

# Update to RESA Administrative Penalties

Information Session

October 24, 2023

**BCFSA** BC Financial  
Services Authority

Classification: Protected A



# Land Acknowledgement

x<sup>w</sup>məθk<sup>w</sup>əy'əm (Musqueam Nation)

Sk<sub>w</sub>x<sub>w</sub>ú7mesh Úxwumixw (Squamish Nation)

səl'ílwətaʔt (Tsleil-Waututh Nation)

# BCFSA Speakers

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Market Conduct

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Senior Policy Analyst

# Agenda

1. Background
  - What Are Administrative Penalties?
  - Current Framework
  - BCFSA Process
2. Proposed Changes
  - Why Change the AP Framework
  - Proposal Overview
  - New Categories
3. Timeline
  - Next Steps
  - BCFSA Rule-making Procedure
4. FAQs
5. Questions

# Background

# What Are Administrative Penalties (APs)?

## OVERVIEW

- Common compliance tool used by regulators
- Deal efficiently and effectively with easily proven misconduct, often technical and minor

## LEGISLATION/RULES

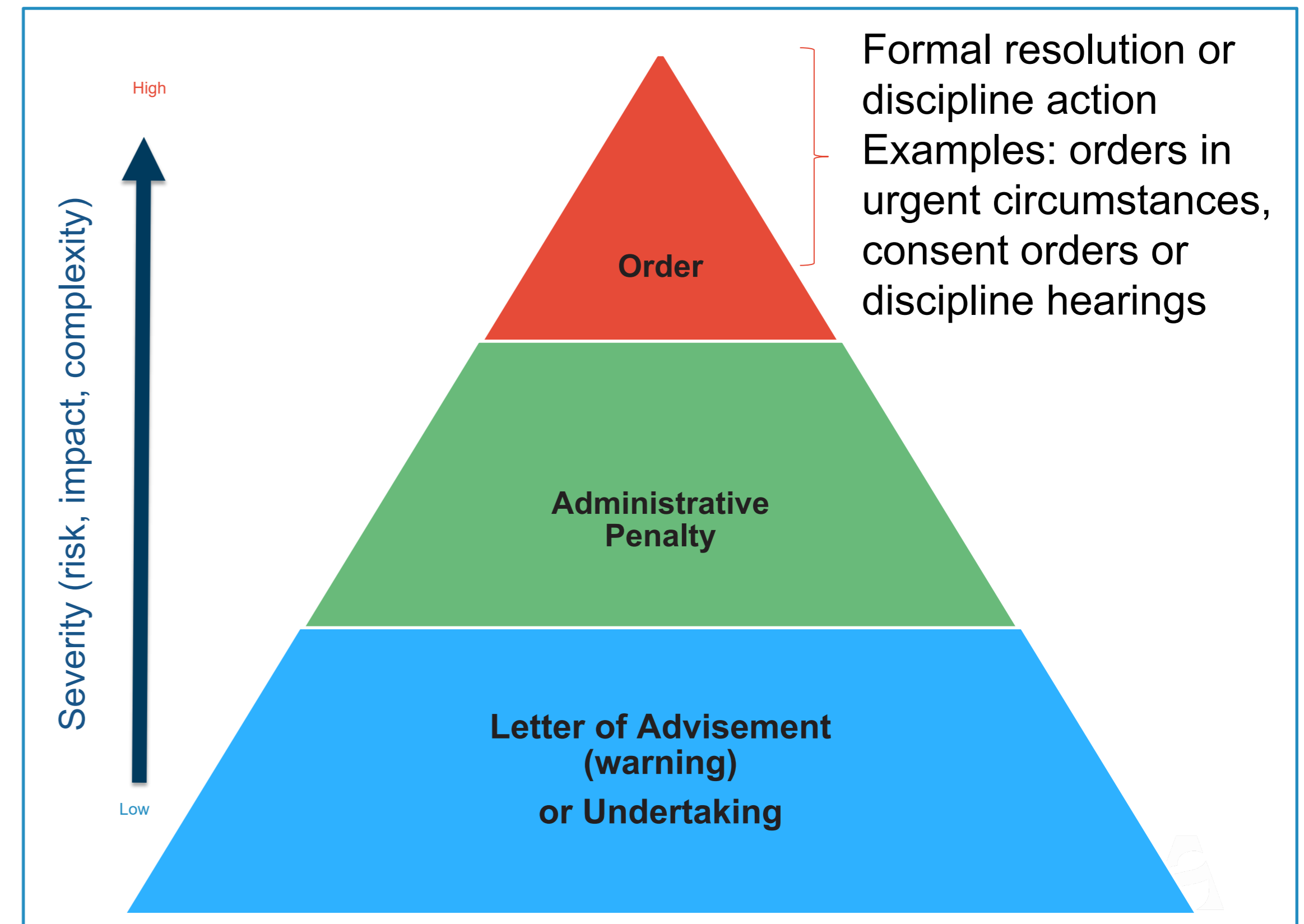
- Administrative penalty provisions are set out in Sections 56 and 57 of the *Real Estate Services Act* (“RESA”) and in Sections 26 and 27 of the Real Estate Services Rules (the “Rules”)



# What Are Administrative Penalties?

- Administrative penalties are an intermediate step that can be taken between a letter of advisement and enforcement action
- The aim of administrative penalties is to encourage compliance
- Administrative penalties do not include enforcement costs
- RESA requires BCFSA to designate contraventions by Rule as eligible for APs and to establish associated penalty amounts
- Administrative penalties can include a financial penalty, requirement to complete a specified course or training, and/or licence restrictions or conditions

## BCFSA PROGRESSIVE ENFORCEMENT TOOLS



# Current Framework

**CATEGORY A**  
 Business management infractions  
 1<sup>st</sup> offence: \$1,000  
 2<sup>nd</sup> offence : \$2,000

**CATEGORY B**  
 Minor matter with no material harm to consumers  
 1<sup>st</sup> offence: \$2,500  
 2<sup>nd</sup> offence: \$5,000

**CATEGORY C**  
 Substantial licensee duties to clients and non-clients  
 1<sup>st</sup> offence: \$5,000  
 2<sup>nd</sup> offence: \$10,000

**CATEGORY D**  
 Minor matters with daily penalties  
 1<sup>st</sup> offence: \$1,000  
 2<sup>nd</sup> offence: \$2,000  
 Plus \$250/day after warning period

**Recent additions:** In 2023, contraventions related to Teams were added, primarily to Category D  
 If approved, in 2024 rules with respect to data disclosure to BCFSA will be integrated to the AP Framework  
 (as part of previous consultations and Rules amendment processes)

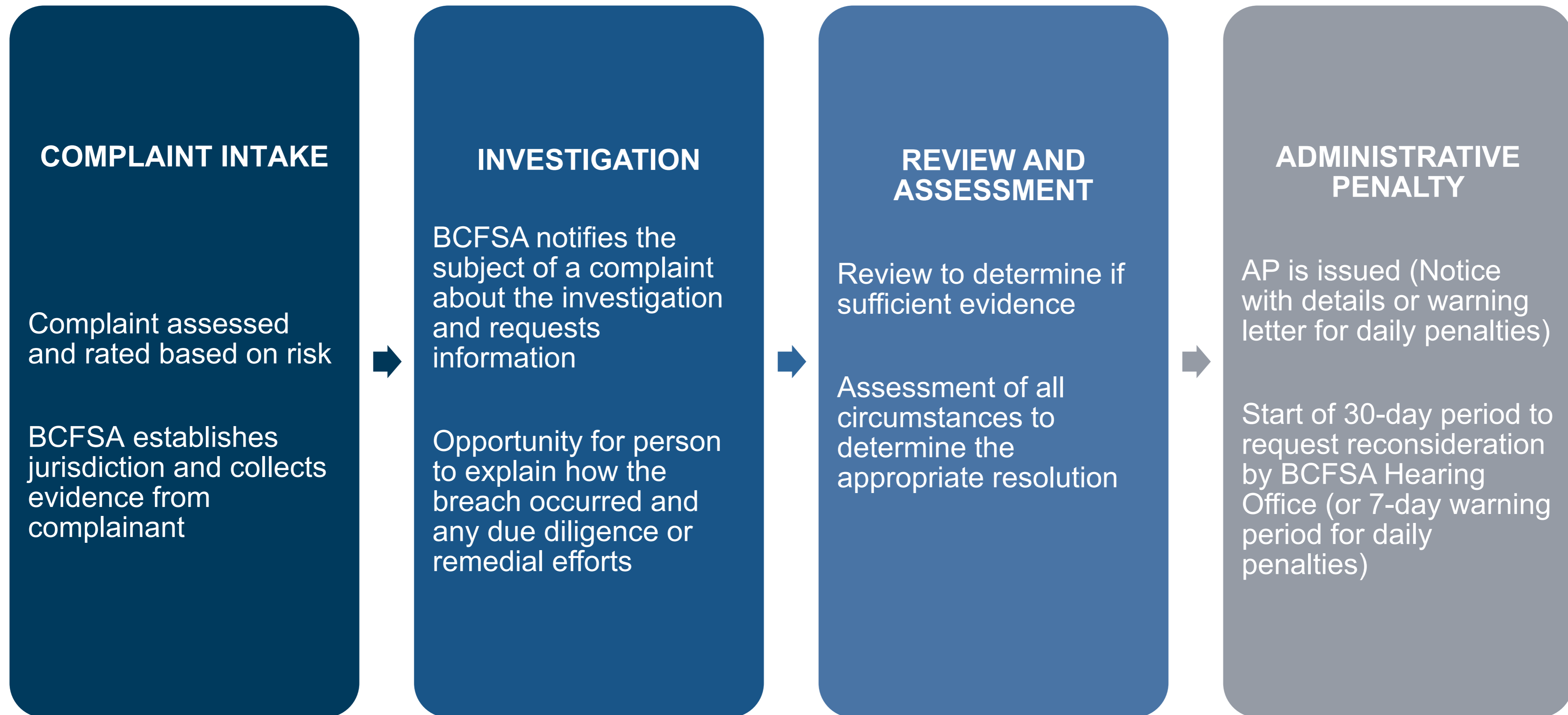




# BCFSA Process

## LEADING UP TO AN ADMINISTRATIVE PENALTY (INVESTIGATION)

See Discussion Paper: Appendix B



**Administrative Penalties are not automatic**

# Proposed Changes

# Why Change the AP Framework?

## AUGUST 2021 RESA AMENDMENTS

- Sections 56 and 57 enable use of APs to address contraventions of the Act, Regulation, and Rules (previously only Rules)
- Change allows BCFSA to address unlicensed activity through administrative penalties for the first time

## CONSUMER PROTECTION

- Continue to improve efficiency and effectiveness of BCFSA's enforcement of RESA
- Consumer confidence that persons who engage in real estate services have the proper training and are competent



# Proposal Overview (1 of 2)

## AMEND RULES TO:

- Create two new categories of APs, capturing
  - Failures by unlicensed persons and licensees to comply with BCFSA investigations
  - Unlicensed and related restricted activity
- Add contraventions with respect to the improper use of required disclosures
- Expand the list of infractions eligible for APs that fit within the parameters of existing categories B, C and D in s. 26 of the Rules



# Proposal Overview (2 of 2)

## NOTABLE FEATURES

- The proposed amendments will benefit licensees and the public
- Expanding APs helps improve enforcement efficiency by addressing more contraventions quickly and avoiding lengthy order processes, where appropriate
- No change to any licensee obligations
- No change to licensing requirements under RESA
- No change to penalty amounts of existing categories



# New Proposed Categories

## CATEGORY E

Unlicensed and licensee cooperation with BCFSA investigations  
(daily penalties for noncompliance)

1<sup>st</sup> offence: \$1,000

2<sup>nd</sup> offence: \$5,000

Plus \$1,000/day after warning period

## CATEGORY F

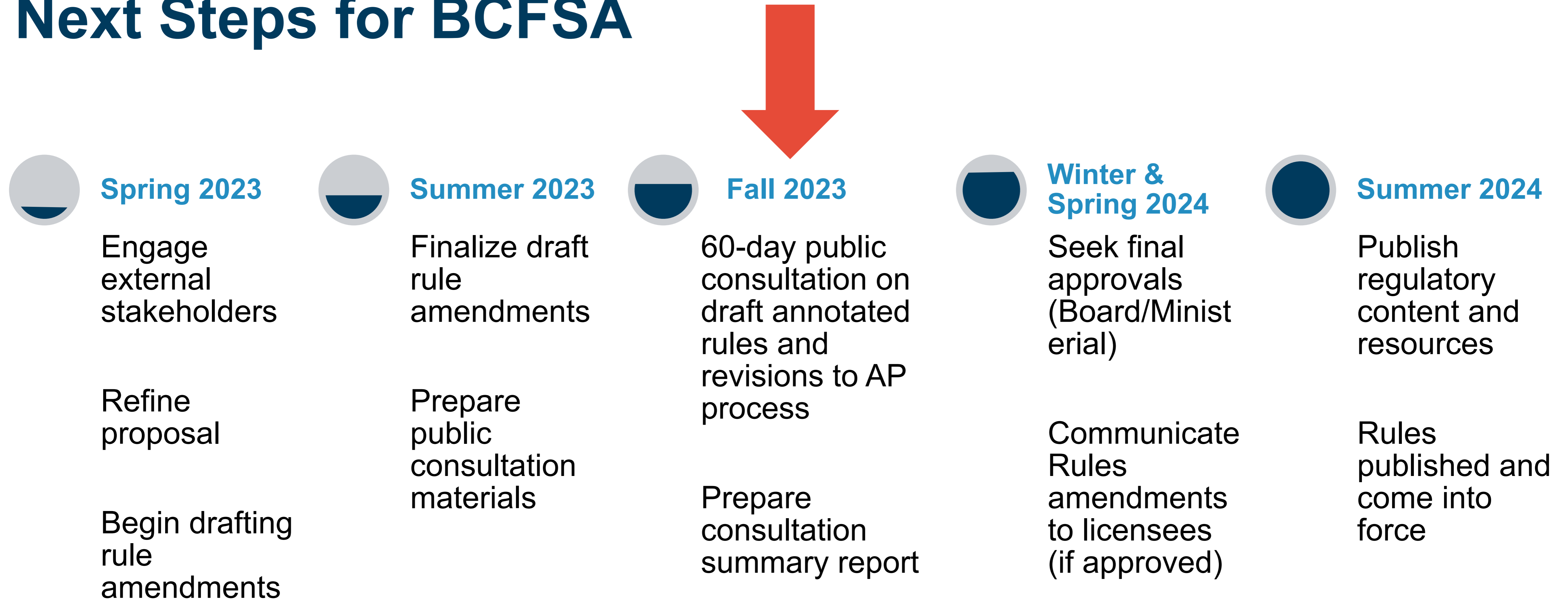
Unlicensed and related restricted activity

1<sup>st</sup> offence: minimum \$5,000

2<sup>nd</sup> offence: minimum double previous penalty amount

# Timeline


# Next Steps for BCFSA





# BCFSA Rule-making Procedure

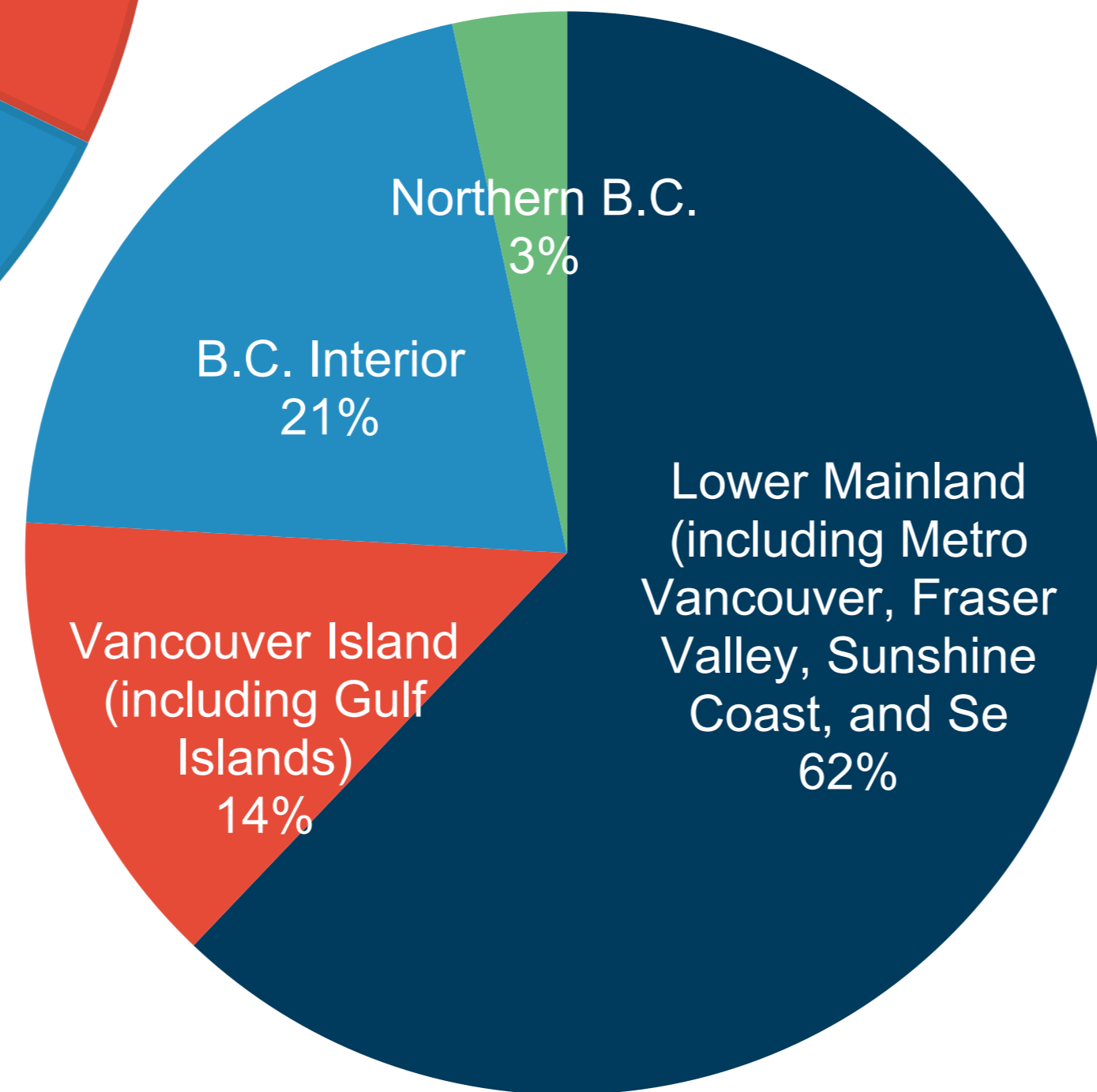
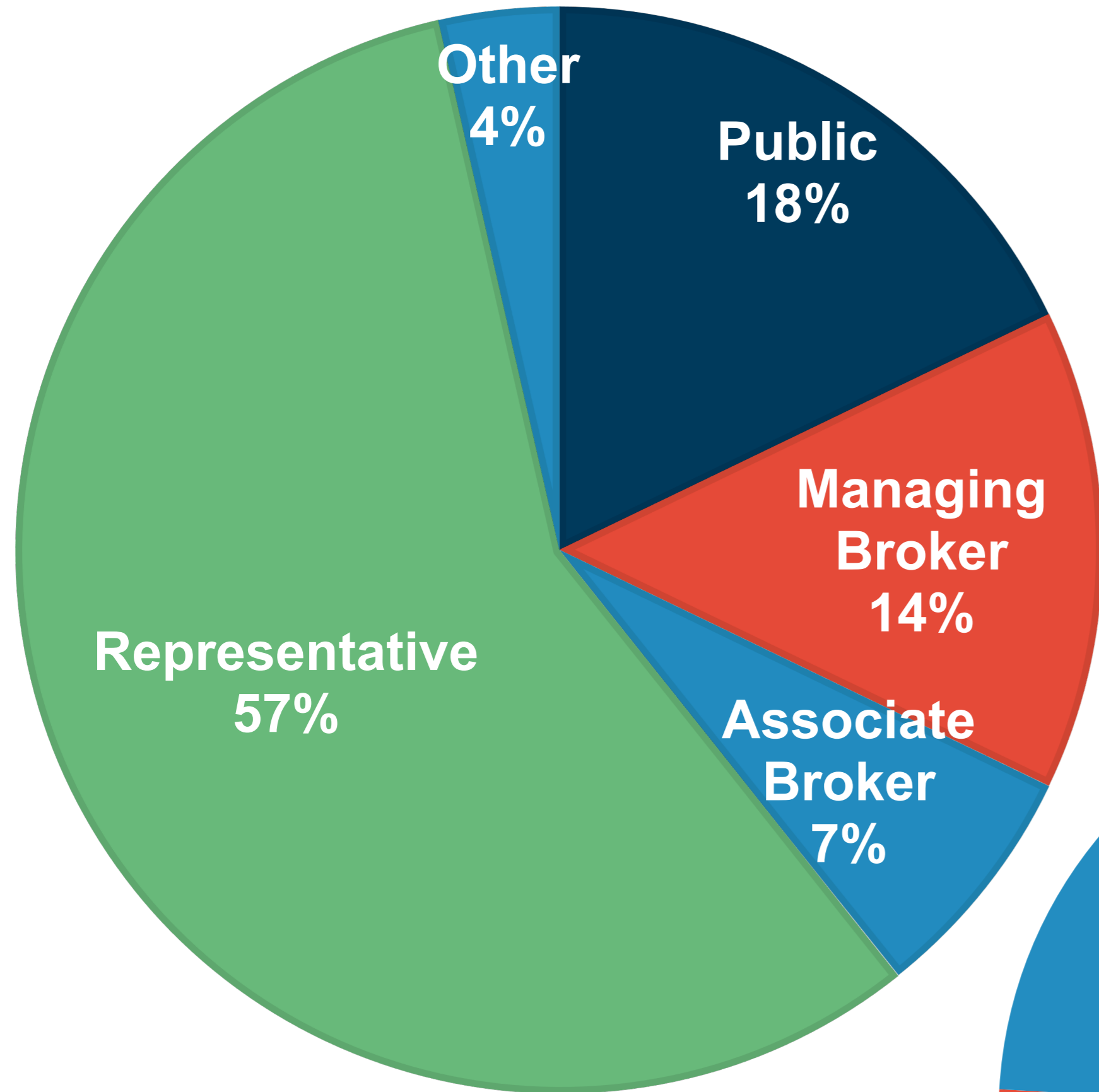
## TO AMEND THE RULES, BCFSA MUST:

1. Obtain the Minister's approval-in-principle to amend the Real Estate Services Rules (30 days for Minister to respond)
-  2. If approval is given, initiate public consultation on proposed Rules amendments (60 days)
3. Undertake analysis of consultation feedback to determine if the proposed amendments need to be altered
  - Material alterations require a second round of public consultation period
4. Obtain the Minister's consent to amend the Rules (60 days for Minister to respond)
5. Publish the amended Rules

# Your Next Steps

- Review the consultation package (including annotated draft rules and Discussion Paper)
- Questions not addressed by the package can be emailed to [policy@bcfsa.ca](mailto:policy@bcfsa.ca)
- Please provide feedback via the consultation feedback form **by November 26, 2023**
- Feedback should be specific to the proposed amendments, including:
  - Other specific sections of RESA, its associated Regulations, and/or the Rules that could fit within the six proposed categories; and
  - Implementation considerations, including materials to support understanding of the proposed changes if approved





# Respondent Demographic Snapshot

September 27, 2023, to October 18, 2023

# Frequently Asked Questions

**Q: What are the proposed Rules  
meant to do?**

# A:

- More flexible tools and procedures to address contraventions of the Act, Regulations, and Rules
- Include unlicensed activity
- Ensure compliance with investigations to encourage timely cooperation
- Ensure required disclosures are provided properly

**Q: If licensee requirements are not changing, what would change?**

# A:

- Expand number of contraventions eligible for disposition by an administrative penalty
- Include contraventions of RESA and its regulations (including the requirement to be licensed)
- Divert appropriate files to APs for quicker disposition, freeing up investigative resources for serious files



**Q: How is an administrative penalty different from a consent order?**

# A:

- Consent orders are formal negotiated discipline orders
  - Include enforcement costs
  - Address more serious or disputed contraventions
  - RESA requires publication
- APs are an intermediate step between a warning and formal enforcement action (Notice of Hearing that may lead to a consent order)

**Q: Are administrative penalty notices published?**

# A:

- The aim of administrative penalties is to encourage compliance. Section 57.1 of RESA enables, but does not require, the Superintendent to [publish](#) a copy of a notice of administrative penalty and the reconsideration decision confirming or cancelling the administrative penalty.
- The Superintendent will generally publish all notices of administrative penalties over \$2,500 and all related reconsideration decisions on BCFSA's website in perpetuity. Administrative penalties for \$2,500 or less will generally be aggregated instead of being published individually.
- Administrative penalties greater than \$2,500 will be published on the CanLII website.
- Administrative penalties do not include enforcement costs. More information about the possible outcomes of an investigation can be found on BCFSA's [website](#).

**Q: What is the process for calculating daily amounts?**

# A:

- Categories D & E have a base penalty amount and may have a daily amount for each day or part day of non-compliance beyond warning period
- Daily penalty stops accruing on the first day of full compliance
- Category E required for unlicensed persons and typically multiple requests before warning period starts

**Q: Can a person dispute an administrative penalty?**

**A:**

- Yes, under RESA a person has 30 days to request reconsideration
- Notice of administrative penalty provides information
- In 2022, BCFSA received four requests



**Q: How do I provide feedback on the proposed rules?**

# A:

- Review the Discussion Paper and Annotated Rules, then use the online consultation feedback form survey to submit feedback
- For more information on the consultation, please see:
  - [Advisory: Consultation on Changes to BCFSA's Administrative Penalty Framework](#)
  - [Consultation page](#)

**Q: Who can I talk to if I have questions that aren't answered in the Discussion Paper and annotated Rules?**

**A:**

- Send questions not addressed by the consultation package by email to [policy@bcfsa.ca](mailto:policy@bcfsa.ca)

# Questions

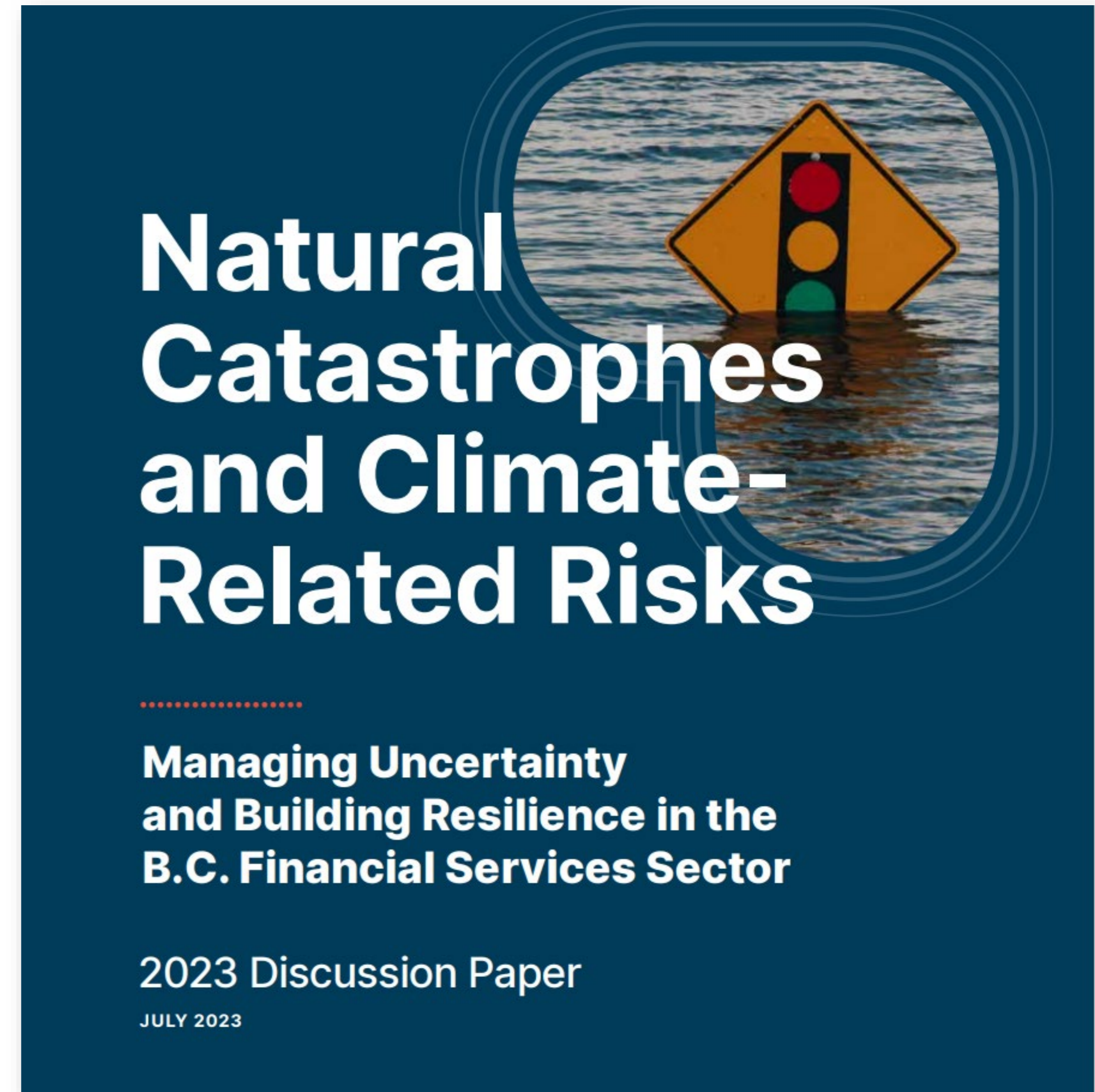
# Consultation

## HAVE YOUR SAY

Send us your thoughts on the concepts and proposals outlined in the Discussion Paper by responding to the questions in our online Consultation Feedback Form.

- [Natural Catastrophes and Climate-Related Risks: Managing Uncertainty and Building Resilience in the Financial Services Sector Discussion Paper](#)
- [Consultation Feedback Form](#)

**The consultation is open until November 30, 2023.**



# Natural Catastrophes and Climate- Related Risks

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## Managing Uncertainty and Building Resilience in the B.C. Financial Services Sector

2023 Discussion Paper  
JULY 2023

**Thank  
you.**