

January 31, 2020

Mr. David Weir
Senior Technical Advisor
Financial and Consumer Services Commission of New Brunswick
200 – 225 King St.
Fredericton, New Brunswick E3B 1E1

Dear Mr. Weir:

Re: Consultation Paper Insurance 2019: Incidental Selling of Insurance, Restricted Insurance Licensing Regime

CAFII commends FCNB for undertaking this consultation and we appreciate the opportunity to comment on the issues set out in the paper.

CAFII's focus as an industry Association is on credit protection insurance – also known as creditor's group insurance, as it is called in your consultation paper – along with travel insurance, as those are the key areas of risk exposure for which our members offer simple, convenient insurance solutions to Canadians through a variety of distribution channels.

Therefore, with respect to the Consultation Questions, we have restricted our feedback comments to matters germane to creditor's critical illness insurance, creditor's disability insurance, creditor's life insurance, and creditor's loss of employment insurance. We have not responded to those Consultation Questions which are out-of-scope for our Association.

1. Licensing of Incidental Sellers of Insurance: Consultation Questions:

1.1 How should "incidental seller of insurance" be defined?

CAFII recommends that FCNB give full and serious consideration to harmonizing with the approach utilized by Alberta and Saskatchewan by introducing a restricted insurance licensing regime which does not rely on defining an "incidental seller of insurance." Such an approach would give your province maximum flexibility to include, at a later date, other existing insurance products which are suitable for a restricted licensing regime – such as travel insurance (see response to 1.4 below) – without having to go back and re-open a definition that is codified in legislation or a regulation. It would also make it easier for FCNB to add new types of insurance products which may be introduced to the market in the future to the restricted licensing regime.

1.2 What businesses should be eligible to receive a restricted insurance licence?

CAFII is generally comfortable with the list of eligible businesses itemized in Section 1 of the consultation paper.

For clarity, however, we recommend that FCNB make the following edit to the final bullet point in the list of Eligible Businesses, on a go-forward basis:

- A business engaged by one of ~~these~~ **the above-noted types of** businesses to solicit, negotiate, sell or arrange insurance on its behalf.

1.3 What classes or types of insurance should be permitted to be solicited, negotiated, sold or arranged under a restricted insurance licence?

CAFII is generally comfortable with the *Classes and Types of Insurance* that the consultation paper proposes for inclusion in New Brunswick's restricted insurance licensing regime.

However, we offer the following points of feedback on the proposals in this section:

- FCNB should undertake a thorough review to assure itself that all classes and types of insurance proposed for inclusion in the restricted insurance licensing regime exist in the province's governing legislation;
- we view the definitions of Creditor's critical illness insurance, Creditor's disability insurance, Creditor's life insurance, and Creditor's loss of employment insurance as being comprehensive and accurate. However, that said, Creditor's loss of employment insurance is equally provided in the form of "a group insurance policy, or a creditor's group insurance policy" and those words should be added to the beginning of its definition for consistency with the definitions of the other three types of credit protection/creditor's group insurance; and
- with respect to "Mortgage insurance," we recommend that FCNB name and differentiate this type of insurance better by calling it "Mortgage default insurance" to distinguish it from creditor's group life/disability/critical illness/loss of employment insurance on a mortgage and thereby avoid confusion.

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?

By way of background context to our response to this question, the powers of federally regulated financial institutions, including CAFII members, to sell travel insurance across Canada stem from both the federal *Bank Act* and the *Insurance Business (Banks and Bank Holding Companies) Regulations*, under which travel insurance is an Authorized Insurance Product, and provincial insurance legislation and regulations.

That said, CAFII strongly recommends that FCNB should reconsider its stated intention to continue issuing a separate travel insurance agent licence for individual licensees, and instead harmonize with Alberta, Saskatchewan, and Manitoba by including travel insurance within New Brunswick's new restricted insurance licensing regime.

We believe that travel insurance should be part of your province's restricted licensing regime because making this change will in no way compromise consumer protection and it will support the overall efficiency and effectiveness of the FCNB, as the regulator, and of the industry. Having travel insurance incorporated within the new restricted licensing regime will allow CAFII members and other insurance businesses to dedicate more of their resources to meeting consumer expectations and enhancing the consumer experience.

Requiring federally regulated financial institution (FRFI) employees to be individually licensed to sell travel insurance would prevent CAFII members from selling travel insurance from their branches because bank branch employees are not permitted to be licensed insurance agents. Such a scenario would result in restricted access to travel insurance for New Brunswickers, access which is available to consumers in all other provinces and territories.

1.6 For which classes or types of insurance should specific businesses be eligible to seek a licence?

CAFII is generally comfortable with the eligible classes and types of insurance specified for deposit-taking institutions under FCNB's proposed restricted insurance licensing regime.

However, FCNB should give itself maximum flexibility to include, at a later date, new types of insurance products which are introduced to the market and are suitable for a restricted licensing regime, without having to go back and re-open legislation or a regulation. This might be accomplished by specifying that the Superintendent of Insurance may add to, or otherwise amend, the types of Business and Eligible Classes and Types of Insurance covered by the restricted insurance licensing regime by issuing an Industry Bulletin or Guidance.

2. Obtaining a Licence: Consultation Questions

2.1 What should the requirements be for obtaining or renewing a restricted insurance licence?

CAFII members are generally comfortable with the Licensing Requirements set out in this section of the consultation paper, with certain notable exceptions as itemized in our responses to other, more specific Consultation Questions below.

In addition, we offer the following points of feedback.

With respect to the requirement that completion of the Application Form include "the number of employees who will be authorized to solicit, negotiate, sell or arrange insurance on behalf of the applicant when and if the licence issued," we strongly recommend that New Brunswick adopt the approach used in Alberta and Saskatchewan where restricted licence applicants with more than 500 employees are required to provide a numerical range for the number of employees who will be authorized to transact insurance, rather than a precise number, because in large employers/licence holders, the relevant number of employees is variable on an ongoing, practically daily basis.

We also recommend that the FCNB's foundational documents for the province's new restricted insurance licensing regime should make it clear that a business can apply for multiple eligible classes or types of insurance on one Application Form; and the Commission's Application Forms should be designed with that in mind.

2.2 Do you foresee any operational challenges with authorizing the Superintendent to obtain a list of employees engaged in the business of insurance and information on any such employee? If so, what do you propose?

Yes, CAFII foresees significant operational challenges with authorizing the Superintendent to obtain a list of employees engaged in the business of insurance. It will be very difficult and onerous for a large restricted insurance licence holder/business, such as CAFII members, to provide such a list because the roster of employees is constantly changing, and HR and IT systems are not structured to provide real-time lists. Any such list of employees provided to the Superintendent would be outdated almost immediately and it would not put the FCNB in a position to make informed, effective decisions.

In addition, should New Brunswick include in its restricted insurance agent licensing regime the requirement to provide such a list upon the Superintendent's request, it would be the only RIA regime in Canada to have such a requirement and, as a result, would be an outlier in this regard (Saskatchewan's RIA regime requires a list of employees but only for applicants with fewer than 500 employees, and only at the time of initial application).

We believe that harmonizing with the Alberta, Saskatchewan, and Manitoba restricted licensing regimes on this point and not including the requirement to provide such a list will in no way compromise consumer protection; and doing so will also allow CAFII members and other insurance businesses to dedicate more of their resources to meeting consumer expectations and enhancing the consumer experience.

In contrast, we do not foresee any such operational challenge in providing the Superintendent with information on a given/specified employee, upon request, within the parameters permitted under applicable privacy legislation.

2.3 What should the requirements be for insurers who sponsor a restricted insurance licence?

CAFII members are generally comfortable with the requirements for insurers who sponsor a restricted insurance licence, as specified under “Sponsorship by an Insurance Company and Duty to Report” as we view them as prudent and reasonable.

2.4 What obligations should be on an insurer whose products are being sold by a restricted insurance licence holder (e.g., establishing policies and procedures and duty to report)?

CAFII members are generally comfortable with the requirements for insurers who sponsor a restricted insurance licence, as specified under “Obligations of Insurer” as we view them as prudent and reasonable.

2.5 What should the eligibility requirements be for a designated representative and what should the process be for replacing a designated representative?

CAFII members are generally comfortable with the eligibility requirements for a Designated Representative and the process for replacing a Designated Representative, as suggested in the consultation paper, as we view them as prudent and reasonable.

However, that said, we have the following points of feedback:

- under “Replacement of a Designated Representative,” the terminology “Submit a new eligible candidate” implies that the Superintendent will have a review and approval/veto function with respect to Designated Representative candidates. However, that sort of authority is not implied elsewhere under “Designated Representative.” CAFII strongly recommends against the Superintendent having a review and approval/veto function with respect to Designated Representatives; and
- for maximum clarity and certainty, we recommend that the FCNB be consistent when specifying periods of time/notice periods in the restricted insurance licensing regime’s foundational documents. In certain places in the document, “15 days” is cited whereas in this section “10 business days” is used. Those two time periods are roughly equivalent, but to avoid any possible confusion and misinterpretation, absolute consistency when referring to time/notice periods would be ideal.

In addition, CAFII members have found that a 15 days/10 business days deadline for reporting Designated Representative changes can be restrictive and onerous in certain circumstances. Therefore, we encourage FCNB to allow 30 days for the reporting of such changes.

2.6 Should the designated representative be fully licensed for the area of insurance that is being offered by the restricted insurance licence holder? For example, should the designated representative for a restricted insurance licence holder offering creditor's life insurance products be required to hold a full life insurance licence?

Because CAFII member financial institutions are both federally and provincially regulated and because their federal powers to sell Authorized Insurance Products across the country stem from the federal *Bank Act* and the *Insurance Business (Banks and Bank Holding Companies) Regulations*, bank distributors of insurance are not permitted to have individually licensed insurance representatives work in their branches. To do so would be a contravention of the above-noted federal statutes.

For that and other compelling reasons, CAFII disagrees with the notion that a Designated Representative for a restricted insurance licence holder should have to hold a full life insurance licence. As the consultation paper states, the role of a Designated Representative is to serve as the “primary contact for the business for regulatory purposes and who is responsible for supervising the activities of the licence holder.” Therefore, the Designated Representative does not need to be an insurance salesperson him/herself and does not need to hold an individual LLQP licence since the competencies associated with being LLQP-certified and holding an insurance licence are not aligned with the responsibilities and expectations of a Designated Representative.

Our Association is opposed to this contemplated requirement, which would impose a limitation upon those who can be appointed as a Designated Representative.

That said, CAFII supports the stated eligibility criteria that the Designated Representative be “a director, officer or management employee of the licence holder” or a partner or the sole proprietor.

2.7 What should the supervisory responsibilities be for a designated representative and what should they be required to report?

CAFII is generally comfortable with the Designated Representative’s responsibilities as set out in the consultation document, save and except for the following points of feedback:

- there is a very relevant caveat with respect to errors and omissions insurance for federally regulated financial institutions (see below);
- with respect to the Designated Representative’s duty to report “any misconduct with respect to the business of insurance by the employees of the licence holder,” it is imperative that the FCNB clearly define “misconduct” and specify a materiality threshold for this duty. Such parameters are necessary so that minor/insignificant or unintended behaviour that did not cause harm to any consumer/insured or to any other party outside the licence holder business, and which is being dealt with remedially within the business, should not have to be reported;
- we encourage the FCNB to establish in the restricted licensing regime’s foundational documents that any licence holder which uses a third party seller/administrator to assist in its business is responsible for overseeing the activities of such contracted third parties and that the responsibilities of the licence holder’s Designated Representative extend to such third parties.

2.8 Where a restricted insurance licence holder has multiple locations, in addition to a designated representative, should there be an on-site supervisor of insurance business at each location? If so, what should be the eligibility requirements to be an on-site supervisor? What should be the supervisory responsibilities for an on-site supervisor?

CAFII is opposed to the notion that where a restricted insurance licence holder has multiple locations, there should be an on-site supervisor of insurance business at each location, in addition to an overall Designated Representative. For purposes of the restricted insurance licence, the responsibility for responding to and dealing with the Superintendent/regulator should rest with just one Designated Representative from the business, regardless of where that individual may be located.

2.9 Are the proposed requirements for errors and omissions insurance sufficient? If not, what do you propose?

CAFII notes that the consultation paper fails to take into account the federal *Trust and Loan Companies Act* and other provincial insurance regulators' acknowledgement of the efficacy of that Act. Under the federal *Trust and Loan Companies Act*, federally regulated financial institutions are exempt from having to carry errors and omissions insurance.

We therefore recommend that FCNB harmonize with the restricted insurance licensing regimes in Alberta, Saskatchewan, and Manitoba on this point, by recognizing that FRFIs are exempt from having to carry errors and omissions insurance by the federal *Trust and Loan Companies Act*. For example, section 5-23(2) of Saskatchewan's *The Insurance Regulations* specifies that the immediately preceding clause on the errors and omissions insurance which restricted licence holders are required to hold does not apply to a deposit-taking institution; a financing corporation; or a member institution within the meaning of the Canada Deposit Insurance Corporation Act.

2.10 Do you foresee any operational challenges with requiring an errors and omissions insurer to provide 30 days' notice to the Superintendent before being permitted to cancel or refuse to renew an errors and omissions policy? If so, what do you propose?

Not applicable to CAFII members. See response to 2.9.

2.11 Do you foresee any operational challenges with authorizing the Superintendent to prohibit any person from soliciting, negotiating, selling or arranging insurance on behalf of the restricted insurance licence holder? If so, what do you propose?

Yes, CAFII foresees operational challenges and the potential for decisions that are not fully informed arising from empowering the Superintendent with a blanket authority to prohibit any person from soliciting, negotiating, selling or arranging insurance on behalf of the restricted insurance licence holder.

CAFII believes that a fundamental design principle and benefit of a restricted insurance licensing regime is to allow the Superintendent/regulator to provide licensure and other authorizations at a company-wide level, rather than on an individual level.

However, that would certainly not preclude the Superintendent from bringing any concerns it has about a particular individual employee to a restricted licence holder's attention; and, in such a case, the matter would almost certainly be resolved to the mutual satisfaction of both parties.

In addition, two key potential and legitimate reasons why the Superintendent might want to prohibit a certain employee from being covered under a restricted licence are already covered off under "Prohibitions with Respect to Employees" in the Market Conduct-related section of the consultation document.

As financial institution (FI) distributors of insurance which are both federally and provincially regulated, and which dedicate significant resources to managing reputational risk, CAFII members adhere to the provisions of CLHIA Guidelines and the CBA Code of Conduct for Authorized Insurance Activities in this area. Additionally, FI distributors of insurance have rigorous screening/selection, reference checking, training, and testing procedures in place to ensure that only well-qualified and suitable individuals are involved in consumer-facing and other roles within their businesses.

We therefore believe that the Superintendent should not be empowered to prohibit any individual from being covered under a restricted insurance licence and that a restricted licensure regime should be allowed to operate under its fundamental design principles.

3. Market Conduct, Disclosure Requirements and Right to Rescind: Consultation Questions

3.1 What restrictions or protections should be in place with respect to personal information?

CAFII is generally comfortable with the consumer protections and other provisions set out under “Use of Personal Information” in this section of the consultation paper. That said, we strongly encourage FCNB to harmonize its new restricted licensing regime’s requirements in this area with the federal *Personal Information Protection and Electronic Documents Act (PIPEDA)*.

3.2 What prohibitions should be in place for employees of a restricted insurance licence holder?

CAFII is generally comfortable with the prohibitions set out under “Prohibitions with Respect to Employees” in this section of the consultation paper.

3.3 What, if any, should the prohibitions be related to tied selling?

CAFII is comfortable with the prohibitions related to tied selling as set out in the consultation paper. Tied selling is illegal under the federal *Bank Act* and prohibited under provincial insurance legislation and regulations and CLHIA Guidelines; and CAFII members have rigorous policies and procedures in place to prevent its occurrence.

3.4 With respect to the right of a lender to insist that a borrower purchase insurance to protect the lender, what class or type of insurance should this apply to? Specifically, should it only apply to insurance that protects the lender against default by the borrower?

CAFII believes that the right of a lender to insist that a borrower purchase insurance to protect the lender applies only in the case of business credit facilities, such as an agricultural loan, and with respect to mortgage default insurance when the purchaser’s down payment on the purchase price of real estate is less than 20% of the property’s appraised value. In either case, the financial institution can only require that loan insurance be in place and not that it be secured from any particular provider. The purchase of all other types of insurance should remain completely optional.

3.5 Do you foresee any operational challenges with requiring a separate application for certain classes or types of insurance? If so, what do you propose? To which classes or types of insurance should it apply?

CAFII agrees with and supports the FCNB’s proposed requirement that restricted licence holders and their employees be required to provide the consumer with an Application Form for the insurance coverage, as we agree that doing so will enhance the consumer’s ability to fully appreciate the nature of the insurance being offered and to assess whether the insurance is suitable for their needs.

However, if the FCNB was to require that a separate Application Form be used for each particular type of insurance offered under a restricted licence, CAFII does indeed foresee significant operational challenges arising.

As the consultation paper acknowledges, there are four different types of credit protection/creditor's group insurance which are made available to consumers as an option, and they are typically grouped together on one integrated Application Form. Requiring that each of the types of creditor's group insurance have its own Application Form would lead to a disjointed, confusing, and negative customer experience. That scenario would also create significant new administrative burden for businesses, as Application Forms and processes for New Brunswick would have to be unique as compared to other jurisdictions across the country, the costs of which would inevitably have to be passed on to consumers.

The prescriptive approach which seems to be contemplated by this Consultation Question would constrain insurers' new product development processes, adversely affect the new systems and forms generated by new product development, and ultimately diminish the consumer's experience with a new insurance product, throughout its life cycle.

CAFII believes that requiring a separate Application Form for each class or type of insurance which can be offered under a restricted licence would not produce any consumer protection benefit and we strongly recommend that such a requirement not be adopted.

3.6 Do you foresee any operational challenges with requiring a copy of a completed application to be provided to the consumer upon request? If so, what do you propose? To which classes or types of insurance should it apply?

No, CAFII does not foresee any operational challenges associated with this requirement as it is something that our members routinely do already.

3.7 What should the disclosure requirements be for restricted licence holders and their employees?

CAFII is concerned and troubled by the wording of this Consultation Question when considered in combination with the following proposal in the consultation paper related to disclosure requirements for restricted licence holders and their employees: "inform the consumer of the cost of the insurance and any direct or indirect compensation, inducement or benefit from the insurer to the licence holder or employee for soliciting, negotiating, selling or arranging the insurance."

The way this proposal is worded and positioned, and the way the Consultation Question is posed, seems to imply that all types of compensation must be disclosed to the consumer and that the actual amount received must be disclosed, even if the employee of the restricted licence holder is receiving just straight salary.

If we are interpreting the intent here correctly, we view this proposal as unreasonable and untenable, and one which will cause confusion rather than produce a consumer benefit.

We strongly recommend that FCNB harmonize with Alberta's restricted insurance licence regime on this matter of disclosure to consumers. Clause 15(4) of Alberta's Insurance and Adjusters Regulation specifies that "where a holder of a restricted certificate receives any compensation, inducement or benefit from an insurer, directly or indirectly, for selling insurance, the holder of a restricted certificate must disclose that fact to any person who is considering buying insurance from that holder."

We view Alberta's approach of having the disclosure requirement reside at the level of the restricted licence holder/business entity and requiring disclosure only of the fact that some compensation, inducement, or benefit is being received from an insurer – rather than the specific amount – as a reasonable and prudent approach to disclosure which benefits consumers and does not cause unnecessary confusion.

Our Association is comfortable, however, with the FCNB's proposal that "where the consumer is applying for creditor's disability insurance, creditor's life insurance, creditor's loss of employment insurance, guaranteed asset protection insurance, or mortgage insurance, a restricted insurance licence holder or its employees must provide the consumer with a statement that the duration of the insurance is less than the term of the amortization period of any related loan, or that the amount of the insurance is less than the indebtedness, if that is the case" as doing so is part of the requirements of *CLHIA Guideline G7, Creditor's Group Insurance*, with which our members already comply.

3.8 How long should a consumer have to rescind a contract for a full refund?

CAFII is comfortable with and supports the consultation paper's proposal that a consumer be permitted to rescind the contract/certificate of insurance on or before the expiry of 20 days, from the date the consumer received the policy or certificate; and that a consumer who rescinds the insurance contract within this time is entitled to a full refund of the premium paid.

A 20-day 'review period' for consumers is in keeping with *CLHIA Guideline G7, Creditor's Group Insurance* and adhered to by CAFII members already.

We note, however, that should the FCNB decide to accept CAFII's recommendation that travel insurance be incorporated within the province's restricted insurance licence regime, the 'review period' period will need to be subject to exception/adaptation in the case of consumer travel which is to occur within the review period.

3.9 To which classes or types of insurance should a right to rescind apply?

CAFII is comfortable with the right to rescind applying to all types of creditor's group insurance proposed for inclusion under New Brunswick's restricted insurance licensing regime.

3.10 Please comment on any other matters for consideration on this issue.

Need For An Industry Voice To Advise FCNB On Operating/Maintaining Restricted Insurance Licensing Regime Efficiently And Effectively

CAFII notes that when New Brunswick's proposed restricted insurance licensing regime comes to fruition and is launched, it will be the only such regime in Canada that does not have oversight from an Insurance Council populated by industry representatives to help ensure that the regime is operated, maintained, and adjudicated efficiently and effectively.

Particularly because some adjudication/disciplinary issues are technical in nature and best understood by industry practitioners who have direct experience and expertise in the field, we believe that a Restricted Insurance Licensing Advisory Group would provide FCNB with a valuable mechanism for consultation and advice. Such an Advisory Group has been developed by the Insurance Councils of Saskatchewan, in consultation with industry stakeholders (CAFII and CLHIA), and is being launched in 2020.

CAFII strongly suggests that New Brunswick's new restricted insurance licensing regime would benefit immeasurably from an industry Advisory Group akin to the one about to be launched in Saskatchewan.

Need for Reasonable Lead Time to Prepare For New Licensure Regime

When provinces are finalizing new regulatory changes, and especially when a new licensure regime is being launched, CAFII always requests that lead time of 12 to 18 months be provided to allow for our members' implementation of the required changes.

These changes inevitably become major projects within our member organizations and it takes time to ensure that the necessary systems changes are made, forms revised, staff trained, and consumers notified of how the changes will affect them.

Closing Comments

CAFII has long been a proponent of harmonization and consistency of rules across jurisdictions. We view the established restricted insurance licence regimes in Alberta (since 2000), Saskatchewan (since 2010), and Manitoba (since 2015) as effective and efficient models for other provinces to follow. We therefore urge FCNB to harmonize to the maximum degree possible with the requirements in Alberta, Saskatchewan and Manitoba, which were developed following thorough consultation with CAFII and other industry stakeholders.

CAFII would like to meet with you to discuss our feedback/input on the consultation document, before the proposals advance to the next stage. We would be prepared to meet in-person in Fredericton or by teleconference, as you prefer. Please contact Brendan Wycks, CAFII Co-Executive Director, at brendan.wycks@cafii.com or 647-218-8243 to arrange a meeting at a mutually convenient time.

We look forward to continuing to work with you toward a practical, efficient and effective restricted insurance licence regime in New Brunswick.

Sincerely,



Martin Boyle
Board Secretary and Chair, Executive Operations Committee

About CAFII

CAFII is a not-for-profit industry Association dedicated to the development of an open and flexible insurance marketplace. Our Association was established in 1997 to create a voice for financial institutions involved in selling insurance through a variety of distribution channels. Our members provide insurance through client contact centres, agents and brokers, travel agents, direct mail, branches of financial institutions, and the internet.

CAFII believes consumers are best served when they have meaningful choice in the purchase of insurance products and services. Our members offer travel, life, health, property and casualty, and creditor's group insurance across Canada. In particular, creditor's group insurance and travel insurance are the product lines of primary focus for CAFII as our members' common ground.

CAFII's diverse membership enables our Association to take a broad view of the regulatory regime governing the insurance marketplace. We work with government and regulators (primarily provincial/territorial) to develop a legislative and regulatory framework for the insurance sector that helps ensure Canadian consumers get the insurance products that suit their needs. Our aim is to ensure appropriate standards are in place for the distribution and marketing of all insurance products and services.

CAFII's members include the insurance arms of Canada's major financial institutions – BMO Insurance; CIBC Insurance; Desjardins Financial Security; National Bank Insurance; RBC Insurance; ScotiaLife Financial; and TD Insurance – along with major industry players Assurant; Canada Life Assurance; Canadian Premier Life Insurance Company/Valeyo; CUMIS Services Incorporated; and Manulife (The Manufacturers Life Insurance Company).