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**OFFICE OF THE SUPERINTENDENT OF REAL ESTATE (OSRE)
BRIEFING DOCUMENT**

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FOR INFORMATION

ISSUE: Filling regulatory data and information gaps

BACKGROUND:

As described in the discussion paper, “Reframing the Role of Managing Brokers in BC’s Changing Real Estate Landscape”, there are a number of gaps in the regulatory data and information collected by BC’s real estate regulators.

Currently, real estate licensees have requirements to report certain information to the Real Estate Council of British Columbia (RECBC). These requirements include licensing and re-licensing applications, annual brokerage financial and activity reports, promptly responding to RECBC inquiries related to complaints and investigations and submitting disclosures involving dual agency in specific circumstances. RECBC produces descriptive statistics, available on its website, in relation to its different areas of responsibility (e.g. licensing, education, audit, discipline).

For its part, OSRE receives copies of developers’ consumer disclosure statements, rental disclosures and schedules of unit entitlement and voting rights. OSRE produces descriptive statistics about development approvals (e.g. number of disclosure statements and timelines) for business planning and performance reporting.

Despite collecting a significant volume of information on licensees and developers, regulators do not routinely collect information on business activities or real estate transactions. In addition, the information that is collected is generally held in a form that is not readily accessible or easily manipulated for identifying and evaluating potential or emerging risk factors.

The limitations of this current approach were highlighted by the recent experience of a joint OSRE-RECBC-Ministry of Finance (Ministry) working group tasked with reviewing the roles and responsibilities of managing brokers in BC’s real estate regulatory framework. While RECBC staff were very helpful and cooperative in supporting the working group’s activities, they had limited ability to provide data and statistics that would have enabled the working group to explore various hypotheses related to misconduct involving managing brokers (e.g. whether brokerages that hire “inexperienced” managing brokers or are owned by non-licensees are more likely to face allegations of misconduct by the brokerage’s related licensees). This gap in regulators’ data capabilities was also noted in the final report of the Independent Advisory Group on Real Estate Regulation in BC, which encouraged RECBC to identify

data and records to assist it in proactively identifying market conduct and licensees conduct that pose risks to consumers¹.

Industry associations, including the 11 local real estate boards, already collect and report a significant volume of data about BC's real estate market. However, OSRE's experience to date indicates that industry associations' data collection activities do not currently address regulators' data collection needs. For example, boards currently have inconsistent methods of collecting data on unrepresented parties involved in real estate transactions, following the ban on dual agency which came into effect in June 2018. Further, each board appears to have different data input processes, making it difficult to compare raw data across boards. In addition, not all boards are forthcoming in responding to regulator requests for information and there is no requirement for boards to provide industry-held data to regulators.

DISCUSSION:

The regulatory data and information gaps identified above hinder regulators' ability to use data to proactively regulate in the public interest in support of their consumer protection mandates. For example, beyond anecdotal impressions, regulators are not currently capable of identifying evidence-based risk factors for misconduct.

With quality data and data management tools, regulators could:

- Increase regulatory efficiency and enhance regulator performance of current statutory authorities and mandate by enabling better regulation of licensees, including brokerages. For example, the regulator would have a better understanding of the prevalence of unrepresented parties in real estate transactions as well as the use of dual agency; and
- Augment the ability of regulators to engage in a risk-based approach to regulation and promote a better understanding of risks (enable the identification, monitoring and measuring of potential risks).

Achieving this vision would require regulators to collect additional streams of data, including real estate transaction data, in addition to adopting practices to support the accessibility and availability of the information that it already collects. (See Appendix A for a list of potential licensee and transaction data points and Appendix B for a list of potential brokerage data points.)

A recent study² conducted by the Australian Health Practitioner Regulation Agency (AHPRA) provides an example of how regulators can harness data to identify practitioners at high risk of attracting formal complaints about health, conduct or performance issues. AHPRA developed an algorithm that assigned an overall predictive

¹ See https://issuu.com/realestatecouncilofbc/docs/iagreport_june2016, pg.48.

² See <https://www.sml-law.com/wp-content/uploads/2019/10/Greyar240.pdf> for a summary and a link to the original study.

risk score for each practitioner based on correlations between complaints and other variables (e.g. the period when each practitioner was registered, type of registration, age band, sex, profession, specialty, practice location.) While there are important legal considerations (e.g. human rights, privacy and freedom of information) in relation to how this type of individual risk score is used, it demonstrates the ways in which regulators can use data to improve regulatory processes and outcomes (e.g. triaging complaints more effectively, targeting educational audits).

A number of ancillary benefits could also arise from improved data collection and analytics, including enabling regulators to publish independent statistics on real estate market conditions, improving broader market conduct regulation (e.g. enhancing market transparency and protections against market manipulation) and collaborating with other regulatory and enforcement agencies (e.g. RCMP, FINTRAC) to support joint enforcement action in the real estate sector, including on AML enforcement.

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Appendix A

List of Potential Licensee and Transaction Data Points

Legend:

Information that is not currently collected on RECBC forms

Information that is currently collected on RECBC forms

Data point	Reason for collection	How it is collected	Comments
Property information (e.g. address, strata plan number, strata corporation name, parcel identifier)	Primary: <ul style="list-style-type: none"> • Record keeping Other uses: <ul style="list-style-type: none"> • Audit • Interacting more effectively with the public • Compliance/ investigations 	<ul style="list-style-type: none"> • Disclosure of Risks to Unrepresented Parties • Disclosure of Expected Remuneration to Sellers • Agreement Regarding Conflict of Interest Between Clients • Notice to Seller Regarding Assignment Terms • Disclosure of Interest in Trade • Disclosure of Remuneration (separate forms for Trading Services, Rental Property Management Services, Strata Management Services) • Disclosure of Benefits (Rental Property/Strata Management Services) 	

		<ul style="list-style-type: none"> • Disclosure of Management of Strata Corporation by Licensee who is an Owner 	
Type and date of agency/no agency relationship, including changes to relationship	<p>Primary:</p> <ul style="list-style-type: none"> • Record keeping <p>Other uses:</p> <ul style="list-style-type: none"> • Audit • Compliance/ investigations • Policy analysis and evaluation 	<ul style="list-style-type: none"> • Disclosure of Representation in Trading Services • Disclosure of Risks to Unrepresented Parties • Disclosure of Risks Associated with Dual Agency 	<ul style="list-style-type: none"> • For dual agency, requires new collection (possibly copy of dual agency agreement between parties)
How deposit held and by who	<p>Primary:</p> <ul style="list-style-type: none"> • Record keeping <p>Other uses:</p> <ul style="list-style-type: none"> • Audit • Compliance/ investigations • Policy analysis and evaluation 	<ul style="list-style-type: none"> • Not currently collected by RECBC 	<ul style="list-style-type: none"> • Requires new collection
Licensee conflicts of interest and date	<p>Primary:</p> <ul style="list-style-type: none"> • Record keeping <p>Other uses:</p> <ul style="list-style-type: none"> • Audit • Compliance/ investigations • Policy analysis and evaluation 	<ul style="list-style-type: none"> • Agreement Regarding Conflict of Interest Between Clients • Disclosure of Interest in Trade • Disclosure of Management of Strata Corporation by Licensee who is an Owner 	
Details of the commission amount, other remuneration and how it was split	<p>Primary:</p> <ul style="list-style-type: none"> • Record keeping <p>Other uses:</p> <ul style="list-style-type: none"> • Audit 	<ul style="list-style-type: none"> • Disclosure of Expected Remuneration to Sellers 	

between brokerages	<ul style="list-style-type: none"> • Compliance/ investigations • Policy analysis and evaluation 	<ul style="list-style-type: none"> • Disclosure of Interest in Trade • Disclosure of Remuneration (separate forms for Trading Services, Rental Property Management Services, Strata Management Services) • Disclosure of Benefits (Rental Property/Strata Management Services) • Record of Referral Fees 	
Assignment of CPS for re-sales	<p>Primary:</p> <ul style="list-style-type: none"> • Compliance/ investigations <p>Other uses:</p> <ul style="list-style-type: none"> • Policy analysis and evaluation 	<ul style="list-style-type: none"> • Notice to Seller Regarding Assignment Terms 	<ul style="list-style-type: none"> • Requires new collection (possibly copy of CPS or Assignment Agreement)
Licensee educational attainment	<p>Primary:</p> <ul style="list-style-type: none"> • Policy analysis and evaluation 	<ul style="list-style-type: none"> • Not currently collected by RECBC 	<ul style="list-style-type: none"> • Requires new collection • Sauder School of Business holds data on candidates who met the ELP requirement through a university degree from an English-language institution
Licensee first language	<p>Primary:</p> <ul style="list-style-type: none"> • Policy analysis and evaluation 	<ul style="list-style-type: none"> • Not currently collected by RECBC 	<ul style="list-style-type: none"> • Requires information sharing with Sauder School of Business, (holds data on

			how candidates met the ELP requirement – degree from an English-language institution or Paragon test results) OR new collection
Licensee date of birth	<p>Primary:</p> <ul style="list-style-type: none"> • Licensing <p>Other uses:</p> <ul style="list-style-type: none"> • Policy analysis and evaluation 	<ul style="list-style-type: none"> • Application for Representative, Associate or Managing Broker Licence 	
Licensee sex/gender	<p>Primary:</p> <ul style="list-style-type: none"> • Policy analysis and evaluation 	<ul style="list-style-type: none"> • Application for Representative, Associate or Managing Broker Licence (sex) 	<ul style="list-style-type: none"> • Needs to be modernized (provide non-binary choices)
Team name, team member names and dates of changes (e.g. create, add, leave)	<p>Primary:</p> <ul style="list-style-type: none"> • Licensing <p>Other uses:</p> <ul style="list-style-type: none"> • Compliance/ investigations • Policy analysis and evaluation 	<ul style="list-style-type: none"> • Team Name Request 	
Licensee professional discipline history, criminal record convictions	<p>Primary:</p> <ul style="list-style-type: none"> • Licensing <p>Other uses:</p> <ul style="list-style-type: none"> • Compliance/ investigations • Policy analysis and evaluation 	<ul style="list-style-type: none"> • Application for Representative, Associate or Managing Broker Licence 	
Licensee licensing history (e.g. date of licensing, gaps in licensing and reason)	<p>Primary:</p> <ul style="list-style-type: none"> • Policy analysis and evaluation 	<ul style="list-style-type: none"> • Currently held by RECBC but difficult to access information (particularly gaps in licensing) 	

Appendix B

List of Potential Brokerage Data Points

Legend:

Information that is not currently collected on RECBC forms

Information that is currently collected on RECBC forms

Data point	Reason for use	How it is collected	Comments
Brokerage name, address	Primary: <ul style="list-style-type: none"> • Licensing Other uses: <ul style="list-style-type: none"> • Policy analysis and evaluation 	<ul style="list-style-type: none"> • Application for Brokerage Licence (Corporation or Partnership, Sole Proprietor, Branch Office) 	<ul style="list-style-type: none"> •
Brokerage principles names, licensing status, professional discipline history, criminal record convictions	Primary: <ul style="list-style-type: none"> • Licensing Other uses: <ul style="list-style-type: none"> • Policy analysis and evaluation 	<ul style="list-style-type: none"> • Application for Brokerage Licence (Corporation or Partnership, Sole Proprietor, Branch Office) • Director, Officer or Partner Information 	<ul style="list-style-type: none"> •
Brokerage management structure (e.g. delegation arrangements)	Primary: <ul style="list-style-type: none"> • Policy analysis and evaluation 	<ul style="list-style-type: none"> • Not currently collected by RECBC 	<ul style="list-style-type: none"> • New collection required • Could be collected through proposed brokerage compliance plans (see MB discussion paper)
Brokerage financial capacity	Primary: <ul style="list-style-type: none"> • Licensing Other uses: <ul style="list-style-type: none"> • Policy analysis and evaluation 	<ul style="list-style-type: none"> • Application for Brokerage Licence (Corporation or Partnership, Sole Proprietor, 	

		Branch Office), Form A	
Licensee remuneration model	Primary: <ul style="list-style-type: none"> Policy analysis and evaluation 	<ul style="list-style-type: none"> Not currently collected by RECBC 	<ul style="list-style-type: none"> New collection required Could be collected through proposed brokerage compliance plans (see MB discussion paper)
Brokerage supervisory practices (e.g. remote, virtual, on-site)	Primary: <ul style="list-style-type: none"> Policy analysis and evaluation 	<ul style="list-style-type: none"> Not currently collected by RECBC 	<ul style="list-style-type: none"> New collection required Could be collected through proposed brokerage compliance plans (see MB discussion paper)
Names and number of licensed and unlicensed staff and changes	Primary: <ul style="list-style-type: none"> Licensing Other uses: <ul style="list-style-type: none"> Policy analysis and evaluation 	<ul style="list-style-type: none"> Application for Representative, Associate or Managing Broker Licence (licensees only) Team Name Request (where Teams include unlicensed individuals) 	<ul style="list-style-type: none"> New collection required to capture unlicensed staff
Audit results, information on RESA and non-RESA contraventions	Primary: <ul style="list-style-type: none"> Licensing Other uses: <ul style="list-style-type: none"> Education Investigations Policy analysis and evaluation 	<ul style="list-style-type: none"> Office and records inspection 	