

FCNB Informal Consultation On Licensing Exemptions

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To: Brendan Wycks <brendan.wycks@cafii.com>; Keith Martin <Keith.Martin@cafii.com>

Subject: Exemptions from licensing - Request for feedback.

Hello Brendan and Keith,

I hope that you are well. Please find attached a request for feedback.

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Financial and Consumer Services Commission

Commission des services financiers et services aux consommateurs



www.fcnb.ca

Licensing Exemptions

As you are aware, the Financial and Consumer Services Commission of New Brunswick has undertaken a review of our *Insurance Act* with the goal of carrying out a complete rewrite. At this time, we are focusing on intermediary licensing and market conduct. In 2015, the Commission issued a Position Paper with proposals for updating the licensing regime for other-than-life agents and brokers. The Paper, entitled *Modernizing the Insurance Licensing Framework*, proposed to eliminate the distinction between agents and broker and proposed the following definition for agent:

“insurance agent” means a person who, for compensation,

(i) solicits insurance on behalf of an insurer, insured or potential insured,

(ii) transmits an application for insurance from an insured or potential insured to an insurer,

(iii) transmits a policy of insurance from an insurer to an insured,

(iv) negotiates or offers to negotiate insurance on behalf of an insurer, insured or potential insured or the continuance or renewal of insurance on behalf of an insurer or insured, or

(v) examines, appraises, reviews or evaluates an insurance policy, plan or program or makes recommendations or gives advice with regard to any of the above.

but does not include an insurer.

Section 351 of the *Insurance Act* provides that:

351 No person shall act or offer or undertake to act or represent himself as an insurance agent, broker, adjuster or damage appraiser in this Province unless he holds a subsisting licence issued under this Act or is otherwise authorized to do so under this Act.

The relevant provisions for the licensing of agents and brokers can be found in s. 352 of the Act. Section 352 also includes several exemptions from the requirement to be licensed. We believe that anyone who is carrying on the activities of an insurance agent should be licensed and that there should be very few exemptions. With the significant changes in the insurance industry and the desire for greater oversight, it is not clear whether these exemptions continue to be necessary. We are seeking your feedback on the rationale for the current exemptions to assist us in determining whether to retain them. We appreciate that some of the provisions do not relate to your area of business.

Collector of Insurance Premiums

352(14) A collector of insurance premiums who does not solicit applications for or the renewal or continuance of insurance contracts, or act or aid in negotiating such contracts or the renewal thereof, may carry on such business without a licence therefor, if the collection fee does not exceed five per cent of any amount collected.

This is a common exemption and we do not have any issues with continuing it. However, we welcome any thoughts that you may have on the matter.

Pension Fund Association or Mutual Insurer Members

352(15) A member of a duly licensed pension fund association, other than a salaried employee who receives commission, or a member of a mutual fire, weather or livestock insurance corporation, carrying on business solely on the premium note plan, may, without a licence, solicit persons to become members of such society, association or corporation.

New Brunswick appears to be the only jurisdiction that has this provision. We appreciate that it is archaic, in that we understand that “pension fund associations” and mutuals operating on a “premium note plan” are things of the past. The provision relates to soliciting “persons to become members”. How does this engage carrying on the business of insurance? If these individuals are promoting and giving advice on an insurance product, why should they be exempt from licensing?

Fraternal Societies

352(16) An officer or a salaried employee of the head office of a duly licensed fraternal society, who does not receive commission, may, without a licence, solicit insurance contracts on behalf of the society.

352(17) Any member not an officer or salaried employee described in subsection (16) may without a licence solicit insurance contracts on behalf of the society unless such member devotes or intends to devote more than one-half of his time to soliciting such contracts or has in the preceding calendar year solicited and procured life insurance contracts on behalf of the society in an amount in excess of twenty thousand dollars.

Ontario, PEI and the Territories have these provisions. However, if these individuals are promoting and giving advice on an insurance product, why should they be exempt from licensing? Manitoba's provision is different and only references members soliciting persons to become members:

378(6) A member of a duly licensed fraternal society, other than a member whose major occupation is, in the opinion of the superintendent, the solicitation of life insurance contracts, may, without a licence, solicit persons to become members of the society.

Officers or Salaried Employees of a Licensed Insurer

352(18) Unless the Superintendent otherwise directs, an officer or salaried employee of a licensed insurer who does not receive commissions, or an attorney or salaried employee of a reciprocal or inter-insurance exchange at which no commission is paid except to such attorney, may, without a licence, act for such insurer or exchange in the negotiation of any contracts of insurance or in the negotiation of the continuance or renewal of any contracts that the insurer or exchange may lawfully undertake, but officers or employees whose applications for licences as insurance agents, insurance brokers or salesmen have been refused or whose licenses have been revoked or suspended may not so act without the written approval of the Superintendent, and in the case of insurers authorized to undertake life insurance, only the officers and salaried employees of the head office who do not receive commissions may so act without a licence.

We would like to better understand the purpose of this provision. Again, if these individuals are promoting and giving advice on an insurance product, why should they be exempt from licensing? We do not consider the question of whether they are "customer facing" to be determinative. If a person is giving advice directly to a consumer, or indirectly by advising an agent on an appropriate product for a consumer, we believe that they should be licensed. We have had some individuals claim that employee's working in a call centre dealing with clients would fall within this exemption.

Manitoba has similar provisions, but includes "who does not receive commissions or his salary in lieu of commissions". The relevant Manitoba provisions are as follows:

378(7) Unless the superintendent otherwise directs, but subject to subsections (8) and (9), an officer or salaried employee of a licensed insurer who does not receive commissions or his salary in lieu of commissions, or an attorney or salaried employee of a reciprocal or inter-insurance exchange at which no commission is paid except to the attorney may, without a licence, act for the insurer or exchange in the negotiation of any contracts of insurance or in the negotiation of the continuance or renewal of any contracts that the insurer or exchange may lawfully undertake.

378(8) Officers or employees whose applications for licences as agents have been refused or whose licences have been suspended or cancelled, may not act as provided in subsection (7) without the written approval of the superintendent.

378(9) In the case of insurers authorized to undertake life insurance only the officers and salaried employees of the head office who do not receive commissions or salaries in lieu of commissions, may act as provided in subsection (7) without a licence.

Ontario's exemption is much narrower:

An officer or salaried employee of the head office of an insurer who solicits contracts of life insurance and accident and sickness insurance on behalf of the insurer and who does not receive any commission. (paragraph 9(1)4 *Agents Regulation*)

Office Staff

352(19) An employee of a licensed agent or broker who normally performs office duties and does not receive commissions may, without a licence but only as incidental to his normal office duties, take applications for insurance and the renewal thereof.

As discussed in our Position Paper, we don't see the need for licensing employees who do clerical work. However, we believe that any employee carrying on any of the activities under the definition of "insurance agent" should be licensed. Therefore, we question the need for this provision.