2017 Annual Information Return Results Summary Report

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Executive summary

Introduction

The Financial Services Commission of Ontario (FSCO) is a regulatory agency established by the Financial Services Commission of Ontario Act, 1997 and accountable to the Minister of Finance. FSCO's legislative mandate is to provide regulatory services that protect the public interest and enhance public confidence in the sectors it regulates. FSCO oversees insurance, pension plans, mortgage brokering, credit unions and caisses populaires, co-operative corporations, loan and trust companies, and health service providers that invoice auto insurers for statutory accident benefits claims.

Under the Mortgage Brokerages, Lenders and Administrators Act, 2006 (MBLAA), all mortgage brokerages and administrators licensed by FSCO are required to file the Annual Information Return (AIR) with FSCO by March 31 each year. FSCO may take enforcement action against any brokerages or administrators that do not file the AIR by the deadline.

This report summarizes the information provided in the 2017 AIR from those licensed during that calendar year. It includes responses from 1,197 mortgage brokerages and 181 mortgage administrators, representing a 97 per cent and 95.3 per cent response rate from brokerages and administrators, respectively. The remaining 3 per cent of brokerages and 4.7 per cent of administrators failed to file their AIR. FSCO has cautioned or initiated enforcement action against 66 brokerages and 20 administrators for late or non-filing of the 2017 AIR. These enforcement actions include licence suspension, licence revocation, and/or administrative monetary penalties. Repeat offenders face progressive enforcement action.

About the AIR

The AIR collects information about mortgage brokerages' and administrators' business practices and internal controls. FSCO uses this information as a tool to monitor the industry's compliance with the law as part of its consumer protection mandate. Depending on the findings, FSCO may flag an entity for examination. FSCO may also take enforcement action where necessary.

Following consultation with industry stakeholders, the 2017 AIR introduced new and revised questions in order to capture additional information about the mortgage brokering sector to assist FSCO in understanding the marketplace and better protect consumers. Substantive revisions include an expansion question about the types of lenders brokerages conducted business with, and changes to syndicated mortgages reporting.

Although the 2017 AIR asked a number of questions on many different topics, this report focuses on eight specific topics for mortgage brokerages:

- Errors and Omissions (E&O) insurance

Supervision of operations

- Brokerage activities
- Lending sources and lender types
- Non-qualified syndicated mortgages
- Remunerations
- Referrals
- Fraud

This report also focuses on four specific topics for mortgage administrators:

- E&O insurance/financial guarantees
- Trust accounts
- Supervision of operations
- Remunerations

These topics are important as they reflect specific legal requirements and/or are potential risks for the sector.

Key findings

Key findings for mortgage brokerages:

- In 2017, mortgage brokerages reported arranging $132.2 billion in mortgages, a marginal decrease from the $132.5 billion reported in 2016.
    - Excluding non-qualified syndicated mortgages[1], mortgage brokerages reported arranging $126.3 billion in mortgages.
    - Mortgage brokerages reported arranging $5.9 billion in non-qualified syndicated mortgages.[2]
- The number of mortgage brokers increased by 5.5 per cent (142) to 2,703 in 2017 from 2,561 in 2016.
- The number of mortgage agents increased by 11 per cent (1,243) to 12,510 in 2017 from 11,267 in 2016.
- More than 99 per cent of mortgage brokerages (1,191) reported that they have the required E&O insurance coverage.

- Approximately 39 per cent of mortgage brokers and agents worked part-time in the sector; specifically, 31 per cent of mortgage brokers (834) and 41 per cent of mortgage agents (5,106).
- 36 per cent of mortgage brokerage offices in Ontario (756) did not have a licensed broker assigned in a supervisory capacity.
- Banks provided the largest source of mortgage funding, totalling 125,534 mortgages valued at $50.3 billion.
- The use of mortgage investment corporations (MICs) continued to grow. In 2017, the number of mortgage brokerages that reported using MICs as lenders increased by 13.8 per cent to 281 from 247 in 2016.
- 8 per cent of mortgage brokerages (97) reported that they also held a mortgage administrator licence.

Key findings for mortgage administrators:

- In 2017, mortgage administrators reported administering $249 billion in mortgages, a 7.5 per cent increase from the $231.3 billion reported in 2016.
- The number of mortgage administrators increased by 10 per cent to 181 in 2017 from 164 in 2016.
- 9 per cent of mortgage administrators (17) reported they did not have a trust account.
- 8 mortgage administrators did not maintain the required $25,000 unimpaired working capital financial guarantee at all times throughout the year as required.
- In 2017, the number and value of non-qualified syndicated mortgages under administration by mortgage administrators was $9.1 billion.

Detailed findings - mortgage brokerages

Errors and Omissions insurance

Under the MBLAA, each mortgage brokerage must have Errors and Omissions (E&O) insurance, including extended coverage for fraud, to protect the brokerage, brokers and agents from acts arising from the business of dealing, trading or lending in mortgages, (such as negligence, misrepresentation, or fraud). The coverage must have a minimum of $500,000 per occurrence and $1 million for all occurrences in a year, and must be provided by a FSCO-approved insurer.

In 2017, mortgage brokerages reported the following:

- 99 per cent of mortgage brokerages (1,191) reported they had the minimum mandatory E&O insurance coverage amounts.

- More than 4 per cent of mortgage brokerages (54) reported an expired E&O insurance policy.
- 6 mortgage brokerages reported that their E&O insurance policy provided less than the required $500,000 per occurrence.
- 6 mortgage brokerages reported they did not have the required $1 million E&O coverage for all occurrences.
- 21 per cent of mortgage brokerages (246) reported they had coverage in excess of $2 million for all occurrences.
- 2 per cent of mortgage brokerages (22) received a total of 31 E&O claims against the mortgage brokerage itself or the brokerages' brokers and agents.
- E&O insurance carriers paid 8 claims against mortgage brokerages and 11 claims against the brokerages' mortgage brokers and agents. Some of the paid claims related to issues such as wrong interest penalty calculation, and delayed closing and/or funding.

Supervision of operations

Mortgage brokerages are required to organize their operations in a way that facilitates adequate supervision of their mortgage brokers and agents to ensure they are compliant with all legal requirements.

- 95 per cent of mortgage brokerages (1,138) reported their head office was in Ontario, while the remainder had head offices primarily in British Columbia and Alberta.
- Of those headquartered in Ontario, 46 per cent (522) reported head offices in the Greater Toronto Area, while 37 per cent (420) had head offices in Central Ontario.
- 15 per cent of mortgage brokerage offices (322) were located more than 100 kilometres away from the principal broker's primary work location.
- Less than 2 per cent of mortgage brokerages (18) reported to FSCO, through Licensing Link, the name of a mortgage broker or agent who was terminated for cause.
- 7 per cent of mortgage brokerages (82) reported the principal broker had not reviewed the brokerages internal policies and procedures pursuant to subsection 3(1) of Ontario Regulation 410/07 to ensure that the policies and procedures were compliant with current MBLAA regulations.

FSCO expects that principal brokers carry out their responsibility to ensure the brokerage, and each broker and agent within the mortgage brokerage, is authorized to deal or trade in mortgages on the mortgage brokerage's behalf, complies with MBLAA regulations, and receives adequate supervision.

The principal broker is also responsible for regularly auditing the mortgage brokerage's policies and procedures and updating them to include changes in legislation or new market conditions, or to address deficiencies identified through audits and complaint handling.

Additionally, as per subsection 43 (3) of Ontario Regulation 188/08, a mortgage brokerage shall immediately notify the Superintendent if they believe that a broker or agent is not suitable to be licensed under the MBLAA.

Brokerage activities

FSCO noticed the following trends for mortgage brokerages that were licensed, but did not close any mortgage deals:

- The number of mortgage brokerages that reported engagement in mortgage brokering activities, but did not close any mortgage deals, increased by 2 per cent to 131 in 2017 from 128 in 2016.
- The number of mortgage brokerages that reported that their primary line of business was not mortgage brokering, and that did not close any mortgage deals, decreased by 2 per cent to 134 in 2017 from 137 in 2016.

The AIR asks mortgage brokerages about any licences held in other sectors. Of note, 41 per cent (495) reported also being licenced in the real estate sector.

- 55 per cent (270) reported that the brokerage itself or its related persons/entities were also registered as a real estate brokerage.
- 45 per cent (225) reported that the brokerage itself or its related persons/entities also held a licence in the real estate industry.

Lending sources and volume of mortgages

The 2017 AIR data revealed the following about sources of funding and volume of mortgages in Ontario:

- The total number of mortgages arranged decreased by 5.6 per cent to 321,348 from 340,527 in 2016.
- The total dollar value of mortgages arranged decreased slightly to $132.2 billion from $132.5 billion in 2016.
- Excluding non-qualified syndicated mortgages, mortgage brokerages reported arranging 318,934 mortgages valued at $126.3 billion.
- Mortgage brokerages reported arranging 2,414 non-qualified syndicated mortgages valued at $5.9 billion.[3]
- Excluding non-qualified syndicated mortgages, banks are the top type of lender, representing 40

per cent of the total dollar value of mortgages ($50.2 billion) and 39 per cent of the total volume of mortgages (125,534).

Mortgage investment corporations

Excluding non-qualified syndicated mortgages, during the 2017 reporting period, mortgage investment corporations (MICs) represented approximately 3.3 per cent of the total dollar value ($4.2 billion) of all mortgage transactions reported by mortgage brokerages.

The number of mortgage brokerages that reported using MICs as lenders increased by 13.8 per cent to 281 in 2017 from 247 in 2016.

During the same period, while the number of mortgages funded by MICs increased by 8.2 per cent (597), the total dollar value decreased by 5.5 per cent to $4.2 billion from $4.4 billion in 2016.

In addition, five per cent of mortgage brokerages (63) reported that their principal broker, officer and/or director also held equity interest in a MIC. Of these, none reported holding a management function within the MIC.

Private lenders

Excluding non-qualified syndicated mortgages, during the 2017 reporting period, privately funded mortgages represented approximately 8.3 per cent of the total dollar value ($10.6 billion) of all mortgage transactions reported by mortgage brokerages.

From 2016 to 2017, there was a 1.5 per cent decrease in the number of private mortgage transactions (324), but the total dollar value increased by 24 per cent ($2 billion).

Although private lenders remain a relatively small portion of the market, FSCO has observed their growth in recent years. FSCO will continue to monitor their rate of growth, sales and lending practices, as well as any changes in market share. FSCO reminds brokerages, brokers and agents of their duty to comply fully with the requirements of the MBLAA. This includes disclosing any conflicts or interests or potential conflicts of interest in connection with a mortgage, or trade in a mortgage, that a brokerage presents for consideration to a borrower, lender, or investor.

Sub-prime mortgages

Excluding non-qualified syndicated mortgages, during the 2017 reporting period, mortgage brokerages reported arranging 26,390 sub-prime mortgages with a total value of $7.7 billion, which represents 6 per cent of total mortgages arranged.

From 2016 to 2017, mortgage brokerages reported a 6.2 per cent decrease in the number of sub-prime mortgage transactions (1,748), and a 6.5 per cent decrease in the total dollar value of sub-prime mortgages ($5.3 million).[4]

Syndicated mortgages

In 2017, FSCO revised the AIR to ask brokerages to provide information about non-qualified syndicated mortgage transactions.[5, 6]

During the 2017 reporting period, 5 per cent of mortgage brokerages (60) reported engaging in 2,414 non-qualified syndicated mortgage transactions, which represented approximately 4.5 per cent ($5.9 billion) of the total dollar value of all mortgage transactions reported that year.

The top 25 per cent of brokerages (15) engaging in non-qualified syndicated mortgages arranged 88 per cent ($5.2 billion) of all non-qualified syndicated mortgages by dollar amount.

In addition, 10 per cent of brokerages (6) reported engaging exclusively in non-qualified syndicated mortgage transactions and arranged 19.5 per cent ($1.15 billion) of all non-qualified syndicated mortgages.

Remuneration

The 2017 AIR collected information about non-monetary payments and incentives that mortgage brokerages received from lenders or paid out to other parties for referrals.

FSCO observed the following:

- 21 per cent of mortgage brokerages (248) accepted non-monetary remuneration from lenders. Reward points, trips, gifts and event tickets were the most common forms of non-monetary remuneration cited.
- Less than 4 per cent of mortgage brokerages (42) offered credit cards or gift cards as remuneration for referrals.
- 37 per cent of mortgage brokerages (446) had a contingency commission or payment arrangement with lenders.

FSCO reminds brokerages, brokers and agents of their duty to comply fully with subsection 5 (2) of Ontario Regulation 187/08 and subsection 45 (1) of Ontario Regulation 188/08 by providing proper disclosure for non-monetary incentives received.

Referrals

In 2017, FSCO added new AIR questions regarding referrals to other brokerages, including real estate brokerages, and payment for referrals by a brokerage.

The results show that:

- 9 per cent of mortgage brokerages (111) reported making a total of 900 referrals to other brokerages.
- More than 10 per cent of mortgage brokerages (126) received a total of 8,417 referrals.

Simple Referrals

Of the 8,417 referrals mortgage brokerages reported to have received, 87 per cent (7,310) were simple referrals from a person or entity that was not licenced under the MBLAA. In total, mortgage brokerages paid $3.7 million in simple referral fees, averaging $512 for each simple referral.

While payment to individuals and/or entities who provide a simple referral is permitted under the MBLAA, FSCO reminds brokerages, brokers and agents that if they are paying or receiving referral fees in the course of their business, they must comply fully with subsection 44 (1) and (2) of Ontario Regulation 188/08 and subsections 1 and 2 of Ontario Regulation 407/07.

Mortgage fraud

Mortgage brokerages were asked if the brokerage itself or a lender declined to proceed with a mortgage because they were made aware of, or had reason to suspect, fraud.

- In 2017, 4.3 per cent of mortgage brokerages (52) reported that they declined to proceed with a mortgage because they were made aware of, or had reason to suspect, fraud.
  - 50 per cent of the mortgage brokerages (26) who reported suspected fraud indicated income and employment verification documentation as the primary reason why they declined to proceed with a mortgage.
  - Mortgage brokerages indicated they declined to proceed with a mortgage due to client evasiveness or explicit requests from a client for help to commit fraud.

- In 2017, 2.2 per cent of mortgage brokerages (26) reported that a lender declined to proceed with a mortgage because the lender was made aware of, or had reason to suspect, fraud.
  - Brokerages reported that lenders who declined to proceed with a mortgage transaction due to suspicion of fraud did not provide the rationale.

FSCO reminds mortgage brokerages and administrators that they have a duty to act proactively to detect and prevent fraud. The MBLAA prohibits mortgage brokerages, administrators, brokers and agents from acting, or failing to act, in circumstances where they ought to know they are being used to facilitate dishonesty, fraud, crime or illegal conduct.

Detailed findings - mortgage administrators

Errors and Omissions (E&O) insurance and financial guarantees

Overall, mortgage administrators reported a high level of compliance with E&O insurance requirements and financial guarantee requirements.

By law, mortgage administrators must maintain E&O insurance coverage from an insurance company approved by FSCO. This insurance must cover any claims that may arise from the business of administering mortgages, (such as negligence or fraud).

Mortgage administrators must also maintain a $25,000 financial guarantee at all times.

- 1 mortgage administrator reported yes when asked if they were being subjected to either E&O claims, charges against them, licence suspensions, or outstanding fines.
- 8 mortgage administrators did not maintain the minimum $25,000 of unimpaired working capital at all times during the year.

Trust accounts

Mortgage administrators are required to maintain a trust account to hold money received from a borrower or lender in connection with the administration of a mortgage.

- More than 9 per cent of mortgage administrators (17) reported they did not have a trust account as required.
- 22 per cent of mortgage administrators (40) reported opening a trust account during the reporting year, of which 80 per cent of these (32) did so without obtaining the approval of the Superintendent in advance.

Supervision of operations

Mortgage administrators must organize their operations, including office locations, in a manner that facilitates the supervision of their staff, as well as examinations by FSCO. This includes the establishment of policies and procedures that are updated regularly to ensure that the mortgage administrator and every person acting on its behalf complies with the regulatory requirements under the MBLAA.

The 2017 AIR results show that:

- 90 per cent of mortgage administrators (165) had head offices in Ontario, while the remainder had head offices in British Columbia, Alberta, Manitoba and Quebec.
- 80 per cent of mortgage administrator offices (181) were located in Central Ontario, 9 per cent in Southwestern Ontario (21), 9 per cent in Eastern Ontario (21), and 2 per cent in Northern Ontario (4).
- 8 per cent of mortgage administrators (14) that transacted in non-qualified syndicated mortgages did not have policies and procedures in place related specifically to the disbursement of funds to the borrower for a non-qualified syndicated mortgage.
- 25 per cent of mortgage administrators (46) reported that they conducted other types of business from their premises. Examples of other types of businesses included mortgage brokerage, real estate brokerage, law practice, accounting office, and MIC.

Remuneration

The 2017 AIR collected information about contingency commission or payment arrangements that mortgage administrators paid out to other persons or entities in connection with the administration of a mortgage.

- 7 per cent of mortgage administrators (12) reported that they had a contingency commission or payment arrangement with another person or entity.

As per subsections 15, 16 and 17 of Ontario Regulation 189/08, mortgage administrators must provide proper disclosure in writing to a lender or investor for payments to others in connection with the administration of a mortgage.

Conclusion

FSCO uses AIR data to inform consumer protection measures.

FSCO is committed to consumer protection and pursues regulatory action where there is evidence of non-compliance. Regulatory action can range from a letter of caution, to an administrative monetary penalty, up to a licence revocation or prosecution. FSCO bases its regulatory decisions on the facts and circumstances of each case.

All licensed mortgage brokerages and administrators must meet their legal requirements under the MBLAA. FSCO encourages licensed brokerages and administrators to visit the **Mortgage Brokering section on FSCO's website** to learn more about their legal obligations.

For additional data on mortgage brokerages and administrators, please refer to the companion guide, **Appendix to 2017 Annual Information Return – Mortgage Brokerages and Administrators Results Summary Report**.

Notes:

[1] The 2017 AIR asked mortgage brokerages to report on the volume and dollar amount of non-qualified syndicated mortgages separately from other mortgage transactions.

[2] The definition of a qualified syndicated mortgage used for the purposes of the 2017 AIR period was based on the proposed definition at that time. The definition was revised when the amendments to Ontario Regulation 188/08 Mortgages Standards came into effect on July 1, 2018. A non-qualified syndicated mortgage is a syndicated mortgage which does not meet the requirements of a qualified syndicated mortgage.

[3] The 2017 AIR asked mortgage brokerages to report on the volume and dollar amount of non-qualified syndicated mortgages separately from other mortgage transactions.

[4] The definition of sub-prime mortgage in the 2017 AIR was revised to include the individual borrower(s) having a mean credit score of 600 or less.

[5] The 2017 AIR, asked mortgage brokerages to report on volume and dollar amount of non-qualified

syndicated mortgages separately from other mortgage transactions.

[6] The definition of a qualified syndicated mortgage used for the purposes of the 2017 AIR period was based on the proposed definition at that time. The definition was revised when the amendments to *Ontario Regulation 188/08* Mortgages Standards came into effect on July 1, 2018. A non-qualified syndicated mortgage is a syndicated mortgage which does not meet the requirements of a qualified syndicated mortgage.