

A. Introduction and Scope of Overview Report

1. In 2018, an Expert Panel on Money Laundering in BC Real Estate, appointed by the Minister of Finance, released a report in which the Panel described the *Mortgage Brokers Act* (MBA) as inadequate. Specifically, the Panel heard that “the current [MBA] should be replaced by modern, effective regulatory legislation to oversee mortgage lending in BC”.² The Panel concluded that the MBA was antiquated³

2. After this report was released, a second independent report, *Dirty Money – Part 2*, authored by Dr. Peter German, Q.C., emphasized that because of insufficient oversight and regulation in some areas of the mortgage lending industry, mortgage brokers, lenders, and the mortgages they provide “can be attractive vehicles for money laundering.”⁴ This report states that BC Financial Institutions Commission (“FICOM”, as it then was) staff “expressed the view that FINTRAC reporting should be extended to all mortgage lenders”.⁵

3. In response to the Expert Panel’s recommendation, the Government of BC launched a review of the MBA.

4. In January 2020, the BC Ministry of Finance issued a white paper entitled “*Mortgage Brokers Act Review: Public Consultation Paper*” (the “Public Consultation Paper”).⁶ The paper reviews identified deficiencies in the MBA and compares the MBA to other more recently enacted mortgage broker legislation in other jurisdictions, to highlight discrepancies and potential areas for reform. The paper sets out particular areas of

¹ RSBC 1996, c 313.

² Maloney, Maureen; Somerville, Tsur; Unger, Brigitte; *Combating Money Laundering in BC Real Estate* (2019), Expert Panel on Money Laundering in BC Real Estate, Government of British Columbia, online: <<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/real-estate-in-bc/combating-money-laundering-report.pdf>> Page 72.

³ British Columbia, Ministry of Finance, *Mortgage Brokers Act Review: Public Consultation Paper* (2020), Government of British Columbia, online: <<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/real-estate-in-bc/mortgage-brokers-act-consultation-paper.pdf>>, Page 1

⁴ Peter M. German, *Dirty Money – Part 2: Turning the Tide – An independent Review of Money Laundering in B. C. Real Estate, Luxury Vehicle Sales & Horse Racing* (2019) Peter German & Associates Inc., online: <https://cullencommission.ca/files/Dirty_Money_Report_Part_2.pdf>, Page 60.

⁵ *Ibid*; *Dirty Money – Part 2*, Page 61.

⁶ *Ibid*; *Mortgage Brokers Act Review: Public Consultation Paper* (2020)

concern and poses questions in respect of each. The Ministry of Finance invited interested parties and the public to submit feedback.

5. This overview report will provide a timeline of the consultation process, a brief overview of the proposed changes, a comparison of proposed changes with Ontario legislation, and an in-depth summary of specific changes alongside feedback received by the government.

B. Consultation Timeline

September 2018: The BC Minister of Finance appoints Professors Maloney, Somerville and Unger to lead an Expert Panel on Money Laundering in Real Estate.⁷

31 March 2019: The Expert Panel submits its report to the Minister of Finance.⁸

May 2019: The Expert Panel Report is released. The report comments on the antiquated nature of the MBA, and recommends replacing the MBA.⁹

17 January 2020: In response to the Expert Panel Report, the Government of BC announces the start of a public consultation period for review of the MBA. The beginning of the consultation period is marked by the release of the Ministry of Finance's Public Consultation Paper on the MBA ("the Public Consultation Paper").¹⁰

14 March 2020: The original deadline for submissions in response to the Public Consultation Paper. This was later extended to April 30, 2020.¹¹

30 April 2020: The consultation period closes (final deadline for responses to the Public Consultation Paper).¹²

⁷ Government of British Columbia, "Combating Money Laundering in BC Real Estate" (12 June 2020), Government of British Columbia, online: <<https://www2.gov.bc.ca/gov/content/housing-tenancy/real-estate-bc/consultations/money-laundering>>

⁸ *Ibid*; *Combating Money Laundering in BC Real Estate* (2020)

⁹ *Ibid*; *Mortgage Brokers Act Review: Public Consultation Paper* (2020), Page 21

¹⁰ BC Gov News, "Consultations begin on preventing money laundering in mortgages, corporations" (17 January 2020), Government of BC, online: <<https://news.gov.bc.ca/releases/2020FIN0002-000075>>.

¹¹ *Ibid*; *Mortgage Brokers Act Review: Public Consultation Paper* (2020), Page 1

¹² Government of British Columbia, Webpage; "Mortgage Brokers Act Review Consultation" (12 June 2020), <<https://www2.gov.bc.ca/gov/content/housing-tenancy/real-estate-bc/consultations/mortgage-brokers-act-review>>

C. BC and Ontario legislative reviews

6. In September 2019, Ontario released a final report regarding a legislative review of its *Mortgage Brokerages, Lenders and Administrators Act* (MBLAA) (the “MBLAA Report”).¹³ In many ways, proposed changes to BC’s MBA reflect recommendations contained in that report.¹⁴

7. The first of these recommendations is to establish new classes of licensing. Like BC, Ontario proposed a modernization of the mortgage broker licensing scheme. Recommendation #2 of the MBLAA Report outlined the need to create new and varied classes of licensing in order to “better [reflect] the unique practices required by different segments of the mortgage market”, and harmonize Ontario’s mortgage broker sector with other regulatory schemes in the province.¹⁵

8. BC’s Public Consultation Paper also contemplates licensing exemptions in order to modernize the MBA and harmonize it with other Canadian jurisdictions. The MBLAA Report, specifically Recommendation #4, advocated maintaining current MBLAA licensing exemptions, including those applying to lawyers and employees of financial institutions.¹⁶

9. The MBLAA Report recommended incentivizing registration for private lenders (Recommendation #6), referencing reports from B.C. that private lending is vulnerable to money laundering.¹⁷ Ontario recommended mandatory registration when private lending meets certain thresholds, and voluntary registration if thresholds are not met.¹⁸ BC’s MBA Consultation Paper addressed the regulation of private lenders and solicited feedback on bringing them into the mortgage broker regulatory scheme.

¹³ Downey, Doug and Cho, Stan, *Protecting and Modernizing Ontario’s Mortgage Broker Industry: Report to The Minister of Finance on the Legislative Review of the Mortgage Brokerages, Lenders and Administrators Act, 2006* (2019), Government of Ontario, online:

<<https://www.fin.gov.on.ca/en/consultations/mblaa-report-september2019.pdf>>

¹⁴ *Ibid*; *Protecting and Modernizing Ontario’s Mortgage Broker Industry*, Page 5

¹⁵ *Ibid*; *Protecting and Modernizing Ontario’s Mortgage Broker Industry*, Page 6

¹⁶ *Ibid*; *Protecting and Modernizing Ontario’s Mortgage Broker Industry*, Page 7

¹⁷ *Ibid*; *Protecting and Modernizing Ontario’s Mortgage Broker Industry*, Page 8

¹⁸ *Ibid*; *Protecting and Modernizing Ontario’s Mortgage Broker Industry*, Page 9

10. Finally, like BC's Public Consultation Paper, the MBLAA Report addressed the administrative monetary penalty framework. Recommendation #7 suggested a review of the framework and the penalties to ensure they are "tailored to specific risks and activities...and that they provide appropriate levels of deterrence in order to promote compliance".¹⁹ BC's MBA Consultation Paper solicited opinions on the current monetary penalty and asked whether the current limits are still appropriate.

11. It is important to note that some stakeholders who engaged with BC's MBA consultation highlighted that mortgage broker legislation across Canada suffers from many of the issues highlighted in the MBA Consultation Paper. Mortgage Professionals Canada ("MPC") specifically, for example, recommended harmonization wherever possible between provinces and coordination with the Mortgage Broker Regulators' Council of Canada.²⁰

D. Entities that submitted feedback

12. As noted above, the BC Ministry of Finance invited submissions and responses to specific questions posed in its Public Consultation Paper. The Ministry of Finance received feedback to the MBA Consultation Paper from the following entities:²¹

- a. Amur Financial Group Inc. (AFG)
- b. Ashdown Capital
- c. British Columbia Financial Services Authority (BCFSA), the successor to FICOM
- d. British Columbia Mortgage Investment Corporation Managers Association (BCMMA)
- e. British Columbia Real Estate Association (BCREA)
- f. Canadian Life and Health Insurance Association (CLHIA)
- g. Canadian Mortgage and Housing Corporation (CMHC)
- h. Canadian Mortgage Brokers Association British Columbia (CMBABC)
- i. Canadian National Association of Real Estate Appraisers (CNAREA)
- j. City of Richmond
- k. CMLS Financial Ltd.
- l. Dundarave Mortgage Investment Corporation (DMIC)

¹⁹ *Ibid* Protecting and Modernizing Ontario's Mortgage Broker Industry, Page 10

²⁰ *Ibid*. Protecting and Modernizing Ontario's Mortgage Broker Industry, Page 7 & 8

²¹ *Ibid*; Mortgage Brokers Act Review Consultation Webpage (2020), Page 1; The original deadline for submissions and comments as set out in the Paper was March 13, 2020, but that deadline was later extended to April 30, 2020.

- m. The Law Society of British ColumbiaThe Mortgage and Title Insurance Industry Association of Canada (MTIAC)
- n. Mortgage Professionals Canada (MPC)
- o. Office of the Seniors Advocate of British Columbia (OSABC)
- p. Peoples Trust
- q. Manulife Investment Management
- r. the BC Notaries Association
- s. the Appraisal Institute of Canada-BC
- t. Members of the Public

E. Brief Summary of Proposed Changes

13. The Government of British Columbia stated in its Public Consultation Paper that the goal of this review was to modernize the MBA in order to harmonize legislation across provinces, foster better detection, intervention and resolution of issues, and implement best practices for mortgage brokers.²²

14. The proposed replacement to the MBA would do the following:

- a. “[Require] licensing of all mortgage brokering with limited exemptions.
- b. [Provide] for minimum standards of conduct and a duty of care to consumers.
- c. [Require] transparency and disclosure in mortgage transactions.
- d. [Provide] enhanced disclosure and reporting requirements for more complex products.
- e. [Reduce] regulatory gaps, [leverage] work done in other provinces and [respect] existing inter-jurisdictional agreements.”²³

F. Issues and questions posed by the Public Consultation Paper, and responses received

i. Mortgage Broker registration or licensing requirements

15. With respect to mortgage broker registration and licensing, the proposed legislation would require registration for a broader array of activities, requiring

²² *Ibid*; *Mortgage Brokers Act Review: Public Consultation Paper* (2020), Page 1 & 3

²³ *Ibid*; *Mortgage Brokers Act Review: Public Consultation Paper* (2020), Page 4

authorization for mortgage brokers and lenders “except in circumstances of low consumer risk, such as individuals lending to a small number of friends and family”.²⁴ This authorization framework would be accompanied by consumer protection measures, as well as accountability and compliance mechanisms.²⁵ The consultation paper divides this exploration into three headings, each with a series of questions.

a. Issue 1: Scope of the MBA (i.e. currently unregulated activity)

16. The Public Consultation Paper notes that, in contrast to modern mortgage broker legislation, the existing legislation does not regulate mortgages granted by BC residents on property located outside BC even if the transaction involves BC persons, nor does it capture private lenders unless certain thresholds are met.²⁶ The existing legislation is ambiguous as to the definition of “carrying on business”, which is a trigger for registration under the MBA. Finally, the existing legislation does not allow for the expansion of definitions as new business activities arise.

Question 1: Are there any unintended consequences or concerns with amending the scope of the MBA legislation to align with other modern provincial MBA legislation?

17. The British Columbia Mortgage Investment Corporation Managers Association (BCMMA) stated that one unintended consequence could be potential conflict and/or overlap with other legislation.²⁷

18. BCFSAs stated that consumer protection would be enhanced “by limiting mortgage brokers to single licenses in the origination category.”²⁸

19. Ashdown Capital raised concerns that harmonizing MBA legislation with other provincial jurisdictions could “render some lenders who fall outside of the [MBA] unable

²⁴ *Ibid*; *Mortgage Brokers Act Review: Public Consultation Paper* (2020), Page 4

²⁵ *Ibid*; *Mortgage Brokers Act Review: Public Consultation Paper* (2020), Page 4

²⁶ *Ibid*; *Mortgage Brokers Act Review: Public Consultation Paper* (2020), Page 6

²⁷ British Columbia Investment Corporation Managers Association Submission via email to Ministry of Finance Policy & Legislation Division re: *Mortgage Brokers Act Review Feedback from British Columbia Mortgage Investment Corporation Managers Association (BCMMA)* (March 17, 2020) Page 2

²⁸ British Columbia Financial Services Authority, Submission via Email to Ministry of Finance Policy & Legislation Division re: BCFSAs Response to Mortgage Brokers Act Review and Consultation Paper, (July 6, 2020), Page 17

to carry on business.” This includes those who are lending small amounts to borrowers who otherwise would not qualify or are ineligible, and so will be unable to access the financing and capital they require. It may also negatively impact those who are lending personal funds as a means of generating a financial return.²⁹

20. The City of Richmond stated that an alignment was necessary. It stated that “the Provincial government should seek to continuously improve financial regulatory legislation” and that the Province should also seek alignment with Financial Action Task Force recommendations.³⁰

21. For consistency and harmonization across both jurisdictions and legislation, the British Columbia Financial Services Authority (BCFSA) suggested that the term “registration” should be replaced with “license”.³¹ The BCFSA supported recognizing the initial licensing credentials of mortgage brokers but suggested that licensees from other Canadian jurisdictions should be made to obtain licensing in BC before conducting business. It also stated that “the process should require a prospective licensee to demonstrate knowledge of BC’s regulatory framework and conduct requirements.”³²

22. Peoples Trust stated that it is important for the MBA to remain relevant and “cover all the new work, practices and potential changes to the industry”.³³

Question 2: To what extent should private lending be regulated?

23. The Canadian Mortgage Brokers Association British Columbia (CMBABC) argued that there should be a distinction between investors and lenders under the revised legislation. CMBABC suggested new legislation distinguish between passive investors, who should not require regulation, and active investors or lenders, who should be

²⁹ Ashdown Capital, Submission via Email to Ministry of Finance Policy & Legislation Division re: *MBA Review Response* (April 14 2020) Page 2

³⁰ City of Richmond, Submission via Email to Ministry of Finance Policy & Legislative Division re: *Response to Provincial Consultation regarding the Mortgage Broker Act* (10 March 2020), Page 1

³¹ British Columbia Financial Services Authority, Submission via Email to Ministry of Finance Policy & Legislation Division re: *BCFSA Response to Mortgage Brokers Act Review and Consultation Paper*, (July 6, 2020), Page 3

³² *Ibid*; *BCFSA Submission*, (July 6, 2020), Page 4

³³ Peoples Trust Company, Submission via Email to Ministry of Finance Policy & Legislative Division re: *Mortgage Brokers Act Review* (27 April 2020) Page 1

regulated. Further, the CMBA suggested including an exemption for lenders who lend to family and “perhaps” friends.³⁴

24. CMLS Financial Ltd. suggested that while the current MBA provides exemptions for private lenders, the BCFSA should review BC Instrument 45-501 under the *Securities Act* to “include a definition of ‘institutional investor’ and ensure consistency with its language”.³⁵

25. Amur Financial Group Inc. (AFG) outlined that there are three types of private lending. The first is private lending between two citizens, which is highly susceptible to money laundering activity, and AFG’s recommendation is to coordinate with the Law Society of BC (“LSBC”) to determine what protocols they have in place regarding this. The second is private lending involving a mortgage broker, and the last is capital raised in the private market, including mortgage investment corporations and peer to peer lending. The latter is also susceptible to money laundering, and AFG recommended the BCFSA implement Know Your Client (KYC) requirements on mortgage brokers engaged in peer to peer lending.³⁶

26. The BCMMA stated that it would be helpful to define private lending and differentiate between mortgage investment corporation lenders, private lenders and syndicated lenders. The Association suggested that “all lenders involved in arms-length mortgage transactions should be regulated.”³⁷

27. Ashdown Capital suggested that “private lending should be regulated to the same standards as lending by financial institutions.”³⁸

³⁴ Canadian Mortgage Brokers Association British Columbia, “*Mortgage Brokers Act Consultation: Response to Questions*” (April 2020), <<https://www.cmbabc.ca/wp-content/uploads/2020/04/MBA-consultation-QA-2020-04-30.pdf>>

³⁵ CMLS Financial, Submission via Email to Ministry of Finance Policy & Legislative Division re: *Mortgage Brokers Act Review Consultation* (17 April 2020) Page 2

³⁶ Amur Financial Group, Submission via Email to Ministry of Finance Policy & Legislative Division re: *MBA Review Consultation* (28 April 2020) Pages 1 & 2

³⁷ *Ibid*; BCMMA Submission (March 2020) Page 3

³⁸ *Ibid*; Ashdown Capital Submission, (April 2020) Page 2

28. CNAREA stated that “private lending should be regulated fully as brokers have access to various types of lenders.” This would eliminate brokers finding unregulated lenders that would in turn finance borrowers that should not be financed.³⁹

29. The City of Richmond stated that mortgage investment corporations and other private lenders involved in mortgages should be regulated. It pointed to Dr. German’s recommendations that regulation should address “beneficial ownership status, lending practices and the source of funds.” The City also stated that “mortgage brokers should be compelled to file suspicious transaction reports.”⁴⁰

Question 3: Are there any other mortgage broker or lending activities that should be subject to regulatory oversight?

30. CMBABC submitted that there should be flexibility in the MBA in order to capture evolving mortgage industry activities. The CMBABC provided the example of FinTech service providers, which sector features blurred distinctions between regulated and unregulated financial services. In CMBABC’s view, the updated MBA should contain mechanisms to adapt to unforeseen changes in industry.⁴¹

31. Mortgage Professionals Canada (MPC) suggested that the definition of sub-mortgage brokers as “employed” by mortgage brokers be amended to use language that more accurately reflects the relationship, which is one of oversight and compliance accountability.⁴²

32. Peoples Trust stated that private lending should be regulated to the extent that this provides enough consumer protection and awareness. It cautioned that private lending should not be over-regulated due to the high risk/high return nature of the lending.⁴³

³⁹ Canadian National Association of Real Estate Appraisers, Submission via email re: *MBA Review Feedback* (March 11, 2020) Page 3

⁴⁰ City of Richmond, Submission via Email to Ministry of Finance re: *MBA Review Response* (March 10, 2020), Page 1

⁴¹ *Ibid*; *CMBABC Response to Questions* (April 2020), Page 3

⁴² Mortgage Professionals Canada, Submission via Email re: *Advice to the British Columbia Ministry of Finance on its Review of the Mortgage Brokers Act* (April 30, 2020) Page 3

⁴³ *Ibid*; *Peoples Trust Submission* (April 2020), Page 1

33. BCMMA stated that the BCFSA should be conducting “spot checks” on licensed brokers to ensure compliance.⁴⁴

34. Ashdown Capital suggested that commercial lending activities such as equipment, working capital, and small business lending should be regulated, as these are transactions that, without oversight, can put clients at risk.⁴⁵

35. CNAREA suggested that “all non-mortgage activities carried out by mortgage brokers should also be included in regulatory oversight.”⁴⁶

36. The BCFSA submitted that the scope of the MBA should be expanded to capture more unregistered activities. The Authority stated that “a broader and clearer definition would provide more certainty” to stakeholders.⁴⁷

37. The City of Richmond suggested that “private lenders and lessors for cars should be regulated”, and that in addition to this, documentation of due diligence should be undertaken by car dealers.⁴⁸

b. Issue 2: Types of Licenses and related obligations

38. The Public Consultation Paper describes the potential for mismatch between the types of business that mortgage brokers carry out today and the conduct contemplated by existing legislation. It addresses the ways this mismatch has been alleviated in modern mortgage legislation in other jurisdictions, and suggests ways in which the current regime could be modernized. Suggested modernizations include continuous licenses, which would eliminate license renewals, and a grouped licensing regime which “distinguishes between persons carrying out different mortgage brokering activities”, imposing different obligations and duties for each activity.⁴⁹

⁴⁴ *Ibid*; BCMMA Submission (March 2020) Page 3

⁴⁵ *Ibid*; Ashdown Capital Submission, (April 2020) Page 2

⁴⁶ *Ibid*; CNAREA Submission (March 2020), Page 3

⁴⁷ *Ibid*; BCFSA Submission (July 2020), Page 7

⁴⁸ *Ibid*; CoR Submission (March 2020), Page 1

⁴⁹ *Ibid*; Mortgage Brokers Act Review: Public Consultation Paper (2020), Page 7

Question 1: What are the challenges associated with moving to a more modern licensing regime described above?

39. Peoples Trust submitted that a modernized licensing scheme will include more extensive reviews of broker activities, and should include regulating individuals who deal with consumers and have influence over the consumer's loan decision. . Peoples Trust also stated that administrative staff who have no influence on the lending activity, but who process documents in relation to it, should be excluded from the licensing regime requirements.⁵⁰

40. AFG recommended looking to the Ontario model in terms of modernization of the MBA.⁵¹

41. BCMMA highlighted concerns with additional costs, and during the transition, issues with public understanding of new registration categories and industry confusion.⁵²

42. Ashdown Capital identified concerns with the disruption and confusion a new licensing regime could cause, especially for organizations that are operating under current broad categories of registration. Ashdown Capital recommended mandatory and license category-specific education to ensure that the transition causes as little disruption as possible.⁵³

43. CNAREA highlighted that a modern licensing regime would result in transition challenges, but that modernization should nonetheless be pursued.⁵⁴

44. BCFSA suggested that “a modern MBA ought to establish different categories of license with specific standards applicable to each category”, including:

- a. Mortgage Originators;
- b. Mortgage Lenders; and

⁵⁰ *Ibid; Peoples Trust Submission (April 2020), Page 2*

⁵¹ *Amur Financial Group, Submission via Email re: MBA Review (April 28, 2020), Page 2*

⁵² *Ibid; BCMMA Submission (March 2020) Page 3*

⁵³ *Ibid; Ashdown Capital Submission, (April 2020) Page 3*

⁵⁴ *Ibid: CNAREA Submission (March 2020), Page 3*

c. Mortgage Administrators.

45. BCFSA suggested that the modernized MBA should clarify whether multiple licenses should be issued for the same categories, e.g. where mortgage originators are operating with different firm within one franchise, and that fees and requirements “should be proportionate to size, activity risk and regulatory complexity.”⁵⁵ Further, the BCFSA suggested the MBA apply concomitant “subcategories” for licensees, to distinguish between roles of actors in the industry and their respective responsibilities. It suggested the following subcategories:

- a. Mortgage Brokerage Firm;
- b. Managing Mortgage Broker; and
- c. Individual Mortgage Broker.

46. BCFSA further recommended baseline and continuing educational requirements for different categories of licenses, “including distinct requirements for brokering commercial versus residential mortgages” and enhanced suitability criteria for licensing, where “the onus is on the applicant to demonstrate suitability.”⁵⁶

47. The City of Richmond stated that moving to a more modern licensing regime would “entail a significant initial investment from the Province” and that “a portion of licensing fees should be fenced to fund regulatory and enforcement resources.”⁵⁷

Question 2: Are there disadvantages to continuous licensing the government should consider?

48. British Columbia Real Estate Association (BCREA) proposed a Professional Standing Committee to allow greater representation of/voice for mortgage brokers in the regulation of the industry. The Association suggested the Standing Committee be

⁵⁵ *Ibid*; BCFSA Submission (July 2020), Page 8

⁵⁶ *Ibid*; BCFSA Submission (July 2020), Page 9

⁵⁷ *Ibid*; City of Richmond Submission (March 2020), Page 2

modelled on the BC Teachers' Council, and outline a brief mandate, composition, appointment process, term length and list of qualifications.⁵⁸

49. CMBABC recommended that bank mortgage brokers (either contracted or hired) should be included in the MBA to the extent that they be required to comply with provincial consumer protection legislation with respect to mortgage broker licensing.⁵⁹

50. MPC recommended that licensing should be amended to reflect the distinction between arranging a mortgage and arranging the capital to lend for a mortgage.

51. MPC also argued that the issues of a potential duty to act in the best interests of the borrower, and a duty on licensees to act in the best interests of an investor or private lender, are issues that should be considered together. It submitted that in some transactions, the former duty should apply, and in others, the latter duty would apply. To consider the questions separately would risk exacerbating the fact that these duties are sometimes in conflict with each other. To avoid this conflict, MPC strongly recommended separate licensing classes for licensees who arrange mortgages for established lenders and those who arrange mortgages for private lenders.⁶²

52. MPC also recommended that changes to licensing not be implemented until December 2021 in order to ensure the industry is ready and properly educated for the change.⁶⁰

53. Peoples Trust state that the main disadvantage would be that brokers who are not active might continue to hold licenses.⁶¹

54. AFG stated that this runs the risk that individuals “lose touch with new and/or changing provisions”. The Group recommended keeping the current re-licensing regime.⁶²

⁵⁸ British Columbia Real Estate Association, Submission via Email re: *BCREA Response to mortgage Brokers Act Review* (April 29, 2020) Pages 5 & 6

⁵⁹ Canadian Mortgage Brokers Association of British Columbia, Submission via Email re: *Submission on exemptions for Bank Brokers* (April 29, 2020) Page 5

⁶⁰ *Ibid*; MPC Submission (April 30, 2020), Pages 3 to 5

⁶¹ *Ibid*; Peoples Trust Submission (April 2020), Page 2

⁶² *Ibid*; Amur Financial Group Submission (April 2020), Page 2

55. Ashdown Capital pointed to the disadvantage that “there may be less compliance and oversight on those who hold a license in perpetuity.”⁶³ This would create problems for the public if an individual or organization would otherwise not be eligible for license renewal, but due to continuous license, would be able to continue to hold their license.⁶⁴

56. CNAREA highlighted that there would be issues associated with lack of “regular review and monitoring of brokers and brokerages.” Additionally, CNAREA stated that there would be a greater burden on regulators and compliance personnel in that continuous licensing would allow more people, especially part-time or occasional brokers, to become licensed.⁶⁵

57. The City of Richmond stated that as long as adequate enforcement and audit measures were in place, continuous licensing could be efficient. However the City also cautioned that “it is vital that verification of reported information and inspections of the business are robust and are conducted adequately by resourced staff.”⁶⁶

c. Issue 3: Exemptions from registration or licencing

58. Modern mortgage legislation provides more exemptions from registration than the current MBA, 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 Jurisdictions; persons that provide simple referrals; and mortgage lenders who only lend through a licensed brokerage or an otherwise exempt broker.”⁶⁷

Question 1: In your view, what are the costs or benefits of matching the MBA registration exemptions to parallel modern mortgage legislation?

59. As a general point, MPC cautioned that, with modern mortgage legislation guarding against money laundering activities and other harms, there should be a balance between combatting illegal activities and protecting privacy interests.

⁶³ *Ibid*; Ashdown Capital Submission, (April 2020) Page 3

⁶⁴ *Ibid*; Ashdown Capital Submission, (April 2020) Page 3

⁶⁵ *Ibid*: CNAREA Submission (March 2020), Page 4

⁶⁶ *Ibid*; City of Richmond Submission (March 2020), Page 2

⁶⁷ *Ibid*; Mortgage Brokers Act Review: Public Consultation Paper (2020), Page 8

60. Its position is that the *Land Owner Transparency Act* and the proposed Public Beneficial Ownership Registry for BC, for example, go too far in providing transparency. MPC supported the creation of the registry but disagreed with allowing full public searchability of the registry. It submitted that the protection of legitimate privacy interests requires that the registry be restricted to lawful authorities.⁶⁸

61. As a further general point, MPC pointed to the Ontario Ministry of Finance's *Mortgage Brokers, Lenders and Administrators Act* recommendation of simplification of documents to ensure efficiency and reduction of red tape. MPC recommended that the BCFA create a panel, with MPC as a participant, to discuss how a simplification of forms can happen in the BC context.⁶⁹

62. Peoples Trust stated that a benefit is that a single set of rules will make things easier to manage.⁷⁰

63. AFG highlighted benefits in harmonizing MBA registration exemptions to other Canadian jurisdictions, and specifically to Ontario. This would result in clear expectations for all parties.⁷¹

64. BCMMA recommended that registration exemptions should not be so broad, and that "all lenders involved in arms-length mortgage transactions should be regulated".⁷² The Association noted that where a company is managing the transactions, there is room for exemptions provided disclosures and other requirements are met.

65. Ashdown Capital stated that harmonized standards would lead to less confusion for those that hold licenses in multiple provinces, or those that move to a new province.⁷³

66. CNAREA stated that the most logical route would be to grant exemptions for those subject to equivalent regulation. The Association was careful to state that "any exemption

⁶⁸ *Ibid*; MPC Submission (April 2020), Page 11

⁶⁹ *Ibid*; MPC Submission (April 2020), Page 9

⁷⁰ *Ibid*; Peoples Trust Submission (April 2020), Page 2

⁷¹ *Ibid*; Amur Financial Group Submission (April 2020), Page 2

⁷² *Ibid*; BCMMA Submission (March 2020) Page 3

⁷³ *Ibid*; Ashdown Capital Submission, (April 2020) Page 3

should be specifically defined to ensure that the exempted party is not carrying on with activities that can harm the public in any way.”⁷⁴

67. The City of Richmond stated that lawyers should not be exempt from MBA legislation because lawyers are not required to file suspicious transaction reports to FINTRAC.⁷⁵

Question 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?

68. Peoples Trust stated that this is no longer relevant.⁷⁶

69. CMHC was supportive of keeping this exemption.⁷⁷

70. Ashdown Capital stated that this is no longer relevant.⁷⁸

71. CNAREA stated that this scenario should be examined because it has the potential to be a loophole for entities to get around regulation.⁷⁹

72. The City of Richmond stated that this exemption is no longer relevant.⁸⁰

Question 3: Are there any other persons currently exempted from registration either under the MBA or modern legislation that should not be exempted?

73. CMLS recommended the MBA's registration requirements be updated to align with BC Instrument 45-501 under the *Securities Act* and provide exemptions for institutional investors and lenders, and that its language be harmonized with the *Securities Act*.⁸¹

⁷⁴ *Ibid*: CNAREA Submission (March 2020), Page 4

⁷⁵ *Ibid*; CoR Submission (March 10, 2020), Page 2

⁷⁶ *Ibid*; Peoples Trust Submission (April 2020), Page 2

⁷⁷ Canadian Mortgage and Housing Corporation, Submission via email re: *British Columbia's Mortgage Brokers Act* (March 3, 2020) Page 2

⁷⁸ *Ibid*; Ashdown Capital Submission, (April 2020) Page 3

⁷⁹ CNAREA Submission, *supra* note **Error! Bookmark not defined.** at page 4.

⁸⁰ *Ibid*; CoR Submission (March 10, 2020), Page 2

⁸¹ *Ibid*; CMLS Financial Submission (April 2020), Page 2

74. AFG supported removing all exemptions in order to make monitoring mortgage and lending activity easier.⁸²

75. CNAREA stated that “persons that provide simple referrals” and “mortgage lenders who only lend through a licensed brokerage or an otherwise exempt broker” are exemption categories that should be investigated further to ensure that it is in the public’s best interests that they be exempted.⁸³

76. The City of Richmond stated that “the current exemptions are adequate with the notable exceptions of lawyers and the provision of exemption for persons lending to their employees.”⁸⁴

Question 4: Are there any other persons that should be exempted from registration under the MBA?

77. Canadian Life and Health Insurance Association (CLHIA) stated support for current provisions of the MBA that exempt insurers and their employees from licensing requirements. CLHIA further recommended exemptions for insurers and their employees who act through intermediaries, and advisors who are providing simple referrals to a mortgage broker or exempt person.⁸⁵

78. Manulife recommended that the MBA be amended to harmonize licensing exemptions with other provinces.⁸⁶

79. BCMMA recommended that further exemptions should be made for administrative assistants who conduct simple tasks that are related to, but are not transaction negotiations or advising.⁸⁷

⁸² *Ibid*; Amur Financial Group Submission (April 2020), Page 3

⁸³ *Ibid*; CNAREA Submission (March 2020), Page 4

⁸⁴ *Ibid*; CoR Submission (March 10, 2020), Page 2

⁸⁵ Canadian Life and Health Insurance Association, Submission via email re: *Consultation on MBA* (March 13, 2020) Page 2

⁸⁶ Manulife Investment Management, Submission via Email re: *Manulife Submission to BC MBA Review Consultation* (March 3 2020) Page 1

⁸⁷ *Ibid*; BCMMA Submission (March 2020) Page 4

80. The Law Society of British Columbia (LSBC) strongly recommended that there be no changes made to Section 11(1) of the MBA, which exempts lawyers in BC from registration requirements when they perform mortgage broker activities in the course of their practice.⁸⁸

81. BCFSA recommended that bank and credit union representatives not be required to register under the modernized MBA.⁸⁹ It also supported a limited number of licensing exemptions in general. These limited exemptions would be “based on the activity being undertaken, the nature and degree to which there is interaction with the public, and the existence of other regulatory frameworks that provide protections for consumers.”⁹⁰

82. CMBABC recommended that the exemptions contained in the current MBA should be changed to:

- a. “exempt financial institutions from the requirements to obtain licensing as a mortgage brokerage under the MBA;
- b. exempt employees or contractors working for and under the proper name of a financial institution who place mortgages with the same institution (e.g. bank mortgage representatives) from the licensing requirements of the MBA;
- c. require the licensing without any exemption under the MBA of persons who act as brokers by placing borrowers with third party lenders (e.g. bank mortgage brokers), regardless of whether they have a business, contractor or employment relationship with a financial institution; and
- d. require the licensing without any exemption under the MBA of persons or entities who work for a financial institution and arrange mortgages for the financial institution but do not work under the proper name of the financial institution.”⁹¹

⁸⁸ Law Society of British Columbia, Submission via Email re: *Mortgage Broker Act Review Consultation* (February 28, 2020) Page 1

⁸⁹ *Ibid*; BCFSA Submission (July 2020), Page 9

⁹⁰ *Ibid*; BCFSA Submission (July 2020), Page 9

⁹¹ Canadian Mortgage Brokers Association of British Columbia, Submission via Email re: *MBA Review Exemptions* (April 29, 2020) Page 6

ii. Duties of registered or licensed persons

83. The Public Consultation Paper states that modern mortgage legislation imposes duties on licensed persons including the “duty to act fairly, honestly and in good faith in carrying out licensed activities” and requires licensees to obtain errors and omissions (E&O) insurance.⁹² Currently, the MBA requires neither.

84. The BCFSA offered submissions on general duties of all licensees. BCFSA outlined that mortgage broker firms “must establish and implement duly designed policies and procedures to ensure the mortgage brokerage firm and individual mortgage brokers comply with the law.”⁹³ Mortgage broker firms should have managing brokers who are designated chief compliance officers, and who remain independent from brokered deals.⁹⁴ The BCFSA stated that the MBA should set out clear requirements for all licensees with respect to record-keeping.⁹⁵ Managing brokers should have “more robust qualifying standards including a special license, no record of bankruptcy, no disciplinary record in a regulated industry, and undertake a specific course.”⁹⁶ Finally, the BCFSA submitted that mortgage brokerage firms should manage risk of fraud, money laundering and terrorist financing.⁹⁷

85. The Public Consultation Paper solicits opinions on the following areas⁹⁸:

a. Issue 1: Duty to act fairly, honestly and in good faith

Question 1: Do you have any concerns with matching modern mortgage legislation to include a duty to act fairly, honestly and in good faith?

86. The CMBABC noted that implementing the duty would be complex. CMBABC reported that industry members support requiring a high level of practice standards of licensees.

⁹² *Ibid*; *Mortgage Brokers Act Review: Public Consultation Paper* (2020), Page 9

⁹³ *Ibid*; *BCFSA Submission* (July 2020), Page 10

⁹⁴ *Ibid*; *BCFSA Submission* (July 2020), Page 10

⁹⁵ *Ibid*; *BCFSA Submission* (July 2020), Page 11

⁹⁶ *Ibid*; *BCFSA Submission* (July 2020), Page 11

⁹⁷ *Ibid*; *BCFSA Submission* (July 2020), Page 14

⁹⁸ *Ibid*; *BCFSA Submission* (July 2020), Page 14

87. MPC was not opposed to legislating this duty. MPC stated that this positive duty should only be imposed in two scenarios: self-reporting, and reporting individuals over whom a person has a supervisory role. MPC noted the duty exists across other sectors in BC.⁹⁹

88. The CMHC fully supported the inclusion of this requirement into the legislation.¹⁰⁰

89. Peoples Trust recommended that this should be explicitly included under the MBA.¹⁰¹

90. CMLS supported the inclusion of this language in the MBA.¹⁰²

91. AFG had no issue with including this in the legislation as long as the duty is clearly articulated.¹⁰³

92. BCMMA stated this should be required.¹⁰⁴

93. Ashdown Capital supported explicit language in the MBA that enforces the importance of acting fairly, honestly and in good faith.¹⁰⁵

94. CNAREA did not have concerns with this.¹⁰⁶

95. The City of Richmond stated that this duty should be included in modernized MBA legislation.¹⁰⁷

96. BCREA supported the incorporation of this duty into the legislation.¹⁰⁸

Question 2: Should a positive obligation to report misconduct be legislated?

⁹⁹ *Ibid*; MPC Submission (April 30, 2020), Page 6

¹⁰⁰ *Ibid*; CMHC Submission (March 2020), Page 3

¹⁰¹ *Ibid*; Peoples Trust Submission (April 2020), Page 3

¹⁰² *Ibid*; CMLS Financial Submission (April 2020), Page 2

¹⁰³ *Ibid*; Amur Financial Group Submission (April 2020), Page 3

¹⁰⁴ *Ibid*; BCMMA Submission (March 2020) Page 4

¹⁰⁵ *Ibid*; Ashdown Capital Submission, (April 2020) Page 4

¹⁰⁶ *Ibid*; CNAREA Submission (March 2020), Page 4

¹⁰⁷ *Ibid*; City of Richmond Submission (March 2020), Page 3

¹⁰⁸ *Ibid*; BCREA Submission (April 2020), Page 1

97. CMBABC also recommended that while a duty to report misconduct should be imposed, it should never be required where the misconduct is uncertain.¹⁰⁹

98. CMHC supported this and, in addition to a positive obligation to report misconduct, recommended that the MBA “include an explicit AML mandate, including mandatory reporting by all parties on indicators of fraud and money laundering with, at minimum, data sharing between the province and other jurisdictions.”¹¹⁰

99. AFG was in support, however they recommended the duty be imposed at the industry association level as part of its Code of Ethics and Standards of Professional Conduct.¹¹¹

100. Peoples Trust answered this question in the affirmative.¹¹²

101. BCMMA stated it would like a clarification on what “positive obligation” means and states that if it is the expectation that brokers report misconduct, then it agrees. BCMMA recommended that exact parameters of when reports should happen and the process that to be followed should be made clear.¹¹³

102. Ashdown Capital answered this question in the affirmative.¹¹⁴

103. CNAREA answered this in the affirmative, stating that “it is imperative that industry participants also take responsibility to ensure that misconduct is reported and if they do not, be held responsible for not reporting it.”¹¹⁵

104. The City of Richmond answered this question in the affirmative, stating that it is “an effective practice in many professions in identifying a range of unethical as well as criminal behaviour.”¹¹⁶

¹⁰⁹ *Ibid*; CMBABC Response to Questions (April 2020), Page 5

¹¹⁰ *Ibid*; CMHC Submission (March 2020), Page 2

¹¹¹ *Ibid*; AMF Submission (April 2020), Page 3

¹¹² *Ibid*; Peoples Trust Submission (April 2020), Page 3

¹¹³ *Ibid*; BCMMA Submission (March 2020) Page 4

¹¹⁴ *Ibid*; Ashdown Capital Submission, (April 2020) Page 4

¹¹⁵ *Ibid*; CNAREA Submission (March 2020), Page 4

¹¹⁶ *Ibid*; City of Richmond Submission (March 2020), Page 3

105. The BCFSA submitted that lenders who contract services of mortgage brokers should have a positive duty to report misconduct.¹¹⁷

iii. Duty to maintain insurance

Question 1: If you are a mortgage broker, do you currently have Errors & Omissions (E&O) insurance?

Question 2: If you are a mortgage broker, what are your reasons for having or not having E&O insurance?

Question 3: Is there any reason why E&O insurance should not be required?

106. MPC recommended that E&O insurance should be required, and that there should be national standards for this type of insurance.¹¹⁸

107. CMHC stated that there “should be recourse for those affected by the negligence of regulated parties with mandatory E&O insurance and recourse to assurance funds for fraud.”¹¹⁹

108. Peoples Trust stated it believes it is the responsibility of the broker/owner to ensure appropriate insurance is in place.¹²⁰

109. AFG stated that it saw no reason as to why this should not be required.¹²¹

110. BCMMA recommended that E&O insurance should be required by sub-mortgage brokers and their companies. However, mortgage brokers that are lenders should have the choice; some lenders are substantial and self-insure. ¹²²

¹¹⁷ *Ibid*; BCFSA Submission (July 2020), Page 12

¹¹⁸ *Ibid*; MPC Submission (April 30, 2020), Page 6

¹¹⁹ CMHC p. 2.

¹²⁰ *Ibid*; Peoples Trust Submission (April 2020), Page 3

¹²¹ *Ibid*; Amur Financial Group Submission (April 2020), Page 3

¹²² *Ibid*; BCMMA Submission (March 2020) Page 5

111. Despite instances where banks have claimed against an appraiser's E&O as part of their collection activities, CNAREA stated that there is no reason E&O insurance should not be required.¹²³

112. BCFSA recommended that E&O insurance be mandatory for licensees, and that "those policies ought to cover various licensing categories including both large and small lenders." In addition, BCFSA staff believe that licensees should contribute to a centralized compensation fund.¹²⁴

iv. Duty to borrowers

113. The Public Consultation Paper proposes the implementation of a duty to act in the best interests of the borrower, which the MBA does not provide for. It lists several components of this duty, including that 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.¹²⁵

a. Issue 1: Duty to act in borrowers' best interest and mortgage suitability

Question 1: What do you consider to be acting in the best interest of the borrower? What parts of that should be required by legislation?

¹²³ *Ibid*: CNAREA Submission (March 2020), Page 5

¹²⁴ *Ibid*: BCFSA Submission (July 2020), Page 14

¹²⁵ *Ibid*: Mortgage Brokers Act Review: Public Consultation Paper (2020), Page 10

114. 1. The CMBABC stated that this duty requires providing full disclosure and advice to borrowers to allow clients to provide informed instructions, and a recognition that multiple factors are at play (including cheapest price, likelihood of acceptance by lender, product features, flexibility, completion deadlines, and consumer biases). It stated that industry, in its attempt to understand how such a duty would be administered, would be very interested in understanding how a regulator would weight those factors when assessing compliance with the duty. It stated that an area of concern for industry is the weight that the regulator gives to each of these factors.¹²⁶

115. Peoples Trust recommended that legislation should require “full disclosure terms of products, relationship to suppliers and who they work with.”¹²⁷

116. AFG stated that private lenders should be explaining and disclosing all relevant terms, costs, conflicts of interest and a mandatory requirement for independent legal advice should be required by legislation, in pursuit of a duty to act in the borrower’s best interest.¹²⁸

117. BCMMA recommended that compulsory education before licensing is foundational to acting in the best interests of the borrower. The Association also stated that legislating this requirement would be difficult. It suggested wording more along the lines of “best efforts to meet the borrower’s needs”, with the MBA providing examples of this.¹²⁹

118. Ashdown Capital stated that acting in the borrower’s best interests means acting “honestly, fairly, transparently and professionally as well as considering the rights and interests of the consumer”, and that this should be required by legislation.¹³⁰

119. CNAREA stated that ensuring legislation and regulation incorporates and enforces KYC principles is crucial to requiring acting in the best interests of the borrower.¹³¹

¹²⁶ *Ibid*; CMBABC Response to Questions (April 2020), Page 5

¹²⁷ *Ibid*; Peoples Trust Submission (April 2020), Page 3

¹²⁸ *Ibid*; Amur Financial Group Submission (April 2020), Page 3 & 4

¹²⁹ *Ibid*; BCMMA Submission (March 2020) Page 5

¹³⁰ *Ibid*; Ashdown Capital Submission, (April 2020) Page 4

¹³¹ *Ibid*; CNAREA Submission (March 2020), Page 5

120. The City of Richmond pointed to the European Union’s mortgage credit directive and stated that a similar requirement should be included in modernized legislation.¹³²

121. BCFSA supported the call for mortgage brokerage firms and individual mortgage brokers to act in the best interests of their clients.¹³³ BCFSA stated that licensees have a duty to act in the best interest of borrowers, and that in order to do so they must understand risk tolerances, financial positions, and the impact that the recommended mortgage product would have on the borrower.¹³⁴

122. The Appraisal Institute of Canada advocated for prudent underwriting guidelines and the requirement for appraisals from all mortgage brokers, to ensure that there is a duty to act in the borrower’s interests.¹³⁵

Question 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?

123. The CMBABC stated meeting the client’s specific needs and affordability was most important factor, though it indicated that there are more than two factors at play.¹³⁶

124. Peoples Trust recommended that factors considered should include “providing options, understanding a borrower’s risk profile, offering insurance options, and providing examples of different costs of each mortgage.”¹³⁷

125. AFG recommended that the choice should always be left with the borrower to choose their own mortgage solution.¹³⁸

¹³² *Ibid; CoR Submission* (March 10, 2020), Page 4

¹³³ *Ibid; BCFSA Submission* (July 2020), Page 15

¹³⁴ *Ibid; BCFSA Submission* (July 2020), Page 12 & 13

¹³⁵ Appraisal Institute of Canada, Submission via Email to Ministry of Finance Policy & Legislative Division re: MBA Review Submission (April 30, 2020) Page 2

¹³⁶ *Ibid; CMBABC Response to Questions* (April 2020), Page 6

¹³⁷ *Ibid; Peoples Trust Submission* (April 2020), Page 3

¹³⁸ *Ibid; Amur Financial Group Submission* (April 2020), Page 4

126. BCMMA stated that suitability is a complicated concept, and the difficulty of legislating and regulating this concept means that this duty should not be placed on a broker.¹³⁹

127. Ashdown articulated a list of factors to consider including “amount of the down payment, the borrower’s income, the stability of their employment, age, family situation and potentially others”, and that mortgage products should be matched on the basis of both current and future needs.¹⁴⁰

128. Once again, CNAREA highlighted KYC principles to “ensure suitability both from an overall qualification perspective as well as a mortgage product perspective.”¹⁴¹

129. The City of Richmond stated that considerations should include “overall risk tolerance and financial knowledge of their clients” similar to regulations respecting mutual funds and securities.¹⁴²

Question 3: Are there borrowers who do not require the protection offered by a duty to determine mortgage suitability?

130. The CMBABC responded that sophisticated high-net-worth borrowers and commercial property mortgage borrowers and corporate borrowers would not benefit from mortgage suitability advice.¹⁴³

131. BCREA considered it impossible to impose a duty to borrowers, in light of the fact that professionals licensed under the MBA can also be lenders.¹⁴⁴

132. Peoples Trust recommended that the same approach to mortgage suitability should be applied to all applicants, regardless of knowledge base.¹⁴⁵

¹³⁹ *Ibid*; BCMMA Submission (March 2020) Page 5

¹⁴⁰ *Ibid*; Ashdown Capital Submission, (April 2020) Page 5

¹⁴¹ *Ibid*; CNAREA Submission (March 2020), Page 5

¹⁴² *Ibid*; City of Richmond Submission (March 2020), Page 4

¹⁴³ *Ibid*; CMBABC Response to Questions (April 2020), Page 6

¹⁴⁴ *Ibid*; BCREA Submission (April 2020), Page 2

¹⁴⁵ *Ibid*; Peoples Trust Submission (April 2020), Page 4

133. Ashdown Capital stated that all borrowers should be provided the same standard of care.¹⁴⁶

134. CNAREA answered this question in the negative, stating that without this duty some borrowers would obtain mortgages that they should not.¹⁴⁷

135. The City of Richmond stated that “borrowers who are financially knowledgeable, experienced and are well aware of their risk tolerance could be exempted.”¹⁴⁸

b. Issue 2: Disclosure of Brokerage Information

136. The Public Consultation Paper notes that most modern mortgage legislation seeks to promote transparency by requiring disclosure of information about the brokerage and types of service offered. This includes ownership of the brokerage (whether a mortgage lender or otherwise), names of those who own the brokerage and the names and numbers of lenders or private investors, any lender identity verification steps taken, and potential conflicts of interest.¹⁴⁹ This information is not required to be disclosed by the current legislation.

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

137. The CMBABC stated that fees, remuneration and penalties payable by a borrower are not disclosure matters, but rather matters that should go into a service agreement between the client and the licensee.¹⁵⁰

138. MPC stated that the existing framework of brokerage information disclosure is sufficient.¹⁵¹

¹⁴⁶ *Ibid*; Ashdown Capital Submission, (April 2020) Page 5

¹⁴⁷ *Ibid*; CNAREA Submission (March 2020), Page 5

¹⁴⁸ *Ibid*; City of Richmond Submission (March 2020), Page 4

¹⁴⁹ *Ibid*; Mortgage Brokers Act Review: Public Consultation Paper (2020), Pages 11 & 12

¹⁵⁰ *Ibid*; CMBABC Response to Questions (April 2020), Page 6

¹⁵¹ *Ibid*; MPC Submission (April 30, 2020), Page 6

139. Peoples Trust stated that information that will provide transparency for the borrower should be included in disclosures to borrowers. This includes disclosure elements that would not typically be covered in a “Cost of Borrowings” disclosure¹⁵²

140. Ashdown Capital recommended that “information recognized in modern legislation about the brokerage and the types of services offered should all be included in disclosures to borrowers.”¹⁵³

141. CNAREA stated that information that will provide transparency, including fees paid by the borrower, must be disclosed and broken down, including referral fees and administrative fees.¹⁵⁴

142. The City of Richmond outlined that the following disclosures should be mandatory:

- a. If the brokerage is owned by a mortgage lender or private investor, the name of that lender or private investor;
- b. The name and number of lenders or private investors;
- c. The steps that the brokerage took to confirm the identity of the lender and private investor;
- d. The fees, remuneration or penalties payable by the borrower in connection with the services offered by the mortgage brokerage; and
- e. Potential conflicts of interest (i.e. where the brokerage or a related person has an interest in the mortgage).¹⁵⁵

c. Issue 3: Disclosure of Compensation arrangements

143. The Ministry of Finance proposed modernizing the legislation to provide the Registrar with the power to adjust forms and degree of disclosure as needed in response to industry changes.¹⁵⁶

¹⁵² *Ibid; Peoples Trust Submission* (April 2020), Page 4

¹⁵³ *Ibid; Ashdown Capital Submission*, (April 2020) Page 5

¹⁵⁴ *Ibid; CNAREA Submission* (March 2020), Page 6

¹⁵⁵ *Ibid; City of Richmond Submission* (March 2020), Page 4

¹⁵⁶ *Ibid; Mortgage Brokers Act Review: Public Consultation Paper* (2020), Page 12

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

144. The CMBABC recommended that the registrar should have this power, provided that proper consultation has been undertaken.¹⁵⁷

145. MPC had no concerns with the Registrar having this flexibility, so long as industry and public consultation has been undertaken.¹⁵⁸

146. Peoples Trust recommended that MBA disclosure requirements be harmonized with requirements across both the financial sector and other provinces.¹⁵⁹

147. AFG had no concerns and their understanding was that the Registrar already had this authority.¹⁶⁰

148. BCMMA recommended the BCFSA to provide the exact forms required, as this would “allow the industry to have standardized forms that are consistent and correct.”¹⁶¹

149. Ashdown Capital stated giving the Registrar this flexibility will be beneficial, but cautioned that if the frequency and number of changes is too great, it could cause confusion and issues in terms of keeping up with the changes.¹⁶²

150. CNAREA answered this question in the negative, as the mortgage industry is continually changing and the Registrar should be able to respond to those changes.¹⁶³

151. The City of Richmond had no concerns with this proposal, and stated that this is required “as new AML and fraud modalities emerge.”¹⁶⁴

152. The BCFSA supported an “enhanced conflict of interest disclosure regime” that went beyond what current legislation requires to encompass “other information that would

¹⁵⁷ *Ibid*; CMBABC Response to Questions (April 2020), Page 7

¹⁵⁸ *Ibid*; MPC Submission (April 30, 2020), Page 6

¹⁵⁹ *Ibid*; Peoples Trust Submission (April 2020), Page 4

¹⁶⁰ *Ibid*; Amur Financial Group Submission (April 2020), Page 4

¹⁶¹ *Ibid*; BCMMA Submission (March 2020) Page 6

¹⁶² *Ibid*; Ashdown Capital Submission, (April 2020) Page 5

¹⁶³ *Ibid*; CNAREA Submission (March 2020), Page 6

¹⁶⁴ *Ibid*; City of Richmond Submission (March 2020), Page 4

assist the consumer to make an informed choice and reduce the risk that advice is influenced by a broker's pecuniary interest in the transaction."¹⁶⁵ It suggested that this regime should include information on ownership and other relationships that exist between parties with an interest in the transaction.¹⁶⁶

d. Issue 4: Disclosure of cost of credit for home equity loans

153. The Public Consultation Paper notes that: "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?

154. CMBABC addressed cost of credit disclosures with four recommendations including:

That the MBA should have its own simplified, and mortgage transaction specific, cost of credit disclosure requirements, with a required cost of credit form included in the regulations;

A simpler framework should be created for cost of credit disclosures. They propose a formula where total cost of borrowing is the total of all interest costs plus specified included mortgage transaction costs;

A simpler [annual percentage rate] formula should be created and adopted, to bring BC in line with other jurisdictions; and

A separate review of cost of credit disclosure requirements should be undertaken for non-traditional mortgages.¹⁶⁷

¹⁶⁵ *Ibid*; BCFSA Submission (July 2020), Page 16

¹⁶⁶ *Ibid*; BCFSA Submission (July 2020), Page 16

¹⁶⁷ Canadian Mortgage Brokers Association of British Columbia, Submission via Email to Ministry of Finance Policy & Legislative Division re: *Cost of Credit Disclosure* (April 27, 2020) <https://www.cmbabc.ca/wp-content/uploads/2020/04/B-note-cost-of-credit.pdf> Pages 6 & 7

155. MPC recommended that there be a cost of borrowing disclosure for mortgages secured against residential properties. These forms should be as simple as possible.¹⁶⁸

156. Peoples Trust cautioned that eliminating this requirement in all cases could be difficult to manage as “the equity (subsequent mortgage) may be provided as part of a complex structure, including various terms and features, that are not normally associated with a residential mortgage.”¹⁶⁹

157. AFG’s position was that cost of borrowing should be disclosed for all mortgage transactions.¹⁷⁰

158. The BCMMA stated that disclosure of the cost of borrowing should be required for all mortgage transactions.¹⁷¹

159. Ashdown Capital stated disclosure of the cost of borrowing should be required “in every instance where an individual takes out a mortgage secured against residential property.”¹⁷²

160. CNAREA stated that “disclosure of the cost of borrowing should be full, extensive, and transparent for all financial products that are secured by real property.”¹⁷³

e. Issue 5: Special considerations for Reverse Mortgages

Question 1: What are the benefits and costs of requiring independent legal advice before taking out a reverse mortgage?

161. The CMBABC stated that independent legal advice is not always particularly useful, as lawyers do not often review mortgage documents compiled by a mortgage broker. Lawyers are often not aware of all of the implications of a reverse mortgage, and

¹⁶⁸ *Ibid*; MPC Submission (April 30, 2020), Page 6

¹⁶⁹ *Ibid*; Peoples Trust Submission (April 2020), Page 4

¹⁷⁰ *Ibid*; Amur Financial Group Submission (April 2020), Page 4

¹⁷¹ *Ibid*; BCMMA Submission (March 2020) Page 6

¹⁷² *Ibid*; Ashdown Capital Submission, (April 2020) Page 5

¹⁷³ *Ibid*; CNAREA Submission (March 2020), Page 6

so independent legal advice should not be relied on as a substitute for full financial advisement.¹⁷⁴

162. LSBC recommended that individuals who are considering a reverse mortgage should be advised to seek independent legal advice.¹⁷⁵

163. Ashdown Capital said there is a benefit to consumers obtaining legal advice before committing to a reverse mortgage, though recognizing that independent legal advice does increase the overall costs of borrowing.¹⁷⁶

164. Peoples Trust cautioned that such advice is “advice on a transaction that is different to regular mortgage product, and may not be fully understood.”¹⁷⁷

165. CNAREA stated that independent legal advice should be sought especially when dealing with the elderly and reverse mortgages.¹⁷⁸

166. The City of Richmond stated that benefits included providing an uninformed borrower with a better understanding of their rights and obligations, though this would come with increased costs for the borrower.¹⁷⁹

167. The Office of the Seniors Advocate of British Columbia (OSABC) advocated for requiring independent advice (not necessarily to legal advice) before taking out a reverse mortgage, and stated that the benefits include:

“The applicant would have an opinion on the feasibility and legality of the proposal independent of the information provided by a mortgage broker;

The independent advisor might detect undue influence on the senior by a family member or other potential beneficiary and they may detect the need for a competency assessment; and

¹⁷⁴ *Ibid*; CMBABC Response to Questions (April 2020), Page 8

¹⁷⁵ *Ibid*; LSBC Submission (February 2020) Page 2

¹⁷⁶ *Ibid*; Ashdown Capital Submission, (April 2020) Page 6

¹⁷⁷ *Ibid*; Peoples Trust Submission (April 2020), Page 4

¹⁷⁸ *Ibid*; CNAREA Submission (March 2020), Page 6

¹⁷⁹ *Ibid*; City of Richmond Submission (March 2020), Page 5

The independent advisor can put the proposal in the broader context of the applicant's other personal and familial financial and legal obligations"¹⁸⁰

Question 2: What is an appropriate extended cooling off period for reverse mortgages?

168. The CMBABC pointed to Manitoba as a model, where the cooling off period is seven days.. It noted that a longer period might also be more appropriate.¹⁸¹

169. Peoples Trust stated that the appropriate cooling off period is 10-15 days.¹⁸²

170. OSABC stated that the appropriate cooling off period for reverse mortgages is 14 days or 10 business days.¹⁸³

171. BCMMA suggested a cooling off period of one week.¹⁸⁴

172. CNAREA recommended that a minimum of two weeks is appropriate as a cooling off period.¹⁸⁵

Question 3: Should disclosure of the effects of an interest rate change on the mortgage balance be required for reverse mortgages?

173. The CMBABC relied on its submission for cost of credit disclosures.

174. OSABC stated that such disclosure should be required.. Applicants should understand the effects of an interest rate change, as it impacts their future financial abilities in regard to home equity and additional reverse mortgages.¹⁸⁶

175. Ashdown Capital answered this question in the affirmative.¹⁸⁷

¹⁸⁰ Office of the Seniors Advocate British Columbia, Submission via Email to Ministry of Finance Policy & Legislative Division re: *MBA Review* (July 2, 2020) Page 2

¹⁸¹ *Ibid*; CMBABC Response to Questions (April 2020), Page 8

¹⁸² *Ibid*; Peoples Trust Submission (April 2020), Page 5

¹⁸³ *Ibid*; Seniors Advocate Submission (July 2020), Page 3

¹⁸⁴ *Ibid*; BCMMA Submission (March 2020) Page 6

¹⁸⁵ *Ibid*; CNAREA Submission (March 2020), Page 7

¹⁸⁶ *Ibid*; Seniors Advocate Submission (July 2020), Page 3

¹⁸⁷ *Ibid*; Ashdown Capital Submission, (April 2020) Page 6

176. CNAREA answered this question in the affirmative.¹⁸⁸

177. The City of Richmond answered this question in the affirmative, stating that this would better protect and inform the consumer.¹⁸⁹

Question 4: Are there other disclosures or requirements that could better protect consumers not contemplated here?

178. The CMBABC recommended some thought be given to developing a prescribed cost of credit disclosure form for fixed credit, open credit, reverse mortgages and equity ownership mortgages.¹⁹⁰

179. MPC recommended that reverse mortgage regulation be brought in line with that of other provinces.¹⁹¹

180. BCMMA suggested it would be “helpful to illustrate the balance at year one, five and ten so that the borrower understands how much they will owe as the loan progresses.”¹⁹²

181. Peoples Trust answered this question in the negative.¹⁹³

182. Ashdown Capital answered this question in the negative.¹⁹⁴

183. CNAREA stated that the ramifications of deferred payments, a significant feature of reverse mortgages, must be disclosed.¹⁹⁵

184. OSABC recommended the following additional disclosures and requirements:

A description, with examples, of what can happen if the value of a house decreases;

¹⁸⁸ *Ibid*: CNAREA Submission (March 2020), Page 7

¹⁸⁹ *Ibid*: City of Richmond Submission (March 2020), Page 5

¹⁹⁰ *Ibid*: CMBABC Response to Questions (April 2020), Page 8

¹⁹¹ *Ibid*: MPC Submission (April 30, 2020), Page 7

¹⁹² *Ibid*: BCMMA Submission (March 2020) Page 6

¹⁹³ *Ibid*: Peoples Trust Submission (April 2020), Page 5

¹⁹⁴ *Ibid*: Ashdown Capital Submission, (April 2020) Page 5

¹⁹⁵ *Ibid*: CNAREA Submission (March 2020), Page 7

An explanation of the change in the percentage of the equity remaining in the house at the end of the mortgage;

Clear explanations with examples of the differences between taking a one-time lump sum payment or a monthly withdrawal;

A discussion of some of the options available including a home equity line of credit, traditional mortgage, deferred taxes, etc; and

A detailed list of costs incurred for the original application, when the mortgage is granted, and when it is renewed.¹⁹⁶

v. Duties to lenders and investors

185. Currently, there is no duty to act in the best interests of lenders or investors under the MBA. There is also no requirement to assess suitability of an investment. These are features of modern mortgage legislation that are proposed in the consultation paper. The duty to act in the best interest of a private lender means that the broker 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”¹⁹⁷

a. Issue 1: Suitability of investment

186. Under modern mortgage legislation, disclosure around suitability of investments only apply in the private sector.¹⁹⁸

Question 1: Should the duty to disclose mortgage information be amended and limited to private investors?

187. The CMBABC suggested that disclosure should be provided to all investors and lenders with the exception of those who already operate under a regulatory framework (i.e. MBA licensees or BCFSA credit unions).¹⁹⁹

¹⁹⁶ *Ibid*; *Seniors Advocate Submission* (July 2020), Page 4

¹⁹⁷ *Ibid*; *Mortgage Brokers Act Review: Public Consultation Paper* (2020), Page 14

¹⁹⁸ *Ibid*; *Mortgage Brokers Act Review: Public Consultation Paper* (2020), Page 1

¹⁹⁹ CMBABC Response to Questions (April 2020), page 9.

188. AFG stated that Form 9 is comprehensive in its investment disclosure and suggested that this form “continue to be included in all private investor transactions.”²⁰⁰

189. BCMMA stated that the disclosure obligation should not be limited to private investors but should apply to all transactions.²⁰¹

190. Ashdown Capital supported a limited duty to disclose, as private investors are the ones most likely to benefit from this type of disclosure when undertaking a mortgage.²⁰²

191. CNAREA recommended that private investors be provided “with detailed disclosures as to how their funds are being invested.”²⁰³

192. BCFSA suggested that the MBA explicitly state that “mortgage brokers have an overarching duty to act in the best interests of their respective investors.”²⁰⁴

Question 2: Should the mortgage broker duty to a private investor include determining mortgage investment suitability?

193. The CMBABC responded yes, but suggested an alternative test to suitability: whether the person has been given information and is able to provide instruction.²⁰⁵

194. Peoples Trust stated that they “do not believe Form 9 adds value, apart for private/MIC lenders.”²⁰⁶

195. AFG answered this question in the negative. Its opinion was that a mortgage broker “should not necessarily be required to have a full understanding of an investor’s objectives”.²⁰⁷

²⁰⁰ *Ibid*; Amur Financial Group Submission (April 2020), Page 5

²⁰¹ *Ibid*; BCMMA Submission (March 2020) Page 7

²⁰² *Ibid*; Ashdown Capital Submission, (April 2020) Page 6

²⁰³ *Ibid*; CNAREA Submission (March 2020), Page 7

²⁰⁴ *Ibid*; BCFSA Submission (July 2020), Page 13

²⁰⁵ CMBABC Response to Questions (April 2020), page 9.

²⁰⁶ *Ibid*; Peoples Trust Submission (April 2020), Page 5.

²⁰⁷ *Ibid*; Amur Financial Group Submission (April 2020), Page 5.

196. BCMMA answered this question in the negative, as mortgage brokers are not qualified to provide this advice.²⁰⁸

197. Ashdown Capital stated that private investors should have the option to choose if they want to undertake a mortgage investment and that, therefore, the mortgage broker duty should not include determining suitability.²⁰⁹

198. CNAREA answered yes. Investors should “understand that their investments are being handled in a manner that has been disclosed and is suitable”, regardless of sophistication.²¹⁰

199. The City of Richmond answered this in the affirmative.²¹¹

b. Issue 2: Duty to act in best interest of private investors

200. According to the Public Consultation Paper, modern mortgage legislation typically provides “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.”²¹²

Question 1: Are there potential conflicts between the duties to a borrower as outlined above and acting in the best interest of a private investor?

201. The CMBABC pointed to the model adopted by Real Estate Council of Alberta, the Alberta regulator, as one that more fully considers the complexity of this question.²¹³

202. MPC addressed this in their submission under “Mortgage Broker registration or licensing requirements.” MPC believes that disclosure of actual or potential conflicts should be made to all investors.²¹⁴

²⁰⁸ *Ibid*; BCMMA Submission (March 2020) Page 7

²⁰⁹ *Ibid*; Ashdown Capital Submission, (April 2020) Page 6

²¹⁰ *Ibid*; CNAREA Submission (March 2020), Page 7

²¹¹ *Ibid*; City of Richmond Submission (March 2020), Page 6

²¹² *Ibid*; Mortgage Brokers Act Review: Public Consultation Paper (2020), Page 15

²¹³ *Ibid*; CMBABC Response to Questions (April 2020), Page 9

²¹⁴ MPC Submission (April 30, 2020), page 7.

203. BCMMA again outlined that it is difficult to act in the best interests of both parties in every situation, but with proper disclosure conflicts can be eased.²¹⁵

204. Ashdown Capital replied in the affirmative.²¹⁶

205. CNAREA answered this question in the affirmative, stating that this situation is similar to the Dual Agency Issue addressed by the Real Estate Council of BC, and “should be reviewed and monitored similarly.”²¹⁷

Question 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?

206. The CMBABC identified that transactions could be more costly if mortgage brokers could not act as intermediaries, as it would require separate representation and increase costs for the borrower.²¹⁸

207. AFG stated that this would require the development of co-broker relationships “so that the borrower and investor have separate individuals acting on their behalf”, which would add an additional cost to the transaction.²¹⁹

208. BCMMA highlighted that the majority of mortgage investment corporations use their management company to arrange their mortgages. If this structure cannot be used, additional costs and time could be added to transactions, and borrowers may then want to approach the lender directly and not use a broker for further lending.²²⁰

209. Ashdown Capital stated that there would be little impact on their business, as they primarily work in commercial transactions and not with private investors.²²¹

c. Issue 3: The Securities Act

²¹⁵ *Ibid*; BCMMA Submission (March 2020) Page 7

²¹⁶ *Ibid*; Ashdown Capital Submission, (April 2020) Page 7

²¹⁷ *Ibid*; CNAREA Submission (March 2020), Page 7

²¹⁸ *Ibid*; CMBABC Response to Questions (April 2020), Page 11

²¹⁹ *Ibid*; Amur Financial Group Submission (April 2020), Page 5

²²⁰ *Ibid*; BCMMA Submission (March 2020) Page 7

²²¹ *Ibid*; Ashdown Capital Submission, (April 2020) Page 7.

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?

210. The CMBABC suggested that a more in-depth review of the relationship between the MBA and the *Securities Act* be undertaken with respect to syndicated mortgages to ensure consistency and address gaps between regulatory frameworks.²²²

211. Peoples Trust noted the potential for overlap but states that if the MBA focuses solely on borrower protection, and the *Securities Act* focuses on investments, then that overlap is easily avoided.²²³

212. Ashdown Capital highlighted that the MBA does not regulate the capital raising activities of mortgage investment entities, but the fact that the *Securities Act* does should be enough protection for investors.²²⁴ However, it stated that if the MBA were to regulate both lending and capital raising, it would create a more streamlined scheme.²²⁵

213. The BCFSA requested that the legislature clarify the responsibilities between the BC Securities Commission and BCFSA, especially “regarding mortgage portfolio underwriting risk as it relates to capital and liquidity, and ongoing investor disclosure.”²²⁶

214. The BCFSA suggested that the current system is not ideal and may result in risks to investors.²²⁷

215. The BCFSA also recommended a review of the MBA and the *Securities Act* “to identify gaps in regulatory responsibilities overseeing an MIE’s investor protection and duties to borrower protection.”²²⁸

²²² *Ibid*; CMBABC Response to Questions (April 2020), Page 12

²²³ *Ibid*; Peoples Trust Submission (April 2020), Page 6

²²⁴ *Ibid*; Ashdown Capital Submission, (April 2020) Page 7

²²⁵ *Ibid*; Ashdown Capital Submission, (April 2020) Page 7

²²⁶ *Ibid*; BCFSA Submission (July 2020), Page 6

²²⁷ *Ibid*; BCFSA Submission (July 2020), Page 6

²²⁸ *Ibid*; BCFSA Submission (July 2020), Page 6

d. Issue 4: Disclosure of compensation receivable or payable

216. Modern mortgage legislation was noted by the Public Consultation Paper to require the disclosure of actual or potential conflicts of interest, but only to private investors.²²⁹

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

217. The CMBABC stated that not all brokers are clear on who is a private investor and who is not, and recommended that all conflicts should be disclosed to parties regardless of the kind of lender involved.²³⁰

218. Peoples Trust responded in the affirmative to this question.²³¹

219. AFG answered this question in the affirmative, stating that conflicts of interest should continue to be provided through BCFS Form 9.²³²

220. BCMMA stated that disclosure of conflicts should be kept as is in Forms 9 and 10.²³³

221. Ashdown Capital stated that disclosure is not always necessary, as lenders outside of private investors are generally “sophisticated individuals” that have their own processes that they follow.²³⁴

222. CNAREA stated that “all disclosures must specifically state conflicts, interest, fees received, incentives paid, and any other factor that can be perceived as a conflict. This would include the nature of the relationship between the broker and the borrower.”²³⁵

²²⁹ *Ibid; Mortgage Brokers Act Review: Public Consultation Paper (2020), Page 16*

²³⁰ *Ibid; CMBABC Response to Questions (April 2020), page 12.*

²³¹ *Ibid; Peoples Trust Submission (April 2020), Page 6*

²³² *Ibid; Amur Financial Group Submission (April 2020), Page 5*

²³³ *Ibid; BCMMA Submission (March 2020) Page 7*

²³⁴ *Ibid; Ashdown Capital Submission, (April 2020) Page 7*

²³⁵ *Ibid; CNAREA Submission (March 2020), Page 8*

vi. The Regulator – Modern Regulatory Requirements and Powers

223. Finally, the Public Consultation Paper outlines that the BCFSA has taken on responsibility for the mortgage broker sector, and that it will become the exclusive regulator for the entirety of the real estate sector by 2021.²³⁶ In order to enact an effective MBA, the legislation must ensure that regulatory authority is consistent across these BCFSA sectors.

a. Issue 1: Regulations and rulemaking powers:

224. The Public Consultation Paper proposes transferring rule-making powers from the Lieutenant Governor in Council to the regulator, with the caveat that Ministerial consent is required before a rule is created or amended.²³⁷

Question 1: Please, provide your views on the Authority being provided with the power to make rules under the MBA.

225. BCREA recommended that the BCFSA should have the power to make its own rules. The CMBABC is of the same opinion, provided that the BCFSA conduct proper consultation when making or changing policy.²³⁸

226. MPC supported the BCFSA being given the power to make rules under the MBA. It indicated that with this power, it would be prudent for the BCFSA to engage industry and stakeholders in the process to ensure effective rule-making.²³⁹

227. Peoples Trust recommended that there should be some ability to make rules under the MBA, but that significant rule changes should require industry consultation.²⁴⁰

228. BCMMA stated that “as long as there is still an opportunity for industry input, and the Ministry of Finance has to give final approval, it is alright to leave rulemaking to BCFSA.”²⁴¹

²³⁶ *Ibid; Mortgage Brokers Act Review: Public Consultation Paper (2020), Page 16*

²³⁷ *Ibid; Mortgage Brokers Act Review: Public Consultation Paper (2020), Page 16*

²³⁸ *Ibid; CMBABC Response to Questions (April 2020), Page 12*

²³⁹ *Ibid; MPC Submission (April 30, 2020), Page 7*

²⁴⁰ *Ibid; Peoples Trust Submission (April 2020), Page 6*

²⁴¹ *Ibid; BCMMA Submission (March 2020) Page 8*

229. Ashdown Capital stated that providing the Authority with rule-making power would make sense if the Minister's consent were required before making or amending rules.²⁴²

230. CNAREA supported the Authority being provided with this power, stating that "the Authority or Regulator should have broad rule-making power."²⁴³

231. BCFSA supported granting the Authority with rule-making authority, to allow flexibility to respond to risk.²⁴⁴

b. Issue 2: Annual information returns

232. The filing of annual information returns is a requirement of most modern mortgage legislation. An annual information return requires mortgage brokerages and administrators to disclose:

- 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.²⁴⁵

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

233. The CMBABC indicated that this is fairly standard practice and that it had no concerns.²⁴⁶

²⁴² *Ibid*; Ashdown Capital Submission, (April 2020) Page 8

²⁴³ *Ibid*; CNAREA Submission (March 2020), Page 8

²⁴⁴ *Ibid*; BCFSA Submission (July 2020), Page 17

²⁴⁵ *Ibid*; Mortgage Brokers Act Review: Public Consultation Paper (2020), Page 17

²⁴⁶ *Ibid*; CMBABC Response to Questions (April 2020), Page 13

234. MPC raised concerns with the additional administrative burden that annual information returns can bring. It recommended consultation with industry to determine appropriate data and efficient collection.²⁴⁷

235. Peoples Trust raised concerns with the work required of the regulator to manage “such a volume of financial statements”, including what the information would be used for, and how that would impact the efficacy of the regulator’s consumer protection role.²⁴⁸

236. Dundrave Mortgage Investment Corporation (DMIC) requested that Form 15 “not apply to mortgage investment companies who only operate trust accounts to receive investment in compliance with the *Securities Act*.”²⁴⁹

237. AFG viewed such a requirement as in line with Ontario’s regulations, and as good business practice. Its concern was that the information required on these returns should be harmonized across provinces.²⁵⁰

238. BCMMA raised concerns about complaints, stating that the BCFSA should remain responsible for receiving and handling complaints. It also cautioned that “only asking trust funds to be audited misses out on brokers placing borrower funds in the wrong accounts.”²⁵¹

239. Ashdown Capital did not express any concerns.²⁵²

240. CNAREA did not have concerns with this, stating that annual information returns can “be used as a benchmark for auditing and determination of any potential irregularities.”²⁵³

²⁴⁷ *Ibid*; MPC Submission (April 30, 2020), Page 7

²⁴⁸ *Ibid*; Peoples Trust Submission (April 2020), Page 6

²⁴⁹ Dundrave Mortgage Investment Corporation, Submission via Email to Ministry of Finance Policy & Legislative Division re: *MBA Review* (May 5, 2020) Page 1.

²⁵⁰ *Ibid*; Amur Financial Group Submission (April 2020), Page 6

²⁵¹ *Ibid*; BCMMA Submission (March 2020) Page 8.

²⁵² *Ibid*; Ashdown Capital Submission, (April 2020) Page 8

²⁵³ *Ibid*; CNAREA Submission (March 2020), Page 8

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

241. The CMBABC categorized this type of requirement as prudential regulation, which focuses on the stability of an entity to protect stakeholders. It stated that there is no public policy interest that is served by prudential regulation for mortgage brokers.²⁵⁴

242. The LSBC stated that a key issue is to “ensure that trust money is accounted for in an appropriate manner by mortgage brokers and enable their clients to obtain a proper accounting, as well as to permit a full proper audit process should that be necessary”.²⁵⁵

243. BCMMA expressed that additional costs would be their expected impacts, and that mortgage investment companies should require annual audits.²⁵⁶

244. With respect to regulation of trust funds generally, the BCFSA submitted that “mortgage broker activities involving the handling of third-party funds should be subject to regulatory oversight, higher suitability standards, mandatory education on handling trust funds, and require a separate license.”²⁵⁷

245. The BCFSA also suggested a non-exhaustive list of trust fund related requirements, including:

- a. Trust money must be deposited in a Credit Union, Canadian Bank, or loan and trust company located in BC;
- b. Licensees cannot, without the Superintendent's written approval, open, move, close or maintain more than one trust account;
- c. Trust funds must be kept separate from other funds;
- d. Licensees must immediately notify the Superintendent if there is a shortfall in a trust account and deposit its own money into the trust account to correct the shortfall; and

²⁵⁴ *Ibid*; CMBABC Response to Questions (April 2020), Page 13

²⁵⁵ *Ibid*; LSBC Submission (February 2020) Page 2

²⁵⁶ *Ibid*; BCMMA Submission (March 2020) Page 8

²⁵⁷ *Ibid*; BCFSA Submission (July 2020), Page 14

- e. Brokerages requiring an endorsement must ensure they have policies and procedures in place for strict adherence to trust fund handling and record keeping requirements.²⁵⁸

c. Issue 3: Enforcement and the Business Practices and Consumer Protection Act (BCPCA)

246. The existing legislation adopts portions of the *BCPCA* by reference, notably disclosure and enforcement provisions. The Public Consultation Paper suggested these powers could be transferred to the MBA for clarity, as has been done in Ontario.

Question 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?

247. The CMBABC recommended the incorporation of provisions equivalent to BPCPA Part 2 and Part 5 into the MBA.²⁵⁹

248. MPC indicated that members are comfortable with the current split between the *MBA* and the *BPCPA*. It requested that the government initiate a separate consultation process if they wish to change the structure.²⁶⁰

249. Peoples Trust stated that administrative and enforcement provisions would be clearer if they were embedded directly in the *MBA*.²⁶¹

250. BCMMA answered this question in the affirmative.²⁶²

251. Ashdown Capital recommended “having all administrative and enforcement provisions embedded in the MBA” to ensure clarity and simplicity in terms of having to refer only to one enactment.²⁶³

²⁵⁸ *Ibid*; BCFSA Submission (July 2020), Page 15

²⁵⁹ *Ibid*; CMBABC Response to Questions (April 2020), Page 13

²⁶⁰ *Ibid*; MPC Submission (April 30, 2020), Page 8

²⁶¹ *Ibid*; Peoples Trust Submission (April 2020), Page 6

²⁶² *Ibid*; BCMMA Submission (March 2020) Page 8

²⁶³ *Ibid*; Ashdown Capital Submission, (April 2020) Page 9

Question 2: If enforcement provisions continue to be split, are there clarifications that could be made in the MBA to reduce complexity and uncertainty?

252. The CMBABC stated that the only way to reduce the complexity and uncertainty is to incorporate BPCPA provisions (specifically Part 2 and Part 5) into the MBA.²⁶⁴

253. Peoples Trust opined that one set of rules would make things easier for industry.²⁶⁵

254. Ashdown Capital recommended specific references embedded in the MBA that direct the individual to the relevant provisions in the BPCPA, and vice versa.²⁶⁶

255. CNAREA stated that it did not intend to directly answer either of the above two questions but stated that "enforcement must encompass all areas and Acts that affect Real Estate", and that enforcement must be consistent and transparent between industries. "The consequences of being a 'bad actor' in one area must have ramifications in all Real Estate related areas."²⁶⁷

256. Mortgage and Title Insurance Industry Association of Canada (MTIAC) recommended that the government invest in public education campaigns that "focus on how to detect and avoid red flags in the mortgage process". In doing so, MTIAC suggested the government should work with industry to ensure information is accurate and up-to-date.²⁶⁸

d. Issue 4: Enforcement and the BPCPA

257. The Public Consultation Paper lists certain powers available to the Registrar under existing legislation and asks for feedback on possible improvements.

²⁶⁴ *Ibid*; CMBABC Response to Questions (April 2020), Page 13

²⁶⁵ *Ibid*; Peoples Trust Submission (April 2020), Page 7

²⁶⁶ *Ibid*; Ashdown Capital Submission, (April 2020) Page 8

²⁷⁹ *Ibid*; CNAREA Submission (March 2020), Page 10

²⁶⁸ Mortgage and Title Insurance Industry Association of Canada, Submission via Email to Ministry of Finance Policy & Legislative Division re: *MBA Review Consultation* (April 30, 2020) Page 3

Question 1: Do you have any suggestions on ways to further improve enforcement powers and remedies [of the Registrar]?

258. The CMBABC suggested further improvement by adding settlement protocols, allowing industry members to be able to enter into consent agreements, and introducing an independent adjudication process through a panel of industry experts.²⁶⁹

259. AFG recommended standardization in expectations and limiting exemptions to improve enforcement powers. It suggested that “clearly articulated tiers of infractions and penalties could improve the ability to implement remedies for infractions.”²⁷⁰

260. BCMMA stressed the importance of acting quickly, and that “penalties and actions should be clearly laid out based on the offences and harsher action should take place when fraud occurs.”²⁷¹

261. The Appraisal Institute of Canada commented that changes to regulatory oversight should incorporate the expertise of industry and related stakeholders.²⁷²

262. Ashdown Capital stated that current enforcement powers are sufficient.²⁷³

263. CNAREA suggested administrative penalties in order to further improve enforcement powers and remedies, and a streamlined complaints and enforcement procedure.²⁷⁴

264. MTIAC recommended, as a starting point, government impose greater disclosure requirements on mortgage brokers and lenders. The MTIAC further recommended the BC government collaborate with other jurisdictions to create a system for monitoring and

²⁶⁹ Canadian Mortgage Brokers Association of British Columbia, Submission via Email to Ministry of Finance Policy & Legislative Division re: *Adding Settlement Protocols, Independence in the Adjudication Process* (April 20, 2020) < <https://www.cmbabc.ca/wp-content/uploads/2020/04/briefing-notes-Settlement-Process.pdf>>, Page 2, < <https://www.cmbabc.ca/wp-content/uploads/2020/04/briefing-notes-independence-discipline.pdf>>, Page 4

²⁷⁰ *Ibid*; *Amur Financial Group Submission* (April 2020), Page 6

²⁷¹ *Ibid*; *BCMMA Submission* (March 2020) Page 9

²⁷² *Ibid*; *AIC-BC Submission* (April 2020), Page 2

²⁷³ *Ibid*; *Ashdown Capital Submission*, (April 2020) Page 9

²⁷⁴ *Ibid*; *CNAREA Submission* (March 2020), Page 9

enforcement of sanctions, to ensure that sanctions against mortgage brokers who have been found guilty of an offence are upheld interprovincially.

265. MTIAC recommended that the BC government:

- a. Increase penalties for professionals who contravene the provisions of the MBA;
- b. Invest more funds to educate, train, and resource law enforcement agencies and the courts to ensure that fraud and money laundering is understood and prosecuted;
- c. Ensure that there is adequate and sustainable funding for enforcement activities; and
- d. Create greater clarity for the industry and for regulators by embedding administrative and enforcement provisions directly in the MBA.²⁷⁵

266. BCFSA supported modernizing enforcement powers under the MBA including:

- a. All investigative powers be equally applicable to other compliance related functions including but not limited to audits, inspections, inquiries and examinations;
- b. Providing for restitution and disgorgement orders;
- c. An ability for the Superintendent to apply to the Supreme Court for an injunction restraining a person from contravening the MBA, the Regulation and applicable rules;
- d. The power to prevent prospective brokers from applying for licenses for a certain period;
- e. Administrative authority for staff to issue “tickets” for minor regulatory infractions, subject to a reasonable appeal period;
- f. Increased administrative penalties, indexed annually to the consumer price index, in the range of \$250,000 for individual mortgage broker violations and

²⁷⁵ *Ibid*; MTIAC Submission (April 2020), Page 4

\$500,000 for mortgage broker firm violations. Administrative penalties should be aligned with other provincial statutes;

- g. The power to require that certain actions be undertaken, and certain actions not be undertaken.

267. BCFSA also submitted that the power to compel employees of federally regulated institutions to provide documents and appear at hearings should be included in the modernized MBA. Finally, the Authority recommended that it be “granted powers to enter information sharing agreements with other regulators and law enforcement agencies that would supersede what is currently provided within the *Freedom of Information and Protection of Privacy Act*.”²⁷⁶

268. The City of Richmond suggested that, as identified in the Expert Panel report, that “enforcement and verification resources should be adequately staffed and funded.”²⁷⁷

Question 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?

269. The CMBABC stated that the current monetary penalty is sufficient.²⁷⁸

270. MPC suggested that administrative monetary penalties be collected and retained by BCFSA, and used to mitigate the burden of licensing fees on brokers.²⁷⁹

271. Peoples Trust recommended that the current monetary penalty limit should be reviewed and increased to be brought in line with other penalties in the financial services sector.²⁸⁰

²⁷⁶ *Ibid*; BCFSA Submission (July 2020), Page 18

²⁷⁷ *Ibid*; City of Richmond Submission (March 2020), Page 7

²⁷⁸ *Ibid*; CMBABC Response to Questions (April 2020), Page 14

²⁷⁹ *Ibid*; MPC Submission (April 30, 2020), Page 8

²⁸⁰ *Ibid*; Peoples Trust Submission (April 2020), Page 7

272. AFG advocated for a tiered infraction/penalty scheme, and that in particular, infractions that support money laundering should be associated with penalties that exceed \$50,000.²⁸¹

273. BCMMA stated that the current financial penalties are adequate.²⁸²

274. Ashdown Capital stated that this depends on the size of the transaction. Larger transactions, where compensation is over the \$50,000 penalty, could result in non-compliance. Ashdown Capital stated that while higher penalties could result in greater compliance, there will always be those who will not comply, regardless of the penalty.²⁸³

275. CNAREA stated that “penalties should be consistent in all areas of real estate regulations”, and that “amounts should be consistent with commissions, fees and revenues that are associated with specific real estate areas.”²⁸⁴

276. The City of Richmond suggested that penalties should be harmonized with the *Real Estate Services Act*. The Act’s penalties are limited at \$500,000 for brokerages and \$250,000 for others.²⁸⁵

vii. Miscellaneous additional feedback

a. General suggestions

277. The BCFSA encouraged the Ministry of Finance “to review the appropriateness of the current regulatory framework in the context of the risk, size, scope and systemic importance of MIEs in BC.”²⁸⁶ BCFSA suggested the following non-exhaustive list of requirements that all mortgage broker firms should undertake:

- a. File annual information returns;

²⁸¹ *Ibid*; Amur Financial Group Submission (April 2020), Page 6

²⁸² *Ibid*; BCMMA Submission (March 2020) Page 9

²⁸³ *Ibid*; Ashdown Capital Submission, (April 2020) Page 9

²⁸⁴ *Ibid*; CNAREA Submission (March 2020), Page 9

²⁸⁵ *Ibid*; City of Richmond Submission (March 2020), Page 7

²⁸⁶ *Ibid*; BCFSA Submission (July 2020), Page 5

- b. Verify the identity of borrowers, lenders and investors;
- c. Determine the suitability of a mortgage or mortgage investment for a borrower, lender or investor;
- d. Identify and disclose material risks to the borrower, lender or investor;
- e. Identify and disclose potential conflicts of interest to the borrower, lender or investor;
- f. Develop and administer complaint handling process and procedure including;
- g. Designate employees to deal with complaints;
- h. Document all complaints;
- i. Respond to all complaints in a fair and effective manner; and
- j. Keep records of all complaints received from the public and the mortgage brokerage firm's responses.²⁸⁷

b. Personal Service Business Corporations

278. The BCFSA requested that, if the new MBA permits personal services corporations, then it should also include “corresponding transparency requirements for large broker networks that franchise or are organized to create economies of scale.”²⁸⁸

279. MPC argued the benefits of allowing sub-mortgage brokers to incorporate as personal service business corporations and noted CMBABC's support of this in their March 6, 2020 briefing note.²⁸⁹

²⁸⁷ *Ibid*; BCFSA Submission (July 2020), Page 10

²⁸⁸ *Ibid*; MPC Submission (April 30, 2020), Page 17

²⁸⁹ *Ibid*; MPC Submission (April 30, 2020), Page 9

c. Education of Mortgage Brokers and Data Access

280. The Mortgage and Title Insurance Industry Association of Canada (MTIAC) provided additional opinions and suggestions on matters that were not within the scope of the consultation paper, but that it believed to be relevant and necessary to the review.

281. This improved education should focus on KYC best practices, questions to ask of clients, how to identify suspicious applications and what to ask when they are identified.

282. MTIAC also recommended that the BCFSA connect with the real estate and lending industries “to develop and maintain the highest standards of ongoing education for real estate professionals regulated under the MBA”.²⁹⁰

283. Access to market data forms the basis of quality advice and valuations, and access to data is “an underlining component of reducing regulatory gaps.”²⁹¹

d. Consistency across jurisdictions

284. MPC was specifically asked by members to note in its submission that Ontario’s mortgage brokering issues are similar to those in BC, and that many of their members operate in both jurisdictions. It recommended harmonization wherever possible with other provinces and coordination with the Mortgage Broker Regulators’ Council of Canada.²⁹²

285. BCFSA supported “harmonizing the federal and the provincial cost of credit disclosure requirements.”²⁹³

e. Miscellaneous feedback from Industry Members

286. There were several common themes among industry members that responded to the consultation paper. These themes included a call to create a tiered licensing model, especially one that differentiates mortgage brokers that only do mortgage placements

²⁹⁰ *Ibid*; MTIAC Submission (April 2020), Page 3

²⁹¹ *Ibid*; Appraisal Institute of Canada (April 2020), , Page 3

²⁹² *Ibid*; MPC Submission (April 30, 2020), Page 8

²⁹³ *Ibid*; BCFSA Submission (July 2020), Page 17

from those that behave as lenders.²⁹⁴ They also included a call to include a licensing exemption for subsidiaries of federally regulated institutions.²⁹⁵

287. There was mixed response to the question of penalties, with some calling for more severe consequences for those engaging in money laundering or otherwise fraudulent activities, and some voicing the opinion that penalties imposed by the current MBA are arbitrary and unfair.²⁹⁶

288. Other industry members suggested the following measures for a modernized MBA²⁹⁷:

- a. Require broker owner/managing broker to elevate standards by requiring them to provide a certain amount of training and holding them accountable for unethical behaviours that happen within their brokerage²⁹⁸
- b. Close the loophole that allows BC brokers to write the Ontario exam to obtain licensing.²⁹⁹
- c. Require lenders to deal with all brokers who register themselves with the lender, instead of playing “favourites” and letting some brokers onto a lender’s approved broker list and excluding some.³⁰⁰
- d. Disconnect the relationship between qualification rate and contract rate in mortgage qualification.³⁰¹

²⁹⁴ First Circle Financial, Submission via Email to Ministry of Finance Policy & Legislative Division re: *MBA Review Consultation* (January 21, 2020), Submission via Email re: *MBA Review Consultation* (May 11, 2020)

²⁹⁵ First Circle Financial Submission re: *MBA Review Consultation* (May 11, 2020), Roynat Capital, Submission via Email to Ministry of Finance Policy & Legislative Division re: *MBA Review Consultation* (January 17, 2020)

²⁹⁶ Submission via Email from individual employed by Dominion Lending Centre to Ministry of Finance Policy & Legislative Division re: *Mortgage Brokers Review* (March 10, 2020), Submission via Email from individual employed by Mortgage Intelligence, to Ministry of Finance Policy & Legislative Division re: *Comments and Concerns* (March 10, 2020)

²⁹⁷ Note that some of these recommendations may contradict proposals put forward in the Public Consultation Paper or raised by industry groups above.

²⁹⁸ Dreger, Cynthia, Submission via Email to Ministry of Finance Policy & Legislative Division re: *Mortgage Brokers Act Review Consultation* (January 17, 2020)

²⁹⁹ *Ibid*; Cynthia Dreger Submission (January 2020)

³⁰⁰ Submission via Email from individual employed by Dominion Lending Centre to Ministry of Finance Policy & Legislative Division re: *MBA Review* (January 25, 2020)

³⁰¹ Submission via Email from individual employed by Mortgage Alliance to Ministry of Finance Policy & Legislative Division re: *Mortgage Broker Act Revision Suggestions* (January 29, 2020).

- e. Eliminate the “prescribed” disclosure form requirement, as it is too confusing for clients.³⁰²
- f. Make exceptions on APR and disclosure for mortgages under \$50,000. To reflect a more accurate depiction of the transaction, the APR calculation method under these circumstances should be amended.³⁰³
- g. Require out-of-province advertising to be regulated, in order to be held to the same accountability standards as BC advertising.³⁰⁴
- h. Treat referrals with benefit and referrals without benefit separately with regards to mortgage broker activities.³⁰⁵
- i. Clearly articulate the obligation of bank employees to clients when bank employees use third party mortgage brokers.
- j. Require disclosure for all mortgages.³⁰⁶
- k. Change regulations to allow sub-mortgage brokers to be able to get paid directly into a corporation while still retaining personal liability for their conduct.³⁰⁷
- l. Change legislation so that residential sub-mortgage brokers are able to take “application fees” and “good faith money”.³⁰⁸
- m. If the mortgage is brokered and administered by a licensed sub-mortgage broker, the minimum fees for registration (\$1000 and 10 or more mortgages in one year) should be either increased dramatically or entirely eliminated.³⁰⁹

f. General Public

289. Public commentary in response to the invitation for feedback on the MBA included a call to widen the scope of this review to include the bank employees as they are facilitating client deals, and that the same restrictions and requirements should be placed

³⁰² *Ibid; Mortgage Alliance Submission* (January 2020)

³⁰³ *Ibid; Mortgage Alliance Submission* (January 2020)

³⁰⁴ *Ibid; Mortgage Intelligence Submission* (March 2020)

³⁰⁵ *Ibid; Mortgage Intelligence Submission* (March 2020)

³⁰⁶ *Ibid; Mortgage Intelligence Submission* (March 2020)

³⁰⁷ Submission via Email from individual employed by City Wide Mortgage Services to Ministry of Finance Policy & Legislative Division re: *MB Act Review* (February 7, 2020)

³⁰⁸ *Ibid; City Wide Mortgage Services Submission* (February 2020)

³⁰⁹ *Ibid; City Wide Mortgage Services Submission* (February 2020)

on them.³¹⁰ Others advocated for a regulation of the way maintenance of buildings is done by non-knowledgeable strata members.³¹¹

290. The final suggestion from the general public was to implement fee-only mortgage advisors that are not dependent on lender commissions. This would include a review of the *Business Practices and Consumer Protection Act* ss. 4(3)(b)(ix) and 5 to eliminate post-funding fee regulation.³¹² It would require borrowers to consent to this model, and advisors to obtain licensing and comply with mortgage broker regulations.³¹³

³¹⁰ Pinto, Shawn, Submission via Email to Ministry of Finance Policy & Legislative Division re: *MBA Review* (January 17, 2020)

³¹¹ Larmer, Gerty, Submission via Email to Ministry of Finance Policy & Legislative Division re: *Mortgage Brokers Act* (January 25, 2020)

³¹² McLister, Robert, Submission via Email to Ministry of Finance Policy & Legislative Division re: *Content Submission for the B/C/ Mortgage Broker Legislation Review* (February 5, 2020)

³¹³ *Ibid*; Robert McLister Submission (February 2020)