

# FSRA RELEASES MORTGAGE BROKERING SUPERVISION PLAN FOR 2021-22 FOCUSING ON PRIVATE LENDING PRACTICES AND MORTGAGE ADMINISTRATION

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On July 23, 2021, the Financial Services Regulatory Authority ("**FSRA**") released their Mortgage Brokering Sector Supervision Plan 2021-2022 (Plan). The Plan, among other things, highlights the areas of supervision that FSRA will focus on for the 2021-2022 year.

Considering the current market environment and trends over the last fiscal year (including increased demand for housing, low interest rates, increased household debt, greater proportions of new mortgages with higher loan-to-income and loan-to-value ratios and the growth of the alternative or private lending market), FSRA will focus predominantly on the activities of mortgage brokerages engaged in private lending and mortgage administrators completing higher risk or complex mortgages (especially for non-sophisticated investors). The overarching goal of FSRA's supervision in these areas is to respond to market needs and demands, facilitate compliance, ensure consumers have adequate knowledge and protection with respect to their mortgage and mortgage investments and increase consumer confidence.

## Mortgage Brokerages

During its supervisory activities in 2020-2021, FSRA noted several instances of mortgage brokerages not having adequate procedures in place to update "know your lender" information, not having adequate procedures in place to review mortgage transactions where conflicts existed and failing to develop adequate procedures to document a borrower's suitability for private mortgages.

As a result, FSRA will focus their supervisory efforts on the activities of mortgage brokerages engaged in private lending in the residential property market.

The specific supervisory activities will include:

- ensuring that brokerages engaging in high volumes of private lending are suitable and are meeting disclosure obligations; and
- reviewing the business practices of brokerages deemed to have been operating inconsistently with

FSRA's expectations.

On the latter point, FSRA will evaluate these business practices to determine if they are appropriate in certain situations or if such practices might negatively impact consumers and need to cease. Such practices may involve communications (for example, failing to communicate the names of lenders to borrowers in the early stages in order to protect the privacy of the lender), documentation (for example, failing to document the assessment and decision as to whether a private loan is suitable for a particular borrower) and disclosure practices (for example, failing to periodically update "know your lender" information).

FSRA intends to publish best practices guidance for the industry based on their findings from the 2021-2022 supervisory period.

#### Mortgage Administrators

Mortgage administrators are expected to monitor circumstances that could impact mortgage performance, such as significant changes in risk to the underlying property and subsequent encumbrances on the property.

FSRA's supervision of mortgage administrators will continue to focus on increasing compliance with the *Mortgage Brokerages, Lenders and Administrators Act* ("**MBLAA**") and relevant FSRA guidance.

Last year's supervision activities revealed several instances of inadequate disclosure to investors about the status of projects funded by Non-Qualified Syndicated Mortgage Investments ("**NQSMI**")<sup>[1]</sup> (which are considered more complex) and how this funding impacts mortgage performance, as well as inadequate information included in the Mortgage Administration Agreement governing the administration of the mortgage.

The specific supervisory activities that FSRA will focus on in 2021-2022 include:

- examining mortgage administrators who complete higher risk and complex mortgages to ensure they are fulfilling their disclosure requirements, using discretion appropriately and complying with the requirements under the MBLAA and relevant FSRA guidance; and
- ensuring that investors are provided with adequate updates on project performance and market conditions that could impact their risk.

FSRA intends to share their findings from the 2021-2022 supervision year with the industry and consumers.

#### Other Areas

Along with the two main areas of supervision, FSRA also intends to focus on supporting principal brokers, regulating NQSMI transfers, rectifying unlicensed activities and increasing consumer awareness and education.

With respect to principal brokers, FSRA is in the process of analyzing the over 1,000 responses it received to a survey conducted last year. The information collected will allow FSRA to better understand the environment under which principal brokers operate and the compliance activities they carry out. So far, FSRA has identified several factors that could impact the effectiveness of a principal broker's role, including the relatively small amount of additional compliance resources available and the competing requirements of principal brokers' other activities (such as servicing clients and managing the brokerage). Once FSRA has fully analyzed the data, FSRA intends to publish guidance to support principal brokers in their supervisory role.

Other specific supervisory activities will include the following:

- continuing to regulate sales to sophisticated investors and controlling the administration of NQSMIs for all investors (including ensuring that sales to unsophisticated investors have moved to the OSC's jurisdiction);
- continuing to keep abreast of new business models in the mortgage sector and evaluating how such models may impact consumers;
- requiring immediate rectification for any new participants in the industry conducting business without a license; and
- educating consumers and increasing awareness with respect to the mortgage brokering sector. For the 2021-2022 FSRA intends to focus their education efforts on high-risk mortgage investments and the Mortgage Brokering Sector Code of Conduct.

FSRA also launched a mortgage brokering newsletter designed to help the industry stay informed about FSRA's views, activities and expectations of the mortgage brokering and administration sector and to collaborate with stakeholders.

Although certain oversight of NQSMIs was transferred to the Ontario Securities Commission (OSC) on July 1, 2021, FSRA will continue to regulate the administration of NQSMIs.

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### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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