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## **Guidelines to RULE MB-001<sup>1</sup>**

### ***Mortgage Brokers Licensing and Ongoing Obligations***

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## Introduction

These guidelines are intended to provide clarification and assistance to mortgage brokerage industry participants in New Brunswick by illustrating how the Financial and Consumer Services Commission (the Commission) and the Director of Mortgage Brokers (the Director) may apply the provisions of Rule MB-001 [Mortgage Brokers Licensing and Ongoing Obligations](#) (the Rule ), and other related legislation.

All references in this guideline are to the Rule, and all references to the Act are to the [Mortgage Brokers Act](#) (the Act), unless otherwise noted.

The guidelines are intended to provide assistance in interpretation only and do not have legal effect. The guidelines should be read along with the Act and the Rule. If there is a conflict with the legislation, the provisions of Act or the Rule prevail.

## PART 1: Preliminary Matters

### Lender

The term “lender” is used throughout the Rule. This is a general term used to describe all types of lenders, including financial institutions, insurance companies, private investors and others who lend money, either on their own behalf or on behalf of another person.

### Requirement to be licensed

Individuals and mortgage brokerages and administrators must be licensed if they are carrying on business in New Brunswick and engaging in any of the activities set out in subsections 1(3) and 1(4) of the *Mortgage Brokers Act*.

Individuals or mortgage brokerages and administrators should consider several factors in determining whether the type of activity they are conducting falls within the activities set out in subsections 1(3) and 1(4) of the Act, including:

- being or expecting to be remunerated or compensated;
- directly or indirectly soliciting;
- engaging in activities similar to a licence holder, such as taking information that would be contained in a mortgage application;
- carrying on the activity with repetition, regularity or continuity;
- whether the activity is incidental to other activities or part of an individual or firm’s primary business; or
- in connection to New Brunswick (ie. location of the borrower, private investor or property).

The Director will look at the type of activity conducted and whether it is carried out for a business purposed to determine if an individual must be licensed.

More details on exemptions is provided in the “Exemptions” below.

Mortgage brokerages who act as “credit brokers” as defined under the [Cost of Credit Disclosure and Payday Loans Act](#) , are also required to be registered as a credit broker pursuant to section 6 of the *Cost of Credit Disclosure and Payday Loans Act*.

## **Exemptions**

The Rule provides exemptions from the Act, in its entirety; it also provides exemptions from the licensing requirements of the Act.

Section 2 of the Rule provides an exemption from the Act for financial institutions and insurance companies who conduct the activities set out in subsections 1(3) and 1(4) of the Act. Paragraph 2(c) sets out an exemption from the Act for a director, officer or employee of a financial institution or insurance company. They cannot rely on this exemption if they are promoting products and services of a third party, or acting on behalf of another person. The exemption for insurance companies includes an exemption for licensed agents of an insurance company, whether an individual or a corporation, to permit the use of professional corporations. A licensed agent of an insurance company who is a professional corporation can rely on this exemption.

Paragraph 2(d) sets out an exemption from the Act for registrants under the *New Brunswick Securities Act* or other Canadian securities legislation. Any person who is conducting activities set out in subsections 1(3) and 1(4) of the Act with respect to a syndicated mortgage (a mortgage in which two or more persons or companies participate, directly or indirectly, as lenders in the debt obligation that is secured by the mortgage) must comply with securities requirements.

It is important to note that securities registrants who do not typically conduct mortgage broker activities in their permitted and regulated securities activities cannot rely on this exemption. For example, a registered scholarship plan dealer would not be conducting mortgage brokerage or mortgage administrator activities in their permitted and regulated securities activities and cannot rely on this exemption if he or she is conducting activities set out in subsections 1(3) and 1(4) of the Act.

## **Simple referrals**

When only basic information is provided to a prospective lender, such as name and contact details of a prospective borrower, there is no requirement for the person providing the information to be licensed. However, where a referral is made for a benefit (a fee or other remuneration), the amount or nature of the benefit must be disclosed to the borrower prior to proceeding with the mortgage brokerage services being offered. If the exact amount of the fee is not known then a reasonable estimate should be provided.

Lead generation or referrals that go beyond name and contact details would not fall within this exemption. Those individuals or firms taking mortgage applications or pre-screening possible referrals to mortgage brokerages are required to be licensed.

As a best practice, the disclosure should be made at the time when the potential borrower is accessing the service of the mortgage broker. The referral fees paid by a brokerage must also be disclosed to the borrower at least 2 days prior to the mortgage taking effect and the exact amount of fees must be disclosed at that time.

## PART 2: Licensing

### Assessing suitability for a licence

Three fundamental criteria are used to assess whether an individual is or remains suitable for licensing:

- **Proficiency:** individuals must meet the applicable education and experience requirements, and any continuing education requirements;
- **Integrity:** licence holders must conduct themselves with integrity and have an honest character; the integrity of individuals is assessed through the application process and through compliance reviews;
- **Solvency:** an individual that is insolvent or has a history of bankruptcy may not be suitable for a licence.

It is the responsibility of the mortgage brokerage or mortgage administrator to ensure compliance of the individuals acting on its behalf. The brokerage and administrator must have policies and procedures in place that detail the everyday compliance practices to be undertaken by all employees.

### Suitability for licensing

All licence holders must maintain their suitability in order to maintain their licence. If the Director determines a licence holder has become unsuitable for licensing, the Director may suspend or revoke their licence.

### Criminal record check

Criminal record checks are one component of assessing integrity and honest character. A criminal record check will be conducted on all applicants at the time of the initial application and a licence holder may be subject to further criminal record checks at any time during the term of their licence.

An applicant for a mortgage brokerage licence will be subject to a criminal record check for:

- each director and officer when it is a corporation;
- each partner in the case of a partnership; or
- the sole proprietor, if it is a sole proprietorship.

An applicant for a mortgage administrator licence will be subject to a criminal record check for each director and officer of the corporation.

By submitting the application for licensing, the applicant and any officers, directors or partners of the applicant, will be asked to provide a Canadian Police Information Centre Criminal Record Check as well as individually authorize the collection of their personal information contained in any police records; records from other government or non-governmental regulators; credit records and employment records that the Director may need to complete his or her review of the applicant. Licence holders may also be asked to provide such authorization for the Director to access the above information to assess the licence holder's continued suitability for licensing.

### Relevant mortgage brokerage industry experience

Section 4 of the Rule requires that all licence holders complete an approved education program, or demonstrate equivalent education and relevant industry experience. Employees of federally regulated

entities will also be required to complete the approved education program, or demonstrate education and equivalent industry experience.

An applicant for a mortgage broker licence will need to demonstrate relevant experience in the mortgage brokerage industry (minimum 24 months in the last 36 months):

- during employment at a mortgage brokerage or mortgage administrator in New Brunswick;
- during employment at a licensed mortgage brokerage in Canada;
- in related fields, such as financial institutions or insurance companies that are federally regulated.

Applicants wishing to demonstrate an equivalent combination of education and experience under paragraph 11(1)(d.1) of the Act must outline their relevant mortgage brokerage industry experience and specify how their educational qualifications and experience are equivalent to, or exceed, the approved education program.

### **Approved education programs**

The Rule requires that all applicants for a mortgage broker or mortgage associate licence successfully complete an approved education program. Paragraphs 4(2)(d) and 4(3)(d) specify that applicants for a mortgage broker or mortgage associate licence must have successfully completed the approved program within the three year period immediately preceding the application. Alternatively, subsection 4(5) of the Rule specifies that an applicant who has successfully completed an approved education program more than three years prior to their application, but has gained at least one year of relevant mortgage brokerage industry experience in the three year period immediately preceding the application may qualify for a licence.

To allow time for industry participants to come into compliance with the terms of the Rule, a transition provision has been included to allow an applicant for a mortgage broker or mortgage associate licence to rely on the exemption provided under paragraph 58(1)(ii) and subsection 58(2) of the Rule by undertaking to successfully complete an approved education program within nine months following the date the Rule comes into force. Note, however, that licence holders who fail to successfully complete the required course within the nine month timeframe will be in breach of the undertaking, and can result in the loss of their licence or other sanctions.

### **Approved continuing education programs**

Any continuing education requirements will be approved by the Director from time to time and all affected licence holders will be notified by the Commission.

### **Licence Suspension**

The Commission may make an application to the [Tribunal](#) if it has serious concerns about the ongoing suitability of a licence holder, particularly if a licence holder is charged with a crime, such as fraud or theft. Under section 75 of the Act, a licence may be suspended or restricted if, upon the application of the Commission, the Tribunal determines it is no longer in the public interest for the licence to remain in force.

### **Working capital requirements**

Section 7 of the Rule requires that certain licence holders maintain minimum working capital. This requirement applies only to licence holders who are holding client funds in trust; namely mortgage brokerages with an endorsement and mortgage administrators. A mortgage brokerage that does not hold client funds in trust is not subject to this requirement.

Subsection 7(2) of the Rule requires that a mortgage brokerage with an endorsement or a mortgage administrator notify the Director immediately if their working capital is less than the required amount. Those firms that are required to maintain minimum working capital must know their working capital positions at all times. The frequency of these working capital calculations depends on many factors, including the size of the firm, the nature of its business and the stability of the components of its working capital.

### **Errors and omissions insurance**

The Director will review applicant's insurance coverage as part of the application process, to confirm that the applicant complies with the requirements set out in section 8 of the Rule.

### **Surrendering of a licence**

A mortgage brokerage that transfers its files to another mortgage brokerage will be required to meet its obligations under the Act, such as ensuring continuing insurance coverage on its files and the maintenance of records. A brokerage will need to confirm that all of its client obligations have been addressed prior to surrendering its licence.

## **PART 3: Brokering Mortgages – Compliance Requirements**

### **Principal broker**

The responsibilities of the principal broker are set out in sections 11 and 12 of the Rule. Compliance with the Act and Rule is not only a responsibility of the principal broker, but is a brokerage-wide responsibility and an integral part of the mortgage brokerage's activities. Everyone in the mortgage brokerage should understand the standards of conduct for their role in the brokerage. This includes the board of directors, partners, management, employees and agents.

### **Duty of mortgage brokerage to verify identity of borrower, lender and private investor**

Section 13 of the Rule states that a mortgage brokerage and its brokers and associates must verify the identity of each borrower, lender or private investor. The steps a mortgage brokerage should take to verify identity will depend on the circumstances. In general, the identity of an individual can be ascertained by referring to the individual's original:

- Canadian birth certificate;
- valid driver's licence issued in Canada;
- current Canadian passport;
- Certificate of Canadian Citizenship or Certification of Naturalization;
- Permanent Resident Card or other document indicating immigration status in Canada;
- Certificate of Indian Status issued by the Government of Canada; or
- other similar government issued document.

Should an individual not be able to be physically present at the mortgage brokerage, a mortgage brokerage may rely on an agent for identification purposes, provided the agent for identification purposes is a licensed mortgage broker or mortgage associate in New Brunswick or holds an equivalent authorizing certificate from another Canadian jurisdiction.

The existence of a corporation, other than a financial institution and insurance company, can be confirmed and the name and address and the names of its directors ascertained by referring to its certificate of corporate status, or any other record that confirms its existence as a corporation. For New Brunswick corporations, or extra-provincial corporations doing business in New Brunswick, a record of the Service New Brunswick Corporate Affairs Registry for an active entity would generally satisfy this requirement.

The existence of a financial institution can be confirmed by referring to an Act of Parliament or similar record that ascertains its existence as a financial institution.

The existence of an insurance company is confirmed by referring to the [Insurance Licence Database](#) of insurance companies maintained pursuant to the *Insurance Act* of New Brunswick.

The existence of an entity, other than a corporation, financial institution or insurance company, is confirmed by referring to a partnership agreement, articles of association or other similar record that ascertains its existence. For New Brunswick partnerships and business names, a record from Service New Brunswick's Corporate Affairs Registry would generally satisfy this requirement.

Records verifying identity must be maintained and may be in paper form, or in an electronic format, and must be obtained from a public source. In certain circumstances it may be reasonable for the mortgage brokerage to rely on a record which previously verified the identity.

It is up to the mortgage brokerage to determine the appropriate steps to comply with the requirements of section 13 of the Rule, and to consider other requirements, such as anti-money laundering legislation. These steps should be outlined in the mortgage brokerage's policies and procedures manual.

#### **Duty regarding unlawful transactions**

Sections 14 of the Rule requires that mortgage brokerages must not act for a party if it has reason to believe the mortgage, its renewal or the investment in it is unlawful. In such circumstances, there may be the following indications of unlawful activity:

- the identification provided may have been forged or altered;
- the borrower is acting as a "straw borrower" and/or is not the person who will be making the mortgage payments;
- the property value seems inflated or overvalued; or
- the income verification provided may have been inflated, altered or forged.

The mortgage brokerage, and those acting on its behalf, must be aware of potential indications of unlawful activity, and must not act on behalf of those who may be participating in unlawful activities.



### **Duty regarding accuracy of mortgage applications**

The mortgage brokerage and those acting on its behalf are in a unique position to confirm the borrower's identity, and to identify irregularities in the mortgage application. Section 16 of the Rule requires that if a mortgage brokerage, or anyone acting on its behalf, identifies irregularities in the mortgage application that give reason to doubt the accuracy of the information provided, the mortgage brokerage must notify the lender accordingly. For example, mortgage brokerages and those acting on its behalf should exercise caution in circumstances where:

- there is no supporting documentation provided by an applicant;
- birth date, address, signature or name spelling of the applicant are inconsistent;
- photo identification does not look like the applicant;
- address provided is a post office box or applicant does not provide an address;
- cheques are not personalized;
- the applicant attempts to avoid involvement of other parties, such as a spouse; or
- the applicant refuses to meet in person.

To address any doubts, the mortgage brokerage or those acting on its behalf should ask more questions, verify additional pieces of identification and look for signs of tampering in the documentation provided. They should also document any explanation from the applicant and advise the lender of any concerns.

### **Suitability obligation**

The suitability obligation to a borrower is built on the principal of acting in the best interest of the client. Any recommendation from a broker or associate to the borrower must take into consideration the unique circumstances of the borrower and the recommendation must be suitable in light of those circumstances.

To meet the suitability obligation, the mortgage brokerage, and those acting on its behalf, must ensure they have sufficient information to understand and assess the borrower's circumstances, such as:

- **Needs and objectives:** Will this mortgage meet the borrower's present and ongoing needs? Could the borrower's family status or employment change during the term of the mortgage?
- **Financial circumstances:** Is the mortgage affordable for the borrower?
- **Risk tolerance:** Can the borrower tolerate an increased mortgage payment due to fluctuations in interest rates? Is the term appropriate for the borrower?

It is also important that any recommendations provided to a borrower consider the costs of homeownership. This will ensure the borrower not only qualifies for a mortgage product but can also afford the mortgage. Other factors to consider include:

- heating costs, property taxes, home maintenance and renovations; and/or
- monthly debt payments, e.g. car loans or leases, credit card payments, lines of credit payments, and student loan payments.

### **Disclosure generally**

Section 83 of the Act requires that mortgage administrators, brokerages, brokers and/or associates present information in a clear and concise manner. Licence holders must present clear and meaningful disclosure so that clients can readily understand the information. These requirements are consistent

with the obligation of all licence holders to deal fairly, honestly and in good faith with clients as set out in section 35 of the Act.

Where a mortgage brokerage or mortgage administrator must obtain the written acknowledgment of the disclosure, written acknowledgment can be obtained by:

- manual signature;
- electronic representation of the manual signature; or
- electronic information where the person provides his or her name and indicates that the name is provided as a signature acknowledging the disclosure document.

Mortgage brokerages and mortgage administrators are required to disclose any conflict of interest they may have to the borrower or private investor. Clients must be informed about any conflict of interest that may affect the services the mortgage brokerage or mortgage administrator provides to ensure the client has realistic expectations of the services offered. The specific disclosure requirements for mortgage brokerages are set out in the Rule under section 18, and for mortgage administrators in section 36.

#### **Disclosure to the borrower**

Section 18 of the Rule provides that all fees paid by the borrower must be disclosed prior to entering into the mortgage. Under section 19, the mortgage brokerage must also disclose to the borrower the fees it receives from others, and under section 20 the mortgage brokerage must disclose to the borrower the fees it will pay to others.

Mortgage brokerages must also comply with the disclosure requirements set out in the *Cost of Credit Disclosure and Payday Loans Act*, including the delivery of the initial disclosure statement. The disclosure to borrowers required under the *Cost of Credit Disclosure and Payday Loans Act* can be combined with the disclosure required under the *Mortgage Brokers Act* and the Rule.

Click [here](#) for an overview of the disclosure to borrower requirements.

#### **Disclosure to the private investor**

Section 22 of the Rule sets out the required disclosure the mortgage brokerage, or those acting on its behalf, must provide to the private investor. This disclosure must include, among other requirements, a written statement that provides a description and explanation of the material risks of the investment in a mortgage under consideration by the private investor. This statement must include the risks, key features, initial and ongoing costs and fees of the proposed investment in a mortgage. The mortgage brokerage must be able to understand and explain to the private investor the risks, key features, and costs of the proposed investment in a mortgage under consideration by the private investor.

Click [here](#) for an overview of the disclosure to private investor requirements and a sample disclosure form.

#### **Advance fees**

Mortgage brokerages cannot charge, collect or attempt to collect a fee or other remuneration from a borrower in advance in relation to a mortgage obtained by an individual for primary personal, family, or household purposes.

Subsection 26(2) of the Rule provides clarification on collecting actual fees disbursed to third-parties. Pursuant to paragraph 1(3)(f) of the *Cost of Credit Disclosure and Payday Loans Act*, fees for professional services required for the purpose of confirming the value, condition, location or conformity to law of property that serves as security for the mortgage, disclosed to the borrower, are not considered advance fees if the borrower is given a report signed by the person providing the professional services and may give the report to third persons.

### **Policies and Procedures**

Section 27 of the Rule requires mortgage brokerages to establish and implement policies and procedures that establish a system of controls and supervision. Section 42 has a similar requirement for mortgage administrators. A system of controls and supervision consists of a compliance system that:

- provides assurance the mortgage brokerage or mortgage administrator and individuals acting on its behalf comply with mortgage broker legislation, and
- manages the risks associated with the mortgage brokerage or mortgage administrator business in accordance with prudent business practices.

An effective compliance system is essential for a mortgage brokerage and mortgage administrator to ensure it continues to be suitable for licensing. It provides reasonable assurance that the mortgage brokerage and mortgage administrator are meeting, and will continue to meet, all requirements of applicable mortgage broker legislation and are managing risks in accordance with prudent business practices. A compliance system should include internal controls, day to day and systemic monitoring and supervision elements that are reasonably likely to identify non-compliance at an early stage, and supervisory systems that allow the mortgage brokerage or mortgage administrator to correct non-compliant conduct in a timely manner.

Elements of an effective compliance system could include:

- maintaining accurate books and records;
- managing conflicts of interest;
- managing marketing and sales practices;
- identifying and managing areas of non-compliance or weaknesses in compliance;
- escalating non-compliance or weaknesses in compliance to management or to another person to take supervisory action to correct;
- reviewing and, in some cases, approving transactions;
- ensuring policies and procedures are kept up-to-date and enforced;
- demonstrating a commitment to compliance; and
- ensuring sufficient resources and training are provided.

As part of the application process, the applicant must confirm the mortgage brokerage or mortgage administrator has established policies and procedures. It is the responsibility of the mortgage brokerage and mortgage administrator to determine whether their policies and procedures provide an effective compliance system. These procedures may be reviewed by the Director at any time.

It is up to the mortgage brokerage and mortgage administrator to determine the most appropriate compliance system for its operations, considering the size and scope of their operations, the types of products and clients it services and any other relevant factors.

#### **PART 4: Mortgage Administrators**

##### **Principal administrator**

The responsibilities of the principal administrator are set out in sections 34 and 35 of the Rule. Section 34 states that the mortgage administrator must verify the identity of a lender or private investor before entering into an agreement to administer a mortgage. The steps a mortgage administrator should take will depend on the circumstances. The identity can be ascertained by following the steps identified under the previous section on “Duty of mortgage brokerage to verify identity of borrower, lender and private investor”.

##### **Disclosure to the private investor**

Click [here](#) for an overview of the disclosure to private investor and administration agreement requirements.

##### **Duty regarding unlawful transactions**

Section 35 of the Rule requires that a mortgage administrator must not administer a mortgage for a lender or private investor if it has reason to believe the mortgage, its renewal or the investment in it is unlawful. In such circumstances, there may be the following indications of unlawful activity:

- the identification provided may have been forged or altered;
- the borrower is acting as a “straw borrower” and/or is not the person who will be making the mortgage payments;
- the property value seems inflated or overvalued; or
- the income verification provided may have been inflated, altered or forged.

The mortgage administrator must be aware of indications of unlawful activity, and not administer a mortgage when any of the parties may be participating in unlawful activities.

#### **PART 5: Record-keeping**

##### **Record keeping generally**

Under section 44 of the Rule, mortgage brokerages and mortgage administrators must keep complete and accurate records of their business activities, financial affairs, client transactions, and demonstrate compliance with mortgage broker legislation.

Mortgage brokerages and mortgage administrators are required to maintain notes of communications that could have an impact on the client transaction or relationship with the mortgage brokerage or mortgage administrator. These communications include oral communications and written communications. While not every voice mail, email or record of telephone conversation needs to be saved, records of all communications relating to instructions from clients, disclosure, suitability or material risks of a mortgage or investment in a mortgage and any complaints must be maintained.

Subsection 45(2) of the Rule sets out record keeping requirements for mortgage brokerages and mortgage administrators who hold client funds in trust. The requirements in this subsection would typically be addressed in the written trust agreement between the private investor and the mortgage brokerage or mortgage administrator. These requirements do not apply to mortgage brokerages that do not hold client funds in trust.

#### **PART 6: Trust Property**

##### **Monthly reconciliation**

The requirement to review trust account reconciliation statements only applies to a mortgage brokerage with an endorsement that is permitted to hold client funds in trust, or a mortgage administrator.

#### **PART 7: Annual Delivery Requirement**

##### **Annual financial statements**

Section 55 of the Rule applies only to those firms that hold client funds in trust, such as mortgage brokerages with an endorsement or mortgage administrators. Annual financial statements are required to be filed to ensure those firms holding client funds in trust are meeting their working capital requirements.

#### **PART 8: Advertising and Communications**

Sections 56 and 57 of the Rule set out the following requirements for all correspondence and advertising: brokerages and administrators must identify their licence category; individual licence holders (brokers and associates) must include the name issued on their licence, their licence category (mortgage broker or mortgage associate) and the name of the brokerage or administrator he or she is authorized to represent.

The public can access a [public register of licence holders](#) in New Brunswick to verify whether a person is licensed.