



# **Report on FSCO's Compliance Reviews Of Mortgage Administrators**

**Financial Services Commission of Ontario  
Licensing and Market Conduct Division**

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## EXECUTIVE SUMMARY

The Financial Services Commission of Ontario (FSCO) has adopted a risk-based approach to regulation, which prioritizes on allocating valuable regulatory resources to those areas that are deemed to have the greatest risk. Under this regulatory approach, FSCO focuses its attention on those risks that have the potential to cause the greatest degree of concerns to the public. The benefit of this approach is that regulatory resources are maximized and compliance costs are minimized.

The compliance review on mortgage administrators is the second phase of FSCO's initiative in assessing compliance of the mortgage brokering industry under the Mortgage Brokerages, Lenders and Administrators Act, 2006 (MBLAA). Following the compliance review on mortgage brokerage in 2009, FSCO conducted a review on the mortgage administrators during the summer and fall of 2010. The focus of the 2010 compliance review was on Regulation 189/08, Mortgage Administrators: Standards of Practice.

The approach FSCO employed for these on-site reviews is consistent with the mortgage brokerages review, conducted in 2009. FSCO's strategy for the on-site review included the following:

- Sampling includes all administrators.
- Developing an examination program to test the administrator's compliance with Ontario Regulation 189/08.
- Assigning experienced examiners who would conduct on-site field review at the selected administrators.
- Following up with the administrators after the on-site review and taking regulatory action if deemed appropriate.
- Collecting and analyzing data once the review had concluded.

The review focused on specific standards under the MBLAA and regulations, particularly standards relating to policies and procedures, oversight and corporate governance. Although policies and procedures do not guarantee compliance with legislation, mortgage administrators are expected to establish and implement policies and procedures that are reasonably designed to ensure compliance with the requirements under the MBLAA. The findings from FSCO's review indicate that majority of the administrators had established policies and procedures in accordance with the regulations. However, there is room for improvement in developing

policies and procedures to achieve a better degree of compliance with legislation and reduce the potential risk of harm to consumers.

The results from the review provide support for FSCO's risk-based approach to regulation and its positive impact on the mortgage brokering industry in promoting higher standards of practice for consumer protection in Ontario.

## **ABOUT FSCO**

FSCO is an agency of Ontario's Ministry of Finance that is responsible for regulating mortgage brokerages, administrators, brokers and agents in the province of Ontario. It is also responsible for regulating other financial sectors, including pension plans, credit unions, caisses populaires, insurance companies, loan and trust companies, and co-operatives.

FSCO is dedicated to being a vigilant, fair-minded and forward-looking regulatory agency with a constructive and responsive presence in Ontario's financial services marketplace. FSCO's broad mandate includes enhancing consumer confidence and public trust in the regulated sectors by conducting its activities in accordance with risk-based approaches, and making recommendations to the Minister of Finance on matters affecting the regulated sectors.

## **BACKGROUND**

In response to the changing brokering industry in recent years, the crisis created by sub-prime mortgages and the mortgage credit markets in the United States, the Government of Ontario took the initiative to make reform by setting out a new framework for regulating the mortgage brokering industry in Ontario. The Mortgage Brokerages, Lenders and Administrators Act (MBLAA) 2006, which replaced the Mortgage Brokers Act, went into effect on June 1, 2008. This was followed by several new regulations on standards of practice, which came into effect on January 1, 2009. The MBLAA and related regulations ensure that the brokerage industry must meet certain requirements in areas such as education, licensing, policies and procedures, standards of practice, and errors and omissions insurance. Under the new Act and related regulations, consumers are better protected and will have greater confidence in the mortgage brokering industry in Ontario.

## **INTRODUCTION**

During the spring and summer of 2009, FSCO initiated on-site field reviews at a random sample of mortgage brokerages to ensure that they were in compliance with new legislation. The focus was to assess how the mortgage brokerages had prepared themselves to meet the compliance requirements under the MBLAA; and its regulations. Report of the findings and conclusions was published in May 2010.

In the spring of 2010, FSCO announced that it would conduct similar on-site field reviews of the mortgage administrators to ensure that they were in compliance with new legislation. The on-site reviews were completed in the fall of 2010. The focus of this second phase of FSCO's compliance review initiative on the mortgage brokering industry is to make an assessment on

the compliance by the administrators under the MBLAA; with specific focus on Ontario Regulation 189/08, Mortgage Administrators: Standards of Practice.

This report presents findings and conclusions that are based on the reviews that were conducted by examiners in FSCO's Licensing and Market Conduct Division.

## **STRATEGY FOR THE REVIEWS**

FSCO continues to utilize risk-based principles in its approach to regulation, which focuses on allocating valuable regulatory resources to those areas that are deemed to have the greatest risk. This approach gives FSCO the flexibility to maximize regulatory resources and minimize compliance costs. After considering key stakeholders' feedback, the need for compliance review of the administrator's practices, policies and procedures, the lack of data on the state of readiness of the mortgage administrator under the MBLAA, and general perspectives on the state of the mortgage brokering industry in Ontario and the United States, FSCO decided to focus on administrators' standards of practice since they relate to corporate governance and oversight. These areas were deemed to have the highest risk of harm to consumers if there was a significant degree of non-compliance, and therefore needed testing and monitoring.

FSCO employed similar approach to conduct the on-site reviews of administrators as the mortgage brokerages in order to assess the level of administrators' compliance to the new legislation. FSCO's strategy for the on-site reviews included the following:

- Sampling includes all administrators.
- Developing an examination program to test administrator's compliance with Ontario Regulation 189/08. Specific focus was given to requirements that deal with corporate governance, oversight, and policies and procedures.
- Assigning individual examiners to the selected administrators. These examiners had previous experiences conducting the on-site field reviews on mortgage brokerages. The examiners were responsible for preparing planning memorandums, setting up examinations, issuing letters to administrators, and completing the examination program.
- Discussing any issues and required corrective actions with the administrators.
- Following up with the administrators after the on-site reviews. The examiners sent the administrators letters that summarized the findings from the reviews, the actions that were required to address them, and the date that a response was expected. Each letter

included an examination report that provided details about the areas that were reviewed in accordance with the examination program.

- Collecting and analyzing data once the reviews had concluded.

## **ABOUT THE REVIEWS**

The scope of the risk-based reviews was to determine if administrators had policies and procedures in place to meet Ontario Regulation 189/08. The Regulation deals with the duty to establish policies and procedures; the duty to have a complaints process; the duty to have insurance; records management duties; duties relating to management of trust funds; duties concerning customer relations; duties in providing information about fees and other payments; and duties concerning particular transactions.

FSCO reviewed the selected administrators' operational process in regards to their corporate governance and oversight for compliance with legislative requirements. All of the administrators' responses were collected and further analyzed. If an examiner detected weaknesses in an administrator's operational processes, the issues and required actions for addressing them were discussed with the administrator.

The on-site reviews provided FSCO with the following information:

- How many of the selected administrators had policies and procedures addressing the requirements under Regulation 189/08.
- Whether the administrators' documented policies and procedures covered the high risk areas which include public relations materials, errors and omissions insurance, financial guarantee, security of record keeping and retention, managing deemed trust funds and their reconciliation and disclosure requirements.
- The state of implementation and/or degree of compliance with the MBLAA and related regulations since they went into effect.
- Whether the administrators had adequately documented compensating internal controls over corporate governance and oversight in their policies and procedures.

As recent changes to the MBLAA and regulations have impacted administrators, FSCO's on-site reviews focused on compliance education, not disciplinary action. Based on this philosophy, FSCO's examiners took the following approach:

1. If an administrator demonstrated that it had done its best to comply with legislation, the examiner would help it meet its obligations by providing advice and educational materials on best practices.
2. If the administrator misunderstood its obligations, consideration would be given to its circumstances (e.g. small administrator with limited staffing resources).
3. If the administrator chose not to meet its compliance obligations, the examiner would provide the administrator a letter that summarized the findings from the review, the actions that were required to address any issues, and a deadline for making the compliance changes. FSCO could also take regulatory action if deemed appropriate.

The examiners will also follow-up with these administrators in the future, to ensure that their compliance obligations have been met.

## **FINDINGS**

FSCO's examiners asked the selected administrators a total of 86 questions, which are in Appendix A and described in the 8 sections and 34 subsections below. In cases where the responses were not positive, the administrators were asked for explanation and were required to take corrective actions to address the issues.

The responses for each question were rated as low, medium or high risk. Low risk ratings were assigned to questions if 90 per cent or more of the administrators had a positive response. Medium risk ratings were assigned to questions if 75 to 89 per cent of the administrators had a positive response. High risk ratings were assigned to questions if less than 75 per cent of the administrators had a positive response. If the majority of the responses to the questions in a particular section or subsection were high, medium or low risk, the section or subsection was ranked accordingly. This means that there was a high, medium or low risk of non-compliance with legal requirements under those sections and subsections. The risk rating methodology was consistent with the approach adopted for mortgage brokerages compliance reviews in 2009.

### **A. MANAGING THE MORTGAGE ADMINISTRATOR**

There are thirty-two questions in the "Managing the Mortgage Administrator" section. The section is broken down into eight subsections which cover areas as follows:



## **1. Policies and Procedures**

The policies and procedures have five questions that cover corporate governance and oversight.

Four of these questions were rated low risk and one question was rated medium risk. Since the majority of these questions had responses that were in the low risk category, this subsection was rated low risk.

## **2. Complaints**

The five questions in “complaints” subsection assess the administrator’s complaint’s handling adequacy.

All five questions were rated low risk. Since all questions had responses that were in the low risk category, this subsection was rated low risk.

## **3. Errors and Omissions**

The five questions in this subsection relate to the coverage of errors and omissions (“E&O”) insurance under the MBLAA.

Four of these questions were rated low risk and one question was not applicable since it did not affect the risk level. Since the majority of these questions had responses that were in the low risk category, this subsection was rated low risk.

## **4. Financial Guarantees**

The two questions in this subsection relate to the requirement to have financial guarantees under the legislation for the protection of the public.

One question was rated low risk and another question was rated medium risk. Since the majority of the responses to these questions were in the low risk category, this subsection was rated low risk.

## **5. Required Records**

Having policies and procedures covering maintenance of records would be prudent operational practice for risk management. The six questions in “required records” subsection relate to the administrator’s maintenance of records under the statute.

All six questions were rated low risk. Since all questions had responses that were in the low risk category, this subsection was rated low risk.

## **6. Security of Records**

Legislation requires that administrators have safeguards for security of records. The “security of records” subsection poses the question whether the administrator’s policies and procedures require that the administrator has taken precautions to guard against the falsification of records.

Since the majority of responses to the question were in the low risk category, this subsection was rated low risk.

## **7. Record Retention**

Legislation requires administrators to have the ability to return original documents to their owners when requested, at no charge. The five questions in this subsection assess the administrator’s records retention adequacy in its policies and procedures.

All five questions were rated low risk. Since all questions had responses that were in the low risk category, this subsection was rated low risk.

## **8. Monthly Reconciliations**

Since administrator administers mortgages, monthly reconciliations of administered funds are required under the legislation. The three questions in this subsection assess whether the administrator has such policies and procedures in place.

Two of the questions were rated low risk and one question was rated medium risk. Since the majority of these questions had responses that were in the low risk category, this subsection was rated low risk.

Since all of the eight subsections under “Managing the Mortgage Administrator” were rated low risk, this section was overall rated low risk.

## **B. MANAGING THE TRUST FUND**

There are twenty-seven questions in the “Managing the Trust Fund” section. The section is broken down into six subsections which cover areas as follows:

### **1. Authorized Trust Funds**

Administrator receiving funds from borrowers are required to maintain such funds in authorized trust accounts. The two questions in this subsection assess the administrator's adequacy in this area.

Both questions were rated low risk. Since all questions had responses that were in the low risk category, this subsection was rated low risk.

### **2. Administration of Trust Account**

Under the legislation, administrator receiving trust funds are required to have proper administration of trust account. The four questions in this subsection assess whether the administrator has such policies and procedures in place.

All four questions were rated low risk. Since all questions had responses that were in the low risk category, this subsection was rated low risk.

### **3. Records of Trust Transactions**

The legislation sets out requirements on particular details that are required under records of trust transactions. The thirteen questions in this subsection assess whether the administrator has such policies and procedures in place.

All thirteen questions were rated low risk. Since all questions had responses that were in the low risk category, this subsection was rated low risk.

### **4. Monthly Reconciliations**

The administrators are required to prepare monthly reconciliations of the mortgage funds that they administered. The five questions in this subsection assess whether the administrator has such policies and procedures in place.

All five questions were rated low risk. Since all questions had responses that were in the low risk category, this subsection was rated low risk.

### **5. Shortfalls in the Trust Account**

There is a duty on the administrator to notify the Superintendent if shortfalls exist in the trust account. The "shortfalls in the trust account" subsection poses the question if the administrator has such policies and procedures in place.

Since the majority of responses to the question were in the medium risk category, this subsection was rated medium risk.

## **6. Annual Reconciliation Statement**

In addition to the monthly reconciliation for trust account, an annual reconciliation statement for trust account is required. The two questions in this subsection assess the administrator's adequacy in its policies and procedures.

One question was rated low risk and another question was rated medium risk. Since the majority of these questions had responses that were in the low risk category, this subsection was rated low risk.

Five out of six subsections under "Managing the Trust Fund" were rated low risk and one subsection was rated medium risk. Since the majority of the subsections were rated low risk, this section was overall rated low risk.

## **C. PUBLIC RELATIONS MATERIALS**

There are five questions in the "Public Relations Materials" section. The section is broken down into four subsections which cover areas as follows:

### **1. Authorized Name**

To avoid confusion and protection of public interest, the administrator should carry on business using only its authorized name. The "authorized name" subsection poses the question whether the administrator has such policies and procedures in place to cover this provision.

Since the majority of responses to the question were in the low risk category, this subsection was rated low risk.

### **2. Use of Name in Public Relations Materials**

The legislation sets out requirements that administrator must follow when using public relations materials. The two questions in this subsection assess whether the administrator has such policies and procedures in place.

One question was rated low risk and another question was rated medium risk. Since the majority of the responses to these questions were in the low risk category, this subsection was rated low risk.

### **3. Content of Public Relations Material**

The legislation prohibits false, misleading or deceptive information in public relations materials. Administrators are to ensure that the contents of their public relations materials abide by the legislation. The question in “content of public relations material” subsection assess whether the administrator has such policies and procedures in place.

Since the majority of responses to the question were in the low risk category, this subsection was rated low risk.

### **4. Duty to Provide Licence Information**

When requested, the administrator has the duty to provide its license information. The question in “duty to provide license information” subsection assess whether the administrator has such policies and procedures in place.

Since the majority of responses to the question were in the low risk category, this subsection was rated low risk.

Since all of the four subsections under “Public Relations Materials” were rated low risk, this section was rated low risk.

## **D. CUSTOMER RELATIONS**

There are five questions in the “Customer Relations” section. The section is broken down into five subsections which cover areas as follows:

### **1. Verification of Customer’s Identity**

Proper business conduct is a principle of good customer relations. Under the legislation administrator are required to take reasonable steps in verification of customer’s identity. The question in “verification of customer’s identity” subsection assess whether the administrator has in place such policies and procedures.

Since the majority of responses to the question were in the low risk category, this subsection was rated low risk.

## **2. Unlawful Transaction**

Administrators are to conduct their business lawfully and in accordance with relevant legislation. The question in “unlawful transaction” subsection assess whether the administrator has in place such policies and procedures.

Since the majority of responses to the question were in the low risk category, this subsection was rated low risk.

## **3. Tied Selling**

One aspect of good customer relations is to treat your customer fairly without coercion or attaching conditions to obtain products or services. The question in “tied selling” subsection assess whether the administrator has in place such policies and procedures.

Since the majority of responses to the question were in the low risk category, this subsection was rated low risk.

## **4. Restrictions Re Guarantees**

The legislation sets out that the administrator shall not directly or indirectly provide guarantees to lender or investor in an investment in a mortgage. The question in “restrictions re guarantees” subsection assess whether the administrator has in place such policies and procedures.

Since the majority of responses to the question were in the low risk category, this subsection was rated low risk.

## **5. Return of Documents**

The legislation sets out the duty on the administrator to promptly and without charge to return the documents to the owner when requested to do so. The question in “return of documents” subsection assess whether the administrator has in place such policies and procedures.

Since the majority of responses to the question were in the low risk category, this subsection was rated low risk.

Since all of the five subsections under “Customer Relations” were rated low risk, this section was rated low risk.

## **E. INFORMATION ABOUT FEES AND OTHER PAYMENTS**

There are seven questions in the “Information about Fees and Other Payments” section. The section is broken down into four subsections which cover areas as follows:

### **1. Disclosure re Fees not Approved by Government**

Administrators should provide adequate disclosure outlining the fees for their mortgage administration services. The question in “disclosure re fees not approved by government” subsection assess whether the administrator has in place such policies and procedures.

Since the majority of responses to the question were in the low risk category, this subsection was rated low risk.

### **2. Receipt of Fees by the Administrator**

The legislation sets out specific requirements involving receipt of fees for administering mortgages. The two questions in “receipt of fees by the administrator” subsection assess whether the administrator has in place such policies and procedures.

Both questions were rated low risk. Since all questions had responses that were in the low risk category, this subsection was rated low risk.

### **3. Disclosure of Fees Payable by Administrator**

The legislation sets out specific requirements involving disclosure of fees payable by the administrator for administering mortgages. The two questions in “disclosure of fees payable by administrator” subsection assess whether the administrator has in place such policies and procedures.

Both questions were rated low risk. Since all questions had responses that were in the low risk category, this subsection was rated low risk.

### **4. Disclosure of Referral Fees Received by the Administrator**

The legislation sets out specific requirements involving disclosure of referral fees received by the administrator for administering mortgages. The two questions in “disclosure of referral

fees received by the administrator assess whether the administrator has in place such policies and procedures.

Both questions were rated low risk. Since all questions had responses that were in the low risk category, this subsection was rated low risk.

Since all of the four subsections under “Information about Fees and Other Payments” were rated low risk, this section was rated low risk.

## **F. DUTIES IN PARTICULAR TRANSACTIONS**

There are five questions in the “Duties in Particular Transactions” section. The section is broken down into five subsections which cover areas as follows:

### **1. Administrator Agreements**

The legislation requires that there exist an administration agreement in writing between the administrator and the lender or investor before administering a mortgage. The question in “administrator agreements” subsection assess whether the administrator’s policies and procedures provides for a checklist of items in the administration agreement that would include items listed in Ontario Regulation 189/08 subsections 18(2) & (3).

Since the majority of responses to the question were in the low risk category, this subsection was rated low risk.

### **2. Disclosure of Administrator’s Relationship**

The legislation requires that the administrator’s relationship with the borrower under the mortgage to be disclosed. The one question in “disclosure of administrator’s relationship” subsection assess whether the administrator has such policies and procedures in place.

Since the majority of these questions had responses that were in the low risk category, this subsection was rated low risk.

### **3. Disclosure of Conflicts of Interest**

The legislation requires that the administrator disclose any potential conflict of interest it or its employees may have in administering a mortgage. The question in “disclosure of conflicts of



interest” subsection assess whether the administrator has such policies and procedures in place.

Since the majority of responses to the question were in the low risk category, this subsection was rated low risk.

#### **4. Deadline for Disclosure**

Deadline for disclosure are set out in legislation. It requires the administrator to provide such disclosure at the earliest opportunity or at least two business days before the administrator and the lender or investor enters into the administrator agreement. The question in “deadline for disclosure” subsection assess whether the administrator has such policies and procedures in place.

Since the majority of responses to the question were in the low risk category, this subsection was rated low risk.

#### **5. Reduction of Disclosure**

The legislation provides for a reduction of disclosure. This is applicable when the lender or investor has consented in writing to reducing the required disclosure period to one business day. The question in “reduction of disclosure” subsection assess whether the administrator has such policies and procedures in place.

Since the majority of responses to the question were in the medium risk category, this subsection was rated medium risk.

Four out of five subsections under “Duties in Particular Transactions” were rated low risk and one subsection was rated medium risk. Since the majority of the subsections were rated low risk, this section was overall rated low risk.

### **G. MORTGAGE ADMINISTRATION**

There are three questions in the “Mortgage Administration” section. The section is broken down into two subsections which cover areas as follows:

## **1. Payments to Lenders/Investors**

Payments to lender or investors involving administered mortgage are set out in legislation. The two questions in “payments to lenders or investors” subsection assess whether the administrator has in place such policies and procedures.

Both questions were rated low risk. Since all questions had responses that were in the low risk category, this subsection was rated low risk.

## **2. Payments on Redemption of Mortgages**

The payments on redemption of mortgages are set out in legislation. The question in “payments on redemption of mortgages” subsection assess whether the administrator has policies and procedures that require the administrator to promptly pay the lender/investor the full proceeds from any redemption or partial redemption of the mortgage.

Since the majority of responses to the question were in the low risk category, this subsection was rated low risk.

Since both subsections under “Mortgage Administration” were rated low risk, this section was rated low risk.

## **H. OTHER MATTERS**

The legislation sets out requirements for use of premises and use of client’s information. The three questions in the “Other Matters” section assess whether the administrator has in place such policies and procedures.

Since all questions had responses that were in the medium risk category, this section was rated medium risk.

## **SUMMARY OF FINDINGS**

The on-site field reviews of the administrators provided FSCO useful data that allowed it to assess the administrators’ level of compliance with various regulatory requirements, particularly those standards contained in Ontario Regulation 189/08. In conjunction with the risk-based principles approach, FSCO was also able to assess how administrators performed in

certain medium to high risk areas such as errors and omissions insurance; records maintenance, protection and retention; disclosure requirements; public relations materials; administration of trust funds and their reconciliation; conflicts of interest and customer relations and complaints handling. By having adequate policies and procedures in these medium to high risk areas should assist the administrators in their ability to maintain corporate governance requirements and oversight.

Since these on-site reviews were inspections, not audits, their focus was limited to examining the existence and quality of the administrators' written policies and procedures. The results of the reviews indicate that most of the administrators have written policies and procedures that are generally in compliance with the standards of practice under Ontario Regulation 189/08.

The majority of administrators had documented policies and procedures in place on the high risk areas of corporate governance and oversight, including the following areas:

- managing the mortgage administrator business operations;
- managing the trust funds on its clients' behalf;
- transparency in public relations materials;
- due care in customer relations;
- disclosure relating to fees and other remuneration;
- disclosure in particular transactions;
- due care in payments re mortgage administration; and
- use of premises and clients' information.

Except for "use of premises and clients' information" section that was rated medium risk, all other high risk sections were overall rated low risk. None of the questions were rated high risk. The results from the compliance reviews of the administrators' corporate governance and oversight were better than the results from the compliance reviews of mortgage brokerages a year ago. The reasons may be attributed to:

1. The administrator business is a more specialized field that requires in general more due diligence, experience and understanding of the mortgage brokering industry. The compliance reviews indicate that the majority of the administrators do have documented policies and procedures in corporate governance and oversight as tools given the more sophisticated nature of the business.

2. The majority of the administrators also operate mortgage brokerages. Some of their mortgage brokerages had the experiences of FSCO's compliance reviews in 2009. Since the 2009 mortgage brokerage compliance reviews, the mortgage brokering industry would have a better understanding of FSCO's approach in conducting compliance examination which focuses on corporate governance and oversight. The industry realizes the importance of developing policies and procedures governing its standards of practice.
3. The 2009 mortgage brokerage compliance reviews were conducted within a year after the introduction of the new MBLAA and regulations on standards of practice. It was a learning curve for many of the mortgage brokerages that were not familiar with or had misunderstanding of the compliance requirements under the new Act and regulations. There is expectation that the administrators should be better prepared and would have established policies and procedures in governing its standards of practice after more than a year of the introduction of the new Act and regulations.

In general the results of the compliance review of the administrators were better than that of the mortgage brokers in 2009. Nevertheless, FSCO did take regulatory action to revoke one administrator's licence in 2010. This particular administrator has numerous compliance deficiencies; has demonstrated a lack of regard for regulatory requirements; policies and procedures manual was not established; trust account was in overdraft and its monthly and annual reconciliation were not completed; and it did not have errors and omissions insurance. Given this administrator's conduct and numerous compliance deficiencies, it demonstrated that the administrator was not governable and posed a risk to the public. Accordingly, FSCO deemed it appropriate to revoke this administrator's licence.

Although the compliance reviews indicated that the majority of administrators had policies and procedures in place, the administrators should be aware of the changing environment to refine, improve and adjust their internal controls on an ongoing basis. The administrators should also be proactive in promoting higher standards of practice for consumer confidence and protection.

## **CONCLUSION**

Overall, the results from the reviews show that in general, the administrators have documented policies and procedures related to the standards of practice under Ontario Regulation 189/08. It is encouraging that the majority of the administrators understand the requirements of the legislation. The administrators, like the mortgage brokers, have endorsed FSCO's risk-based approach to regulation. However, there is still room to achieve a better degree of compliance with legislation and reduce the potential risk of harm to consumers.




These reviews cannot guarantee that there is compliance by all administrators under Ontario Regulation 189/08. Nevertheless, they are useful in providing an assessment of the administrators' risk of non-compliance with legislation. They also allow FSCO to communicate the corrective actions that need to be implemented to have a low risk of non-compliance.








The results from the reviews provide support for FSCO's risk-based approach to regulation and its positive impact on the mortgage brokering industry in promoting higher standards of practice by administrators for consumer protection in Ontario.









## APPENDIX A: RISK RATINGS BY QUESTION












The table below provides risk ratings for each question.

### Risk Ratings Definitions:










- Low risk – 90 per cent or more of administrators had a positive response. 
- Medium risk – between 75 and 89 per cent of administrators had a positive response. 
- High risk – less than 75 per cent of administrators had a positive response. 



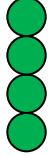

Questions		Number (Percentage)	Risk Ratings	
<b>A. MANAGING THE MORTGAGE ADMINISTRATORS</b>				
<b>1.1 Policies and Procedures</b>				
1.	Has the administrator established written Policies & Procedures? [O. Reg. 189/08, s. 25.(1)]	73 (or 97%)	Low	
2.	Do the policies and procedures contain provisions that the administrator and every person acting on its behalf complies with the requirements established under the Mortgage Brokers, Lenders and Administrators Act (“MBLAA”) and its Regulations? [O. Reg. 189/08, s. 25.(1)]	66 (or 88%)	Medium	
3.	Do the policies and procedures contain provisions for the adequate supervision of very person acting on behalf of the administrator? [O. Reg. 189/08, s. 25.(2)]	72 (or 96%)	Low	
4.	Do the policies and procedures include the provision for the verification of the identity of lenders and investors? [O. Reg. 189/08, s. 25.(3)1.]	71 (or 95%)	Low	
5.	Do the policies and procedures include the provision for the identification of potential conflicts of interest that the administrator or employee may have in connection with the mortgage and their disclosure to the lender/investor? [O. Reg. 189/08, s. 25.(3)2.]	72 (or 96%)	Low	
<b>1.2 Complaints</b>				
1.	Do the policies and procedures contain provisions that the administrator has established a process for resolving complaints from the public? [O. Reg. 189/08, s. 26.(1)]	73 (or 97%)	Low	
1.	Do the policies and procedures contain provisions that the administrator has designated an individual (i.e. complaints	73 (or 97%)	Low	












	officer) to receive and attempt to resolve complaints from the public? [O. Reg. 189/08, s. 26.(2)]			
3.	Do the policies and procedures contain provisions that the administrator keeps a record of all written complaints received from the public and all written responses to the complainants by the administrator? [O. Reg. 189/08, s. 26.(3)]	71 (or 95%)	Low	
4.	Do the policies and procedures contain provisions that the administrator's written response to the complainant sets out its proposed resolution of the complaint? [O. Reg. 189/08, s. 8.(1)]	71 (or 95%)	Low	
5.	Do the policies and procedures contain provisions that the administrator's written response to the complainant include a statement that if the complainant is not satisfied with their response and if the person believes that their complaint relates to the contravention of the MBLAA, they should contact the Superintendent? [O. Reg. 189/08, s. 8.(2)]	70 (or 93%)	Low	
<b>1.3 Errors and Omissions</b>				
1.	Obtain a copy of the administrator's current Errors and Omissions Insurance policy.	75 (or 100%)	Low	
2.	Who is the insurer?	N/A	N/A	
3.	Is the insurer on the list of approved providers contained on the FSCO website? [O.Reg. 189/08, s. 27.(1)]	72 (or 96%)	Low	
4.	Does the policy include extended coverage for loss resulting from fraudulent acts or has some other form of assurance in a form approved by the Superintendent been obtained? [O. Reg. 189/08, s. 27.(1)]	72 (or 96%)	Low	
5.	Does the policy include coverage sufficient to pay a minimum payment of \$500,000 in respect of any one occurrence and \$1 million in respect of all occurrences during a 365 day period? [O. Reg. 189/08, s. 27.(2)]	72 (or 96%)	Low	
<b>1.4 Financial Guarantees</b>				
1.	As of today's date, does the administrator maintain a \$25,000 financial guarantee? (Note: the financial guarantee may be unimpaired working capital or some other form of financial guarantee acceptable to the Superintendent) [O. Reg. 189/08, s. 28.(1)(2)]	74 (or 99%)	Low	








2.	If another form of financial guarantee is being used, was it approved by the Superintendent?	13 (or 87%)	Medium	
<b>1.5 Required Records</b>				
Is the administrator maintaining the following records?				
1.	Financial records of its licensed activities in Ontario [O. Reg. 189/08, s.29.(1)1.]	72 (or 96%)	Low	
2.	All documents or written information given to or obtained from a lender/investor or prospective lender/investor or other entity. [O. Reg. 189/08, s.29.(1)2.]	73 (or 97%)	Low	
3.	Complete and accurate records of every agreement entered into by the administrator [O. Reg. 189/08, s. 29.(1)3.]	73 (or 97%)	Low	
4.	Does the administrator's financial records distinguish between the following: [O. Reg. 189/08, s.29.(2)] <ul style="list-style-type: none"> <li>• Trust Funds</li> <li>• Mortgage held in trust for a lender/investor</li> <li>• Any other assets pertaining to other activities</li> </ul>	70 (or 93%) 69 (or 92%) 69 (or 92%)	Low Low Low	
<b>1.6 Security of Records</b>				
1.	Do the policies and procedures contain provisions that the administrator has taken precaution to guard the falsification of its records? (i.e. the deliberate alteration of the administrator's records) [O. Reg. 189/08, s.30.]	72 (or 96%)	Low	
<b>1.7 Record Retention</b>				
1.	Do the policies and procedures contain provisions that the administrator retains their administration agreements for at least six years after the expiry of the agreements? [O. Reg. 189/08, s. 31.(1)]	72 (or 96%)	Low	
2.	Do the policies and procedures contain provisions that the administrator retains all other records for at least six years? [O. Reg. 189/08, s.31.(2)]	72 (or 96%)	Low	
3.	Does the administrator retain the records described in O. Reg. 189/08, s. 31(1)(2) at its principal place of business in Ontario? [O. Reg. 189/08, s.31.(3)]	73 (or 97%)	Low	
4.	Do the policies and procedures contain provisions that if the administrator retains its records at another location in Ontario, they have notified the Superintendent? [O. Reg. 189/08, s.31.(3)]	32 (or 97%)	Low	
5.	Do the policies and procedures contain provisions that if	34 (or 97%)	Low	

















	records have originated at another place of business, the administrator forwards them, at the earliest opportunity, to its principal place of business in Ontario? [O. Reg. 189/08, s.31.(4)]			
<b>1.8 Monthly Reconciliations</b>				
1.	Do the policies and procedures contain provisions that the administrator prepares monthly records which reconcile the total outstanding principal balances due from the borrowers on mortgages under administration to the total principal balances due to the lenders/investors as at month end? [O. Reg. 189/08, s. 32.(1)]	71 (or 95%)	Low	
2.	Do the policies and procedures contain provisions that the records set out any differences between the balances as at the end of the month?	69 (or 92%)	Low	
3.	Do the policies and procedures contain provisions that the reasons for any differences are described?	67 (or 89%)	Medium	
<b>B. MANAGING TRUST FUNDS</b>				
<b>2.1 Authorized Trust Account</b>				
1.	Do the policies and procedures contain provisions that the administrator maintains a trust account designated as its "mortgage administrator's trust account" at one of the financial institutions in Ontario that are listed in [O. Reg. 189/08, s. 34.(1)]?	69 (or 92%)	Low	
2.	Do the policies and procedures contain provisions that if the administrator has opened more than one administrator's trust account, prior written consent of the Superintendent was obtained? [O. Reg, 189/08, s.34.(2)]	36 (or 90%)	Low	
<b>2.2 Administration of Trust Account</b>				
1.	Do the policies and procedures contain provisions that the administrator deposit all trust funds into its trust account within two business days after receiving the funds? [O. Reg. 189/08, s. 35.(1)]	70 (or 93%)	Low	
2.	Do the policies and procedures contain provisions that the administrator keeps trust funds separate from money that does not constitute trust funds? [O. Reg. 189/08, s. 35.(2)]	69 (or 92%)	Low	
3.	Do the policies and procedures contain provisions that the administrator pays any interest earned on trust funds to the beneficial owners? [O. Reg. 189/08, s. 35.(3)]	47 (or 92%)	Low	
4.	Do the policies and procedures contain provisions that trust funds are being disbursed only upon the terms which	68 (or 91%)	Low	





the funds were received by the administrator? [O. Reg. 189/08, s. 35.(4)]			
<b>2.3 Records of Trust Transactions</b>			
1. Do the policies and procedures contain provisions that the administrator maintains a written records of all trust funds received? [O. Reg. 189/08, s.36]	72 (or 96%)	Low	
2. Do the policies and procedures contain provisions that the record includes details of every deposit made including the: [O. Reg. 189/08, s. 36.1.]  <ul style="list-style-type: none"> <li>• Amount</li> <li>• Date</li> <li>• Name of the person/entity that the funds were received from</li> <li>• Purpose of deposit</li> </ul>	70 (or 93%) 70 (or 93%) 70 (or 93%) 70 (or 93%)	Low Low Low Low	
3. Do the policies and procedures contain provisions that the records include details of every disbursement from the trust account including the: [O. Reg. 189/08, s. 36.2.]  <ul style="list-style-type: none"> <li>• Amount</li> <li>• Date</li> <li>• Name of the person/entity receiving the funds</li> <li>• Purpose of the disbursement</li> </ul>	68 (or 91%) 68 (or 91%) 68 (or 91%) 68 (or 91%)	Low Low Low Low	
4. Do the policies and procedures contain provisions that the records include details of interest paid to the holder of the trust funds detailing the: [O. Reg. 189/08, s. 36.3.]  <ul style="list-style-type: none"> <li>• Deposit made</li> <li>• Date of deposit</li> <li>• Interest rate used</li> <li>• Date interest was paid</li> </ul>	69 (or 92%) 69 (or 92%) 69 (or 92%) 69 (or 92%)	Low Low Low Low	
<b>2.4 Monthly Reconciliations</b>			

1.	Do the policies and procedures contain provisions that the administrator completes the following: [O. Reg. 189/08, s. 37. (1)(2)(3)]			
	<ul style="list-style-type: none"> <li>Prepare monthly reconciliation statement for the trust account</li> <li>Review, sign and date the reconciliation certifying its accuracy</li> <li>Prepare the reconciliation 30 days after receiving the monthly bank statements</li> <li>List any differences between the administrator's records and the bank statements</li> <li>Determine what person or entity is entitled to the balance in the account</li> </ul>	72 (or 96%)	Low	
		69 (or 92%)	Low	
		69 (or 92%)	Low	
		68 (or 91%)	Low	
		69 (or 92%)	Low	
<b>2.5 Shortfalls in the Trust Account</b>				
1.	Do the policies and procedures contain provisions that the administrator immediately notifies the Superintendent of any shortfalls in the trust account? [O. Reg. 189/08, s. 38]	66 (or 88%)	Medium	
<b>2.6 Annual Reconciliation Statement</b>				
1.	Do the policies and procedures contain provisions that the administrator prepares an annual reconciliation statement for their trust account within 90 days after the end of the fiscal year? [O. Reg. 189/08, s. 39.(1)]	67 (or 89%)	Medium	
2.	Do the policies and procedures contain provisions that the annual reconciliation statement summarizes the information contained in the monthly reconciliation statements for the fiscal year? [O. Reg. 189/08, s. 39.(2)]	68 (or 91%)	Low	
<b>C. PUBLIC RELATIONS MATERIALS</b>				
<b>3.1 Authorized Name</b>				
1.	Do the policies and procedures contain provisions that the administrator only carries on business in its licensed name? [O. Reg. 189/08, s. 5]	71 (or 95%)	Low	
<b>3.2 Use of Name in Public Relations Materials</b>				
1.	Do the policies and procedures contain provisions that the authorized name and licence number of the administrator is clearly disclosed on it public relations materials? [O. Reg. 189/08, s. 5.(1)]	70 (or 93%)	Low	
2.	Do the policies and procedures contain provisions that if a franchise name is being used, the administrator clearly indicates that it is independently owned and operated? [O. Reg. 189/08, s. 5.(2)]	16 (or 89%)	Medium	

<b>3.3 Contents of Public Relations Material</b>				
1.	Do the policies and procedures contain provisions that the administrator has ensured that its public relations materials do not contain any false, misleading or deceptive statements? [O. Reg. 189/08, s. 6]	54 (or 93%)	Low	
<b>3.4 Duty to Provide License Information</b>				
1.	Do the policies and procedures contain provisions that if requested, the administrator provides its license number to the public? [O. Reg. 189/08, s. 7]	70 (or 93%)	Low	
<b>D. CUSTOMER RELATIONS</b>				
<b>4.1 Verification of Customer's Identity</b>				
1.	Do the policies and procedures contain provisions that the administrator takes reasonable steps to verify the identities of each lender or investor before entering into the administration agreement with them? [O. Reg. 189/08, s. 9. (1)]	73 (or 97%)	Low	
<b>4.2 Unlawful Transactions</b>				
1.	Do the policies and procedures contain provisions that if the administrator has reasonable grounds to believe that the mortgage, its renewal or the investment in it is unlawful, the administrator declined to administer it? [O. Reg. 189/08, s. 10]	70 (or 93%)	Low	
<b>4.3 Tied Selling</b>				
1.	Do the policies and procedures contain provisions that tied selling of other service only occurs if the service offers more favourable terms. [O. Reg. 189/08, s. 11. (1)]	46 (or 98%)	Low	
<b>4.4 Restrictions: re Guarantees</b>				
1.	Do the policies and procedures contain provisions that the administrator does not offer any guarantees to the lender in respect of a mortgage or the investor in respect of an investment in a mortgage? [O. Reg. 189/08, s. 12]	58 (or 94%)	Low	
<b>4.5 Return of Documents</b>				
1.	Do the policies and procedures contain provisions that the administrator promptly, without charge, returns all documents to their owners, when requested to do so? [O. Reg. 189/08, s. 13]	69 (or 92%)	Low	
<b>E. INFORMATION ABOUT FEES AND OTHER PAYMENTS</b>				

<b>5.1 Disclosure Re Fees Not Approved By Government</b>				
1.	Do the policies and procedures contain provisions that the administrator does not make any representations that amounts payable to them in connection with administering mortgages are set or approved by any government authority? [O. Reg. 189/08, s. 14. (1)]	68 (or 91%)	Low	
<b>5.2 Receipts Of Fees By The Administrator</b>				
Do the policies and procedures contain provisions that the administrator provides the following information, in writing, to a lender/investor in connection with the administrator of a mortgage?				
1.	Whether the administrator has received, may receive or will receive a fee or other remuneration, directly or indirectly, from another person or entity in connection with the administration of the mortgage? [O. Reg. 189/08, s. 15.(1) 1]	59 (or 98%)	Low	
2.	If a fee or other remuneration is or may be payable, the identity of the other person/entity, the basis for calculating the amount of the fee or other remuneration and the nature of the benefits disclosed? [O. Reg. 189/08, s. 15.(1)2.]	58 (or 98%)	Low	
<b>5.3 Disclosure of Fees Payable By the Administrator</b>				
Do the policies and procedures contain provisions that the administrator provides the following information, in writing, to a lender/investor in connection with the administrator of a mortgage?				
1.	Whether the administrator has paid, may pay or will pay a fee or other remuneration, directly or indirectly, to another person or entity in connection with the administration of the mortgage? [O. Reg. 189/08, s. 16.(1)1.]	55 (or 98%)	Low	
2.	If a fee or other remuneration is or may be payable, is the identity of the other person/entity, the basis for calculation the amount of the fee or other remuneration and the nature of the benefit disclosed? [O. Reg. 189/08, s.16.(1)2.]	58 (or 98%)	Low	
<b>5.4 Disclosure Of Referral Fees Received By the Administrator</b>				
Do the policies and procedures contain provisions that if the administrator refers a lender/investor or prospective lender/investor to another person or entity for a fee or other remuneration, the administrator provides the following information, in writing, to the lender/investor or prospective lender/investor before or when making the referral?				
1.	A description of the nature of the relationship between the administrator and the other person or entity. [O. Reg. 189/08, s. 17.1.]	47 (or 96%)	Low	
2.	A statement whether the administrator has received, may receive or will receive a fee or other remuneration, directly	68 (or 91%)	Low	

	or indirectly, for making the referral. [O. Reg. 189/08, s. 17. 2.]			
<b>F. DUTIES IN PARTICULAR TRANSACTIONS</b>				
<b>6.1 Administration Agreements</b>				
1.	Do the policies and procedures contain provisions that the administrator agreements includes the 7 items listed in O. Reg. 189/08, s. 18. (2) and the 2 deemed items listed in O. Reg. 189/08, s. 18. (3)?	71 (or 95%)	Low	
<b>6.2 Disclosure of Administrator's Relationships</b>				
1.	Do the policies and procedures contain provisions that the administrator discloses in writing to each lender/investor the nature of any relationships, if any, it may have with the borrower(s)? [O. Reg. 189/08, s. 19. (1)(2)(3)]	72 (or 96%)	Low	
<b>6.3 Disclosure Of Conflicts Of Interest</b>				
1.	Do the policies and procedures contain provisions that the administrator discloses in writing to each lender/investor any conflicts of interest that the administrator or an employee may have? [O. Reg. 189/08, s. 20. (1)(2)(3)]	73 (or 97%)	Low	
<b>6.4 Deadline For Disclosure</b>				
1.	Do the policies and procedures contain provisions that the required disclosure to the lenders/investors has been made at least two business days before the administrator and the lender/investor enters into the administration agreement? [O. Reg. 189/08, s. 22. (1)]	68 (or 91%)	Low	
<b>6.5 Reduction Of Disclosure</b>				
1.	Do the policies and procedures contain provisions that if applicable, the lender/investor has consented in writing to reducing the required disclosure period to one business day? [O. Reg. 189/08, s. 22. (2)]	65 (or 87%)	Medium	
<b>G. MORTGAGE ADMINISTRATION</b>				
<b>7.1 Payments To Lenders/Investors</b>				
1.	Do the policies and procedures contain provisions that the administrator makes payment to the lender/investor only from funds received from the borrower? [O. Reg. 189/08, s. 23.(1)]	70 (or 93%)	Low	
2.	Do the policies and procedures contain provisions that if the cheque received from the borrower is not certified, the	70 (or 93%)	Low	

<p>administrator waits until the cheque has cleared the borrower's bank account before making payment to the lender/investor? [O. Reg. 189/08, s. 23.(2)]</p>			
<b>7.2 Payments On Redemption of Mortgages</b>			
<p>1. Do the policies and procedures contain provisions that the administrator promptly pays the lender/investor the full proceeds from any redemption or partial redemption of the mortgage? [O. Reg. 189/08, s. 24]</p>	71 (or 95%)	Low	
<b>H. OTHER MATTERS</b>			
<p>1. Is the administrator conducting any other concurrent business from its premises? [O. Reg. 189/08, s. 40.]</p>	58 (or 77%)	Medium	
<p>2.a. Do the policies and procedures contain provisions that the administrator does not use information obtained from a person or entity in the course of administering their mortgages, for any other purposes? [O. Reg. 189/08, s. 41.]</p>	67 (or 89%)	Medium	
<p>2.b. If yes, was a written consent obtained from the person or entity?</p>	64 (or 85%)	Medium	
<b>Subtotal</b>	<b>86 questions</b>		