



REQUEST FOR COMMENTS

Notice and Request for Comment – Publication of proposed Financial and Consumer Services Commission Rule MB-001 *Mortgage Brokers Licensing and Ongoing Obligations* and Rule MB –002 *Mortgage Brokers Fees* (collectively the “Proposed Rules”) and related consequential amendments to Local Rules 31-502 *Supplementary Registration Requirements* and Companion Policy 31-502 *Supplementary Registration Requirements* (collectively the “Proposed Amendments”).

Introduction

On 29 September 2014, the Financial and Consumer Services Commission (Commission) approved publication in order to obtain comments on the Proposed Rules and Proposed Amendments.

Substance and Purpose of Proposed Rules and Proposed Amendments

The purpose of the Proposed Rules 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.

Consequential amendments are also proposed to Local Rule 31-502 *Supplementary Registration Requirements* and to Companion Policy 31-502 under the *Securities Act*. These modifications are required to eliminate certain provisions that are no longer necessary given the new proposed mortgage broker regulatory regime. The effective date of the Proposed Amendments would coincide with the implementation of the Proposed Rules.

Contents of Annexes

<u>Annex A:</u>	<u>Proposed Rule MB – 001 <i>Mortgage Brokers Licensing and Ongoing Obligations</i></u>
<u>Annex B:</u>	<u>Proposed Rule MB – 002 <i>Mortgage Brokers Fees</i></u>
<u>Annex C:</u>	<u>Proposed Amendments to Local Rule 31-502 <i>Supplementary Registration Requirements</i></u>
<u>Annex D:</u>	<u>Blackline showing proposed changes to Companion Policy 31-502 <i>Supplementary Registration Requirements</i></u>

Request for Comment

The Commission welcomes your comments on the Proposed Rules and Proposed Amendments.

In addition to any general comments you may have, we also invite comments on the following specific questions:

1. We propose to exempt certain entities and certain activities from the application of the Act or the requirement to be licensed. These entities or those conducting the identified activities are already subject to regulation and oversight under separate legislation. Do you have any material concerns with the scope of these exemptions? Please explain.
2. We propose licensing criteria, including educational requirements for participants to become licensed. We have also included a transition period to permit time for participants to attain the required education courses, and we anticipate providing notice to participants of the implementation of the Act and rules. Do you agree that the proposed transition period requirements will permit participants to successfully complete the education courses?
3. We are proposing a deadline of disclosure to borrowers of no later than 2 business days before the borrower enters into a mortgage agreement or signs a mortgage instrument, whichever is earlier. This disclosure requirement is consistent with the disclosure required under the *Cost of Credit Disclosure Act*. Is there an additional or different deadline that should be considered that still provides the borrower with 2 days to reconsider the mortgage transaction? Please explain.
4. We are proposing a duty to establish policies and procedures and a complaint process for mortgage brokerages and mortgage administrators to obtain a licence. These requirements are intended to provide further consumer protection. Do you have any comments on these requirements?

How to Obtain a Copy and Provide your Comments

The texts of the Proposed Rules and Proposed Amendments are included with this notice.

A paper copy of the proposed materials may be obtained by writing, telephoning or emailing the Commission. Comments are to be provided, in writing, by no later than **1 December 2014** to:

Secretary
Financial and Consumer Services Commission
85 Charlotte Street, Suite 300
Saint John, N.B. E2L 2J2
Telephone: 506-658-3060
Toll Free: 866-933-2222 (within NB only)
Fax: 506-658-3059
E-mail: information@fcnb.ca

A summary of the written comments received during the comment period may be published.

Questions

If you have any questions, please refer them to:

Ella-Jane Loomis
Legal Counsel, Securities
Financial and Consumer Services Commission
Tel: 506-658-2602
Email: ella-jane.loomis@fcnb.ca



ANNEX A

FINANCIAL AND CONSUMER SERVICES COMMISSION RULE MB-001 *Mortgage Brokers Licensing and Ongoing Obligations*

PART 1 PRELIMINARY MATTERS

Definitions

1. (1) In this Rule:

“Act” means the *Mortgage Brokers Act*.

“Agreement on Internal Trade” means the Agreement on Internal Trade entered into on or about July 18, 1994 by the governments of Canada, the provinces and the territories.

“approved education program” means:

- (a) the New Brunswick mortgage associate course for an applicant for a mortgage associate licence;
- (b) the New Brunswick mortgage broker course for an applicant for a mortgage broker licence.
- (c) a similar education program that is approved by a Canadian regulatory authority authorized to grant an authorizing certificate; or
- (d) any other education program that is approved by the Director.

“authorizing certificate” means a valid certificate, licence, registration, or other form of official recognition granted by a regulatory authority in a jurisdiction that is a party to the Agreement on Internal Trade, to an individual, which attests an individual is qualified to practise an occupation that is substantially equivalent to that of mortgage broker or mortgage associate.

“business location” means a location where the mortgage brokerage or mortgage administrator carries out activities referred to in subsection 1(3) or (4) of the Act that requires licensing, and includes a residence if regular and ongoing licensed activities are carried out from the residence or if records relating to licensed activities are kept at the residence.”

“continuing education requirement” means the continuing education course approved by the Director.

“financial institution” means:

- (a) a bank or authorized foreign bank as defined in the *Bank Act* (Canada);

- (b) a credit union or caisse populaire incorporated or continued pursuant to the *Credit Unions Act*;
- (c) a loan company or trust company incorporated, continued or licensed pursuant to the *Loan and Trust Companies Act*;
- (d) a retail association as defined in the *Cooperative Credit Associations Act* (Canada).

“insurance company” means an insurer licensed under the *Insurance Act*;

“interest in a mortgage” means the interest of a person who will or may receive a benefit or advantage, whether directly or indirectly, if the mortgage transaction proceeds as proposed, including any benefit or advantage resulting from a transaction ancillary to the mortgage transaction, but not including any remuneration that is to be received by the mortgage brokerage or related person directly from the borrower with respect to the mortgage brokerage services provided for the proposed mortgage transaction and has otherwise been disclosed to the borrower.

“investor disclosure form” means Form MB-001 F1 *Investor Disclosure* in the form provided by the Director.

“investor renewal disclosure form” means Form MB-001 F2 *Investor Renewal Disclosure* in the form provided by the Director.

“New Brunswick mortgage associate course” means the course and examination prepared and administered by the Canadian Association of Accredited Mortgage Professionals entitled “*Introduction to the Canadian Mortgage Industry – New Brunswick Mortgage Associate*”.

“New Brunswick mortgage broker course” means the course and examination prepared and administered by the Canadian Association of Accredited Mortgage Professionals entitled “*New Brunswick Mortgage Broker Education*”.

“related person” means a person who shares a relationship with a mortgage brokerage or mortgage administrator, including a mortgage broker, mortgage associate, shareholder, partner, director, officer, employee or other representative of the mortgage brokerage or mortgage administrator, other than an arm’s-length business relationship.

“private investor” means any person who invests or proposes to invest in a mortgage, but does not include:

- (a) a body corporate that
 - (i) has assets having an aggregate realizable value, net of related liabilities, of at least \$5 million; and
 - (ii) provides written confirmation to the mortgage brokerage or mortgage administrator that it has assets in the amount mentioned in paragraph (a).
- (b) an administrator or trustee of a registered pension plan within the meaning of subsection 248(1) of the *Income Tax Act* (Canada);
- (c) a mortgage brokerage or a mortgage administrator acting on its own behalf;
- (d) the Crown, or an agent of the Crown, in right of New Brunswick, of Canada or of any other jurisdiction in Canada; or

(e) a person in respect of which all of the owners of interests, other than the voting securities required by law to be owned by directors, are persons or entities described in paragraphs (a) to (d).

(2) The definitions contained in the Act apply to this Rule, unless the terms in question are defined in this Rule.

Exemptions

2. For the purposes of paragraph 2(1)(a) of the Act, the Act does not apply to:

(a) A financial institution that conducts activities referred to in subsection 1(3) or (4) of the Act.

(b) An insurance company that conducts activities referred to in subsection 1(3) or (4) of the Act in the ordinary course of conducting their permitted and regulated insurance activities.

(c) A director, officer or employee of a financial institution or an insurance company when, in the ordinary course of his or her duties, the individual conducts activities referred to in subsection 1(3) or (4) of the Act on behalf of the financial institution or insurance company.

(d) A person who is registered under the *Securities Act* or securities legislation in another jurisdiction in Canada, and conducts activities referred to in subsection 1(3) or (4) of the Act provided the activity conducted is permitted and regulated under the terms of that registration.

3. For the purposes of paragraph 2(1)(a) and subsection 2(2) of the Act, the requirements to hold a licence in section 5 of the Act do not apply to:

(a) a person when it refers a prospective borrower to a prospective lender if:

(i) before making the referral, the person informs the prospective borrower in writing of all of the following:

(A) that the person has received or will or may receive a fee or other remuneration, directly or indirectly, for making the referral;

(B) the amount of the fee or other remuneration mentioned in subparagraph (i) or, if the amount is not ascertainable at that time, a reasonable estimate of the fee or other remuneration;

(C) if the remuneration is in a form other than money, the nature of the remuneration;

(D) the nature of the relationship between the person and the prospective lender;

(ii) the only information that the person provides to the prospective borrower, in addition to the information set out in paragraph (a), is the name, address, telephone number, fax number, email address or website address of the prospective lender or an individual who acts on behalf of the prospective lender; and

- (b) a referring person when it refers a prospective lender to a prospective borrower if:
 - (i) the person obtains the written consent of the prospective borrower to give the information mentioned in subparagraph 3(a)(ii) to the prospective lender; and
 - (ii) the only information that the person provides to the prospective lender is the name, address, telephone number, fax number, email address or website address of the prospective borrower or an individual who acts on behalf of the prospective borrower;
- (c) a Member of the Law Society of New Brunswick entitled to practice law in New Brunswick where the Member:
 - (i) is acting in a professional capacity as a barrister and solicitor on behalf of a client; and
 - (ii) does not otherwise engage or hold himself or herself out as being engaged in the activities referred to in subsection 1(3) or (4) of the Act;
- (d) a professional corporation of a mortgage broker or mortgage associate provided that the corporation meets the requirements set out in subsection 31(3) of this Rule;
- (e) a person who is engaged in the activities referred to in subsection 1(3) or (4) of the Act on behalf of a Crown corporation or other agency of the Crown in right of New Brunswick, Canada or another jurisdiction in Canada, if that person is not otherwise required to be licensed;
- (f) a person who is acting as a trustee in bankruptcy;
- (g) a person who is acting under an order of the Court of Queen's Bench of New Brunswick; and
- (h) a collection agency licensed under the *Collection Agencies Act* where the collection agency:
 - (i) is acting as a collection agency, and is enforcing or taking steps to enforce payment by a borrower under a mortgage; and
 - (ii) the collection agency does not otherwise engage or hold itself out as being engaged in other activities referred to in subsection 1(3) or (4) of the Act.

PART 2 LICENSING

Licence criteria

- 4. (1)** A mortgage brokerage licence may only be issued if:
- (a) the applicant:
 - (i) in the case of a corporation, was incorporated or continued pursuant to the laws of any jurisdiction in Canada;
 - (ii) in the case of a partnership, was formed pursuant to the laws of any jurisdiction in Canada; or
 - (iii) in the case of a sole proprietor, is a resident of Canada;
 - (b) the applicant consents to a criminal record check concerning the following individuals:

- (i) in the case of a corporation, each director and officer of the corporation;
 - (ii) in the case of a partnership, each partner of the partnership;
 - (iii) in the case of a sole proprietor, the sole proprietor; and
- (c) the applicant designates a principal broker who meets the requirements in the Act and regulations.
- (2)** A mortgage broker licence may only be issued if the applicant:
- (a) is at least 19 years of age;
 - (b) is a resident of Canada;
 - (c) consents to a criminal record check;
 - (d) subject to any exemptions in subsection 5(1) of this Rule:
 - (i) has successfully completed an approved education program for a mortgage broker within the three-year period preceding the date of the application; and
 - (ii) has been licensed as a mortgage associate for at least 24 of the 36 months preceding the date he or she applies for the mortgage broker licence; and
 - (e) is authorized by a mortgage brokerage to broker mortgages on its behalf.
- (3)** A mortgage associate licence may only be issued if the applicant:
- (a) is at least 19 years of age;
 - (b) is a resident of Canada;
 - (c) provides the Director with consent to a criminal record check;
 - (d) has successfully completed an approved education program for a mortgage associate within the three-year period preceding the date of the application, subject to any exemptions in subsection 5(1) of this Rule; and
 - (e) is authorized by a mortgage brokerage to broker mortgages on its behalf.
- (4)** A mortgage administrator licence may only be issued if the applicant:
- (a) is incorporated or continued pursuant to the laws of any jurisdiction in Canada;
 - (b) provides the Director with consent to a criminal record check from each director and officer of the corporation; and
 - (c) designates a principal administrator who meets the requirements in the Act and regulations.
- (5)** For the purposes of this Part, the requirements in paragraphs 4(2)(d) and 4(3)(d) do not apply if the applicant successfully completed an approved education program more than three years before the date of the application and has gained one year of relevant experience in the mortgage brokerage industry during the three-year period before the date of the individual's application.
- (6)** The Director may exempt an applicant from the requirements of this section if the applicant demonstrates an equivalent combination of education and experience.

Exemption for applicants with an authorizing certificate from another Canadian regulatory authority

5. (1) An individual is exempt from the requirements set out in paragraph 4(2)(d) for a mortgage broker licence, or from the requirement set out in paragraph 4(3)(d) for a mortgage associate licence, if:
 - (a) the individual holds an authorizing certificate in good standing;
 - (b) the Director is satisfied that the authorizing certificate authorizes the individual to practise an occupation that is substantially equivalent to that of mortgage broker, or mortgage associate; and
- (2) If an individual's authorizing certificate is subject to terms and conditions, the Director may:
 - (a) impose equivalent terms and conditions on the licence issued to the individual; or
 - (b) if the Director is not satisfied that he or she can impose an equivalent condition on the licence, refuse to issue a licence to the individual.

Continuing education requirements

6. Every licensed mortgage broker and licensed mortgage associate must meet the applicable continuing education requirement.

Working capital requirements

7. (1) The minimum working capital to be maintained:
 - (a) by a licensed mortgage brokerage that holds an endorsement, as calculated in accordance with the form on calculating working capital provided by the Director, is \$100,000; and
 - (b) by a licensed mortgage administrator, as calculated in accordance with the form provided by the Director, is \$100,000.
- (2) If, at any time, the working capital is less than the amount required in subsection (1), the licensed mortgage brokerage that holds an endorsement or licensed mortgage administrator must notify the Director of this change in circumstances immediately.

Errors and omissions insurance

8. (1) An applicant for a mortgage brokerage or mortgage administrator licence must have errors and omissions insurance that:
 - (a) is in a form approved by the Director;
 - (b) includes extended coverage for loss from fraudulent acts;
 - (c) is sufficient to pay a minimum of:
 - (i) if the insurance is in support of a mortgage brokerage licence:
 - (A) \$500,000 with respect to any one occurrence involving the mortgage brokerage or any mortgage broker or mortgage associate authorized to broker mortgages on its behalf; and

- (B) \$1,000,000 with respect to all occurrences during a 365-day period involving the mortgage brokerage or any mortgage broker or mortgage associate authorized to broker mortgages on its behalf; and
 - (ii) if the insurance is in support of a mortgage administrator licence:
 - (A) \$500,000 with respect to any one occurrence involving the mortgage administrator; and
 - (B) \$1,000,000 with respect to all occurrences during a 365-day period involving the mortgage administrator;
 - (d) maintains insurance coverage to cover acts or omissions occurring during the period the mortgage brokerage or mortgage administrator holds a licence in New Brunswick for a period of 6 years following the event of either:
 - (i) the merger, dissolution or cessation of the mortgage brokerage or mortgage administrator;
 - (ii) the cancellation or suspension of the mortgage brokerage or mortgage administrator licence in New Brunswick; and
 - (e) includes a provision requiring the insurer to advise the Director if the policy is cancelled or not renewed or if coverage is below the minimum coverage required by the Act and this Rule.
- (2) Every mortgage brokerage and mortgage administrator must, at all times while it holds a licence, maintain errors and omissions insurance in the form and amount required pursuant to the Act and this Rule.
- (3) A licence holder required to maintain errors and omissions insurance must notify the Director immediately if the required errors and omissions insurance may not be in force or effective in accordance with its terms or may otherwise fail to meet the requirements of the Act.

Cancelling a licence or endorsement

9. For the purposes of subsection 18(5) of the Act, a licence or an endorsement suspended under section 18 of the Act that has not been reinstated is cancelled on the second anniversary of the suspension.

Change in circumstances

10. (1) For the purposes of subsection 22(2) of the Act, the following constitutes a change in circumstances requiring the licence holder to provide the Director with corrected information or material within seven days after the change occurred:
- (a) change in name of licence holder;
 - (b) any changes to the authority of the licence holder to engage in brokering mortgages or administering mortgages in another jurisdiction in Canada, including a suspension, cancellation, imposition of terms and conditions or other restrictions, or surrendering of a licence to an out-of-province regulatory authority;

- (c) charges with a criminal offence under federal statutes, including but not limited to the *Criminal Code* of Canada, *Income Tax Act* (Canada), the *Competition Act* (Canada), *Immigration and Refugee Protection Act* (Canada) and the *Controlled Drugs and Substances Act* (Canada) or any other offence against any law of any country, province or state, excluding:
 - (i) charges for summary conviction offences that have been stayed for six months or more;
 - (ii) charges for indictable offences that have been stayed for a year or more;
 - (iii) offences under the *Youth Criminal Justice Act* (Canada); and
 - (iv) speeding or parking violations;
- (d) a civil action or administrative proceeding is brought against the licence holder alleging fraud, breach of trust, deceit or misrepresentation by the licence holder;
- (e) circumstances indicating the financial security provided by a licence holder may not be in force or effective in accordance with its terms or may otherwise fail to meet the requirements of the Act.

(2) For the purposes of subsection 22(2) of the Act, the following constitutes a change in circumstances requiring the mortgage brokerage or mortgage administrator to provide the Director with corrected information or material within seven days after the change occurred:

- (a) a change of a business location in New Brunswick of the mortgage brokerage or mortgage administrator, including the opening of a new business location, the closing or the relocation of an existing business location;
- (b) if the mortgage brokerage or mortgage administrator does not have a business location in New Brunswick, a relocation of the principal business location of the mortgage brokerage or mortgage administrator;
- (c) in the case of a corporation, a change of one or more of its directors or officers;
- (d) cessation of business in New Brunswick as a mortgage brokerage or a mortgage administrator;
- (e) the commencement of bankruptcy, receivership or winding-up proceedings concerning the mortgage brokerage or mortgage administrator;
- (f) the transfer of records of the mortgage brokerage or mortgage administrator to a business location other than a location with respect to which the Director has been previously notified;
- (g) a change in the fiscal year of the mortgage brokerage or mortgage administrator.

(3) For the purposes of subsection 22(2) of the Act, the following constitutes a change in circumstances requiring the mortgage brokerage to provide the Director with corrected information or material within seven days after the change occurred:

- (a) the person designated by the mortgage brokerage as its principal broker ceases to act in that capacity;

- (b) a mortgage broker or a mortgage associate ceases to be authorized to broker mortgages on behalf of the mortgage brokerage;
 - (c) in the case of a mortgage brokerage that is a partnership, the addition or departure of one or more of the partners;
 - (d) the mortgage brokerage has reasonable grounds on which the Director could determine that:
 - (i) a mortgage broker or a mortgage associate is not suitable to hold a licence pursuant to the Act; or
 - (ii) the continued licensing of a mortgage broker or mortgage associate pursuant to the Act would be objectionable.
- (4) For the purposes of subsection 22(2) of the Act, a mortgage broker or a mortgage associate must notify the Director if he or she ceases to be authorized to broker mortgages on behalf of the mortgage brokerage named in his or her licence.
- (5) For the purposes of subsection 22(2) of the Act, an applicant for a licence or an endorsement must notify the Director if any information provided in an application has changed prior to the issuance of a licence.

PART 3 BROKERING MORTGAGES

Principal broker

11. A principal broker must satisfy the following criteria:

- (a) the individual must have the following status in relation to the mortgage brokerage:
 - (i) if the mortgage brokerage is a corporation, he or she is a director or officer of the corporation;
 - (ii) if the mortgage brokerage is a partnership other than a limited partnership, he or she is a partner;
 - (iii) if the mortgage brokerage is a limited partnership, he or she is the general partner or a director or officer of a corporation that is the general partner;
 - (iv) if the mortgage brokerage is a sole proprietorship, he or she is the sole proprietor; and
- (b) the Director is satisfied that:
 - (i) the individual is suitable to perform the duties and responsibilities of principal broker on behalf of the mortgage brokerage; and
 - (ii) the designation of the individual as principal broker is not for any reason objectionable.

Additional duties of a principal broker

12. A principal broker must:

- (a) take reasonable steps to ensure that the mortgage brokerage, and each mortgage broker and mortgage associate authorized to broker mortgages on its behalf, complies with every requirement in the Act and regulations;
- (b) review the policies and procedures of the mortgage brokerage to determine whether they are reasonably designed to ensure:
 - (i) that the mortgage brokerage, and each mortgage broker and mortgage associate authorized to broker mortgages on its behalf, complies with every requirement in the Act and regulations; and
 - (ii) that each mortgage broker and mortgage associate authorized to broker mortgages on behalf of the mortgage brokerage is adequately supervised;
- (c) recommend in writing to the mortgage brokerage that it make any changes to its policies and procedures that he or she believes are necessary to ensure that the requirements mentioned in subparagraphs (b)(i) and (ii) are met, and retain a copy of that written recommendation; and
- (d) review every trust account reconciliation record prepared pursuant to section 48 of this Rule and certify that it is accurate by signing and dating it.

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

- 13. (1)** A mortgage brokerage must verify the identity of each borrower, lender or private investor to whom it intends to present a mortgage or renewal for consideration.
- (2)** A mortgage brokerage must verify the identity of each lender or private investor to whom it intends to present an investment in a mortgage for consideration.

Duty regarding unlawful transactions

- 14.** A mortgage brokerage must not act as a representative of a borrower, lender or private investor in respect of a mortgage if the mortgage brokerage has reasonable grounds to believe that the mortgage, its renewal or the investment in it is unlawful.

Duty regarding borrower's legal authority

- 15.** If a mortgage brokerage has reason to doubt a borrower's legal authority to mortgage a property, the mortgage brokerage must so advise each prospective lender or private investor in respect of that mortgage transaction at the earliest opportunity.

Duty regarding accuracy of mortgage application

- 16.** If a mortgage brokerage has reason to doubt the accuracy of information contained in a borrower's mortgage application or in a document submitted in support of an application, the mortgage brokerage must so advise each prospective lender or private investor of that mortgage transaction at the earliest opportunity.

Suitability obligation

- 17. (1)** For the purposes of section 28 of the Act, a mortgage brokerage must take reasonable steps to ensure that any mortgage or investment in a mortgage that it presents for the consideration of a borrower or private investor is suitable having regard to the needs and circumstances of the borrower or private investor.
- (2)** A mortgage brokerage must identify the mortgage that is most suitable for the borrower by recommending a mortgage from a selection of proposed mortgage options available to the borrower, based on consideration of all of the following features of the proposed mortgage:
- (a) whether the mortgage is conventional or high ratio;
 - (b) the interest rate;
 - (c) whether the interest rate is fixed or variable;
 - (d) if the interest rate is variable, a description of how the formula for calculating a variable rate mortgage may change during the term of the mortgage;
 - (e) the term of the mortgage;
 - (f) whether the mortgage is closed, partially open or fully open;
 - (g) the amortization period;
 - (h) the fees, remuneration or penalties payable by the borrower in connection with any existing mortgage or the proposed mortgage;
 - (i) the fees, remuneration or penalties payable by the borrower in connection with the services offered by the mortgage brokerage;
 - (j) in the case of a reverse mortgage, an estimate of the accumulated interest for the term of the loan;
 - (k) any other options or distinguishing features of the available mortgage.
- (3)** The mortgage brokerage must provide the borrower with a written assessment of the suitability of a proposed mortgage option and must obtain the borrower's written acknowledgement that the mortgage brokerage made the disclosure required under this section.

Disclosure to the borrower

- 18. (1)** For the purposes of section 28 of the Act, every mortgage brokerage must provide a borrower with the following information in writing:
- (a) whether the mortgage brokerage is directly or indirectly owned, in whole or in part, by a mortgage lender or private investor and, if it is, the name of that mortgage lender or private investor;
 - (b) the total number of lenders and private investors to which the mortgage brokerage is capable of submitting a mortgage application at the time the information is provided to the borrower;
 - (c) the names of the lenders and private investors mentioned in paragraph (b);

- (d) the steps that the mortgage brokerage took to confirm the identity of the lender and private investor and whether the mortgage brokerage was able to obtain that confirmation;
 - (e) whether the mortgage brokerage or any related person has, or may have, an interest in a mortgage or related mortgage transaction and, if so, the nature of that interest.
- (2) The mortgage brokerage must obtain the borrower's written acknowledgement that the mortgage brokerage made the disclosure required by this section.

Remuneration the mortgage brokerage will receive from others

19. (1) A mortgage brokerage must give the following information, in writing, to a borrower in connection with a mortgage or mortgage renewal that it presents for the borrower's consideration:
- (a) whether the mortgage brokerage has received, may receive or will receive a fee or other remuneration, directly or indirectly, from a person in connection with the negotiation or arrangement of the mortgage or mortgage renewal;
 - (b) if a fee or other remuneration is or may be payable to the mortgage brokerage, the identity of the other person, the basis for calculating the amount of the fee or other remuneration and, in case of a benefit other than money, the nature of the benefit;
 - (c) whether a mortgage broker or mortgage associate who is authorized act on the mortgage brokerage's behalf has received, may receive or will receive payment of an incentive from another person in connection with the negotiation or arrangement of the mortgage or mortgage renewal;
 - (d) if an incentive is or may be payable to a mortgage broker or mortgage associate, the nature of the incentive and the identity of the other person.
- (2) The mortgage brokerage must obtain the borrower's written acknowledgement that the mortgage brokerage made the disclosure required by this section.

Remuneration payable by the mortgage brokerage to others

20. (1) A mortgage brokerage must give the following information, in writing, to a borrower in connection with a mortgage or mortgage renewal that it presents for the borrower's consideration:
- (a) Whether the mortgage brokerage has paid, may pay or will pay a fee or other remuneration, directly or indirectly, to another person in connection with the negotiation or arrangement of the mortgage or renewal;
 - (b) If a fee or other remuneration is or may be payable, the identity of the other person, the basis for calculating the amount of the fee or other remuneration and, in case of a benefit other than money, the nature of the benefit.
- (2) The mortgage brokerage must obtain the borrower's written acknowledgement that the mortgage brokerage made the disclosure required by this section.

Deadline for disclosures to borrowers

- 21.** Unless the context requires otherwise, every disclosure of information to a borrower that is required by this Rule must be made at the earliest opportunity and, in any case, no later than two business days before the borrower enters into a mortgage agreement or signs a mortgage instrument, whichever is the earlier.

Disclosure to private investors

- 22. (1)** For the purposes of section 29 of the Act, every mortgage brokerage must provide each private investor the following information and documentation:
- (a) a completed investor disclosure form;
 - (b) a written statement indicating the steps that the mortgage brokerage took to confirm the identity of the borrower and whether or not the mortgage brokerage was able to obtain that confirmation;
 - (c) a written statement indicating the material risks of the investment in a mortgage that the mortgage brokerage presents for the consideration of a private investor;
 - (d) a written statement indicating whether the mortgage brokerage or any related person has or may have an interest in the mortgage transaction and, if so, the nature of that interest;
 - (e) if an appraisal of the property has been done in the preceding 12 months and is available to the mortgage brokerage, a copy of the appraisal;
 - (f) if an appraisal of the property is not available as described in paragraph (e), documentary evidence of the value of the property, other than an agreement of purchase and sale;
 - (g) if an agreement of purchase and sale with respect to the property has been entered into in the preceding 12 months and is available to the mortgage brokerage, a copy of the agreement of purchase and sale;
 - (h) documentary evidence of the borrower's ability to meet the mortgage payments;
 - (i) a copy of the application for the mortgage and of any document submitted in support of the application;
 - (j) documentary evidence of any down payment made by the borrower for the purchase of the property;
 - (k) a copy of any agreement that the private investor may be asked to enter into with the mortgage brokerage;
 - (l) if the investment is in an existing mortgage, a copy of the mortgage instrument;
 - (m) all other information, in writing, that an investor of ordinary prudence would consider to be material to a decision about whether to make the investment in the mortgage.
- (2)** A mortgage brokerage must obtain the private investor's written acknowledgement that the mortgage brokerage has disclosed the information and documents required by this section.

Disclosure form for private investors in mortgage renewals

- 23. (1)** Every mortgage brokerage required to act in the best interests of a private investor with respect to a renewal of an investment in a mortgage must provide the private investor with the following information and documentation:
- (a) a completed investor renewal disclosure form;

- (b) a written statement indicating the material risks of the investment in a mortgage that the mortgage brokerage presents for the consideration of a private investor;
- (c) a written statement indicating whether the mortgage brokerage or any related person has or may have an interest in the mortgage transaction and, if so, the nature of that interest;
- (d) if an appraisal of the property has been done in the preceding 12 months and is available to the mortgage brokerage, a copy of the appraisal;
- (e) if an appraisal of the property is not available as described in paragraph (d), documentary evidence of the value of the property, other than an agreement of purchase and sale;
- (f) if an agreement of purchase and sale with respect to the property has been entered into in the preceding 12 months and is available to the mortgage brokerage, a copy of the agreement of purchase and sale;
- (g) a copy of the application for the mortgage renewal and of any document submitted in support of the application;
- (h) a copy of any agreement that the private investor may be asked to enter into with the mortgage brokerage;
- (i) a certificate of insurance or other documentary evidence confirming the insurance coverage with respect to the property;
- (j) all other information, in writing, that an investor of ordinary prudence would consider to be material to a decision about whether to renew the investment in the mortgage.

- (2) A mortgage brokerage must obtain the private investor's written acknowledgement that the mortgage brokerage has disclosed the information and documents required by this section.

Deadline for disclosures to private investors

- 24. (1) Unless the context requires otherwise, every disclosure of information to a private investor that is required by this Rule must be made at the earliest opportunity and, in any case, no later than two business days before the earliest of the following events:
 - (a) the mortgage brokerage receives money from the private investor;
 - (b) the mortgage brokerage enters into an agreement to receive money from the private investor;
 - (c) the private investor enters into an agreement to invest in a mortgage;
 - (d) the money is advanced to the borrower under the mortgage; or
 - (e) the closing date for the mortgage transaction .
- (2) If the private investor consents in writing to receiving the disclosure after the deadline described in subsection (1), the disclosure may instead be made no later than one business day before the earliest of the events described in that subsection.

Duties of the mortgage brokerage in reverse mortgages

- 25. (1) A mortgage brokerage must not arrange or enter into a reverse mortgage with a borrower unless the mortgage brokerage receives from the borrower a statement signed by a lawyer

confirming that the lawyer has given the borrower independent legal advice about the proposed reverse mortgage.

- (2) For the purposes of this section, a mortgage is a reverse mortgage if both of the following conditions are satisfied:
- (a) The money that is advanced under the mortgage does not have to be repaid until the occurrence of one or more of the following events:
 - (i) the borrower's death or, if there is more than one borrower, the death of the last surviving borrower;
 - (ii) the acquisition by the borrower or the last surviving borrower of another dwelling to use as his or her principal residence;
 - (iii) the sale of the mortgaged property;
 - (iv) the borrower's or last surviving borrower's vacating the mortgaged property to live elsewhere with no reasonable prospect of returning;
 - (v) an event of default under the conditions of the mortgage;
 - (b) One or more of the following conditions applies while the borrower or last surviving borrower continues to occupy the mortgaged property as his or her principal residence and otherwise complies with the terms of the mortgage:
 - (i) no instalment repayments of the principal and no payment of interest on the principal are due or capable of becoming due;
 - (ii) although interest payments may become due, no repayment of all or part of the principal is due or capable of becoming due;
 - (iii) although interest payments and repayment of part of the principal may become due, repayment of all of the principal is not due or capable of becoming due.

Advance fees

26. No mortgage brokerage will charge or accept from a borrower a fee or other remuneration for mortgage brokerage services until:
- (a) an investor has provided a written confirmation to fund a mortgage to the borrower;
 - (b) a mortgage agreement has been entered into; and
 - (c) the mortgage contemplated in the mortgage agreement has been funded and secured by a mortgage as set out in the written confirmation.

Duty to establish policies and procedures

- 27. (1)** A mortgage brokerage must establish and implement policies and procedures that are reasonably designed to ensure that the mortgage brokerage and every mortgage broker and mortgage associate who is authorized to act on its behalf complies with the requirements established under the Act.
- (2)** A mortgage brokerage must establish and implement policies and procedures providing for the adequate supervision of every mortgage broker and mortgage associate who is authorized to act on its behalf, and specifically with respect of the following matters:
- (a) the verification of the identity of borrowers, lenders and private investors in the circumstances required by this Rule;
 - (b) the determination of the suitability of a mortgage or investment in a mortgage for a borrower or private investor;
 - (c) the identification of the material risks of an investment in a mortgage for a private investor and their disclosure to the private investor as required by this Rule;
 - (d) the identification of potential conflicts of interest;
 - (e) the provision of incentives to its mortgage brokers and mortgage associates by other persons and entities, if the mortgage brokerage permits any of its mortgage brokers or mortgage associates to receive such incentives.

Duty to establish complaints process

- 28. (1)** A mortgage brokerage must establish a process for resolving complaints from the public about the mortgage business activities of the mortgage brokerage or of any mortgage broker or mortgage associate acting on its behalf.
- (2)** As part of the process for resolving complaints, the mortgage brokerage must:
- (a) designate one or more individuals to receive and attempt to resolve complaints from the public;
 - (b) ensure that each designated individual is an employee of the mortgage brokerage or someone who is otherwise authorized to act on its behalf;
 - (c) document all complaints received from the public;
 - (d) respond to all complaints received from the public about any mortgage brokerage activities conducted by the mortgage brokerage; and
 - (e) respond to a complaint in a manner that a reasonable complainant would consider fair and effective.

Duty of mortgage brokerage in authorization of mortgage brokers and mortgage associates

- 29. (1)** A mortgage brokerage must not authorize an individual to act on its behalf unless the mortgage brokerage takes reasonable steps to satisfy itself that the individual is eligible to be licensed as a mortgage broker or mortgage associate.
- (2)** A mortgage brokerage must not authorize an individual to act on its behalf if the mortgage brokerage knows, or reasonably ought to know, that the individual is a mortgage broker or mortgage associate who is authorized to deal or trade in mortgages on behalf of another mortgage brokerage.
- (3)** A mortgage brokerage must immediately notify the Director if the mortgage brokerage believes that there may be reasonable grounds upon which the Director could determine that a mortgage broker or mortgage associate is not suitable to be licensed under the Act.

Duty of mortgage brokers and mortgage associates acting on behalf of a mortgage brokerage

- 30.** A mortgage broker or mortgage associate must not do or omit to do anything that might reasonably be expected to result in the mortgage brokerage on whose behalf he or she is authorized to act to contravene or fail to comply with a requirement established under the Act.

Use of a professional corporation by mortgage brokers and mortgage associates

- 31. (1)** In this this section,
- “family member” means a spouse, child, parent, grandparent, brother, sister, uncle, aunt, niece or nephew;
- “family trust” means a trust, of which all of the beneficiaries and a majority of the trustees are Family Members.
- (2)** A mortgage broker or mortgage associate must not receive, directly or indirectly, any fee or other remuneration in respect to his or her activities referred to in subsection 1(3) or (4) of the Act from a person other than the mortgage brokerage on whose behalf he or she is authorized to act.
- (3)** A mortgage broker or mortgage associate who is a shareholder or employee of a professional corporation that is exempted by subsection 3(3) from the requirement to have a mortgage brokerage licence is permitted to receive fees or other remuneration for conducting activities referred to in subsection 1(3) or (4) of the Act from the professional corporation if the following circumstances exist:
- (a) The professional corporation is incorporated under the laws of Canada or a jurisdiction in Canada;
- (b) All of the professional corporation’s directors, officers and shareholders are:
- (i) licensed individuals authorized to act for the same mortgage brokerage;

- (ii) a family member of a licensed individual authorized to act for the same mortgage brokerage; or
- (iii) a family trust related to a licensed individual authorized to act for the same mortgage brokerage.
- (c) The professional corporation and the mortgage broker or mortgage associate have a written contract under which the mortgage brokerage is liable for the acts or omissions of the professional corporation and each licensed individual who is a director, officer, or shareholder of the professional corporation if these acts or omissions are related to or arise from the licensed activities of the mortgage broker or mortgage associate.
- (d) Upon request of the Director, the professional corporation makes any and all of its books and records available for inspection.
- (e) The mortgage brokerage on whose behalf the mortgage broker or mortgage associate is authorized to act pays the applicable fees and other remuneration for the mortgage broker or mortgage associate to the professional corporation instead of to the mortgage broker or mortgage associate.

PART 4 MORTGAGE ADMINISTRATORS

Principal administrator

- 32.** A principal administrator must satisfy the following criteria:
- (a) the individual must be a director or officer of the corporation;
 - (b) the Director is satisfied that:
 - (i) the individual is suitable to perform the duties and responsibilities of principal administrator on behalf of the mortgage administrator; and
 - (ii) the designation of the individual as principal administrator is not for any reason objectionable.

Additional duties of a principal administrator

- 33.** A principal administrator must:
- (a) review the policies and procedures of the mortgage administrator to determine whether they are reasonably designed to ensure that the mortgage administrator, and those acting on its behalf, comply with the requirements in the Act and regulations;
 - (b) recommend in writing to the mortgage administrator that it make any changes to its policies and procedures that he or she believes are necessary to ensure that the requirements mentioned in subsection (b) are met, and retain a copy of that written recommendation; and

- (c) review every trust account reconciliation record prepared pursuant to section 48 and certify that it is accurate.

Duty to verify customer's identity

- 34.** A mortgage administrator must verify the identity of a lender or private investor before entering into an agreement with that lender or private investor to administer the mortgage.

Duty regarding unlawful transactions

- 35.** A mortgage administrator must not administer a mortgage for a lender or private investor if the mortgage administrator has reasonable grounds to believe that the mortgage, its renewal or the investment in it is unlawful.

Disclosure to the private investor

- 36. (1)** Every mortgage administrator must provide a private investor with the following information in writing:
 - (a) whether the mortgage administrator or any related person has or may have an interest in the proposed mortgage administration transaction; and,
 - (b) if the mortgage administrator or any related person has such an interest, the nature of that interest.
- (2)** The mortgage brokerage must obtain the borrower's written acknowledgement that the mortgage brokerage made the disclosure required by this section.

Remuneration the mortgage administrator will receive from others

- 37. (1)** A mortgage administrator must give the following information, in writing, to a private investor in connection with the administration of a mortgage:
 - (a) whether the mortgage administrator has received, may receive or will receive a fee or other remuneration, directly or indirectly, from another person in connection with the administration of the mortgage;
 - (b) if a fee or other remuneration is or may be payable to the mortgage administrator, the identity of the other person, the basis for calculating the amount of the fee or other remuneration and, in case of a benefit other than money, the nature of the benefit.
- (2)** The mortgage administrator must obtain the written acknowledgement of the private investor that the mortgage administrator made the disclosure required by this section.

Remuneration payable by the mortgage administrator to others

- 38. (1)** A mortgage administrator must give the following information, in writing, to a private investor in connection with the administration of a mortgage:

- (a) whether the mortgage administrator has paid, may pay or will pay a fee or other remuneration, directly or indirectly, to another person in connection with the administration of the mortgage;
 - (b) if a fee or other remuneration is or may be payable, the identity of the other person, the basis for calculating the amount of the fee or other remuneration and, in case of a benefit other than money, the nature of the benefit.
- (2) The mortgage administrator must obtain the written acknowledgement of the private investor that the mortgage administrator made the disclosure required by this section.

Duty to have an administration agreement

- 39. (1)** For the purposes of section 32 of the Act, the agreement entered into between a mortgage administrator and a private investor must include terms and conditions that require the mortgage administrator to do all of the following:
- (a) to promptly remit to the private investor all payments due and owing to the private investor under the mortgage that is the subject of the agreement;
 - (b) to immediately notify the private investor on becoming aware of any of the following changes with respect to the property that is the subject of the agreement:
 - (i) any subsequent encumbrance on the property;
 - (ii) any change in the use of the property;
 - (iii) any change in the amount or nature of insurance coverage on the property;
 - (iv) any other significant change in circumstances affecting the property;
 - (c) to provide to the private investor an annual statement of payments made by the borrower that indicates:
 - (i) the total amount of payments received from the borrower during the statement period;
 - (ii) the amount of the payments applied to principal and to interest;
 - (iii) the outstanding principal balance of the mortgage at the end of the statement period; and
 - (iv) the total amount of fees or other remuneration received by the mortgage administrator for administering the mortgage during the statement period;
 - (d) to immediately notify the private investor on becoming aware of any default under the mortgage.
- (2) For the purposes of section 32 of the Act, the agreement entered into between a mortgage administrator and a private investor must contain:

- (a) the name under which the mortgage is or will be registered in the land titles office or registered under the laws of another jurisdiction in Canada;
- (b) a list of all fees or other remuneration that the mortgage administrator is to receive for the administration of the mortgage, including the method of calculation and payment;
- (c) any other expenses or costs related to the mortgage that will be charged to the private investor;
- (d) the extent of the responsibilities of the mortgage administrator and the private investor for decisions respecting:
 - (i) the collection of money under the mortgage;
 - (ii) the prepayment of principal under the mortgage;
 - (iii) discharges and partial discharges of the mortgage; and
 - (iv) the commencement or continuation of enforcement proceedings under the mortgage;
- (e) the responsibility of the mortgage administrator to inform himself or herself as to the changes with respect to the property, within the meaning of paragraph (1)(b);
- (f) the disposition to be made of all payments made under the mortgage by the borrower, including any penalties and bonuses;
- (g) any conditions and restrictions with respect to the right of the private investor to terminate the agreement or assign his or her interest in the agreement; and
- (h) if the mortgage is held in trust, the details of the trust.

Deadline for mortgage administrator's disclosures to private investors

- 40. (1)** Unless the context requires otherwise, every disclosure of information to a private investor that is required by this Rule must be made at the earliest opportunity and, in any case, no later than two business days before the mortgage administrator and the private investor enter into a mortgage administration agreement for the applicable mortgage.
- (2)** If the private investor consents in writing to receiving the disclosure after the deadline described in subsection (1), the disclosure may instead be made no later than one business day before the mortgage administrator and the private investor enter into a mortgage administration agreement for the applicable mortgage.
- 41.** A mortgage administrator must not charge or accept from a private investor a fee or other remuneration for mortgage administering services until:
- (a) a private investor has provided a written confirmation to fund a mortgage to the borrower;
 - (b) a mortgage agreement has been entered into; and
 - (c) the mortgage to the borrower has been funded and secured by a mortgage as set out in the written confirmation.

Clarity of disclosure

- 42.** A written disclosure, consent or acknowledgement required by this Rule must be expressed in plain language that is clear and concise and it must be presented in a manner that is logical and is likely to bring to the attention of the borrower, lender or private investor, the information that is required to be conveyed.

Duty to establish policies and procedures

- 43. (1)** A mortgage administrator must establish and implement policies and procedures that are reasonably designed to ensure that the mortgage administrator and every person acting on its behalf complies with the requirements established under the Act and regulations.
- (2)** A mortgage administrator must establish and implement policies and procedures providing for the adequate supervision of every person acting on its behalf, and specifically with respect of the following matters:
- (a) The verification of the identity of lenders and private investors in the circumstances required by this Rule;
 - (b) The identification of potential conflicts of interest that the mortgage administrator or any employee engaged in administering a particular mortgage may have in connection with the mortgage, and their disclosure to the lender or private investor as required by this Rule.

Duty to establish complaints process

- 44. (1)** A mortgage administrator must establish a process for resolving complaints from the public about the mortgage business activities of the mortgage administrator or of any person acting on its behalf.
- (2)** As part of the process for resolving complaints, the mortgage administrator must:
- (a) designate one or more individuals to receive and attempt to resolve complaints from the public;
 - (b) ensure that each designated individual is an employee of the mortgage administrator or someone who is otherwise authorized to act on its behalf;
 - (c) document all complaints received from the public;
 - (d) respond to all complaints received from the public about any mortgage administration activities conducted by the mortgage brokerage;
 - (e) respond to a complaint in a manner that a reasonable complainant would consider fair and effective.

Record keeping - General

- 45. (1)** For the purposes of subsection 37(1) of the Act, every mortgage brokerage and mortgage administrator must keep a complete and accurate record of the following documents:
- (a) financial records of the licence holder's activities in New Brunswick as required by the Act or regulations;
 - (b) all the information to be disclosed and documentation to be provided to and obtained from borrowers or prospective borrowers, or any other person pursuant to the Act or regulations;
 - (c) all the information to be disclosed and documentation to be provided to and obtained from private investors or prospective private investors or any other person pursuant to this Act or regulations;
 - (d) all written agreements that the mortgage brokerage or mortgage administrator has entered into with a borrower or private investor;
 - (e) all documents, correspondence and any other written information that the mortgage brokerage or mortgage administrator provided to or received from another person with respect to a mortgage transaction;
 - (f) any other records required by the Act or the regulations.
- (2)** For the purposes of section 46 of the Act, every mortgage brokerage and mortgage administrator must keep records showing, with respect to each mortgage that it brokers or administers:
- (a) the date and nature of the transaction;
 - (b) a description of the real property that is sufficient to identify it;
 - (c) the names of all of the parties to the mortgage;
 - (d) the repayment terms;
 - (e) the fees, expenses, costs or other charges required to be borne by the borrower;
 - (f) the fees or other remuneration received by the mortgage brokerage or the mortgage administrator and the identity of the persons paying the fees or other remuneration.
- (3)** Every month, every mortgage administrator that receives payments made by a borrower or otherwise monitors the performance of a borrower with respect to his or her payment obligations under a mortgage must prepare a record that:
- (a) reconciles the total of outstanding principal balances due from borrowers with respect to mortgages being administered and the total amount of principal balances owing to

investors under those mortgages, as the balances appear in the records of the mortgage administrator;

- (b) sets out the difference, if any, between the balances as of the last day of the month and describes the reasons for the difference; and
- (c) is signed and dated by an officer of the mortgage administrator to indicate that he or she has reviewed the record and certifies that it is accurate.

Security of records

- 46.** Every mortgage brokerage and mortgage administrator must take precautions that are appropriate to the form of its records, to maintain the integrity of the records.

PART 6 TRUST PROPERTY

Record keeping – Trust property

- 47. (1)** In addition to the requirements set out in section 45 of this Rule, every mortgage brokerage that receives or holds trust money and every mortgage administrator must keep records showing:
- (a) all trust money received and all transactions relating to the trust money; and
 - (b) the unexpended balance of trust money held by the mortgage brokerage or mortgage administrator in total and also separately for each person for whom that money is held.
- (2)** The records must include:
- (a) a separate trust ledger for each person on whose behalf the mortgage brokerage or mortgage administrator holds trust money showing, in chronological order:
 - (i) all receipts and disbursements of trust money with respect to that person;
 - (ii) with respect to each receipt:
 - (A) from whom the money was received;
 - (B) the form and manner in which the money was received; and
 - (C) the purpose for which the money was received, including particulars of the mortgage to which the money relates;
 - (iii) with respect to each disbursement:
 - (A) to whom the money was disbursed;
 - (B) the number of the cheque, or the confirmation number of the electronic transfer, by which the money was disbursed; and
 - (C) the purpose for the disbursement, including particulars of the mortgage to which the disbursement relates; and

- (iv) the unexpended balance held on behalf of the person immediately after each receipt and disbursement; and
- (b) copies of:
 - (i) deposit slips for each deposit to the trust account;
 - (ii) all cheques with respect to the account, including cancelled cheques;
 - (iii) bank statements or passbooks for the trust account; and
 - (iv) any other documentary evidence of deposits and withdrawals with respect to the trust account.

Monthly reconciliation

- 48.** Every mortgage brokerage that receives or holds trust money and every mortgage administrator must, every month, prepare a trust account reconciliation that:
- (a) if prepared by a mortgage brokerage, is reviewed by the principal broker in accordance with paragraph 12(d);
 - (b) if prepared by a mortgage administrator, is reviewed by the principal administrator in accordance with paragraph 33(c);
 - (c) is prepared and reviewed by different individuals; and
 - (d) is prepared, reviewed and certified no later than:
 - (i) if the mortgage brokerage or mortgage administrator receives a monthly account statement from the financial institution where the account is maintained, 30 days after the monthly statement is received; or
 - (ii) in any other case, 30 days after the end of the month.

Records of mortgage administrator

- 49. (1)** Every mortgage administrator must keep records that identify:
- (a) all mortgages received or held in trust by the mortgage administrator, and the original amount of each mortgage;
 - (b) separately for each mortgage any receipt or disbursement of funds and any liabilities, income and expenses with respect to the mortgage; and
 - (c) with respect to each mortgage held in trust, the fractional interest or percentage owned by any person.
- (2)** The records mentioned in subsection (1) must include a trust ledger for each mortgage held in trust showing, in chronological order:
- (a) the amount of money received from each person having an interest in the mortgage, the form and manner in which the money was received and the date the money was received;
 - (b) the amount of money advanced on the mortgage or the purchase price of the mortgage the form and manner in which the money was advanced and the date that money was advanced or paid;

- (c) the dates and amounts of any repayments received on the mortgage and the name of the person from whom the money was received;
- (d) the dates and amounts of any disbursements of money received under the mortgage and the name of the person to whom it was disbursed;
- (e) any other liabilities, income and expenses relating to the mortgage;
- (f) the receipt or disbursement of any funds in connection with the mortgage; and
- (g) the outstanding balance of the mortgage in total and separately for each person having an interest in the mortgage.

Trust agreements

- 50. (1)** For the purposes of section 43 of the Act, the written trust agreement must contain with respect to the receiving or holding of trust money:
- (a) an express acknowledgment of the trust;
 - (b) the terms on which the trust money is to be received, held and disbursed; and
 - (c) a term that requires that all withdrawals of money from the trust account for remuneration to a mortgage brokerage or mortgage administrator, be done by way of cheque, or electronic transfer, payable to the general account of the mortgage brokerage or mortgage administrator.
- (2)** The written trust agreement mentioned in section 44 of the Act with respect to holding a mortgage in trust must:
- (a) include a description of the interest in the mortgage that is the subject of the trust, including, if the interest represents less than the entire mortgage, the percentage of the mortgage that the interest represents;
 - (b) set out the terms of the trust; and
 - (c) have appended to it a copy of the mortgage agreement that creates the interest that is the subject of the trust.
- (3)** The written trust agreement under paragraphs 43(1)(b) and 43(2)(b) of the Act and the written administrative agreement under subsection 32(1) of the Act may be combined into one agreement.

Mortgage held in trust

- 51.** Every mortgage administrator that receives a mortgage in trust must ensure that the interests of the beneficiaries in the mortgage are registered in the land titles registry against the mortgage administrator's interest in the mortgage.

Requirements regarding trust money

- 52. (1)** Every mortgage brokerage receiving trust money must:
- (a) provide a receipt to the person from whom the money was received, showing:
 - (i) the amount of money received;

- (ii) the manner in which the money was received;
 - (iii) the date on which the mortgage brokerage received the money;
 - (iv) the name of the person from whom the money was received and, if the money was received on behalf of another person, the name of that person;
 - (v) the purpose for which the money was received, including particulars of the mortgage to which the money relates; and
 - (vi) the name of the mortgage broker or mortgage associate who received the money on behalf of the mortgage brokerage; and
 - (b) ensure that a duplicate deposit receipt or other documentary evidence of the deposit is prepared.
- (2)** Every withdrawal of money by a mortgage brokerage or mortgage administrator from a trust account must be done by way of:
- (a) a cheque that meets all of the following conditions:
 - (i) it is numbered and includes on its face words identifying it as being drawn against a trust account;
 - (ii) it includes a reference to the transaction to which it relates that is sufficient to permit the cheque to be identified with the corresponding disbursement recorded in the records of the mortgage brokerage or mortgage administrator; or
 - (b) an electronic transfer that meets all of the following conditions:
 - (i) the financial institution where the trust account is maintained is able to produce a written confirmation showing all of the following details of the electronic transfer:
 - (A) the date of the transfer;
 - (B) the name of the financial institution and the account name and account number of the trust account from which the trust money was withdrawn;
 - (C) the name of the financial institution and the account name and account number of the account to which the trust money was transferred;
 - (D) the amount of trust moneys transferred;
 - (ii) an automated teller machine card is not used to make the transfer.
- (3)** If a mortgage brokerage or mortgage administrator transfers trust moneys by way of an electronic transfer in accordance with paragraph (2)(b) to an account to which the mortgage brokerage or mortgage administrator has not previously transferred trust moneys, the mortgage brokerage or mortgage administrator must:
- (a) within five days after the date of the transfer, obtain a confirmation from the recipient to whom the trust money was intended to be transferred that the trust money was received; and
 - (b) prepare a record that documents the date the confirmation was received by the mortgage brokerage or mortgage administrator and the name of the individual who provided the confirmation.

Deposit of trust money

- 53.** For the purposes of section 46 of the Act, every licence holder receiving trust money must, within two business days after its receipt, deposit the money into a trust account that is held with one of the following:
- (a) a bank authorized to accept deposits pursuant to the *Bank Act* (Canada);
 - (b) a credit union incorporated, continued or registered pursuant to the *Credit Unions Act*;
 - (c) a corporation authorized to accept deposits pursuant to the *Loan and Trust Companies Act*;
 - (d) A retail association as defined under the *Cooperative Credit Associations Act* (Canada).

PART 7 ANNUAL FILING REQUIREMENTS

Annual return

- 54.** For the purposes of section 49 of the Act, every licence holder must:
- (a) deliver to the Director an annual information return for the previous year in a form provided by the Director;
 - (b) must provide the annual return to the Director on or before October 1st of each year; and
 - (c) pay any required fee.
- 55. (1)** For the purposes of section 50 of the Act, every mortgage brokerage that did not hold an endorsement during the preceding fiscal year must provide a declaration to the Director that it did not hold any trust property on or before October 1st of each year.
- (2)** A declaration provided pursuant to section 50 of the Act must be in the form provided by the Director.

Annual financial statement

- 56. (1)** In this section:
- “auditor”** means a member in good standing of a recognized accounting profession that is regulated by an Act of Canada or any province or territory;
- “fiscal year”** means the fiscal year of the mortgage brokerage or mortgage administrator.
- (2)** The financial statement provided to the Director pursuant to section 51 of the Act must include:
- (a) a written certification as to the accuracy of the financial statement made by two directors of the mortgage brokerage or mortgage administrator;
 - (b) a report prepared by an auditor; and
 - (c) a report prepared by an auditor, pursuant to an engagement letter between the accountant and the mortgage brokerage or mortgage administrator that is in the form provided by the Director.

- (3) The financial statement mentioned in subsection (2) must be delivered to the Director no later than 120 days after the end of the fiscal year to which it relates.
- (4) No mortgage brokerage that has been granted an endorsement, and no mortgage administrator, will change its fiscal year if, as a result of the change, the fiscal year will be a period that exceeds 15 months.

PART 8 ADVERTISING AND COMMUNICATIONS

Advertising requirements

- 57. (1)** For the purposes of subsection 54(2) of the Act, an advertisement of a mortgage brokerage or mortgage administrator that advertises the business or any products or services offered by that business must contain:
- (a) a statement identifying the licence issued to the mortgage brokerage or mortgage administrator; and
 - (b) in the case of an advertisement for a mortgage brokerage that includes a reference to a particular mortgage broker or mortgage associate authorized to broker mortgages on its behalf, the name of the mortgage broker or mortgage associate as set out in his or her licence.
- (2)** For the purposes of subsection 54(3) of the Act, an advertisement of a mortgage broker or mortgage associate advertising any product or service offered by the mortgage broker or mortgage associate must contain a statement identifying the licence issued to the mortgage brokerage for which the mortgage broker or mortgage associate is authorized to act.

Correspondence requirements

- 58.** For the purposes of section 56 of the Act, every licensee must disclose the following information in correspondence and other written material prepared or used in the course of their licensed activities:
- (a) the name of the mortgage brokerage or mortgage administrator, as set out in the licence issued to the mortgage brokerage or mortgage administrator;
 - (b) a statement identifying the licence issued to the mortgage brokerage or mortgage administrator;
 - (c) if it includes a reference to a particular mortgage broker or mortgage associate authorized to broker mortgages on its behalf, the name of the mortgage broker or mortgage associate as set out on the licence issued to the mortgage broker or mortgage associate;
 - (d) if it is signed by or issued under the name of a mortgage broker or mortgage associate:
 - (i) a statement identifying the licence issued to the mortgage broker or mortgage associate; and
 - (ii) the name of the mortgage broker or mortgage associate as set out in the licence.

PART 9 EXEMPTIONS

59. The Director may grant an exemption from this Rule, in whole or in part, subject to the terms and conditions that may be imposed in the exemption.

**PART 10
TRANSITION**

60. (1) An applicant for a mortgage broker licence is exempt from the requirements in paragraph 4(2)(d) if the applicant:
- (i) demonstrates an equivalent combination of education and experience as required for a mortgage associate licence;
 - (ii) demonstrates relevant experience in the mortgage brokerage industry for at least 24 of the 36 months preceding the date of the application for a mortgage broker licence; and
 - (iii) undertakes to the Director to successfully complete an approved education program for mortgage brokers on or before **1 January 2016**, or 6 months following the availability of the approved education program in New Brunswick, whichever is later.
- (2) An applicant for a mortgage associate licence is exempt from the education requirement in subparagraph 4(3)(d) if the applicant undertakes to successfully complete an approved education program for mortgage associates on or before **1 January 2016**, or 6 months following the availability of the approved education program in New Brunswick, whichever is later.

**PART 11
COMING INTO FORCE**

This Rule comes into force on [insert effective date].



Annex B

FINANCIAL AND CONSUMER SERVICES COMMISSION RULE MB-002 MORTGAGE BROKERS FEES

PART 1 DEFINITIONS

1. (1) **Definitions** – In this Rule

“Act” means the *Mortgage Brokers Act*.

(2) The definitions contained in the Act apply to this Rule, unless the terms in question are defined in this Rule.

PART 2 FEES PAYABLE

2. (1) All fees set out in this Rule are payable to the Commission.

(2) The fees payable when an application for a licence is submitted to the Director are:

- (a) **\$600**, for a licence as a mortgage brokerage,
- (b) **\$300**, for a licence as a mortgage broker,
- (c) **\$300**, for a licence as a mortgage associate,
- (d) **\$600**, for a licence as a mortgage administrator.

(3) The fees payable when an application for an endorsement is submitted to the Director are **\$400**.

(4) The fees payable to maintain a licence are:

- (a) **\$600**, annually on [•], for a mortgage brokerage licence;
- (b) **\$300**, annually on [•], for a mortgage broker licence;
- (c) **\$300**, annually on [•], for a mortgage associate licence;
- (d) **\$600**, annually on [•], for a mortgage administrator licence.

(5) A person holding a licence in multiple classes shall submit the fee for each class of licence held.

- (6) The fee payable to maintain an endorsement is **\$300**, annually on [•],.
- (7) The fee for an exemption application is **\$300**.
- (8) The fee payable for each request to review an application on an expedited basis is **\$300**.
- (9) For the purposes of section 87 of the Act, the late fee payable is **\$100** for each document filed outside the prescribed time period.

**PART 3
RECOVERABLE FEES AND COSTS**

- 3. For a compliance review, the following fees and expenses are recoverable by the Commission under sections 58(8) of the Act:
 - (a) \$50 per hour for each employee of the Commission involved in the review,
 - (b) disbursements properly incurred by the Commission for a compliance review,
 - (c) fees paid or payable to an expert,
 - (d) disbursements properly incurred by an expert,
 - (e) fees paid or payable for legal services, and
 - (f) disbursements properly incurred in connection with the provision of legal services.

**PART 4
REFUNDS AND DISCRETIONARY FEE REDUCTION**

Refunds

- 4. The Director may, upon the application of the person who made the application or the filing, grant a refund of the fee paid on the making of the application or the filing or such part thereof as the Director considers fair and reasonable, where:
 - (a) an application for registration is abandoned;
 - (b) an application is incomplete or filed in error;
 - (c) a filing is incomplete or filed in error; or
 - (d) an application is withdrawn.

Discretionary fee reduction

- 5. (1) If the Commission considers it to be in the public interest, the Commission may order that any fee which it is required to charge:
 - (a) be varied by reducing the fee or cost payable; or
 - (b) does not apply.
- (2) If the Director considers it to be in the public interest, the Director may order that any fee which the Director is required to charge:
 - (a) be varied by reducing the fee or cost payable; or

(b) does not apply.

PART 5
EFFECTIVE DATE

6. This Rule comes into force on ●.



ANNEX C

**Amendments to
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. *Subsection 1(1) is amended by deleting the following definitions:***
 - (a) “mortgage”;
 - (b) “mortgage broker”.
- 3. *Part 2 is repealed.***
- 4. This instrument comes into force on [Insert date].**



ANNEX D

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

This Annexe 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 New Brunswick Securities 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 and Exemptions*;

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

“SN 32-701” means Staff Notice 32-701 *Exemptive Relief Applications from Registration Requirements*.

“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 2 MORTGAGE BROKERING ACTIVITIES AND SUITABILITY FOR REGISTRATION~~

~~**2(1) Suitability for registration** – To address potential conflicts of interest and to ensure that a registrant can discharge its responsibilities to its clients, LR 31-502 specifically prohibits a registered individual, whose principal regulator is New Brunswick, from acting as a mortgage broker, unless otherwise exempted. 31-103CP, while not specifically prohibiting this practice, does state that a regulator will look at other employment or partnerships when assessing a registrant’s suitability for registration.~~

~~Certain financial institutions, such as banks and certain referral activities are exempted from this requirement.~~

~~**2(2) Application for an exemption**—Commission staff will generally support an application for relief from the prohibition on mortgage brokering activities for an individual if the application conforms to the guidelines set out below:~~

- ~~• the application is made in accordance with SN 32-701~~
- ~~• the applicant can represent that:~~
 - ~~○ all mortgage brokering activity will be supervised and approved by the registered firm;~~
 - ~~○ policies and procedures are in place at the registered firm to prevent or minimize conflicts of interest; and~~
 - ~~○ policies and procedures are in place to prevent or minimize the misuse of personal information.~~

~~**2(3) Suitability generally**—While LR 31-502 specifically places a prohibition on mortgage brokering activities, the Executive Director may also prohibit other types of employment or partnerships where the Executive Director is of the opinion that such employment or partnership negatively affects a registrant's suitability for registration.~~

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.