



ATLANTIC CENTRAL

2 May 2012

BY HAND

The Honourable Ross Landry  
Minister of Nova Scotia Department of Justice  
Chair of the Law Amendments Committee  
5151 Terminal Road  
Halifax, NS B3J 2L6

Honourable Mr. Landry:

**Re: Bill 22 – Mortgage Regulation Act**

Thank you for the opportunity to appear before the Law Amendments Committee to make submissions regarding Bill 22, the *Mortgage Regulation Act* ("MRA"). We are supportive of the Act but do have two requests to discuss today.

The issues we are raising should in no way slow the legislative process. It is our understanding that the exclusions we are seeking would not be dealt with in the MRA itself, but rather in its associated Regulations. Our intention in appearing before you today is to draw your attention to our concerns and to get our requests on record.

By way of background, Atlantic Central is the regional credit union central and trade association representing credit unions in Atlantic Canada. In Nova Scotia, we represent 30 credit unions with \$1.9 Billion in assets and 160,000 members. Credit unions are a significant participant in the mortgage market in Nova Scotia and are also a significant employer in Nova Scotia with over 800 employees.


Additionally, Atlantic Central owns and operates League Savings and Mortgage Company as a subsidiary organization. Registered under the federal *Trust and Loans Companies Act* (the "TLCA"), and with assets of \$460 Million, League Savings and Mortgage Company provides mortgage and deposit services to our members - both retail and business - across Atlantic Canada.

Between Nova Scotia credit unions and League Savings and Mortgage Company, our outstanding conventional and collateral mortgages in Nova Scotia are approximately \$1 Billion.

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Because of our multiple connections to mortgage lending, Atlantic Central is very interested in the application and impact of the MRA. In 2010, we were pleased to have the opportunity to participate in the legislative process by submitting a response to the proposed MRA to Maggie MacDonald, Senior Policy Analyst. Very recently, we have been in contact with Catherine Smith, Registrar under the *Mortgage Brokers and Lenders Registration Act*, and with Mark Coffin, Deputy Registrar of Credit, who have agreed to work with us during the legislative change process - particularly in relation to the new Regulations. We are pleased and encouraged by this helpful collaboration.

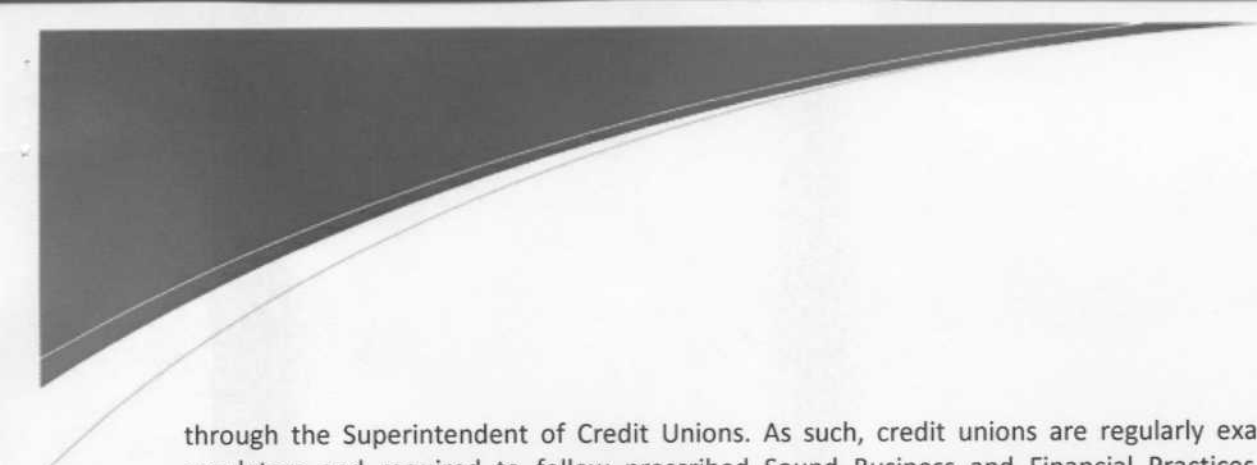
As mentioned above, we are very supportive of the legislation and the positive effect it will have on the regulation of currently unregulated persons and entities in the mortgage brokerage industry. It is our understanding from reading the 2010 Consultation Paper that the main objectives of the MRA - in particular the mortgage broker and mortgage administrator portions - are to promote confidence in Nova Scotia's markets and to protect consumers from behaviour that profits brokers and private lenders at the borrowers' expense. And, as the Honourable John MacDonell stated in his introduction to the House during the Second Reading of Bill 22 on Monday, under existing legislation, mortgage brokers in the Province are not required to be initially licensed, nor are they required to follow any kind of professional or industry standards. The intention behind the MRA is to modernize mortgage brokering and lending regulations to ensure they are up to date, reflect current industry practices and are clear, fair and consistent. The MRA will also ensure that Nova Scotians who use mortgage brokering or lending services are dealing with trained mortgage brokers who are licensed and who can provide them with the best possible advice.

While Atlantic Central completely agrees that an under-regulated market puts Nova Scotia home buyers and our economy at risk, we would like to point out that Nova Scotia credit unions and federally regulated loan companies are already fully regulated. Accordingly, we are concerned about maintaining a level playing field with other financial institutions as well as avoiding regulatory duplication. As a result, we do have recommendations and requests on two issues: 1) that credit unions not be subject to the mortgage brokers or mortgage administrators portions of the MRA; and, 2) that all federally regulated mortgage lenders, including League Savings and Mortgage Company, be exempt from, or be treated equally by, the MRA.

#### **1. Exemption of Credit Unions from Requirements for Brokers and Administrators**

Atlantic Central strongly recommends that credit unions be subject only to the MRA's mortgage lenders requirements, and should be exempted from the MRA's mortgage brokers and mortgage administrators requirements.

As stated above, we fully support the objectives of the MRA to promote confidence in Nova Scotia's markets and to protect consumers from behaviour that profits brokers and private lenders at the borrowers' expense. However, it should be noted that credit unions are already very well regulated: all Nova Scotia credit unions are governed by the Nova Scotia *Credit Union Act* and are supervised by the Credit Union Deposit Insurance Corporation ("CUDIC") and the Nova Scotia Department of Finance



through the Superintendent of Credit Unions. As such, credit unions are regularly examined by the regulators and required to follow prescribed Sound Business and Financial Practices. Additionally, CUDIC's approval is required for all lending policies and lending limits of each credit union. Credit unions are not private entities that pose potential risks to consumers.

However, credit unions do engage in mortgage lending activities, and it should be noted that all financial institutions buy and sell mortgages for liquidity purposes. Once a mortgage is sold by a financial institution, although the original lender may continue to "administer" the mortgage on behalf of an investor - in that it receives mortgage payments made by the borrower and remits the payments to the investor - such mortgage administration type activities (as well as any mortgage broker type activities) are limited and performed only as part of the financial institution's activities as a mortgage lender. As such, Atlantic Central respectfully submits that such activities should not subject credit unions (or any other financial institution) to licensing and other requirements above and beyond those required for mortgage lenders.

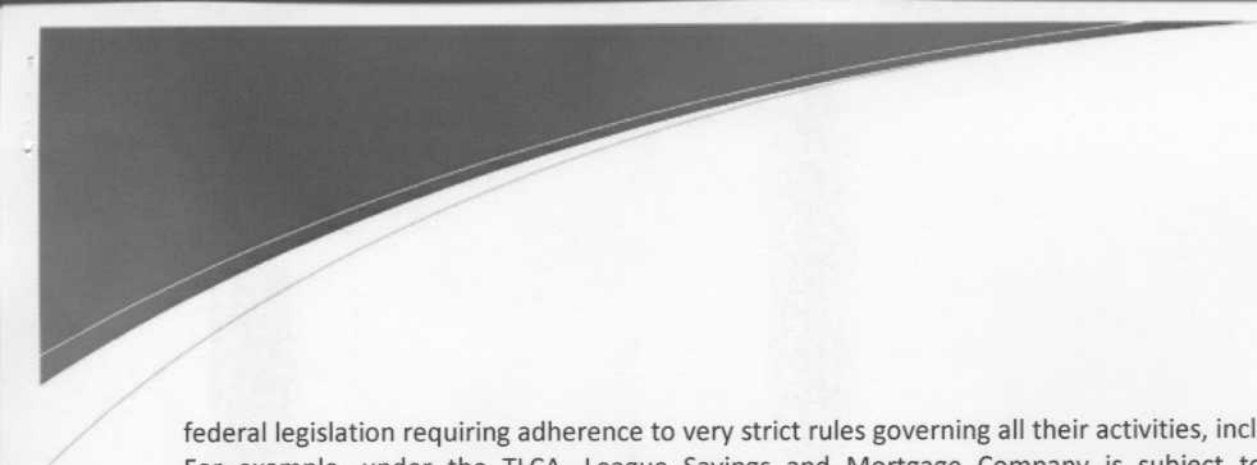
Credit unions are heavily regulated but our mortgage disclosure requirements are not covered by the *Consumer Protection Act* or by the *Credit Union Act*. This causes credit unions to be captured by the current *Mortgage Brokers and Lenders Registration Act* and by the proposed *Mortgage Regulation Act*. We respectfully submit that this is the only reason we are captured by this legislation. Because of this, in an attempt to streamline the regulatory regime, we will be looking to include disclosure requirements in the next amendment of the *Credit Union Act* which we understand is forthcoming. At that time, we would seek an exemption from the MRA.

Accordingly, while we agree that credit unions should be captured by the "mortgage lenders" portion of the MRA and subject to the related disclosure requirements, we submit that credit unions should not be captured by the portions of the MRA relating to brokers and administrators. Therefore, we respectfully request that the MRA's Regulations provide an exemption for all credit unions from the mortgage administrator and mortgage broker portions of the MRA.

## **2. Exemption of Federally Regulated Financial Institutions from the MRA**

It is Atlantic Central's strong recommendation that all federally regulated financial institutions should be exempt from all portions of the MRA on the basis that they are already subject to comparable federal legislation. We understand that chartered banks are to be exempt from the MRA but that there was no similar exclusion contemplated for federally regulated loan companies. Making some federally regulated lenders subject to the MRA while excluding those regulated under the *Bank Act* would provide competitive advantages to banks and disadvantage other federally regulated financial institutions. Consequently, there would not be a level playing field.

All federally regulated financial institutions, including banks regulated under the *Bank Act* and loan companies regulated under the TLCA (such as League Savings and Mortgage Company), are supervised by the federal Office of the Superintendent of Financial Institutions ("OSFI") and must comply with



federal legislation requiring adherence to very strict rules governing all their activities, including lending. For example, under the TLCA, League Savings and Mortgage Company is subject to the *Cost of Borrowing Regulations*, which mandate the manner, timing and content of a loan company's disclosure when entering into any credit or loan agreement.

All federally regulated financial institutions, including banks regulated under the *Bank Act* and loan companies regulated under the TLCA (such as League Savings and Mortgage Company), are also subject to regulation by the Financial Consumer Agency of Canada ("FCAC"). The FCAC is an independent body working to protect and inform consumers of financial products and services. It was established by the federal government to strengthen oversight of consumer issues and expand consumer education in the financial sector. The FCAC is a federal regulatory agency whose responsibilities include ensuring that the market conduct of federally regulated financial entities complies with federal legislation and regulations. Its requirements are very strict and very specific.

We therefore respectfully request that all financial institutions with comparable levels of federal (or provincial) regulation should be treated equally under the MRA and, therefore, should be subject to comparable requirements and exemptions. Ideally, because they are fully regulated already, all federally regulated financial institutions should be exempted by the Regulations from the requirements of the MRA.

#### **Exemptions in other Jurisdictions**

We understand that the MRA was drafted taking in consideration other mortgage brokerage legislation including that of Saskatchewan and Ontario. Both those provinces provide equal exemptions for credit unions, trust and loan companies, and banks from the mortgage broker and mortgage administrator activities covered by the acts.

The Regulations under the Saskatchewan *Mortgage Brokerages and Mortgage Administrators Act* exclude various entities from the application of the requirements of the Act which apply to mortgage brokers and mortgage administrators. In addition to chartered banks, the excluded entities include credit unions and loan companies.

In Ontario, every financial institution (including credit unions and loan companies) is exempted from the requirements in the *Mortgage Brokers, Lenders and Administrators Act* to have a brokerage license and or a mortgage administrator's license.

Atlantic Central submits that similar legislation would also be appropriate in Nova Scotia and strongly urges Nova Scotia legislators to completely exempt loan companies, including League Savings and Mortgage Company, from the application of the MRA and exempt credit unions from the requirements relating to mortgage administrator activities, the holding of trust property, and mortgage brokerage activities.

Thank you for giving us the opportunity to make this submission and to present these issues to you. We welcome the chance to work with the Government on the Regulations in order to fully protect consumers while not duplicating legislative and regulatory requirements.

We look forward to hearing your comments on the above, and would be pleased to address any questions.

Respectfully,

A handwritten signature in black ink, appearing to read "B. O'Neil". The signature is written in a cursive, flowing style.

Bernie O'Neil  
President & Chief Executive Officer

Laws Amendments Committee May 2<sup>nd</sup> 2012

Good Afternoon. We represent the MBAAC, my name is Glen Ward, I am the president of the association. Today I have with me Michelle Drover, Vice President.

We are a reasonably new organization, set up as a not for profit association representing the Mortgage Brokers living in Atlantic Canada, including Nova Scotia.

Our goal as an association is to help elevate the profile of Mortgage Brokers in the eyes of the public, help assist in providing feedback and communication between our Industry and Government officials, and to provide an avenue for brokers to have access to Continuing Education and other forms of group benefits.

Our association is pleased to see the work that has been put forth with Bill 22 and as an overall concept and proposition, we are in complete support of its fundamental purpose.

Although the Prescribed details of the legislation have yet to be revealed, the body of the Bill appears to touch on many of the aspects of our industry that we feel should be overseen by regulators.

There are a couple of points we would like to highlight as points of interest with potential need for clarity.

Section ~~30~~ 31- Brokers acting on behalf of Private Lenders. We can attest the amount of business that is being done by private lenders, without the knowledge of the Brokerage, or perhaps a private lender that more than likely does not have a Lenders License for this province as well. Our association would be happy to help identify some of the Lenders in the province that are doing business with out a license so we can help correct this action and move toward better protecting the brokers and the consumer.

Perhaps A Private Mortgage that is established between a Buyer and a Seller of a property should be outlined as an exception to the licensing rule set out in this Bill. It may be required that the definition of a Private lender be more detailed, to which it may include a definition around a minimum amount of volume being distributed in each year period.

Section 55- Annual Filings- We are a little concerned by the type of information the province may be looking for in these returns- and look forward to seeing the prescribed criteria that the registrar is proposing.

Section 58- Advertising. The Bill states that any advertising will have to show the information under which the broker is licensed. We would like to point out a possible provision for brokers that are registered with a brokerage but that may also have a Sub brokerage with different branding within that brokerage. It may also be a potential definition change that would recognize this type of situation and allow for minimal recognition of the licensed brokerage.