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Submitted by email: consultation@fcnb.ca

Subject: **Consultation Paper- Incidental Selling of Insurance Restricted Insurance Licensing Regime**

Independent Financial Brokers of Canada (IFB) welcomes the opportunity to comment on the Insurance Division's proposal to implement a restricted licensing regime applicable to the selling of incidental insurance (ISI) products in New Brunswick.

IFB is of the view that anyone selling insurance to the public should be properly licensed, trained and subject to regulatory oversight. It has been, and continues to be, IFB's position that individual licensing of those selling any type of insurance to retail consumers is preferred[1]. While a restricted license, whereby the entity, and not individuals selling on behalf of the entity is licensed, provides regulatory structure and oversight of sellers, individual licensing takes this accountability to a higher standard.

Despite this, we see the proposal as a significant step forward in improving the level of protection for retail consumers of insurance products in New Brunswick. We acknowledge the Commission's intent to harmonize this type of insurance regulation by proposing a restricted licensing regime that is largely similar to that in place in Alberta, Saskatchewan and Manitoba.

Introduction

IFB is a national, not-for-profit professional association with approximately 3,500 individual members who are licensed financial advisors. IFB members are independent, in that they are not career agents or employees of financial institutions. Most are self-employed and operate small to medium sized financial practices in their local community. The majority of IFB members are life/health insurance licensees. Many hold other financial licenses (most commonly mutual funds) or accreditations which permit them to provide complementary services to consumers such as financial planning, estate planning, deposit instruments, and so on.

IFB provides its members, and the financial community more generally, with professional support including a comprehensive errors and omissions program, a variety of in-person and online educational opportunities, and compliance and regulatory updates. An important part of the work IFB does is to advocate on behalf of independent financial advisors with regulators, government and industry stakeholders to ensure access to independent advice remains a viable choice for consumers.

[1] As set out in IFB responses to Manitoba 2008, 2011, Alberta, Ontario 2019

Consultation Comments

Section 1. Licensing of Incidental Sellers of Insurance

In general, IFB supports the Commission's proposal to introduce a licensing regime for those selling incidental insurance products to consumers. IFB suggests, however, a full life license may be more appropriate for sellers of creditor life and disability insurance, due to the risk of mis-selling and serious financial consequences for consumers if a claim is denied some years later.

Incidental insurance products have become very widely distributed, and because they are sold to consumers in conjunction with another transaction, consumers may not clearly understand the coverage they are purchasing. In effect, ISI products are a secondary purchase that is subject to only a cursory review.

Consumers often have limited knowledge of insurance matters and should not be expected to understand that the insurance they purchase in certain situations will be from a licensed life insurance agent or broker, while insurance purchased under different circumstances will be from an unlicensed agent or broker. Such a two tiered situation cannot stand up to public scrutiny and exists only because of gaps in the current regulatory system. The introduction of a restricted licensing regime helps to fill this gap.

Financial regulators, industry, and consumer advocates have devoted a great deal of time, research, and resources in the last decade aimed at improving how financial products are sold to consumers. These consumer-oriented measures have included updated regulatory and best practice standards, which have resulted in improvements to transparency, disclosure, and suitability and recommendation processes. Underpinning these changes is a heightened focus on ethical principles and promoting fair outcomes for consumers. Recently, this culminated in the adoption of the Fair Treatment of Customers (FTC) guidance by each provincial insurance regulator.

At a minimum, consumers should be entitled to information which allows them to understand the financial product being considered, any options available, the cost, and how to seek further clarification or file a complaint, when required. The value of individual licensing of those selling life/health insurance is that it ensures consumers receive advice, regardless of where they live or the insurance product being considered, from advisors who are subject to a standardized level of education and that is specifically related to life/health insurance. These advisors have statutory obligations to maintain certain minimum requirements on an ongoing basis.

The basis, then, on which to consider all the issues related to the sale of incidental insurance is whether a consumer is in a position to make an informed decision about the suitability of the purchase at the time of the sale. It is IFB's position that, particularly for creditor life and disability insurance products, this is less likely to be the case than, perhaps, it is for some other types of incidental insurance. IFB continues to advocate for improved disclosure and transparency throughout the sales process of these types of insurance products so consumers are aware of the details of the product, the implications of application errors (and the effects such errors can have at the time of a claim), and the choice they have to purchase or decline the coverage.

Creditor insurance has been under particular scrutiny over the past decade. The CCIR initiated a consultation and review of ISI products in 2008. To inform our response to the CCIR, IFB conducted a

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survey where licensed advisors could provide input on the risks, benefits or other issues related to the sale of ISI products to consumers. A large number of responses were received, and this feedback was central to IFB's submission – a copy of which is available on the CCIR website.

Subsequently, in 2009, as a follow up to the CCIR review, the Consumer Council of Canada undertook a study entitled Creditor's Insurance: Are Consumers being Well-served? The researchers observed that, although the products may be useful for consumers in some circumstances (such as those who may not be able to obtain or qualify for life or disability insurance by purchasing more traditional insurance products), in most cases consumers would be better served by purchasing term life/disability insurance, often available at a lower price. The research also indicated that young adults were disproportionately more likely to buy creditor insurance at a higher price due to convenience and lack of awareness of alternatives.[2] The report concluded that: "*Consumers most often will be well-served to consult a licensed insurance professional (LLQP) associated with an insurance brokerage or agency to determine the full range of their opportunities available*".[3]

More recently, in 2018, the Financial Consumer Agency of Canada (FCAC) reviewed the retail sales practices at Canada's six largest banks as a follow up to the CBC's *Go Public* revelations from bank employees describing the pressure to achieve sales targets. *The FCAC's review found that the retail banking culture encourages employees to sell products and services, and rewards them for sales success. This sharp focus on sales can increase the risk of mis-selling and breaching market conduct obligations. The controls banks have put in place to monitor, identify and mitigate these risks are insufficient.*[4]

The findings of the FCAC review have helped inform IFB's responses to the Commission's consultation questions.

Q. 1.4. Do you agree with the classes or types of insurance that the Commission proposes to exclude from the restricted insurance licensing regime, thereby requiring individuals who sell those products to be fully licensed?

We agree with the Commission's intent to leave unchanged the current licensing arrangements for travel agents or the sale of funeral insurance. Travel agents will continue to be separately licensed and those who sell funeral insurance will continue to require a life insurance agent license. IFB views this as positive, and supports their exclusion from the restricted licensing regime. We think this same level of protection should be extended to consumers of any insurance product, but in particular for creditor life and disability insurance.

Creditor life and disability insurance products are generally purchased to meet a longer-term financial need (mortgage amortization periods can be 40 years), and for an amount of indebtedness which, if not honoured in the event of a claim, is likely to have dire financial consequences for the claimant or beneficiary. The purchase of such insurance is often based on a short set of medical/health questions and subject to post claim underwriting. This can lead to a false sense of protection if the claim can be denied years later, despite the claimant having paid premiums over a long period of time. A properly

[2] Consumer Council of Canada. Creditor's Insurance study. Page 8.
[3] Consumer Council. Ibid.
[4] Financial Consumer Agency of Canada. Domestic Banks Retail Sales Practices Review. March 20, 2018. Executive Summary, Page 1.

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trained, licensed life insurance advisor can help identify a suitable life or disability policy, underwritten at the time it is acquired, thereby reducing the risk of a claim being denied in future.

Those who purchase insurance should have reasonable assurance that a future claim will be honoured. In addition, the difficulties faced by consumers or beneficiaries when a death or disability claim is denied can be further complicated by the passage of time, when locating the original information, documentation or salesperson may be much more difficult. For all of these reasons, IFB supports full life licensing for those selling creditor life and/or disability insurance to retail consumers.

The FCAC review resulted in five key findings. We draw your attention to Finding #3, which states:
Certain products, business practices and distribution channels present higher sales practices risk.
The system of incentives and rewards is more developed than the controls to mitigate sales practices risk for mobile mortgage specialists, cross-selling, creditor insurance products and third-party sellers.[5]

Below, we have included those sections of the FCAC report which focus on creditor insurance as they effectively illustrate the FCAC findings of the risks faced by consumers.

> ***C) Creditor insurance***
> *The purpose of creditor insurance is to pay off outstanding credit balances or to make set monthly payments against debts if certain triggering events occur, such as job loss, serious illness or death. In the large majority of cases, consumers can acquire creditor insurance products only from the bank that sold them the credit product. Consumers who wish to purchase credit card balance protection insurance can do so only through the bank that originally issued the credit card.*
>
> *Similar to most insurance policies, creditor insurance coverage is subject to exclusions, such as employment status and health conditions. At the time of purchase, the underwriting is performed by assessing answers to a handful of broadly worded yes-or-no questions. Depending on how consumers answer these questions, creditor insurance may be granted in a matter of minutes.*
>
> *Credit insurance products usually offer a 30-day first-look period during which consumers are fully refunded any premiums paid if they choose to cancel the coverage. This feature is described in a variety of ways, such as a "trial period" or "free look." However, it is important to highlight that banks are not required to ask consumers to reconfirm their consent for acquisition of the product after the initial 30-day period.*
>
> ***Consumer risks associated with creditor insurance***
> *There is a risk that consumers and front-line staff may not adequately understand creditor insurance, the exclusions to the coverage or the claims adjudication process. Bank employees may not provide certain details because of an inadequate understanding of the product, in the interest of closing a sale or in response to time constraints. For example, bank employees may sell creditor insurance to post-secondary students to go along with a personal line of credit but neglect to inform them that they need to work a minimum number of hours for the coverage to be in force.*

[5] FCAC report. Page 2.

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Bank employees are often encouraged to cross-sell, bundle and generally apply more pressure when selling creditor insurance than other banking products and services. Employees can mistakenly or deliberately imply that creditor insurance is sold as part of the credit product or that credit approval is contingent on the purchase of creditor insurance. For example, front-line employees may sell creditor insurance by advising consumers that "the credit card comes with balance protection," which may give consumers the impression that creditor insurance is a card feature, as opposed to what it really is: a separate and optional product.

Banks set product-specific sales targets for creditor insurance. Employees are expected to reach insurance penetration targets, such as selling creditor insurance with 30 percent of credit products sold. Product-specific targets increase the likelihood that sales staff may push a specific product to meet their target, even when the product does not meet the needs of the consumer. Failure to meet a target may lead to reduced variable compensation or negatively impact their eligibility for non-financial rewards.

Bank employees may try to persuade consumers to purchase creditor insurance by failing to provide clear information about the 30-day first-look feature. For example, when consumers ask questions about coverage exclusions, bank employees may encourage them to purchase the product on a trial basis in order to obtain an information package, even though the information is available without purchase. During the review, FCAC found that some consumers forget to cancel the product and incur premium payments.

The industry describes creditor insurance as a "sold" product rather than a "bought" product. This means consumers rarely inquire about creditor insurance, initiate its purchase on their own or educate themselves about its features. Instead, banks rely on employees to offer the product to consumers. Consumers often depend on the information provided by bank employees when deciding whether to purchase creditor insurance.

Controls for creditor insurance sales practices

Banks use scripts and cues, training and claw backs to mitigate the risk of mis-selling creditor insurance and to promote compliance with market conduct obligations. In general, FCAC found that the controls are underdeveloped, particularly in light of the characteristics of creditor insurance and the risks associated with prevailing sales practices.

Scripts and cues

Banks rely on scripts and conversation cues to make sure employees communicate key information to consumers, including the terms and conditions of creditor insurance products. In addition, scripts and cues are used to mitigate the risk of employees applying undue pressure when selling creditor insurance and to ensure employees communicate in a manner that is clear, simple and not misleading when obtaining the consent of a consumer. Employees are expected to use and follow the scripts, which are designed to present information in a logical manner.

However, banks do not have adequate controls in place to ensure employees follow scripts, clearly explain terms and conditions, and avoid using undue sales pressure. Oversight is greater in call centres where calls are recorded, but only a very small number are reviewed for compliance with the bank's code of conduct and market conduct obligations. In the branch

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environment, banks largely rely on branch managers, assistants and supervisors to prevent mis-selling.

Training
Banks use training to mitigate the risk of employees mis-selling creditor insurance and to prevent breaches of market conduct obligations. The training is intended to supplement scripts and cues, ensuring employees are in a position to adequately answer consumer questions about creditor insurance.

Training on creditor insurance is covered by a voluntary code of conduct adopted by the banks. All code signatories commit to training employees and to taking measures to ensure that the products are sold by knowledgeable staff.

The review revealed that bank employees are not always adequately informed or knowledgeable about creditor insurance products. For example, during FCAC branch visits, employees provided inaccurate and incomplete information about the benefits, coverage and exclusions associated with creditor insurance when answering questions about how they sell the product. FCAC is of the view that there is room to strengthen the training of front-line staff.

Claw backs
Some banks claw back sales commissions when consumers cancel creditor insurance products within 90 days of sale. This measure reduces the risk of mis-selling by encouraging employees to make a reasonable effort to assess consumers' needs when selling creditor insurance. FCAC found that claw backs are more widely employed to control the mis-selling of creditor insurance than they are for other banking products or services.

Banks gather some data on cancellation rates, but it may not necessarily reflect instances of mis-selling as consumers may cancel the insurance for other reasons. Further analysis of cancellations by banks would enable the data to be used to monitor, identify and address sales practices risk.

Based on the aforementioned, it can be surmised that, although the FCAC review focused on the sales practices at the six major banks, these same findings are likely to be exacerbated for smaller firms or those with less robust sales practices and procedures, yet which sell creditor life and disability products to consumers.

Section 2. Obtaining a License

IFB supports the provisions that sellers be sufficiently trained and have errors and omissions insurance in order to obtain a restricted insurance license.

Q 2.1 What should the requirements be for obtaining or renewing a restricted insurance license?
IFB supports formal training for anyone appointed to act as a designated representative. The designated representative will have supervisory responsibilities that cannot be reasonably acted upon without proper training and sufficient knowledge of the product being sold, its limitations or restrictions, and whether it is suitable for the retail consumer. For this reason, and to increase accountability for the placement of such insurance, IFB recommends that the designated representative hold a full life insurance license (per Q. 2.6).

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IFB agrees that, in order to obtain or renew a license, the licensee must be suitable and be able to demonstrate that those unlicensed individuals working for the restricted licensee have met suitability requirements and have been properly trained and competent. IFB further recommends that any restricted license holder be bound by the FTC principles that apply to other insurance licensees.

Q 2.3 and 2.4. *What obligations should be on an insurer whose products are being sold by a restricted insurance license holder?*
The insurer should have formal policies and procedures that the restricted licensee must adhere to. Many of these are set out in CLHIA Guideline 7, *Creditor's Insurance*, although it should be noted that Guidelines apply to CLHIA member companies.

Policies and procedures should provide a level of disclosure similar to that required of licensed life insurance agents, i.e. insurer represented, conflicts of interest, privacy protection, complaint mechanisms, etc. Training and competency of sellers and designated representatives should include a focus on FTC principles, and insurer or firm codes of conduct. There should be ongoing monitoring by the insurer. Lack of adherence to the insurer's practices should be reportable and, if necessary, result in termination of the contract. Insurers could rely on the termination processes already in place for the MGAs and licensed advisors they contract with for the sale of traditional insurance products.

Q.2.6. *Should the designated representative be fully licensed for the area of insurance being offered by the restricted license holder?*
IFB prefers individual life licensing for anyone selling life insurance, but at a minimum, the designated representative should be fully licensed per our comments above.

Q. 2.8. Where a restricted insurance license holder has multiple locations, in addition to a designated representative, should there be an onsite supervisor at each location?
IFB supports the need for an onsite supervisor at each location. The supervisor should have an appropriate level of knowledge to support sellers of the product(s) and able to address basic questions that may be raised in the process of recommending or purchasing the insurance product. The onsite supervisor should have access to the designated representative when a matter cannot be resolved by the supervisor. However, we caution that without having access to a licensed individual on site, the risk of mis-selling[6] or mistakes could be heightened, especially when a delay in completing the insurance transaction may risk the transaction terminating, (for example, if the designated representative is unavailable in a timely manner).

Q. 2.9. Are the proposed requirements for errors and omission insurance sufficient?
IFB supports a mandatory requirement for anyone selling life/health insurance to have errors and omissions insurance. E&O provides consumers with the ability to seek financial restitution without resorting to potentially expensive legal action, as well as protection for advisors against unsubstantiated claims.

Consistent with this position, ***IFB encourages the Commission to introduce an E&O requirement for life/health insurance licensees, as well as those with a restricted license.***

[6] FCAC defines "mis-selling" as the sale of financial products or services that are unsuitable for the consumer; sales that are made without taking reasonable account of the consumer's financial goals, needs and circumstances; and sales where consumers are provided with incomplete, unclear or misleading information.

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We agree that the coverage should apply to all the insurance products the restricted license holder can sell or arrange, coverage amounts should be exclusive of defense and investigative expenses, and with a minimum 12 month extended reporting period.

We are unclear as to the intent of requiring fidelity insurance in addition to the E&O insurance, and would welcome more information on why this recommendation is included.

IFB supports improving compliance with the E&O requirement by requiring the insurer to notify the Superintendent before terminating or refusing to renew a policy. We agree that a license should be automatically suspended if valid E&O is not in place. Such processes will strengthen compliance and help prevent gaps in coverage. As noted, IFB believes these measures should be in place for the protection of consumers of any life/health insurance product – regardless of how it is sold.

Q. 2.12. Please comment on any other matters for consideration.
Consistent with our previous comments, anyone selling insurance products should be properly trained at the outset, before advising consumers. However, this educational requirement should be an ongoing obligation.

IFB recommends the Commission consider establishing a continuing education requirement for anyone selling life/health insurance, including restricted license holders, designated representatives and sellers of ISI products. Proficiencies, industry standards, and legislative and regulatory requirements change over time and a formal ongoing CE requirement will help keep sellers up-to-date on these developments, and further consumer protection.

Section 3. Market Conduct, Disclosure Requirements and Right to Rescind
Q. 3.1. What restrictions or protections should be in place with respect to personal information?
IFB agrees with the Commission's suggested restrictions to protect a consumer's personal information. Consumer consent should be in writing and a copy retained by the restricted insurance license holder and the consumer.

IFB agrees with the proposal that the consumer be provided with a separate application for the insurance coverage and a copy of the completed insurance application. By doing so, the consumer will be more aware that the transaction is separate and apart from the initial purchase or transaction.

Similarly, the prohibition against tied selling is an important safeguard but will only be effective if the disclosure requirements are met.

Q. 3.7. What should the disclosure requirements be for restricted license holders and their employees?
IFB recommends disclosure requirements which are similar to those required of licensed life insurance agents. Consumers of any insurance product should be entitled to a minimum, standard level of disclosure. See also our response to Q. 2.3 and 2.4.

Given, however, that there are some unique differences between creditor and traditional life/health insurance, we suggest including the following additional disclosures so consumers are in a position to make a more informed decision:

- Claims are subject to post-claim underwriting, and a clear explanation of what this entails.
- When the claim is triggered, the debt is repaid to the company and not the insured.

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- The insurance coverage is relative to the amount remaining on the loan or mortgage. As the debt is reduced, the amount of coverage reduces with it (although the premium may not reduce).
- The coverage is with the issuing lender and may not be portable if the customer changes institutions.
- Consumers should be informed of alternative coverages available, such as a term life/disability insurance policy, and be informed on how to access a licensed life insurance advisor.

Disclosure should be in writing, signed by the consumer and representative, with copies retained by the restricted licensee and consumer.

Other matters for consideration

One of the recommendations made by the CCIR/CISRO ISI working group was the need to track statistical evidence which would help inform regulators of any ISI systemic issues. Specifically, the report recommended that:

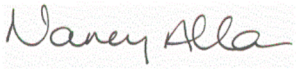
In a risk-based regulatory regime, a key element for identifying issues that warrant greater regulatory attention is the ability for regulators to timely obtain relevant and reliable statistical information, including tracking complaints[7].

IFB recommends the Commission collect statistical complaint information, and that it work with other jurisdictions to identify any consumer protection issues related to incidental insurance products.

In closing, IFB supports the Commission proceeding with the implementation of a regulatory regime applicable to the sale of incidental insurance products. IFB views this as a significant step forward in improving the level of protection for consumers of such products.

Should you have any questions, or wish to discuss our comments further, please contact the undersigned or Susan Allemang, Director, Policy & Regulatory Affairs (email: sallemang@ifbc.ca).

Yours truly,



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[7] CCIR/CISRO Incidental Insurance Selling Report. 2008. Page 7.