

Guidance

Interpretation

Approach

Information

Decision



Effective date: [TBD]

Identifier: No. MB0053INT

Proposed Guidance: Mortgage Brokerage and Principal Broker responsibilities to ensure compliance and fair consumer outcomes

Purpose

This Interpretation Guidance (“**Guidance**”) outlines the Financial Services Regulatory Authority of Ontario’s (“**FSRA**”) interpretation of a brokerage’s and principal broker’s statutory duties to ensure compliance with statutory requirements and fair outcomes for consumers (borrowers and lenders/investors) through strong conduct. These duties arise out of subsection 7(5) of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (“**Act**”) and section 2 of Ontario Regulation 410/07 (“**O. Reg. 410/07**”), respectively.

More specifically, this Guidance sets out:

1. FSRA’s interpretation of the relevant factors that inform whether a brokerage is complying with their statutory duty under section 7(5) of the *Act* to ensure that every mortgage broker and mortgage agent who is authorized to deal in mortgages or trade in mortgages on behalf of the licensee complies with the applicable requirements established under the *Act*.

FSRA’s interpretation of this requirement emphasizes that brokerages should assess the suitability of their principal broker to determine whether the principal broker can comply with their statutory duties, and as a result the brokerage should:

- a. ensure the individual has the integrity and professional competency – including qualifications and experience – to be able to properly discharge the obligations of a principal broker
 - b. ensure the principal broker is given the necessary authority, resources and independence to be able to properly discharge their statutory duties
2. FSRA’s interpretation of the relevant factors that inform whether a principal broker is complying with their statutory duty under section 2 of O. Reg. 410/07 to take reasonable steps to ensure that the brokerage, and each broker and agent authorized to deal or trade in mortgages on its behalf, complies with every requirement established under the *Act*. FSRA emphasizes that compliance with this “reasonable steps” requirement is necessary to prevent poor or unfair outcomes for consumers and to ensure compliance with the *Act* and the regulations.

FSRA uses a principles-based and outcomes-focused interpretation of these statutory requirements aimed at preventing poor or unfair consumer outcomes and promoting a strong conduct and compliance culture within the brokerage. Misconduct by an agent, broker, principal broker and/or brokerage or failure to achieve these consumer protection outcomes is indicative, though not determinative, of non-compliance with these statutory requirements.

Scope

This Guidance applies to:

- Mortgage brokers that are principal brokers
- Mortgage brokerages

It is relevant for:

- Mortgage brokers
- Mortgage agents
- Brokerage directors, officers and partners (DOPs), management and others involved in the day-to-day operations of the brokerage

Rationale and background

FSRA mandate

In accordance with FSRA's objects, FSRA supervises and regulates the mortgage brokering sector to:

- contribute to public confidence in the mortgage brokering sector
- promote high standards of business conduct
- protect the rights and interests of consumers

A key objective of FSRA's oversight of the mortgage brokering sector is to ensure fair treatment and outcomes for consumers. This requires a strong conduct and compliance culture at a brokerage. A strong conduct and compliance culture refers to a brokerage's norms, attitudes and behaviours with respect to treatment of and outcomes for their clients (e.g., brokerage takes actions and makes decisions that will not deliver poor or unfair outcomes for its clients). It is driven by the owners, directors, officers and partners of the brokerage and the principal broker and assisted by effective support from the brokerage's control functions (e.g., regulatory compliance staff) where applicable. A brokerage's conduct culture impacts the risk of misconduct that can lead to poor or unfair outcomes for customers.

Brokerages and their principal brokers have obligations to ensure fair treatment and outcomes for consumers (e.g., consumers receive suitable product recommendations, appropriate disclosure).

Based on the results of a supervisory survey targeted at principal brokers,^[1] FSRA is concerned that some principal brokers are not as effective as they could be in ensuring fair treatment of consumers by their brokerages, brokers and agents, regardless of whether a principal broker may be found to be complying with their duties outlined in section 2 of O. Reg. 410/07.

Through properly discharging their statutory duties, principal brokers, regardless of whether they operate as owners of the brokerage or as part of the brokerage's control function, play an important role in preventing poor or unfair outcomes for consumers by establishing a strong conduct and compliance culture for their brokerage, brokers and agents.

FSRA considers several factors to determine whether a brokerage and its principal broker properly discharges their statutory duties, including the extent to which a brokerage ensures that a principal broker:

- has integrity
- meets a standard level of professional competence
- maintains independence to operate on their own initiative, without improper influence from other parts of the business, which necessitates:
 - having sufficient authority to make decisions on the brokerage's behalf

¹ FSRA, "[Principal Broker Supervision](#)" November 2020.

FSRA surveyed 1,202 PBs to gather information about their supervisory approaches, oversight, authority, and resources. There was an 81 per cent response rate to the survey. The survey responses indicated that the supervision and compliance activities of PBs varied significantly.

Only one-half of the PBs at brokerages with over 100 licensees had the authority to influence conduct and compliance at their brokerages. Some PBs also faced challenges with limited resources to effectively carry out their duties and difficulty implementing their decisions regarding compliance issues without the approval/support of the brokerage's owners. The survey results showed that PBs spend around one-third of their time on compliance-focused activities, with the rest of their time split between brokering, personnel management, and administration. FSRA also noted that some brokerages failed to recognize the critical role PBs play in ensuring compliance as 108 brokerages in 2021 did not have a designated licensed PB.

- having sufficient resources to ensure brokers, agents and the brokerage's compliance

FSRA's view is supported by international regulatory literature and standards,^[2] which suggest the following features are integral to mitigating misconduct, or preventing poor or unfair outcomes for consumers, by enabling the strong conduct and compliance culture of brokerages:

- Senior leadership at firms should articulate the firm's vision that will guide appropriate behavior,^[3] and take actions to mitigate the risk of misconduct.^[4]
- Firms should ensure individuals who are assigned key responsibilities (such as chief compliance officers) are suitable based on their integrity and competence.^[5]
- Those accountable for compliance should have the necessary authority and resources,^[6] independence and ability to act^[7] in order to properly discharge their duties.

Interpretation

1. Interpretation of section 7(5) under the Act

Subsection 7(5) of the Act establishes a central requirement for licensed brokerages:

7 (5) The licensee shall ensure that every mortgage broker and mortgage agent who is authorized to deal in mortgages or trade in mortgages on behalf of the licensee complies with the applicable requirements established under this Act.

² See e.g., Financial Stability Board, "[Strengthening Governance Frameworks to Mitigate Misconduct Risk: A Toolkit for Firms and Supervisors](#)" April 2018 ("**FSB Report**"); and International Organization of Securities Commissions, "[Compliance Function at Market Intermediaries](#)" March 2006 ("**IOSCO Report**")

³ FSB Report, Tool 1: Senior leadership of the firm articulate desired cultural features that mitigate the risk of misconduct.

⁴ FSB Report, Tool 3: Act to shift behavioral norms to mitigate cultural drivers of misconduct.

⁵ FSB Report, Tool 10: Assess the suitability of individuals assigned key responsibilities.

See also IOSCO Report, Topic 4 ("Qualification of Compliance Personnel").

⁶ IOSCO Report, Topic 1 ("Establishing a compliance function"), "(a) Means for Implementation".

⁷ IOSCO Report, Topic 3 (Independence and Ability to Act).

Principal brokers have a similar “**duty of compliance**” as statutorily required under section 2 of O. Reg. 410/07:

2 (1) The principal broker of a brokerage shall take reasonable steps to ensure that the brokerage, and each broker and agent authorized to deal or trade in mortgages on its behalf, complies with every requirement established under the Act.

2 (2) The principal broker shall ensure that the brokerage takes reasonable steps to deal with any contravention of a requirement established under the Act by the brokerage or by a broker or agent authorized to deal or trade in mortgages on its behalf.

FSRA’s outcomes-focused interpretation of section 7(5) of the *Act* is such that a brokerage is required to ensure that a principal broker can comply with, among other requirements under the *Act*, their duty of compliance outlined in section 2 of O. Reg 410/07. FSRA’s view is that a principal broker that is supported by their brokerage to properly discharge their statutory duty of compliance, by promoting a strong conduct and compliance culture, will reduce the risk of poor or unfair outcomes for consumers.

When deciding if a brokerage does enough to ensure their principal broker properly discharges their duty of compliance, and thus comply with section 7(5) of the *Act*, FSRA takes into a consideration the non-exhaustive factors described below. The more likely that a brokerage can demonstrate they assess the following factors when ensuring principal brokers can properly discharge their duty of compliance, the more likely the brokerage will be found to be in compliance with section 7(5) of the *Act*.

A brokerage that fails to satisfy its obligations as set out under s.7(5) of the *Act*, including the failure to ensure that its principal broker can properly discharge their duty of compliance, may be subject to sanctions.

The more a brokerage can demonstrate their consumers are being treated fairly (e.g., their consumers are receiving suitable mortgage products/ advice based on their needs and circumstances, and understand the features and implications of the products which are being recommended to them), the more likely FSRA will determine the brokerage and its agents and brokers are complying with the *Act*.

Several factors may indicate that a brokerage is complying with section 7(5) of the *Act*, including whether the brokerage assesses, both prior to designating an individual as the principal broker and also on an ongoing basis during the principal broker's employment:

1.1 Whether the principal broker acts with integrity:

Failure to assess an individual's integrity may result in the designation of a principal broker that is unlikely or unable to properly discharge their duty of compliance, leading to poor or unfair outcomes for consumers or contravention of statutory requirements.

Relevant considerations as to whether a principal broker acts or can act with integrity include whether the individual:

- acts ethically, honestly, and fairly
- interacts with others in an authentic, candid, and transparent manner
- puts the interests of customers first and appropriately manages conflicts of interest

1.2 Whether the principal broker demonstrates professional competence.

Determining whether a principal broker is professionally competent is central to ensuring the principal broker can properly discharge their duty of compliance. Failure to determine a principal broker's professional competence increases the likelihood of poor or unfair outcomes for consumers or contravention of statutory requirements.

Several factors may be relevant to a brokerage when determining a principal broker's professional competence, including but not limited to an assessment of the individual's:

- qualifications and credentials
- professional experience
- comprehension of relevant statutory requirements
- effectiveness in overseeing agents and brokers

1.3 Whether the principal broker has the necessary independence to properly discharge their statutory duties.

A principal broker has independence only when they can operate and perform their duties without improper or undue influence by other parts of the business.^[8] Improper influence can be mitigated by a brokerage by providing the principal broker with sufficient resources, status, and authority to perform their roles and satisfy their regulatory responsibilities, proportionate to the nature, size, complexity, operations and risk profile of the brokerage.

In circumstances where the principal broker is not an owner, director, officer or partner, that is not part of the executive management team that has ultimate authority to make business decisions for the brokerage, in order to best ensure that a principal broker is equipped with the necessary independence to properly discharge their statutory duties, the brokerage should ensure the principal broker has access to all levels of the brokerage, which may include the brokerage:

- facilitating channels for the principal broker to communicate with any licensed or unlicensed individuals delivering products and services to customers
- giving the principal broker unrestricted access to the brokerage's records or information

⁸ IOSCO Report, Topic 3 (Independence and Ability to Act).

- supporting the principal broker in conducting investigations or reviews of the conduct of the brokerage and its agents and brokers
- giving the principal broker the authority to determine how misconduct or regulatory breaches should be rectified

The more a brokerage can demonstrate they have assessed the indicators above, the more likely that the brokerage is in compliance with section 7(5) of the *Act*.

2. Interpretation of section 2 of O. Reg. 410/07

As mentioned above, subsection 2(1) of O. Reg. 410/07 outlines a principal broker's duty to take reasonable steps to ensure that the brokerage, and each broker and agent authorized to deal or trade in mortgages on its behalf, complies with every requirement established under the *Act*.

This is also known as a principal broker's "duty of compliance". A principal broker that properly discharges their duty of compliance plays an important role in ensuring fair treatment outcomes for consumers by supporting strong conduct and compliance culture at their brokerage.

FSRA considers a non-exhaustive list of factors when determining if a principal broker has taken reasonable steps and thus properly discharged their duty of compliance. Failure to achieve these factors/indicators may be indicative of a principal broker's non-compliance with their statutory duty of compliance.

In order to properly discharge their statutory duty of compliance under section 2 of O. Reg. 410/07, FSRA considers whether a principal broker achieves the following indicators:

2.1 Licensed individuals hired by the brokerage are suitable and proficient to deliver products and services to customers.

Mortgage brokers and agents who are unsuitable or otherwise lack proficiency in their roles may result in the recommendation of unsuitable mortgage products to consumers,^[9] or other poor or unfair outcomes for consumers.

Consequently, when evaluating if a principal broker has taken reasonable steps to ensure that the brokerage, and each broker and agent authorized to deal or trade in mortgages on its behalf complies with requirements under the *Act*, FSRA considers the extent to which the principal broker has determined whether the licensed individuals of the brokerage are suitable and proficient to deliver products and services to customers.

Several indicators are relevant to demonstrate whether a principal broker is achieving this outcome, including but not limited to:

- Recruitment and hiring practices that formally assess an individual’s professional competence (including compliance with education requirements) and conduct history
- Leveraging multiple sources of available information to make recruitment decisions, including but not limited to consideration of:
 - previous brokerages / employers
 - background check
 - regulator websites
 - criminal check

⁹ Section 24(1) of Ontario Regulation 188/08 requires brokerages to “take reasonable steps to ensure that any mortgage or investment in a mortgage that it presents for the consideration of a borrower, lender or investor, as the case may be, is suitable for the borrower[...].”

See also [Mortgage Product Suitability Guidance](#).

2.2 Appropriate onboarding and periodic training are provided for licensed individuals to ensure ongoing suitability and proficiency to deliver products and services to consumers.

Determining whether the staff of the brokerage remain suitable and proficient on an ongoing basis to deliver products and services to customers is an important outcome FSRA looks for when determining if a principal broker has taken reasonable steps to properly discharge its duty of compliance.

New circumstances – including evolving market conditions or a change in regulatory requirements – may render obsolete any initial training provided to licensed individuals, and result in the brokerage, its brokers, or its agents being unsuitable to deliver products to consumers.

Several indicators are relevant to demonstrate how a principal broker is achieving the outcome of appropriate onboarding and periodic training being provided to licensed individuals, including but not limited to:

- Initial and ongoing training is provided to staff proportionate to the experience of licensed individuals to communicate conduct expectations and to ensure they remain suitable and proficient to deliver products and services.
- Initial and ongoing training is provided to staff when the business of the brokerage evolves or when new products are introduced to ensure they remain suitable and proficient to deliver products and services.

2.3 Supervision of licensed individuals to ensure ongoing suitability and proficiency to deliver products and services to consumers.

Related to the above outcomes, supervision of the staff of the brokerage to ensure they remain suitable and proficient on an ongoing basis to deliver products and services to customers is a central consideration FSRA looks to when determining if a principal broker has taken reasonable steps to properly discharge its statutory duties. Supervision should be commensurate to a licensed individual's experience, conduct, performance, and responsive to customer feedback.

Several indicators are relevant to demonstrate how a principal broker is achieving the outcome of appropriate supervision of licensed individuals, including but not limited to:

- whether the principal broker periodically monitors and assesses the conduct of licensed individuals to determine if the conduct is resulting in poor or unfair outcomes for consumers or breaches of regulatory requirement
- whether the principal broker actively takes steps to rectify any actual or potential misconduct or regulatory breaches (e.g., further training, enhanced supervision, discipline or termination)
- whether the principal broker ensures their licensed individuals meet the specified education requirements, e.g. continuing education
- where a brokerage relies on teams to solicit and service clients, or relies on team leads to hire and manage the brokers' and agents' activities under the teams, whether the principal broker:
 - monitors the formation of teams
 - monitors the hiring, onboarding and supervision of team members
 - effectively ensures established conduct and compliance expectations are understood and implemented by team leads and their team members
- whether the principal broker reviews compensation arrangements for licensed individuals (including those that are part of a team), and takes steps to
 - mitigate any resulting potential conflicts of interest
 - disincentivize conduct that would lead to poor or unfair outcomes for consumers or regulatory breaches

The more a principal broker can demonstrate they are achieving the indicators above, the more likely FSRA will determine the principal broker has taken reasonable steps to ensure compliance and is properly discharging their duty under section 2 of O. Reg. 410/07.

Supervision and enforcement

Brokerages and principal brokers must comply with the *Act* and its regulations, including O. Reg. 410/07 as outlined in this Interpretation Guidance.

Failure to comply may result in enforcement or supervisory action including the imposition of licence conditions, suspension or revocation, or administrative monetary penalties, and, if convicted of an offence under the MBLAA, may result in a fine, imprisonment, or both.

Effective date and future review

This guidance became effective on [TBD] and will be reviewed no later than [TBD].

About this Guidance

This document is consistent with [FSRA's Guidance Framework](#).

Interpretation Guidance sets out FSRA's view of requirements under its legislative mandate (i.e., legislation, regulations and rules), so that non-compliance can lead to enforcement or supervisory action.

Reference

- FSRA Guidance: Transparent Communication of FSRA Enforcement Action [No. GR0011APP](#)
- FSRA's website: [Enforcement actions](#): A list of cease and desist orders, enforcement actions and warning notices.
- [MBRCC Code of Conduct for the Mortgage Brokering Sector](#)

Effective date: [TBD]