSC 2. EMP 3. CFA Charter and 12 months of relevant securities industries experience in the 36-months before applying for registration 4. Advising representative requirements – portfolio manager or exempt from these under section 16.10(1)	One of these two options: 1. PDO or CCOQ and EMP or CSC 2. CCO requirements – portfolio manager or exempt from these under section 16.9(2)
Scholarship plan dealer	
Dealing representative	**CCO**
SRP	SRP, BMP, and PDO or CCOQ
Restricted dealer	
Dealing representative	**CCO**
Regulator to determine on a case-by-case basis	Regulator to determine on a case-by-case basis

Portfolio manager		
Advising representative	**Associate advising representative**	**CCO**
One of these two options: 1. CFA and 12 months of relevant investment management experience in the 36-month period before applying for registration 2. CIM and 48 months of relevant investment management experience (12 months gained in the 36-month period before applying for registration)	One of these two options: 1. Level 1 of the CFA and 24 months of relevant investment management experience 2. CIM and 24 months of relevant investment management experience	One of these three options: 1. CSC except if the individual has the CFA or CIM designation, PDO or CCOQ, and CFA or a professional designation as a lawyer, CA, CGA, CMA, notary in Quebec or the equivalent in a foreign jurisdiction, and: • 36 months of relevant securities experience working at an investment dealer, registered adviser or investment fund manager, or • 36 months providing professional services to the securities industry and 12 months working at a registered dealer, registered adviser or investment fund manager, for a total of 48 months 2. CSC except if the individual has the CFA or CIM designation, PDO or CCOQ and five years working at: • an investment dealer or a registered adviser (including 36 months in a compliance capacity), or • a Canadian financial institution in a compliance capacity relating to portfolio management and 12 months at

		a registered dealer or registered adviser, for a total of six years 3. PDO or CCOQ and advising representative requirements – portfolio manager
Restricted portfolio manager		
Advising representative	**Associate advising representative**	**CCO**
Regulator to determine on case-by-case basis	Regulator to determine on case-by-case basis	Regulator to determine on case-by-case basis
Investment fund manager		
CCO		
One of these three options: 1. CSC except if the individual has the CFA or CIM designation, PDO or CCOQ, and CFA or a professional designation as a lawyer, CA, CGA, CMA, notary in Quebec or the equivalent in a foreign jurisdiction, and: • 36 months of relevant securities experience working at a registered dealer, registered adviser or investment fund manager, or • 36 months providing professional services in the securities industry and 12 months working in a relevant capacity at an investment fund manager, for a total of 48 months 2. CIF, CSC or IFIC; PDO or CCOQ and five years of relevant securities experience working at a registered dealer, registered adviser or an investment fund manager (including 36 months in a compliance capacity) 3. CCO requirements for portfolio manager or exempt from these requirements under section 16.9(2)		

Appendix Q

Ministry of Finance

News Release November 12, 2019

Single real estate regulator protects people, combats money laundering

NEWS RELEASE

For Immediate Release
2019FIN0115-002149
Nov. 12, 2019

Ministry of Finance

Single real estate regulator protects people, combats money laundering

VICTORIA – British Columbians can buy and sell their homes with renewed confidence and protection as the BC Financial Services Authority (BCFSA) takes its first steps toward becoming the single regulator for real estate.

“Buying a home is one of the most significant purchases people make in their lifetime, and by working together, the BC Financial Services Authority, Office of the Superintendent of Real Estate and the Real Estate Council of BC can combine their expertise to better protect consumers,” said Carole James, Minister of Finance. “Through legislation, we are giving people the assurance they deserve, while continuing to create world-leading protections against money laundering and other criminal activity in our real estate sector.”

Creating a single regulator was one of the central recommendations from Dan Perrin’s Real Estate Regulatory Structure Review in September 2018 and was echoed in the Expert Panel on Money Laundering Report in May 2019.

As the single regulator, the BCFSA will take responsibility over real estate licensing, conduct, investigations and discipline.

“Bringing real estate regulation within the new BC Financial Services Authority is an important step towards modern, effective and efficient regulation,” said Stanley Hamilton, chair of BCFSA. “This announcement builds on the important work already in progress at the BCFSA and positions consumers to be able to benefit from an unprecedented depth of expertise and experience.”

The BCFSA, which officially became a new Crown agency on Nov. 1, 2019, is currently responsible for regulating mortgage brokers, private pension plans and financial institutions. By including real estate regulation within the responsibility of the BCFSA, the Ministry of Finance is simplifying and integrating regulation of the B.C. financial services sector, resulting in increased consumer confidence and opportunities to streamline investigations and enforcement.

Since 2016, the Office of the Superintendent of Real Estate (OSRE) and the Real Estate Council of British Columbia (RECBC) have both played a vital role in overseeing the real estate industry. Moving forward, both agencies will be integrated within the BCFSA, building off the work that has already been done.

“We welcome the changes announced today to ensure that the regulatory framework provides effective consumer protection and to increase public confidence in the broader financial services sector,” said Micheal Noseworthy, superintendent of OSRE.

Elain Duvall, chair of RECBC, said, “Today’s announcement is good news for both real estate

consumers and the sector as we combine expertise in one regulator. As we work towards the establishment of a single regulator, public protection will continue to be the Real Estate Council of British Columbia's primary focus."

The Ministry of Finance is targeting fall 2020 to bring forward new legislation, while establishing an integrated real estate and financial services sector regulator is anticipated in spring 2021.

Learn More:

To read the Real Estate Regulatory Structure Review (Perrin report), visit:
https://news.gov.bc.ca/files/Real_Estate_Regulatory_Structure_Review_Report_2018.pdf

To read the Expert Panel on Money Laundering in BC Real Estate report, visit:
https://news.gov.bc.ca/files/Combatting_Money_Laundering_Report.pdf

To learn more about the British Columbia Financial Services Authority, visit:
https://www.bcfsa.ca/pdf/news/News20191101.pdf

Contact:

Ministry of Finance
Media Relations
778 974-3341

Appendix R

BC Land Title & Survey

History of BC's Land Title System

bc Land Title & Survey

Menu

COVID-19 Notice

In order to protect the health and well-being of our employees and customers, the Land Title and Survey Authority of British Columbia (LTSA) is restricting access in all Land Title Offices to only its employees, direct access pass holders and Registry Agents until further notice.

Land Title Office front counters are closed; all other office operations continue as usual. **Follow us on Twitter** for updates.

History of BC's Land Title System

British Columbia, including the colonies before the province came into existence, has always maintained a system for recording ownership and interests in private land.

Contents

Land Titles: The Modified Torrens System Proves Validity of Title

Land title in British Columbia is based on the principles of the "Torrens system" of land title registration. Sir Robert Richard Torrens, former premier of South

making the land registry conclusive, as the government or its agent guarantees an indefeasible title. The system eliminates the need for historical searches to prove validity of title.

This type of land title system provides an up-to-date official and public record of who owns the land, and the charges and interests that relate to land titles. The modified Torrens system, as it is called in BC, provides the foundation for all real property business and ownership in the province. It makes land ownership and transfers simple and certain. It provides certainty to both the seller and the purchaser.

The system, because it is conclusive, also allows title to be “assured”. Such assurance is provided through a guarantee that, should an error be made in a title, individuals who suffer a loss will be compensated.

Land Surveys: Maintaining the Cadastral Fabric of BC

Land surveys are referred to as “cadastral” which comes from the French word referring to the register of lands. The “cadastral fabric” of BC refers to the property boundaries, survey monuments, legal documents, maps, and regulations which are required to make the system work.

The earliest survey record in the Crown Land Registry dates back to December 15, 1851 and was completed by Joseph Despard Pemberton, Colonial Surveyor on behalf of the Hudson’s Bay Company. Pemberton was later named the first Surveyor General of the Colony of Vancouver Island in 1858. The position has evolved over time with many Surveyors General since the creation of the Corporation of BC Land Surveyors in 1905. The land surveyors’ professional organization became the Association of BC Land Surveyors ↗ in 2005.

During the time of large scale immigration and land settlement, the role of the Surveyor General was of vital importance in the initial division of Crown lands. Although the level of Crown land settlement has subsided over the years, the role of the Surveyor General today focuses on ensuring that the system and standards of cadastral surveys are maintained in the province.

Historical Documents of Interest

1859-1872: Dept. of Lands and Works Originals and Microfilm ↗

1860-1865: Office of the Surveyor General Originals ↗

1871-1872: Dept. of Lands and Works Originals ↗

1871-1872: Dept. of Lands and Works Originals ↗

1871-1874: Victoria Surveyor Originals: From Non-Government Records Catalogue ↗

1872-1929: Dept. of Lands Originals: Transferred from Lands, Parks and Housing, 1983

1872-1947: Dept. of Lands Originals ↗: Transferred from Lands, Parks and Housing, 1983

1876-1907: Joint Indian Reserve Commission Originals ↗: Transferred to Archives 1995

1890-1983: Corporation of Land Surveyors of the Province of British Columbia ↗ – originals and microfilm

1911-1918: Dept. of Lands, Surveys Branch ↗ Microfilm

1913-1920: Dept. of Lands Originals: Transferred from Lands 1974 ↗

bc Land Title & Survey

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Contact Us >

Information and resources for contacting the LTSA.

Get Support

Provide Your Feedback

Appendix S

City of Vancouver

Empty Homes Tax Annual Report

January 1, 2019 to December 31, 2019 Tax Year

Empty Homes Tax Annual Report

January 1, 2019 to December 31, 2019 Tax Year

Activity to November 1, 2020

CITY OF VANCOUVER | HOUSING VANCOUVER

Appendix S

CONTENTS

INTRODUCTION

The City of Vancouver created the Empty Homes Tax (EHT), also known as the Vacancy Tax, to help return empty and under-utilized properties to the market as long-term rental homes for people who live and work in Vancouver. This is one of many actions in the City's 10-year Housing Vancouver Strategy. The EHT, the first of its kind in North America, is intended to help relieve pressure on Vancouver's rental housing market, which at 1% rental vacancy has among the lowest rental vacancy rates and the highest rental costs of any Canadian city (2019 CMHC Rental Market Report). With 53% of Vancouver households renting rather than owning (as of the 2016 Statistics Canada Census), low vacancy and high rents have real impacts on whether renters earning low and moderate income can afford to live and work in the city. Net revenues received from the tax must be reinvested in affordable housing initiatives across the city.

BACKGROUND

On November 16, 2016, Vancouver City Council approved the EHT program and enacted the Vacancy Tax By-law No. 11674 (EHT by-law) to levy a tax on empty and under-utilized class 1 residential properties within the City of Vancouver. As required in the Vancouver Charter, the EHT by-law requires the Collector of Taxes to prepare an annual report regarding the EHT which must include the amount of money raised by the EHT and how such monies were, or are intended to be, used.

Homes that are declared, determined or deemed to be empty are subject to a tax of 1% of the property's assessed taxable value. Starting with the 2020 vacancy reference period, under City Council's direction, the tax will increase to 1.25% of the property's assessed taxable value.

Most residential properties are not subject to the tax, including homes that are principal residences for at least six months of the year; homes that are rented out for at least six months of the year; or homes that are eligible for one of eight exemptions as set out in the EHT by-law.

In order to determine which properties were subject to EHT, all homeowners were required to make an EHT declaration for the 2019 reference period by February 4, 2020, confirming the status of their property as occupied, exempt or vacant. As all revenue and compliance activity related to the reference period occurs in the following year, this report includes revenue from compliance activities up to November 1, 2020.

PURPOSE OF THE EMPTY HOMES TAX

The EHT works in conjunction with a suite of actions that the City is taking to increase housing supply and to ensure that renters have access to safe, secure, and affordable rental housing in Vancouver. The City has committed to monitoring the effectiveness of the EHT as well as other actions to address housing affordability in its Housing Vancouver Annual Progress Report and Data Book. Recent reports can be accessed at: vancouver.ca/housing-strategy.

Who is subject to EHT?

The EHT applies to properties that are not being used as principal residences or rented for at least six months of the year, and do not qualify for one of the eight exemptions outlined in the EHT by-law. A residential property that is rented or serves as a principal residence for an owner or permitted occupier (such as a family member) is not intended to be subject to EHT.

Is the Empty Homes Tax working?

Isolating the effect of a single policy like the EHT in a housing market as dynamic as that of the city of Vancouver is challenging. However, City staff have noted positive trends. We monitor the following key performance indicator trends:

- Number of properties required to declare
- Change in vacant and exempt properties
- Breakdown of exemptions by type
- Change in number of tenanted properties
- Occupancy status of previously vacant properties
- Assessed value of properties subject to EHT

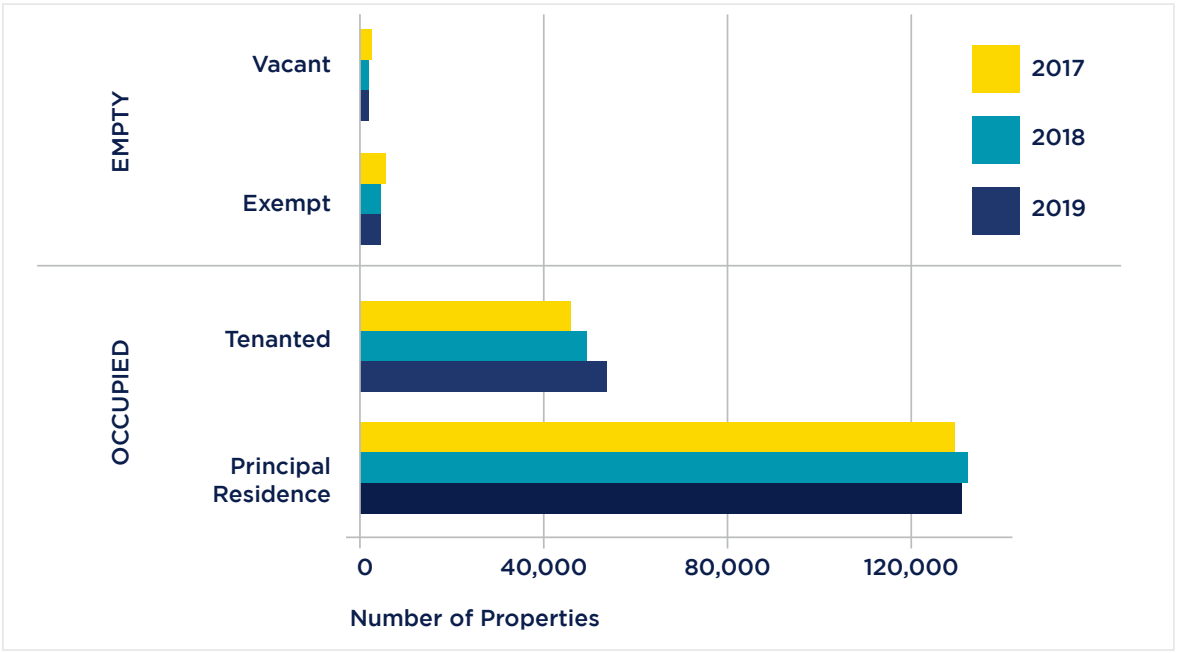
Data to date on these indicators and a discussion on trends since the EHT was launched in 2017 is available in the data appendix to this report. There is also external data pointing to the impact of EHT on Vancouver's rental housing supply. The 2019 Rental Market Report from CMHC observed a shift toward long-term rental in Vancouver's condominium stock, with an increase of 5,920 condominium units in the long-term rental stock between their surveys in 2018 and 2019[1]. CMHC notes that this shift coincides with the implementation of policies like EHT in the city of Vancouver.

[1] Differences in data collection methodology for rented condominiums in the CMHC Rental Market Report may not always align with EHT property status data.

VANCOUVER DECLARATIONS: VACANCY AND GEOGRAPHIC DATA

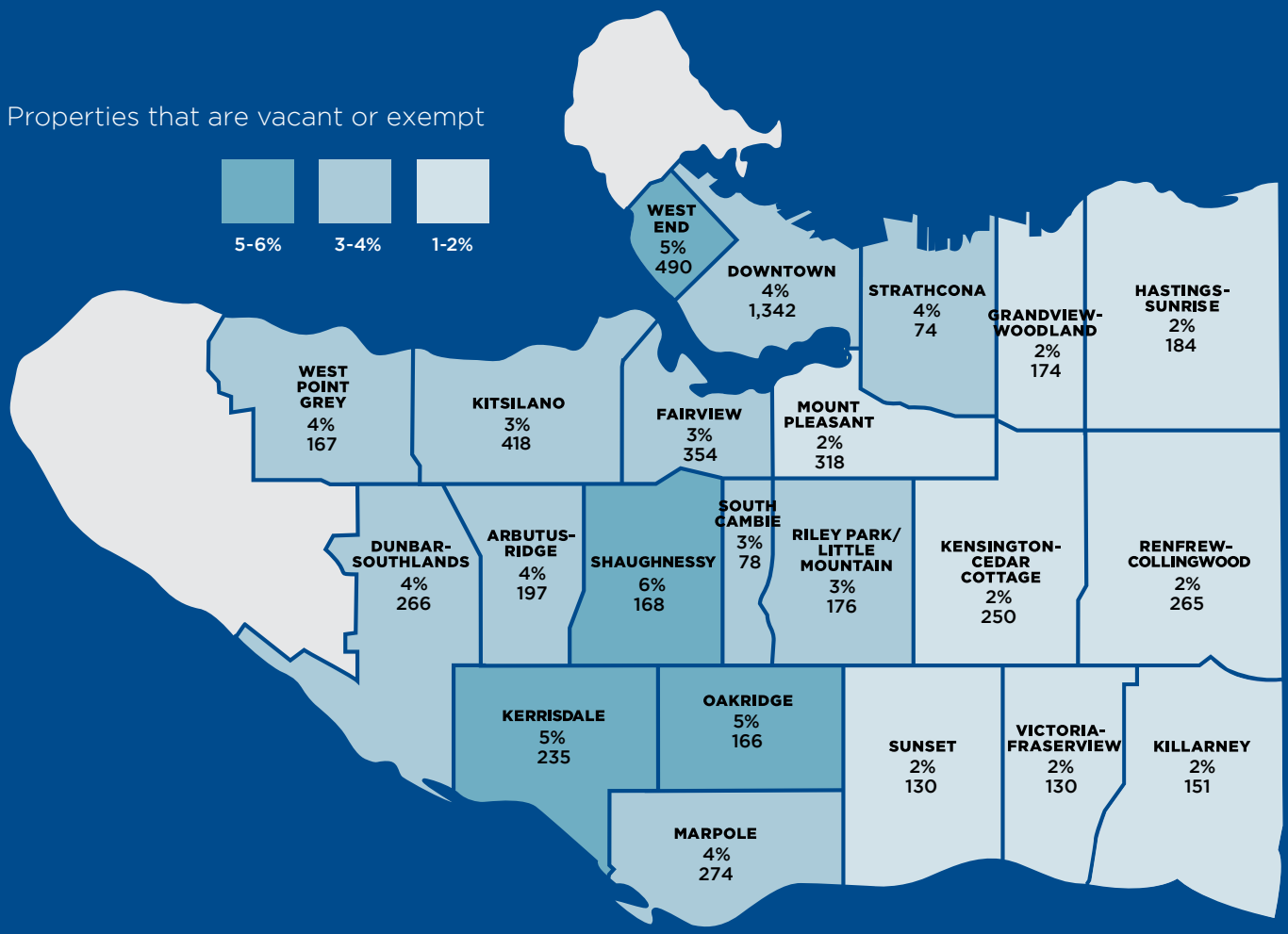
Property Status: 2017 to 2019 Tax Reference Years

	2017	2018	2019
EMPTY			
Exempt	5,383	4,256	4,132
Vacant	2,538	1,989	1,893
OCCUPIED			
Principal Residence	131,347	132,815	132,042
Tenanted	46,770	50,102	54,050
Total	186,038	189,162	192,117



2019 EHT VACANT & EXEMPT PROPERTIES

(6,025 TOTAL – SHOWN AS PERCENTAGE OF TOTAL/NUMBER OF PROPERTIES)



Similar to the prior year, the majority of exempt and vacant properties are condominiums, which account for 57% of combined exempt and vacant properties.

Aligning with the high density of condominiums in the downtown core, the largest number of vacant and exempt properties was recorded in Downtown Vancouver. Shaughnessy recorded the highest percentage of unoccupied properties, relative to the number of residential properties in the neighbourhood that were required to declare.

MONIES RAISED

Revenue

	2017 $ Millions	2018 $ Millions	2019 $ Millions
Revenue (Tax Levy)	$38.0	$39.4	$36.0
Revenue (Penalties and Fines)	$1.1	$1.8	$1.9
Collected	$33.6	$23.3	$27.9

Revenue decreased in 2019 compared to 2018 as the number of vacant properties went down, and also due to tax reversals resulting from City Council's approval to implement a one-time extension of the declaration deadlines for the 2017 and 2018 vacancy reference years. Annual revenue for each year is estimated at November 1 even though late declaration and audit activities continue for a longer time period. Additional revenue after November 1, 2020 will be included in next year's revenue results.

If a payment for an EHT tax notice is not made by December 31 of the year levied, outstanding amounts may be added to the owner's property tax account and start accruing interest of approximately 7% starting January 1 of the following year.

Audit activities

Using a risk-based approach, as well as random audits, the EHT program has a goal of verifying property status declarations and encouraging compliance with the by-law.

The EHT by-law equally applies to all property owners; therefore, all property status declarations are subject to the audit process, in line with best practices for provincial and federal tax programs. Audits completed from the period November 2, 2019 to November 1, 2020 are outlined below, along with a comparison to the prior year ending November 1.

	Period to November 1		
	2018	2019	2020
Total Audits Completed	6,231	8,457	9,310
Non-compliant Audits	331	892	722
Non-compliance Rate	5.3%	10.5%	7.8%

Property owners who were found to be non-compliant were invoiced for the EHT. Revenue generated from audit activities during the period from November 2, 2019 to November 1, 2020 was $18.2 million. Owners found non-compliant in their audits have the opportunity submit a Notice of Complaint. If they are unsuccessful in their complaint, owners may request a review by an external review panel. Many audits are still in progress and additional audits relating to the 2019 reference year may be initiated in the future. As a result, revenue generated from audit activities may be adjusted in future years.

Complaints

Complaints received were primarily triggered in instances where property owners had failed to make their declaration on time, or where property owners were in disagreement with their audit determination. In order to contest the EHT invoice they received, these property owners were required to submit a Notice of Complaint.

Total complaints completed by the vacancy tax review officer to November 1, 2020, are as follows:

	Period to November 1		
	2018 *	2019	2020*
Accepted	1,207	346	403
Rejected	252	237	156
Total	1,459	583	559

* Most of the accepted complaints related to property owners who were originally deemed vacant because they failed to make a declaration.

Property owners whose complaints were rejected were required to pay the tax or request a review of their case from the external review panel.

Late Declarations

In 2017, the first year of EHT, property owners who missed the declaration deadline were required to submit a Notice of Complaint and provide evidence to support that their property was occupied or exempt in order to have the tax rescinded. In 2018, the City created a late declaration process that allowed property owners to submit a late declaration online without having to file a Notice of Complaint. The deadline to make a late declaration for the 2017 and 2018 vacancy reference periods was December 31, 2018 and December 31, 2019, respectively. In May 2020, Council approved a one-time extension for late declarations not submitted by the original 2018 and 2019 deadlines to December 31, 2020. As of November 1, 2020, 229 late declarations for 2017 and 2018 have been received via the Notice of Complaint process and of the 186 completed, 95% were determined to be exempt or occupied based on evidence provided, resulting in the tax being rescinded.

Review panel

Total reviews completed by the external vacancy tax review panel from November 2, 2019 to November 1, 2020, are as follows:

	Period to November 1		
	2018	2019	2020
Accepted	8	35	14
Rejected	39	95	44
Total	47	130	58

All review requests go to an independent external panel for a property status determination. This is the last appeal stage to determine the property status and the status determined by the review panel is considered final. The review panel activities are ongoing. For reviews that were accepted, the tax was rescinded.

USE OF FUNDS

Since the inception of the Empty Homes Tax, $61.3 million has been allocated to support a variety of affordable housing initiatives to increase the supply and affordability of social housing and to support renters.

In addition, the revenue collected to date is sufficient to cover the one-time implementation costs of $7.5 million and estimated annual operating costs of $2.5 million.

Money collected from the EHT is first allocated to cover annual operating costs with the remainder being available for initiatives respecting affordable housing.

The information and table below summarize the funding allocation for additional EHT amounts collected in the current reporting period (Nov 2, 2019 to Nov 1, 2020).

Community Housing Incentive Program (CHIP)

The $25 million 2019-2022 Community Housing Incentive Program provides non-profit housing providers with grants to deepen the level of affordability of social and co-op housing projects.

The program is a key way to deliver on the goals of the Housing Vancouver Strategy by supporting the work of local non-profits, who play an important role in both operating and delivering affordable housing to low-income households.

The grants aim to put non-profit and co-op housing providers in a strong position to attract other funds, including federal and provincial funding programs. Each grant provides a capital contribution towards the development of non-profit or co-op housing projects, resulting in deeper affordability.

In June 2020, City Council approved four CHIP capital grants totaling $8.7 million towards the construction of 269 social housing units located across the city. In November 2020, Council approved a further $3.2 million towards the construction of an additional 137 social housing units.

CHIP grants help achieve the 10-year Housing Vancouver target of 12,000 new social and supportive housing units and prioritize deeper levels of affordability and emphasis on alignment with City housing and strategic objectives. The capital grants are payable after building permit issuance following execution of a grant agreement and confirmation of funding sources. The developments also require registration of Housing Agreements securing all units as social housing for the greater of 60 years or the life of the building.

An additional $2 million will be added to the 2019-2022 Capital Plan to support additional CHIP Grants from EHT revenue collected in the current reporting period.

Land Acquisition/ Development opportunities

The City continues to look for opportunities to work with partners to acquire or develop housing opportunities on City land as well as respond to new senior government funding programs. It is recommended that $8 million be added to the housing capital budget to enable more housing on City land to support the delivery of the Housing Vancouver Strategy priorities and targets.

EHT FUNDING AVAILABLE FOR THIS REPORTING PERIOD*:

Priority	Project Description	Funding Allocation $ millions
Acquire or provide land and resources for affordable non-profit and co-op housing	Multi-year housing capital grants, as part of the Community Housing Incentive Program (CHIP) to deepen affordability of social housing and meet affordability targets in the Housing Vancouver Strategy	2.0
	Land acquisition / development opportunities	8.0
	Funding for staff working on affordable housing projects	3.7
Emerging initiatives		1.0
	TOTAL:	**$14.7**

* Funds available for allocation are net of allowance for refunds and EHT administration expenses.

CONCLUSION

Since the Empty Homes Tax launched, we've continued to use our key performance indicators to measure the program's effectiveness in tackling our city's housing crisis. In the 2019 reference year there has been encouraging progress made on these indicators, including another year-over-year increase in tenanted properties. Staff continue to work on initiatives that aim to improve living conditions and increase the supply of affordable housing, as part of the broader set of actions set out in the City's 10-year Housing Vancouver Strategy.

For additional information on the EHT program, please visit **vancouver.ca/eht**.

DATA APPENDIX

As part of the EHT Annual Report, staff report on several indicators related to performance of the tax on key metrics, including the number of properties converted from vacant to occupied; the number of new properties reported as vacant; and the number of properties declared as tenanted. These indicators were developed in partnership with housing policy experts.

Indicator	Key Trends
1. Number of properties required to declare	**Increase in properties required to declare EHT** • The number of Class 1 residential properties required to declare increased by 1.6% (2,955 properties) between 2018 and 2019; this is driven by new properties being added to the BC Assessment tax roll.
2. Change in vacant and exempt properties	**Reduction in vacant and exempt properties from 2018 to 2019** • In 2019, 6,025 properties were vacant or exempt (3.1% of all properties); this is 220 fewer units than in 2018 (3.5% reduction) and 1,896 fewer units than 2017 (23.9% reduction) • In 2019, 1,893 properties (approximately 1.0 % of all properties) were vacant; this is 96 fewer units than in 2018 (4.8% reduction) and 645 fewer units than in 2017 (25.4% reduction)
3. Breakdown of exemptions by type	**Property transfer is the largest exemption category, followed by renovation and strata rental restriction** • The majority (40%) of exempt properties in 2019 claimed the property transfer exemption; 34% claimed the renovation exemption, and 14% claimed the strata rental restriction exemption • Most properties (68%) claiming transfer in 2019 were condos; most properties (80%) claiming renovation were single family homes
4. Change in tenanted properties	**Increase in tenanted properties from 2018 to 2019** • There was a net increase of 3,948 tenanted properties between 2018 and 2019; this includes a net increase of 3,394 tenanted condominiums and 1,085 single family homes, and a decrease of 531 other property types. • This data doesn't provide insights on basement/secondary suites – since a tenanted single family home could refer to a fully rented house or just a rented suite in an otherwise empty home • We also see significant flows between categories in and out of tenanted – indicating overall that this stock is less secure than purpose built rental
5. Occupancy status of previously vacant properties	**2018 vacant properties converted to occupied in 2019** • Of the 1,989 vacant properties in 2018, 41% were occupied in 2019 (24% tenanted, 13% principal residences, 4% principal residences of a permitted occupant and 2% no longer required a declaration)
6. Average assessed value of vacant property vs. all properties	**Vacant property has a higher assessed value than properties overall** • For 2019, the average assessed value of a vacant condo ($1.5M) is 59% higher than the average condo ($0.9M) • The average assessed value of a vacant single family home ($3.5M) is 52% higher than the average single family home ($2.3M) • Overall the average assessed value of vacant properties was $1.9M compared to the average value of $1.6M for all properties

DETAILED DATA

Indicator #1: Number of properties required to declare[1]

Indicator	2017	2018	2019	2018 to 2019 Change	
Condo	95,734	98,566	101,525	2,959	3.0%
Single Family Including Duplex	80,687	80,638	80,683	45	0.1%
Other	9,617	9,958	9,909	-49	-0.5%
TOTAL	186,038	189,162	192,117	2,955	1.6%

Indicator #2: Change in vacant and exempt properties

Number of vacant and exempt properties by property type

Condo	2017	2018	2019	2018 to 2019 Change	
Vacant	1,981	1,535	1,447	-88	-5.7%
Exempt	2,750	2,082	2,006	-76	-3.7%
TOTAL	4,731	3,617	3,453	-164	-4.5%

Single Family	2017	2018	2019	2018 to 2019 Change	
Vacant	458	370	358	-12	-3.2%
Exempt	2,271	1,843	1,773	-70	-3.8%
TOTAL	2,729	2,213	2,131	-82	-3.7%

Other	2017	2018	2019	2018 to 2019 Change	
Vacant	99	84	88	4	4.8%
Exempt	362	331	353	22	6.6%
TOTAL	461	415	441	26	6.3%

1 Housing categories were developed by grouping BC Assessment Use Codes. Duplexes are included in the single family category, and row houses are included in the condominium category. Other includes non-stratified multi-unit buildings and other miscellaneous codes e.g. strata parking stalls and vacant lots

Indicator #3: Breakdown of exemptions by type

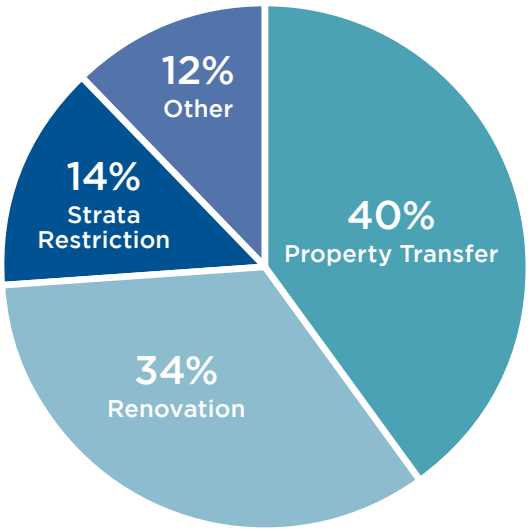
Breakdown of properties by property type that qualified for an exemption:

Condo	2017	2018	2019	2018 to 2019 Change	
Property Transfer	1,629	1,173	1,131	-42	-3.6%
Redevelopment/ Renovation	101	96	100	4	4.2%
Strata Restriction	536	606	574	-32	-5.3%
Other	207	207	201	-6	-2.9%
TOTAL	2,473	2,082	2,006	-76	-3.7%

Single Family	2017	2018	2019	2018 to 2019 Change	
Property Transfer	805	493	508	15	3.0%
Redevelopment/ Renovation	1,195	1,193	1,141	-52	-4.4%
Strata Restriction	1	0	0	0	0.0%
Other	120	157	124	-33	-21.0%
TOTAL	2,121	1,843	1,773	-70	-3.8%

Other	2017	2018	2019	2018 to 2019 Change	
Property Transfer	28	17	22	5	29.4%
Redevelopment/ Renovation	156	157	179	22	14.0%
Strata Restriction	0	1	1	0	0.0%
Other	106	156	151	-5	-3.2%
TOTAL	290	331	353	22	6.6%

Breakdown of properties that qualified for an exemption in 2019:



Indicator #4: Change in tenanted properties

	2017	2018	2019	2018 to 2019 Change	
Condo	28,809	31,086	34,480	3,394	10.9%
Single Family	10,549	11,309	12,394	1,085	9.6%
Other	7,412	7,707	7,176	-531	-6.9%
TOTAL	46,770	50,102	54,050	3,948	7.9%

Indicator #5: Occupancy status of previously vacant properties

Current status of 2018 vacant properties:

Status	2019
Principal Residence	341
Tenanted	470
Occupied Total	**811**
Exempt	**206**
Vacant	**941**
Declaration not required	**31**
Total	**1,989**

Current status of 2017 vacant properties:

Status	2019
Principal Residence	686
Tenanted	862
Occupied Total	**1,548**
Exempt	**219**
Vacant	**721**
Declaration not required	**50**
Total	**2,538**

Indicator #6: Average assessed value of vacant property vs. all properties

	Vacant 2019	All Properties 2019	% Higher Assessment
Condo	$1.5M	$0.9M	59%
Single Family	$2.3M	$1.2M	52%
Total	**$1.9M**	**$1.6M**	**17%**

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Appendix T

RECBC

Brokerage Responsibilities

Brokerage Responsibilities

Published on 4 February, 2020 - Professional Standards Manual

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The brokerage is the entity through which real estate services are provided. Section 6 of RESA requires every brokerage to have one or more managing brokers, who are responsible for exercising the rights and performing the duties of the brokerage. A brokerage may only offer the real estate services that are permitted by the licence of the managing broker.

In addition to engaging a managing broker, a brokerage may engage associate brokers or representatives, who are licensed in relation to, and provide real estate services on behalf of, the brokerage. Only managing brokers, associate brokers, or representatives who are engaged by and licensed to the brokerage may provide real estate services on behalf of the brokerage.

Section 4-1 of the Rules requires each brokerage to prominently display the brokerage licence and branch licences at the brokerage or branch office. The brokerage must also display the business name on or near the door and on the building directory if there is one.

Section 2-22 of the Rules requires that every brokerage notify RECBC of any business changes, including:

- changes in the brokerage contact information,
- the licensees engaged by the brokerage,
- the brokerage's partnership or corporate structure, and
- savings institutions or branch locations for the brokerage

Appendix T

savings institutions or branch locations for the brokerage.

Section 2-20 of the Rules provides that a brokerage must also notify RECBC if it is unable to pay its debts as they come due.

In addition, RESA sets out a number of duties that each brokerage must carry out, such as:

- a requirement to maintain at least one interest bearing trust account on behalf of the brokerage,
- certain requirements with respect to the handling of, accounting for, and payment out of trust money received by the brokerage,
- a requirement to maintain proper business records, and
- in some cases, the requirement to enter into written service agreements.

Trust Funds and the Payment of Remuneration

RESA and the Rules impose obligations on a brokerage in relation to the handling of trust funds.

Other than in the exceptions described earlier in this chapter, section 27 of RESA requires that a brokerage must pay into a brokerage trust account, all money held or received from, for, or on behalf of a principal in relation to real estate services. Additionally, all money received which represents remuneration for real estate services, including money received from or on behalf of another brokerage, and whether or not the remuneration has already been earned, must be paid into the brokerage trust account.

Section 27 of RESA requires that the remuneration be paid into the brokerage trust account even if the transaction has completed.

A brokerage is not required to pay funds into the brokerage trust account if, in a separate written agreement, all principals to the transaction agree that other arrangements for the funds are acceptable.

Once the funds held in trust have been earned, section 31 of RESA requires that the funds payable to a cooperating brokerage must be paid out directly to the brokerage from the brokerage trust account. The net share of the remuneration owing to a licensee engaged by the brokerage must be paid out either directly to the licensee from the brokerage trust account or the funds may be paid into a commission trust account and then, from that account, to or on behalf of the licensee. Section 7-2 of the Rules permits a brokerage to maintain one or more commission trust accounts for the payment of licensee remuneration.

A commission trust account will be necessary if, of the net amount owed to the licensee, a portion of the funds are payable to a third party such as the Canada Revenue Agency (CRA). In such cases, it is not permissible for the brokerage to retain a portion of the net funds payable to the licensee in the brokerage trust account or the brokerage operating (general) account. As a result, either the entire amount of the net funds must be paid to a commission trust account, and from that account, funds can be paid to the licensee while other funds are held for payment to the CRA, or at least that portion of the net funds that are to be held and paid to a third party on behalf of licensees must be paid to the commission trust account.

RESA requires that a managing broker must be a signing authority on each trust account maintained by the brokerage.

A shortage in a trust account must be reported to RECBC immediately if the managing broker considers that the negative balance in the trust account will result in a claim against the compensation fund, or if the shortage cannot be resolved within 10 working days of the shortage occurring.

be received within 10 working days of the shortage occurring.

Audit Requirements

Section 7-7 of the Rules requires that every brokerage submit an Accountant's Report within 120 days after the brokerage's fiscal year end. Section 4-9 of the RECBC Bylaws requires that each trust account maintained by the brokerage be reported on by the accountant in the Accountant's Report. However, trust accounts maintained for the purpose of holding commissions have been excluded from the audit requirement.

Written Service Agreements

Section 5-1 of the Rules requires that a brokerage have a written service agreement in all cases where the brokerage provides trading services to an owner in relation to offering the real estate for sale or otherwise disposing of the real estate, or if the brokerage provides rental property management services to an owner of rental real estate, or strata management services to a strata corporation unless the agreement is waived by the client.

Licensees should be aware that under section 5-1(4)(f.1) of the Rules in the case of a service agreement for trading services that provides for a portion of remuneration to be paid by a listing brokerage to a cooperating brokerage, the following information must be included:

(i) if there is a cooperating brokerage,

(A) the remuneration to be paid by the seller to the listing brokerage,

(B) the remuneration to be paid by the listing brokerage to the cooperating brokerage, and

(C) the remuneration to be retained by the listing brokerage;

(ii) if there is no cooperating brokerage, the remuneration to be paid by the seller and to be retained by the listing brokerage.

The written service agreement must be entered into before the brokerage offers the property for sale or lease or provides rental property or strata management services. Section 5-1 of the Rules sets out what the written service agreement must contain. Included in the required contents is a general description of the services to be provided.

The written service agreement that is used when offering real estate for sale is a listing contract.

In the case of rental property management or strata management services, the written service agreement will be the management contract between the brokerage and the owner of rental real estate or the strata corporation respectively.

Although, in many cases, an associate broker or representative is authorized to sign the listing contract or the management contract on behalf of the brokerage, it is important to keep in mind that the listing or management contract binds the brokerage. As a result, the general description of services that are included as part of the contract are not the services to be provided by the representative, but rather, the services to be provided by the brokerage. Managing brokers should, therefore, be actively involved in the drafting of the description of services to be used in the contracts and in reviewing the contracts signed on behalf of the brokerage.

[updated 06/13/2018]

General Description of Services

RESA requires that a general description of the services be provided in a service contract.

The brokerage should be aware that, because it is a term of the contract, the general description of services is binding on the brokerage and the failure to provide the services that are described may result in the client terminating the contract and in a potential claim by the client for damages for breach of contract.

[updated 06/15/2018]

Records and Reports

The Rules set out a variety of financial and non-financial records that a brokerage must maintain.

A brokerage is required to maintain financial records for the brokerage which indicate the amount of money received or paid by the brokerage on its own account and on account of others. A brokerage must maintain the banking documents for the general accounts and records which show the receipts and disbursements of cash.

Every brokerage must maintain trust account records, including:

- a cash record showing all transactions affecting the trust account,
- a journal showing amounts received and disbursed.

It must also keep a separate ledger for:

- each trade in real estate,
- each principal in relation to rental property management services,
- each principal in relation to strata management services, and
- each licensee showing the amounts received and disbursed.

The brokerage must prepare a monthly trust liability and asset reconciliation.

Section 8-4 of the Rules sets out various general records relating to the provision of real estate services that a brokerage must retain; section 8-5 of the Rules sets out what documents must be retained in respect of trades in real estate; section 8-6 of the Rules sets out what documents must be maintained when a brokerage provides rental property management services, and section 8-7.1 of the Rules sets out what documents a brokerage must keep when it provides strata management services.

The Rules require that a brokerage retain its records for a minimum of seven years after their creation unless a shorter period is authorized in writing by RECBC.

Each year, within 120 days of the end of a brokerage's fiscal year, the brokerage must file financial statements, an Accountant's Report, and a Brokerage Activity Report with RECBC. The financial statements must be audited if the brokerage is a public company and, in other cases, subjected to at least a review engagement report by an accountant.

Under section 7-7(2.1) of the Rules, RECBC may authorize a brokerage to file financial statements that have been subject to a Notice to Reader prepared by an accountant if certain conditions are met. Please refer to the

Brokerage Standards Manual for further information. As an alternative to filing an Accountant's Report, a brokerage that did not hold or receive any public trust money during the fiscal year to which the financial statements relate

may file with RECBC a solemn declaration. For further information, please contact RECBC's office or refer to the Brokerage Standards Manual.

At the time that a brokerage is winding up, the brokerage must promptly submit a winding-up report. Samples of the Accountant's Report, the Brokerage Activity Report and the Brokerage Winding-Up Report are available on RECBC's website at www.recbc.ca.

Retention of Disclosures

Section 8-4 of the Rules provides that a brokerage must keep copies of all written disclosures that a licensee must make. The brokerage must retain copies of all disclosures under Division 2 of Part 5, which would include:

- Disclosure of Interest in Trade form,
- Disclosure of Representation in Trading Services form,
- Disclosure of Risks to Unrepresented Parties form,
- Disclosure to Sellers of Expected Remuneration (Payment) form
- Disclosure of Remuneration form,

as well as disclosures relating to benefits in relation to rental property or strata management, disclosures relating to material latent defects, and dual agency disclosures. In addition, the brokerage must retain all written disclosures under sections 9-1, 9-2 and 9-3 of the Rules that a licensee must make. Section 8-10 of the Rules requires the brokerage to retain these disclosures for at least seven years after their creation unless a shorter period is authorized in writing by the Council.

Licensees should note that the disclosure form under section 5-17 of the Rules relating to dual agency must be provided to Council promptly after the parties enter into a written agreement of dual agency.

[updated 06/15/2018]

Duty to Clients

Section 3-3 of the Rules sets out the duties that a brokerage owes to a client. Unless the client and brokerage have agreed to modify the brokerage's duties, a brokerage is required to do all of the following:

- act in the best interests of the client;
- act in accordance with the lawful instructions of the client;
- act only within the scope of the authority given by the client;
- advise the client to seek independent professional advice on matters outside of the expertise of the licensee;
- maintain the confidentiality of information respecting the client;
- disclose to the client all known material information respecting the real estate services, and the real estate and the trade in real estate to which the services relate;
- communicate all offers to the client in a timely, objective, and unbiased manner;
- use reasonable efforts to discover relevant facts respecting any real estate that the client is

considering acquiring;

- take reasonable steps to avoid any conflict of interest; and
- promptly and fully disclose any conflict that does arise to the client.

Related Links

Disclosures →

Managing Broker Responsibilities →

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Vancouver, BC V6C 2T8
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Appendix U

RECBC

Real Estate Development Marketing Act

Real Estate Development Marketing Act

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The marketing of development property is regulated by the *Real Estate Development Marketing Act* . Such activity was previously regulated by Part 2 of the *Real Estate Act*.

The *Real Estate Development Marketing Act* applies to developers who market various types of real estate developments that are included in the definition of development property. Marketing is defined in the *Real Estate Development Marketing Act* as selling or leasing.

The *Real Estate Development Marketing Act* is intended to protect the public by ensuring that the appropriate and necessary steps are taken in relation to the development of the property; that the developer has sufficient financing to ensure that the title and services will be in place at the time of transfer, and that the developer deals with purchasers' deposits appropriately. Additionally, the *Real Estate Development Marketing Act* protects the public by requiring that developers disclose specific information about the development property to prospective purchasers. This requirement is satisfied by the requirement that developers file a Disclosure Statement with the Superintendent of Real Estate and provide a copy of the Disclosure Statement to prospective purchasers.The *Real Estate Development Marketing Act* is administered by the Superintendent of Real Estate. If you have questions about the Real Estate Development Marketing Act, please contact the Office of the Superintendent of Real Estate .

Real Estate Development Property

Real Estate Development Property

The *Real Estate Development Marketing Act* defines development property in relation to the number of development units created. Development property is any of:

(a) 5 or more subdivision lots in a subdivision, unless each lot is 64.7 ha or more in size;
(b) 5 or more bare land strata lots in a bare land strata plan;
(c) 5 or more strata lots in a stratified building;
(d) 2 or more cooperative interests in a cooperative association;
(e) 5 or more time share interests in a time share plan;
(f) 2 or more shared interests in land in the same parcel or parcels of land;
(g) 5 or more leasehold units in a residential leasehold complex;

Unless an exemption applies, sections 3 and 14 of the *Real Estate Development Marketing Act* require the filing of a Disclosure Statement before a developer markets a development unit. The *Real Estate Development Marketing Act* defines a development unit as any of the following in a development property:

(a) a subdivision lot;
(b) a bare land strata lot;
(c) a strata lot;
(d) a cooperative interest;
(e) a time share interest;
(f) a shared interest in land;
(g) a leasehold unit.

The definition of development unit and the corresponding requirement that a Disclosure Statement be filed before a development unit may be marketed confirms that even the marketing of one property may trigger the requirement for a Disclosure Statement if the property is located within a development property. For example, if a developer owns five or more strata lots in a stratified building but intends to market only one strata lot, the developer is marketing a development unit in a development property. Before marketing a development unit, the developer must comply with all the requirements of the *Real Estate Development Marketing Act*, including, the need for a Disclosure Statement.

Licensees acting for developers should verify that the developer is in compliance with the requirement of the *Real Estate Development Marketing Act* generally, and specifically, that a Disclosure Statement has been prepared and filed before offering any property for sale that meets the definition of a development unit.

In the past, RECBC has disciplined licensees for offering land for sale prior to the filing of a Disclosure Statement.

Exemptions

The Real Estate Development Marketing Regulation sets out a number of exemptions from the requirements of the *Real Estate Development Marketing Act*. The sales of properties covered by the exemptions do not require the filing of a Disclosure Statement and are exempt from the requirements with respect to the manner in which deposits are handled.

Exemptions apply to the following transactions:

Marketing between developers

- The marketing of development property in a single transaction.

Developments used for industrial or commercial purposes

- Development property that is within an area that is zoned for only industrial or commercial use, and is used and advertised only for industrial or commercial use.
- Development property that is located within a comprehensive use zoning that includes residential use, but the property is used and advertised only for industrial or commercial use, if the developer notifies prospective purchasers that the protections of the *Real Estate Development Marketing Act* and the provisions of the *Real Estate Development Marketing Act* requiring Disclosure Statements and the manner in which deposits are handled do not apply.

Leases of three years or less:

- Leases of development units where the term of the lease (including options or covenants for extension or renewal) do not exceed three years.

Sales or Leases Subject to the Securities Act:

- Development property for which the developer has filed a prospectus under the *Securities Act* and complies with the requirements of the *Securities Act* relevant to the marketing of the development.

Subdivisions within a municipality:

- Marketing of subdivision lots within a municipality if the developer has complied with the requirements of the *Local Government Act* or Vancouver Charter regarding servicing agreements and subdivision control and has deposited any security that the municipality may require.

Continuing exemptions:

- Developments previously exempted from the need for a Disclosure Statement.

Low equity cooperative interests:

- Cooperative interests if the acquisition cost to the purchaser is $5,000 or less.

Disclosure Requirements

If a development unit is not exempted, section 14 of the *Real Estate Development Marketing Act* requires that before marketing a development unit, the developer must prepare and file a Disclosure Statement with the Superintendent of Real Estate. The Disclosure Statement must be in the form and include the content required by the Superintendent and, without misrepresentation, plainly disclose all material facts.A developer may not enter into a purchase agreement with a purchaser for the sale or lease of a development unit unless a copy of the Disclosure Statement has been provided to the purchaser, the purchaser has been afforded an opportunity to read the Disclosure Statement, and the purchaser has signed a written statement acknowledging that the purchaser had an opportunity to read the Disclosure Statement. The *Real Estate Development Marketing Act* requires developers, or licensees offering the property for sale on the developer's behalf, to retain the written statement from the purchaser for a period of three years.

It is not acceptable under the *Real Estate Development Marketing Act* to create a "subject to" clause to the effect that the offer is subject to the buyer receiving, reading and approving the Disclosure Statement. It is also not acceptable for a term to be created in the contract, which states that the seller will provide a copy of the Disclosure Statement to the buyer.

Licensees should ensure that the proper procedure has been adhered to when selling properties which require a Disclosure Statement, as improper compliance with this procedure could result in the buyer being able to revoke the offer and, subsequently, could result in the seller taking legal action against the licensees involved.

Disclosure Receipt Clause

The Buyer acknowledges having received and having had an opportunity to read the developer's Disclosure Statement.

The Superintendent's office has prepared a number of Policy Statements which set out the requirements for the Disclosure Statement for each type of development property. The Policy Statements require that the content of each Disclosure Statement must be set out in the order prescribed in the Policy Statement.

The *Real Estate Development Marketing Act* requires that if the developer becomes aware that the Disclosure Statement contains a misrepresentation, the developer must file either a new Disclosure Statement or an amendment to the Disclosure Statement and provide copies to new purchasers and to those who have entered into a purchase agreement but who have not yet received title or the interest for which the purchaser has contracted. A new Disclosure Statement must be filed if the identity of the developer has changed, or a receiver or liquidator has been appointed.

Forms of Development Property under the Real Estate Development Marketing Act

Cooperative Interests

A cooperative interest is the interest that includes both a right of ownership in the shares of a cooperative association or to be a partner or member in the cooperative association and the right to use or occupy a part of the land in which the cooperative association has an interest.

The *Real Estate Development Marketing Act* defines a cooperative association as

(a) a corporation, as defined in the *Business Corporations Act*;
(b) a limited liability company as defined in the *Business Corporations Act*;
(c) a partnership; and
(d) an entity incorporated or other wise created outside British Columbia that is similar to one described in paragraphs (a) to (c).

Thus, an owner of a cooperative interest acquires shares, or some other form of ownership in a corporate entity or partnership, which carry with them the right to occupy only a portion of the land that the cooperative association owns. The particular portion may be an apartment or a recreational vehicle site.

Sellers are unable to carry primary or secondary financing on cooperative interests by way of a mortgage registered against the title or by an Agreement for Sale, as there is no title in a cooperative interest to encumber. It is, therefore, strongly recommended, in a situation where the seller is asked to carry any financing, that the seller's lawyer and the buyer's lawyer be consulted before the acceptance of any offer.

Licensees are also advised to consult their financial advisers, including experienced mortgage brokers, for guidance in such financing, as well as ascertaining from the cooperative's rules and regulations whether or not there is a prohibition on financing in any way.

A Disclosure Statement must be filed with the Superintendent of Real Estate before a developer or a developer's agent can market one cooperative interest if the cooperative interest is part of a development consisting of two or more cooperative interests. Accordingly, licensees involved in the sale or purchase of a cooperative interest by or

from a developer should familiarize themselves with the content of and the requirements associated with the

Disclosure Statement. It is possible for a cooperative association to own a strata lot. Hence, the *Strata Property Act* may also be applicable.

Regardless of whether the transaction involves a developer or a single unit resale, licensees should be knowledgeable with respect to the proportion of the share capital acquired by the purchaser, the allocation of ongoing maintenance and operating costs, the presence of any other assets or liabilities that the cooperative association may have, the terms of the agreement which restricts an owner to using only a portion of the land that the cooperative association owns, the applicability of the homeowner's grant and property transfer tax, and the particulars of the cooperative association's share capital, such as provisions related to voting rights or restrictions on transfer.

Rental Leases and Head Leases

Another type of ownership, which fits between cooperative and strata on leased land, is the rental lease, where the cooperative building sits on leased land. It is financed like a cooperative, although sometimes private leaseholders will allow for less down payment and provide financing directly themselves. The holder of the head lease, the corporation which owns the building, determines how units in the building are purchased. As with cooperatives, these are purchases of shares in exchange for the exclusive right to occupy a designated unit in the building. Owners do not have title to the unit itself. Owners must not make alterations to the unit (unlike strata ownership) without permission from the cooperative association. These are long-term leases (often 99 years). Licensees are advised to consult experienced financial advisers, lawyers and mortgage brokers for guidance.

The following clause should be used in the purchase of cooperative interests. This clause may also be used for the purchase of rental-lease properties but it is strongly recommended that the buyer seek legal advice and ensure understanding of the head lease's restrictions and duration.

Co-operatives-Suite/Townhouse Clause
This contract is for the purchase of (number of shares) *shares in* (name of co-operative association) *together with a lease of* (unit number) *to the Buyer, and other considerations as may accompany said lease.*
Buyer to assume payments of the monthly maintenance charge of $(amount) *(which includes a proportionate share of annual taxes).*
Subject to the approval of the Buyer by the Board of Directors of (name of co-operative association) *on or before* (date) .
This condition is for the benefit of both the Buyer and the Seller.
Buyer has approved the Rules and Regulations, the Memorandum and Articles of Association, any lease documentation and any financial obligations of (name of co-operative association) *including the following specific restriction(s):*

Ώ Warning re Approval of buyer by Directors: The Board of Directors of a Cooperative is allowed to make a decision as to the suitability of any buyer. The reasons for such a decision are to be kept confidential to the Board of Directors.

Optional Assumption of Portion of Mortgage Clause
NOTE: The Buyer should obtain legal advice before assuming a mortgage in these circumstances.
Buyer will assume obligations on an assigned portion under the existing first mortgage held by (name of mortgage lender) *registered against the property at* (address) *with an outstanding balance on the assigned portion of approximately* $(amount) *at an interest rate of ___% per annum, calculated* (frequency)*, not in advance, with an original* (number of years)*-year amortization and a* "balance due" *term date of* (date)*, with blended payments of $* (amount) *per month including principal and interest.*

Shared Interests in Land

A shared interest in land is a person's interest in one or more parcels of land, if the parcel or parcels are owned or leased by the person and at least one other person and as part of any arrangement relating to the acquisition of the person's interests, that person's right of use or occupation of the land is limited to a part of the land.

Thus, an owner of a shared interest in land acquires a direct ownership interest in land, typically an undivided fractional fee simple interest, which carries with it, by agreement amongst the co-owners, a right to occupy only a portion of the land.

A Disclosure Statement must be filed with the Superintendent of Real Estate before a developer or the developer's agent can market one shared interest in a development containing at least two shared interests. Accordingly, licensees involved in the sale or purchase of a shared interest in land by or from a developer should familiarize themselves with the content of and the requirements associated with the Disclosure Statement.

Regardless of whether the transaction involves a developer or a single unit resale, licensees should be knowledge-able with respect to the proportionate fractional interest acquired, the allocation of ongoing maintenance and operating costs, the applicability of the Homeowner's Grant and Property Transfer Tax, and the particulars of the agreement which restricts owners to using only a portion of the land that they own, such as voting rights or restrictions on transfers.

Time Share Interest

A time share interest is defined in the *Real Estate Development Marketing Act* as a person's interest in a time share plan. A time share plan is a plan in which the persons participating each have a right of recurring use, of all or part of the land. A time share plan does not require that the persons acquire an ownership interest in the land that is the subject of the plan.

A Disclosure Statement must be filed before a developer may market one time share interest in a development containing five or more time share interests. Accordingly, licensees involved in the sale or purchase of a time share interest by or from a developer should familiarize themselves with the content of and the requirements associated with the Disclosure Statement.

Real Estate Securities

In some cases, the offering of a real estate development unit may constitute the offering of an investment contract, which is a security within the meaning of the *Securities Act*. Where a real estate development includes an interest in land and an ancillary agreement, usually with the developer, for management of the property, combined with financial commitments such as rental guarantees or revenue and expense pooling, the arrangement may meet the requirements of a security. A typical example of such an offering is the marketing of strata lots in a hotel or resort in which there is an agreement that the strata lots will be rented out by a manager. The agreement may include a rental guarantee or revenue or expense pooling, or it may simply be a mandatory requirement that the strata lot be provided to the manager for rental as part of the overall development. In such cases, both the Real Estate *Development Marketing Act* and the *Securities Act* apply. Policy Statement 13 – *Real Estate Securities* issued by the Superintendent's office sets out an explanation of real estate securities and includes reference to the related documents issued by the Securities Commission. Licensees involved in the purchase and sale of real estate offerings, where the purchaser must rely on the promoter for an investment return, should familiarize themselves with these requirements.

Leasehold Units

A leasehold unit is a unit in a residential leasehold complex which is defined as containing one or more buildings capable of being used for leasehold residential purposes other than buildings comprised of strata lots, cooperative

interests or shared interests in land.

Although not specifically identified in the *Real Estate Development Marketing Act*, a common form of leasehold unit that has been marketed in British Columbia is a life lease. A life lease in its broadest sense is a leasehold interest in land, the term of which extends for the life of the lessee. In many ways, it resembles a life estate. In particular, life leases typically must prepay a large portion or all of the rent, and the possessionary interest of a life estate and a life lease both terminate with the life of the person holding the interest. However, a life estate is a freehold interest in land whereas a life lease is a leasehold interest in land that creates a landlord and tenant relationship.

The distinction between a life lease and a life estate should not be forgotten because a life lessee is subject to a lease. Accordingly, most, if not all, aspects of the law governing landlord and tenant relationships will apply and licensees should be aware of their duties and responsibilities, which apply to all lease transactions. The following characteristics of many life leases should also be considered.

Most, if not all, life lease offerings obligate the landlord to repay some or all of the prepaid rent to the lessee, or his or her heirs, on the death of the lessee or the termination of the lease. The obligation to repay the rent (capital payment) results from the contractual terms of the lease. The repayment term is basically peculiar to life leases. Licensees should familiarize themselves with the security arrangements, if any, associated with the obligation to repay and the financial ability of the landlord to make the repayment.

Additionally, landlords can generally terminate a life lease for non-payment of rent or a breach of any other covenant in the lease. The life lease may or may not be registrable. Section 4 of the *Residential Tenancy Act* provides that the Act does not apply to living accommodation rented under a tenancy agreement that has a term longer than 20 years. Life lessees generally may not assign or sublet their lease as the landlord typically controls the renting of the premises. Life leases generally obligate the lessees to pay monthly charges related to the maintenance and operation of the development. Often, these charges are payable as rent.

The *Real Estate Development Marketing Act* requires that a developer file a Disclosure Statement before marketing a leasehold unit of a term of three years or more in a development property containing five or more residential leasehold units. All long-term leases, including life leases contained within developments other than buildings comprised of strata lots, cooperatives or shared interests, are subject to the requirements of the *Real Estate Development Marketing Act*. Because the marketing of strata lots, cooperative interests and shared interests are specifically addressed in the *Real Estate Development Marketing Act* and because the definition of marketing includes selling or leasing, the offering of a long-term lease of a strata lot, cooperative interests or shared interests already requires compliance with the *Real Estate Development Marketing Act*.

Each offering of a leasehold interest, including a life lease, requires that a current Disclosure Statement, which has been filed with the Superintendent of Real Estate, be provided to the lessee. Developers may therefore be required to update the Disclosure Statement to ensure that it is current before each new leasehold interest is marketed. In other words, as lessees die or otherwise terminate their lease, the developer will offer a new leasehold interest which requires an up to date Disclosure Statement. Developers reselling life leases must therefore provide a current Disclosure Statement to new lessees.

Market Testing Prior to Filing a Disclosure Statement

The *Real Estate Development Marketing Act* prohibits marketing of development units unless a Disclosure Statement has been filed with the Superintendent of Real Estate. The Policy Statements prepared by the Superintendent's office describe "Marketing" as "engaging in any transaction or other activity that will or is likely to lead to a sale or lease".

The Policy Statements indicate that the use of "letters of intent", "priority lists", "reservation agreements",

"conversion rights", "rights of first refusal", or any similar agreement that carries with it the right to acquire a development unit, falls within the meaning of marketing. Licensees should be very careful to avoid the use of such agreements and to avoid receiving any deposits prior to the filing of a Disclosure Statement.

The Policy Statements permit developers to advertise a proposed development and communicate with potential purchasers as long as potential purchasers **do not** gain the impression that they have a right to acquire the development unit. To avoid confusion, the Policy Statements recommend that every advertisement contain the name and address of the developer, the telephone number of at least one representative from whom information and a Disclosure Statement (when available) can be obtained, and a **prominent disclaimer** stating that the advertisement is not an offering for sale and that such an offering can only be made after filing a Disclosure Statement.

Early Marketing

The *Real Estate Development Marketing Act* permits developers to begin marketing development units prior to meeting the requirements for approvals and permits if the developer has received approval in principle to construct or otherwise create the development and the permission of the Superintendent of Real Estate to begin marketing.

The *Real Estate Development Marketing Act* also permits developers to begin marketing development units prior to meeting the requirements relating to the assurance of services if the developer satisfies the requirements established by the Superintendent in a policy statement.

Policy Statement 5 – *Early Marketing – Development Approval* and Policy Statement 6 – *Adequate Arrangements – Utilities & Services* allow a developer to market strata lots, subject to certain restrictions, without a building permit (#5) or a firm financing commitment (#6).

Licensees should be aware that in both cases, any Contract of Purchase and Sale entered into by a buyer must:

- be terminable at the option of the buyer for a period of seven days after receipt of the amended Disclosure Statement if the building permit materially changes the layout or size of the applicable development unit, the construction of a major common facility, including a recreation centre or clubhouse, or the general layout of the development;
- if an amendment to the Disclosure Statement that sets out the particulars of the building permit or financing was not received within 12 months after the initial Disclosure Statement was filed, be terminable by the buyer until an amendment is filed;
- require that no greater than 10% of the purchase price be paid by way of deposit or other wise; and
- require that all such funds including, where applicable, interest earned, be returned to the buyer forthwith upon notice of cancellation by the buyer without deduction.

Risks Associated with Purchasing "Pre-Sale" Residential Units

The following information has been provided by the Office of the Superintendent of Real Estate . Licensees who work with buyers are encouraged to familiarize themselves with this information and to make it available to their clients.

Pre-Sale Contracts

Developers in British Columbia commonly pre-sell residential units such as strata titled apartments and

Developers in British Columbia commonly pre-sell residential units such as strata titled apartments and townhouses. These "pre-sales" include any residential unit that is purchased prior to the completion of construction. Typically developers enter into contracts that provide for units to be built within two years at a fixed price, and require deposits to be paid by the prospective purchasers. The deposits are held in trust by a lawyer, notary public or real estate brokerage, unless deposit protection insurance is obtained, in which case the deposits may be released to the developer. If a proposed development does not proceed and the purchase contract is terminated, pre-sale purchasers are entitled to have their deposit money repaid.

However, unless the pre-sale contract requires interest to be paid, the purchaser may not receive interest on that deposit. This is something that a purchaser will want to clarify at the time that they enter into a contract.

Obtain Professional Advice

In order to better understand the development, the prospective purchaser may wish to consult with a real estate licensee before entering into any contract. A licensee can explain real estate terms and practices and provide information about available properties in the purchaser's price range. Additionally, prospective purchasers may wish to consult a lawyer to better understand their rights and obligations in respect of an existing or proposed pre-sale contract. A lawyer will be able to provide advice with respect to the purchaser's responsibilities under the contract, including any termination or extension rights.

Review the Disclosure Statement

A prospective purchaser should carefully review the developer's Disclosure Statement. The*Real Estate Development Marketing Act* provides that a developer must not enter into a contract to sell a development unit unless a copy of the Disclosure Statement has been provided to the purchaser and the purchaser has been given a reasonable opportunity to read it. The Disclosure Statement explains what the developer is selling and describes the purchaser's right under the *Real Estate Development Marketing Act* to cancel the pre-sale contract within seven days of signing it. It is important for prospective purchasers, who either already have a pre-sale contract or are considering entering into one, to appreciate the risks associated with them. Some of these risks are explained below. There may also be other risks, depending on the specific terms in the pre-sale contract and the specific circumstances of the development.

Pre-Sale Risks

A proposed development may be delayed, or may not proceed at all, for a variety of reasons including: inadequate sales; delays in obtaining financing or building permits; higher than expected costs for construction materials; and an inability to hire skilled construction workers.

If a proposed development is delayed beyond the completion date set out in the presale contract, the contract may provide that it is terminated unless both the purchaser and developer have agreed to an extension. If market prices have increased during a delay in construction, a purchaser may be asked to pay a higher purchase price in order to extend the original contract or obtain a new contract. There is also a risk that the developer may not agree to an extension or new contract and instead sell the unit to another purchaser. Purchasers who initially sought legal advice on their pre-sale contract will be aware of any potential termination dates or may return to their lawyer for clarification of the options available. Prospective purchasers who wish to complete their purchases should, with the appropriate professional assistance, seek a written extension of their pre-sale contract before the termination date set out in that contract.

Delays in development may require prospective purchasers to arrange temporary accommodation or delay moving from their existing homes. As delays that occur in a rising market may also be accompanied by price increases, prospective purchasers should consider how to invest their purchase monies during that time so as to keep pace with any increase in real estate prices. For example, if an existing home is to be sold to fund the purchase of a proposed unit, the homeowner may wish to delay the home sale and use any increase in the home's value to help fund the ultimate purchase of the proposed unit. There is also a risk that real estate prices may decline in the future. If the developer completes a pre-sale contract within the time set out in the contract, the purchaser may be obligated to complete the purchase at the agreed price, even though the real estate may have declined in value. **If a purchaser fails to complete the purchase, the specific terms of the contract may authorize the developer to not only keep the deposit but also pursue other legal remedies. Such remedies may include legal action to seek**

compensation from the purchaser for any losses beyond the amount of the deposit, or actual performance of the contract. A purchaser may wish to assign the contract to another purchaser prior to the completion date.

Depending on the specific terms of the pre-sale contract, assignments may not be permissible, or may require a substantial assignment fee to be paid to the developer. The risks associated with pre-sales apply to a new purchaser who is assigned a pre-sale contract.

Additionally, depending on the specific terms of an assignment, the new purchaser may not recover any payments made to the initial purchaser and developer to allow the assignment. A pre-sale contract may allow the developer to substitute equivalent materials or make adjustments to the layout of the unit or the development. In the current real estate market, purchasers at several developments have had their pre-sale contracts terminated and this has led to complaints about some of the risks that are described above. It is important for all prospective purchasers to appreciate those risks in order to better understand any existing pre-sale contract and make a more informed decision about whether or not to enter into a pre-sale contract.

For further information on real estate transactions and contact information for government offices and industry associations, visit the Superintendent's website or the BC Housing, Licensing and Consumer Services website . Various industry groups also provide information and seminars relating to the purchase and sale of real estate. First-time home buyers may wish to take advantage of these educational events to increase their knowledge in this area.

Deposits

The ability of developers to hold deposits is prevented by the *Real Estate Development Marketing Act* . The *Real Estate Development Marketing Act* requires that a developer, who receives a deposit, must place the deposit with a brokerage, lawyer or notary public, who holds the money as a trustee for the developer. The trustee holds the funds on deposit for the developer and purchaser and not as agent for either of them.

The deposit may only be released as follows:

- if the money was paid into the trust account in error;
- to the purchaser with the written consent of the purchaser and the developer;
- if the developer certifies that the rescission period has expired, the subdivision or strata plan has been filed, the development may be lawfully occupied, and the purchaser's interest is either registered or evidenced in an instrument delivered to the purchaser;
- if the developer certifies that the rescission period has expired and the purchaser has failed to pay a subsequent deposit and the contract permits the developer to cancel the contract under those circumstances;
- if the developer will use the deposit as permitted under the *Real Estate Development Marketing Act*;
- if the purchaser rescinds the purchase agreement within the time provided by the *Real Estate Development Marketing Act*;
- if the funds are unclaimed as provided for in section 32 of RESA;
- if there are adverse claims to the funds and the trustee pays the fund into court in accordance with section 33 of RESA;
- in accordance with a court order; and
- in accordance with any regulations under the *Real Estate Development Marketing Act*.

The *Real Estate Development Marketing Act* permits a developer to use deposits for purposes related to the development property, including the payment of expenses relating to the construction and marketing of the development, if a developer has obtained deposit insurance (i.e., entered into a deposit protection contract). Before

the trustee may pay the funds to the developer, the developer must enter into a deposit protection contract with an insurer and provide an original or true copy of the contract to the trustee. Additionally, the developer must provide notice of the deposit protection contract to the purchaser in the Disclosure Statement.

Remedies and Enforcement

The *Real Estate Development Marketing Act* provides that a purchaser may rescind a purchase agreement within seven days after the later of the date that the purchase agreement was made or the date that the developer received the written statement from the purchaser acknowledging that the purchaser had an opportunity to read the Disclosure Statement.

If a purchaser is entitled to receive a Disclosure Statement but does not receive the Disclosure Statement, the purchaser may rescind the purchase agreement at any time including after the title or other interest has been transferred to the buyer.

Licensees should also be aware that no contract to purchase or lease a development unit is enforceable against a buyer or tenant by a developer who has breached the requirements of the *Real Estate Development Marketing Act* relating to the requirements for approval, the filing and provision of Disclosure Statements and the handling of deposits.

The *Real Estate Development Marketing Act* permits the Superintendent of Real Estate to conduct an investigation if the Superintendent has reason to believe that a developer is either contravening the provisions of the *Real Estate Development Marketing Act* or has failed to comply with an order of the Superintendent. At the conclusion of an investigation, the Superintendent may require the developer, or an officer, director, controlling shareholder or partner of the developer, to attend at a hearing.

At the conclusion of the hearing, the Superintendent may order that the developer pay an administrative penalty of up to $50,000 in the case of a corporation and up to $25,000 in the case of an individual.

Licensees must be particularly careful when acting as an agent of a developer that they ensure compliance with the requirements of the *Real Estate Development Marketing Act*, including the requirement to deliver a Disclosure Statement that plainly discloses all facts and, if the brokerage retains the deposits, that they are only released in accordance with the provisions of the *Real Estate Development Marketing Act*.

Interacting with a Developer's Sales Representatives

Sometimes when a licensee working with a buyer introduces that buyer to a new home or strata title project, the developer's onsite sales team will ask that licensee to hand the buyer over to them. This can happen whether the developer's marketing team is licensed or employed directly by the developer and not licensed.

The developer and/or its sales team are more knowledgeable about the project and various finishing issues; therefore, they might believe negotiations will be smoother if handled by them. Typically, the licensee who has introduced the buyer to the project is told that he or she will be paid remuneration if the buyer purchases a unit.

Licensees and buyers both need to be aware that their relationship and the buying process will change if this proposal is accepted. First, the buyer will likely not have any agent representing his or her interests in the purchase. Second, when it comes time to write an offer, this will often be done using a contract that has been prepared by the

developer's lawyers. The preprinted clauses in this contract may be more beneficial to the seller (Developer) than

those contained in the standard Contract of Purchase and Sale most licensees use. Finally, the buyer may not receive timely advice with respect to appropriate holdback or deficiency provisions.

If a licensee is prepared to hand the buyer over in this situation and the buyer agrees, the licensee should confirm in writing that:

- the licensee will be receiving remuneration from the developer if the buyer purchases;
- there is a change in the agency relationship, and the nature of the agency relationship, if any, the licensee will be providing; and
- the buyer should seek independent legal advice before signing a contract to purchase.

A final note of caution. Sometimes after this has taken place and the buyer is in the midst of negotiations or concerned about something, that buyer will contact the licensee for advice. Licensees need to be careful not to step back into the role of the buyer's agent unless they are ready, willing and able to accept that responsibility. It may be more appropriate to refer the buyer to his or her lawyer or the developer's sales team.

Related Links

Strata Sales →

New Construction →

Appendix V

Professional Legal Training Course 2020

Practice Manual Real Estate

Appendix V

PLTC 2020 Practice Material – Real Estate

Professional Legal Training Course 2020

Practice Material

Real Estate

Recent Contributors:
Dick Chan
Tony Magre
Greg Umbach
Edward L. Wilson
The Land Title and Survey Authority of BC

Practice Material Editor:
Katie McConchie

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The Law Society of British Columbia

Appendix V

REAL ESTATE

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BUILDERS LIEN APPENDICES – *NOT AVAILABLE IN ONLINE VERSION*

Chapter 1

Introduction[1]

Each year, lawyers in British Columbia help buyers and sellers with many thousands of transfers of real property, commonly known as "conveyances."

Lawyers who have a conveyancing practice often rely on non-lawyers, including paralegals and legal assistants, to assist with some stages or parts of a transaction. As well, lawyers are often consulted by clients who have already been working with a "licensee" (a person providing real estate services under the *Real Estate Services Act*, S.B.C. 2004, and licensed by the Real Estate Council of BC, often referred to as a "real estate agent" or a "realtor").

To build a healthy and sustainable conveyancing practice, a lawyer must understand the context of a residential real estate transaction, the parties involved, each party's role and obligations, and the laws that govern them.

This chapter looks briefly at the parties, their roles, and the statutes that govern the transfer of ownership and interests in land. Subsequent chapters look at the stages of the transaction.

[§1.01] Role of the Lawyer

The lawyer's essential role in a conveyancing practice is to complete the transaction. This role includes fixing any issues left to the lawyer by the real estate agent or by the parties themselves (where the deal is private).

It is important for a conveyancing lawyer to build a positive reputation early on. Becoming known as a deal-wrecker will not result in repeat referrals from real estate agents—the life-blood of a healthy conveyancing practice. Building a practice requires developing a good inventory of practical solutions and understanding the classic motivations of buyers and sellers, while balancing the lawyer's ethical and legal responsibilities.

In a stable market, where the price of real estate is neither climbing nor falling sharply, it is usually a relatively easy process to complete transactions. In a volatile market, a lawyer's lack of understanding of *what* needs attention and *when* can expose the lawyer to insurance claims and can damage the lawyer's reputation in the real estate community.

It is important that a lawyer have a fully developed knowledge of the law governing real estate transactions. However, clients or real estate agents do not hire you to show your knowledge of all the rights and remedies, but to execute the actual transaction. The lawyer should adopt a practical approach to conveyancing and develop knowledge of the soft spots (where deals are their weakest) and a repertoire of fixes.

Lawyers should keep current with the publications and programs of the Continuing Legal Education Society of BC (CLEBC). In addition, attending the monthly meetings of the Real Property sections of the Canadian Bar Association is a useful way of staying current on law and practice changes. It can be helpful to maintain relationships with surveyors, municipal planners, appraisers, insurance underwriters and fellow practitioners. As well, officials in the three Land Title Offices are extremely helpful in assisting practitioners to resolve problems.

For an effective and economic conveyance to proceed to completion, efficient management procedures and proper file administration must be in place. The lawyer must be very well organized and have a system to approach the steps of the conveyance. Of utmost importance is a checklist where each of the steps in a conveyance can be reviewed to ensure that no essential matter is neglected. Refer to the CLEBC's practice manuals and the Law Society of British Columbia's *Practice Checklists Manual* (www.lawsociety.bc.ca/support-and-resources-for-lawyers/practice-checklists/).

1. Buyer's Lawyer

The role of the buyer's lawyer is to deliver what the client is expecting, without surprises. Generally this means delivering title clear of financial encumbrances of the seller and any avoidable negative charges.

The buyer's lawyer will do the heavy lifting in a real estate transaction, including drafting or reviewing the contract (unless the contract is delivered to the lawyer already completed by the licensee, as is the case in most residential real estate transactions). The buyer's lawyer will also review the title; prepare most of the transaction documents; and coordinate signatures, registration and money exchanges.

The buyer's lawyer must be alert to many practical considerations in order to carry out these responsibilities in a timely manner. The lawyer must know how long it takes for money to move from the client to the lawyer. This depends on where funds originate, how they are sent, and what form they take. For example, certified cheques from foreign jurisdictions can take more than a month to clear in the

[1] Revised by **Edward L. Wilson**, Lawson Lundell LLP, Vancouver, in December 2019. Reviewed regularly by the Land Title and Survey Authority for content relating to the BC land title and survey system, most recently in October 2019. Previously revised by Gregory Lee (2017); Randy Klarenbach and Aneez Devji (2012); Ian Davis (2010); Joel Camley (2005, 2006 and 2008); and Lawson Lundell, Real Estate Department (1991–2004). Tina Dion reviewed the Aboriginal title content of this chapter in November 2011. Doug Graves revised the Aboriginal title part of this chapter in December 2010. John M. Olynyk contributed comments about Aboriginal title in January 2002.

lawyer's trust account. Locally drawn cheques deposited to a trust account can also take a week or two to clear, and require time-consuming follow-up with banks to confirm clearance. Deposits over certain thresholds for certain banks also require clearance time. Wire transfers may present a solution to most money moving issues encountered when receiving closing proceeds from the buyer, but the cut-off times for such transfers should be carefully noted. Where there is a very short timeline for closing, it is even more important for the lawyer to understand how funds will be transmitted and to anticipate timing issues.

Early on, the buyer's lawyer must evaluate all the timing factors. If the existing transaction timeline does not look feasible, the lawyer should ask for an extension of the completion date (or give an early warning that an extension might be needed), while avoiding anticipatory breach of the contract. Creating a list of "critical dates" at the outset is recommended to assist in making this determination, particularly if the lawyer did not prepare the purchase agreement. It is easier to obtain an extension from a seller if the request is made early so as to minimize surprise and the chance of the seller compounding the problem by having entered into new commitments based on assuming timely completion.

On receipt of registrable transfers, the buyer's lawyer must provide the fundamental undertaking to the seller's lawyer to not file the transfer until the buyer's lawyer has sufficient funds in trust to complete the transaction. Where a new mortgage is funding the purchase, this undertaking is modified to provide that the buyer's lawyer must hold funds in trust that, when combined with the amount to be advanced by the mortgage lender, are sufficient to complete the transaction, and that the buyer's lawyer must know of no reason why the new mortgage would not be registered and funds disbursed in the ordinary course of business.

Most transactions are closed pursuant to the Canadian Bar Association's Standard Undertakings (the "CBA Standard Undertakings"). This is because most residential real estate contracts are based on the British Columbia Real Estate Association and Canadian Bar Association (Real Property Section) standard form Contract of Purchase and Sale, which requires that the parties close pursuant to the CBA Standard Undertakings.

2. Seller's Lawyer

The primary role of the seller's lawyer is to vet the documentation produced by the buyer's lawyer and pay out the seller's financial encumbrances prior to paying net sale proceeds to the seller. The letter from the buyer's lawyer enclosing the documents will generally identify what will have to be paid out, but both sides should obtain a current copy of the title to verify. The seller's lawyer must find out the amounts due and confirm that there will be enough money to go around, especially if there are holdbacks for builders liens, deficiencies or non-resident tax security.

The seller's lawyer must also be mindful of practical issues caused by client travel, location and residency, particularly because the seller must execute certain closing documents in the presence of a lawyer or notary. The lawyer will have to manage client expectations about receiving sale proceeds so that the client does not make impossible commitments based on unrealistic expectations.

The seller's lawyer provides the fundamental undertaking to clear title. In practice this means not paying the seller without having paid out the financial encumbrances first. Most financial institutions are obligated to provide a registrable discharge in due course after payment. However, where an encumbrance is private or exceptional, the seller's lawyer will often have to obtain the registrable discharges and have them in hand before allowing the transaction to complete. Complications can arise when the encumbrance is an old private mortgage, long paid off, but the mortgage lender has died or otherwise disappeared. If a private mortgage is registered on title, the seller's lawyer should consider the steps involved in the discharge process as early as possible.

[§1.02] Role of Non-lawyers

The *Practice Material: Real Estate* has been prepared on the assumption that the lawyer has a direct hand in each of the transactions discussed and direct contact with the client throughout. In reality, this is often not the case. An effective conveyancing practice is often a matter of effective administration, training, communication and assignment. In other words, in many law offices, someone other than a lawyer carries out many of the steps in a real estate transaction. For example, the initial information and instructions will often come from a non-lawyer conveyancer such as a notary, real estate agent, lender/mortgage officer, or insurance agent. Additionally, a paralegal or legal assistant will often prepare most of the documents necessary to complete the transaction.

Chapter 6, section 6.1, rule 6.1-1 of the *Code of Professional Conduct for British Columbia* (the "*BC Code*") contains the guiding principle as to the division of responsibility between the lawyer, the legal assistant, and other staff:

> **Direct supervision required**
>
> 6.1-1 A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to

Appendix W

BC Financial Services Authority

2020/21 – 2022/23
Service Plan February 2020

BC Financial Services Authority

2020/21 – 2022/23
SERVICE PLAN

February 2020

BC FSA
BC FINANCIAL
SERVICES AUTHORITY

BRITISH
COLUMBIA

Appendix W

For more information on the BC Financial Services Authority contact:

Suite 2800 – 555 West Hastings Street
Vancouver, BC V6B 4N6

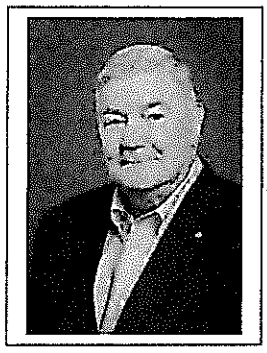
Phone: 1+(604) 660-3555
Fax: 1+(604) 660-3368
Toll Free: 1-866-206-3030

General Email:
BCFSA@bcfsa.ca

Or visit our website at
https://www.bcfsa.ca

Published by the BC Financial Services Authority

Board Chair Accountability Statement



The 2020/21 – 2022/23 BC Financial Services Authority (BCFSA) Service Plan was prepared under my direction in accordance with the *Budget Transparency and Accountability Act.* The plan is consistent with the government's strategic priorities and fiscal plan. The Board is accountable for the contents of the plan, including what has been included in the plan and how it has been reported. The Board is responsible for the validity and reliability of the information included in the plan.

All significant assumptions, policy decisions, events and identified risks as of February 2020 have been considered in preparing the plan. The performance measures presented are consistent with the *Budget Transparency and Accountability Act,* the BCFSA's mandate and goals, and focus on aspects critical to the organization's performance. The targets in this plan have been determined based on an assessment of the BCFSA's operating environment, forecast conditions, risk assessment and past performance.

Stanley Hamilton
Board Chair

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Glossary

AML	Anti-Money Laundering
BC	British Columbia
BCFSA	BC Financial Services Authority
CABRO	Crown Agencies and Board Resourcing Office
CAPSA	Canadian Association of Pension Supervisory Authorities
CCIR	Canadian Council of Insurance Regulators
CUIA	*Credit Union Incorporation Act*
CUDIC	Credit Union Deposit Insurance Corporation
CUPSA	Credit Union Prudential Supervisors Association
FIA	*Financial Institutions Act*
FICOM	Financial Institutions Commission
FINTRAC	The Financial Transactions and Reports Analysis Centre of Canada
FSAA	*Financial Services Authority Act, 2019*
GBA+	Gender-Based Analysis Plus
MBRCC	Mortgage Broker Regulators' Council of Canada
OSFI	The Office of the Superintendent of Financial Institutions
PBSA	*Pension Benefits Standards Act*

Strategic Direction and Alignment with Government Priorities

The Government of British Columbia remains focused on its three strategic priorities: making life more affordable, delivering better services, and investing in a sustainable economy. Crowns are essential to achieving these priorities by providing quality, cost-effective services to British Columbia families and businesses.

Additionally, where appropriate, the operations of Crowns will contribute to:

- The objectives outlined in the government's *A Framework for Improving British Columbians' Standard of Living*,
- Implementation of the *Declaration on the Rights of Indigenous Peoples Act* and the Truth and Reconciliation Commission Calls to Action, demonstrating support for true and lasting reconciliation, and
- Putting BC on the path to a cleaner, better future – with a low carbon economy that creates opportunities while protecting our clean air, land and water as described in the *CleanBC* plan.

By adopting the Gender-Based Analysis Plus (GBA+) lens to budgeting and policy development, Crowns will ensure that equity is reflected in their budgets, policies and programs.

The **BC Financial Services Authority** (BCFSA) is a Vancouver-based Crown agency of the Government of British Columbia. The BCFSA, which assumed the regulatory accountabilities of the Financial Institutions Commission (FICOM), became operational on November 1, 2019. The BCFSA has four core business areas that are organized around its areas of regulatory responsibility: pension plans, mortgage brokers, financial institutions (including credit unions, insurance and trust companies) and the Credit Union Deposit Insurance Corporation.

The BCFSA administers the following statutes found through these links:

- *Financial Services Authority Act, 2019*
- *Credit Union Incorporation Act*
- *Financial Institutions Act*
- *Insurance Act*
- *Insurance (Captive Company) Act*
- *Mortgage Brokers Act*
- *Pension Benefits Standards Act*

The BCFSA's operations are aligned with the priorities set out in its *Mandate Letter* issued by the Minister of Finance of British Columbia ("Minister of Finance") and are summarized here:

Government Priorities	The BCFSA Aligns with Government priorities by:
Making life more affordable	• Continuing to improve our risk-based and proportionate supervision of the financial services sector and enhancing consumer protection. • Engaging and working with sector participants and provincial and federal regulators.
Delivering the services people count on	• Working collaboratively with the government to ensure a sustainable and effective deposit insurance program and improve financial crisis preparedness. • Continue to work with the Superintendent of Real Estate, the Ministry of Finance Policy and Legislation Division, and the Real Estate Council of BC to establish a single regulator of real estate within the BCFSA • Work collaboratively with government, industry and other stakeholders to review issues related to the cost and availability of insurance for strata corporations.
A strong, sustainable economy	• Provide information, advice and support to the Ministry of Finance as it undertakes a review of the *Mortgage Brokers Act* of British Columbia. • Work collaboratively with the government as it improves the effectiveness of BC's Anti-Money Laundering (AML) Regime.

Operating Environment

The BCFSA began operations as a new Crown agency on November 1, 2019 by assuming the regulatory accountabilities of the Financial Institutions Commission (FICOM). The transition was driven by the need to create a modern, efficient and effective regulator with the independence and flexibility necessary to regulate a financial services sector that had grown in size and complexity.

On November 12, 2019, the Minister of Finance announced that the BCFSA would also become responsible for regulation of the real estate industry, including licensing, conduct, investigations and discipline. The consolidation of real estate regulation within the BCFSA is expected to be completed by the spring of 2021.

Recruiting, developing and retaining a team with the necessary skills and experience is fundamental to the BCFSA's ability to achieve its objectives. As FICOM experienced staffing challenges in the past, we anticipate that the transition to a Crown agency will bring an updated suite of recruitment and retention strategies to assist in meeting human resource challenges.

Governance and funding

The BCFSA is governed by an 11-member Board of Directors appointed by the Government of British Columbia. The BCFSA is managed by a Chief Executive Officer (CEO) who is appointed by the Board. The BCFSA CEO currently leads a team of approximately 160 individuals in a variety of disciplines.

While the BCFSA was granted some transition funding from the Government of British Columbia, the regulator is intended to operate as a self-funded entity with costs covered by fees paid by regulated entities and individuals. This funding model dates from the establishment of FICOM in 1989. The BCFSA must not incur or budget for a deficit without the prior written approval of the Minister of Finance. The BCFSA consults with regulated entities and individuals prior to any fee changes. Cabinet approval is required to implement fee changes proposed by the BCFSA.

Legislation and transparency

The BCFSA was established by the *Financial Services Authority Act, 2019* (FSAA). The FSAA is designed to improve accountability and oversight at the BCFSA and align with regulatory best practices.

As a Crown agency, the BCFSA receives a mandate letter from the Minister of Finance and publicly reports on its finances and operations through various documents including this annual service plan and an annual service plan report.

Financial services landscape

The scope of the BCFSA's regulatory mandate reflects the size and complexity of the financial services sector in BC which, as of November 2019, included:

- 41 credit unions with more than $65 billion in assets;
- over 5,000 mortgage brokers and brokerages;
- 677 pension plans with approximately $158 billion in assets; and
- over 200 insurance and trust companies.

Note that many of the insurance and trust companies and some of the pension plans the BCFSA oversees also operate in other provinces. Mortgage brokers may also be authorized to do business in other provinces. Central 1 Credit Union, which undertakes various centralized activities such as clearing and payments for credit unions, acts as a "central" in both BC and Ontario.

This landscape makes cooperation and harmonization with other regulators in Canada a priority. The BCFSA is an active partner in national regulatory associations including the Canadian Council of Insurance Regulators (CCIR), the Credit Union Prudential Supervisors Association (CUPSA), the Canadian Association of Pension Supervisory Authorities (CAPSA) and the Mortgage Broker Regulators' Council of Canada (MBRCC).

A risk management model and market conduct

A properly functioning and efficient financial services sector in which British Columbians can place their trust and confidence is essential to the Province's economy. To achieve this objective, the BCFSA safeguards the interests of depositors, policyholders, beneficiaries, pension plan members and home buyers while at the same time allowing the financial sector to take reasonable risks and compete effectively. The BCFSA's goal is to balance competitiveness with financial stability and federal and international standards with local market realities.

The BCFSA uses a risk-based prudential supervisory framework to identify imprudent or unsafe business practices and intervenes on a timely basis, as required. The principles, concepts and core processes in our supervisory framework apply to all the BCFSA regulated financial entities in British Columbia. The primary focus of the BCFSA's supervisory work is to determine the impact of current and potential future financial events, both within British Columbia and externally.

In addition to the risk-based supervisory framework for regulated financial entities, the BCFSA also monitors the system for any violations of fair business practices such as mis-selling, unfair or misleading contracts and coercive sales tactics. The BCFSA ensures that no unauthorized business takes place in BC and that no unlicensed insurance agents, adjusters and salespeople operate in BC. The BCFSA may also appeal decisions of the Insurance Council of British Columbia.

In the mortgage broker sector, the objective of the Registrar of Mortgage Brokers is to protect the public and enhance mortgage broker industry integrity by enforcing broker suitability requirements and reducing and preventing market misconduct.

The BCFSA's key strategic priorities align our objectives and related strategies under each goal to demonstrate how the BCFSA intends to work towards achieving these goals. BCFSA engages in regular, dialogue with the Ministry of Finance on all issues that intersect with the priorities of the Government of British Columbia and are key to delivering on our mandate.

Performance Plan

The BCFSA's Mandate Letter identifies five key goals. The BCFSA has identified objectives and related strategies to support the achievement of each of the goals. The BCFSA will engage in regular communications with the Ministry of Finance toward the achievement of the goals as well as on matters within its regulatory accountabilities.

Goal 1: Risk-based Supervision and Consumer Protection

Objective 1.1: Advance the BCFSA's risk-based and proportionate supervision of financial services sectors and efforts to enhance consumer protection

The BCFSA's supervisory mandate includes overseeing financial institutions, pensions funds and mortgage brokers. Protecting the public is a key part of this mandate. A proportionate approach to supervision is required to protect the public while continuing to allow regulated entities and individuals to innovate and grow. Global standards dictate a move towards risk-based supervision.

Key Strategies:

1.1a. Update and publish the BCFSA's supervisory framework (the "Supervisory Framework") to ensure a consistent approach to supervision of the financial services sector.

- Revise the Supervisory Framework to align advancements in the BCFSA's regulatory approach with other federal and provincial regulators including the management of risks related to cyber, anti-money laundering and retail credit.
- Develop a supervisory 'playbook' for supervision activities to enable a consistent methodology and approach to proportionate monitoring and on-site reviews, reflective of varying size, scope and complexity of regulated entities in BC.

1.1b. Increase number of on-site and face-to-face meetings with regulated entities and base subsequent monitoring on these supervisory assessments.

- Our goal is for each financial institution (credit union, insurance company and trust company) to receive at least one (1) face-to-face meeting per year with the BCFSA.
- We will design and pilot an examination function to complete the risk review process for pension plans. This examination function, based on application of the risk framework, will include both desk and on-site examination.
- We will establish for turnaround times for the delivery of supervisory letters. Initial metric will be 90 days from the exit meeting (for on-site reviews). As processes and system tools improve, timelines will be reduced to 60 days effective March 2021.

1.1c. Increase targeted examinations of market conduct activities

- The goal of targeted market conduct examinations is to proactively identify and intervene to address harmful business practices among mortgage brokers, brokerages and financial institutions.

1.1d. Increase responsiveness to complaints

- The BCFSA treats all complaints seriously and is committed to responding promptly. When complaints are received, they are assessed for risk, assigned a priority and actioned appropriately.

Performance Measure(s)		2020/21 Baseline*	2021/22 Target	2022/23 Target
1.1a	Revision and modernization of current Risk Framework Risks across the financial services sector have evolved such that our process, procedures and methodologies to risk assessment as defined within the Supervisory Risk Framework, need to be reviewed and revised to reflect emerging risks.	50% of Framework revised	75%	100%
1.1b	Percentage of face-to-face supervisory meetings with financial institutions (credit unions, insurance companies and trust companies) in the fiscal year	75% of institutions	85%	90%
1.1c	Increase targeted examinations of market conduct activities.	24 examinations	28	32
1.1d	Increase percentage of complaints resolved within 3 months.	70% of complaints	75%	80%

*baseline measures have been established based on BCFSA operational data

Linking Performance Measures to Objectives:

1.1a Ensuring the Supervisory Framework reflects current and emerging risk drivers is foundational to modern, effective and efficient supervision of the BC financial services sector. The Supervisory Framework provides the methodology which the BCFSA follows in assessing the risk profiles of regulated entities.

1.1b The goal for increasing supervisory meetings face-to-face is to establish a mutual understanding of issues facing BC financial institutions and fostering a better understanding by the BC financial institutions of the BCFSA's areas of focus. There is a shared accountability for ensuring regular dialogue between stakeholders which is a key to ensuring the ongoing strength and viability of the BC financial services system.

1.1c An increase in targeted examinations of market conduct activities demonstrates the BCFSA's commitment to resourcing and growing its proactive conduct supervision capabilities. The measure is not calibrated to file complexity or seriousness and will be monitored over time to validate value as a measure of the BCFSA's business. For example, an examination of a larger financial institution is more resource intensive than the examination of a smaller mortgage brokerage.

1.1d Shorter average turnaround times on complaints demonstrates responsiveness to public interest in timely resolution of the issues they raise with the regulator. The measure is not calibrated to file complexity or seriousness and will be monitored over time to validate value as a measure of the BCFSA's business. For example, an increase in high complexity and serious files as a result of increased regulatory examinations and public awareness of the regulator will increase the average complaint turnaround time.

Goal 2: External Engagement

Objective 2.1: Engage and work with sector participants and other provincial and federal regulators

In order to regulate effectively and in a proportionate manner, the BCFSA needs to engage with regulated entities and individuals to understand their views, challenges and opportunities. As well, the BCFSA needs to engage with other regulators to look to opportunities to harmonize regulation, where possible.

Key Strategies:

2.1a. Active attendance in regulatory organizations such as working committees

- Participate in scheduled meetings of all regulatory associations related to the BCFSA's areas of responsibility

2.1b. Number of meetings related to emerging financial regulatory trends and issues such as cyber risk and cross-jurisdictional harmonization

- BCFSA staff act as the Chair of following committees:
  - MBRCC emerging issues committee
  - CCIR natural disasters and ombudservice oversight standing committees
  - CAPSA cyber security committee
  - CUPSA payments and centrals committees

- BCFSA staff participate in regular and ad-hoc working groups, consultations and dialogue with federal and provincial agencies across Canada, such as:
  - Western Canadian Regulators annual conference
  - The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)
  - The Office of the Superintendent of Financial Institutions (OSFI)
  - BCFSA staff participate in a variety of working groups led by other jurisdictions.

2.1c. Appoint an Industry Liaison and implement a stakeholder engagement framework

- Develop and implement the BCFSA's stakeholder engagement framework ensuring an integrated approach across BCFSA.
- Guide the development and maintenance of a culture of engagement with stakeholders and the public and recommend outreach opportunities to increase awareness of the BCFSA's services, priorities and corporate operations.
- Develop and lead the implementation of new outreach strategies and action plans.

Performance Measure(s)		2020/21 Baseline*	2021/22 Target	2022/23 Target
2.1a	Active attendance in regulatory organizations such as working committees.	80% attendance	90%	100%
2.1b	Number of scheduled meetings related to emerging financial regulatory trends and issues. ▪ Attendance at Provincial / Federal meetings ▪ Attendance at Working Committees	 100% attendance 90% attendance	 100% 95%	 100% 100%
2.1c	Stakeholder Engagement Plan ▪ Percentage completion of the work to review and finalize a stakeholder engagement plan including the appointment of an Industry Liaison Officer	50% complete	75%	100%

*baseline measures have been established based on BCFSA operational data

Linking Performance Measures to Objectives:

2.1a Active participation by the BCFSA in regulatory associations through attendance at regularly scheduled meetings fosters harmonization and the development of common approaches to issues of national importance.

2.1b Through chairing and participating in working committees and ongoing engagement with regulatory peers, the BCFSA is aware of and positioned to respond to emerging regulatory issues.

2.1c The introduction of the role of Industry Liaison will allow the BCFSA to plan and execute expanded and more focused engagement with all our stakeholders. The Industry Liaison will seek opportunities to better use modern communication platforms – for example webinars and social media – as well as the more traditional methods of in-person meetings and focus groups.

Objective 2.2: Work collaboratively with government, industry and other stakeholders to review issues related to the cost and availability of insurance for strata corporations

Key Strategies

2.2a. Fully participate in all relevant activities related to the cost and availability of insurance for strata corporations.

- BCFSA staff participate in regular and ad-hoc meetings, working groups, consultations and dialogue related to the cost and availability of insurance for strata corporations.

Performance Measure(s)		2020/21 Baseline*	2021/22 Target	2022/23 Target
2.2a	Active attendance in meetings with government, industry and other stakeholders to review issues related to the cost and availability of insurance for strata corporations.	100% attendance	100%	100%

*baseline measures have been established based on BCFSA operational data

Linking Performance Measures to Objectives:

2.2a Through active participation in meetings with government, industry and other stakeholders with regards to reviewing issues related to the cost and availability of insurance for strata corporations will help ensure the BCFSA will be able to respond to emerging regulatory issues as they pertain to strata insurance.

Goal 3: Regulatory Governance and Legislation

Objective 3.1: Continue to work with the Superintendent of Real Estate, the Ministry of Finance Policy and Legislation Division and the Real Estate Council of BC to establish a single regulator of real estate within the BCFSA.

Government announced in November 2019 the establishment of the BCFSA as the integrated real estate and financial services regulator for British Columbia. The BCFSA is committed to working closely with all parties to achieve a successful transition and integration of real estate regulatory functions.

Key Strategies:

3.1a. Fully participate in all relevant activities related to the establishment of a single regulator at the Ministry's request.

- Together with the Ministry, Superintendent of Real Estate, and Real Estate Council, the BCFSA will develop and implement an integrated transition plan.
- The BCFSA will participate actively and fully in all relevant activities that are necessary to successfully plan and implement the inclusion of real estate in the BCFSA's mandate.

- For example, the BCFSA will attend all steering committee meetings, all sub-committee meetings under the project governance framework, provide written and verbal input into operational and policy discussions, and consult with stakeholders, including industry.
- The BCFSA will work with partners to achieve all transition plan milestones.

Performance Measure(s)		2020/21 Baseline*	2021/22 Target	2022/23 Target
3.1a	Percentage of participation in all relevant activities related to the establishment of a single regulator at the Ministry's request.	100% participation	100%	N/A
	Execute on relevant milestones from transition plan.	75% completion	100%	N/A

*baseline measures have been established based on BCFSA operational data

Linking Performance Measures to Objectives:

3.1a The performance measures demonstrate the BCFSA's commitment to working with partners to develop and implement a plan that achieves Government's goal of an integrated real estate and financial services regulator in spring 2021.

Objective 3.2: Provide information, advice and support to the Ministry of Finance as the Ministry undertakes a review of the *Mortgage Brokers Act.*

The BCFSA regulates the mortgage broker industry, which is a key component of BC's financial services sector. The BCFSA is committed to supporting the Ministry of Finance's review of the *Mortgage Brokers Act*.

Key Strategies:

3.2a. Fully participate in all relevant activities related to the Ministry's review of the *Mortgage Brokers Act*

- The BCFSA will participate fully in all relevant activities to support the Ministry's review of the *Mortgage Brokers Act*. Those activities may include providing expert advice, defining regulatory objectives, offering perspectives on practical application of the legislative framework and highlighting best practices in other jurisdictions.

Performance Measure(s)		2020/21 Baseline*	2021/22 Target	2022/23 Target
3.2a	Percentage of participation in all relevant activities related to the Ministry's review of the *Mortgage Brokers Act*.	100% participation	100%	100%

*baseline measures have been established based on BCFSA operational data

Linking Performance Measures to Objectives:

3.2a The performance measure demonstrates the BCFSA's commitment to supporting a successful legislative review by the Ministry.

Goal 4: Deposit Insurance

Objective 4.1: Work collaboratively with government to ensure a sustainable and effective deposit insurance program and improve financial crisis preparedness.

The Credit Union Deposit Insurance Corporation (CUDIC) is a statutory corporation continued under the *Financial Institutions Act* (FIA) and administered by the BCFSA. CUDIC is responsible for administering and operating the credit union deposit insurance fund. The FIA authorizes CUDIC to guarantee the deposits and non-equity shares of provincially incorporated credit unions in British Columbia.

The BCFSA is committed to working collaboratively with CUDIC and stakeholders to maintain preparedness, stability and confidence in the credit union system.

Key Strategies:

4.1a Implement an Effective BCFSA Deposit Insurance Assessment Methodology

- The BCFSA and CUDIC are committed to maintaining a modern, efficient, and effective deposit insurance assessment methodology that responds to the needs of a rapidly changing credit union system and its depositors. Key activities to achieve that goal include:
  - Finalize and release the deposit insurance assessment methodology to the credit union system for comment;
  - Continue communications and engagement with credit union system and industry associations; and
  - Approve and implement an updated deposit insurance assessment methodology.

4.1b Review and Set Deposit Insurance Fund Size

- Reflecting international best practices, the BCFSA is committed to reviewing the CUDIC fund target size every four years, to ensure the fund size is credible and contributes to depositor confidence and system stability. Key activities to achieve that goal include:
  - Review the approach and parameters used to determine the adequacy of the current target fund range and fund size;
  - Research cross-jurisdictional best practices regarding the establishment of deposit insurance fund targets;
  - Conduct consultations with credit union system and industry associations; and
  - Finalize and adopt new target fund range, target point and funding timeline.

Performance Measure(s)		2020/21 Baseline*	2021/22 Target	2022/23 Target
4.1a	Continue to implement an effective Deposit Insurance assessment methodology. • Percentage of information sessions completed post release	50% completion of information sessions	75%	100%
4.1b	Review and set Deposit Insurance fund size. • Percentage of completion of work to review, finalize and release new fund target size	85% complete	100%	100%

*baseline measures have been established based on BCFSA operational data

Linking Performance Measures to Objectives:

4.1a CUDIC and the BCFSA are committed to maintaining a modern, efficient, and effective deposit insurance methodology that responds to the needs of a rapidly changing credit union system and its depositors. Industry consultation and engagement is an ongoing cornerstone of that commitment. The BCFSA will build on consultations that began in 2017 and will engage the credit union system by releasing a final proposed methodology in preparation for implementation in 2020/2021.

4.1b Reflecting international best practices, the BCFSA is committed to reviewing the CUDIC fund target size every four years, to ensure the fund size is credible and contributes to depositor confidence and system stability. In 2019/20, FICOM engaged an actuarial firm to provide independent actuarial analysis and advice to the Commission and CUDIC Board on the deposit insurance fund target range, target point, and funding timeline. The actuarial modelling is part of a comprehensive internal review of both quantitative and qualitative factors, including regulatory powers and practices.

Goal 5: Anti-Money Laundering

Objective 5.1: Work collaboratively with government as it improves the effectiveness of B.C.'s Anti-Money Laundering Regime

In 2019, Government received two reports identifying weaknesses and opportunities to strengthen B.C.'s anti-money laundering (AML) system (Combatting Money Laundering in BC, by the Expert Panel on Money Laundering in BC Real Estate, and Dirty Money – Part 2, by Peter German and Associates). On May 15, 2019, in the wake of these reports, the Government announced the establishment of the Cullen Commission of Inquiry into Money Laundering in BC.

Key Strategies:

5.1a. Fully participate in all relevant activities related to strengthening the BC and Canadian AML regime, including implementation of recommendations from the reports as endorsed by Government.

- Ensure BCFSA provides expert advice, where required, on policy and operational matters related to the initiative.

5.1b. Independently identify and implement opportunities for the BCFSA to strengthen its role within the current, integrated AML regime

- The BCFSA will identify and implement measures to support improved AML outcomes, including, for example:
  - amplify its focus on AML controls in its supervisory assessment of financial institutions;
  - increase scrutiny of mortgage broker applications and activities for potential money laundering risks;
  - continue to report suspected money laundering activities to relevant federal partners; and
  - increase interactions with AML partners on a bilateral and multilateral basis.

Performance Measure(s)		2020/21 Baseline*	2021/22 Target	2022/23 Target
5.1a	Percentage of participation in all relevant activities related to the review and implementation of AML improvements, and other complementary recommendations, as endorsed by Government.	100% participation	100%	100%
5.1b	Number of opportunities to strengthen the BCFSA's AML role identified and implemented.	10 opportunities identified	10	10

*baseline measures have been established based on BCFSA operational data

Linking Performance Measures to Objectives:

5.1a The performance measure demonstrates the BCFSA's commitment to supporting the strengthening of the BC and Canadian AML regime.

5.1b The performance measure demonstrates the BCFSA's proactive response to opportunities to strengthen its role in AML, in the context of its current mandate and jurisdiction.

Financial Plan

Summary Financial Outlook

($000)	2019/20 Forecast	2020/21 Budget	2021/22 Plan	2022/23 Plan
Total Revenue				
By Major Sources				
Fees, Licenses & Recoveries	8,171	26,905	28,594	29,654
Grants	5,471	5,339	2,849	-
Total Revenue	**13,642**	**32,244**	**31,443**	**29,654**
Total Expenses				
Salaries and Benefits	7,044	21,285	21,445	21,605
Other	5,827	9,707	7,814	7,440
Total Expenses	**12,871**	**30,992**	**29,259**	**29,045**
Net Income/Excess of Revenue over Expenses/Annual Surplus (Deficit)	**771**	**1,253**	**2,184**	**610**
Total Liabilities/Debt (even if zero)	**0**	**0**	**0**	**0**
Accumulated Surpluses/Retained Earnings/Equity (even if zero)	**771**	**2,024**	**4,208**	**4,818**
Capital Expenditures	**0**	**0**	**0**	**0**
Dividends/Other Transfers	**0**	**0**	**0**	**0**

Key Forecast Assumptions, Risks and Sensitivities

Key assumptions for the 2020/21 budget:

- The BCFSA regulatory fee changes that became effective early 2020 will increase fee revenue by $2.1M versus 2019/20.
- Industry activity will remain stable through to year end.
- New staff positions will be filled by fiscal year-end, enabling the BCFSA to increase its regulatory capacity and drive innovation.

Key assumptions for the 2021/22 budget:

- The BCFSA regulatory fee changes that became effective early 2020 will increase fee revenue by $2.2M versus 2020/21.

Key assumptions for the 2022/23 budget;

- The BCFSA regulatory fee changes that became effective early 2020 will increase fee revenue by $0.6M versus 2021/22.

Risks and Sensitivities

- The financial services sector in BC and globally is rapidly evolving. If the BCFSA cannot keep up, it could impede the BCFSA's ability to respond in times of crisis. Complexity and interconnectedness across and within sectors necessitates a thoughtful, proportionate and responsive regulatory approach.
- The BCFSA will be part of a larger system of government agencies, financial services providers and the economy. Although basic regulatory functions would continue, failure to engage with stakeholders could result in the regulator being out of touch with the nature and severity of risks faced by its sector participants and therefore failure to be able to appropriately carry out its mandate.
- Failure to align and coordinate with partners including the Ministry of Finance, Real Estate Council of BC and Superintendent of Real Estate could hinder successful integration of real estate regulatory functions in the BCFSA.
- Failure to provide sound advice and support to the Ministry of Finance in its review of the *Mortgage Brokers Act* could hinder the modernization of the regulatory framework and the ability of the regulator to respond to industry trends and risks.
- If there are no credit union failures/financial crises during the fiscal year, the impact of failing to develop and operationalize improvements to the credit union deposit insurance fund will be low. However, if there is a crisis and the organization has not finished developing its plan and secured the funds to pay out depositors, it would have a very high impact on the organization's ability to fulfill its core mandate.
- The success of BC and Canada's AML framework rests on close cooperation and collaboration between various parts of the AML system, and failure to work together would impact the BCFSA's ability to fulfill its mandate and effectively regulate the financial services sector.

Management's Perspective on the Financial Outlook

The ongoing funding model for the BCFSA does not include financial support from the Government of British Columbia. Most of the BCFSA's revenue comes from filing, registration and application fees paid by regulated entities and individuals under the various statutes. Compensation, occupancy and asset depreciation expenses account for about 70% of total expenses.

Appendix A: Hyperlinks to Additional Information

Corporate Governance

- BCFSA Governance
- BCFSA Board of Directors and of each Board Committee
- Per Appendix 1 of B.C.'s 'Governance and Disclosure Guidelines for Governing Boards of B.C. Public Sector Organizations":

Organizational Overview

- BCFSA Mandate
- BCFSA's business areas
- Location of BCFSA operations

Additional Information

- *Financial Services Authority Act, 2019*
- *Credit Union Incorporation Act*
- *Financial Institutions Act*
- *Insurance Act*
- *Insurance (Captive Company) Act*
- *Mortgage Brokers Act*
- *Pension Benefits Standards Act*
- Auditor General's Report
- Canadian Council of Insurance Regulators (CCIR)
- Credit Union Prudential Supervisors Association (CUPSA)
- Canadian Association of Pension Supervisory Authorities (CAPSA)
- Mortgage Broker Regulators' Council of Canada (MBRCC)
- Strata Legislation

Appendix W-1

BCFSA Mortgage Brokers Education Requirements

BC FINANCIAL
SERVICES AUTHORITY

Official Change of Name

On November 1, 2019, BC Financial Services Authority (BCFSA) replaces the Financial Institutions Commission (FICOM) as BC's regulator of credit unions, trust companies, insurance companies, pension plans and mortgage brokers. All references in the attached document to **FICOM** and the **Financial Institutions Commission** should be read as **BCFSA** and **BC Financial Services Authority** until revised or replaced by the name of the Authority. The attached form or document will continue to be used until otherwise revised or cancelled.

If you have any questions, please contact us at 604-660-3555.
Email: bcfsa@BCFSA.ca

BC FINANCIAL SERVICES AUTHORITY

Education Requirements

New Individual Applicant

Individuals with No Experience

Mortgage broker applicants operating as sole proprietors and submortgage broker applicants must successfully complete certain courses in order to qualify for registration. The courses or programs which qualify for mortgage broker or submortgage broker registration are:

1. Mortgage Brokerage in British Columbia; or
2. A Diploma in Urban Land Economics, or its three core courses:
    - 111 Real Property Law & Ethics;
    - 121 Foundations of Real Estate Mathematics; and
    - 221 Real Estate Finance in a Canadian Context; or
3. a four year Bachelor of Commerce Degree with a specialization in Real Estate.

Individuals who have successfully completed the course, Mortgage Brokerage in British Columbia, must apply for registration within one year of writing the examination. This is to ensure that recently qualified individuals build on and solidify their education. However, if an individual has been actively brokering mortgages on behalf of an entity exempt from registration, such as a savings institution, the one year period may be extended.

Examination Challenge Option for Individuals with Experience

Individuals, who have significant experience in the mortgage broker industry, may be permitted to enroll in an accelerated version of the course, Mortgage Brokerage in British Columbia. The Examination Challenge Option program allows individuals to obtain course materials and challenge the final examination without the requirement to complete assignments.

In order to apply for permission to enter the Exam Challenge program, individuals must submit a resume outlining their education and work experience to the Registrar of Mortgage Brokers ("Registrar"). Individuals must receive written confirmation from the Registrar stating that they are eligible to challenge the Mortgage Brokerage in British Columbia examination prior to their enrolment in the program.

Individuals are only permitted to enroll in the challenge program once, and must challenge the examination within 18 months of receiving permission to do so from the Registrar. Individuals, who do not pass the examination or fail to write the examination within 18 months of receiving permission, must enrol in the full course. This would involve successfully completing the

assignments and pass the examination in order to satisfy the education requirements for mortgage broker registration.

An individual applicant for mortgage broker or submortgage broker registration who is currently licensed as a mortgage associate or equivalent in another province with which BC has a reciprocal licensing agreement in place must comply with the requirements outlined in the related policy document.

Individual Interprovincial Applicants who do not Qualify for Licensing Reciprocity

Individual applicants for mortgage broker or submortgage broker registration who do not qualify for licensing reciprocity and have been licensed or registered as a mortgage broker or equivalent in another province for at least three out of the last five years, or who have successfully written and passed a qualifying mortgage broker's prelicensing examination in another province within the last year may qualify for registration by successfully completing:

1. any of the three courses or programs listed above; or

2. the Mortgage Brokerage Inter-Provincial and BC Procedures examination.

Previously licensed or registered Interprovincial applicants seeking to write the Mortgage Broker Inter-Provincial and BC Procedures examination must provide the Registrar with an original copy of their licensing history including their disciplinary record.

Interprovincial applicants seeking to write the Mortgage Broke Inter-Provincial and BC Procedures examination who have not been previously licensed or registered, must provide the Registrar with a copy of the course certificate from a mortgage broker prelicensing course in the other province.

Applicants with Prior Real Estate Services Education

Individual applicants who have successfully completed a former real estate services course from the Sauder School of Business within the last year, who have been licensed with the Real Estate Council of BC for at least three of the last five years, or who are currently licensed with the Real Estate Council of BC may qualify for registration by successfully completing:

1. any of the three courses or programs listed under "Individuals with No Experience"; or
2. the Mortgage Brokerage Supplemental Course.

Individuals who are currently licensed with the Real Estate Council of BC or who have successfully completed former real estate services courses from the Sauder School of Business within the past year may enroll directly in the Mortgage Brokerage Supplemental Course.

Individuals who have been licensed with the Real Estate Council of BC for at least three of the last five years must receive written confirmation from the Registrar stating that they are eligible to enroll in the Mortgage Brokerage Supplemental Course, prior to their enrolment in the program.

Individuals who have successfully completed the Mortgage Brokerage Supplemental Course must apply for mortgage broker registration within one year of writing the examination. This is to ensure that recently qualified applicants build on and solidify their education. However, if an individual has been actively brokering mortgages on behalf on an entity exempt from registration, such as a savings institution, the one-year period may be extended.

Course Information

All courses and programs listed above are offered by the University of British Columbia. Further information on the courses or programs may be obtained from:

Real Estate Division
Sauder School of Business
202 – 2053 Main Mall
University of British Columbia
Vancouver, British Columbia V6T 1Z2
Telephone Number: (604) 822-8444
Toll Free: 1-888-776-7733
Web: http://www.realestate.ubc.ca/mortgages
E-mail: info@realestate.sauder.ubc.ca

Former Registrants Who Wish to Reactivate Their Registration

Individuals who are not currently registered, but have been registered as a mortgage broker or submortgage broker within the last five years, may apply to reactivate their registration without retaking any of the qualifying courses or programs. However, they will be required to satisfy the renewal of registration education requirement prior to obtaining registration.

If a former registrant seeking reactivation has been actively brokering mortgages on behalf of an entity exempt from registration, such as a savings institution, the five-year period may be extended.

Continuing Education

The Registrar requires persons who are registered as mortgage brokers or submortgage brokers under the Mortgage Brokers Act to qualify for each and every registration renewal, and unregistered persons to qualify for reinstatement of their registration, by taking continuing education. Please refer to bulletin MB 14-002 for details and approved courses.

Appendix W-2

BCSFA Mortgage Broker Registrations

BC FINANCIAL
SERVICES AUTHORITY

Official Change of Name

On November 1, 2019, BC Financial Services Authority (BCFSA) replaces the Financial Institutions Commission (FICOM) as BC's regulator of credit unions, trust companies, insurance companies, pension plans and mortgage brokers. All references in the attached document to **FICOM** and the **Financial Institutions Commission** should be read as **BCFSA** and **BC Financial Services Authority** until revised or replaced by the name of the Authority. The attached form or document will continue to be used until otherwise revised or cancelled.

If you have any questions, please contact us at 604-660-3555.
Email: bcfsa@BCFSA.ca

BC FINANCIAL SERVICES AUTHORITY

Mortgage Broker Registrations

When is Registration Required?

Under the Mortgage Brokers Act (the Act), companies, partnerships and sole proprietors, unless exempted under section 11 of the Act, need to be registered as mortgage brokers to engage in mortgage broker activity. The Act defines a "mortgage broker" as a person who does any of the following:

a) carries on a business of lending money secured in whole or in part by mortgages whether the money is the mortgage broker's own or that of another person;
b) holds himself or herself out as, or by an advertisement, notice or sign indicates that he or she is, a mortgage broker;
c) carries on a business of buying and selling mortgages or agreements for sale;
d) in any one year, receives an amount of $1,000 or more in fees or other consideration, excluding legal fees, for arranging mortgages for other persons;
e) during any one year, lends money on the security of 10 or more mortgages; and
f) carries on a business of collecting money secured by mortgages.

Arranging Mortgages – Examples

The intent of the Act is to require every person involved in an essential way in the process of "arranging mortgages" to be registered.

The specific set of facts will determine whether a person is "arranging mortgages". However, for guidance, the following activities are likely to constitute "arranging mortgages":

- promoting mortgage brokering services;
- speaking with customers about mortgages, explaining the mortgage terms, or reviewing the mortgage documents and / or disclosure statements;
- taking mortgage applications;
- obtaining supporting documentation and conducting credit bureau checks;
- dealing with any lender in obtaining approvals and providing documentation to support a mortgage application; and
- completing mortgage renewals.

Mortgage brokers may employ clerical, accounting, or management staff without requiring those employees to be registered provided those employees are not actively engaged in arranging mortgages.

How to Apply for Registration

New mortgage broker applicants, or mortgage broker registrants who intend to register a new branch office, must print paper applications from the BCFSA website. The completed application with the accompanying information, documents and fees must then be sent to the Registrar of Mortgage Broker (Registrar)'s office for processing. Once a mortgage broker has obtained registration, it may commence using our MB E-filing system to file and amend registration information and applications.

Designated Individual Qualifications

Each mortgage broker which is a corporation, partnership or sole proprietorship must have a registered sub-mortgage broker who acts as its "Designated Individual".

In order to qualify to act as a Designated Individual, a person:

- must be an officer and/or director of a corporate mortgage broker; or
- must be a general partner in a mortgage broker partnership; or
- must be a sole proprietor; AND
- must have recently be registered under the Act or similar legislation in another jurisdiction for a minimum of two years with no prior record of regulatory misconduct under the Act or any other legislation in British Columbia or elsewhere.

The main responsibilities of the Designated Individual are:

- ensures that all employees involved in arranging mortgages are properly supervised and registered under the Act;
- ensures that all employees are aware of the Act, the Regulations made pursuant to the Act, and the Information Bulletins and policies of the Registrar;
- ensures that all financial records of the mortgage broker are accurate and up to date;
- ensures that year-end financial filings are provided to the Registrar annually; on time; and, in the form required;
- maintains accurate and timely registration information; and
- submits complete and accurate applications from the mortgage broker through the MB E-filing system.

Trade Names

If a mortgage broker wishes to identify itself by a sole proprietorship name, it must register that name with the Registrar of Companies and provide a copy of that registration to the Registrar of Mortgage Brokers. Please note we require all partnerships to register a business name with the Registrar of Companies and obtain mortgage broker registration under that name.

New Mortgage Broker Applications for Corporations and Partnerships

If the applicant for mortgage broker registration is a corporation or partnership, the intended designated individual must complete the Form 1 – Application for Mortgage Broker Registration of a Corporation or Partnership.

The following completed documents and fees must accompany the application:

- $1,900 for the application for registration for the mortgage broker; and
- $1,500 for the application for registration for sub-mortgage broker who is the intended Designation Individual if not currently registered in BC.
- A copy of the certificate of incorporation or extra-provincial registration from BC Corporate Registry for a corporation or partnership;
- A copy of the partnership agreement if applicable;
- A copy of the trade name filing at BC Corporate Registry if the applicant intends to use a trade name;
- A copy of the agreement or letter for the consent to use the name of another corporate entity if the mortgage broker applicant is a franchisee;
- A Form 2A Director Officer Information Return completed by each and every director and /or partner of the corporation or partnership;
- A Form 16 Certification for Applicants completed by each and every director and /or partner of the corporation or partnership,
- One piece of colour copied government issued identification, which includes a photograph of the director;
- A certified criminal record check for each director and/or partner, which is dated not more than six months from the date of application (see bulletin MB 11-002);
- A Form 2A Director Officer Information Return completed by the sub-mortgage broker who is intended to be the designated individual;
- A Form 16 Certification for Applicants completed by the sub-mortgage broker who is intended to be the Designated Individual,
- One piece of colour copied government issued identification, which includes a photograph of the sub-mortgage broker; and
- A certified criminal record check for the sub-mortgage broker, which is dated not more than six months from the date of application (see bulletin MB 11-002).

Sole Proprietor Applications

If the Applicant for mortgage broker registration is a sole proprietor, the Applicant must complete a Form 1A – Application for Mortgage Broker Registration of a Sole Proprietor.

The following completed documents must accompany the application:

- $1,500 for the application for registration for sole proprietorship as a mortgage broker;
- A copy of the trade name filing at BC Corporate Registry if the applicant intends to use a trade name;

- A copy of the agreement or letter for the consent to use the name of another corporate entity if the mortgage broker applicant is a franchisee;
- A Form 2A Director Officer Information Return completed by the sole proprietor;
- A Form 16 Certification for Applicants, completed by the sole proprietor,
- One piece of colour copied government issued identification, which includes a photograph of the director; and
- A certified criminal record check for the sole proprietor, which is dated not more than six months from the date of application (see Bulletin MB 11-002).

Branch Office Applications

Currently registered mortgage brokers who intend to open a new branch location must complete a New Branch application online via the MB E-Filing System. The submission requires a $200 application fee.

Each mortgage broker branch office location must have at least one registered sub-mortgage broker.

Mortgage broker branch office applications will be approved with the following condition: “Must submit MB E-filed sub-mortgage broker application within 30 days”.

You will receive an email from the Registrar’s office confirming the registration of the branch office and the requirement to register a sub-mortgage broker. Failure to register a sub-mortgage broker with the branch office within 30 days will result in the branch office termination.

Appendix X

Real Estate Development Marketing Enforcement Action – Province of British Columbia

Real Estate Development Marketing Enforcement Action

Real Estate Development Marketing Enforcement Action

The B.C. government investigates and takes enforcement action against real estate developers who provide inadequate disclosure statements, mishandle deposits or market developments without meeting legislated requirements.

Regulatory action is undertaken by the Office of the Superintendent of Real Estate (OSRE), which may result in an order being made. Such an order may be made on an urgent basis without a hearing, by consent or following a hearing.

Notices, Orders & Decisions

The following actions were taken against real estate developers for misconduct under the *Real Estate Development Marketing Act*.

Release Date	Parties (PDF)	Issue	Type
2020-02-28	1216920 B.C. Ltd. (directors Breen, Donna Marie; Doornenbal, Robert James; and Fletcher, Marty.)	• Inadequate Disclosure and Mishandling Deposits	Cease Marketing Order
2019-01-31	0981478 B.C. Ltd (director Chandler, Mark)	• Inadequate Disclosure and Mishandling deposits	Notice of Hearing
2017-09-08	0981478 B.C. Ltd (director Chandler, Mark)	• Inadequate Disclosure and Mishandling deposits	Cease Marketing Order
2012-05-10	J. Gordon Enterprises LTD. and Gordon, Jason	• Inadequate Disclosure	Consent Order
2012-01-24	J. Gordon Enterprises LTD. and Gordon, Jason	• Inadequate Disclosure	Notice of Rescheduled Hearing Date
2012-01-10	J. Gordon Enterprises LTD. and Gordon, Jason	• Inadequate Disclosure	Notice of Adjournment of Hearing

Appendix X

Release Date	Parties (PDF)	Issue	Type
2011-08-03	Local 1661 Building Inc. and Wiegel, Jeffrey Karl	• Inadequate Disclosure	Cease and Desist Order
2011-03-30	Holborn Developments (2812 Main) LTD. and 2812 Main Holdings Ltd.	• Inadequate Disclosure and Breach of Undertaking	Consent Order
2010-07-21	Revelstoke Mountain Resort Limited Partnership and Revelstoke Mountain Resort Inc. and Gaglardi, Andrea Gail and Gaglardi, Devonna Brooke	• Inadequate Disclosure and Breach of Undertaking	Consent Order
2010-05-06	Lallico Investments Ltd and 679972 BC Ltd and 671532 BC Ltd. and Gill, Gopal Singh and Lalli, Jaspal Singh and Lalli, Manjit	• Inadequate Disclosure and Mishandling Deposits	Notice of Adjournment of Hearing
2010-02-10	Lallico Investments Ltd and 679972 BC Ltd and 671532 BC Ltd. and Gill, Gopal Singh and Lalli, Jaspal Singh and Lalli, Manjit	• Inadequate Disclosure and Mishandling Deposits	Notice Of Hearing
2009-09-23	JR Concept Developments Inc. and Randhawa, Jugdeep	• Inadequate Disclosure	Notice Of Adjournment Of Hearing
2009-08-21	Pacific Land Sales of Costa Rica LLC and Cohen, Mitchell Fred		Cease Marketing Order
2009-08-12	Hundal, Bhajan Singh And Gill, Gopal Singh	• Mishandling Deposits	Notice Of Adjournment Of Hearing
2009-03-13	Royal Indian Raj International Holdings Corporation, Royal Indian Raj International Real Estate Fund Ltd., Royal Garden Villas Resort Corp., Royal Garden City Enterprises Private Limited, Royal Indian Raj International Corporation, BENJAMIN, Ravi, BENJAMIN, Collins, [REDACTED] and BENJAMIN, Manoj C.	• Inadequate Disclosure and Mishandling Deposits	Cease and Desist Order

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Release Date	Parties (PDF)	Issue	Type
2009-03-11	Hundal, Bhajan Singh And Gill, Gopal Singh	• Mishandling Deposits	Amended Notice of Hearing
2009-01-27	684693 BC Ltd., GILL, Amritpal and RAI, Ranjit	• Inadequate Disclosure and Mishandling Deposits	Consent Order
2009-01-13	The Springs RV Resort AT Harrison Inc., Grant, David D. and Moser, Wayne and Moser, Beatrice and Smith, Mary Darlene	• Inadequate Disclosure	Consent Order
2008-12-08	Westcoastliving Developments Ltd. and Gill, Munjinder and Gill, Baljit	• Inadequate Disclosure and Mishandling Deposits	Cease Marketing Order
2008-12-04	JR Concept Developments Inc. and Randhawa, Jugdeep (Hearing adjourned to 2009-10-02)	• Inadequate Disclosure	Amended Notice of Hearing
2008-11-20	528872 B.C. Ltd.	• Inadequate Disclosure	Consent Order
2008-11-18	Lochhead, Craig William and Hayward, Grayden Roland and Hogue, Maurice R. and Carrera Ventures LTD. and Mardon Developments LTD.	• Inadequate Disclosure	Consent Order
2008-10-28	0732433 B.C. Ltd and Lalli, Binder Singh	• Inadequate Disclosure and Mishandling Deposits	Cease Marketing Order
2008-10-21	Soaring Peaks Developments Ltd. and LeSeur, Philip	• Inadequate Disclosure	Consent Order
2008-10-21	Stonehaven Enterprises Ltd., LeSeur, Philip, Hartwig, Gerald, and McColl, Fraser	• Inadequate Disclosure	Consent Order
2008-09-04	18 On 18 Developments Ltd., Barrie, Leonard Greig, LeSeur, Philip, and McColl, Fraser	• Inadequate Disclosure	Consent Orde

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Release Date	Parties (PDF)	Issue	Type
2008-07-30	528872 B.C. Ltd.	• Inadequate Disclosure	Consent Order
2008-07-29	Balcom Financial Corporation, Madden Holdings Ltd., BFC Development Corporation, Asher Strata Homes, East View Ridge Developments, Balcom, Ralph, and Balcom, Kathy	• Inadequate Disclosure	Consent Order
2008-07-03	Balcom Financial Corporation, Madden Holdings Ltd., BFC Development Corporation, Asher Strata Homes, East View Ridge Developments, Balcom, Ralph, and Balcom, Kathy	• Inadequate Disclosure	Consent Order
2008-06-09	0692273 B.C. Ltd., and Gustafsson, Roland Steven, and Lindsay, Steven Herbert, and Tait, Thomas A.	• Inadequate Disclosure	Consent Order
2008-05-14	Paraiso Tropical S.A. and Miranda, Ricardo	• Inadequate Disclosure and Mishandling Deposits	Cease Marketing Order
2008-05-05	The Springs RV Resort at Harrison Inc., Grant, David D., Moser, Wayne, Moser, Beatrice, and Smith Mary Darlene	• Inadequate Disclosure	Cease Marketing Order
2008-04-28	18 on 18 Developments Ltd., and Soaring Peaks Developments Ltd. and Barrie, Leonard Greig, and Leseur, Philip, and McColl, Fraser	• Inadequate Disclosure	Cease Marketing Order
2008-03-05	TDF Developments Inc. and Kereliuk, Terry, McDonald, David, Myroon, Donald, 962001 Alberta Ltd., Mid Coast Consulting and Inspection Ltd., and Onyx Ventures Corp.	• Inadequate Disclosure	Consent Order
2008-02-19	TDF Developments Inc. and Kereliuk, Terry, McDonald, David, Myroon, Donald, 962001 Alberta Ltd., Mid Coast Consulting and Inspection Ltd., and Onyx Ventures Corp.	• Inadequate Disclosure	Cease Marketing Order
2008-02-19	Vastu Development Corporation and Arney, Donald Brian, Beifuss, Richard Michael, Hardy Michael Bruce, McCooey, Mark, Shapka, Maury, Wilbert, Gary, Taves, Ruth Anne Helene and the development known as Vastu Forest Estates	• Inadequate Disclosure	Consent Order

Appendix X

Release Date	Parties (PDF)	Issue	Type
2008-02-08	Balcom Financial Corp., Madden Holdings Ltd., BFC Development Corp., Asher Strata Homes, East View Ridge Developments, Balcom, Ralph, and Balcom, Kathy	• Inadequate Disclosure and Mishandling Deposits	Cease Marketing Order
2008-02-05	Jr Concept Developments INC. and Randhawa, Jugdeep	• Inadequate Disclosure	Cease Marketing Order
2008-01-22	528872 B.C. Ltd. and Peligren, Timothy Bruce	• Inadequate Disclosure and Breach of Cease and Desist Order	Consent Order
2008-01-17	Timberstone Lodge Properties Ltd., Mehl, Fred, Koehler, Trent, Johnson, Lloyd, Arndt, Lavern, and Barnes, Irene	• Inadequate Disclosure, Mishandling Deposits and Breach of Undertaking	Consent Order
2008-01-07	Vastu Development Corporation and Arney, Donald Brian, Beifuss, Richard Michael, Hardy, Michael Bruce, McCooey, Mark, Shapka, Maury, Wilbert, Gary, Taves, Ruth Anne Helene, and the development know as Vastu Forest Estates	• Inadequate Disclosure	Cease Marketing Order
2007-12-18	Timberstone Lodge Properties Ltd., Mehl, Fred, Koehler, Trent, Johnson, Lloyd, Arndt, Lavern, and Barnes, Irene	• Inadequate Disclosure and Breach of Undertaking	Cease Marketing Order
2007-12-13	Vastu Gardens Project Ltd., and Colver, Paul, and Harris, Raymond Fearon	• Inadequate Disclosure	Cease Marketing Order
2007-10-23	Chandler, Mark John, and Chandler Katsura Developments Inc., and Cook and Katsura Homes Inc., and Chandler Homer Street Ventures Ltd. – *H&H Yaletown* and *Garden City Residences on a Park* may be marketed by the court-appointed receiver (i.e. The Bowra Group) under a Disclosure Statement filed with the Superintendent of Real Estate on 2008-02-28, for each of those two developments	• Inadequate Disclosure	Refrain from Marketing Order

Appendix X

Release Date	Parties (PDF)	Issue	Type
2007-09-25	A.P. Development Group Inc. and Hottman, Reiner	• Security for Utilities and Services	Consent Order
2007-09-14	International Hi-Tech Industries Inc., and IHI Development II Ltd., and Abou-Rached, Roger, aka Roger A. Rached	• Inadequate Disclosure	Refrain from Marketing Order
2007-07-18	Orville, Michael and Century Point Residences Ltd.	• Inadequate Disclosure	Cease Marketing Order
2007-06-25	Hauff, Brian Lyons, Cook, Devan Edward William, Tuan Development Inc. and Saltspring Island Investments Ltd.	• Inadequate Disclosure	Refrain from Marketing Order
2007-06-07	Lochhead, Craig William, Hayward, Grayden Roland, Hogue, Maurice R., Carrera Ventures Ltd. and Mardon Developments Ltd	• Inadequate Disclosure	Cease Marketing Order
2007-05-14	CB Development 2000 Ltd., Lochhead, Craig William, and Hayward, Grayden Roland	• Inadequate Disclosure	Cease Marketing Order
2007-01-19	528872 B.C. Ltd.	• Inadequate Disclosure	Cease Marketing Order
2006-10-04	A.P. Development Group Inc., and Hottman, Reiner	• Breach of Cease and Desist Order	Cease Marketing Order
2006-09-01	Chandler Katsura Developments Inc. and Hamlin Mews Inc. and Tribeca Lofts Yaletown Inc. and Chandler Homer Street Ventures Ltd. (Collectively "the Developers") and Chandler, Mark and Rennie Marketing Systems Ltd.	• Inadequate Disclosure and Security for Utilities and Services	Consent Order

Release Date	Parties (PDF)	Issue	Type
2006-06-30	Chandler Katsura Developments Inc. and Hamlin Mews Inc. and Tribeca Lofts Yaletown Inc. and Chandler Homer Street Ventures Ltd. (collectively "the Developers") and Chandler, Mark and Rennie Marketing Systems Ltd.	• Inadequate Disclosure and Mishandling Deposits	Cease Marketing Order
2006-06-15	Knight, Michael Jerome	• Unlicensed Trading Services, Inadequate Disclosure and Mishandling Deposits	Consent Order

The following actions were taken against real estate developers for misconduct under the *Real Estate Act*, which was repealed in 2005.

Release Date	Parties (PDF)	Issue	Type
2004-06-18	Ladysmith Hilltop Holdings Ltd. - Twin Falls Development	• Inadequate Disclosure	Marketing Resumes
2004-02-27	Gaukel, Norman And 619399 B.C. Ltd.	• Inadequate Disclosure	Temporary Cease Selling Order and Notice Of Hearing
2004-02-16	Ladysmith Hilltop Holdings Ltd.	• Inadequate Disclosure	Temporary Cease Selling Order and Notice of Hearing
2002-10-14	Sullivan Village	• Inadequate Disclosure	Marketing Resumes
2002-09-17	577995 B.C. Ltd. and 504807 B.C. Ltd. dba Chez Victoria	• Inadequate Disclosure	Developer Ordered To Permanently Halt All Selling And Leasing
2002-09-03	577995 B.C Ltd. and 504807 B.C. Ltd. dba Chez Victoria	• Inadequate Disclosure	Developer Ordered To Halt Leasing
2002-09-03	Gateway Falls R.V. Estates	• Inadequate Disclosure	Marketing- Resumes

Appendix X

Release Date	Parties (PDF)	Issue	Type
2002-07-03	Sullivan Village	• Inadequate Disclosure	Developer Ordered To Halt Sales
2001-11-07	Carlow Real Estate Limited Partnership	• Inadequate Disclosure	Cease Selling Order
2001-09-19	Gateway Falls	• Inadequate Disclosure	Tri-Corp Ordered To Stop Marketing

Make a Complaint

The Office of the Superintendent of Real Estate regulates the marketing of multi-unit real estate developments.

- Make a complaint against misconduct (PDF)

Appeal a Decision

The Financial Services Tribunal hears appeals of enforcement decisions made by the Superintendent of Real Estate and the Real Estate Council of B.C.

- Financial Services Tribunal

Resources

- Real Estate Development Marketing Act
- Office of the Superintendent of Real Estate
- Real Estate Council of B.C.
- B.C. Real Estate Association
- Real Estate Institute of B.C.
- Real Estate Foundation of B.C.
- Association of Real Estate License Law Officials
- UBC Real Estate Division

Contact Information

Contact the Office of the Superintendent of Real Estate:

Office:
604 660-1883

Street:
2800 - 555 West Hastings, Vancouver BC, V6B 4N6

Email:
realestate@gov.bc.ca

Appendix X

Appendix X-1

BC Real Estate Services Enforcement Action

Real Estate Services Enforcement Action

The B.C. government investigates and takes enforcement action against real estate service providers who do not have a licence or an exemption from legislated requirements.

Regulatory action is undertaken by the Office of the Superintendent of Real Estate (OSRE), which may result in an order being made. Such an order may be made on an urgent basis without a hearing, by consent or following a hearing.

Notices, Orders & Decisions

The following actions were taken against real estate service providers for misconduct under the *Real Estate Services Act*.

Release Date	Parties (PDF)	Issue	Type
2021-01-14	Colton Roberts and Renters Management Inc. and Bluhome Properties	• Unlicensed Rental Property Management Services	Cease and Desist Order
2020-02-07	1074936 B.C. Ltd. and Vasant Pragjibhai Patel	• Unlicensed Trading Services	Notice of Hearing
2019-12-16	Gee Sing Jason Pao	• Unlicensed Rental Property Management Services	Notice of Hearing
2019-08-07	Kitsilano Management Ltd. and Yiu Keung (Anthony) Ng	• Unlicensed Rental Property Management Services	Notice of Hearing
2016-09-13	Shangren Vancouver Settlement Service Ltd. and Feng 'Fanny' Ni and Xiao Wen 'Wendy' Ye	• Unlicensed Trading Services	Cease and Desist Order
2016-09-13	Shangren Vancouver Settlement Service Ltd. and Feng 'Fanny' Ni and Xiao Wen 'Wendy' Ye	• Unlicensed Trading Services	Freeze Order

Release Date	Parties (PDF)	Issue	Type
2015-12-08	Valcourt, Mary and Valcourt, Kenneth and K & K Homelink Network Enterprises	• Unlicensed Trading Services • Unlicensed Rental Property Management Services	Consent Order
2015-04-02	Morhun, Patricia and Morhun, Gerald Roy and At Ease Rental Property Maintenance and Administration	• Unlicensed Rental Property Management Services	Consent Order
2014-09-30	Jason Gee Sing Pao and Jason Gee Sing Pao doing business as M G Property Management Co.	• Unlicensed Rental Property Management Services	Consent Order
2014-03-06	Murphy, Ian Hayden and Bateleur Properties Inc. dba Executive Property Management and dba Executive Management	• Unlicensed Rental Property Management Services	Decision
2014-01-22	Bentrott, Darlene Katie and Bentrott, Darlene Katie doing business as Darlene's Property Management Service and Bentrott, Darlene Katie doing business as Event Enterprise	• Unlicensed Rental Property Management Services	Hearing Decision
2014-01-10	Wilson, Tamara Lee and Stearns, Bradley David	• Unlicensed Rental Property Management Services	Cease and Desist Order
2013-12-17	Bell, Scott and Bell, Stephen and Blackwell, Eric and Gonsalves, Mark and Petersen, Brian and Millionaire Mentor Group LLC, and Profits in Paper, Inc. dba Profits in Paper Group	• Unlicensed Trading Services	Notice of Adjournment of Hearing

Release Date	Parties (PDF)	Issue	Type
2013-12-13	Kassam, Khalil Altaf and Kassam, Khalil Altaf doing business as Pacific Rim Living	• Unlicensed Rental Property Management Services	Cease and Desist Order
2013-09-06	Cooper, Tina and 625873 B.C. LTD. dba VANAPS	• Unlicensed Rental Property Management Services	Consent Order
2013-08-07	Robert Alexander Collins	• Unlicensed Rental Property Management Services	Consumer Alert
2013-02-05	Scott, Guy Alexander and Kelowna Golf Ski & Borgata Lodge Ltd. and Lewis, Chris	• Unlicensed Rental Property Management Services	Consent Order
2012-12-10	Scott, Guy Alexander and Kelowna Golf Ski & Borgata Lodge Ltd. and Lewis, Chris	• Unlicensed Rental Property Management Services	Notice of Adjournment and Resetting of Hearing
2012-07-03	Bentrott, Darlene Katie and Bentrott, Darlene Katie doing business as Darlene's Property Management Service and Bentrott, Darlene Katie doing business as Event Enterprise	• Unlicensed Rental Property Management Services	Cease and Desist Order
2012-04-13	Scott, Guy Alexander and Kelowna Golf Ski & Borgata Lodge Ltd. and Lewis, Chris	• Unlicensed Rental Property Management Services	Cease and Desist Order

Release Date	Parties (PDF)	Issue	Type
2012-03-07	Fan, Jessica doing business as Amber Terrace Property and doing business as Properties Amber	• Unlicensed Rental Property Management Services	Cease and Desist Order
2011-08-09	Streamline Properties INC. and Knight, Jerome Michael	• Unlicensed Trading Services	Cease and Desist Order
2011-01-10	Absolute Property Services and Glinsbockel, Trevor Kyle and Jamieson, Adam Jason Grant	• Unlicensed Rental Property Management Services	Cease and Desist Order
2009-06-19	Barbero-Montagna, Claudio Alfonso and McCormick, Daniel-Joseph and Fine Interior Rentals	• Unlicensed Trading Services • Unlicensed Rental Property Management Services	Consent Order
2009-06-09	Acadia-West Homes Ltd. and Kyle, Harold and Gold, David and Jespersen, Eileen	• Unlicensed Trading Services	Cease and Desist Order
2009-04-20	Oak Grove Capital Corporation and Wall, Jan Peter and Blinn, Richard Albert	• Unlicensed Trading Services • Unlicensed Rental Property Management Services	Cease and Desist Order
2009-03-26	Barbero-Montagna, Claudio Alfonso and McCormick, Daniel-Joseph and Fine Interior Rentals (See Consent Order dated 2009-06-19)	• Unlicensed Trading Services • Unlicensed Rental Property Management Services	Cease and Desist Order

Release Date	Parties (PDF)	Issue	Type
2009-02-13	Stevens, Peter and Alternate Options Property Investment Inc	• Unlicensed Trading Services • Unlicensed Rental Property Management Services	Cease and Desist Order
2009-01-20	Moffatt, Beverly Dianne and Moffatt Management Services	• Unlicensed Rental Property Management Services	Cease and Desist Order
2009-01-05	Bellevue Rental Agency and Fazli, Cameron and Winter, Hayley Frances	• Unlicensed Rental Property Management Services	Cease and Desist Order
2009-01-05	The Freedom Investment Club Group of Companies, FIC Investment Ltd., WBIC Canada Ltd., Lathigee, Michael, Pasquill, Earle, Mohawk Diversified LLC, Andrus, Alan and Pro Financial Services, Inc. (Utah) dba Pro Financial Services, LLC (Utah)	• Unlicensed Trading Services • Unlicensed Rental Property Management Services	Consent Order
2008-10-20	Foundation Property Management and McQueen, Susan	• Unlicensed Rental Property Management Services	Cease and Desist Order
2008-10-15	Standard Enterprises Ltd., Leung, Samuel Sen Sam, Leung, Caroline Ching Hing, Leung, Henry Sen Kwan, Leung, Kay, and Leung, Joanna Sulk San	• Unlicensed Rental Property Management Services	Cease and Desist Order

Release Date	Parties (PDF)	Issue	Type
2008-08-27	The Freedom Investment Club Group of Companies, FIC Investment L'td., WBIC Canada Ltd., Lathigee, Michael, Pasquill, Earle, Mohawk Diversified LLC, Andrus, Alan and Pro Financial Services, Inc. (Utah) dba Pro Financial Services, LLC (Utah)	• Unlicensed Trading Services • Unlicensed Rental Property Management Services	Cease and Desist Order
2008-08-14	Mystratacorp Document Services and Bramwell, Timothy Keith	• Unlicensed Trading Services	Consent Order
2008-05-21	Victory Properties Ltd. and Victory Properties Ltd. dba pent4rent and Dobrich, Earl Anthony Dale, and Dobrich, Karen Louise	• Unlicensed Rental Property Management Services	Cease and Desist Order
2008-05-20	Mystratacorp Document Services and Bramwell, Timothy Keith (See Consent Order dated 2008-08-14)	• Unlicensed Trading Services • Licensee Misconduct	Cease and Desist Order
2008-05-15	Stanchev, Stan, and Crest Realty Ltd., and Wheater, Charles Marsden	• Inadequate Disclosure	Cease and Desist Order
2008-05-05	Dove Property Mgmt Ltd. and Renae, Nancy Lee	• Unlicensed Rental Property Management Services	Cease and Desist Order
2008-04-28	Horner, Ian James	• Unlicensed Rental Property Management Services	Cease and Desist Order
2008-02-21	Chu, Ka Woun also known as Jones, Phoebe	• Unlicensed Rental Property Management Services	Cease and Desist Order

Release Date	Parties (PDF)	Issue	Type
2007-12-04	Fitzpatrick, Jay Gordon	• Unlicensed Rental Property Management Services	Corrigendum
2007-11-28	Fitzpatrick, Jay Gordon	• Unlicensed Rental Property Management Services	Cease and Desist Order
2007-11-26	LeMoel, Casey Keith and LeMoel Enterprises	• Unlicensed Rental Property Management Services	Cease and Desist Order
2006-09-22	Hendin Properties Inc. and Hendin, Howard Joel	• Unlicensed Rental Property Management Services	Cease and Desist Order
2006-08-23	Fulton & Company, Lawyers, and Hodson, Maureen	• Unlicensed Trading Services	Order
2006-06-15	Knight, Michael Jerome	• Unlicensed Trading Services • Inadequate Disclosure	Consent Order
2006-06-13	Elkjar, Paul Dalgaard and Viking Management	• Unlicensed Strata Management Services	Order
2006-03-28	Dedicated Property Management Ltd.	• Unlicensed Strata Management Services	Cease and Desist Order

The following actions were taken against real estate service providers for misconduct under the *Real Estate Act*, which w repealed in 2005.

Release Date	Parties (PDF)	Issue	Type
2005-07-20	Thomson, Ronald Patrick	• Suitability for Licensing	Hearing Decision
2004-11-26	Gonzalez, Werner Giovanni	• Suitability for Licensing	Cancellation Order
2004-10-12	AIB Mortgage And Realty Inc., And Khan, Haroon Akbar	• Suitability for Licensing	Suspension Order
2004-04-28	Thomson, Ronald Patrick	• Suitability for Licensing	Suspension Order
2004-03-23	AIB Mortgage And Realty Inc.	• Operating without a Nominee	Rescission Of Suspension Order
2003-06-04	Day Team Realty Ltd. (Nanaimo Branch Office)	• Operating without a Nominee	Suspension Rescinded
2003-06-02	Day Team Realty Ltd. (Nanaimo Branch Office)	• Operating without a Nominee	Suspended
2003-01-16	Barnard, Derek Wesley - Vernon Realtor	• Licensee Misconduct	Suspended
2002-11-25	Gabriola Island Real Estate Company	• Suitability for Licensing	Suspended
2002-10-01	Patrick Real Estate Ltd. - Real Estate Licence	• Suitability for Licensing	Suspended
2002-06-07	Russell's Red Mountain Realty Ltd	• Suitability for Licensing	Suspended
2002-03-30	Pacific Alliance Realty Ltd	• Suitability for Licensing	Suspended
2002-02-13	Rusin, Daryl Wade - Real Estate Salesperson	• Licensee Misconduct	Suspended
2002-01-10	Assist Realty Ltd.	• Licensee Misconduct	Suspended
2002-01-09	Georgia Real Estate And Property Management Services Ltd. Of Vancouver	• Suitability for Licensing	Suspended

Release Date	Parties (PDF)	Issue	Type
2002-12-02	Kathron Enterprises Inc.	• Operating without a Nominee	Suspended

Make a Complaint

Consumers, developers and licensees are encouraged to report suspected unlicensed real estate services to the Office of the Superintendent of Real Estate:

- Make a complaint against unlicensed activities (PDF)

Complaints of real estate licensees facilitating unlicensed providers of real estate services are made to the Real Estate Council of British Columbia:

- Make a complaint against a licensee

Appeal a Decision

The Financial Services Tribunal hears appeals of enforcement decisions made by the Superintendent of Real Estate and the Real Estate Council of B.C.

- Financial Services Tribunal

Resources

- Real Estate Services Act
- Office of the Superintendent of Real Estate
- Real Estate Council of B.C.
- B.C. Real Estate Association
- Real Estate Institute of B.C.
- Real Estate Foundation of B.C.
- Association of Real Estate License Law Officials
- UBC Real Estate Division

Contact Information

Contact the Office of the Superintendent of Real Estate:

Office:
604 660-1883

Street:
2800 - 555 West Hastings, Vancouver BC, V6B 4N6

Email:
realestate@gov.bc.ca

Appendix Y

RECBC

Licensing and Enforcement Statistics

Licensing and Enforcement Statistics

RECBC maintains statistics on the number of individuals and brokerages licensed to provide real estate services in BC, on the complaints we receive and on the investigations and prosecutions we conduct.

We also track statistics on our disciplinary outcomes, the brokerages we audit, and the inquiries from licensees and consumers we respond to. We continuously monitor this information to identify emerging regulatory issues and trends in BC's real estate industry, and we publish this information as a resource for the public and the profession.

We update our statistics quarterly throughout the year. Please check back periodically for the most current information.

Quarterly Statistics April 2020 – March 2021

Real Estate Professionals

	June 30	Sept 30	Dec 31	March 31
Total Real Estate Professionals	25,304	25,348		

By Category	June 30	Sept 30	Dec 31	March 31
Real Estate Sales	23,627	23,658		
Rental Property Management	4,756	5,075		

Appendix Y

Strata Property Management	1,317	1,334

Note: Professionals may be licensed for more than one category.

By Level	June 30	Sept 30	Dec 31	March 31
Managing Brokers	1,308	1,309		
Associate Brokers	1,471	1,451		
Representatives	22,525	22,588		
Total	25,304	25,348		

	June 30	Sept 30	Dec 31	March 31
Licensed Brokerages	1,517	1,520		

Note: Licensed brokerages include branch offices.

Disciplinary Actions +

Professional Standards Inquiries +

Complaints and Anonymous Tips +

Audits +

Education +

Statistical Archive

Find quarterly RECBC licensing, disciplinary, audit and education statistics from past years here.

Quarterly Statistics 2019/2020

Appendix Y

Find selected statistics from the 2019/2020 fiscal year including licensing numbers, complaints received and disciplinary outcomes.

Download PDF

Quarterly Statistics 2018/2019

Find selected statistics from the 2018/2019 fiscal year including licensing numbers, complaints received and disciplinary outcomes.

Download PDF

We regulate real estate professionals in the public interest.

Our offices are located on traditional Coast Salish territory of the Musqueam, Squamish, and Tsleil-Waututh Nations.

ABOUT US →

QUICK LINKS

REPORT A CONCERN →

FIND A PROFESSIONAL →

KNOWLEDGE BASE →

CAREERS AT RECBC →

PROFESSIONAL LOGIN →

WHERE WE ARE

Real Estate Council of British Columbia
900-750 West Pender Street
Vancouver, BC V6C 2T8
604.683.9664
Toll-free: 1.877.683.9664

Privacy Policy

Appendix Y

Appendix Z

RECBC

Quarterly Statistics 2019/2020

RECBC REAL ESTATE COUNCIL OF BRITISH COLUMBIA

Quarterly Statistics 2019/2020

RECBC maintains statistics on the number of individuals and brokerages licensed to provide real estate services in BC. We also track statistics on our disciplinary outcomes, the brokerages we audit, and the inquiries from licensees and consumers we respond to. We continuously monitor this information to identify emerging regulatory issues and trends in BC's real estate industry.

Below you will find selected statistics from the 2019/2020 fiscal year including licensing numbers, complaints received and disciplinary outcomes.

Licensing

	As of June 30	As of Sept 30	As of Dec 31	As of Mar 31
Total Number of Licensed Real Estate Professionals	25,964	25,844	25,761	25,594
Licence Holders by Category	**As of June 30**	**As of Sept 30**	**As of Dec 31**	**As of Mar 31**
Trading Services	24,310	24,126	24,072	23,898
Rental Property Management	5,034	4,949	4,893	4,846
Strata Property Management	1,338	1,338	1,333	1,332
Note: Individuals may be licensed for more than one licence category. Therefore total of breakdown by category exceeds total number of licensed real estate professionals.				
Licence Holder by Level	**As of June 30**	**As of Sept 30**	**As of Dec 31**	**As of Mar 31**
Managing Broker	1,349	1,327	1,319	1,318
Associate Broker	1,505	1,501	1,491	1,474
Representatives	23,110	23,016	22,951	22,802
Total	25,933	25,844	25,761	25,594
	As of June 30	**As of Sept 30**	**As of Dec 31**	**As of Mar 31**
Licensed Brokerages	**1,531**	**1525**	**1,518**	**1,523**
Note: Licensed brokerages include branch offices				

RECBC REAL ESTATE COUNCIL OF BRITISH COLUMBIA

Complaints and Anonymous Tips

Complaints by Source	Q1 Apr – June	Q2 Jul – Sept	Q3 Oct - Dec	Q4 Jan - Mar
Consumer Complaint	151	130	109	112
Licensee Complaint	31	24	15	24
Initiated by RECBC	33	8	6	15
Referred by the real estate board	2	–	1	–
Referred by another regulator	1	1	1	1
Other	9	2	1	3
Total Received	261	168	114	198
	Q1 Apr – Jun	**Q2 Jul - Sept**	**Q3 Oct – Dec**	**Q4 Jan – Mar**
Anonymous Tips	**90**	**64**	61	72

Calls and Inquiries to Professional Standards

Breakdown by source of Inquiry	Q1 Apr – Jun	Q2 Jul – Sept	Q3 Oct – Dec	Q4 Jan – Mar
Licensees	**1,432**	**1,186**	**1,270**	**1,260**
Consumers	**643**	**738**	**547**	**656**
Non identified/Other	**30**	**40**	**25**	**24**
Total	**2,105**	**1,964**	**1,842**	**1,940**

RECBC REAL ESTATE COUNCIL OF BRITISH COLUMBIA

Disciplinary Actions

Enforcement	Q1 Apr – June	Q2 Jul – Sept	Q3 Oct - Dec	Q4 Jan - Mar
Consent Orders Issued	**24**	**16**	**12**	**–**
Discipline Hearings Held*	**–**	**7**	**–**	**–**
Fines Issued & Admin Penalities	**66**	**33**	**27**	**34**
Total Fines Issued & Admin Penalities Amounts	**$102,125**	**$112,500**	**$78,025**	**$50,875**
Suspensions Issued	**–**	**1**	**0**	**–**
Letters of Advisement Issued	**19**	**13**	**27**	**9**
License Surrenders	**–**	**–**	**1**	**–**
*Disciplinary hearings are, in most cases, held in two parts: a hearing on liability, followed in cases where there is a finding of liability by a hearing to determine penalty.				
	Q1 Apr - June	**Q2 Jul – Sept**	**Q3 Oct – Dec**	**Q4 Jan – Mar**
Discipline Appeals	-	-	-	-

Audits

	Q1 Apr- Jun	Q2 Jul- Sept	Q3 Oct -Dec	Q4 Jan - Mar
Brokerages Audited	**28**	**44**	**38**	**42**

RECBC REAL ESTATE COUNCIL OF BRITISH COLUMBIA

Regulatory Education

Students Registered for Licensing Examinations	Q1 Apr – Jun	Q2 Jul – Sept	Q3 Oct – Dec	Q4 Jan - Mar
Real Estate Trading Services	**729**	**774**	**682**	**977**
Rental Property Management Services	**128**	**135**	**129**	**171**
Strata Management Services	**43**	**63**	**51**	**74**
Managing Broker	**36**	**51**	**49**	**56**
Note: These numbers represent all individuals writing exams, not outcomes (i.e pass/fail)				

Appendix AA

RECBC

Quarterly Statistics 2018/2019

RECBC REAL ESTATE COUNCIL OF BRITISH COLUMBIA

Quarterly Statistics 2018/2019

RECBC maintains statistics on the number of individuals and brokerages licensed to provide real estate services in BC. We also track statistics on our disciplinary outcomes, the brokerages we audit, and the inquiries from licensees and consumers we respond to. We continuously monitor this information to identify emerging regulatory issues and trends in BC's real estate industry.

Below you will find selected statistics from the 2018/2019 fiscal year including licensing numbers, complaints received and disciplinary outcomes.

Licensing

	As of June 30	As of Sept 30	As of Dec 31	As of Mar 31
Total Number of Licensed Real Estate Professionals	25,846	26,023	25,987	25,853
Licence Holders by Category	**As of June 30**	**As of Sept 30**	**As of Dec 31**	**As of Mar 31**
Trading Services	24,295	24,455	24,395	24,233
Rental Property Management	5,334	5,232	5,125	5,071
Strata Property Management	1,309	1,308	1,310	1,326
Note: Individuals may be licensed for more than one licence category. Therefore total of breakdown by category exceeds total number of licensed real estate professionals.				
Licence Holder by Level	**As of June 30**	**As of Sept 30**	**As of Dec 31**	**As of Mar 31**
Managing Broker	1,367	1,367	1,353	1,357
Associate Broker	1,557	1,555	1,541	1,514
Representatives	22,922	23,101	25,093	22,982
Total	**25,846**	**26,023**	**25,987**	**25,853**
	As of June 30	**As of Sept 30**	**As of Dec 31**	**As of Mar 31**
Licensed Brokerages	**1,526**	**1,532**	**1,537**	**1,548**
Note: Licensed brokerages include branch offices				

RECBC REAL ESTATE COUNCIL OF BRITISH COLUMBIA

Complaints and Anonymous Tips

Complaints by Source	Q1 Apr – June	Q2 Jul – Sept	Q3 Oct - Dec	Q4 Jan - Mar
Consumer Complaint	151	141	108	102
Licensee Complaint	36	33	20	24
Initiated by RECBC	60	70	15	27
Referred by the real estate board	2	2	2	1
Referred by another regulator	3	3	1	0
Other	29	12	3	3
Total Received	281	261	149	157
	Q1 Apr – Jun	**Q2 Jul - Sept**	**Q3 Oct – Dec**	**Q4 Jan – Mar**
Anonymous Tips	**138**	**133**	**37**	**78**

Calls and Inquiries to Professional Standards

Breakdown by source of Inquiry	Q1 Apr – Jun	Q2 Jul – Sept	Q3 Oct – Dec	Q4 Jan – Mar
Licensees	**2,917**	**2,328**	**1,418**	**1,477**
Consumers	**928**	**891**	**622**	**708**
Non identified/Other	**81**	**35**	**17**	**34**
Total	**3,926**	**3,254**	**2,120**	**2,219**

RECBC REAL ESTATE COUNCIL OF BRITISH COLUMBIA

Disciplinary Actions

Enforcement	Q1 Apr – June	Q2 Jul – Sept	Q3 Oct - Dec	Q4 Jan - Mar
Consent Orders Issued	**13**	**10**	**34**	**21**
Discipline Hearings Held*	**3**	**-**	**3**	**-**
Fines Issued & Admin Penalities	**24**	**29**	**102**	**57**
Total Fines Issued & Admin Penalities Amounts	**$65,500**	**$34,625**	**$138,500**	**$123,000**
Suspensions Issued	**3**	**2**	**7**	**4**
Letters of Advisement Issued	**3**	**10**	**57**	**18**
License Surrenders	**1**	**-**	**2**	**-**

*Disciplinary hearings are, in most cases, held in two parts: a hearing on liability, followed in cases where there is a finding of liability by a hearing to determine penalty.

	Q1 Apr - June	Q2 Jul – Sept	Q3 Oct – Dec	Q4 Jan – Mar
Discipline Appeals	2	1	-	-

Audits

	Q1 Apr- Jun	Q2 Jul- Sept	Q3 Oct -Dec	Q4 Jan - Mar
Brokerages Audited	**78**	**52**	**43**	**31**

RECBC REAL ESTATE COUNCIL OF BRITISH COLUMBIA

Regulatory Education

Students Registered for Licensing Examinations	Q1 Apr – Jun	Q2 Jul – Sept	Q3 Oct – Dec	Q4 Jan - Mar
Real Estate Trading Services	**1,045**	**874**	**639**	**748**
Rental Property Management Services	**108**	**119**	**109**	**160**
Strata Management Services	**56**	**55**	**43**	**72**
Managing Broker	**46**	**36**	**59**	**64**
Note: These numbers represent all individuals writing exams, not outcomes (i.e pass/fail)				

Appendix BB

RECBC

Quarterly Statistics 2020/21 – 2022/23

Service Plan

February 2020

Real Estate Council of British Columbia

2020/21 – 2022/23
SERVICE PLAN

February 2020

Appendix BB

For more information on the Real Estate Council of British Columbia, contact:

Suite 900, 750 West Pender Street
Vancouver, BC
V6C 2T8

604-683-9664
Toll-free:1-877-683-9664

info@recbc.ca

Or visit our website at
www.recbc.ca

Council Chair Accountability Statement

The 2020/21 – 2022/23 Real Estate Council of British Columbia (RECBC) Service Plan was prepared under the Council's direction in accordance with the *Budget Transparency and Accountability Act*. The plan is consistent with government's strategic priorities and fiscal plan. The Council is accountable for the contents of the plan, including what has been included in the plan and how it has been reported. The Council is responsible for the validity and reliability of the information included in the plan.

All significant assumptions, policy decisions, events and identified risks, as of February 2020 have been considered in preparing the plan. The performance measures presented are consistent with the *Budget Transparency and Accountability Act*, RECBC's mandate and goals, and focus on aspects critical to the organization's performance. The targets in this plan have been determined based on an assessment of RECBC's operating environment, forecast conditions, risk assessment and past performance.

Elain Duvall
Council Chair

Table of Contents

Strategic Direction and Alignment with Government Priorities

The Government of British Columbia remains focused on its three strategic priorities: making life more affordable, delivering better services, and investing in a sustainable economy. Crowns are essential to achieving these priorities by providing quality, cost-effective services to British Columbia families and businesses.

Additionally, where appropriate, the operations of Crowns will contribute to:

- The objectives outlined in the government's newly released A Framework for Improving British Columbians' Standard of Living,
- Implementation of the *Declaration on the Rights of Indigenous Peoples Act* and the Truth and Reconciliation Commission Calls to Action, demonstrating support for true and lasting reconciliation, and
- Putting B.C. on the path to a cleaner, better future – with a low carbon economy that creates opportunities while protecting our clean air, land and water as described in the CleanBC plan.

By adopting the Gender-Based Analysis Plus (GBA+) lens to budgeting and policy development, Crowns will ensure that equity is reflected in their budgets, policies and programs.

The Real Estate Council of British Columbia (RECBC) is a regulatory agency established by the provincial government in 1958. Our mandate is to protect the public interest by enforcing the licensing and licensee conduct requirements of the *Real Estate Services Act*. RECBC is responsible for licensing individuals and brokerages engaged in real estate sales, rental and strata property management. RECBC also enforces entry qualifications, investigates complaints against real estate professionals and imposes disciplinary sanctions under the Act. RECBC does not receive taxpayer funding as our operations are funded through licensing assessment fees.

RECBC's mission is to protect the public interest by promoting and enforcing professional standards to raise the competency and conduct of real estate professionals in British Columbia. In collaboration with the Office of the Superintendent of Real Estate (OSRE), RECBC works to achieve the shared goal of a fair, transparent and consistent regulatory system for real estate services in British Columbia.

We have set out a three-year plan with strategies, performance measures and targets, aligned with the objectives in the B.C. Government's Mandate Letter, to fulfill our mission on behalf of B.C. consumers and achieve our vision: *Public trust in ethical and competent real estate professionals.*

In November 2019, the Ministry of Finance announced its intention to create a single regulator for the financial services sector, including real estate, by amalgamating RECBC and OSRE within the British Columbia Financial Services Authority (BCFSA). This amalgamation will require legislative change and it is anticipated to be fully implemented in 2021. We are committed to working with the Ministry of Finance, OSRE and BCFSA to transition to a single regulator. The goals, strategies, performance measures and targets contained in this service plan will guide our work until the amalgamation is effective. This service plan includes performance measures and budget planning until 2022/23; however, these may be adapted for inclusion in future service plans by BCFSA.

RECBC supports Government's commitment to reconciliation with Indigenous Peoples. We are taking steps to implement the *Declaration on the Rights of Indigenous Peoples Act* and the Calls to Action of the Truth and Reconciliation Commission within the context of our work to protect the

public interest through the regulation of real estate professionals. We will work to ensure that RECBC's operations align with Government's climate plan to move towards a low-carbon economy and we will be applying the GBA+ lens to promote equity in our operations and programs.

This service plan identifies three key goals that reflect successfully delivering on our vision and mission: fostering a culture of service excellence; providing consumers and real estate professionals with the information to participate effectively in real estate transactions; and ensuring public confidence in real estate regulation. As we prepare for the transition to a single regulator, we will continue to make the investments necessary to increase our efficiency and improve our services to real estate consumers and real estate professionals.

We will work to deliver on these goals by effectively and efficiently identifying and mitigating risks to real estate consumers; raising awareness among members of the public about real estate issues; and increasing professionalism in the real estate industry. By achieving these goals, we will help ensure that B.C. consumers can participate with confidence in real estate transactions, knowing they are working with competent and ethical real estate professionals.

RECBC is aligned with the Government's key priorities:

Government Priorities	**RECBC Aligns with These Priorities By:**
Making life more affordable	• Working with OSRE and the Ministry of Finance to address market conduct of real estate professionals and ensure rules are appropriately implemented, including anti-money laundering requirements. (Strategy, Objective 3.2)
Delivering the services people count on	• Fostering a culture of service excellence. (Goal 1). • Working with OSRE, the Ministry of Finance, and BCFSA to establish a single, trusted regulator. (Strategy, Objective 3.2)
A strong, sustainable economy	• Helping consumers and real estate professionals to access the information and resources they need to participate effectively in real estate transactions. (Goal 2). • Working collaboratively with Government, OSRE, BCFSA and other agencies to ensure real estate professionals comply with anti-money laundering requirements. (Strategy, Objective 3.3)

Operating Environment

Real estate transactions are a significant economic driver in British Columbia. From year to year, many factors may affect the real estate market, the practices and regulation of licensed real estate professionals and the protection of real estate consumers.

In our external operating environment, one of the most significant challenges that RECBC continues to experience is the rise in complaint volumes, which have doubled since 2015. Recent leveling of sales in the province's real estate markets may be slowing the increase in new complaints and may also affect the numbers of new entrants into the profession.

In 2018, a decision by the Supreme Court of Canada upheld the position of the Competition Bureau that consumers deserve greater access to real estate data in Canada. In the years ahead, RECBC will be monitoring the impacts of this decision, and other innovations that may disrupt traditional real estate business practices, affecting the numbers of new entrants and the retention of experienced practitioners in the industry.

A range of factors influence RECBC's internal operating environment. The Minister of Finance announced her intention to create a single regulator for the financial services sector, including real estate, by amalgamating RECBC and OSRE within the British Columbia Financial Services Authority (BCFSA) in 2021. We are committed to working with the Ministry of Finance, OSRE and BCFSA to transition to a single regulator while continuing to deliver robust consumer protection. However, planning and activities required to implement the transition may impact RECBC's ability to complete planned internal modernization projects.

Developments that may positively impact performance results in 2020/21 include ongoing investment in building leadership capacity across RECBC's business areas. Further work to support employee engagement, recruitment and retention will be particularly critical during the transition to a single regulator within the BCFSA.

The transition of responsibility for the development and administration of regulatory education from the British Columbia Real Estate Association (BCREA) to RECBC may continue to impact us over the coming year as we adapt to this new business line. RECBC will introduce a new mandatory continuing education course for real estate professionals in 2020/21.

We will undertake further investment in data management and information technology to understand and manage business risks and maintain or improve service delivery levels. RECBC recognizes the fast pace of technological change and the need to adapt business-critical systems to provide effective and efficient services. Responding to the threats and opportunities of technological change will require ongoing innovation, collaboration and system-wide thinking. We will continue to focus on expanding online services to consumers and real estate professionals.

Performance Plan

This performance plan describes RECBC's goals, objectives and performance measures for 2020/21 to 2022/2023. The goals are similar to those in the 2019/20 Service Plan with updates to better reflect strategic priorities, alignment with Government's Mandate Letter and the organization's performance. These changes will be integrated into the organizational strategy and performance measures and will continue to evolve.

In developing this performance plan, RECBC evaluated results of its ongoing monitoring of the operating environment and considered direction from Government and its strategic priorities. We will regularly engage on both strategic and operational levels with the Ministry of Finance, OSRE and BCFSA. RECBC will work with OSRE and BCFSA to ensure that development and implementation of the strategies in this performance plan that will impact the single regulator is done collaboratively and with due consideration of the expanded role of the future amalgamated organization

Goal 1: RECBC fosters a culture of service excellence

This goal aligns with the Government priority to deliver the services that people count on.

Objective 1.1: Enhance the efficiency and timeliness of compliance and licensing processes

To ensure that RECBC continues to effectively manage complaints and investigations in a timely manner, and reduce its inventory of cases, we are committed to developing processes that enable the organization to respond effectively to a changing environment. One of the outcomes resulting from increasing levels of public awareness of RECBC's role as the regulator of licensed real estate professionals has been a sustained high volume of complaints: in fiscal year 2018/19 RECBC received 848 complaints. As RECBC continues to focus on consumer awareness activities, no decrease in complaint volumes is anticipated in the coming years. As a result, a key measure of success for RECBC will be the maintenance or reduction of the average time to complete an investigation. To achieve this outcome, RECBC's compliance and legal department will continue to implement measures to streamline investigative processes, prioritize and expedite critical investigations, increase the efficiency and transparency of disciplinary processes, and introduce alternatives to resolve complaints in advance of a hearing. RECBC will continue to focus on modernizing licensing processes, automating internal document management, and implementing practices to facilitate and encourage flexibility and problem-solving within our licensing department.

Key Strategies:

- Implement a new case management system to improve productivity and reporting.
- Further develop alternative measures of disciplinary action to promote timely resolution of certain cases and free up resources for more complex cases.
- Develop a dedicated client service support team to provide one-stop access to information for consumers and real estate professionals.
- Continue transition of licensing processes online to eliminate paper applications.

Performance Measure(s)		2017/18 Baseline	2018/19 Actuals	2019/20 Forecast	2020/21 Target	2021/22 Target	2022/23 Target
1.1a	Average number of calendar days to complete a complaint investigation[1]	310	296	245	Maintain or decrease from prior year	Maintain or decrease from prior year	Maintain or decrease from prior year
1.1b	Percentage of complete applications for new individual licences processed within three weeks[2]	N/A	89%	90%	Maintain or increase from prior year	Maintain or increase from prior year	Maintain or increase from prior year
1.1c	Reduction in 2018/19 inventory of compliance files[3]	N/A	700 baseline	650	400	Maintain or decrease from prior year	Maintain or decrease from prior year

1. Data Source: RECBC complaints tracking system (note that 2017/18 is a 9-month fiscal period)
2. Data Source: RECBC licensing tracking system (note that 2017/18 is a 9-month fiscal period)
3. Data Source: RECBC compliance department files (note that 2017/18 is a 9-month fiscal period)

Linking Performance Measures to Objectives:

1.1a RECBC demonstrates its ability to respond to reported conduct issues in a timely manner, while continuing to ensure administrative fairness, through the average length of time required to complete complaint investigations.

1.1b In addition to providing services to the public, RECBC has an obligation to provide licensing services to suitable and qualified applicants in a timely manner. The processing of new licence applications is a key indicator of licensing service standards and efficiency.

1.1c As a result of the increase in the volume of complaints over the past three years, RECBC has an inventory of active investigation files. Measures to reduce this inventory that have been implemented to date include: the recruitment of additional investigators to expand the capacity of RECBC's compliance department, streamlining the file review process to increase the efficiency of investigations, and improving the timeliness of RECBC's responses to consumer complaints. These changes have had a significant impact on reducing the inventory of investigation files. Over the next two years RECBC plans to continue to reduce the inventory through on ongoing focus on process improvements and investments in training and technology.

Discussion:

1.1a RECBC is on track to meet our forecast for this performance measure, exceeding the target of a 5% decrease from our 2019/20 Service Plan. As RECBC continues to streamline and automate processes, we may update this performance measure to improve service standards. Targets for future years may be adjusted accordingly.

1.1b This measure was introduced in RECBC's first service plan in 2018 and was not previously tracked, therefore there is no data to report for 2017/18. RECBC is on track to meet our forecast for this performance measure.

1.1c This measure is based on the inventory of complaints as of January 2019. RECBC is on track to meet our forecast for this performance measure. Targets may be adjusted annually to reflect changes in the future volume of complaints which cannot be predicted. While the inventory reflects the current number of open investigation files, it does not provide insight into the

relative complexity of those files, which is also outside of RECBC's control. Variability in the complexity of investigations will impact the time required to complete investigations.

Objective 1.2: RECBC employees are engaged and motivated

Engaged and motivated employees contribute to higher levels of organizational success. To create a workplace that enhances employee engagement, RECBC will continue to build a strong culture in which all employees are valued and receive the support to increase their skills, expand their knowledge and develop their careers. RECBC has experienced a period of significant business transformation and growth where more than 30% of current employees are relatively new to the organization. By continuing to focus on workplace culture development, we will build organizational capacity to achieve service excellence, contributing to the success of the BCFSA.

Key Strategies:

- Enable and promote a workplace culture where all employees support RECBC's values.
- Implement a performance management program.
- Develop and implement employee training policies and career development paths, in collaboration with BCFSA to ensure consistency with policies of the single regulator
- In collaboration with BCFSA, develop a competitive compensation package that includes rewards, recognition and opportunities for ongoing learning and development now and under the BCFSA.

Performance Measure:

RECBC will demonstrate success at implementing the strategies described above to build a culture of service excellence and an engaged and motivated workforce through regular, comprehensive employee surveys, augmented by pulse check surveys to confirm results in alternating years. The first survey to establish a baseline against which to measure increases in engagement levels was conducted in 2019.

Performance Measure(s)	2017/18 Baseline	2018/19 Actuals	2019/20 Forecast	2020/21 Target	2021/22 Target	2022/23 Target
1.2 Level of employee engagement [1]	N/A	75% Baseline	Maintain or increase from prior year	Maintain or increase from prior year	Maintain or increase from prior year	Maintain or increase from prior year

[1] **Data Source:** Employee engagement survey and trust index.

Linking Performance Measure to Objectives:

1.2 RECBC measures employee engagement through a survey and trust index that measures employee perceptions on leadership, organizational credibility, respect, fairness, pride and camaraderie in the workplace. The results of the survey provide a foundation upon which to build further employee engagement initiatives. Having achieved over 70% in its baseline survey, RECBC was certified in 2019 as a Great Place to Work ™ by Great Place to Work ®, a global authority that measures and recognizes excellence in workplace cultures.

Discussion:

1.2 As RECBC continues to implement measures to enhance employee engagement, such as enhancements to our onboarding processes, improvements to performance goal setting and management, changes to benefits as well as to human resources policies and procedures, expanded opportunities for continuous learning and development, and improved internal communications our surveys will be augmented with semi-annual pulse checks. In December 2019, RECBC was proud to be named one of Canada's Best Workplaces Managed by Women, as determined by Great Place to Work. The award is based on direct feedback from employees and demonstrates RECBC's increasing level of workforce engagement and satisfaction.

Goal 2: Consumers and real estate professionals have the information and resources they need to participate effectively in real estate transactions

This goal aligns with the Government priority of building a strong, sustainable economy.

Objective 2.1: Increase the availability of consumer resources to support informed real estate decisions

To ensure that real estate consumers are well informed and feel empowered to make the decisions that are most appropriate for them, they need access to independent, relevant, accessible information that helps them to understand the process of a real estate transaction, and the risks and issues that may be encountered. RECBC is investing in delivering information online through our website and social media channels, and offline through direct engagement activities to help consumers build the skills and knowledge they need to make sound real estate decisions.

Key Strategies:

- Promote a new consumer-focused website and online resources.
- Deliver targeted campaigns to inform and educate consumers, including a focus on high-risk or vulnerable consumers.

Performance Measure:

RECBC will gauge consumers' self-reported levels of knowledge and confidence through a consumer survey conducted every two years by a third-party market research firm.

Performance Measure(s)		2018/19 Baseline	2019/20 Forecast	2020/21 Target	2021/22 Target	2022/23 Target
2.1	Percentage of consumers who feel informed and knowledgeable to participate effectively in a real estate transaction. [1]	70%	N/A	5% increase from prior results	N/A	Maintain or increase from prior results

[1] **Data Source:** Biennial consumer survey conducted by Insights West.

Linking Performance Measures to Objectives:

2.1 Surveying every second year allows for sufficient time to analyze results and implement measures to improve future outcomes.

Objective 2.2: Increase the standard of education and resources provided to real estate professionals

RECBC will increase public confidence in the real estate industry by raising educational standards, promoting best practices and fostering a culture of strong ethics. Following an external review of its regulatory education RECBC developed a multi-year education strategy including new initiatives to increase education standards. RECBC will continue to focus on planned enhancements to regulatory education to promote increased professionalism among real estate professionals and to strengthen consumer protection, working in collaboration with BCFSA to identify opportunities for sector-wide education and/or application to other regulated financial services professionals.

Key Strategies:

- Continue to transform continuing education for real estate professionals, including introducing mandatory anti-money laundering and ethics courses.
- Engage industry stakeholders through the RECBC Education Advisory Group to explore implementing a more formal apprenticeship model to enhance regulatory education.
- Develop updated competency profiles to support the review of the educational and assessment components of pre-licensing and continuing education.
- Undertake a comprehensive review and update of RECBC's key resources for real estate professionals and managing brokers, the *Professional Standards Manual* and *Brokerage Standards Manual*.
- Collaborate with OSRE to engage and support managing brokers as industry change agents.

Performance Measures

RECBC will measure the effectiveness of strategies to enhance regulatory education and raise standards of resources for real estate professionals by surveying managing brokers. Managing brokers have attained a higher level of licensing, must be experienced practitioners, and are responsible for oversight of all real estate professionals at a real estate brokerage. They are thus well positioned to assess the competency of real estate professionals under their supervision.

Performance Measure(s)		2018/19 Baseline	2019/20 Forecast	2020/21 Target	2021/22 Target	2022/23 Target
2.2	Percentage of managing brokers who agree that RECBC education prepares real estate professionals for competent and professional practice.[1]	87%	N/A	Maintain or increase from prior results	N/A	Maintain or increase from prior results

[1] **Data Source:** Biennial survey of managing brokers conducted by Insights West.

Linking Performance Measures to Objectives:

2.2 Under the *Real Estate Services Act,* managing brokers supervise real estate professionals and are accountable for brokerage operations. Surveys of managing brokers will measure the effectiveness of changes to the delivery and content of licensing education.

Goal 3: Ensuring public confidence in real estate regulation

This goal aligns with the Government priority to deliver the services people count on**.**

Objective 3.1: Raise awareness of the regulatory mandate and strengthen relationships with stakeholders

In collaboration with OSRE and BCFSA, we will engage with stakeholders in industry, government and key consumer groups to strengthen awareness of the role of the regulator of licensed real estate professionals as a source of accurate, impartial real estate information. We will survey consumers to measure public awareness of the role of regulation in B.C. real estate services in order to ensure a strong foundation for the establishment of a single regulator of financial services including real estate.

Key Strategies:

- Create and implement a public relations strategy.
- Strengthen relationships with key stakeholders and government partners.
- Enhance transparency in decision-making and governance.

Performance Measure(s)		2017/18 Baseline	2018/19 Actuals	2019/20 Forecast	2020/21 Target	2021/22 Target	2022/23 Target
3.1	Percentage of recent real estate consumers who are aware of the regulatory mandate. [1]	65%	N/A	5% increase from prior results	N/A	Maintain or increase from prior results	N/A

[1] **Data Source**: Biennial consumer survey conducted by Insights West.

Linking Performance Measures to Objectives:

3.1 This performance measure is tracked through a survey of recent real estate consumers conducted by a third-party market research firm every two years. RECBC will measure success by seeing an increase in the percentage of recent real estate consumers who are aware of the role of the regulator of licensed real estate professionals. Surveying consumers every second year allows for sufficient time to analyze results and implement measures to improve future survey responses.

Discussion:

3.1 This performance measure has been updated from previous years to reflect that with regulatory amalgamation ahead, it is important to build public awareness of the role of regulation in real estate.

Objective 3.2: RECBC will work with OSRE, BCFSA and other partners to address market conduct and consumer risks

RECBC takes an evidence-based approach to identify and understand the causes of emerging risks in the B.C. real estate market. We work with OSRE, BCFSA, other regulatory agencies, government partners and industry stakeholders to address these issues. We also educate real estate professionals about how to avoid conduct that may result in risks to consumers and raise consumer awareness of risks and how they can be avoided or reduced.

Key Strategies:

- Take an evidence-based approach to identifying and responding to emerging risks.
- Work with staff from OSRE and the Ministry of Finance on policy initiatives to review the role of managing brokers in real estate regulation and the ethical conduct and standards of real estate professionals.
- Work with OSRE and the Ministry of Finance to address market conduct of real estate professionals and support OSRE in ensuring rules are appropriately implemented, including specific attention to anti-money laundering and reporting suspicious transactions.
- Cooperate with BCFSA, OSRE and other agencies to identify and mitigate consumer risks.
- Work with OSRE, the Ministry of Finance, and BCFSA to establish a single regulator.
- Develop and implement consumer and licensee awareness campaigns about emerging risks.

Performance Measure(s)		2017/18 Baseline	2018/19 Actuals	2019/20 Forecast	2020/21 Target	2021/22 Target	2022/23 Target
3.2	Number of people who access RECBC Advisory Notices online. [1]	4,676	6,172	5% increase from prior year	Maintain or increase from prior year	Maintain or increase from prior year	Maintain or increase from prior year

[1] **Data Source:** RECBC website analytics.

Linking Performance Measures to Objectives:

3.2 RECBC will measure success by demonstrating annual increases in the number of visits to Advisory Notices made available on our website alerting consumers and real estate professionals to emerging risks and providing guidance on ways to prevent or reduce the likelihood of harm.

Objective 3.3: Implement measures to strengthen enforcement of conduct requirements for real estate professionals and increase consumer protection

RECBC is committed to developing and implementing measures to strengthen enforcement and increase consumer protection. We will work collaboratively with OSRE, BCFSA and the Ministry of Finance to ensure requirements relating to anti-money laundering for real estate professionals are appropriately implemented to improve the effectiveness of B.C.'s Anti-Money Laundering Regime.

Key Strategies:

- Enhance RECBC's brokerage audits (office records and inspection program) to provide more education for managing brokers on best practices for brokerage policy and records management.
- Develop a public report card summarizing the results of the brokerage audits, providing important feedback to managing brokers and improving consumers' ability to make informed real estate decisions. Continue to develop tools and resources for managing brokers, including resources on records management and brokerage policy best practices.
- Continue to work with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to ensure that brokerages understand their anti-money laundering requirements.
- Work collaboratively with the federal and provincial Governments, OSRE, BCFSA and other agencies as appropriate to ensure real estate professionals comply with anti-money laundering requirements.

Performance Measure(s)

RECBC will measure the effectiveness of planned initiatives to increase compliance by brokerages by tracking the number of audits that do not result in administrative penalties or disciplinary proceedings against the brokerage.

Performance Measure(s)		2019/20 Forecast	2020/21 Target	2021/22 Target	2022/23 Target
3.3	Percentage of audits that do not result in administrative penalties or disciplinary proceedings.	92% baseline	Maintain or increase from prior year	Maintain or increase from prior year	Maintain or increase from prior year

Linking Performance Measures to Objectives:

3.3 RECBC audits a representative sample of B.C.'s real estate brokerages annually based on a risk matrix to ensure they are operating in accordance with the *Real Estate Services Act*, Regulation and Rules. This performance measure will track the percentage of brokerages that do not have significant deficiencies noted in audit results.

Discussion:

3.3 RECBC expects to reach the forecast baseline for 2019/20 on this measure. Potential rule changes expanding the range of administrative penalties are anticipated in 2020/21. Future targets for this performance measure may require recalibration as a result. A baseline survey of recently audited managing brokers, conducted in 2019, identified areas where RECBC's audit program can be enhanced to increase the educational value of the audit and inform the development of new resources and tools for managing brokers in 2020/21.

Financial Plan

The Real Estate Council of BC does not receive taxpayer funding. Key activities described in this Service Plan will be primarily funded through licensing assessment fees gathered from the more than 26,000 individuals and brokerages we license and regulate. A small portion of our revenue is derived from enforcement sanctions and required under the *Real Estate Services Act* to be directed to the internally restricted In-Trust Education Fund. RECBC's budget includes fees collected and remitted on behalf of the Superintendent of Real Estate, the Real Estate Errors and Omissions Insurance Corporation, and the Real Estate Compensation Fund Corporation. RECBC expenditures are divided between investigative functions (compliance department and a portion of audit and legal expenses) and other administrative costs (education, communications, legal, audit and professional advisory services).

Summary Financial Outlook

($000)	2019/20 Forecast	2020/21 Budget	2021/22 Plan	2022/23 Plan
Total Revenue				
By Major Sources				
Licence Fees*	1,176	1,156	1,156	1,156
Assessment Fees**	10,115	10,509	12,362	12,362
Course Fees	3,864	8,586	8,586	8,586
Other Int and Investment Income (net)***	79	304	304	304
Total Revenue	**15,234**	**20,555**	**22,408**	**22,408**
Total Expenses				
By Program Area or Function				
Operational & Administration	10,824	13,529	13,805	13,805
Investigative	1,096	1,147	1,347	1,347
Other	3,314	5,879	7,256	7,256
Total Expenses	**15,234**	**20,555**	**22,408**	**22,408**
Total Liabilities/Debt (even if zero)	**700**	**700**	**700**	**700**
Accumulated Surpluses - (RECBC)	**8,495**	**8,495**	**8,495**	**8,495**
Accumulated Surpluses - (REEOIC)	**24,086**	**24,086**	**24,086**	**24,086**
Capital Expenditures	**1,025**	**2,169**	**200**	**200**

*Licence and Assessment fees are collected for a 24-month licensing cycle based on individual renewal dates.
**Assessment fees are assumed to increase by $100 (17.6%) in 2021/22 and 2022/23.
*** Interest and investment income is net of credit card charges.

Key Forecast Assumptions, Risks and Sensitivities

Our key revenue assumptions are as follows for comparative year 2020/21:

- Budget is based on a conservative estimate that annual licence renewals may decline up to 2.5% as a result of market fluctuations and changes to education standards.
- No change anticipated to licensing fee and assessment rates in 2020/21. Licensing fee and assessment rates are reviewed annually as part of budget planning.
- Budget projections for 2012/22 and 2022/23 include an anticipated increase of $100 in licensee assessment fees to ensure balanced budgets. With increasing technology investments and process improvements, operating expenses are expected to increase with revenues decreasing due to the projected decline in renewals per above.
- Administrative responsibility for regulatory education course development and delivery transitioned from BCREA to RECBC in October 2019. RECBC now develops and administers mandatory regulatory education on a cost-recovery basis. Course fee revenue for 2019/20 is forecast at $3.8M and includes expected revenue from a new mandatory regulatory education course to be introduced in January 2020. The launch of a further new mandatory education course is anticipated in the spring of 2020. All real estate professionals must complete RECBC's mandatory regulatory education courses within their 2-year licensing cycle.

Our key expense assumptions are as follows for comparative year 2020/21:

- $3.0M increased education program expenses, not including staffing costs, as a result of program administration and delivery adopted in October 2019.
- $2.2M increased staffing costs as anticipated to support additional full-time employees (FTE) for compliance, audit and operations functions and increased employee benefit costs.
- RECBC has renewed the lease for its current premises until 2034, with additional space totaling 17,389 sqft at an average cost of $31.25/sqft over a 15-year commitment.
- No changes anticipated in liabilities.
- No change anticipated to investment in controlled entities: Real Estate Compensation Fund Corporation (assets in trust) or Real Estate Errors and Omissions Insurance Corporation (government business enterprise).
- Other interest and investment income is net of credit card expenses.
- Capital assets are amortized straight line for computer hardware and software additions and office furniture and equipment over four and five years respectively.

Risks include:

- RECBC revenue is uncertain as trends in new licence applications and renewals of existing licences are impacted by market fluctuations and the unpredictability of enforcement sanctions.
- Proposed balanced budgets for fiscal years 2020 and 2021 are subject to change based on licensee assessment and renewal fees revenue. Deficits may erode RECBC's unrestricted surplus or may be offset by future increases to licensee assessment fees. RECBC's revenue strategy will be reviewed annually and real estate professionals will be provided with advance notice of any proposed increases.
- Costs associated with the implementation of a technology modernization remain preliminary.

- Costs associated with the anticipated amalgamation with the Office of the Superintendent and the BC Financial Services Authority are still unknown. RECBC is working with representatives from each organization and with the Ministry of Finance to develop project plans and preliminary budgets for the amalgamation project.

Management's Perspective on the Financial Outlook

RECBC prepares an annual budget for approval by the Council, monthly budget variance reporting to management and requests Council approval of significant expense variances.

Compensation and occupancy costs account for about 57% of the organization's expenses for 2020/21. We are enhancing staff capacity to align with growing operational demands and strategic priorities as we plan for a transition to a single regulator. To accommodate its staff and improve space efficiencies, RECBC has secured a 15-year lease expanding our current premises in downtown Vancouver until 2034. RECBC is not a capital intensive organization and has no capital projects valued at more than $50M.

RECBC continues to enhance its use of technology to improve the efficiency and effectiveness of its services while improving digital security and reducing technical liability. RECBC will increase the use of data across all platforms to predict trends and identify potential consumer risks. Technology expenditures are projected to increase over the next three years as licensing processes are modernized, case management systems are improved, infrastructure is upgraded, and strategic data initiatives begin. Our revenue strategy and any future changes to assessment fees will be reviewed annually based on changing strategic priorities, operating expenditures and licence renewal trends.

RECBC appoints the majority of the board members to the Real Estate Compensation Fund Corporation (RECFC). RECFC provides protection for members of the public who have entrusted real estate professionals with money that was misappropriated or wrongfully converted, intentionally not paid over or accounted for, or obtained by fraud. The funds administered by RECFC under the *Real Estate Services Act* (RESA) meet the definition of a trust under administration and are not included in RECBC's financial statements.[1]

The Real Estate Errors and Omissions Insurance Corporation (REEOIC) is a government business enterprise (GBE) controlled by RECBC. REEOIC is a special act corporation incorporated under RESA. REEOIC pools the insurance premiums paid by real estate professionals in a fund that is used to pay the costs of defending and indemnifying real estate professionals against professional liability claims.

[1] *As determined by RECBC auditors Grant Thornton LLP in 2017.*

Appendix A: Hyperlinks to Additional Information

Corporate Governance

Information about RECBC's Corporate Governance can be found at:
https://www.recbc.ca/about/governance.html.

This includes links to information regarding:

- Council members
- RECBC committees and advisory groups
- Executive Team

Organizational Overview

Information about RECBC's operating environment can be found at:
https://www.recbc.ca/about/overview.html.

This includes links to information about:

- RECBC's mandate
- Core business areas
- Organizational goals

The *Real Estate Services Act*, the enabling statute for RECBC, is available here:
http://www.bclaws.ca/civix/document/id/complete/statreg/04042_01

Public Review of Real Estate Regulation

Real Estate Regulatory Structure Review, September 2018

Related Organizations

Information about the Real Estate Compensation Fund Corporation can be found at:
https://www.recbc.ca/complaints/special-compensation-fund.html

Information about the Real Estate Errors and Omissions Corporation can be found at:
https://www.reeoic.com/

Information about the Office of the Superintendent of Real Estate can be found at:
https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/central-government-agencies/office-of-the-superintendent-of-real-estate

Information about the British Columbia Financial Services Authority can be found at:
https://www.bcfsa.ca/