COMMISSION OF INQUIRY INTO MONEY LAUNDERING IN BRITISH COLUMBIA

The Honourable Mr. Austin F. Cullen, Commissioner

AFFIDAVIT OF ADAM ROSS

I, ADAM ROSS of 601, 700 West Georgia Street, Vancouver, British Columbia, SWEAR THAT:

1. I am a consultant with the Commission of Inquiry into Money Laundering in British Columbia ("Commission"), and as such, have personal knowledge of the facts and matters deposed to in this affidavit, save and except where based on information and belief, and where so stated, I believe it to be true.
2. Attached as **Exhibit "A"** is a copy of my curriculum vitae.
3. I have been retained by the Commission to prepare a report of private lending in British Columbia. In particular, I have been asked to answer the following questions:

    1) How can mortgages be used to launder proceeds of crime?

    2) What portion of the mortgage lending market involves private lenders?

    3) Who are the actors involved in private mortgage lending in BC?

    4) What restrictions and obligations are placed on those actors by the current anti-money laundering ("AML") regime in Canada, including the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* ("PCMLTFA") and associated Regulations, and other regulatory frameworks with AML implications?

    5) How can publicly available data on mortgages in BC be used to identify money laundering, suspicious activity, and/or unusual lending behaviour?

4. Attached hereto and marked as **Exhibit "B"** is a copy of my final report, dated March 9, 2021.

AFFIRMED at the City of Vancouver,
this 9 day of March, 2021

A Commissioner for taking Affidavits
within British Columbia
601 - 700 West Georgia Street
Vancouver, B.C. V7Y 1B6

Adam Ross

This is Exhibit "A" referred to in the Affidavit of Adam Ross sworn (or affirmed) before me at Vancouver, B.C. this 1 day of March 2021.

A Commissioner for Taking Affidavits within British Columbia

ADAM ROSS

[redacted]

PROFILE

Analyst and investigator specializing in anti-money laundering, corruption, fraud and white-collar crime. I couple strong investigative skills with the ability to distil and communicate complex information, honed over a decade in the business intelligence field.

EXPERIENCE

Templeton Research Ltd

August 2020 – Present

Partner — *Business Intelligence & Investigations*

Specialized due diligence and investigations consultancy that provides business-critical investigative research support to investors, corporates, financial institutions, and law firms. Headquartered in Hong Kong with offices in London and Vancouver, Templeton Research has a regional focus on APAC, Europe and North America.

White Label Insights Ltd

August 2013 - Present

Principal — *Business Intelligence & Investigations*

Specialized due diligence, investigations and analysis firm with a focus on anti-corruption and anti-money laundering compliance, litigation support and strategic intelligence to support key business decisions. I am the founding principal of the business, through which I have completed several hundred assignments for clients in the private sector, government, and civil society.

Risk Advisory Group

February 2011 – August 2013

Senior Associate (December 2012 – August 2013) — *Business Intelligence & Investigations*

Associate (February 2011 – December 2012)

- Managed major complex multi-jurisdictional due diligence projects, asset searches, IP and supply chain investigations, and in-depth fraud and bribery investigations
- Conducted in-depth public record research and source enquiries, developing a network of on-the-ground contacts and proficiency in the use of specialist databases
- Quality-controlled research and ensured that reports are client-ready in a timely manner
- Day-to-day management of the Litigation Support practice
- Interviewed, mentored and trained junior members of staff
- Built new client relationships and supporting senior management in business development activities
- Wrote articles and delivered presentations on corruption risks and investigations

Global Witness

July 2010 - February 2011

Researcher – Conflict Resources program — *Investigative research & advocacy*

- Conducted investigations of companies, directors and shareholders to identify beneficial owners, money trails and conflicts of interest to an evidential standard of proof.

- Delivered investigative reports on corruption risks and procurement fraud in the commercial agriculture sector in West Africa.
- Formulated recommendations for Global Witness' engagement strategy in West Africa.

Elections BC January 2009 – September 2009
Senior Electoral Finance Reviewer *Government administration*

Asian Forum for Human Rights & Development September 2007 – July 2008
Consultant – UN Advocacy program, Researcher – Ethic Minorities Program *Research & advocacy*

VOLUNTEER

Transparency International Canada 2015 - present

- Member of expert working group on beneficial ownership transparency (December 2016-present)
- Regular speaker and expert resource for Canadian media outlets and professional associations
- Authored two reports on opaque ownership and money laundering risk in Canada: No Reason to Hide:
- Unmasking the Anonymous Owners of Canadian Companies and Trusts (2016); and Opacity: Why
- Criminals Love Canadian Real Estate (2019).

EDUCATION

London School of Economics and Political Science 2009 - 2010
MSc Global Politics

- Dissertation (distinction): Explaining state resistance to regulation of the private military sector

University of Victoria 2001 - 2005
Bachelor of Commerce (Hons) – International business and social entrepreneurship focus

PUBLICATIONS

- "Understanding state resistance to international regulation of private military and security companies". *Journal of Public and International Affairs,* 2011:88-108.
- "No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts". *Transparency International Canada,* December 2016.
- "Opacity: Why Criminals Love Canadian Real Estate". *Transparency International Canada,* February 2019
- Peter German & Associates, "Dirty Money – Part 2: Turning the tide – an independent review of money laundering in BC real estate, luxury vehicle sales & horse racing", March 2019 (real estate chapter)

This is Exhibit "B" referred to in the Affidavit of Adam Ross sworn (or affirmed) before me at Vancouver, B.C. this 9 day of March 2021.

A Commissioner for Taking Affidavits within British Columbia

Private Lending in British Columbia

Adam Ross, White Label Insights Ltd

March 9, 2021

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INTRODUCTION

A. Scope and structure of report

1. Following on intergovernmental, governmental and academic commentary to the effect that mortgages can serve as a tool for laundering money through real estate,[1] this report examines private lending in BC, a the request of the Commission of Inquiry into Money Laundering in British Columbia ("Commission"). The Commission asked me to answer the following questions:

   a. How can mortgages be used to launder proceeds of crime?

   b. What portion of the mortgage lending market involves private lenders?

   c. Who are the actors involved in private mortgage lending in BC?

   d. What restrictions and obligations are placed on those actors by the current anti-money laundering ("AML") regime in Canada, including the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* ("PCMLTFA") and associated Regulations, and other regulatory frameworks with AML implications?

   e. How can publicly available data on mortgages in BC be used to identify money laundering, suspicious activity, and/or unusual lending behaviour?

2. The first part of this report sets out relevant background information, beginning with a summary of money laundering typologies involving mortgages. Next, the report briefly touches upon regulation and legislation that applies to mortgage lending.[2] The report then sets out a framework through which I have reviewed the regulatory coverage of mortgage lending activity in the province, with a focus on AML and AML-related responsibilities.

3. The second part of the report presents the findings of my data analysis.[3] It begins with an analysis of regulatory coverage of mortgage lending using the framework set out in Part 1 and

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[1] For a more detailed review of this commentary, see the Commission's Overview Report: Money Laundering in Real Estate & Industry Response.
[2] A more detailed review is set out in the Commission's Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia.
[3] The data analysis work was supported by Belinda Li and Kamil Kisiel of Alces Technologies. I am grateful for their help in building and managing the database of property information and scraping BCSC filings, among other technical support.

seeks to estimate the size of the unregulated or unregistered[4] mortgage lending sector in BC. Next, it uses data from filings to the BC Securities Commission ("BCSC") to estimate how much capital is invested with Mortgage Investment Corporations ("MICs") in BC and the geographic origins of that capital. That is followed by a summary of LTSA mortgage data cross-referenced with a list of registered mortgage brokers and sub-brokers with a view to identifying lenders that meet one of the definitions of a mortgage broker under the *Mortgage Brokers Act* ("MBA") - i.e. they have lent money on the security of 10 or more mortgages within one year – but have not registered with the Registrar of Mortgage Brokers ("RMB"). This part of the report concludes with an assessment of data quality and accessibility, particularly with respect to LTSA data, and its impacts on a user's ability to perceive anomalous lending activities,[5] such as patterns of activity associated with money laundering typologies.

B. Definitions

4. Though the terms "private lender" and "private mortgage lender" are widely used within the industry, a legal or standardized definition does not appear to exist. For the purpose of this report I divide mortgage lenders into two broad categories: traditional and private lenders. Traditional lenders – also commonly referred to as conventional lenders or financial institutions – encompass banks, credit unions, caisses populaires, loan and trust companies, and life insurers.[6] Private lenders, on the other hand, are a diverse group encompassing all non-traditional lenders, including individuals, mortgage investment entities, and a variety of operational businesses, holding companies and non-profits.

5. Some private mortgage lending has also been referred to in media reports as "shadow lending", though again that is ill-defined.[7] In order to reflect the diversity among non-traditional

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[4] As discussed in greater detail in the following sections, I use the term "unregistered" to describe lenders that meet one or more criteria for registration as a mortgage broker under the MBA or as a registrant or exempt market dealer under the Securities Act, but who have not registered with the RMB or BCSC, respectively. Unregulated lenders include those with no registration or reporting requirements.

[5] Unger, Brigitte; Ferwerda, Joras; Nelen, Hans; Ritzen. Luuk; Trouw Jaap; "*Detecting Criminal Investments in the Dutch Real Estate Sector*", online: https://www.politieacademie.nl/kennisenonderzoek/kennis/mediatheek/PDF/86218.pdf (January 19, 2010); FATF, "*Money Laundering and Terrorist Financing Through the Real Estate Sector*", online: https://www.fatf-gafi.org/documents/documents/moneylaunderingandterroristfinancingthroughtherealestatesector.html (June 29, 2007)

[6] Financial Services Commission of Ontario, *"Shop Around for a Mortgage Checklist"*, online: https://www.fsco.gov.on.ca/en/mortgage/Pages/shop-mortgage.aspx (2017)

[7] Posadzki, Alexandra, *"Federal Government Closely Monitoring Shadow Mortgage Lenders"*, The Globe and Mail, Online: https://www.theglobeandmail.com/real-estate/mortgages-and-rates/federal-government-closely-monitoring-shadow-mortgage-lenders/article26832250 (2015); Global News, "*Pitfall of the shadow mortgage*", online: https://globalnews.ca/video/2301430/pitfall-of-the-shadow-mortgage (October 27, 2017); Tyler Anderson, "*Ordinary*

mortgage lenders in BC, this report has categorized private lenders into tiers based on the varying degrees to which they are subject to regulatory coverage through the PCMLTFA and associated Regulations, the MBA and the *Securities Act*. The term "unregistered" is only used for private lenders that are not registered with the RMB nor the BCSC but meet at least one of the criteria for registration with those regulators.

C. Methodology

6. This report draws from a range of publicly available sources, including: academic literature and previous reports on this topic; reports and commentary found in the open-source internet; media reports; legislative and regulatory documents; corporate records; securities filings; property records; and litigation records. These sources are cited in the body of the report and as footnotes.

7. A select number of interviews were also conducted with industry stakeholders, including representatives from: the BC MIC Managers Association ("BCMMA"); the Mortgage Investment Association of BC ("MIABC"); the Canadian Mortgage Brokers Association of BC ("CMBA-BC"); the RMB and Financial Services Authority ("BCFSA"); the BCSC; the Land Title Survey Authority ("LTSA"); and several BC-based Mortgage Investment Corporations. Where these interviews informed my conclusions, I have so indicated in the footnotes.

8. The data analysis component of the research relied upon records maintained by the LTSA and BC Assessment, including a data set of all active BC property titles registered between January 1999 and December 2019 and cancelled BC property titles from January 2014 to December 2019 (which includes titles registered before January 1999).[8] In all, there are 1,289,689 active titles and 1,023,528 cancelled titles in the data set. The data set also includes all charges (active and cancelled) registered against active property titles created during that 20-year period, as well as charges on cancelled titles from January 2014 to December 2019, which amounts to 0.96 million active mortgages and 2.00 million cancelled mortgages.

Canadians become bankers as shadow mortgage lending rises to meet housing demand," Reuters, online: https://financialpost.com/personal-finance/mortgages-real-estate/ordinary-canadians-become-bankers-as-shadow-mortgage-lending-rises-to-meet-housing-demand (July 9, 2015)

[8] Much of this data set was initially provided by LTSA for the purposes of the Second German Report. The LTSA has consented to its use by the Commission and its contractors and has updated the dataset to include titles for the remainder of 2019. The Commission set a five-year limit for cancelled titles (2014-2019) due to the size of the data files involved.

9. Other data used in the analysis included the RMB's list of registered mortgage brokers and sub-brokers (current as of May 25, 2020 with historical registrations dating back to 2012)[9] and reports of exempt distribution filed by issuers of securities registered with the BCSC (between 2012 and June 2020).[10]

D. Caveats

10. This report focuses on financing of residential real estate in BC, which covers the vast majority of mortgage lending activity.[11] Commercial real estate is typically owned and financed in different ways to residential property and, while outside of the scope of this report, is an area that is worth future study.

11. This report provides a snapshot into residential mortgage lending in the past 20 years. It does not provide a comprehensive view of all mortgage lending activity, as the LTSA data made available to the Commission (outlined above) does not include historic charges registered against cancelled titles from before January 2014 and after December 2019. The analysis relies upon mortgages registered on title and therefore does not capture forms of real estate finance that are not recorded with the LTSA.

12. Due to limitations of mortgage data held by the LTSA, I was unable to conduct analysis based on interest rates or loan value, such as identifying mortgages with high interest rates to flag potential loan sharking activity or examining mortgages with unusually high loan-to-value ("LTV") ratios. The key source for that mortgage data is the LTSA's Form B charge registration document[12], which was not susceptible to the data analysis methods employed for a few reasons:

a. Form Bs are not readily available in a machine-readable format. They are stored by the LTSA as PDF files, so data analysis would require mass conversion of PDFs

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[9] The list of registered mortgage brokers and sub-brokers was provided by the RMB on May 25, 2020 in compliance with a summons issued by the Commission on May 6, 2020.
[10] This data was acquired from the publicly available BCSC eServices database of reports of exempt distribution (https://eservices.bcsc.bc.ca/eder/formsearch.aspx), and was used in our analysis of Mortgage Investment Corporations. The 2011 start date for the data was chosen due to a change in securities regulations in December 2010 requiring MICs to file information reports, and a subsequent change to the BCSC's reporting templates for exempt issuers (see BCN 2010/40 – Adoption of BC Instrument 32-517 Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities)
[11] According to figures published by Canada Mortgage and Housing Corporation, as of 2015 around 87% of the $1.5 trillion in outstanding mortgages across Canada were residential.
[12] In BC, a mortgage is registered as a charge against a property by submitting a Form B registration document to the LTSA. Those forms are publicly available for a fee, and include basic information on the mortgagor, mortgagee and – in some cases – terms of the mortgage such as interest rate, principal amount and amortization schedule. However, those latter fields do not need to be completed for the form to be registered, and in many cases they are not.

to machine-readable format, which is time intensive process that yields data with inaccuracies;

b. Form Bs do not necessarily include the terms of the mortgage (i.e. interest rate, principal amount, amortization schedule), which are often attached as a schedule (which would suffer from the same PDF problem as above) or are not included at all;

c. Where mortgage particulars such as the principal are disclosed on the Form B, the information may not be accurate. For instance, lenders may dispense additional funds after registering a mortgage charge, without updating to the information listed on the Form B. Conversely, some mortgages are registered for more than what is ultimately borrowed. Home equity lines of credit ("HELOCs") may be registered as mortgages for the full value of a secured property. Using Form B data, those loans would appear as 100% LTV mortgages regardless of how much has been used by the borrower, which would skew any analysis of high LTV loans.[13]

PART 1: TYPOLOGIES AND REGULATION

TYPOLOGIES: MONEY LAUNDERING THROUGH MORTGAGES

13. This section summarizes past literature on the role of mortgages as a high-risk typology for the laundering of the proceeds of crime. Several typologies have been identified in academic literature, publications by law enforcement and financial intelligence units, and in cases that have emerged in the public domain.[14] They can be broadly divided into typologies on the borrowing

[13] February 6, 2020 interview with representative of the MIABC

[14] Shelley, Louise, *"Money Laundering into Real Estate"* in Miklaucic, Michael and Brewer, Jacqueline eds, "*Convergence: Illicit Networks and National Security in the Age of Globalization"* (Washington, D.C.: National Defense University Press, (2013); AUSTRAC, "*Strategic Analysis Brief: Money Laundering through Real Estate"*, Australian Government, online: <https://www.austrac.gov.au/sites/default/files/2019-07/sa-brief-real-estate_0.pdf> ("AUSTRAC"), (2015) pg. 7; FATF, "*Concealment of beneficial ownership",* FATF (July 2018), online: <https://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf>, at 64-65; FATF 2007; Schneider, Stephen, *"Money laundering in Canada: A quantitative analysis of RCMP cases"* (July 2004) 11:3 J Finance Crime, online: <doi: 10.1108/13590790410809220>, at pg. 34-35 ("Schneider"); Unger, Brigitte; Ferwerda, Joras, *"Money Laundering in the Real Estate Sector: Suspicious Properties"* (Massachusetts: Edward Elgar, 2011) ("Unger and Ferwerda"); Hoekstra, Gordon, "*BC civil forfeiture case alleges drug money laundered in real estate"*, Vancouver Sun, online: https://vancouversun.com/news/local-news/b-c-civil-forfeiture-case-alleges-drug-money-laundered-in-real-estate/ (January 17, 2019)

side of the mortgage transaction ("Borrower Typologies") and those on the lending side ("Lender Typologies").

A. Borrower Typologies

14. **Repayment of mortgages with proceeds of crime**: By taking out a mortgage, a criminal borrower can use legitimate (or laundered) funds to finance part of a property purchase and then repay the loan using proceeds of crime. Subsequent mortgages can be taken out using the property as collateral to launder more money. Cash proceeds of crime can be deposited with financial institutions and will not trigger an obligation to make a large cash transaction report ("LCTR") if the deposits are under $10,000. Those funds can then be used to make mortgage payments. Early repayment and large lump sum payments can expedite the laundering process.

15. **Leveraging proceeds of crime to purchase property:** In the same way that legitimate buyers can make leveraged purchases, criminal buyers can use mortgages to acquire property that they would otherwise be unable to afford (or which would draw unwanted attention if they were to acquire it outright[15]). In doing so, money launderers can scale up by acquiring multiple properties or higher-value real estate. When properties are sold, the proceeds are used to repay mortgages and launder the deposits. In the interim, the criminal borrower can increase his equity in a property by making mortgage payments with proceeds of crime (as above), though the main objective is to launder the deposit by flipping the property.[16] Illustrating the prevalence of these mortgage-based typologies among criminals in Canada, a much-cited 2004 study of RCMP files found that of 83 money laundering cases linked to real estate 78% involved a mortgage that was repaid with proceeds of crime.[17] Analysis done for the Second German Report found that of 154 properties targeted by the Civil Forfeiture Office ("CFO") since 2006, 92% (142) were mortgaged.[18] The analysis found that properties targeted by the CFO – which the Second German

[15] All-cash (i.e. unfinanced) purchases of real estate have attracted the attention of regulators and reporting entities as being at high risk for money laundering. See: Hundtofte, Sean & Rantala, Ville, *"Anonymous Capital Flows and U.S. Housing Markets"* University of Miami Business School Research Paper No. 18-3, online: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3186634 (May 28, 2018) Pg. 9-10

[16] The deposit for a property needs to have been already placed in the financial system in order to be used for a transaction, as payment in cash (i.e. hard currency) is no longer accepted for real estate purchases. Laundering the deposit falls within the layering/integration stages of the money laundering process; BC Real Estate Association, "*The Role of REALTORS® in Helping the Government Stop Money Laundering,"* Online, (pdf): https://www.bcrea.bc.ca/wp-content/uploads/2018-12moneylaunderinginfographic-1.pdf (December 2018)

[17] *Supra*: *Schneider*, at 34-35

[18] German, Peter, "*Dirty Money – Part 2: Turning the Tide- An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing",* Peter German & Associates Inc., online: https://icclr.org/wp-content/uploads/2019/06/Dirty_Money_Report_Part_2.pdf?x77040 (March 31, 2019) ("Second German Report") at pg. 109

Report used as a proxy for properties through which money has been laundered – were more likely to have multiple mortgages registered against them, with lenders repaid more quickly than average.

B. Lender Typologies

16. **Lending proceeds of crime**: Like legitimate capital, proceeds of crime can be loaned and secured against real estate. Loans can be registered on title as mortgages or can be secured through promissory notes or contracts. They can be made directly by an individual or through a nominee or legal entity. Payments on those loans, including any interest earned on the investments, can then be declared as legitimate income. Laundering through mortgage lending either needs to take place after the placement stage (i.e. when the money is already in the financial system) or the funds need to be used for purposes other than acquiring property, as it is difficult to buy real estate with cash in Canada.[19] Mortgages do not only finance property purchases and can be advanced in cash to pay for renovations, building work or expenses unrelated to real estate.

17. **Investing proceeds of crime with third party lenders**: Mortgage investment entities present another opportunity for laundering proceeds of crime through real estate. In this typology, a criminal would place funds with another private lender such as a MIC, which would lend against real estate. In this type of arrangement, the criminal would not be involved in originating loans or collecting on debts. It is a passive investment generating returns that can be reported as legitimate income. As discussed in the following section of this report, institutional private lenders that raise outside capital are regulated and subject to statutory AML obligations such as 'know-your-client' ("KYC") due diligence. As such, proceeds of crime would generally need to be placed with a financial institution before being invested with a mortgage investment entity, and the investor would be subject to some scrutiny. Nonetheless, this typology would afford the prospective money launderer with a means of disposing income into real estate while also generating income in apparently legitimate funds.

C. The loan-back scheme

[19] The PCMLTFA and associated Regulations require real estate agents and financial institutions to report suspicious activity and large cash transactions to FINTRAC. Since 2004, the Law Society of has precluded its members from accepting cash payments amounting to more than $7,500 limit for cash payments that can be accepted by its members.

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18. Lending and borrowing typologies can be bridged in what is known as a 'loan-back' scheme, whereby a criminal borrows and repays his own funds.[20] This method typically involves the use of a corporate entity as the lender, which is ultimately controlled by the borrower. The corporate entity is usually registered in an opaque jurisdiction – where shareholders and/or directors are not disclosed or where nominees are permitted – in order to conceal the link to the borrower. Less sophisticated loan-back schemes may use individual nominee lenders instead of corporate entities.

19. Professor Schneider's 2004 study of RCMP money laundering cases found that 20 of 83 cases (or 24%) involved loan-back schemes whereby the criminal would set up a 'fake' mortgage to lend against a property he owned either directly or indirectly through a company or nominee.[21]

REGULATORY AND LEGISLATIVE STRUCTURE

A. PCMLTFA and Associated Regulations

20. The PCMLTFA and its associated Regulations form the centerpiece of Canada's AML regime. It dictates obligations for individuals and entities in prescribed sectors with respect to conducting due diligence, AML training and reporting to Canada's financial intelligence unit, the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC"). In the context of mortgage lenders in Canada, the PCMLTFA and associated Regulations covers banks, credit unions, caisses populaires, trust and loan companies (collectively, "financial entities"), life insurers and securities dealers.[22]

21. These lenders are considered "reporting entities" under the PCMLTFA and associated Regulations, which dictate obligations including that they conduct KYC due diligence, maintain AML compliance programs, keep records and report suspicious and large cash transactions to FINTRAC.[23] However, the PCMLTFA and associated Regulations do not apply to individuals,

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[20] *Supra; AUSTRAC*, at pg. 7; FATF 2007, at pg. 7-8
[21] *Supra; Schneider*, at 34-35
[22] Financial Transactions and Reports Analysis Centre of Canada, "*Securities dealers",* online: https://www.fintrac-canafe.gc.ca/re-ed/sec-eng (Modified January 4, 2021) - *"For the purposes of the PCMLTFA, a securities dealer means an individual or entity authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services. Any person who acts exclusively on behalf of a securities dealer is not considered a reporting entity. If you are a broker-dealer employed by and authorized to sell securities on behalf of a securities dealer firm, it is your employer that is considered to be the securities dealer under the Regulations…"*
[23] FINTRAC <https://www.fintrac-canafe.gc.ca/re-ed/intro-eng>

most private companies – including MICs[24] – and non-profit entities (i.e. charities, foundations and endowments) that engage in mortgage lending.

B. Provincial legislation and regulation

22. The mortgage industry in BC is regulated under the MBA[25] and the *Securities Act*.[26] Though neither of those laws explicitly addresses money laundering, the MBA, *Securities Act* and supporting regulations do apply oversight and rules of conduct to those mortgage lenders.

23. The application of the MBA and *Securities Act* to mortgage lenders in BC is discussed in a separate overview report: "Legislative and Regulatory Structure of Real Estate in British Columbia".[27]

24. Several points addressed in that overview report are summarized below for ease of reference, as they relate specifically to private lenders:

a. The MBA applies to any person who "carries on a business of lending money secured in whole or in part by mortgages" and/or who "in any one year, lends money on the security of 10 or more mortgages" (among several other qualifying criteria).[28] The MBA definition captures not only those brokering transactions between borrowers and lenders but also includes an array of lenders themselves, including MICs.

b. The *Securities Act* and associated regulations place KYC obligations on Mortgage Investment Entities ("MIEs")[29] that are registered with the BCSC, though those

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[24] FINTRAC takes the position that MICs issuing only their own shares to investors are not considered securities dealers and are not reporting entities under the PCMLTFA and associated Regulations. <https://www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/FINS/2-eng?s=2>

[25] *Mortgage Brokers Act*, R.S.B.C. 1996 c. 313, s. 1

[26] Canadian Securities Administrators, *"CSA Staff Notice 31-323: Guidance Relating to the Registration Obligations of Mortgage Investment Entities"*, online (pdf): https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy3/31323_CSA_Staff_Notice2.pdf (February 25, 2011) ("CSA Notice")

[27] Cullen Commission, *"Overview Report: Legislative and Regulatory Structure of Real Estate in British Columbia"*, pg. 17-22

[28] *Mortgage Brokers Act*, R.S.B.C. 1996 c. 313, s. 1

[29] *Supra*: *CSA Staff Notice*: MIE is a term used by securities regulators, which encompasses MICs and other lenders *"...whose purpose is to directly or indirectly invest substantially all of its assets in debts owing to it that are secured by mortgages, hypothecs or in any other manner on real property..."* Pg. 1

obligations do not include source of fund checks or an explicit AML-focused due diligence.[30]

c. From August 2010 through February 2020, MIEs were not required to register with the BCSC as investment fund managers, advisers and/or exempt market dealers. This was due to a temporary exemption that was renewed repeatedly until 2019, when MIEs were given a yearlong grace period to register with the securities regulator.[31]

d. The regulators tasked with enforcing the MBA and the *Securities Act* – the RMB/BCFSA and the BCSC, respectively – do not have an explicit AML mandate. The RMB and wider BCFSA are concerned with consumer protection and maintaining the stability of BC's financial services industry.[32] For its part, the BCSC's mandate concerns investor protection and preserving the integrity of capital markets.[33] These mandates may have indirect AML consequences.

25. In addition, the *Business Practices and Consumer Protection Act* (BPCPA) applies to mortgage lending in BC to the extent that the Act covers unfair practices and disclosure of the cost of consumer credit, including interest rate calculations and fees.[34] These provisions of the BPCPA are effectively incorporated into the MBA, which refers to the Act and includes clauses addressing broker conduct rules and disclosing the cost of borrowing.[35] The BPCPA includes enforcement and inspection provisions, including administrative penalties and civil remedies for violations of the Act.[36]

26. In theory, lenders whose activities do not require them to be registered under the MBA may be captured by, and required to meet, the consumer protection requirements of the BPCPA.

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[30] BCSC, "BC Notice 2019/1: expiry of BC Instrument 32-517…", January 21, 2019; BCSC, "Companion policy 31-103 CP: registration requirements, exemptions and ongoing registrant obligations," February 2012, (p.37).
[31] British Columbia Securities Commission, *"Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities – BC Instrument 32-517"*, online (pdf): https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy3/32517-BCI-August-15-2018.pdf (August 15, 2018) - That exemption took effect in BC on December 3, 2010.
[32] BCFSA Mandate Letter, *"About Us - Our Mandate"*, online: https://www.bcfsa.ca/index.aspx?p=about_us/mandate (Accessed Dec 14, 2020)
[33] British Columbia Securities Commission, *"About - Mission, Values & Overall Benefits"*, online: https://www.bcsc.bc.ca/about/what-we-do/mission-values-benefits (Accessed Dec 14, 2020)
[34] https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/04002_00_multi; http://www.mbabc.ca/wp-content/uploads/2011/01/disclosure_seminar_feb_2007.pdf
[35] https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/real-estate-in-bc/mortgage-brokers-act-consultation-paper.pdf; https://www.cmbabc.ca/wp-content/uploads/2020/04/Briefing-Note-Advance-Fees-MBA-Review-2020-04-21.pdf
[36] https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/04002_12

This could include some of the 'Class 3' (unregulated / unregistered) lenders described later in this overview report, in the sections discussing regulatory coverage, though there is no practical way of identifying those lenders.

C. Types of Private Mortgage Lender

i. Background

27. According to figures published in 2019 by Canada Mortgage and Housing Corporation ("CMHC"), 92% of the $1.3-1.4 trillion[37] in residential mortgages in Canada are financed by banks, credit unions, caisses populaires, trust companies and life insurance companies – each of which have AML reporting and due diligence obligations under the PCMLTFA and associated Regulations.[38] Most of the remaining $165 billion in residential mortgages are funded by lenders who are not reporting entities.[39]

28. Mortgages provided by private lenders typically involve rates that are higher than those of financial institutions but that include more lenient terms in some respects, such as the borrower's debt load, employment history or citizenship status. Therefore, these mortgages may be attractive to would-be borrowers who do not qualify for loans with regulated financial institutions.[40]

29. Private lending is increasing across Canada, driven in part by mortgage stress test regulations rolled out by the Office of the Superintendent of Financial Institutions ("OSFI") in January 2018 (known as the B-20 rules). Media reports, citing industry experts, estimate that up to 10% of Canada's $1.5 trillion mortgage market is now served by private lenders.[41]

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[37] Mortgage Professionals Canada estimates that the total residential mortgage market had expanded to $1.55 trillion by the end of 2018; Dunning, Will, *"Annual State of the Residential Mortgage Market in Canada"*, Mortgage Professionals Canada, online (pdf): https://mortgageproscan.ca/docs/default-source/membership/annual-state-of-res-mtge-mkt-2018.pdf (January 2019)
[38] Canada Mortgage and Housing Corporation, *"Residential Mortgage Industry Report"*, online (pdf): https://tinyurl.com/yokdamd5 (Q3 2019)("CMHC 2019") - A further 6% of residential mortgages are financed by MFCs, which comply with OSFI guidelines in order to qualify for securitization programs and funding from banks. However, they are not explicitly covered by AML regulations and reporting is voluntary.
[39] *Ibid.*
[40] *Ibid.*; CMHC 2019; ShopTheRate.ca, *"When You Should Consider a Private Mortgage"*, online: https://shoptherate.ca/blog/mortgages/when-you-should-consider-a-private-mortgage (Updated Sept 16, 2019) LoansCanada.ca, Kapralos, Chrissy; Wood, Caitlin; *"Loans for Newcomers to Canada"*, online: https://loanscanada.ca/loans/loans-for-newcomers-to-canada/ (2018)
[41] Scuffham, Matt; *"OSFI under pressure by banks, industry lobbyists to ease mortgage stress test: sources"*, Financial Post, Reuters, online: https://financialpost.com/real-estate/mortgages/osfi-under-pressure-by-banks-industry-lobbyists-to-ease-mortgage-stress-test-sources (Feb 4, 2019, Updated Feb 6, 2019)

ii. *Categories of mortgage lender used for analysis*

30. For the purposes of this report, mortgage lenders are categorized as follows:

a. **Class 1:** mortgage lenders that are reporting entities under the PCMLTFA and associated Regulations (i.e. lenders with statutory AML obligations), i.e. "traditional lenders" as described above.

b. **Class 2:** private lenders that are covered by provincial regulation as registered mortgage brokers with the RMB and, in the case of most MICs, as exempt market dealers covered under the *Securities Act*; and Mortgage Finance Companies ("MFCs") that voluntarily comply with the AML requirements imposed on financial institutions regulated by the PCMLTFA and associated Regulations.

c. **Class 3:** private lenders that are not required to register with any regulator, or are exempt from registration, and private lenders who meet at least one criterion for registration with a regulatory body but have not registered.

31. A more detailed summary of each category, and the private mortgage lenders they include, is set out below.

iii. *Class 1 lenders*

32. Class 1 includes traditional lenders that are required to comply with provisions under the PCMLTFA and associated Regulations.[42] As noted above, approximately 93% of mortgage lending in Canada is done by Class 1 lenders.

iv. *Class 2 lenders*

33. Class 2 regulated lenders are not directly covered by the PCMLTFA and associated Regulations but have other regulatory obligations, either because they voluntarily uphold OSFI standards (in the case of MFCs) or because they are covered under provincial regulations (registered mortgage brokers, including MICs, and issuers/arrangers of syndicated mortgage investments).

Mortgage Investment Corporations

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[42] Financial Transactions and Reports Analysis Centre of Canada; *"Guidance for Securities Dealers",* online: https://www.fintrac-canafe.gc.ca/re-ed/sec-eng (Accessed Dec 15, 2020)

34. MICs issue equity to outside investors and lend out that capital as mortgages. However, FINTRAC does not considered them to be securities dealers, and most do not meet the criteria for any other type of reporting entity under the PCMLTFA and associated Regulations.[43]

35. MICs are private lenders whose borrower base typically do not qualify for loans from traditional lenders.[44]

36. MICs are predominantly active in the residential property market; by law, at least half of their assets must be invested in residential mortgages or insured deposits.[45] A 2015 study commissioned by CMHC found that 74-83% of MIC lending was for residential mortgages.[46] MICs also lend against other classes of property, however, and are a common source of financing for real estate development.[47]

37. For borrowers, MIC-funded mortgages often serve as bridge financing until other more favourable loans can be obtained. Most MICs provide loans for terms of 6-24 months, with the median term for a MIC-funded mortgage being one year, as opposed to five years for banks and credit unions.[48] Interest rates for MIC-funded mortgages tend to be higher than those of traditional lenders, with average rates of 9-10%. These higher rates reflect the risk profile of borrowers, who tend to be self-employed, real estate investors and borrowers with short-term liquidity issues.[49]

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[43] This position was expressed by Canada in its feedback on a draft version of this report, and aligns with a policy interpretation published on the FINTRAC website <https://www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/FINS/2-eng?s=2>

[44] *Supra; CMHC 2019*

[45] Canadian Mortgage and Housing Corporation, *"Risk profile of Mortgage Investment Corporations"*, online: https://assets.cmhc-schl.gc.ca/sf/project/cmhc/pubsandreports/pdf/68768.pdf?rev=9a63524b-7801-4cc1-9d46-80a6209def6f (August 2016) ("CHMC 2016")

[46] Canadian Mortgage and Housing Corporation; Fundamental Research Corp, "*Growth and risk profile of the unregulated mortgage lending sector,* online (pdf): https://www.baystreet.ca/articles/research_reports/fundamental_research/Unregulated-Mortgage-Lenders-Oct-2015.pdf (2015) ("CMHC 2015")

[47] *Ibid.*

[48] Tal, Benjamin, "*Mortgage Stress Test: The Operation Was a Success, but…",* CIBC Economics, online (pdf): https://economics.cibccm.com/economicsweb/cds?ID=7069&TYPE=EC_PDF (2019) ("CIBC 2019")
Canadian Mortgage and Housing Corporation, *"Research Insight: Mortgage Investment Corporations Update",* online (pdf): http://publications.gc.ca/collections/collection_2019/schl-cmhc/NH18-33-10-2018-eng.pdf (December 2018) ("CMHC 2018")

[49] McFarland, Janet, "*Non-bank lenders attract wave of money, CMHC report on mortgages says"*, The Globe and Mail, online & Appended https://www.theglobeandmail.com/business/article-non-bank-lenders-attract-wave-of-money-cmhc-report-on-mortgages-says/ (July 16, 2019)

38. MIC loans tend to have lower LTV ratios than mortgages issued by banks, credit unions and monoline lenders. According to a 2019 CMHC report, half of MIC mortgages have an LTV of 65% or less, while another 19% falls in the 65-75% range.[50]

39. According to a December 2018 study by CMHC, MICs account for 1% of total residential mortgages nationwide – around $13-14 billion – though it is increasing at more than double the rate of overall mortgage growth.[51] There are approximately 200-300 MICs operating in Canada, according to CMHC, which estimates that 78% of MIC mortgages are in BC and Ontario, primarily in the Lower Mainland and the Greater Toronto Area.[52]

40. In order to better understand the size of the MIC industry in BC, I analyzed BCSC filings for 119 MICs that have filed reports with the regulator since 2011. Those MICs raised approximately $6.7 billion for mortgage lending between 2011 and 2019. That analysis is summarized in Section 5, below.

Mortgage Finance Companies

41. MFCs, often referred to as monoline lenders, are non-depository financial institutions whose only line of business is underwriting and administering mortgages. Unlike MICs and syndicated lenders, MFCs securitize their mortgages and sell them to banks (whereas MICs and syndicated lenders keep the loans on their books). MFCs accounted for approximately 6% of residential mortgage lending in Canada as of 2019.[53]

42. CMHC refers to MFCs as being "quasi-regulated" because MFCs rely on public mortgage securitization programs and funding methods that require them to comply with OSFI guidelines.[54] While they are not directly covered by the PCMLTFA and associated Regulations, OSFI has published guidelines on deterring and detecting money laundering, which MFCs are expected to adhere to.[55]

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[50] *Supra*; *CMHC 2019*
[51] *Supra; CMHC 2018*
[52] *Supra; CMHC 2019*
[53] *Ibid;* CMHC 2019
[54] *Ibid;* CMHC 2019
[55] Office of the Superintendent of Financial Institutions, *"Deterring and Detecting Money Laundering and Terrorist Financing"*, online: https://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/b8.aspx (December 2008)

43. Money laundering risk related to MFCs is limited on the lending side because they obtain most of their funds through public securitization programs and wholesale funding from banks.[56] In order to qualify for those sources of capital, MFCs adhere to the same underwriting standards as banks and other OSFI-regulated lenders, which reduces money laundering risk from borrowers to the extent that there is considerable scrutiny of borrowers' source of funds and creditworthiness. MFCs do not have statutory AML obligations under the PCMLTFA and associated Regulations (though they may nevertheless submit Voluntary Information Records to FINTRAC). However, there is little else distinguishing them from banks and credit unions with respect to mortgage-related money laundering risk.

Syndicated mortgage investments

44. Syndicated mortgage investments ("SMIs") involve multiple investors pooling funds to finance a real estate project or purchase. SMIs enable investors to spread risk and finance loans that might otherwise be too large for one party to fund on their own.[57] Unlike investment in a MIC, where investors own shares in the lender, with an SMI the lenders take a position on each loan.

45. SMI lenders include banks, credit unions and institutional investors as well as individuals. Syndications can also be used to pool funds from wider groups of retail investors. Syndicated lending can be used as an alternative to bank financing for commercial real estate investments or development projects, with funds often going toward early-stage costs such as permits and planning expenses.[58] Where larger numbers of co-lenders are involved, the SMI is often managed by an administrator, who may also be the lead lender on the SMI.[59]

46. In BC, SMIs are delineated into "qualified" and "non-qualified" SMIs.[60] Qualified SMIs involve co-lending by institutional investors and/or loans where multiple parties pool funds to finance a specific residential mortgage, and their issuers (i.e. lenders) and arrangers (i.e. administrators and arranging co-lenders) are largely exempt from BCSC regulations requiring

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[56] Coletti, Don; Gosselin, Marc-Andre; MacDonald, Cameron; "*The rise of mortgage finance companies in Canada: Benefits and Vulnerabilities*", Bank of Canada, Financial System Review, online (pdf): https://www.bankofcanada.ca/wp-content/uploads/2016/12/fsr-december-2016-coletti.pdf (December 2016)
[57] February 6, 2020 interview with representative of MIABC
[58] Folger, Rubinoff LLP; "*Canada: The CSA Proposes Tougher Rules for Syndicated Mortgages*", Mondaq, online: https://www.mondaq.com/canada/charges-mortgages-indemnities/688046/the-csa-proposes-tougher-rules-for-syndicated-mortgages (April 4, 2018)
[59] February 6, 2020 interview with representative of MIABC
[60] British Columbia Securities Commission, "*Commission Rule 45-501 (BC) Mortgages*", online (pdf): https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/HistPolicies/HistPolicy4/45501_BCI.pdf (September 28, 2009) ("BCSC Rule 45-501")

them to file investment prospectuses and register as securities dealers, respectively, providing they meet certain requirements.[61] They may nevertheless be required to register as mortgage brokers under the MBA. The issuers and arrangers of non-qualified SMIs are regulated by the BCSC and are required to file offering memoranda and register as dealers, respectively.[62]

47. Following high-profile cases in Ontario where retail investors were sold non-qualified SMIs and lost their investments, securities administrators have amended the regulatory regime for syndicated mortgages, including enhanced reporting and controls such as mandating independent appraisals of properties prior to issuing SMIs.[63] Amendments to syndicated mortgage rules by the BCSC (and its counterparts in other provinces) go into effect on March 1, 2021 and will require the issuers of qualified SMIs to submit reports to the securities regulator so that it can "understand the extent of the syndicated mortgage market in British Columbia…".[64]

48. Presently, there is no reliable way to identify SMIs through publicly available LTSA records. In some cases, known as direct participation, each SMI co-lender is identified on the Form B charge registration document and has a direct relationship with the borrower. In other cases, the administrative agent is listed as the charge holder and co-lenders register their interest through a loan agreement or commitment letter. In those cases of indirect participation, there is often no record with the LTSA to indicate that a loan is syndicated.[65]

Non-MIC mortgage brokers

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[61] British Columbia Securities Commission, "*Amendments to National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and changes to Companion Policy 45-106CP Prospectus Exemptions and Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations related to Syndicated Mortgages*", online https://www.bcsc.bc.ca/securities-law/law-and-policy/instruments-and-policies/4-distribution-requirements/current/45-106/45106-csa-notice-of-amendments-csa-notice-august-6-2020 (August 6, 2020)("CSA notice 2020") - A qualified SMI must be sold through a mortgage brokerage, must be primarily residential, is capped at 90% LTV, and cannot be used for construction or development, among other requirements.

[62] British Columbia Securities Commission, "*Annex F – Local Matters (British Columbia),* online (pdf): https://www.bcsc.bc.ca/-/media/PWS/New-Resources/Securities-Law/Instruments-and-Policies/Policy-4/45106-Local-Matters-August-6-2020.pdf (August 6, 2020)

[63] Brockbank, Nicole; Cheung, Michelle, "Investors *likely lost $9M in syndicated mortgages tied to convicted fraudster*", CBC News, online: https://www.cbc.ca/news/canada/toronto/syndicated-mortages-1.4078124 (April 24, 2017); Canadian Securities Administrators, "*Request for comment: proposed amendments to National Instrument 45-106 and Companion Policy 45-106CP*", online: https://www.albertasecurities.com/-/media/ASC-Documents-part-1/Regulatory-Instruments/2019/03/5452130-v1-CSA_Notice_re-Syndicated_Mortgages_Proposed-Amendments-45-106-_-31-103.ashx (March 15, 2019)

[64] British Columbia Securities Commission, *"Annex F: Local Matters (British Columbia)",* online (pdf) https://www.bcsc.bc.ca/-/media/PWS/New-Resources/Securities-Law/Instruments-and-Policies/Policy-4/45106-Local-Matters-August-6-2020.pdf (August 6, 2020)

[65] February 6, 2020 interview with representative of MIABC

49. As discussed above, individuals and entities engaged in the business of mortgage lending (as defined in the MBA) are required to register as mortgage brokers and are regulated by the BCFSA. Mortgage brokers include MICs, which are generally also regulated by the BCSC due to their activities as exempt market dealers.[66] Other (non-MIC) mortgage brokers do not have statutory AML obligations and are not overseen by the BCSC but have market conduct responsibilities under the MBA. As mortgage brokers can also be lenders, I have included non-MIC mortgage brokers as Class 2 lenders.

v. Class 3 lenders

50. Class 3 lenders are a diverse group of individuals and entities that comprise all lenders that fall outside the categories above. They include lenders whose mortgage lending activity does not require them to register with any regulatory body as a lender (i.e. unregulated lenders), as well as those who are specifically exempt from registering (e.g. lawyers engaged in mortgage lending activity as part of their legal practice are exempt from the MBA[67]). It also includes lenders that appear to meet at least one criterion for registration under the MBA or *Securities Act* but who have not registered (i.e. unregistered lenders).

51. Among the Class 3 lenders are:

a. **Individuals**: Private individuals account for slightly more than half of private mortgage lending, according to recent figures from Ontario.[68] Individual lenders can be arms-length investors or associates of the borrower. That analysis from Ontario estimates that intra-family loans account for 10% of mortgage lending by individuals.[69] While individual lenders and borrowers may know one another, in many cases they are paired by a broker and have no direct interaction.[70] While some individual lenders in BC are registered with the BCFSA as mortgage brokers or sub-brokers, the vast majority are not.

b. **Private legal entities:** Privately held corporations, societies and other legal entities also feature as mortgage lenders. Legal entities may be established with

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[66] Some MICs may choose to raise funds through other arms-length entities, in which case they do not need to register with the BCSC as exempt market dealers, though in practice this appears to be uncommon.
[67] Though not legally binding, the Code of Conduct for lawyers in BC includes rules for lawyers lending money to clients and issuing mortgages (e.g. Code rule 3.4-28, Commentary [1](a), and rule 3-4.30).
[68] CIBC 2019; The figures are similar by number of transactions and by value of mortgages and are derived from 2018 statistics in Ontario.
[69] *Ibid.:* CIBC 2019
[70] Interviews with borrowers and mortgage brokers.

the specific purpose of mortgage lending or may register mortgages alongside other business activities or investments. They are a diverse group that includes sellers of properties that issue vendor take-back mortgages,[71] entities set up to pool capital from multiple mortgage investors,[72] small businesses whose owners prefer to lend through their company for tax reasons,[73] and a multitude of other scenarios. In BC (and much of Canada), private legal entities are not required to publicly identify their shareholders or beneficial owners, so in most cases there is no information about the individuals behind these lenders.[74]

c. **Crowd-funding**: This relatively new real estate investment mechanism allows investors to partially fund individual projects, typically through online platforms. Crowd-funding is more widely used to fund start-up businesses or product ideas (e.g. Kickstarter[75]), but real estate is a growing application for the financing model.[76] Real estate crowdfunding has seen some growth in the US, where there are platforms like GroundFloor and Patch of Land.[77] However, there are very few real estate crowd-funders operating in Canada.

In BC, crowd-funding in real estate has been regulated by the BCSC since May 2015, with a $1,500 cap on each deal per individual investor, a $500,000 annual limit for each fundraiser, and a $250,000 limit on each project.[78] Crowd-funders are required to register as exempt market dealers. Some unregulated real estate crowd-funding activity does appear to have occurred in BC, however. In 2016, local

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[71] Canadian Real Estate Magazine, "*Ins and outs of the vendor take-back mortgage*", online: https://www.canadianrealestatemagazine.ca/news/ins-and-outs-of-the-vendor-takeback-mortgage-184019.aspx (August 27, 2012)
[72] Kim, Kevin, "*Structuring a private mortgage pool*", American Association of Private Lenders, online: https://aaplonline.com/structuring-a-private-mortgage-pool/ (March 14, 2018)
[73] Tilly, Baker, "*Should you put your investments into a corporation?"* online: <https://www.bakertilly.ca/en/btc/publications/should-you-put-your-investments-into-a-corporation> (October 15, 2005); Golombek, Jamie, *"Small business owner dilemma: invest in an RRSP, or do the investing through your corporation?"*, Financial Post, online: https://financialpost.com/personal-finance/taxes/small-business-owner-dilemma-invest-in-a-rrsp-or-do-the-investing-through-your-corporation (February 10, 2017)
[74] British Columbia Ministry of Finance, "*B.C. consultation on a public beneficial ownership registry*", online: https://engage.gov.bc.ca/app/uploads/sites/121/2020/01/386142-BCABO-Consultation-Document-For-Release.pdf (January 2020)
[75] Kickstarter PBC, Kickstarter, online: www.kickstarter.com (Accessed Feb 11, 2021)
[76] Ernst & Young, "*Real Estate Crowdfunding: Introduction to an Alternative Way of Investing*", March 2019, online: https://vdocuments.mx/real-estate-crowdfunding-ernst-young-global-real-estate-crowdfunding.html
[77] Groundfloor, online: www.groundfloor.us (Accessed Feb 11, 2021); Patch of Land, online: www.patchofland.com (Accessed Feb 11, 2021)
[78] British Columbia Securities Commission, *"Guidance on crowdfunding"*, web page archive, online: https://web.archive.org/web/20171018002210/https://www.bcsc.bc.ca/For_Companies/Private_Placements/Crowdfunding/ (October 18, 2017) (Accessed Feb 11, 2021)

newspapers reported on alleged crowd-funding activity by two real estate firms targeting investments from the Chinese community.[79] That spurred investigations by the BCSC and public notices that firms selling securities without a prospectus need to be registered as exempt market dealers.[80] No further action appears to have been taken, and the issue of unregistered crowd-funding for real estate in BC has not made headlines since.

PART 2: DATA ANALYSIS

52. Using the data set out in Section B, above – charge and title data from the LTSA, BC Assessment Roll data, reports of exempt distribution filed by MICs with the BCSC, and the names of mortgage brokers and sub-brokers registered with the RMB/BCFSA – I sought to answer several questions related to private mortgage lending in BC, namely:

a. To what extent is private lending regulated, and how much of that regulation has an anti-money laundering component?

b. How many mortgages and mortgage lenders in BC are unregulated/unregistered?

c. What is the composition of the unregulated/unregistered mortgage sector? (How many lenders are individuals, companies or other legal entities? How many mortgages have each of these lenders registered?)

d. How has the size[81] of the MIC industry evolved over the past decade?

e. How much capital have MICs raised to invest in mortgages in BC, and what are the geographic origins of that capital?

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[79] Lee, Jeff, *"Crowdfunding BC Real Estate Ventures Involving Chinese Investors Being Reviewed"*, Vancouver Sun, online: https://vancouversun.com/news/crowdfunding-b-c-real-estate-ventures-involving-chinese-investors-being-reviewed/ (January 22, 2016)

[80] Young, Ian, *"Canadian securities regulators review Vancouver real estate 'crowdfunders' after SCMP report"*, South China Morning Post, online: <https://www.scmp.com/comment/blogs/article/1912274/broker-behind-vancouver-real-estate-crowdfunding-website-says-it-was (January 23, 2016,); Young, Ian, *"Broker behind Vancouver real estate 'crowdfunding' website says it was a mistake"*, South China Morning Post, online: https://www.scmp.com/comment/blogs/article/1912274/broker-behind-vancouver-real-estate-crowdfunding-website-says-it-was (February 12, 2016,)

[81] As discussed in Section 5, I measured the industry's size by dollars invested in MICs and number of MICs operating in the province. Measuring by value of mortgages or number of mortgages was not feasible due to a lack of machine-readable Form B data on dollar values and a data set consisting mainly of active property titles (which would fail to account for historical lending registered as charges against cancelled titles).

f. How many mortgage lenders in BC are unregistered, despite meeting at least one criterion for registration, and how many mortgages were provided by those lenders?

REGULATORY COVERAGE OF BC MORTGAGES

53. The following analysis seeks to estimate how many mortgages in BC are provided by Class 1, Class 2, and Class 3 lenders, using the categories set out above in Section 3.C(iii).

A. Methodology

54. This analysis involved cross-referencing LTSA mortgage charge data[82] with lists of individuals and entities subject to regulation by OSFI (financial institutions and life insurers), the BCSC (issuers and exempt market dealers)[83], IIROC (broker-dealers)[84] and the RMB/BCFSA (mortgage brokers, credit unions and caisses populaires).[85] The LTSA data includes all active and cancelled mortgages registered against active property titles registered between January 1, 1999 and December 31, 2019, as well as titles cancelled between January 1, 2014 and December 31, 2019.

55. I analyzed the number of lenders and the number of mortgages using LTSA title search form data. The value of a mortgage is not provided on the title search form, so I was unable to analyze the various tiers of regulation by dollar amount.[86]

56. Some double-counting has occurred where lenders (and their mortgages) are registered with multiple regulators, and where mortgages have multiple lenders. A margin of error also exists due to typographical errors and variations in spelling on LTSA forms (for instance, due to multiple

[82] The LTSA data used for this analysis included active and cancelled mortgage charges registered against active residential property titles in BC. Specifically, it included the mortgagee names and dates of registration/discharge as listed on the title search record for each residential-use-code PID in the province.
[83] Note that there is no publicly available list of BCSC registrants, so the LTSA data set was not filtered for investment fund managers and investment advisors registered with the BCSC. However, all MIEs registered with the BCSC are included as exempt market dealers or issuers and should have been captured by the analysis.
[84] I have included IIROC-regulated broker-dealers in the research because they are covered by the PCMLTFA and associated Regulations and may be contracted by mortgage investment entities to conduct fundraising and other related activities. IIROC-registered securities dealers only appear in eight active/cancelled mortgages in the LTSA data set, confirming that they are not involved in mortgage lending.
[85] BC credit unions are regulated by the BCFSA from a market stability and consumer protection standpoint but have separate AML oversight governed by the PCMLTFA and associated Regulations. Rather than using a list of credit unions from the BCFSA, I used a list maintained by the Canadian Credit Union Association in order to capture mortgages issued by credit unions and caisses populaires from other provinces.
[86] The mortgage principal is usually included in the Form B or its schedules but that data is not available in machine-readable format so could not be analyzed at scale.

spellings of lenders, the counts of the unique number of lenders are higher than the actual number). Rather than precise figures, the calculations summarized below are estimates intended to inform discussion regarding private lending in BC and its regulation.

B. Findings

57. My review found that 96.10% of mortgages in the LTSA data set (2,848,798 of 2,964,393 mortgages) are Class 1 or Class 2 lenders. Of those:

a. 93.04% (2,757,935 mortgages) are with OSFI-regulated lenders;[87]

b. 55.54% (1,646,511 mortgages) are with issuers, registrants and/or exempt market dealers regulated by the BCSC;[88] and

c. 5.32% (157,735 mortgages) are with lenders registered with the BCFSA.[89]

58. As the totals above suggest, many mortgage lenders are regulated by both OSFI and the provincial regulators, while others are registered with both BCSC and the RMB/BCFSA.

59. The following chart provides a visualization of the regulatory coverage of BC mortgages.[90]

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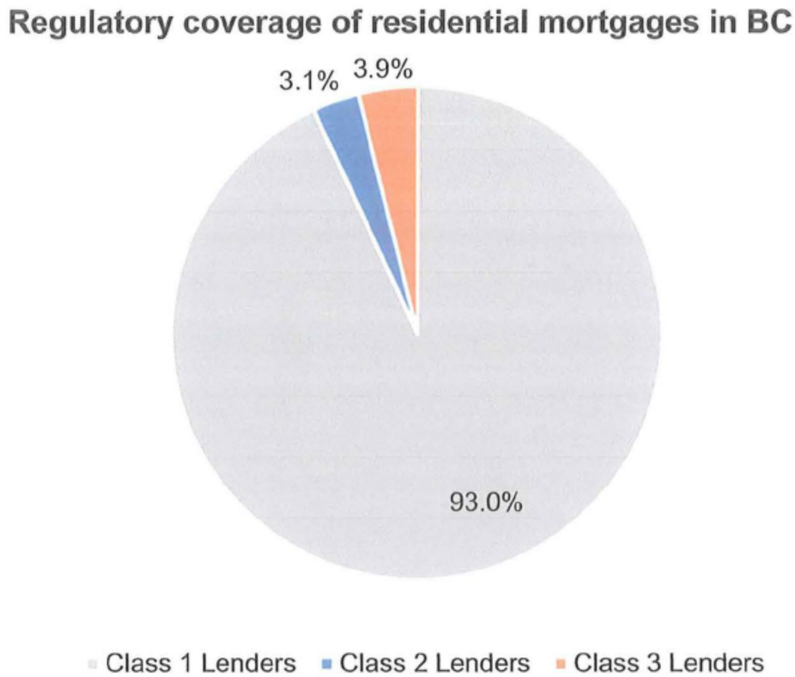
[87] As of January 2020, there were 216 financial institutions regulated by OSFI, comprising: 37 domestic banks; 18 foreign banks; 32 foreign bank branches; 43 trust companies; 18 loan companies; and 68 life insurance companies. The OSFI-regulated institutions were extracted from the regulator's website (<https://www.osfi-bsif.gc.ca/Eng/wt-ow/Pages/wwr-er.aspx>). The list of credit unions and caisses populaires was compiled from the Canadian Credit Union Association's Q3 2019 national sector results, which identifies 239 institutions (<https://ccua.com/app/uploads/private-files/3Q19SystemResults_21-Nov-19.pdf>)

[88] Of these, 1,568,641 mortgages (95.3%) are with OSFI-regulated lenders that are also reporting issuers with the BCSC. The other 77,870 mortgages (4.7%) are with exempt market dealers, registrants and reporting issuers that are not OSFI-regulated, with the vast majority (76,497) held by lenders that are also regulated by the RMB/BCFSA.

[89] Of these, 81,238 mortgages (51.5%) held by lenders that are regulated by both the BCFSA and OSFI (i.e. credit unions), while the remaining 76,497 (48.5%) are held by registered mortgage brokers.

[90] More than half of the mortgages with Class 1 regulated lenders are also covered by Class 2 regulators (BCFSA and BCSC). Analyzed by regulator, 92.71% are covered by OSFI, 49.82% are covered by the BCSC, 5.32% are covered by the RMB/BCFSA, and 4.68% are not registered with any regulator.



i. Class 3 lenders

60. There are 115,595 mortgages in the data set (3.9%) whose lenders are not registered with any regulatory body. Of those:[91]

a. 58,438 (50.55%) have lenders that are individuals[92] (of those, 22% share a surname with the borrower. I have assumed that most of those are intrafamily loans rather than mortgages with arms-length private lenders);

b. 48,168 (41.67%) have lenders that are corporate entities;[93]

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[91] 16,772 mortgages were double counted in this analysis due to mortgages with multiple lenders.

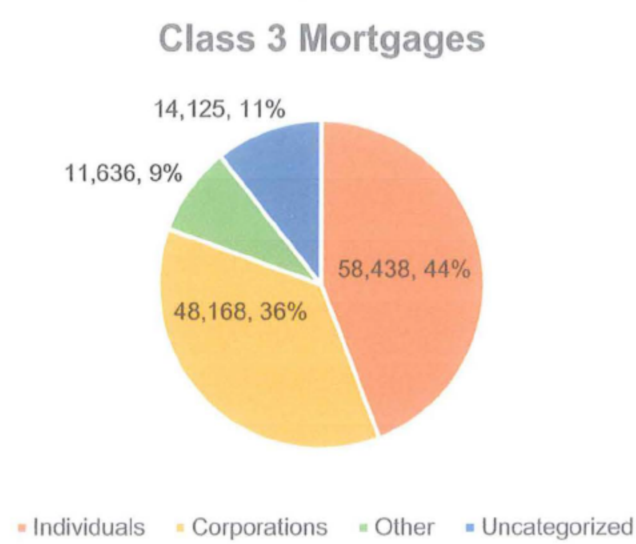
[92] There is a significant discrepancy here with the findings from the Second German Report, which found 17,144 mortgages with individual lenders. My analysis includes cancelled mortgages as well as active ones, and I did not filter for the nature of transfer or the declared value on title, as was done for the analysis published in the Second German Report.

[93] This includes 2,706 numbered companies. It is worth noting that numbered companies are more likely than named companies to be used as special purpose vehicles to hold a single mortgage. Among Class 3 lenders, numbered companies hold an average of 2.37 mortgages each while the average for named companies is 3.29 mortgages. Aside from this footnote, I do not distinguish between named and numbered companies, as they do not exhibit any different characteristics as legal entities. While numbered companies can be challenging to identify through open-source research, many named companies also have a negligible online footprint and can be just as difficult to identify. The BC government charges a nominal fee to name a company, and a name application must be submitted, so many incorporators appear to simply forego that process – particularly for a company that is being used for a limited number of transactions.

c. 11,636 (10.07%) are with other institutions such as government agencies and universities; and

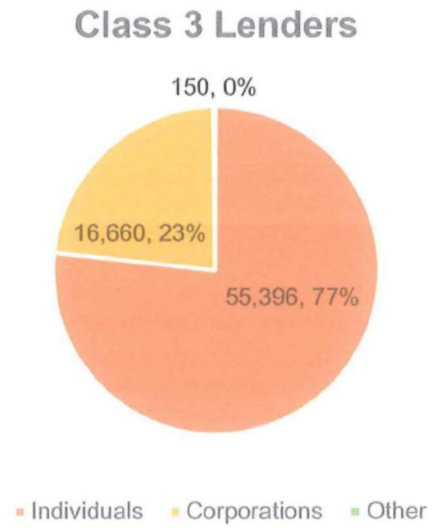
d. 14,125 (12.22%) have no names in the charge owner field so could not be categorized.

61. This breakdown of mortgages provided by Class 3 lenders is set out in the following chart. Note that mortgages jointly held by a Class 1 or 2 lender and a Class 3 lender are not included in this count. There is also some double-counting due to mortgages with multiple lenders.[94]



62. Analyzed by lender, those 132,367 mortgages are held by 72,206 lenders: 55,396 individuals, 16,660 companies and 150 other institutions.

[94] All the lenders for those 16,772 mortgages have been included in this count (132,367), which is why it does not match the total number of Class 3 mortgages (115,595).



63. Among Class 3 lenders, the mean number of mortgages for individual lenders is 1.54, while it is 3.15 for corporate entities.

MORTGAGE INVESTMENT CORPORATIONS

64. MICs are a small but quickly growing segment of mortgage lenders in BC, and account for much of the private lending in the province.[95] Using information disclosed in BCSC filings, I mapped out the size and growth of the MIC industry in the province, and the geographical sources of investment for BC MICs.

A. Methodology and data

65. MICs operating in BC are required to register as mortgage brokers with the RMB. They also file reports with the BCSC, which are then disclosed in a public database maintained by the BCSC. Using the RMB's mortgage broker list I searched the BCSC database and compiled a list of MICs, which was manually reviewed to ensure that the analysis had not misidentified any entities or individuals. The result was a list of 119 MICs that operate in the province.

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[95] *Supra*: *CMHC 2018*; British Columbia MIC Managers Association, online: https://www.bcmma.org/about-us (Accessed Feb 11, 2021) - According to the website of the BCMMA, their 35 members have approximately $2 billion in assets under management.

66. Using this list, I extracted information from exempt distribution reports filed by those MICs with the BCSC, in which they disclose the country of origin (and within Canada, the province) and dollar amount of each investment. Those reports also contain information about insiders and recipients of commissions and referral fees.

67. The BCSC data sample includes filings from 2005 to 2020, though my analysis focused on the 2011-2020 period. Since 2010, MICs have been required to file information reports with the BCSC under the terms of a registration exemption granted by Canada's securities regulators.[96] The BCSC also updated its reporting templates in 2011, prior to which there was too much variation in the reports to extract data for the analysis.

68. The RMB mortgage broker and sub-broker list I used for the analysis encompasses all registrants from 2012 to 2020.

B. Findings

i. Size of the MIC industry

69. The MIC industry has seen significant growth in the past decade. My review of BCSC filings suggests that there was approximately $230 million invested in BC MICs in 2012. By 2017, annual investment had grown to more than $970 million. The industry experienced a peak in 2018, with more than $2 billion in disclosed investment.[97]

70. Analysis of BCSC filings by MICs on an annual basis gives one perspective into the growth of the industry during the 2011-2019 period. Over the course of that period, 80 MICs filed reports for the first time.[98] Approximately twice as many MICs filed for the first time as stopped filing during

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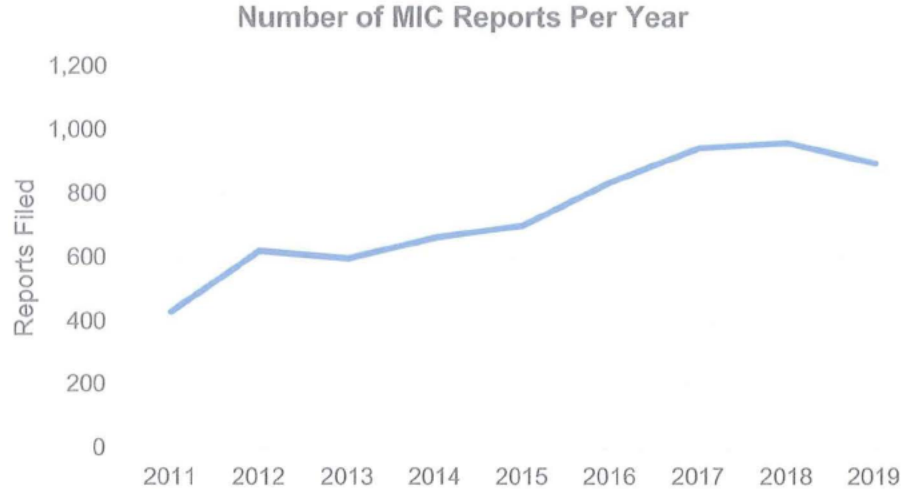
[96] British Columbia Securities Commission, "*BCN 2010/40 – Adoption of BC Instrument 32-517 Exemption from Dealer Registration Requirement for Trades in Securities of Mortgage Investment Entities*", online: https://www.bcsc.bc.ca/securities-law/law-and-policy/bc-notices/current/bcn201040-adoption-of-bc-instrument-32517-exemption-from-dealer-registration-requirement-for-trades-in-securities-of-mortgage-investment-entities-bcn; The exemption was announced in August 2010 and went into effect in December 2010

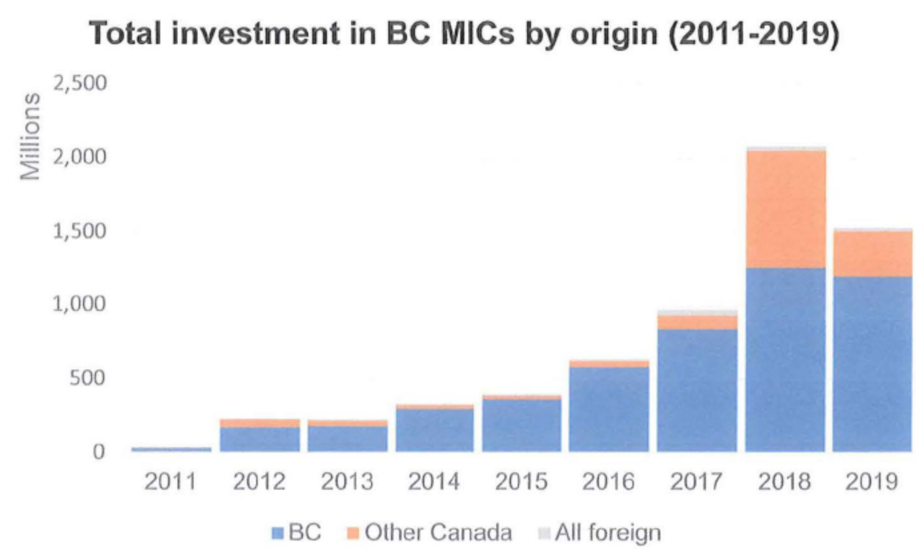
[97] British Columbia, in its feedback on a draft version of this report, noted that the BCFSA conducted a desktop review of the BC MIC industry and found that, as at May 31, 2020, registered BC MICs had lent $5.5 billion with $3.8 billion secured by mortgages in BC.

[98] The breakdown by year is as follows: 8 (2011), 18 (2012), 11 (2013), 7 (2014), 5 (2015), 7 (2016), 11 (2017), 7 (2018), 6 (2019).

that period.[99] As expanded upon below, the increase in reporting largely aligns with a rise in investment in the industry during that period.



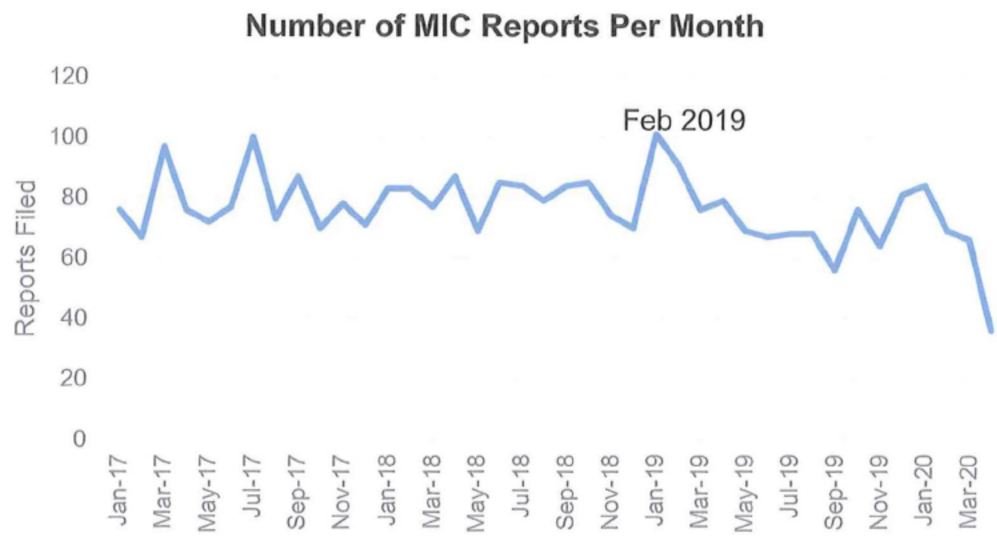
71. The following chart shows the total value of investment reported by the 119 MICs each year from 2011 to 2019 (the 2020 figures only include the first several months of the year, so I have not used them when describing trends). In total, approximately $6.4 billion was invested in BC MICs between 2011 and 2019.



[99] Analysis based on the date of last filing is constrained by the fact that 2019-2020 would include both active MICs and any that have recently wound down operations. In the 2011-2018 period, the counts for last filing are as follows: 3 (2011), 11 (2012), 4 (2013), 8 (2014), 4 (2015), 3 (2016), 3 (2017), 6 (2018),

72. In February 2019, a BCSC notice exempting MICs from registering as investment dealers expired.[100] Filings with the BCSC show a year-on-year decline in investment, from $2 billion in 2018 to $1.5 billion in 2019, though it is unclear how much of that can be attributed to the change in registration requirements. Industry sources interviewed in the course of the Commission's research estimated that 75% of MICs in BC have registered with the BCSC.[101] They indicated that some MICs have outsourced capital-raising to third parties, while others have decided to exit the BC market.

73. As illustrated in the following chart, when the registration exemption expired in February 2019, there was an immediate spike in reporting by BC MICs (from 70 reports in January to 101 reports in February). There was no distinct drop in the number of reports filed with the BCSC when the one-year grace period expired in February 2020. A drop-off in reporting in March-April 2020 can likely be attributed to the onset of the COVID-19 pandemic and its impacts on economic activity.

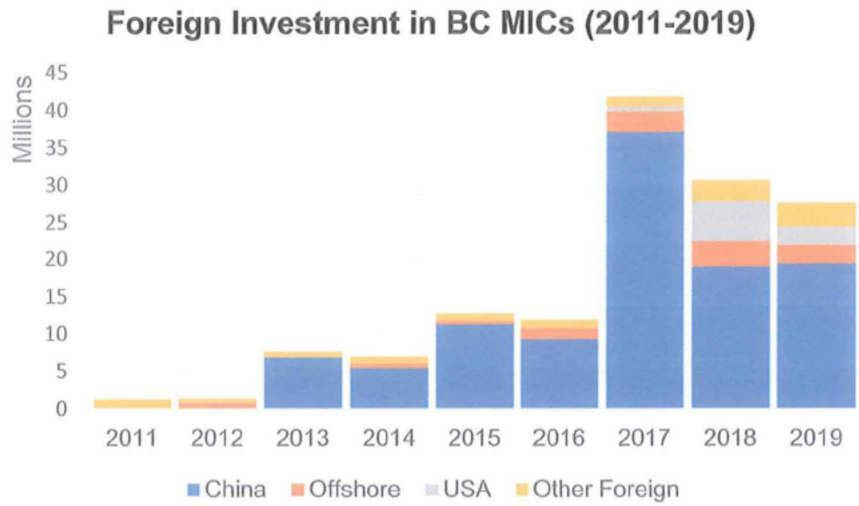


ii. Domestic and foreign investment

74. The vast majority of funds invested in BC MICs originates from Canadian sources, according to data filed with the BCSC. It is important to note that the data does not necessarily capture the origins of capital invested in BC MICs. Rather, it reflects the geographic location of funds immediately prior to their investment with those MICs. Capital that has transited into Canada

[100] There was a one-year grace period for registering, which expired in February 2020.
[101] February 18, 2020 interview with representatives of the BCMMA.

from abroad prior to being invested cannot be measured through the data disclosed in BCSC filings, which appears to be the only publicly available source of data on the geographic origins of capital invested in the industry.



75. From 2011 to 2020, 97.78% of all investment was declared to have come from within Canada. On an annual basis, Canadian sources have never fallen below 95% of the total investment in the data set. Overall, BC sources account for 76.4% of total investment while investment from other provinces amounts to 21.4%.[102] Annual investment from BC fluctuates between 77% and 91%.

76. The data shows that 2018 was an anomalous year, in which total investment more than doubled, from $970 million in 2017 to a little over $2 billion. That increase came entirely from domestic capital: BC investment grew by around 50% to $1.25 billion and investment from other provinces increased nearly nine-fold, from $92 million to $801 million.

77. Throughout the period I analyzed (2011-2020), investment from foreign sources has remained below 5% of annual MIC investment. In total, it accounts for just 2.2% of total investment, or $150 million.

[102] $1.44 billion in extra-provincial Canadian investment comprises Ontario (42.26%), Alberta (23.77%), Quebec (20.65%), Newfoundland (6.93%), PEI (4.77%), Manitoba (0.86%), Saskatchewan (0.69%), other provinces and territories (0.07%, collectively).

78. By far the largest constituent of that foreign investment is China, including Hong Kong, which accounts for around 78% of the total. Chinese investment in BC MICs amounts to $116 million since 2013 (no investment from China or Hong Kong was recorded in 2011 or 2012).

79. The next-largest contributor, the United States, makes up just 6% of foreign investment. Other substantial contributors are Taiwan (3.1%) and several offshore financial centres (8%, collectively). Iran and Italy each account for around 1% of foreign investment, and all other foreign countries are all below 1% — each of their total cumulative investment is less than $1.5 million.

80. Foreign investment is concentrated in a small minority of MICs. Around 92% of Chinese investment has been made with four MICs, with the remaining 8% spread between another four firms. All of the $116 million invested from China and Hong Kong in the past decade has been placed with those eight MICs.

81. As noted above, several other MICs have reported investment from offshore financial centres deemed by some to be high-risk jurisdictions for tax evasion and other financial crime.[103] In aggregate, $11.71 million has been invested since 2012 from four offshore centres:

a. Bahamas - $7.24 million invested with two MICs since 2016

b. Malta – $1.65 million invested in one MIC since 2014

c. Marshall Islands – $250,000 invested in one MIC in 2019

d. Turks and Caicos – $2.57 million invested in one MIC since 2012

That investment was reported by five BC MICs.

C. Potential impacts of policy on foreign MIC investment

82. The data shows fluctuations in foreign investment that appear to correlate with shifts in government policy in China and BC – namely, a 2016 crackdown in China on currency controls

[103] Remeur, Cecile, *"Listing of tax havens by the EU"*, European Parliamentary Research Service, online (pdf): https://www.europarl.europa.eu/cmsdata/147404/7%20-%2001%20EPRS-Briefing-621872-Listing-tax-havens-by-the-EU-FINAL.PDF; (May 2018); Langerock, Johan, *"Off the hook: how the EU is about to whitewash the world's worst tax havens"*, Oxfam, online: https://www.oxfam.org/en/research/hook-how-eu-about-whitewash-worlds-worst-tax-havens (March 7, 2019,); Tax Justice Network, Financial Secrecy Index, online https://fsi.taxjustice.net/en/ (February 18, 2020)

and the introduction and subsequent expansion of the BC foreign buyer's tax – though there may be other unidentified variables at play.

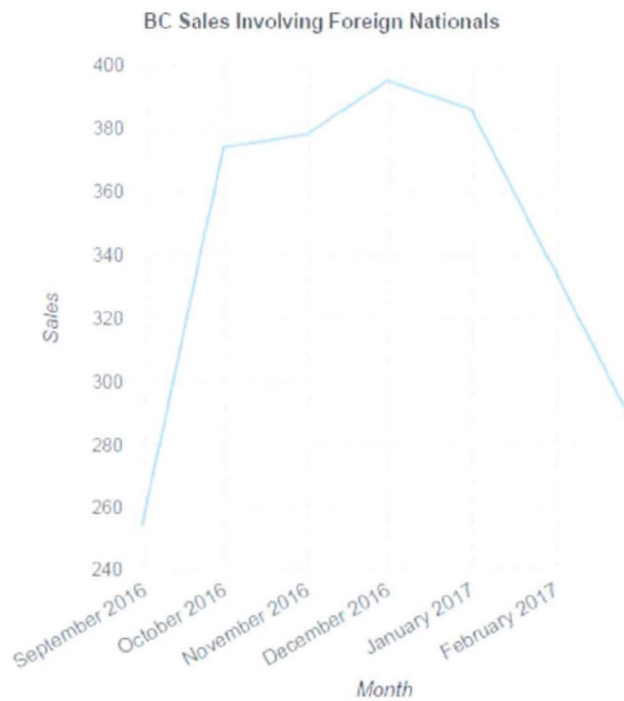
83. Beginning in January 2016, China began to ratchet up controls to stem capital outflows from the country – a drive that intensified later into the year.[104] Comparing 2015 to 2016, Chinese investment dropped from 28.5% to 14.8% of reported total investment in BC MICs. While overall investment rose from $399.6 million in 2015 to $636.0 million in 2016, Chinese investment decreased from $11.4 million to $9.4 million. In contrast, foreign investment from other countries increased by 76% between 2015 and 2016 (though the total remained small, at $2.6 million).

84. Chinese investment in BC MICs increased in 2017, to $37.2 million from $9.4 million in 2016. This accounted for 38.3% of total MIC investment in 2017. The reasons behind the marked rise in Chinese investment that year are unclear. It is plausible that capital controls were less of a constraint than they were in 2016. Chinese investment has remained steady since 2018 at around $19-20 million annually.

85. Another policy factor that may have influenced foreign investment into BC MICs is the introduction of the Foreign Buyer Tax in July 2016 and its expansion in February 2018.[105] The tax placed a 15-20% premium on property purchases by foreign nationals in competitive BC markets such as the Lower Mainland and Victoria. For foreign investors looking for exposure to the BC real estate market, MICs provided a way to invest without paying that 15-20% premium.

[104] Wildau, Gabriel, *"China steps up capital controls to stem outflows",* Financial Times, online: https://www.ft.com/content/9e25a772-b5df-11e5-aad2-3e9865bc6644 (January 8, 2016); Keith Bradsher, *"China tightens control on overseas use of its currency",* The New York Times, online: https://www.nytimes.com/2016/11/29/business/economy/china-tightens-controls-on-overseas-use-of-its-currency.html (November 29, 2016)

[105] Government of British Columbia, *"Additional Property Transfer Tax for Foreign Entities & Taxable Trustees",* online: https://www2.gov.bc.ca/gov/content/taxes/property-taxes/property-transfer-tax/additional-property-transfer-tax



Source: BC Ministry of Finance.

86. The graph above shows the change in BC property sales involving foreign nationals in the wake of the foreign buyer's tax.[106] The MIC investment data is annual so it was not possible to do a comparable month-to-month breakdown over the same period. However, as noted above, there was a significant jump in foreign investment in BC MICs (both as a percentage of total investment and in absolute terms) between 2016 and 2017.

87. While the introduction of the FBT may have encouraged some overseas property investors to place their capital with MICs instead of investing directly in BC real estate, foreign investment in MICs remained relatively low, at less than 5%. Total foreign investment in BC MICs has remained low in absolute figures, peaking at $42 million in 2017, suggesting that the impact of foreign money on the industry's growth has been limited.[107]

IDENTIFYING UNREGISTERED MORTGAGE BROKERS

88. LTSA data can also be used to identify lenders that meet one of the criteria for registration as mortgage brokers with the RMB. Although the definition of mortgage broker in the MBA is

[106] Punwasi, Stephen, *"A Brief History of Foreign Buying of Vancouver Real Estate"*, Better Dwelling, online: https://betterdwelling.com/city/vancouver/a-brief-history-of-foreign-buying-of-vancouver-real-estate/ (August 4, 2017)
[107] I again note again that investment originating overseas but transiting through Canadian financial institutions before being placed with BC MICs is not captured in this data as "foreign" capital.

imprecise, one criterion states that a person must register as a mortgage broker under the Act if "during any one year, lends money on the security of 10 or more mortgages".[108] That 10-mortgage threshold can be applied to a review of LTSA data.

89. Commission counsel sought clarification from British Columbia as to the registration requirements for private lenders under the MBA, including where lenders engage registered mortgage brokers for transactions. Counsel for the Registrar of Mortgage Brokers confirmed that "a lender in the business of lending money [that is secured by mortgages] has to be registered and it does not matter if part of the process is facilitated by a registrant ... The only circumstances where the above is not true is where a person(s) lends money on the security of less than 10 mortgages per year." In other words, lenders are required to register as mortgage brokers if they lend money secured by mortgages on 10 or more occasions in a year, regardless of whether they have engaged a registered mortgage broker or sub-broker for the transactions.

A. Methodology and limitations

90. This analysis was conducted by filtering LTSA mortgage data[109] for lenders that have registered 10 or more mortgages in a 365-day period[110], then cross-referencing it with a list of all mortgage brokers and sub-brokers registered since 2012 (no electronic mortgage broker list existed prior to 2012). OSFI-regulated financial institutions, which are exempt from the MBA, were filtered out, leaving a list of lenders who appear to meet this definition of mortgage broker but have not registered with the RMB.

91. This analysis only captures lenders that have registered 10 or more mortgages in a 365-day period and whose names appear directly on the LTSA's title search form. Further, it would not capture a lender who is lending under multiple names. Lenders using multiple distinct legal personalities (i.e. subsidiaries or companies with shared beneficial ownership) cannot be captured in the absence of publicly available shareholder and beneficial ownership data on BC companies.

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[108] As defined in the MBA, "'person' includes an individual, corporation, firm, partnership, association, syndicate, any unincorporated organization and an agent of any of them".
[109] Active and cancelled charges registered on LTSA title search records, including the dates of registration.
[110] The MBA refers to 10 or more mortgages "during any one year". I interpreted this to mean a 365-day period rather than a calendar year.

92. The data query is only a first step to identifying unregistered brokers and needs to be followed by a manual review to filter out false positives and improve its accuracy. The lenders captured by the data query that had to be filtered included:

a. Crown corporations and other government-linked lenders;[111]

b. insurance companies;[112] and

c. lenders with variations between their name in LTSA records and as registered with the RMB.[113]

93. This analysis does not seek to definitively determine or provide a legal opinion as to whether an entity ought to have registered as a mortgage broker under the MBA or submitted filings/registered with the BCSC, but rather applies this one criterion, of 10 or more mortgages in a year, to a list of registered mortgage brokers and sub-brokers. There are exemptions to the requirement to register when this criterion is met. The unregistered lenders identified through this analysis may include some who enjoy these exemptions, such as lawyers who have registered mortgages in the course of their legal practices (nine law firms were identified in my analysis).[114]

94. There are also atypical lending scenarios, where a lender may meet the 10-mortgage threshold of the MBA's mortgage broker definition but does not appear to be the business of mortgage lending. For instance, the query identified an Okanagan summer camp provider that has issued 41 mortgages to co-owners of the same property, 20 of which were registered within a 365-day period. My analysis did not sort for these types of scenarios, which would need to be manually reviewed and excluded. Conducting such a review, while not possible within the ambit of this report, would provide a more refined and accurate analysis.

95. Some of the unregistered lenders identified through this analysis appear to conduct their lending through a third-party broker that is registered with the BCFSA. For instance, a company called Maier Investments Ltd. holds 32 active mortgages and was flagged for registering 32 mortgages within a 365-day period. However, its Form B mortgage registration documents all provide a mailing address care of One Stop Mortgage Corp, a registered broker. Other

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[111] For instance, Alberta Treasury Branches and the BC Housing Management Commission. These are exempted under Part 1, Section 11(1)(d) of the MBA.
[112] These are exempted under Part 1, Section 11(1)(a) of the MBA.
[113] For example: CRG Mortgage Investment Corp and C.R.G. Mortgage Investment Corp; True North Mortgage Inc and Greater True North Mortgage Inc; Hometown Investments Ltd and Hometown Investment Ltd.
[114] *Mortgage Brokers Act*, R.S.B.C. 1996 c. 313, s. 11

unregistered lenders may have similar arrangements with registered brokers, albeit ones that are not reflected on the Form Bs for their loans. As noted above, when consulted British Columbia made clear to Commission counsel that these lenders are still required to register as mortgage brokers if their lending activity crosses the 10-mortgage-per-year threshold.

B. Findings

96. The data query identified 493 individuals and entities that had registered 10 or more mortgages within a 365-day period dating back to January 1, 2012 but who were not registered with the RMB during that period. Further analysis of those lenders is set out below.

97. A manual review of those lenders found that 16 were likely exempt from registering as mortgage brokers due to their status as financial institutions, trust companies, insurers or government bodies. The remaining 477 appear to have met the 10-mortgage-per-year registration threshold, yet were not registered.[115]

98. Of the unregistered brokers, 247 are corporations, 220 are individuals, and 10 are non-profit societies or foundations.

99. The 247 unregistered corporate entities have registered a combined 5,808 mortgages. The individual lenders have registered 4,766 mortgages. Note that some loans would have been double counted in cases where multiple lenders are involved.

100. A selection of nine individuals and entities flagged for their lending activity were reviewed in more detail by review of records of mortgage documents pulled from the LTSA. These nine were chosen at random. Of that group, three were individuals or apparent family units, five were corporations, and one was a non-profit society. Available records indicated that collectively these persons and entities had made at least 590 mortgage loans in a 365-day period. The average number of mortgages registered by each within a 365-day period was 66. The median number was 69. In terms of actively held mortgages, these persons/entities collectively held 250 active mortgages, with a total value of $203,739,420. The average number of active mortgages currently

[115] Some of the nine law firms identified in the analysis may be exempt from registering. Only a cursory review of the lenders was done, so it is likely that some were miscategorized as unregistered mortgage brokers despite qualifying for an exemption or being registered with the RMB/BCFSA (variations in spellings and name structure may not have been caught during my review).

held by these entities was 28, and the average value of all mortgages currently held was $25,467,427.[116] The median number of active mortgages was 23.

101. Commission counsel wrote to each of the nine lenders set out above to advise them of the results of the analysis, i.e. that each has registered 10 or more mortgages during a 365-day period, which is an MBA criterion requiring registration as a mortgage broker, and to provide an opportunity for response. Of the six that did respond, three indicated that they were unaware that they were required to register as a mortgage broker, one disputed that it met the definition of a mortgage broker, and one furnished a letter from the RMB advising the lender that it need not register so long as it conducted all lending through a registered mortgage broker and had no interaction with members of the public.

102. One of the lenders, in a response to Commission counsel, described having contacted the RMB (described in the email as "FICOM") after receiving the Commission's letter and reported being advised by an unnamed staff member that "if we [i.e. the lender] are using a mortgage broker then we don't need any licence to lend money," underlining the apparent confusion over the MBA's application to private lenders not just among registrants but within the regulator itself.[117]

IMPROVING DATA SCOPE AND QUALITY

103. Over the course of my research and analysis I encountered constraints related to the availability and quality of LTSA data on mortgages. These mainly relate to a lack of accessible data on the value of loans (see Section 1(B) for a summary of LTSA mortgage data).

104. There are several areas for improvement to make LTSA data more useful for future analysis of mortgage lending, including for the purpose of detecting money laundering through real estate:

a. **Verification**: No entity independently verifies most data submitted to the LTSA. Most forms can now be completed and submitted electronically but there are still free-form text boxes that undermine attempts to ensure data is standardized and

[116] One entity did not disclose the values of its mortgages on the Form B charge documents, so the average value of mortgages was taken by dividing the value of the other 8 entities' mortgage by 8.

[117] British Columbia advises that at various points in time, the RMB has taken the position that lenders with 10 or more mortgages who have used a registered mortgage broker to complete those transactions need not register themselves as mortgage brokers. This is still the case in some other provinces, such as Ontario. However, it is not the current practice in BC.

accurate. There is no requirement for titleholders and charge holders to submit government identification or certified documents that attest to their identity, leaving room for error and misrepresentation

b. **Unique identifiers**: The LTSA does not assign or collect unique identifiers for titleholders or charge holders, which means it is not possible to discern between people or entities that share names (e.g. "John Smith" may own 30 properties, but it is not possible to determine how many of these properties are owned by the same John Smith).

c. **File format**: Mortgage charge forms (Form Bs) are only held in PDF format. Their schedules – which often contain relevant information about the terms of the loans – are often not included at all. If those records were uploaded and stored in machine readable format it would be possible to analyze loans using a range of variables that are not currently available, such as LTV, principal amount and repayment terms.

d. **Broker information**: The LTSA collects information on a mortgage's lender(s), borrower(s), guarantor(s) and covenantor(s). It does not collect or disclose any information about mortgage brokers. If mortgage broker information were disclosed, analysts could look at patterns of unusual activity linked to specific brokers and regulators could use that data to identify unregistered mortgage brokers.

e. **Cost**: The cost of analysing property records in BC is prohibitive for many stakeholders. Most regulators and law enforcement bodies now pay for accounts with the LTSA and do not have access to its data through an API for their own analysis.

105. In response to a draft of this report, the BCFSA provided a list of other data that its staff felt would help to assess money laundering risk, which could be collected and/or presented in LTSA records. Their suggestions have been paraphrased and set out below:

a. Collect and disclose identifiers for property owners and beneficial owners, as well as their primary addresses;

b. collect and disclose values of purchase price for transactions, lending value for mortgages, and aggregate that information so that the total claims on each property can be viewed;[118]

c. in cases where mortgages are 're-advanceable' (i.e. mortgages with a line of credit), identify the initial draw or limit on the Form B;

d. create categories of mortgage lender and disclose that information on Form B, such as credit union, bank, MIC (a full list of proposed categories was not provided);

e. collect identification (e.g. registration numbers) for professionals participating in each transaction, including (where applicable) the mortgage broker, real estate licensee, developer, securities registrant, lawyer and/or notary;

f. create categorization in Form B to indicate the type of mortgage, such as syndications, reverse mortgages and different re-advanceable mortgage types;

g. make the details of Form B machine-readable and improve search functionality;

h. collect and disclose information on the source of funds for purchases and for funds loaned as mortgages, categorized by lender (e.g. Canadian financial institution, foreign financial institution, other) and by form of transfer (e.g. domestic wire transfer, international wire, cash, etc.); and

i. include a disclosure on Form B to select whether a mortgage is income-qualified or non-income qualified (equity).

106. The BCFSA also suggests that the definition of "interest in land" in the *Land Owner Transparency Act* be expanded to include mortgages and other charges.[119]

* * *

[118] This information can be provided on the LTSA title search document and, in the case of mortgages, on the Form B, though it is inconsistently applied and is not aggregated.
[119] *Land Owner Transparency Act*, S.B.C. 2019 c. 23