



November 2, 2021

Huston Loke
Executive Vice President, Market Conduct
Financial Services Regulatory Authority of Ontario
25 Sheppard Avenue West, Suite 100
Toronto, ON M2N 6S6

Dear Mr. Loke:

Re: FSRA's Consultation on Proposed FY2022-2023 Statement of Priorities (ID 2021-016)

Thank you for the opportunity to comment on FSRA's [proposed Statement of Priorities](#) (SOP). Firstly, on behalf of MPC, I remain appreciative of the collaborative approach your team has taken in ensuring our industry remains informed. We do feel we are contributing to your efforts to streamline and modernize financial regulatory processes in Ontario. As a result of our positive relationship, we are able to effectively communicate to MPC members what FSRA as a regulator needs from Ontario's mortgage brokering community, and you are attentive to and understanding of our needs, minimizing burden. This mutual understanding and collaboration is what we hoped for when FSRA began its role in 2018; we are optimistic this level of mutual respect and understanding will continue.

Regarding the Mortgage Brokering section of the SOP, we are pleased to see the evolution of the MBLAA review, from our initial consultations with the Ministry of Finance, to the Ministry's adoption of many of [our recommendations](#), and then on to FSRA's implementation of the [review's recommendations](#). We are supportive of your key deliverables, designed to enhance public confidence in mortgage brokering. Noteworthy to some members would be the introduction of "a licensing scheme with enhanced proficiency requirements that better reflect the unique practices of different segments of the mortgage market." Members have told us that brokers and brokerages that choose not to deal in more intricate mortgage products should have less stringent licensing requirements than those brokers/brokerages that do. We look forward to assisting in this enhancement of educational requirements.

We must note that while we are supportive and understanding of your stated priorities, we trust that FSRA will not unduly burden our members and the community with red tape and additional expense, and that you will continue to consult with us as your plans progress.

Additionally, there is an issue of concern regarding Errors & Omission (E&O) insurance, which MPC hopes can be addressed by way of written guidance from FSRA. It has been previously mentioned to members of your staff and to MBRCC, but the issue is one that still, I believe, merits clarification.

A theoretical example: An agent is involved in a poor transaction, perhaps a private deal that eventually defaults. The agent was with Brokerage A when the transaction was finalized, funded, and the commissions were paid. The agent subsequently moves to Brokerage B. The agent has consistently had appropriate E&O insurance, originally through Brokerage A then Brokerage B, and has been assessed his costs for the insurance by the respective brokerage. When the default occurs, after the agent has moved to Brokerage B, an investor sues the agent.



Because Mortgage Brokerage E+O policies are issued on a “claims made” basis, the date of the mortgage issuance that spurs the claim is irrelevant; the policy covering the agent/broker being sued at the time the suit is brought is the one that responds. In the example above, the policy covering Brokerage B would respond to protect the consumer against any potential wrongdoing of the agent while conducting business at Brokerage A. This is problematic in that the brokerage and principal broker who ultimately wear the loss experience and increased premium costs would have had no direct oversight of the transaction in question (and therefore no ability to correct the issues), nor received any compensation or commission. This practice also has the potential to encourage poorly run brokerages to simply eject problem agents rather than educate them. If the brokerage was to uncover any poor practices, they understand their brokerage reputation will not be impacted by any potential future claims.

MPC understands the need for claims made coverage, since it is a preferable protection for consumers. However, we would suggest that the priority of insurer liability and claim responsibility be clarified to stipulate that, should the policy that was covering the agent at the time the problematic mortgage was funded is still in force, that policy should bear the responsibility to respond in the event of a claim. This clarification would reinforce the obligation of a principal broker to oversee all transactions and fundings, and assist E+O insurers to better identify, rate, and price appropriately those brokerages whose now more accurately assigned loss ratios demonstrate an increased risk of a claim. If that policy is no longer in force due to a brokerage ceasing business or having been sold, then the policy providing coverage for the agent at the time of the suit should respond.

Our ask is for FSRA to issue guidance to the industry, and specifically to the insurers currently providing coverage. This guidance would outline that, in the event the policy that was covering the agent’s/broker’s activity that is the subject of a suit is still in force when he or she is sued, that policy should be the responding policy.

On behalf of our over 8,800 members in Ontario, we wish FSRA success and look forward to its next steps.

Sincerely,

A handwritten signature in blue ink, appearing to be 'P. Taylor', with a long horizontal flourish extending to the right.

Mortgage Professionals Canada
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