

Consumer Credit Division

Licensing Requirements - Acquisition of Mortgages

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LICENSING REQUIREMENTS – ACQUISITION OF MORTGAGES

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ISSUE

Licensing requirements pursuant to *The Trust and Loan Corporations Act, 1997* (“Act”) for investment dealers, as defined in National Instrument 31-103 (NI 31-103), authorized to operate in Saskatchewan purchasing existing mortgages as part of the *National Housing Act* (Canada) Mortgage-Backed Securities (“NHA MBS”) program overseen by Canada Mortgage and Housing Corporation (“CMHC”).

BACKGROUND

CMHC is a Crown Corporation owned by the Canadian government.

CMHC describes the program as “NHA MBS are created when a CMHC Approved Seller brings together a pool of eligible mortgages for the purpose of transforming the mortgages into securities which can be sold to investors. Approved sellers are typically mortgage lenders such as banks, trust companies, and other types of lending institutions.”

An outcome of this program is that mortgage lenders are better able to manage liquidity and capital, resulting in an increased supply of low cost mortgage funds.

Participants in the program include trust, loan, and financing corporations as defined in the Act, banks, credit unions, and investment dealers.

Requirements of the Act

Section 2(1)(i) of the Act defines a financing corporation as:

- (i) financing corporation means a body corporate that does not accept deposits and that:
 - (i) carries on the business of lending money;
 - (ii) deals in or purchases:
 - (A) mortgages on real property;
 - (B) security interests within the meaning of *The Personal Property Security Act, 1993*; or
 - (C) accounts receivable;
 - (iii) has as its primary business the granting of revolving credit; or
 - (iv) is one of a class of businesses prescribed in the regulations as a financing corporation;

Section 17 of the Act establishes licensing requirements:

17(1) No person shall carry on business or hold himself, herself or itself out as carrying on business as:

(a) a financing corporation without a licence authorizing the person to carry on business as a financing corporation;

...

Section 16 of the Act sets out exemptions from the licensing requirements for banks, licensed insurers, and Saskatchewan credit unions. Section 16 of the Act does not set out an express exemption for investment dealers.

NI 31-103 requires authorized investment dealers to be members of, and regulated by, the Investment Industry Regulatory Organization of Canada (IIROC).

Objective of the Act's Licensing Regime

In administering the financing corporation provisions of the Act, the Superintendent of Financial Institutions (Superintendent) administers consumer protection legislation to protect Saskatchewan borrowers from harms. These harms arise in two broad categories: (1) harms arising in the creation of the mortgage, such as illegal interest rates (i.e. s.347 of the *Criminal Code* (Canada)) and inappropriate disclosure requirements pursuant to *The Cost of Credit Disclosure Act, 2002*; and (2) harms arising from the inappropriate administration of the mortgage once it has been created.

Application of the Act's Licensing Regime

In the NHA MBS program, investment dealers acquire interests in Saskatchewan mortgages with the objective of pooling these mortgages and securitizing them to investors. These mortgages were originated by lenders licensed under the Act, or exempt from licensing.

Investment dealers who are not licensed or expressly exempted from the licensing requirement may be viewed as purchasing or dealing in mortgages on real property.

The Act's licensing objectives address consumer risks arising in the creation of the mortgage agreement and the ongoing servicing of these mortgages. As investment dealers obtain existing mortgages originated by licensed lenders or lenders exempt from the Act, the regulatory concern shifts to the ongoing servicing (i.e. administration) of the mortgages.

The Mortgage Brokerages and Mortgage Administrators Act (MBMA) establishes licensing requirements for mortgage administrators and sets exemptions from licensing requirements.

Investment dealers have described to the Superintendent that they do not carry on the business of administering mortgages; rather, the administration of the acquired mortgages is carried out by either the originating lender, an administrator licensed pursuant to the MBMA, or by a person exempt from the administrator licensing requirement of the MBMA.

Accordingly, investment dealers acquiring Saskatchewan mortgages who maintain the ongoing administration of the mortgages with an authorized mortgage administrator or person exempt from the mortgage administrator licensing requirement are not, as a result of only that activity, posing material risks to Saskatchewan borrowers. From a consumer risk perspective, they are akin to passive investors, an activity that the financing corporation regulatory framework is not intended to regulate.

An established principle of legislative interpretation is that Acts need to be interpreted in light of their purpose, intent and context. As described above, the purpose of the Act as it relates to financing corporations is to protect Saskatchewan borrowers in the contexts of the creation of mortgages and the subsequent and ongoing administration of the mortgages. In regards to investment dealers involved in the NHA MBS Program – where the ongoing administration of the underlying mortgages is with licensed or exempted mortgage administrators under *The Mortgage Brokerages and Mortgage Administrators Act (Saskatchewan)* – such investment dealers, when viewed in the context of the purpose and objective of the Act, are not considered to be in the business of dealing in or purchasing mortgages within the meaning of subclause 2(1)(i)(ii) of the Act.

CONCLUSION

The financing corporation licensing requirement does not apply to an authorized investment dealer that purchases Saskatchewan mortgages pursuant to the NHA MBS program when the administration of the mortgages remains with either an authorized mortgage administrator or a person exempt from that requirement.