

Interpretation



Effective Date: February 1, 2022

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Identifier: No. MB0046INT

Licensing Exemption for Permitted Clients that are not Individuals

This Interpretation Guidance provides the Financial Services Regulatory Authority of Ontario's ("FSRA") interpretation of the licensing exemption for Permitted Clients¹ that are not individuals, effective February 1, 2022, as per section 10.1² of Ontario Regulation 407/07 under the *Mortgage Brokerages, Lenders and Administrators Act, 2006* ("MBLAA").

Scope

This Guidance applies to Permitted Clients that are not individuals ("Non-Individual Permitted Client") as interpreted in Guidance, applicable when:

¹ "Permitted Client" is defined in section 1 of [Ontario Regulation 188/08 – Mortgage Brokerages: Standards of Practice \("O. Reg. 188/08"\)](#). This section of Ontario Regulation 188/08 stipulates that the term has the same meaning as in section 1.1 of National Instrument 31-103 "Registration Requirements, Exemptions and Ongoing Registrant Obligations".

² See source: [Ontario Regulation 34/22: Amending O. Reg. 407/07](#) (Exemptions from the requirements to be licensed)

- A person or entity is otherwise subject to the requirements in section 2 or 3 of the MBLAA to have a brokerage licence to deal and/or trade in mortgages, but is exempted under subsection 6(7) of the MBLAA as a Non-Individual Permitted Client that is dealing and/or trading in mortgages exclusively with other Non-Individual Permitted Clients.
- A person or entity is otherwise subject to the requirements in section 4 of the MBLAA to have a brokerage licence to carry on the business of a mortgage lender but is exempted under subsection 6(7) of the MBLAA as a Non-Individual Permitted Client lending exclusively to borrowers that are Non-Individual Permitted Clients.

Such persons or entities may include Non-Individual Permitted Clients whose primary business is not mortgage brokering but who have set up a brokerage to conduct mortgage brokering transactions on behalf of themselves or a related party, as well as mortgage lenders who use a mortgage brokerage to lend/originate mortgages.

Rationale and context

Reducing red tape for Non-Individual Permitted Clients

The 2019 [Report](#) to the Minister of Finance on the Legislative Review of the MBLAA (“the Report”) recommended that the Ministry of Finance (“MOF”) work with FSRA “to develop and propose amendments to the MBLAA that would reduce regulatory burden on commercial mortgage transactions between sophisticated entities³ such as large companies and financial institutions.”

Mortgage transactions between Non-Individual Permitted Clients do not involve individual consumers. As such, risk of consumer harm is limited, reducing the need for FSRA to oversee such transactions; any potential harm or misconduct can be effectively managed by the Non-Individual Permitted Clients themselves.

³ FSRA interprets sophisticated entities to be Non-Individual Permitted Clients.

The standards of practice regulations under the MBLAA help to ensure consumer protection. Non-Individual Permitted Clients do not rely, for the most part, solely on the MBLAA and standards of practice requirements to manage transactions between themselves. In practice, disputes between Non-Individual Permitted Clients are generally managed through the civil dispute regime.

Non-Individual Permitted Clients are presumed to have significant experience and knowledge regarding financial matters, including investments, and substantial financial resources to manage the risks associated with mortgage/mortgage investment transactions.

This licensing exemption enables FSRA to focus its resources on the conduct of licensees who provide mortgage agent and broker services to individual consumers.

FSRA mandate

In supervising and regulating the mortgage brokering and administration sector, FSRA is required to administer and enforce the MBLAA and its regulations. In doing so, FSRA is guided by its statutory objects, which for the purposes of informing this Guidance, include the following:

- contribute to public confidence in the mortgage brokering sector
- protect the rights and interest of consumers
- foster a strong, sustainable, competitive and innovative sector
- deter deceptive or fraudulent conduct, practices and activities by the mortgage brokering sector
- monitor and evaluate developments and trends in the mortgage brokering sector

Interpretation

Under the MBLAA, persons or entities that wish to deal, trade or lend in mortgages must be licensed with FSRA or be exempt from the requirement to have a licence.⁴

⁴ MBLAA, subsections 2(2), 3(2), 4(2)

Section 10.1 of Ontario Regulation 407/07 provides a licensing exemption (the “Exemption”) for persons or entities that are Non-Individual Permitted Clients that:

- deal and/or trade in mortgages exclusively on their own behalf or on behalf of Non-Individual Permitted Clients, per subsection 10.1(2) of the regulation
- are mortgage lenders that lend exclusively to borrowers that are Non-Individual Permitted Clients, per subsection 10.1(5) of the regulation

National Instrument 31-103, Registration Requirements, Exemptions and Ongoing Registrant Obligations (“National Instrument 31-103”) under securities law, defines “Permitted Client”.

Through this Guidance, FSRA is providing its Interpretation of Non-Individual Permitted Client and examples of the types of transactions Non-Individual Permitted Clients may conduct under the Exemption.

Non-Individual Permitted Clients that require further clarification regarding the scope of the Exemption should contact:

Licensing Approvals

Financial Services Regulatory Authority of Ontario (FSRA)

Telephone: 416-250-7250

Email: licensingapprovals@fsrao.ca

25 Sheppard Avenue West, Suite 100

Toronto, ON

M2N 6S6

Interpretation of Non-Individual Permitted Client

The underlying rationale of the Exemption is to allow sophisticated non-individual parties to lend, deal and/or trade in mortgages with other sophisticated non-individual parties.

In terms of determining whether a non-individual is a sophisticated party, FSRA will generally look to National Instrument 31-103 which provides a Permitted Client definition for individuals (see Appendix for reference), which in Class (o) refers to the beneficial ownership of financial

assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$5M. Any individual, including one that meets the requirements in Class (o), does not qualify for the exemption.

Therefore, FSRA's interpretation of Non-Individual Permitted Clients typically includes, for example, financial institutions, regulated pension plans, governments or government agencies, dealers or advisers registered under the securities regime and high-net-worth companies (net assets of at least \$25 million).

Non-Individual Permitted Clients may be Mortgage Investment Vehicles (MIEs) whose: (a) units are sold only to Permitted Clients investors; and, (b) units' distribution is regulated under another regulatory regime such as the *Securities Act*.

Reference should be made to National Instrument 31-103 and a determination should be made by a non-individual as to whether they satisfy the intent of what qualifies as a Non-Individual Permitted Client with reference to National Instrument 31-103, which is not intended to be exhaustive or definitive.

Examples of transactions that may be conducted by Non-Individual Permitted Clients

The types of transactions that may be conducted between Non-Individual Permitted Clients under the Exemption include, but are not limited to:

- trading of Canada Mortgage and Housing Corporation ("CMHC") insured single-family mortgages originated for the National Housing Act ("NHA") program and CMHC Commercial Mortgages (i.e., covered by CMHC mortgage underwriting criteria and underwritten by Approved Lenders) for treasury management purposes
- trading of mortgages by an adviser registered under the *Securities Act* acting on behalf of managed accounts
- trading of notes secured by a mortgage (i.e., where a note represents an interest in a 'fracture'/tranche of a mortgage with a specific rank/priority)

- sale of a pool of single family or commercial mortgages
- syndication of residential or commercial mortgages to institutional investors/lenders

Non-Individual Permitted Clients may require registration with the Ontario Securities Commission if transacting in any Non-Qualified Syndicated Mortgage transaction in the absence of a FSRA licence, such as when taking advantage of the Exemption.

Compliance

A Non-Individual Permitted Client that deals, trades or lends in mortgages with individual consumers, whether the consumer is a Permitted Client or not, must be licensed under the MBLAA as a mortgage brokerage with FSRA. Transactions overseen by a licensed brokerage offers protection to individual consumers.

If FSRA suspects unlicensed activity, it has the power to:

- request and/or make **inquiries and conduct examinations** of the business and activities of the person or entity
- apply to the courts for **an order to inspect**⁵ the business premises of the person or entity
- issue a **summons order**⁶ to produce information under oath to determine whether a person or entity is complying with a requirement established under the MBLAA
- issue a **compliance order**⁷ to a person or entity to cease committing an act or pursuing a course of conduct or perform such acts that are necessary to remedy the non-compliance with the MBLAA

⁵ MBLAA, s. 30 (2), s. 31

⁶ MBLAA, s. 34 (1). This differs from requests for information through direct correspondence with a licensee or unlicensed person or entity under s.29 and s. 30.

⁷ MBLAA, s. 35 (2), s. 35 (3)

- issue an **order to freeze assets**⁸ to a person or entity that has not complied with a compliance order
- issue an **administrative monetary penalty**⁹ to promote compliance with the MBLAA, or to prevent a person or entity from benefiting economically, directly or indirectly, as a result of contravening or failing to comply with MBLAA requirements

Effective date and future review

This Guidance is effective February 1, 2022 and will be reviewed no later than February 1, 2025.

About this guidance

This document is consistent with [FSRA's Guidance Framework](#). As Interpretation guidance, it describes 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.

⁸ MBLAA, s. 36

⁹ MBLAA, s. 38 (1)

Appendices and reference

Definition of “Permitted Client” as per National Instrument 31-103 [section 1.1 Definitions of terms used throughout this Instrument](#).

“Permitted Client” means any of the following:

- (a)** a Canadian financial institution or a Schedule III bank
- (b)** the Business Development Bank of Canada incorporated under the Business Development Bank of Canada Act (Canada)
- (c)** a subsidiary of any person or company referred to in paragraph (a) or (b), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of the subsidiary
- (d)** a person or company registered under the securities legislation of a jurisdiction of Canada as an adviser, investment dealer, mutual fund dealer or exempt market dealer
- (e)** a pension fund that is regulated by either the federal Office of the Superintendent of Financial Institutions or a pension commission or similar regulatory authority of a jurisdiction of Canada or a wholly-owned subsidiary of such a pension fund
- (f)** an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (e)
- (g)** the Government of Canada or a jurisdiction of Canada, or any Crown corporation, agency or wholly-owned entity of the Government of Canada or a jurisdiction of Canada
- (h)** any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government
- (i)** a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l’île de Montréal or an intermunicipal management board in Québec

- (j) a trust company or trust corporation registered or authorized to carry on business under the Trust and Loan Companies Act (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a managed account managed by the trust company or trust corporation, as the case may be
- (k) a person or company acting on behalf of a managed account managed by the person or company, if the person or company is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction
- (l) an investment fund if one or both of the following apply:
 - (i) the fund is managed by a person or company registered as an investment fund manager under the securities legislation of a jurisdiction of Canada
 - (ii) the fund is advised by a person or company authorized to act as an adviser under the securities legislation of a jurisdiction of Canada
- (m) in respect of a dealer, a registered charity under the Income Tax Act (Canada) that obtains advice on the securities to be traded from an eligibility adviser, as defined in section 1.1 of National Instrument 45-106 Prospectus Exemptions, or an adviser registered under the securities legislation of the jurisdiction of the registered charity
- (n) in respect of an adviser, a registered charity under the Income Tax Act (Canada) that is advised by an eligibility adviser, as defined in section 1.1 of National Instrument 45-106 Prospectus Exemptions, or an adviser registered under the securities legislation of the jurisdiction of the registered charity
- (o) ¹⁰ an individual who beneficially owns financial assets, as defined in section 1.1 of National Instrument 45-106 Prospectus Exemptions, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$5 million

¹⁰ Class (o) permitted client(s) do not qualify for licensing exemption.

- (p)** a person or company that is entirely owned by an individual or individuals referred to in paragraph (o), who holds the beneficial ownership interest in the person or company directly or through a trust, the trustee of which is a trust company or trust corporation registered or authorized to carry on business under the Trust and Loan Companies Act (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction
- (q)** a person or company, other than an individual or an investment fund, that has net assets of at least \$25 million as shown on its most recently prepared financial statements
- (r)** a person or company that distributes securities of its own issue in Canada only to persons or companies referred to in paragraphs (a) to (q)