



**NOTICE OF ADOPTION**

**COMMISSION LOCAL RULE MB-001  
*MORTGAGE BROKERS LICENSING AND ONGOING OBLIGATIONS***

**AND**

**COMMISSION LOCAL RULE MB-002  
*MORTGAGE BROKERS FEES***

**Introduction**

On 25 May 2015, the Financial and Consumer Services Commission (Commission) approved Commission Rule MB-001 *Mortgage Brokers Licensing and Ongoing Obligations* (Rule MB-001) and Rule MB-002 *Mortgage Brokers Fees* (Rule MB -002). The Commission also approved for publication for public comment related consequential amendments to Local Rules 31-502 *Supplementary Registration Requirements* (LR 31-502) and Companion Policy 31-502 *Supplementary Registration Requirements* (CP 31-502).

Rule MB-001 *Mortgage Brokers Licensing and Ongoing Obligations* and Rule MB-002 *Mortgage Brokers Fees* will come into effect on **1 April 2016**, pursuant to section 8 of New Brunswick Regulation 2014-21 under the *Financial and Consumer Services Commission Act* (O.C. 2010-440), a rule comes into force on the day the rule is published electronically by the Commission as required under paragraph 90(1)(a) of the *Mortgage Brokers Act*, S.N.B. 2014, c. 41, or on such later date as is specified in the rule.

**Background**

On 29 September 2014, the Financial and Consumer Services Commission approved publication for comment Proposed Rule MB-001 *Mortgage Brokers Licensing and Ongoing Obligations* and Proposed Rule MB-002 *Mortgage Brokers Fees* and related consequential amendments to LR 31-502 and CP 31-502, all of which were published electronically on the Commission web site on 1 October 2014 and in the October 15, 2014 edition of The Royal Gazette. The 60-day consultation period was extended and ended on 15 December 2014.

There were 7 comment letters submitted during the comment period. We have considered the comments received and thank all of the commenters for their input. The names of the commenters are contained in **Annex C** and a summary of their comments, together with our responses, is contained in **Annex D**. We have made some changes to the materials and those changes are reflected in [Rule MB-001 in Annex A](#) and in [Rule MB-002 in Annex B](#). As those changes are not material, we are not publishing for a further comment period.

On 25 May 2015, the Commission approved the making of Rule MB – 001, MB – 002, and consequential amendments to Local Rules 31-502 *Supplementary Registration Requirements* and Companion Policy 31-502 *Supplementary Registration Requirements*.

On 28 September 2015, the Minister of Justice consented to the making of Local Rule MB-001, MB-002 and the consequential amendments to LR 31-502 and CP 31-502.

### **Substance and Purpose of Rules MB-001 and MB-002**

The purpose of Rule MB-001 and Rule MB-002 is to provide the regulatory framework to support the *Mortgage Brokers Act* (the Act). The Act imposes standards of practice, minimum educational requirements and enhanced disclosure obligations on licence holders. The *Mortgage Brokers Licensing and Ongoing Obligations* rule establishes the specific requirements which are set out in the Act, while the *Mortgage Brokers Fees* rule establishes the regulatory fees for applicants and licence holders.

### **Questions**

If you have any questions, please refer them to:

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### **Contents of Annexes**

Annex A:	Rule MB-001 <i>Mortgage Brokers Licensing and Ongoing Obligations</i>
Annex B:	Rule MB-002 <i>Mortgage Brokers Fees</i>
Annex C:	List of Commenters
Annex D:	Summary of Comments
Annex E:	Amendments to Local Rule 31-502 <i>Supplementary Registration Requirements</i>
Annex F:	Blackline showing changes to Companion Policy 31-502 <i>Supplementary Registration Requirements</i>



## APPENDIX C

### LIST OF COMMENTERS

1. Canadian Association of Accredited Mortgage Professional (CAAMP) – Jennie Hodgson
2. Canadian Life and Health Insurance Association (CLHIA) – Peter Goldthorpe
3. Investors Group – Christina C. Vieira
4. Mortgage Brokers Association of Atlantic Canada (MBAAC) – Janet McKeough
5. Mortgage Brokers Association of British Columbia (MBABC) – Samantha Gale
6. NuVision Mortgage – Kevin Babin
7. Real Estate Council of Alberta (RECA) – Kirk Bacon

## SUMMARY OF COMMENTS AND FCNB RESPONSES

Comments on proposed <i>Mortgage Brokers Licensing and Ongoing Obligations</i> (the Proposed Licensing Rule)		
<u>General Comments on Licensing Rule</u>		
<u>Issue</u>	<u>Summarized Comment</u>	<u>Responses</u>
<b>Support for regulations</b>	<p>Three commenters supported the introduction of regulations for the mortgage industry, for the following reasons:</p> <ul style="list-style-type: none"> <li>• Changes are needed to make brokers more accountable and increase the professionalism of the industry.</li> <li>• There is a lack of transparency in the mortgage brokerage industry that may leave the buyer vulnerable. Buyers need to be informed of how the mortgage broker is paid, including the dollar amount, by whom and whether the mortgage broker is gaining any financial advantage by representing one lender rather than another lender.</li> <li>• The new legislation and proposed rules appear to be well crafted and create a forward thinking licensing regime for mortgage brokers in New Brunswick.</li> <li>• One commenter supported insurance and educational requirements.</li> </ul>	The FCNB thanks the commenters for their support.
	One commenter supported the rules and regulation of the industry but cautioned that the proposed changes be implemented in a realistic time frame.	We agree and we have included a transition period to permit applicants time to meet the educational and licensing requirements.
<u>Definitions</u>		
<b>“Financial institution”</b>	One commenter thought that this definition should include private investors	The definition of financial institutions is meant to capture those sectors that are regulated by specific legislation. Since private investors are not regulated by that legislation we have defined

		private investors separately.
<b>“private investor” and “lender”</b>	One commenter thought that the distinction between private lender and lender was unclear and sought further clarification.	The definition of private investor is set out in the Proposed Licensing Rule. The term lender is used to refer to all types of lenders, regardless of their size or value, including private investors, financial institutions, and insurance companies.
<b>“New Brunswick Mortgage Associate Course” and “New Brunswick Mortgage Broker Course”</b>	One commenter thought that these definitions should refer to a course and examination prepared and administered by an <b>approved service provider</b> . Another commenter suggested that the Director should be able to approve the education program.	The specific course name and course providers were prescribed in the Proposed Licensing Rule to correspond with the authority provided under the Act. Subject to government approval, we have recommended that the Act be amended to provide the Director with the discretion to approve the course and course provider, and we have amended these definitions in the Licensing Rule accordingly.
<b><u>Exemptions</u></b>		
<b>Exemptions for financial institutions</b>	<p>Four commenters agreed that the exemption for financial institutions was appropriate when employees of the financial institution were selling the product of their employer.</p> <p>However, those commenters did not support an exemption for financial institutions when the person representing the financial institution arranges a mortgage for the public with a third party lender who is not that financial institution (or its affiliate or subsidiary). The commenters believe that if the lender is unable to place the borrower with their own mortgage products, then they are conducting mortgage brokering activities and should not benefit from the exemption for financial institutions.</p>	This provision provides an exemption to entities that are subject to oversight through other regulators. Banks, including their affiliates and subsidiaries as well as other federally regulated financial institutions, are subject to federal oversight. Financial institutions may rely on this exemption for products and services they provide on behalf of an affiliate or subsidiary of the financial institution. A financial institution would not be able to rely on this exemption to promote products and services of a third party lender.
	One commenter stated that employees of financial institutions represent themselves to the public as advisors or brokers of mortgage products and this is confusing to the public since they are not subject to the same regulatory framework.	We have amended the Licensing Rule (section 56 and 57) such that all correspondence and advertising of a licensee must identify the person’s licence category. In addition, the public will be able to access a public register of licence holders in New Brunswick.
<b>Exemptions for lawyers</b>	One commenter supported the exemption for lawyers only in circumstances where that lawyer was not holding themselves out to deal or trade in mortgages.	We agree. The exemption for lawyers is only available when the lawyer is acting in their professional capacity as a lawyer and is not holding themselves out as engaging in mortgage brokering activities.
<b>Section 2(b)</b>	One commenter requested further clarification or guidance on what is contemplated by activities	In order to avoid confusion, we have removed the reference to

<b>Exemptions for insurance companies</b>	conducted in the ordinary course of “permitted and regulated insurance activities”. The commenter indicated that life insurance companies have an established history of providing mortgages to both insurance and non-insurance clients and was concerned that this exemption would place insurance companies at a disadvantage when compared to other financial institutions.	permitted and regulated activities in the exemption provision.
<b>Section 2(c) Exemptions for director, officer or employee of a financial institution or insurance company</b>	One commenter indicated that most insurance companies in Canada distribute their products using licensed agents rather than employees. By not including reference to these licensed agents, the provision was inappropriately narrow. The commenter also suggested changing 'individual' to 'person' because an insurance agent can be an incorporated entity.	We have amended this provision so that a licensed agent (individual or corporation) authorized to act on behalf of an insurance company may rely on this exemption.
<b><u>Referrals</u></b>		
<b>Section 3 Exemptions for simple referrals</b>	One commenter supported an exemption for simple referrals, but questioned the necessity of disclosing the amount of the compensation, and referred to the exemption for simple referrals in Ontario which require disclosure of the fact of compensation but not the amount.	We acknowledge this comment. However, we believe that disclosing the amount of compensation provides the borrower with valuable information in managing the conflict of interests. If the exact amount of the fee is not ascertainable then a reasonable estimate of the fees can be provided. This approach is consistent with other jurisdictions, such as Saskatchewan.
	One commenter indicated that their current practice is to disclose the referral fee in the loan approval letter issued to the borrower with the terms of the mortgage approval. That commenter found that disclosure at this time did not jeopardize the borrower’s rights, as the borrower receives that fee disclosure information prior to signing the mortgage instrument.	We believe that the disclosure has the most value if it is provided when the client is being referred, as this is the time when the borrower is accessing the service of the mortgage broker. The referral fees paid by a brokerage will also be disclosed to the borrower at least 2 days prior to the mortgage taking effect. Disclosure at this latter time does not provide the opportunity for the borrower to reject the service.
	Two commenters pointed out the growth in lead generation companies. These companies provide general information and may take applications from prospective borrowers. The prospective borrowers are then referred to another party for a fee or percentage of commission. The commenters did not support an exemption for companies who are making referrals where the prospective borrower had provided information that would typically be contained in a mortgage application.	Lead generation or referrals that go beyond a name and contact information would not fall within this exemption under the Licensing Rule. Those entities taking mortgage applications or pre-screening possible referrals to mortgage brokers would be required to be licensed. This requirement is consistent with the <i>Cost of Credit Disclosure Act</i> , which requires registration as a credit broker when credit applications are taken, and disclosure

		to the potential borrower.
	Two commenters supported an exemption for parties who were referring or introducing the consumer to a third party for the purpose of securing a mortgage, where there is no financial compensation.	We agree. Referring a person to a mortgage broker where basic information, such as name and contact information is provided, without compensation, will not require licensing.
	Three commenters supported the exemption for simple referrals where only name and contact information is provided in the referral.	We agree. There is no requirement to be licensed when only basic information, such as name and contact details, is provided. Where a referral is made for compensation, the amount of compensation must be disclosed to the borrower prior to proceeding with the mortgage brokering services being offered.
	Two commenters supported the requirement to disclose the compensation being paid by the mortgage broker for a simple referral.	We agree. Under the Licensing Rule anyone making a referral to a mortgage broker for compensation will be required to disclose the nature of their relationship with the mortgage broker and the compensation they are receiving for the referral.
<b>Section 3(a)</b>	Two commenters were concerned that any lay person who makes a referral to a lender or mortgage broker would be required to provide disclosure and they found that this requirement would be onerous.	This exemption applies where a person provides a referral to a mortgage broker for compensation. Where a referral is made without expectation of compensation, there is no licensing requirement, nor a need to be exempt from licensing.
<b><u>Licensing</u></b>		
<b>Section 4 Licensing criteria</b>	One commenter was a strong supporter of qualifying education standards for both mortgage associates and mortgage brokers, , including support for: <ul style="list-style-type: none"> <li>• mandatory continuing education;</li> <li>• the six month transition period that will allow participants time to complete the required education program.</li> </ul>	We agree and thank the commenter for their support.
	One commenter thought that criminal background checks should be conducted only on the principal broker for corporations and partnerships, and that background checks on all directors of the business was too onerous and unnecessary. Another commenter suggested that we consider a criminal record check by fingerprint comparison.	We believe that criminal background checks on those parties in control of the company or partnership provides valuable information for the regulator. We do not believe this provision is onerous, as the FCNB will be conducting the criminal background checks. The FCNB has not required a fingerprint comparison on application, but one may be required in limited circumstances.
	One commenter sought clarification that the criminal background check would only be conducted at the	A criminal background check will be conducted at the time of

	time of initial licensing.	the initial application and may be conducted at any time during the term of the licence. We believe that criminal background checks will maintain the integrity of the mortgage brokerage industry.
	Three commenters thought that the FCNB should only recognize approved education programs that an applicant has successfully completed in the last 12 months, rather than in the 36 months preceding the application as required in the Proposed Licensing Rule.	We believe that the recognition of an approved education program within 36 months of the application, combined with the requirement for continuing education will sufficiently prepare participants to enter into the mortgage brokerage industry and keep them updated on any changes in the mortgage brokerage industry.
	One commenter questioned the recognition of an approved program that was successfully completed more than 36 months prior to the application, even if the applicant had at least one year of relevant experience in the mortgage brokerage industry.	We believe that some participants in the New Brunswick mortgage industry have taken approved education programs in the past. We have included this provision to recognize that education where the applicant can also demonstrate that they have relevant industry experience.
	One commenter thought that the Director should be able to exempt an applicant from the licensing requirements if the applicant demonstrates an equivalent combination of education <i>or</i> experience, and proposed at least five years of related experience.  Another commenter suggested that the Director consider relevant experience that relates to the established mortgage broker qualifying standards, upon which the education is based.	We believe that education of participants in the mortgage broker industry is essential. We have amended the Act to provide the Director with the authority to determine equivalent combination of education and experience on a case by case basis.
<b>Section 7 Working capital requirements</b>	Two commenters thought that the requirement for working capital was unnecessary for mortgage brokerages and one commenter indicated that the requirement for errors and omissions insurance was sufficient, while another commenter indicated that the requirement for working capital was excessive.	The requirement to maintain minimum working capital applies only to licensees who are holding client funds in trust, specifically mortgage brokerages with an endorsement and mortgage administrators.
	One commenter sought further clarification on when an endorsement would be needed.	An endorsement is required when a mortgage brokerage will be holding client funds in trust. Most mortgage brokerages will not be holding any trust funds.
<b>Section 8 Error and omissions insurance</b>	Two commenters supported the proposed errors and omissions insurance requirements and specifically that coverage: <ul style="list-style-type: none"> <li>• is mandatory;</li> <li>• be maintained for 6 years after the brokerage is no longer in business;</li> <li>• includes fraudulent acts coverage.</li> </ul>	We agree and thank the commenter for their support.
	One commenter suggested that the FCNB approve insurance providers.	The FCNB will review all insurance requirements as part of the



		application process.
	One commenter indicated that the insurance requirements should enable a brokerage to transfer its files to another brokerage and let that new brokerage protect the files. The commenter also questioned how these requirements would be enforced.	A brokerage that transfers its files to another 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.
<b>Section 8 (1)(d) Error and omissions insurance</b>	One commenter questioned whether having errors and omissions insurance in place for six years after an event was feasible.	We have consulted with insurance providers to ensure that applicants will be able to meet the errors and omissions insurance requirements.
<b>Section 12(d)</b>	One commenter questioned the requirement to review trust account reconciliation statements and stated that most mortgage brokerages do not hold funds in trust.	The requirement to review trust account reconciliation statements will only apply to a mortgage brokerage with an endorsement that is permitted to hold client funds in trust.
	One commenter asked if mortgage brokerages would be required to have a trust account.	There is no requirement to set up a trust account if the mortgage brokerage is not handling client funds in trust.
<b>Section 13</b>	One commenter supported the broad requirement to verify the identity of each borrower, lender or private investor to prevent and detect mortgage fraud. That commenter suggested that if there are specific expectations on how an identity should be verified those expectations should be clearly communicated to the licensee. Another commenter suggested that we specify what type of identification should be reviewed by the mortgage brokerage, and also verify whether the lender or private investor holds a licence.	The provision requiring the mortgage brokerage to verify the identity of each borrower, lender or private investor is broad to allow the mortgage brokerage the flexibility to determine appropriate steps to verify the parties they are dealing with. The mortgage brokerage may determine that it is necessary to verify whether a party is licenced as part of that process.
<b>Section 14 Duty regarding unlawful transactions</b>	One commenter found that the standard of “reasonable grounds to believe” that a mortgage is “unlawful” placed too high a burden on mortgage brokerages, who will not have the expertise to determine reasonable grounds. The commenter suggested we consider prohibiting mortgage brokers from being “a party to a mortgage transaction that is harsh and unconscionable or otherwise inequitable”.	We acknowledge your comment and have amended the standard such that a mortgage brokerage must have a “reason to believe” that a mortgage is unlawful. In addition, all licence holders will have a duty to act fairly, honestly and in good faith in all their mortgage brokering and mortgage administering activities.
<b>Sections 15 and 16 Duty regarding borrower’s legal authority and accuracy of mortgage</b>	One commenter found that requiring a mortgage brokerage to determine whether there was a reason to doubt the legal authority of a borrower placed too high a burden on the mortgage brokerage, who will not have the expertise to determine whether a borrower has legal authority.	Thank you for your comment; however the mortgage brokerage is in a unique position to confirm the identity of the borrower due to its direct relationship with the borrower. We are confident that this standard is appropriate to provide consumer protection.

<b>application</b>		
<b>Section 17(2) (3) Suitability obligation</b>	One commenter was unclear whether a mortgage brokerage must identify all suitable mortgage products or only those that the borrower qualifies for. That commenter thought it would be beneficial to industry to have further guidance on what is meant by a suitable mortgage. Another commenter was supportive of this requirement.	The mortgage brokerage must identify proposed mortgage options that are suitable for the borrower, based on the features of the proposed mortgage and the borrower's circumstances and in the borrower's best interest. Any recommendation of a mortgage product for which the borrower does not qualify is inherently unsuitable because it does not consider the borrower's circumstances.
<b><u>Disclosure to Borrower</u></b>		
<b>Section 18 Disclosure to borrower</b>	One commenter thought that borrowers should be able to see all lender financing offers and know which lenders the mortgage broker is able to access on their behalf. The commenter further suggested that all of this information could be contained in a disclosure form given to and signed by the borrower when he or she first retains the mortgage broker.	The Licensing Rule requires that the mortgage broker disclose to the borrower the number and names of all lenders and private investors that it deals with. This written disclosure must be acknowledged in writing by the borrower. In addition, the mortgage broker will provide the borrower with a suitability assessment that identifies the most suitable mortgage option from a selection of proposed mortgage options, which are in the borrower's best interests.
	One commenter stated their support for disclosure to the borrower of non-arm's length relationships between the mortgage brokerage, broker and lender or private investor. However, that commenter felt that requiring direct disclosure to the borrower of the number of lenders and private investors and names of those lenders and private lenders to the borrower was excessive and not consistent with requirements of other jurisdictions. The commenter supported providing this information to the regulator as part of the application for licensing process.	We believe that identifying and managing conflicts of interest is essential to promote consumer confidence in the mortgage brokerage industry. The disclosure to borrowers is built on the principals of acting in the best interest of the client, disclosing any actual or potential conflict of interest associated with a transaction and ensuring that products are suitable for the consumer. Mortgage brokerages will need to provide similar disclosure to the FCNB as part of the application for licensing process, but it must also be disclosed to the borrower, so that they can make their own determinations regarding the conflict of interest.
<b>Section 19 Remuneration the mortgage brokerage will receive from</b>	One commenter sought clarification regarding whether the mortgage brokerage would be required to disclose remuneration to the mortgage broker from individuals and businesses, or only by registered businesses.	The Licencing Rule requires disclosure of all remuneration the mortgage brokerage will receive from others, including remuneration from individuals and companies.

<b>others</b>		
	One commenter supported that the mortgage brokerage would not be required to disclose to the borrower the dollar value of compensation they will receive.	The Licensing Rule does not require disclosure of the dollar amount of compensation the mortgage brokerage will receive, however the basis for calculating the amount of the fee or remuneration must be disclosed.
	One commenter supported disclosure of the fees payable by the borrower to the mortgage broker, and how the mortgage broker is paid by others. This commenter thought this disclosure provided valuable information which the borrower could use to evaluate the suitability of the proposed mortgage and brokerage fees compared to what the borrower could negotiate with a lender directly.	We agree that disclosure of fees payable by the borrower is important to maintain the integrity of the mortgage brokerage industry. We have clarified that the mortgage brokerage must disclose the fees payable by the borrower in connection with the services offered by the mortgage brokerage or the proposed mortgage.
<b>Section 21 Deadline for disclosure to borrower</b>	One commenter indicated that it was the practice of national lenders to provide the mortgage loan approval letter and related mortgage documents to the borrower and the borrower's lawyer, which will contain all the required disclosures under the <i>Cost of Credit Disclosure Act</i> . The lawyer can then explain the disclosure and terms of the mortgage to the borrower prior to signing the mortgage instrument. Another commenter indicated that it was common practice for mortgage brokers to provide disclosure required under the <i>Cost of Credit Disclosure Act</i> to borrowers when they sign their lender approval or commitment. Both commenters proposed that these practices continue as an acceptable form.	We have amended this provision to provide further clarification that disclosure must be provided to the borrower at least two business days before the borrower enters into a mortgage agreement. We have also added when the deadline for disclosure may be waived, which is consistent with the <i>Cost of Credit Disclosure Act</i> . We believe that this provision will provide flexibility in the provision of disclosure while continuing to provide consumer protection.
	Three commenters pointed out that the <i>Cost of Credit Disclosure Act</i> permits the waiver of the delivery of disclosure in certain circumstances and that a similar waiver should be available for disclosure under the <i>Mortgage Brokers Act</i> .	We have amended this provision to include a waiver of the delivery of disclosure provided certain conditions are met, similar to that found under the <i>Cost of Credit Disclosure Act</i> .
	One commenter was supportive of clear and accurate disclosures, in writing, with sufficient time for borrowers to review the transaction prior entering into a mortgage agreement. That commenter suggested that we clarify the difference between a mortgage agreement and a mortgage instrument.	We agree and have amended the provision to refer to the mortgage agreement.
<b>Section 22 Disclosure to private investors</b>	One commenter thought that additional disclosure for private investors should be required, including: <ul style="list-style-type: none"> <li>• the financial encumbrances to remain on title;</li> <li>• the priority of remaining financial encumbrances;</li> <li>• the priority of the mortgage which is the subject of the disclosure;</li> <li>• the outstanding balance or maximum potential balance (whichever is higher) of all remaining financial encumbrances; and</li> <li>• the LTV of the mortgage which is the subject of the disclosure.</li> </ul>	This information is available in the mortgage application and on other mortgage documentation (including the instructions to the lawyer).

	<b>Advance Fees</b>	
<b>Section 26 Advance fees</b>	<p>Three commenters did not support the prohibition on advance fees for residential mortgages. Those commenters believe the fee is necessary to compensate the mortgage broker in circumstances where:</p> <ul style="list-style-type: none"> <li>• the mortgage amount is too small and the compensation would not reflect the effort to secure the financing;</li> <li>• the fees are disclosed and acknowledged by the borrower; and</li> <li>• mortgage brokers take on difficult mortgage clients where financing is more time consuming to secure.</li> </ul> <p>Those commenters suggest that advance fees should be permitted in some circumstances:</p> <ul style="list-style-type: none"> <li>• in mortgages greater than a certain threshold, ie. \$300,000;</li> <li>• when the required disclosure has been made and a mortgage commitment has been signed by the borrower;</li> <li>• a fee similar to an application fee charged by some financial institutions.</li> </ul> <p>Four commenters indicated that it is common in commercial mortgages to have an advance fee paid to the mortgage broker prior to the mortgage approval. One commenter explained that the brokerage may establish a contract with the borrower that provides for the payment of fees prior to securing a commercial mortgage for the borrower. Advance fees in a commercial context reflect the additional complexity of these types of transactions, the additional time and effort needed to secure financing.</p>	<p>The prohibition on advance fees is intended to address concerns surrounding predatory lending practices, such as excessive fees and hidden charges. We weighted the comments from all stakeholders and continue to support the prohibition as it is essential to promote consumer confidence in the mortgage brokerage industry.</p>
	<p>One commenter indicated that some brokers charge unreasonable fees and suggested that mortgage brokers fees generally should be limited and suggested a limit of 2% or less on any residential mortgages in excess of \$100,000 and a limit of \$2000 for any residential mortgages less than \$100,000.</p>	<p>The FCNB is concerned with the amount of fees payable by borrowers and has provided that all fees paid by the borrower are disclosed prior to entering into the mortgage. The mortgage brokerage must also disclose to the borrower the fees it receives from others. Ultimately, is the borrower's decision whether those fees are justified for the services they receive.</p>
	<p>One commenter suggested that the prohibition against advance fees will prevent mortgage brokerages from collecting costs in the course of a transaction to cover out of pocket expenses, such as appraisal fees, creating a substantial risk to the mortgage broker who should not have to bear any of the borrower's costs to facilitate the mortgage transaction.</p>	<p>Pursuant to the <i>Cost of Credit Disclosure Act</i>, 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.</p>
<b>Section 28 Duty to</b>	<p>Three commenters supported the requirement for the mortgage brokerage or mortgage administrator to</p>	<p>Applicants for a mortgage brokerage or mortgage administrator</p>

<b>establish complaints process</b>	establish policies and procedures, and a complaints process, and one commenter sought clarification whether these requirements must be established before a licence will be granted. Another commenter suggested that the complaints process and policies should be posted on the brokerage's website along with contact information for the industry associations and provincial regulatory bodies.	licence are required to have a complaints process in place in order to receive a licence. However, it is up to the mortgage brokerage or mortgage administrator to determine whether to post details of their policy on its website.
	One commenter suggested that brokerages should have policies and procedures in place for hiring, licensing and training and these policies and procedures should be periodically reviewed with those mortgage brokers and associates acting on its behalf.	We have not mandated any specific policies and procedures for hiring and training staff of the mortgage brokerage or mortgage administrator. All licensees must act fairly, honestly and in good faith in carrying out their mortgage brokering and/or mortgage administrator activities, and must satisfy the educational requirements. In addition, it is the principal broker's and/or principal administrator's duty to ensure that all parties acting on behalf of the mortgage brokerage or mortgage administrator are in compliance with the legislative requirements.
<b>Section 37 Record-keeping</b>	One commenter sought clarification on whether electronic files were sufficient and whether brokerages are required to keep physical (paper records) in their premises.	The Act requires that records (including electronic files) be retained at a location approved by the Director and the Licensing Rule requires that the integrity of those records be maintained at all times.
	One commenter sought clarification regarding the length of time records must be retained.	The Act requires that records be retained for a minimum of seven years after the date of the transaction to which the records relate.
<b>Section 45 Record keeping – General</b>	One commenter stated that mortgage brokers do not know the fees and expenses that the borrower will incur, and that the specific costs are provided at the solicitor's office.	The fees and expenses in this section refer to the handling of trust money. These fees and expenses would be addressed in the written trust agreement between the private investor and the mortgage brokerage or mortgage administrator.
<b>Section 54 Annual returns</b>	One commenter questioned the need for annual returns when businesses file annual returns with the Canada Revenue Agency.	The annual return form is provided by the Commission and will collect information specific to the activities conducted by licensees in New Brunswick.
<b>Section 56 Annual financial statement</b>	One commenter believed that the provision of audited financial statements would be onerous and costly for smaller brokerages.	We believe that audited financial statements for those mortgage brokerages and mortgage administrators who are holding client funds is required to create consumer confidence in the mortgage brokerage industry. We do not believe this will be onerous as it is limited to only those mortgage brokerages and mortgage administrators who hold client funds in trust.

<b><u>Transition</u></b>		
<b>Section 60 Transition</b>	One commenter sought clarification whether all mortgage brokers will be required to take the new approved education course.	Yes, we believe that education is an essential component to the integrity of the mortgage brokerage industry. The Licensing Rule requires that all licence holders complete an approved education program, or demonstrate equivalent education and relevant industry experience.
	One commenter proposed that applicants for a licence be provided with 12 months to complete the approved education course.	We have provided a 9 month transition period for applicants to complete the approved education course. Following the transition period, all applicants will be required to complete the course prior to becoming licensed.
	One commenter proposed that applicants for a licence who were former employees of financial institutions be provided with 12 months to complete the approved education course.	We believe that former employees of financial institutions should be subject to the same educational requirements as other participants in the mortgage brokerage industry. The Licensing Rule requires that all licence holders complete an approved education program, or demonstrate equivalent education and relevant industry experience.
<b>Other Comments</b>		
<b>Wind up reports</b>	One commenter suggested that we require mortgage brokerages that cease to carry on business in New Brunswick to file a wind up report, which describes how outstanding files, mortgage loans and any trust monies have been concluded, transferred or otherwise dealt with.	The Act provides authority for the Director to impose terms and condition on the surrender of a licence if the Director believes it would be in the public interest. A brokerage will need to confirm that all of its client obligations have been addressed prior to surrendering its licence.
<b>Pooled trust account interest</b>	One commenter suggested we address how interest from pooled trust accounts is to be dispersed.	We expect that mortgage brokerages or mortgage administrators holding trust funds will address how interest on funds held in trust, if any, will be distributed in the written trust agreement between the parties.
<b>Duty of care</b>	One commenter sought clarification of the duty of care requirement and specifically whether a mortgage brokerage could represent a borrower and private lender in the same transaction if each party was represented by a different broker within that brokerage. That commenter also suggested that we consider Saskatchewan's approach and provide disclosure of the conflict of interest to the borrower and let the borrower decide whether to be represented by another brokerage.	We considered the various options to manage conflicts of interest; we believe that each party should be separately represented to promote consumer confidence in the mortgage brokerage industry.
	One commenter stated that the borrower is the client of the broker and the mortgage broker has a	We agree and the Act mandates that the mortgage brokerage,

	fiduciary duty to that client.	including those acting on its behalf, act in the best interest of their client – either the borrower or the private investor.
<b>Comments on the proposed <i>Mortgage Brokers Fees</i> (the Proposed Fee Rule)</b>		
<b><u>Issue</u></b>	<b><u>Summarized Comment</u></b>	<b><u>Responses</u></b>
<b>Section 2 Fees payable</b>	One commenter thought that the proposed licensing fees were aggressive and should be more aligned with those of Nova Scotia. Another commenter suggested that we consider that mortgage broker compensation is based on mortgage size, which is on average, less than in other parts of the country when determining the licensing fees.	We reviewed the licensing fees from jurisdictions across Canada and considered the nature of the mortgage brokering industry in the region and we believe that the fees are consistent with other regulatory fees.
<b>Section 3 Recoverable fees and costs</b>	One commenter sought clarification on when compliance review costs would be recoverable.	Compliance review costs may be sought by the Commission on a case-by-case basis, based on the circumstances of the review.



APPENDIX E

**Amending Instrument**  
**FINANCIAL AND CONSUMER SERVICES COMMISSION**  
**LOCAL RULE 31-502**  
**SUPPLEMENTARY REGISTRATION REQUIREMENTS**

1. *Local Rule 31-502 Supplementary Registration Requirements is amended by this instrument.*
2. *The title is amended by adding “31-502” after “Local Rule”.*
3. *Subsection 1(1) is amended by deleting the following definitions:*
  - (a) “mortgage”;
  - (b) “mortgage broker”.
4. *Part 3 is repealed.*
5. This instrument comes into force on [Insert date].





## APPENDIX F

**Amending Instrument**  
**FINANCIAL AND CONSUMER SERVICES COMMISSION**  
**LOCAL POLICY 31-502**  
**SUPPLEMENTARY REGISTRATION REQUIREMENTS**

1. *Companion Policy 31-502 to Local Rule 31-502 Supplementary Registration Requirements is amended by this instrument.*
2. *The title is amended by adding “31-502” after “Companion Policy”.*
3. *Subsection 1(1) is amended*
  - (a) *by replacing “New Brunswick Securities Commission” with “Financial and Consumer Services Commission”;*
  - (b) *by replacing “Registration Requirements and Exemptions” with “Registration Requirements, Exemptions and Ongoing Registrant Obligations”; and*
  - (c) *by deleting the definition “SN 32-701”.*
4. *Part 2 is repealed.*
5. This instrument becomes effective on [Insert date].

**BLACKLINE SHOWING CHANGES TO COMPANION POLICY 31-502CP TO LOCAL RULE 31-502  
SUPPLEMENTARY REGISTRATION REQUIREMENTS**

This Appendix shows, by way of blackline, changes to Companion Policy 31-502CP.

**PART 1            GENERAL**

**1(1) Definitions** - In this companion policy,

“Act” means the *Securities Act*, SNB c. S-5.5, as amended;

“Commission” means the Financial and Consumer Services Commission;

“IIROC” means the Investment Industry Regulatory Organization of Canada

“LR 31-502” or the “instrument” means Local Rule 31-502 *Supplementary Registration Requirements*;

“MFDA” means the Mutual Fund Dealers’ Association of Canada;

“MI 11-102” means Multilateral Instrument 11-102 *Passport System*;

“NI 31-103” means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Obligations*;

“31-103CP” means Companion Policy 31-103 *Registration Requirements, Exemptions and Ongoing Registration Obligations*;

“SRO” means self-regulatory organization.

**1(2) Further definitions** – Unless otherwise defined, terms used in this companion policy and that are defined in the *Act*, MI 11-102, National Instrument 14-101 *Definitions* or NI 31-103 have the same meanings as in those instruments.

**PART 3            REGISTRATION EXEMPTION REGARDING DIRECTED SALES COMMISSIONS OR FEES**

**3(1) Exemption requirements-** The Commission has determined, subject to terms and conditions described in the instrument, that it would not be prejudicial to the public interest to exempt a corporation controlled by a registered individual from the registration requirements of the *Act* for the sole purpose of permitting the corporation to receive commissions and fees from a registered firm that is registered as a dealer and is a member in good standing of a SRO that has been recognized under paragraph 35(1)(b) of the *Act* as these commissions or fees relate to the registered individual’s trading or advising in securities.

Currently the only recognized SROs in New Brunswick are the MFDA and IIROC.

It is incumbent upon the registered individual who intends to rely on this Part to ensure that this Part does not conflict with any rules, regulations, by-laws, policies, notices, practices, procedures, bulletins or other regulatory instruments of the relevant SRO that are in effect.

**PART 4            COLD CALLING BY REGISTRANTS**

**4(1) Act requirements** - Part 5 of LR 31-502 should be read in conjunction with section 57 of the *Act*.