



August 29, 2016

Michael McTavish
Managing Director, Mortgage Brokers
Financial Institutions Commission of British Columbia
2800 - 555 West Hastings
Vancouver BC V6B 4N6

Dear Mr. McTavish,

On behalf of our 11,500 mortgage industry members, I would like to thank you for sharing FICOM's draft proposed bulletin outlining the expectations of a broker's disclosure requirements in a mortgage transaction. We appreciate the opportunity to once again provide stakeholder input prior to the distribution of a finalized document to the industry. We value our relationship with FICOM and the open discourse it affords each of us.

General Comments

We are disappointed that the industry consultation FICOM conducted has seemingly not altered FICOM's focus in any way. The issue being addressed is the consumer's lack of understanding of a broker's potential conflict of interest in a mortgage transaction. Numerous industry participants expressed concern with FICOM's initial proposed methodology and provided alternative and superior solutions that would empower a consumer to determine if a broker was acting in his or her best interest. There are difficulties, and in some cases impossibilities, in expressing in monetary terms, the possible compensation that a broker and brokerage have the potential to earn.

Mortgage Professionals Canada is of the opinion that FICOM's disclosure requirements will be detrimental to the very industry that is responsible for helping BC consumers save millions of dollars on their mortgage interest payments. The introduction of the disclosure requirements as described will remove competition within the mortgage broker channel and therefore, reduce its competitive position in the industry. Consumers in the province will ultimately end up paying more if the prescribed disclosure protocols are introduced. The effect of these changes is clearly contrary to public interest.

Not only will the disclosure requirements be introduced in an unequitable manner across all industry participants, but also, and perhaps more troublingly, the proposed guidelines call for transparency of broker-lender financial agreements, and brokerage/sub-broker compensation agreements which will directly impact the competitive position of lenders and brokerages within the channel itself. We have concerns about the general legality of this requirement which are addressed in further detail below.

We would much rather have seen the introduction of alternative consumer protections in British Columbia that exist in other parts of the country. Mandatory errors and omissions insurance, for example, would provide direct and immediate consumer protection that is not currently enforced. Similarly,

disclosure requirements used in Ontario and Saskatchewan would meet the needs of BC consumers as well as satisfy FICOM's concerns without creating legal and competitive challenges to regulated industry participants. Harmonized disclosure requirements would also assist national mortgage industry operations to comply with regulations more easily. FICOM's chosen direction creates continued and complicated disruption of frameworks across the country. This seems to contravene the objectives of the Mortgage Broker Regulators' Council of Canada.

In addition to the aforementioned comments, we also have the following specific concerns:

Brokerage Transparency of Lender Agreements

In the draft bulletin, FICOM has chosen to make the difficult disclosure issues the responsibility of the brokerage. Our first impression was that this would put BC brokerages in a no-win situation, i.e. do they comply with FICOM and disclose all compensation arrangements with their lender partners to their brokers, or honour the confidentiality agreements within these lender contracts and potentially put their brokers in contravention of FICOM's requirements.

When we raised this issue early on, FICOM implied that the terms of a broker-lender contract were not its concern. FICOM further suggested that, since it is not possible to operate in a way that makes an agreement unlawful, any contract that currently precludes a brokerage from fulfilling its obligations under the new guidelines would need to be renegotiated and made lawful.

It could be argued that FICOM is indirectly amending the Act and/or its Regulations by enforcing this interpretation of Form 10 - an ability it is not empowered with under the Act. Neither the Act nor the Regulations in BC, or any other jurisdiction in Canada for that matter, state the requirement for the financial details of lender-brokerage contracts to be transparent to sub-brokers or end consumers. Should FICOM find a brokerage or broker to be in contravention of the disclosure requirements by virtue of not disclosing details that are contractually protected through confidentiality covenants, Mortgage Professionals Canada suggests such a finding could be legally challenged. A decision of this nature by FICOM would call into question the legality of the broker-lender contract and FICOM's authority to require the disclosure. Since neither the Act nor the Regulations stipulate the disclosures as required in the draft interpretation bulletin, the question of whether a bulletin introduces requirements of regulatory status would need to be answered. Our position at this time is that it would not. As such, the contracts that were legally drawn up and include the confidentiality provisions would supercede the guidelines introduced through the bulletin that are not, in and of themselves, statutory in nature.

We suggest specifically revisiting this requirement within the bulletin. Mortgage Professionals Canada does support increased and meaningful disclosure to protect consumers. We believe however, that this particular requirement would be seen as anticompetitive and legally unenforceable. In addition, its introduction would add significant business constraints to all sectors of the mortgage industry who originate mortgages through brokers in BC. Negotiating (or renegotiating) compensation contracts with a requirement of full contractual disclosure removes these businesses' ability to create entrepreneurial compensation structures. This is unequivocally anticompetitive and the practical outcome would lead to standardizing all compensation agreements.

The indirect result of this would, once again, see consumers ultimately paying more for their mortgage. Lenders would practically be precluded from entering into unique arrangements allowing for performance rewards that could be passed along to the consumer.

We are currently awaiting additional materials from our legal counsel regarding the legality of the requirement. We will share any additional comments or feedback we receive as soon as we have them. As stated, our desire is for further discussion specific to this issue prior to the release of the final document to the industry.

Disclosure of Interest as a Dollar Amount

We have several concerns related to the requirement to disclose interest in a transaction being applied to exact dollar compensation. As we indicated, and likely the majority of our industry colleagues have echoed, it is unfeasible to accurately provide a specific dollar amount to reflect a broker or brokerage's interest in a transaction prior to signing the commitment letter and actually releasing the funds. Even with the traditional finder's fee or origination commission, there are many variables in the valuation that make exactness difficult. The proposed draft suggests some leniency, however, the concern we have is less about a compliance audit and more about the potential liability it creates for brokerages. Once these requirements are enacted, we anticipate consumers will expect, and demand, ultimate accuracy.

For volume commitments and efficiency bonuses or equivalent mechanisms, some brokers are not privy to the calculation details, and most will be unaware of any corporate bonuses or marketing cost sharing arrangements which are typically contained in confidential agreements between the network and brokerage or the lender and the brokerage. A franchisor or network brokerage will have an arrangement with the brokerage which is also national in scope and not limited to mortgages originated in BC, further complicating the calculation as these agreements are generally based upon aggregated business volume numbers. The brokerage may or may not have a separate and distinct compensation bonus structure payable to the individual broker. Because of this, disclosure of agreement terms will cause significant concern to the brokerage.

Variation of Authority and Inequitable Application of Requirements

Franchisors are not currently subject to the same requirements as licensed brokerages, even though the financial terms of contracts between lenders and brokers and lenders and franchisors are, for all intents and purposes, the same. Licensed brokerages are therefore being penalized by the increased transparency requirement and suffering a significant competitive disadvantage to franchisors over whom FICOM has no authority. Once brokerages discover they can complete a Form 10 without disclosing dollar amounts for franchises (by virtue of the fact that FICOM cannot compel the franchisor to disclose its financial arrangements), brokerages stand to lose many of their contracted brokers who would prefer a simpler compliance requirement.

Other Practical Concerns for Brokers Include:

Free-form Text Box

- By providing a free-form text box only, the onus of proper disclosure is much more difficult as opposed to having a menu of pre-determined text to select from. Free-form text boxes should only be available in the case of an exception or extenuating circumstance which may require further explanation.
- Free-form text boxes would also encumber a FICOM audit as an auditor would be required to interpret the disclosure wording and the context in which it was written which could prove extremely cumbersome and open to misunderstanding or misinterpretation.
- The same issues would occur for an internal audit of a brokerage causing unnecessary frustration with the process of undertaking a proper audit of its people. This would then further defeat the purpose of what FICOM is trying to achieve.
- The demographics of BC, like the rest of Canada, are very diverse. There are many mortgage consumers and mortgage professionals whose first language is not English. The proposed form requires a broker to correctly and succinctly disclose important information to their clients. However, due to language variances, there is a risk of miscommunication by the broker to the client, or vice versa, especially when something as seemingly minor as a misplaced comma can significantly change the meaning of a sentence.

Additional Questions to Address

- If a lender provides incentives to a brokerage for their business as a whole, is this really an interest in a transaction? Since this is a monetary amount, how is the brokerage to provide advice on how to complete the form given that the amount may be associated with hundreds or thousands of transactions as a whole?
- The draft states that Form 10 must be provided to the lender. If the lender does not require it, can this requirement be waived?
- Finally, the fourth paragraph of the draft bulletin states, “Although Brokerages and Individual Brokers are both required to provide disclosure when a conflict of interest exists...”. This implies that disclosure is not required where a conflict of interest does not exist. Some lenders are licensed as brokerages but specifically represent the funding of the transaction and not the borrower’s interest. How is this to be stated on the form? If a brokerage indicates in all transactions that they are representatives of the lender and not the borrower, are they also able to exercise an exemption to this requirement?

Conclusion

Mortgage Professionals Canada has many concerns with the draft bulletin as noted above. We would therefore ask for additional consultation with FICOM and the industry to address the issues we have

identified. We do not feel the draft bulletin is in an appropriate format to be released and we expect a considerable amount of resistance from the industry as a whole if it is presented in its current state.

We strongly support transparency that empowers consumers with the ability to make informed decisions. We appreciate that for most Canadians, their largest investment is their home, and its financing is one of the most important decisions of their lives. This is precisely why the proposed requirements stated within the draft bulletin should be reconsidered with a view to providing meaningful disclosure that is in line with those of other jurisdictions in Canada. We must look at ways to empower consumers rather than confuse them.

We look forward to educating our BC members with any new compliance requirements and to being a part of the creation and dissemination of associated materials as necessary.

Sincerely,



Paul Taylor
President and CEO
Mortgage Professionals Canada



Jared Dreyer
Chair of the Board



Dan Pultr
BC Director



Dustan Woodhouse
BC Director

CC: Chris Carter, FICOM