MBRCC Mortgage Broker Regulators' Council of Canada

CCARCH Conseil canadien des autorités de réglementation des courtiers hypothécaires

PRIVATE MORTGAGE LENDING REVIEW REPORT

April 2025

Table of Contents

Introduction

The Mortgage Broker Regulators' Council of Canada ("MBRCC") noted in its 2020-2023 Strategic Plan that it is committed to better understanding the risks related to the mortgage broker industry's engagement in private lending[1].

MBRCC created the Private Lending Committee ("Committee") following the publication of the 2020-2023 Strategic Plan. The Committee was tasked with researching private lending practices across jurisdictions. The work of the Committee continued in the 2023 to 2026 cycle and aligns with MBRCC's strategic priorities to:

- Foster consumer confidence in the sector; and
- Monitor market trends and emerging issues through regulatory cooperation and information sharing.

This report provides an overview of the common private lender labels used in the sector.

Methodology

The Committee undertook a review of the existing private lending landscape[2] and has identified the types of private lenders included in the report.

[1]Many private mortgage lenders in the sector categorize Non-individual Private Lenders (e.g., Mortgage Finance Companies, Mortgage Investment Corporations, Mutual Fund Trusts and Limited Partnership Structures) as Alternative Mortgage Lenders and Individuals as Private Mortgage Lenders. This report includes both Alternative and Individual Lenders as Private Mortgage Lenders.

[2] On October 4, 2022, the government of British Columbia introduced new legislation to replace the outdated *Mortgage Brokers Act* with a new Mortgage Services Act. British Columbia Financial Services Authority anticipates that this change to the regulatory framework will occur over several years.

Types of Private Lenders

"Private lender[3]" is a label that has been broadly defined as any lender whose lending activities (e.g. underwriting criteria) are not directly regulated by the Office of the Superintendent of Financial Institutions (OSFI) or a provincial prudential regulator[4]. Some private lenders are subject to market conduct oversight, primarily through licensing statutes. Market conduct oversight focuses on consumer protection and fair market practices while prudential oversight focuses on the financial stability of institutions.

The broad labelling is confusing when discussing issues and risks affecting consumers. Private lending may also include capital raising activities that are subject to prospectus or dealer or advisor registration. Accordingly, the Committee identified/used the following four more specific descriptions/labels/key groupings to describe private lenders in greater detail:

1. Mortgage Finance Companies (MFC)
2. Mortgage Investment Entities (MIE)
3. Other Private Lenders
4. Lenders in a Mortgage Syndicate

We identify the role of the borrower, lender, and investor in each of these groupings. MFC and MIE are non-individual entities that lend money to borrowers, but they distinguish themselves in the way they raise the funding used for their mortgage lending activities. MFCs funds mostly come from institutional investors. MIEs pool together money raised through investors who purchase securities of the MIE. However, 'Other Private Lenders' can be both the investor and lender. In Mortgage Syndications, a group of investors participate as a lender in a mortgage. The distinction between investor and lender is important for distinguishing the roles and responsibilities of securities regulators from those of mortgage broker regulators.

Mortgage broker regulators share a common mandate to protect borrower consumers. However, their mandates are not consistent with respect to protecting the investor/lender consumers. While generally, investor protection is in the realm of securities regulators, for instance in cases where the lender is also an investor or participates in a mortgage syndication, this is not uniform across jurisdictions. The protections usually offered by the securities regulatory framework may not apply to a given mortgage transaction or there may be an exemption available in connection with a transaction.

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[3] In Ontario, private lenders are lenders that are not financial institutions or approved lenders under the *National Housing Act* (Canada). The Financial Services Regulatory Authority of Ontario notes that NHA-approved lenders are required to follow certain underwriting requirements in order for their mortgages to be traded with other market participants or packaged as mortgage-backed securities.

[4] A provincial regulator overseeing the activities of credit unions and other provincially regulated financial institutions.

Individual private lenders may be considered Other Private Lenders or Lenders in Mortgage Syndicate categories, which could lead them to become more vulnerable participants. This may be the case in more complex investment structures, which usually involve higher risks and increase the possibility that the investment may not be suitable for those individual private lenders.

1. Mortgage Finance Companies (MFC*)*

MFCs are sometimes considered private lenders because their lending practices are not directly regulated by the Office of the Superintendent of Financial Institutions (OSFI) or a provincial prudential regulator. MFCs are distinguished as primarily larger, more sophisticated corporations competing with banks and credit unions for mortgage market share. MFCs rely on large institutional investors (e.g. banks, pension funds, securities dealers etc.) and Canada Mortgage and Housing Corporation (CMHC) mortgage securitization programs to fund their mortgage lending activities. Securitization activities can sometimes fall within the scope of securities legislation. Traditionally, investors have preferred CMHC insured loans, so MFCs usually insure all qualifying loans with mortgage default insurance. Although MFCs are not subject to OSFI oversight, they generally operate in accordance with OSFI requirements. Sometimes MFCs are referred to as “quasi regulated” institutions because they are large, financial institution like private lenders with a commitment to federal and provincial regulation which makes them lower risk private lenders. These entities are also known as monoline lenders and are not always categorized as private lenders.

MFCs are licensed as mortgage brokerages in some provinces because they perform mortgage origination and mortgage administration activities on behalf of the lenders.[5] In British Columbia (BC) and Ontario (ON) MFCs also require a mortgage broker/brokerage licence to engage in lending activity. Nova Scotia (NS), requires all mortgage lenders not listed in the Mortgage Regulation Act Exemption Regulations - Mortgage Regulation Act (Nova Scotia) to be licensed.

Prior to the 2008 financial crisis, several MFCs funded higher risk mortgages (alternative mortgages). During the financial crisis, investors withdrew from the market leaving alternative mortgage borrowers with limited renewal options. Restricted credit supply and increased OSFI regulation led to the growth of other forms of private lending.

MFCs have reentered the alternative market. Should there be another significant housing market decline, there is a risk that borrowers will once again be left with few renewal options

[5] In jurisdictions where the mortgage administrator licensing category exists, a MFC may also be licensed as a mortgage administrator (e.g., in Ontario). Lenders (including MFCs) in Ontario must lend through a brokerage or hold a brokerage licence.

whether their financing came from an MFC or other private lender. These are systemic risks that are not generally within the mortgage broker regulator's purview.

2. Mortgage Investment Entities (MIE)

MIEs directly or indirectly invest a large portion of the funds they raise in mortgages, hypothecs, or other forms of real property. There is a wide range of MIEs, which include Mortgage Investment Corporations (MICs), Mutual Fund Trusts, Mortgage Income Funds, Limited Partnerships, etc. They raise their capital (to lend) through the distribution of securities of the entity. Such distribution by MIEs is generally regulated by securities regulatory authorities and subject to the requirements of the securities legislation of each Canadian jurisdiction. The most common MIE is a MIC.

Capital raising activities made by MIEs are subject to the application of provincial securities legislation. MIEs may be private issuers but may also be reporting issuers under securities legislation. MIEs that are reporting issuers have more obligations under securities legislation, notably periodic information disclosure obligations.

MIEs do not have regulated lending underwriting guidelines/requirements similar to financial institutions (FIs), accordingly they are able to take on higher risk[6]. MIEs are significant providers of capital to consumers including individuals and businesses, including the development industry. Typically, MIEs provide short term mortgages of between 6 to 12 months to provide more flexible financing, where reduced loan size to real estate value is favoured over debt capacity[7]. Many MIEs do not qualify borrowers based on their income in the same way as is required by OSFI regulated entities. Some refer to themselves as "equity lenders" meaning their focus is primarily ensuring that there is sufficient collateral value in the event of foreclosure or repayment issues.

Many MIEs are established by mortgage brokerages who manage raising capital for the MIE (this activity is regulated by securities regulatory authorities). MIEs activities consist of mortgage origination and mortgage administration. Investors participating in MIEs own securities issued by the MIE, which then pools together the investors' capital in order to lend to borrowers (mortgage loan). These loans form the portfolio of a MIE. If the portfolio includes a multitude of different loans made to various types of borrowers, on various terms, etc., they can diversify their risk for the investors. Mortgage brokerages require dual registration with securities and mortgage regulators under this structure.

[6] We further note that FIs have capital and liquidity requirements that further restrict their risk appetite.
[7] In the current economic market (rising interest rates and tighter underwriting guidelines), MIEs are extending their terms to accommodate and/or renew. See https://financialpost.com/real-estate/mortgages/private-mortgage-risk-flagged-regulators-growth-shadow-banking.

Although complaints against MIE origination and mortgage administration activities are often expressed by investors, their activities also present significant risks to borrowers including lack of product suitability/suitability assessment and disclosure. Furthermore, given the size and stature of MIEs, there are also systemic risks which could be caused by investors withdrawing capital during times of economic uncertainty.

3. Other Private Lenders

The third group are individuals and entities lending their own money. This group does not typically qualify borrowers based on their income. These lenders have become a significant source of funding to those who would not otherwise qualify for a mortgage from financial institutions, MFCs or MIEs.

Individuals and entities are motivated to become private lenders because loans are secured by real estate and offer the potential for higher returns (e.g. the interest rate and fees charged to the borrower) compared to the return on more traditional investments such as stocks, bonds, mutual funds, etc. Individual private lenders range from professionals (such as lawyers and real estate licensees) who understand real estate markets and law to unsophisticated individuals often utilizing retirement funds or savings. Entities include, for example, small to medium sized businesses, numbered companies and holding companies looking to invest their assets for similar reasons as individual investors.

Individual private lenders are often the source of complaints to regulators and errors and omission (E&O) insurance claims. Complaints typically occur when a mortgage does not perform as expected and the individual private lender did not understand they might have to expend additional funds to cover prior encumbrances or legal expenses to recover their investment funds (all, some, or none).

E&O insurance brokers tell us that they often receive claims from unsophisticated individual private lenders who were introduced to the lending opportunity by mortgage brokers who lack experience in private lending (referred to as “dabblers”).

While less common than unsophisticated individual private lenders, experienced private lenders also file complaints with regulators and submit claims with E&O insurance when a mortgage deal does not perform as expected leading to financial losses.

In some markets, similar to the experience as MIEs, ‘Other Private Lenders’ are not renewing mortgages due to declining property values and rising interest rates. As a result, borrowers are left with the hardship of finding a replacement mortgage.

4. Lenders in a Mortgage Syndicate

Mortgage syndication is a process where two or more persons participate, directly or indirectly, as a lender in a debt obligation that is secured by a mortgage for a borrower (i.e., there are two or more investors participating as a "lender" in the mortgage). The group of lenders is called the syndicate. Lenders in the syndicate may be, for example, individuals, entities, financial institutions, MFCs and MIEs participating together in a mortgage loan.

A syndicated mortgage is a form of investment subject to prospectus and dealer registration requirements under securities legislations across many Canadian jurisdictions. In some jurisdictions, syndicated mortgages are distinguished as "qualified" (mortgages on primarily residential property transactions) or "non-qualified" (mortgages on properties that are not used primarily for residential purposes e.g., for commercial development of properties)[8]. In some jurisdictions, mortgage brokerages are not required to register as a dealer under securities legislation for distributing qualified syndicated mortgages as they are regulated by mortgage broker regulators. The distribution of non-qualified syndicated mortgages are typically regulated by securities regulatory authorities and are subject to prospectus and registration requirements. However, some prospectus and registration exemption may be available. Regardless of the distinction between qualified and non-qualified syndicated mortgages, some mortgage broker regulators oversee the mortgage administration activities.

Many mortgage brokers are also registered as a Dealer with the securities regulatory authorities so they can perform both capital raising and mortgage origination. Where securities regulations apply, prospectus exemptions are usually used which may require disclosure of prescribed information, limit participation to individuals meeting certain financial thresholds, or both.

Disclaimer: The information included in this section of the report is not intended to be investment or registration advice.

[8] In Ontario, non-qualified syndicated mortgages (NQSMI) may fall under the jurisdiction of either the mortgage brokerage regulator, the securities regulator, or both. Further information is available in the guidance document "Supervision Approach for Non-Qualified Syndicated Mortgage Investments with Permitted Clients and Legacy Non-Qualified Syndicated Mortgage Investments (July 1, 2021)" https://www.fsrao.ca/industry/mortgage-brokering/regulatory-framework/guidance-mortgage-brokering/supervision-approach-non-qualified-syndicated-mortgage-investments-permitted-clients-and-legacy-non-qualified-syndicated-mortgage-investments-july-1-2021