

***Agenda Item 5(b)(i)(2)***  
***January 21/20 EOC Meeting***

**PRELIMINARY DRAFT ONLY**  
**NOT FOR CIRCULATION/DISCUSSION BEYOND CAFII MEMBERSHIP**

Mr. David Weir  
Senior Technical Advisor  
Financial and Consumer Services Commission of New Brunswick

Dear Mr. Weir:

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

The Canadian Association of Financial Institutions in Insurance (CAFII) is writing to you in response to the XXX, which was circulated to industry stakeholders in December, 2019. CAFII appreciates the opportunity to provide written commentary on the draft regulation.

While we recognize that the following opening comments reflect on more than the proposed regulatory and legislative changes in New Brunswick, we feel that these comments are relevant to this consultation as New Brunswick is proposing the introduction of a new RIA regime. Ideally, instead of introducing another provincial RIA regime, we feel that the provinces, all of whom are members of the CCIR and CISRO, should work with those organizations for the development of an intra-provincial RIA regime that would incorporate the key elements all of the provinces seek, and seek to have such a model apply to all the provinces that have an RIA regime. The different jurisdictions are all striving for the same outcome, and the differences between the regimes are subtle and nuanced. Do these differences outweigh the costs and inefficiencies introduced by slightly different models and approaches?

An RIA regime exists currently in three other provinces in Canada: Alberta, Saskatchewan, and most recently Manitoba. It is our view that the regime in Manitoba, which benefited from the learnings provided by the provinces that introduced this legislation earlier, is the most current regime and the best model for New Brunswick. As such, we ask whether as an alternative, the Manitoba model might not be adopted by New Brunswick, as opposed to proceeding down the path of an entirely new approach that in the end achieves the same objectives.

Finally, another model we would ask New Brunswick to consider in to allow the other provincial models to be adopted for use in New Brunswick. With such an approach, the provinces would each recognize that the slightly different models in different provinces are all seeking to achieve the same outcome, and would recognize each of these models as sufficient to meet each provinces' requirements.

We note that New Brunswick is the only RIA jurisdiction where there will not be a licensing council overseeing the regime. Because some licensing issues are technical in nature and most understood by industry practitioners, we believe that an Advisory Group could provide New Brunswick with a valuable mechanism for consultation and advice. Such an Advisory Group has been developed by the Insurance Councils of Saskatchewan, and we believe that New Brunswick should consider such an approach.

### **Need for Reasonable Time to Implement New Regulations**

When provinces are finalizing new regulations, we request that lead time of 12 to 18 months be provided to facilitate CAFII members' implementation of 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 affect them.

### **Not Capturing or Incorporating Federal Trust and Loan Corporations Act**

The draft regulation fails to capture and incorporate the federal *Trust and Loan Corporations Act*. This is particularly important with respect to the exemption for financial institutions from having to carry errors & omissions insurance. We recommend that New Brunswick make an adjustment to be consistent with the ISI restricted license regimes in Saskatchewan and Alberta (and Manitoba??) to ensure that trust and loan companies are adequately captured within the Regulation.

### **Consultation Questions:**

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

*--Need to ensure that classes of insurance that are defined exist in the New Brunswick legislation.*

*--Request that definitions be aligned and harmonized with the provinces that currently have a RIA Regime (Saskatchewan, Manitoba, Alberta).*

*--We note that CAFII member employees don't "sell" coverage, rather, they "enrol" the client in the financial institutions plan.*

--We note that the consultation paper states the following:

*The Commission proposes that "incidental seller of insurance" be defined to mean: "a person that, in the course of selling or providing goods or services to the person's customers or clients, solicits, negotiates, sells or arranges insurance, or offers to sell, negotiate or arrange insurance, that relates to those goods or services."*

*This is the definition currently used in Manitoba.*

*We had recommended to Manitoba that it harmonize with Alberta and Saskatchewan by introducing a restricted licensing regime which does not rely on defining incidental insurers of insurance. Such an approach would give your province the flexibility to include the products that may be currently excluded.*

- 1.2 What businesses should be eligible to receive a restricted insurance licence? Please elaborate on your response.

*--Personal Accident Insurance is captured under Critical Illness Insurance, and under Disability Insurance, but Personal Accident Insurance is a separate product that is generally not sold incidental to another product, and as such the Regulation should clarify that it does not fall under the RIA regime, but rather is an exempted product from requiring licensing.*

- 1.3 What classes or types of insurance should be permitted to be solicited, negotiated, sold or arranged under a restricted insurance licence? Please elaborate on your response.
- 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? Please elaborate on your response.

*--The Regulation should make clear that an application can be made for multiple classes or types of insurance in one form, and the application forms should allow for that to be done.*

- 1.5 What other terms should be defined, and how should they be defined? Please elaborate on your response.
- 1.6 For which classes or types of insurance should specific businesses be eligible to seek a licence? Please elaborate on your response.
- 1.7 Please comment on any other matters for consideration on this issue.

2.1 What should the requirements be for obtaining or renewing a restricted insurance licence?  
Please elaborate on your response.

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? Please elaborate on your response.

Consultation paper states:

*Based on a review of the other restricted insurance licensing regimes, the Commission is not proposing that an applicant for a restricted insurance licence provide the names of all employees who will be engaged in the business of insurance. However, the Commission proposes that, upon request, a restricted insurance licence holder must supply a list of all employees engaged in the business of insurance and any additional information required by the Superintendent with respect to any such employee(s).*

--will be very difficult and onerous to provide a list of employees selling this insurance  
--elaboration on the challenges outlined below, but employees constantly change, HR and IT systems are not structured to provide real-time lists  
--Recommend exemption for institutions with more than 500 employees in total

2.3 What should the requirements be for insurers who sponsor a restricted insurance licence?  
Please elaborate on your response.

Consultation Paper states:

*Further, where the insurer terminates its sponsorship of a restricted insurance licence, the Commission proposes requiring the insurer to provide the Superintendent with written notice of the termination, with reasons, no later than 15 days after the termination.*

Also:

*To further enhance consumer protection, the Commission is also proposing that any insurer whose products are marketed and distributed through a restricted insurance licence holder must provide the Superintendent detailed written notice, within 15 days of becoming aware, where the insurer has reasonable grounds to believe that the restricted insurance licence holder or any employee of the licence holder engaged in the business of insurance is not suitable to carry on the business of insurance.*

*Confidentiality requirements may restrict the ability to provide detailed information on why the sponsorship of a license is terminated.*

*--“Any employee of the licence holder” is a difficult requirement to meet*

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)? Please elaborate on your response.

2.5 What should the eligibility requirements be for a designated representative and what should the process be for replacing a designated representative? Please elaborate on your response.

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? Please elaborate on your response.

*--believe that there should not be a designated representative at all*

2.7 What should supervisory responsibilities be for a designated representative and what should they be required to report? Please elaborate on your response.

*The Regulation states that “As indicated, a restricted insurance licence holder is required to have a designated representative. A designated representative would be a single individual who is the primary contact for the business for regulatory purposes and who is responsible for supervising insurance activities of the licence holder.”*

*It is our view that the supervisory duties of the designated representative are too onerous. Typically, financial institution staff who are involved in offering a product such as creditor insurance do not all report to the same person. CAFII recommends that the Regulation instead state that the license holder (i.e. the organization itself) assume responsibility for supervising employees. In the context of financial institutions involved in ISI, the organization is ultimately accountable for the conduct of staff, ensuring that appropriate leadership is in place to supervise staff performance, and ensuring that employees are trained and knowledgeable about their compliance obligations. In addition, financial institutions have comprehensive internal policies and procedures that govern the conduct of staff involved in offering insurance.*

*The section on “Designated Representative’s Duty to Report” states that*

*The Commission proposes that a designated representative be required to report within 10 business days any of the following:*

- *Change in name of the licence holder;*
- *Change of ownership of the licence holder;*
- *Any misconduct with respect to the business of insurance by the employees of the licence holder;*
- *Any change in errors and omissions coverage; and*
- *Any errors and omissions claim against the licence holder or any employee with respect to the business of insurance, with details.*

*These requirements would be onerous and difficult for financial institutions to meet, given that they do not maintain a single database of persons involved in the sale of creditor insurance and other incidental insurance products. Further, given the large number of employees authorized to sell creditor insurance, compliance with the record-keeping rules would force financial institutions to update their lists almost daily.*

*CAFII strongly recommends that organizations with 500 or more employees be exempt from the Regulations record-keeping requirements. This is how Alberta and Saskatchewan (and Manitoba?) have resolved this issue, by including the roster requirements in the application process and noting that those organizations applying in the highest tier (more than 500 employees) would not be required to supply a list.*

*The section on “Designated Representative’s Responsibilities” states that:*

*The Commission proposes that the designated representative would be responsible for the reasonable and prudent oversight of all insurance activities carried on by the restricted insurance licence holder and its employees. The Commission proposes that a designated representative's supervisory responsibilities include, but not be limited to, ensuring that:*

- *The licence holder complies with the Act, Regulations and Rules;*
- *The licence holder operates in accordance with any conditions and restrictions on their licences;*
- *The licence holder has reasonable and demonstrable policies and procedures to ensure that any employee carrying on insurance on its behalf is knowledgeable, competent and suitable, taking into account the class or type of insurance and that these employees comply with these policies and procedures;*
- *The licence holder has appropriate written procedures, which include, but are not limited to, such matters as proper file maintenance;*
- *Trust monies are handled properly and all books and records are properly maintained;*
- *Errors and omissions insurance is properly maintained;*
- *Regular reviews are conducted of the work of employees carrying out insurance to ensure that there are no issues related to compliance, competence or ethics. Regular reviews would include auditing samples of client files.*

*--requirements are too onerous*

*--harmonize with the approach taken in the other RIA regime jurisdictions*

*--financial institutions do all of these requirements and these should not be separately required of the designated representative*

*--recommend an exemption from these requirements for the designated representative for firms of more than 500 employees*

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? Please elaborate on your response.



2.9 Are the proposed requirements for errors and omissions insurance sufficient? If not, what do you propose? Please elaborate on your response.

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? Please elaborate on your response.

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? Please elaborate on your response.

*--The benefit of the RIA regime is to allow the Superintendent to provide authorization at an industry level, not at an individual level. CAFII members have rigorous procedures to ensure proper adherence to applicable rules and regulations. We believe that the Superintendent should regulate at the industry level and leave individual authorizations to be managed at the company level.*

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

3.1 What restrictions or protections should be in place with respect to personal information? Please elaborate on your response.

3.2 What prohibitions should be in place for employees of a restricted insurance licence holder? Please elaborate on your response.

3.3 What, if any, should the prohibitions be related to tied selling? Please elaborate on your response.

*--Tied selling is illegal under the Federal Bank Act and is not practiced by any CAFII members.*

*--We support a prohibition on tied selling but do not believe it necessary fits into this legislative change, as it is already covered by the federal Bank Act and by CLHIA Guidelines that all CAFII members adhere to.*

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? Please elaborate on your response.

*--The only insurance that is required is mortgage insurance that is required by federal law if the mortgage down payment is less than 20% of the mortgage amount. No other insurance should be required.*



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? Please elaborate on your response.

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? Please elaborate on your response.

3.7 What should the disclosure requirements be for restricted licence holders and their employees? Please elaborate on your response.

3.8 How long should a consumer have to rescind a contract for a full refund? Please elaborate on your response.

*--10 days to a month is the typical period used.*

Consultation paper states:

*The Commission proposes that a consumer be permitted to rescind the contract of insurance on or before the expiry of 20 days, or any longer period specified in the policy or group insurance certificate, from the date the consumer received the policy or certificate. A consumer who rescinds the insurance contract within this time is entitled to a full refund of the premium paid.*

*--Industry norm is 10 days. Introducing these variations on the norm is precisely the sort of non-harmonized approach that produces inefficiency and additional regulatory compliance costs.*

3.9 To which classes or types of insurance should a right to rescind apply? Please elaborate on your response.

*--Should not apply to travel insurance after the travel period has begun, but this regime does not cover travel insurance.*

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