

SCHEDULE A

Briefly outline why you disagree with what the Chief Executive Officer (“CEO”) is proposing to do in the Notice of Proposal dated April 30, 2024 (“NOP2”). Use point form if desired. Please be as specific as possible in referring to the statutory provisions relevant to your case.

Background

1. The Applicants, Harold Gerstel (“Gerstel”) and Harold The Mortgage Closer Inc. (“HTMC”), have been in business for approximately 10 years. During these 10 years, Gerstel and HTMC have helped many borrowers who are very appreciative. These borrowers could not obtain bank or institutional financing to protect their homes and businesses. Gerstel and HTMC have provided a service that is needed in the Ontario mortgage market. There is no credible allegation in the NOP2 that the public interest is at stake or at risk, based on the fabricated allegations against Gerstel and HTMC in the NOP2.
2. Furthermore, Gerstel and HTMC introductions of borrowers to EGI, for no compensation directly or indirectly, have resulted in businesses and homes being protected and saved. The borrowers were told that the money was coming from Gerstel’s wife’s company, which is a matter of public record, and all particulars are available from a corporate search, but that was irrelevant, in any event, as the borrowers did not care about the company from which the funds came, as they were unable to obtain funds from any other lender.

3. Gerstel and HTMC have maintained a positive reputation in the business community in which they have carried on the brokerage business over the last ten years.
4. During this ten-year period, there have been no complaints, from the borrowing public, except for the two complaints revealed to, and learned by Gerstel, for the first time in the NOP2 dated April 30, 2024.
5. Gerstel does introduce borrowers to EGI, and in particular to EGI's lawyer. Borrowers retain independent legal representation to negotiate terms of the mortgages, with EGI's lawyer. No brokerage fee or any fee, is charged or paid by the borrowers to Gerstel or HTMC.
6. In May of 2022, an article was published in the newspaper, making various allegations against Gerstel, that were false, related to mortgage transactions with Ms. Judith Allen ("JA"). Statements in media reports are not evidence, are not reliable, nor should they be used to attempt to interfere with licensing and one's livelihood.
7. This article resulted in a civil action ("Allen case"), which has not produced a shred of evidence that corroborates these false claims found in the newspaper article. The Financial Services Regulatory Authority of Ontario ("FSRA") knows this, or ought to know this. Claims in a Statement of Claim are not evidence and are not reliable, nor should they be used to attempt to interfere with licensing and one's livelihood.
8. This Allen case was the catalyst for four investigations by FSRA of Gerstel and HTMC, the fourth being the apparently more than a two year investigation that resulted in the NOP2. From the issuance of the original NOP in June of 2023, to the issuance of the NOP2, nothing changed. The FSRA obtained no further material information related to the Allen case. No public interest was involved.

9. On June 27, 2022, FSRA commenced an investigation against HTMC and Gerstel under s. 30(1) of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (“MBLAA” or “Act”). It asked HTMC to answer questions related to its everyday practice, specifically:

- a. Private mortgage brokering and lending practices;
- b. Mortgage suitability assessment;
- c. Borrower disclosures;
- d. Management and disclosure of (actual or perceived) conflict of interest; and
- e. Regulatory reporting requirements [e.g., Annual Information Return (AIR)].

10. Gerstel and HTMC submitted the requisite answers.

11. On November 30, 2022, Gerstel and HTMC received another letter from FSRA. This letter requested responses to comments made in the *Summary of Findings*.

12. Gerstel and HTMC submitted the requisite answers.

13. On January 23, 2023, FSRA concluded their investigation and issued a Letter of Warning of a number of matters including related to conflict of interest and suitability, which they now raise again in the NOP2. The Technical Lead, Fariba Mirhassanivahed (“Fariba”), thanked the Applicants for their cooperation throughout the investigation process.

14. Gerstel and HTMC have provided all relevant information asked for by the FSRA. This included submitting names of borrowers. FSRA declared that once it had the names, it would pick some sample files. There was nothing preventing the FSRA from choosing sample files, as FSRA advised it would do. However, it never asked for any sample files. Instead, FSRA employees, officers and agents called borrowers and asked

intimidating and leading questions to suggest there was misconduct by Gerstel or HTMC or both.

15. All files related to the Allen case were provided to FSRA. No complaint was made by FSRA for at least two years, related to the transactions that were the subject of the Allen case and litigation until the April 30, 2024 disclosure.

16. Gerstel and HTMC have provided their positions in writing to the FSRA throughout this whole process of “investigation”.

17. The same matters that only required a warning are now the subject of allegations and penalties in the NOP2. This is an abuse of process. Gerstel and HTMC rely on the principles of issue estoppel and res judicata.

18. The CEO and the FSRA breached the duty of procedural fairness and the duty to comply with the principles of natural justice during the investigation, prior to the NOP2, and when it issued the NOP2.

19. The procedure used by the FSRA is unfair and contrary to procedural fairness and natural justice. FSRA refused to disclose the allegations being made by them or the allegations in complaints, or what provisions of the legislation FSRA relied upon, before either asking for information, or before any examinations using their subpoena power. The use of the subpoena power without providing the basis of the investigation is procedurally unfair and contrary to principles of natural justice.

20. FSRA has no authority or jurisdiction to bring this NOP2. The statutory conditions precedent were not complied with by the FSRA.

21. The Financial Services Tribunal (“FST”) has the jurisdiction to monitor the conduct of the FSRA and sanction and control the improper use of this power.

22. The CEO and the FSRA used improper tactics such as ambush, failure to make true, full, fair and complete disclosure to Gerstel and HTMC, and planned entrapment using incomplete, misleading statements, during the investigation. The silence of the FSRA and the CEO, when Gerstel stated under oath that no complaints had been received from borrowers, was intentionally misleading. This was done in circumstances where there was no reason not to provide the information about the complaints made to the FSRA by borrowers, or the complaints of the FSRA, against Gerstel or HTMC. This would have been fair, transparent conduct consistent with the purpose of protecting the public interest. How is the public interest protected by hiding the “misconduct” for two years from the public, and even hiding it from the alleged perpetrators?

23. There is no basis for any allegation of non-compliance with the *MBLAA* or its regulations. FSRA's conduct lacked the required impartiality, and appearance of impartiality required, when a public authority is investigating under the *MBLAA* and when issuing and drafting the NOP2. This conduct is consistent with bad faith and malice.

24. Gerstel and HTMC submit that the CEO and FSRA had no jurisdiction under the *MBLAA* to issue an NOP2 that was materially incomplete, false, misleading and unfair, in bad faith and malicious, and designed and intended by FSRA to be published and to mislead the public. It was also designed and intended to destroy the reputation of Gerstel and HTMC.

25. FSRA's investigation of Gerstel and HTMC started prior to April 30, 2022, all the particulars of which are known to FSRA. FSRA was aware of the alleged contravention or alleged failure to comply, alleged in the NOP2, more than two years before April 30, 2024.

Inquiry Letter to Harold Gerstel and History of Investigation

26. On March 13, 2023, FSRA delivered an inquiry letter to Gerstel¹. This letter contained questions that overlapped with the previous investigation done by FSRA in June of 2022, including dealing with conflict of interest issues.

27. On March 28, 2023, Gerstel provided answers to the questions posed in the inquiry letter to Ms. Tamara Kido.

28. On March 29, 2023, Gerstel and Ms. Kido spoke on the phone regarding a few matters, one of them being the answers to the inquiry letter.

29. On April 5, 2023, Ms. Kido asked four questions for clarification of the answers submitted, which Gerstel answered except for the broad question about lawsuits.

30. On April 20, 2023, Gerstel delivered the bank statements as requested.

31. As of that date, Gerstel provided full answers to the relevant questions posed in the inquiry.

¹ In fact, the FSRA purported to send another inquiry letter in July 2022 addressed to HTMC. This letter was confusing and ambiguous. It is not referred to in the NOP2. Information that letter requested, was provided, without prejudice to the rights of HTMC and HG to dispute the authority of FSRA to make these enquiries.

Abuse of Process

32. While prosecuting the Notice of Proposal issued in June of 2023, the FSRA, as a party to this proceeding, and the CEO, continually imposed crisis management deadlines for the delivery of material and steps with regard to the Request for Hearing related to that Notice of Proposal, before the Financial Services Tribunal. These demands for crisis management timing were made knowing the commitments and the unavailability of Gerstel's counsel.

33. However, secretly and internally, the employees and officers and agents of FSRA were investigating other allegations against Gerstel and HTMC, and intended to issue another Notice of Proposal. This was also concealed from FST and the Chair by FSRA.

34. They intended to deliberately interfere with the FST schedule, which was already in place, ordered by the Chair over the objection of Gerstel and HTMC . FSRA and in particular Troy Harrison and Michael Scott, under the instructions of the CEO, intended "to crater" that schedule.

35. The FSRA had demanded the truncated-in-time schedule, knowing FSRA intended to dismantle that schedule and the work that had already been done and the funds that had already been expended.

36. The use of the unlimited public funding available to FSRA, compared to the limited resources of members of the public such as Gerstel and HTMC, is a malicious and intentional misuse of power, designed to cause financial distress and intimidation. It is also a misuse of the economic resources, that is supposed to protect the public interest.

37. The FSRA has available to it millions of dollars, a substantial part of which comes from fines issued by the FST. As a result, there is an inherent conflict of interest in the FSRA's excessive requests for monetary penalties. The FSRA is obligated to disclose this conflict of interest before the FST.

38. The FSRA is responsible to the public for its use and misuse of these public funds. The FST should be the governmental body responsible for the monitoring and policing of the FSRA and its employees, agents and officers.

39. When acting with malice and contrary to the procedural fairness and natural justice principles that govern public authorities, the persons in power should be personally responsible for the misuse of public funds. They should also be personally responsible for the wasted costs, imposed and required to be expended to defend the business and reputation of licencees, such as Gerstel and HTMC. Their strategy is to make the proceeding as expensive as possible to extract settlement or capitulation to the FSRA's demands.

40. Gerstel and HTMC will be seeking Orders for costs and sanctions against Troy Harrison, Michael Scott and Ms. Sinha on the hearing of this NOP2, if the NOP2 is not set aside by the Divisional Court.

41. The FST has the jurisdiction and responsibility to monitor and police the conduct of the FSRA and its agents, officers and employees, who abuse their power with malice.

Alleged Scheme

42. The FSRA irresponsibly alleges that there is a “scheme” and that it was “orchestrated” by Gerstel. There is no basis in fact for that allegation whatsoever.

43. FSRA fails to understand the market or the nature of the borrowers who seek Gerstel’s assistance.

44. They are borrowers in significant difficulty, who cannot get financing from any large financial institutions. They make the decision whether to borrow funds from EGI. They choose EGI with legal representation and advice.

45. Every borrower is provided with full protection under the *MBLAA* and its regulations. They chose the lawyer who acted for them and they received all documents required by their lawyer, and as well receive independent legal representation and independent legal advice from a lawyer.

Allegations that Gerstel Failed to Co-operate

46. The FSRA served a Summons, in the midst of the other FST proceeding involving the 2023 Notice of Proposal, without first seeking a convenient date. In particular, after having imposed a strict and comprehensive schedule requiring significant time commitments of the counsel for Gerstel, FSRA then issued a

Summons to Witness and chose a date that it knew or ought to have known that Gerstel's senior counsel was not available. Under the statute, the FSRA must respect a witness's or licensee's right to counsel of their choice. This is a legislated right of Gerstel. Gerstel was entitled to retain a senior counsel to be present at the examination, who had knowledge of all proceedings and could properly and fully protect Gerstel. FSRA knew or ought to have known, that Mr. Solmon was Gerstel's senior counsel of choice, and knew that his availability was limited due to, in part, the time commitments imposed by FSRA and ordered by the FST, with regard to the hearing of the initial Notice of Proposal issued in June of 2023.

47. As a result, Gerstel and HTMC seek an Order that protects their reputation and for costs of this hearing.

48. In response to the general allegations in the Notice of Proposal dated April 30, 2024 (NOP2), Gerstel and HTMC state as follows:

- a. In 2022, the FSRA investigated issues related to conflict of interest and referral fees and found there was no serious misconduct whatsoever. The matter of conflict of interest issue and the suitability assessment issues were dealt with and decided and a warning was issued. Gerstel and HTMC rely on *issue estoppel* and *res judicata*.
- b. With regard to paragraph 11, there was no conflict of interest and a suitability assessment was done. Firstly, all of the borrowers who seek Gerstel's or HTMC's assistance, have been refused by other brokers, have been refused by financial institutions, and either

require money quickly, and at times immediately, or they will lose their homes or businesses.

- c. With regard to paragraph 13, Gerstel and HTMC have no interest directly or indirectly, in EGI. Esther Gerstel is the sole director. No monies were lent to Gerstel. This is abusive speculation and reckless investigation and irresponsible accusations that the FSRA intends to publish on its website over the internet.
- d. Paragraph 13 is intentionally vague. FSRA has no evidence whatsoever that Gerstel has a direct interest in EGI. This form of speculation and irresponsible allegation should not be carried out by a public authority and it should be sanctioned. The FST has the power, authority and jurisdiction to sanction the FSRA for misconduct. As there is evidence supporting malice in the approach of the FSRA, the FST must take jurisdiction to deal with such misconduct, so that the public interest in FSRA's conduct being monitored, is carried out by an independent administrative body.
- e. In paragraph 16 the FSRA and CEO intentionally exaggerate the interest rates and cost of borrowing and overstate the amount, alleging 80% as a total maximum cost of borrowing, which is not true. This conduct also supports the bad faith and malice of the FSRA and CEO towards Gerstel and HTMC.

49. Gerstel denies that he was the sole point of contact with EGI. The borrowers retained lawyers who were the point of contact with EGI's lawyer.

50. With regard to paragraph 15, Gerstel never insisted nor encouraged the borrowers to use specific lawyers. He did recommend always that the borrowers had to obtain independent legal representation and advice. The lawyers confirmed, and if necessary, negotiated mortgage terms on behalf of the borrowers for which they acted. EGI had its own lawyer acting for it on transactions with borrowers of funds, including the borrowers referred to in the NOP2.

51. With regard to paragraph 16, the FSRA intentionally inflates the cost of borrowing in the NOP2. The average cost of borrowing was subject to and based upon the approval of EGI. No one lost his or her home because of any conduct by HTMC or Gerstel.

JA

52. With regard to the facts related to JA, the FSRA has never provided a copy of the Complaint to Gerstel or HTMC. This conduct is contrary to procedural fairness and the principles of natural justice. This conduct is not in the public interest. It is contrary to the public interest. FSRA's conduct buries the alleged misconduct and fails to disclose it to the public (if it really was misconduct), in this case for two years. This conduct of FSRA should be corrected by the FST.

53. The figures and allegations set out in paragraphs 16 to 26 involving HTMC and Gerstel are false and knowingly false in many respects. Gerstel and HTMC

put the FSRA to the strict proof of those allegations. There was no mareva injunction against Gerstel or HTMC. JA testified under oath, that she had no complaints against Gerstel. The Complaint was a manufactured or connived Complaint as a result of pressure JA received from other individuals, all the particulars of which are known by FSRA and unknown to Gerstel and HTMC. JA was a repeat customer of EGI and had a number of mortgages with EGI. She was sophisticated and knowledgeable.

54. Although the lawsuit is still continuing against Gerstel and HTMC, there is no evidence whatsoever connecting Gerstel or HTMC with regard to any of the misconduct of the contractors that were chosen by JA, and retained by JA, not by Gerstel or HTMC.

MW

55. MW had a number of mortgages with EGI and was a repeat customer. He was in the business of buying, renovating and then, selling condominiums. When he over-extended himself in his business, two properties were sold: one by Power of Sale which was a tear-down and was not a family home, and the other, which was not a family home, was sold by MW because he could not obtain further construction financing.

56. MW was a satisfied customer for the introduction by Gerstel to EGI for a number of loans, so that MW could obtain the funding he needed for his business, until the last two loans which were not profitable as he lacked financing or overspent.

57. Gerstel and HTMC have not seen the Complaint filed by MW with FSRA. The failure to provide a copy of that Complaint prior to the filing of the Notice of Proposal dated April 30, 2024 and prior to serving a Summons to Witness, is an abuse of process contrary to procedural fairness and contrary to the rules of natural justice. Furthermore, it is intended to ambush and, whether intended or not, it instills unfairness into the investigation and prosecution process.

58. During the time that Gerstel and HTMC did not know of the existence of the two complaints made by JA and MW, FSRA had multiple opportunities to correct Gerstel and HTMC's belief that there were no complaints from any borrowers, but FSRA chose to stay silent instead.

DG

59. With regard to paragraphs 34 to 40, DG obtained a mortgage based on independent legal advice and independent legal representation. Gerstel introduced DG to EGI. Gerstel and HTMC received no fee for the introduction. Gerstel and HTMC did not benefit directly or indirectly with regard to this loan.

60. Further, this loan was a very risky loan being a mortgage on half of a property. DG knew it was a very risky loan, but as a result of the loan she was able to refinance and save her home.

MD

61. With respect to paragraphs 41 to 46 with regard to a loan to MD, MD was introduced by Gerstel to EGI. Gerstel and HTMC received no fee for the

introduction. Gerstel and HTMC did not receive any benefit directly or indirectly. MD received independent legal advice and independent legal representation before making the decision to borrow money from EGI, which MD did a number of times. As a result, of the loans MD was able to avoid losing his house.

WJ

62. With respect to paragraphs 47 to 51, with regard to a loan to WG, WG was introduced by Gerstel to EGI. Gerstel and HTMC did not receive any benefit directly or indirectly. Gerstel and HTMC received no fee for the introduction. WG received independent legal advice and independent legal representation before making the decision to borrow money from EGI.

MA

63. WJ asked EGI for a further loan in 2023.

64. With respect to paragraphs 52 to 57, Gerstel and HTMC disagree with the allegations listed in paragraphs 52 to 57 and put FSRA to the strict proof thereof. With regard to a loan to MA, MA was introduced by Gerstel to EGI. Gerstel and HTMC did not receive any benefit directly or indirectly. Gerstel and HTMC received no fee for the introduction. MA received independent legal advice and independent legal representation before making the decision to borrow money from EGI.

Allegation of Gerstel's Failure to Co-operate with FSRA Investigation

65. With respect to paragraphs 58 to 61, see paragraph 45 herein. Pursuant to the *Act*, Gerstel is entitled to retain senior counsel and for FSRA to respect his right to have his senior counsel attend at the examination. The FSRA breached the *Rules of Professional Conduct* related to legal representation, and the provisions of the *Act*, in refusing to adjourn the examination to await the availability of Mr. Solmon, in light of the facts already pleaded herein.

66. There was no urgency unless one was created intentionally or through reckless conduct by FSRA.

Alleged Contravention or Failure to Comply with the Act

67. Gerstel did not broker the mortgages for EGI that are identified in this NOP2. Gerstel did not receive remuneration directly or indirectly, as he has no financial interest or other interest in EGI.

68. Having signing authority over a bank account is an administrative matter and has nothing to do with a financial interest or control, and FSRA and the CEO know this.

69. At no time did Gerstel or HTMC have any control over EGI.

70. Paragraph 67 is false and Gerstel and HTMC put FSRA to the strict proof thereof.

71. With regard to paragraph 68, FSRA appears to be taking two opposite positions. In any event, Gerstel and HTMC put FSRA to the strict proof thereof. This was an introduction with no fee and the borrowers all obtained independent legal advice and received independent legal representation, with respect to their dealings with EGI. Legal representation is the protection of the public, intended by the *Act*.

72. With regard to paragraph 69, Gerstel and HTMC deny the allegation and state that they received no remuneration. Gerstel and HTMC did not in any way fail to comply with the *Act* as alleged in paragraph 69. Gerstel and HTMC received no remuneration.

73. With regard to paragraph 70, the CEO has acted without authority and without jurisdiction and the CEO has no evidentiary basis for these allegations.

Allegations Related to the Grounds for Refusal to Renew Gerstel's Licence

74. The CEO and the FSRA are abusing the process by using their power to double-down on its misuse of public funds.

75. The conduct of the FSRA is inconsistent with it being confident in the initial NOP delivered in June of 2023. If FSRA is confident in that first NOP, there is no need for a second NOP2, as against Gerstel and HTMC. It is a waste of public funds.

76. However, if the FSRA does not have confidence in the first NOP, then it should abandon the NOP and consent to the Order requested in the Request for Hearing with regard to that first NOP. This will avoid the excessive time and cost that will be spent and incurred on the initial NOP by the parties and the FST. Gerstel and HTMC plead that the commercially unreasonable use of government funds of FSRA's funds, should be monitored and sanctioned by the FST.

77. Gerstel and HTMC deny paragraphs 81 to 83.

78. With regard to paragraph 84, Gerstel and HTMC have been in compliance.

Allegations Related to the Grounds for the Revocation of HTMC's Licence

79. With regard to paragraphs 86 to 94, HTMC denies that there are any valid grounds for revocation of its licence. There is no evidentiary basis for the allegations in paragraphs 91 and 92.

Allegations Related to the Grounds for Imposing Administrative Penalties on Gerstel

80. With regard to paragraphs 95 to 109, Gerstel denies the allegations of FSRA and the CEO related to penalty and states:

- a. Gerstel did not contravene, and in any event did not receive any funds or compensation directly or indirectly, and so there is no basis for any administrative penalty or fine in the amount of \$60,000.00 or

any amount. In any event, such amount is excessive and punitive, and, by FSRA asking for such a large amount, is malicious and unfair.

- b. Gerstel never engaged in a deliberate course of conduct designed to leverage his credibility or that of HTMC, nor did he deny the protections of the *Act* to any borrowers. All borrowers had protections as required by the *Act*. There was no benefit to “himself”. Gerstel denies there was any serious harm, or any harm at all, nor have there been any contraventions. The FSRA, in seeking the high penalty it seeks, does not take into account that the borrowers had the protection of lawyers and were not deprived of any protection, as it vaguely claims in the NOP2, and that Gerstel received no remuneration.
- c. Gerstel denies paragraph 104 and puts the FSRA to the strict proof thereof. Borrowers had the full protection of legal representation and legal advice and that is what is contemplated as the protection required under the *Act* and its regulations. Gerstel did not benefit, nor did the borrowers suffer any deprivation or loss. Borrowers were fully aware that they were dealing with a high-risk mortgage when they dealt with EGI.
- d. Paragraph 105 is false. MW did not lose a private home. He was in the business of buying and selling property. MW knew the risks. He

was a sophisticated borrower. FSRA knows that. FSRA's NOP2 wording is irresponsible and designed to inflame public opinion (FSRA intending that the NOP2 be published on its website). It is abhorrent speculation and demonstrates FSRA's reckless investigation or failure to investigate.

- e. With respect to paragraph 105 and the allegation that JA lost her home, that loss of home had nothing to do with Gerstel or HTMC, and this is a misleading and irresponsible accusation. JA lost her home because of the contractor that she chose to hire. JA has passed away and the contractor has passed away. No one blamed Gerstel other than a lawyer for JA who had no evidence whatsoever to support that allegation. On the cross-examination of JA, she was asked if she had any complaints against Gerstel and she said "no". Additionally, she made it clear that Gerstel had not caused her any loss. The FSRA will have to call the lawyer who acted for JA at the material time in this litigation, as a witness, failing which Gerstel and HTMC will rely on the law of adverse inference when defending this allegation.
- f. With regard to paragraph 106, Gerstel denies there was any loss to mitigate, nor any remedial action required, as there was never any suggestion that anything was a problem. The conduct of Gerstel was consistent with his introduction, for no fee, of persons who had significant financial problems, to EGI.

- g. With regard to paragraph 107, Gerstel had no economic benefit as pleaded above.
- h. With regard to paragraph 109, Gerstel denies the facts and puts the CEO to the strict proof thereof, that the penalty sought is not punitive and malicious.

81. Gerstel and HTMC state that the financial losses of EGI are not relevant to Gerstel and HTMC and they state that EGI did not receive \$2.15 million in fees and interest from Borrowers, and in fact suffered losses related to MW and JA loans. All this was known, or should have been known, by FSRA.

82. With regards to the Grounds to Issue a Compliance Order, Gerstel and HTMC state that they did not facilitate or perform any contraventions of the *Act*, nor did they intentionally circumvent the intentions of the *Act* to the borrowers as the borrowers all had protection as required by the *Act*.

Summary

83. There are no victims referred to in this NOP2. There is no loss of money by anyone. The two “missing” documents in the quote referred to by FSRA are not part of the generally necessary documents in light of the regulations involving lawyers. Lawyers are permitted to close mortgage loan transactions without these documents.

Lawyers for borrowers provide protection to the borrowers. No vulnerable person was taken advantage of. These “vulnerable persons” were individuals who were either business persons or had taken risks before and knew what the risks were in borrowing these monies. Further, they all had independent legal representation and legal advice.

84. It is submitted that FSRA is intentionally concealing the fact that MW was a renovator and a businessperson. It was not his personal home that was “lost”. MW was borrowing money to make money. This is a good example to demonstrate the fishing expedition that FSRA has been on for years, as against Gerstel and HTMC.

85. Due to FSRA’s various calls they have made to many of the borrowers, obviously trying to find something to hold against Gerstel or HTMC, FSRA has now alarmed many borrowers.

86. Furthermore, the FSRA has known about the two Complaints, now referred to and relied upon by FSRA, since September 2022 when they investigated the relationships between HTMC, Gerstel and EGI in the Fariba investigation in 2022, which was completed in January of 2023 with only a warning letter. There is no Complaint referred to. The Notice of Proposal issued in June of 2023 mentioned nothing about these matters.

87. It appears that FSRA waited until the very last minute to bring this information to light and has been procrastinating and delaying revealing this information. Because of its failure to act in a reasonable manner and with due diligence, FSRA decided not to provide the normal courtesy for the cross-examination but instead decided to take the

position that because Mr. Gerstel and HTMC's lawyer was not available, that meant that Mr. Gerstel was not in compliance with a Summons to Witness. That is ridiculous.

88. The penalty requested is out of proportion to the allegations of misconduct in any event. There is no evidence of, nor was there any harm to any borrowers who dealt with the Gerstel and HTMC, as a result of any conduct of Gerstel and HTMC. There is no evidence of, nor is there any evidence, of economic benefit to Gerstel or HTMC, as a result of the alleged misconduct.

Reference to Statutes

89. The following statutes are relied upon.

- a. Sections 16, 19, 21 (3), 30, 34, 38, 39(4), 39(5), 44 and 45 pursuant to the *Mortgage Brokers, Lenders and Administrators Act*, 2006 S.O. 2006, chap. 29 and any related regulations;
- b. Rules 12 and 15, pursuant to the *Rules of Civil Procedure*, to proceedings before the Financial Services Tribunal; and
- c. *The Financial Services Authority Act* and any relevant regulations.

Orders Sought

90. An Order that the NOP2 (dated April 30, 2024) not be published for viewing on the Internet;

91. In the alternative, if it is published on the Internet, then this Request for Hearing must also be published on the Internet forthwith, in the same manner and with the same transparency and accessibility to the public as the NOP2. This issue is now before the Divisional Court and FSRA should await that decision before publishing anything, unless FSRA agrees to publish both the NOP2 and this RFHF;

92. An interim or interlocutory and permanent injunction restraining the publication of this NOP2 dated April 30, 2024, and if necessary a mandatory injunction removing the NOP2 from the Internet;

93. An Order declaring that the CEO has failed to comply with the rules of natural justice in their treatment of Gerstel and HTMC before the NOP2 was served, and prior to delivery of this Request for Hearing and in light of the conduct as pleaded above.

94. Gerstel and HTMC seek a declaration that Gerstel and HTMC are entitled to keep their mortgage broker licence;

95. Gerstel and HTMC ask for an Order that the licence of the Gerstel be renewed;

96. Gerstel and HTMC ask that the NOP2 of April 30, 2024 be dismissed, vacated, set aside or declared to no effect;

97. Gerstel and HTMC ask for an Order that any publication of the NOP2 on the website of FSRA or anywhere else under the control of the FSRA or CEO be removed from the Internet;

98. Gerstel and HTMC request costs associated with the commencement of FSRA's investigation plus costs of all matters related to the NOP2 dated April 30, 2024 and that they be paid by FSRA, or the CEO, and that Troy Harrison and Michael Scott be held jointly liable for such costs.

99. Gerstel and HTMC ask for an Order that the Tribunal has jurisdiction

- a. to monitor and police the conduct of the FSRA;
- b. to make such Orders as may be necessary to control and monitor and ensure that the actions of the FSRA are in compliance with statutory requirements including the regulation of the relevant rules; and
- c. to sanction the conduct, in bad faith, with malice and in disregard of FSRA's mandate to protect the public interest, of FSRA (including the officers, employees and agents involved), as pleaded herein.

100. Such further Order that the Tribunal deems just.

