

June 19, 2018

FIA & CUIA Review
Policy & Legislative Division
Ministry of Finance
PO Box 9470 Stn Prov Govt
Victoria, BC V8W 9V8

Email: fiareview@gov.bc.ca

Re: Financial Institutions Act and Credit Union Incorporation Act Review – Preliminary Review

To Whom it May Concern;

I write on behalf of the Canadian Mortgage Brokers Association – British Columbia (CMBA-BC) regarding the above noted preliminary set of recommendations concerning the restructuring of the Financial Institutions Commission (FICOM), in relation to mortgage broker regulation.

About CMBA-BC

By way of background, the CMBA-BC was chartered in 1990 and is the oldest mortgage broker association in Canada, representing over 1600 mortgage brokers and lenders in British Columbia. CMBA-BC advocates for its members on issues impacting the mortgage industry. It has a vested interest in ensuring that regulation appropriately balances the need for public protection through regulation with reducing unnecessary red tape to sustain a thriving industry which serves the needs of consumers.

FICOM's Current Role in Mortgage Broker Regulation

The Mortgage Brokers Act (the Act) was enacted in 1972 and provides the Registrar of Mortgage Brokers with the authority to regulate and enforce the provisions in the Act. Section 1 of the Act defines "registrar" to mean: "a person appointed by the Lieutenant Governor in Council to act as registrar or a person authorized by the registrar to perform the registrar's duties under this Act."

On the other hand, FICOM is a creature of the Financial Institutions Act (FIA). Section 202 of the FIA permits the Lieutenant Governor in Council to appoint from 2 to 11 members of Commission. It further gives the Commission power to consent to matters such as the incorporation and amalgamation of trust companies and credit unions.

FICOM has no statutory authority to regulate any matters in relation to mortgage brokers within the Act. Historically however, the Lieutenant Governor in Council will appoint the same person to act as the Registrar of Mortgage Brokers as the Superintendent of Financial Institutions. In addition, the Registrar's staff is housed within the offices of FICOM. As a result regulators, government, media and industry persons commonly but mistakenly believe that FICOM regulates mortgage brokers. It is for example, more common for people to refer to disciplinary decisions as "FICOM orders" than "decisions of the Registrar of Mortgage Brokers".

The Proposal

There are 68 recommendations in the proposal, some of which touch on mortgage broker regulation. We will comment on five of the Recommendations.

Recommendation 1 – Establish FICOM as a Crown agency

We have no comment on whether FICOM should be established as a Crown agency so long as it has no mandate under the Act. However, if such a mandate is established, then we urge the Ministry to ensure that the Commission is comprised of persons with actual experience and expertise in the field of mortgage brokering. If the power of the Commission to provide for the making of rules, increasing industry fees and rule enforcement is strengthened through the granting of Crown agency status, then commensurate with that power, there needs to be mortgage broker industry representation at the Commission level to ensure that regulatory action is informed by industry best practices, knowledge and foresight. This helps to steer regulatory action to avoid unintended consequences and make appropriate and balanced decisions.

Recommendation 2 – Expand the mandate of the Commission to exercise certain powers and duties related to mortgage brokers and pension plans.

We repeat the concerns set out above in relation to Recommendation 1. In addition, we note that it is not possible to expand the mandate of the Commission to exercise certain powers and duties related to mortgage brokers without a wholesale review and amendment of the Act. An Act review has been on the Ministry's legislative agenda since 2012 but has not been given priority and does not appear to be a future priority of

the current government. This would make the implementation of any change requiring statutory amendment near impossible.

In addition, it is not clear exactly how the Commission would exercise powers and duties related to mortgage brokers. For instance, the Commission currently provides consent to the incorporation and amalgamation of credit unions, which are complex financial institutions that are relatively small in number when compared to the number of registered mortgage brokers. It would not be desirable or even feasible for the Commission to provide consent to the registration of more simple mortgage broker entities, which number in the many hundreds. What then would be the role of the Commission in relation to mortgage brokers? Would it be to review or approve the creation of policy or rules in relation to mortgage brokers, or perhaps to oversee the disciplinary process? Would the authority of a Commission in relation to mortgage broker regulation be carved out from that of the Registrar, or would the Commission possess ultimate statutory authority, which is then delegated down to the Registrar and staff? These questions are broad and would require considerable narrowing before providing more focussed feedback to the Ministry.

Recommendation 3 – The Commission will appoint the CEO and statutory decision makers of FICOM

One of the challenges with the Lieutenant Governor in Council appointing the CEO of FICOM who also serves as the Registrar of Mortgage Brokers, is that in choosing an appointee, experience, perspective and abilities which favour FICOM regulation is likely to take precedence over mortgage broker regulation.

We are of the view that for the Commission to be able to hire and fire statutory decision makers of FICOM, such as the Registrar of Mortgage Brokers, it would be imperative for persons to sit on the Commission who have experience and expertise in the field of mortgage brokering. While the mortgage broker program may be less robust in scale than other programs administered by FICOM, there is no benefit to integrating the mortgage broker program into FICOM, without having informed oversight from industry at the Commission level.

Recommendation 5 – Provide FICOM with the authority to issue enforceable guidelines/rules. Guidelines/rules will require public consultation and Ministerial approval.

We repeat our comments above and urge the Ministry to ensure that FICOM Commissioners possess experience and expertise in the field of mortgage brokering in order to ensure that guidelines and rules are informed by industry best practices and avoid unintended consequences.

Recommendation 18 – Establish a cross-ministry working group to coordinate government’s financial literacy efforts.

We urge the government to consider leveraging the financial industry to assist with financial literacy efforts, as industry knowledge is necessary to properly educate the public about financial products, industry issues and trends.

Thank you for providing CMBA-BC with an opportunity to comment on this preliminary review. As the Ministry considers each Recommendation in more detail, we would be pleased to provide additional, and more detailed feedback.

Yours truly,



Samantha Gale
CEO, the Canadian Mortgage Brokers Association - BC