

February 7, 2022

Corporate Secretary
Financial and Consumer Services Commission
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
secretary@fcnb.ca
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Re: CAFII Feedback on FCNB Draft Rule INS-001: Insurance Intermediaries Licensing and Obligations

Dear Corporate Secretary:

CAFII commends FCNB for undertaking this consultation. As a key industry stakeholder, we appreciate the opportunity to provide feedback on the licensing provisions and related market conduct obligations set out in Draft Rule INS-001.

CAFII's focus as an industry Association is on credit protection insurance (CPI) and travel insurance, the product sectors of the life and health insurance industry in which our members offer simple, accessible, and affordable insurance solutions for Canadians through alternate distribution channels such as financial institution branches, internet/online/digital, contact centres, and direct mail. CPI and travel insurance are Authorized Insurance Products under the federal Bank Act and the related Insurance Business (Banks and Bank Holding Companies) Regulations.

Our major focus in this submission will be on the Draft Rule's provisions underpinning the introduction of a restricted insurance licensing regime in New Brunswick, which will be the first in Atlantic Canada, while also providing feedback on select other elements that are relevant to our Association's members.

High Level Feedback Germane To FCNB's Proposed Restricted Insurance Licensing Regime

In Draft Rule INS-001, there are a number of differences between FCNB's proposed definitions and key provisions related to the new restricted insurance licensing regime, on the one hand, and the counterpart provisions in the three existing Western Canada Restricted Insurance Agent (RIA) licensing regimes, on the other hand. Those differences will create compliance challenges and regulatory burden for CAFII members and other industry players, as they will have to navigate a new licensure regime that has the same overall consumer protection goals as the predecessor regimes but yet has numerous subtle and nuanced differences.

Therefore, CAFII believes that there is still room for New Brunswick to bring its restricted insurance licensing regime into fuller harmony with the existing RIA licensing regimes in Alberta, Saskatchewan, and Manitoba. Our view is that the Manitoba regime, the one most recently launched, is the one which operates most efficiently and effectively for both the regulator and RIA licensees; and we therefore encourage FCNB to align its new regime as closely as possible with the Manitoba model.

In that connection, CAFII is strongly of the view that FCNB will be doing itself, the industry, and ultimately consumers a disservice if it decides to call its new restricted insurance licensing regime a “Restricted Insurance Representative” regime. That’s because in common English parlance, the word “Representative” is typically used solely in connection with an individual person, whereas restricted insurance licences are issued almost exclusively to corporate entities. We believe that the proposed use of “Restricted Insurance Representative” for the name of the new regime and for the type of licence that it issues will cause wholesale and unhelpful confusion for all parties who are exposed to that terminology. We encourage FCNB to reconsider its proposed unique nomenclature and instead harmonize with the three existing Western Canada comparator regimes by calling the new regime a “Restricted Insurance Agent” licensing regime which issues “RIA licences” or “Restricted certificates.”

With a view to enhancing users’ ease of reading/referencing and utilizing the new Rule, we encourage FCNB to combine and integrate all of the RIA regime-related provisions into one discrete section. If the Rule is finalized as drafted, users will have to scan and search to find provisions that are scattered throughout the document in order to have confidence that they have not missed one or more important provisions. Our request for a complete integration into one discrete section – such that any RIA-relevant provision will be found only in that section and nowhere else -- will greatly assist both industry and FCNB with usability, understanding/assimilation, and industry compliance.

We also want to reiterate an RIA regime-related recommendation we made in our January 31, 2020 submission to FCNB on its *Consultation Paper Insurance 2019: Incidental Selling of Insurance, Restricted Insurance Licensing Regime*:

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 (actually launched in 2021 and now fully operational).

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.

As a final point of feedback on FCNB’s proposed RIA regime itself, when provinces and territories 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 members’ 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.

Feedback On Specific Provisions/Clauses

With respect to Clause 4.2 (page 5), we recommend that FCNB specify that a person working from home for the company will be considered to be working at the head office of the insurer.

With respect to Clause 6(1)(a) (page 6), we question why the minimum age requirement to be issued an insurance licence by FCNB is 19 years of age, and not 18 years of age which is the age of majority to be eligible to vote in New Brunswick.

With respect to Clause 6(3) (page 6), we commend FCNB for the reciprocal recognition, harmonization, and industry flexibility it is supporting via this provision.

With respect to Clause 7(2) (page 7), given that there is no reference (which we could find) in any of the three existing Western Canada RIA regimes to a licence applicant having to be distant/removed enough from a negatively-framed “objectionable”-ness threshold/standard; and, as well, given that there does not appear to be any compelling reason for FCNB to include in its Rule such a vague concept – one potentially open to arbitrary interpretation -- we recommend that FCNB either (i) harmonize with the existing RIA regimes by removing all references to “objectionable”; or, failing that, (ii) provide clear guidance, and therefore greater certainty for regulated entities, as to what would constitute “objectionable.”

With respect to Clause 27(1) and 27(2) (page 11), the language here could be interpreted to mean that New Brunswick has its own particular life insurance agent licensure exam and accident & sickness insurance agent licensure exam, when in fact the LLQP exam (outside of Quebec) is the same throughout the country. Therefore, we encourage FCNB to modify the language to make that factual reality clear.

With respect to the definition of “mortgage insurance” found in Clause 31 (page 15), we recommend that FCNB should instead call the cited product “mortgage default insurance” in order to distinguish it from credit protection life/disability/critical illness/loss of employment insurance on a mortgage and thereby avoid confusion.

With respect to Clause 35(1)(d) (page 17), CAFII strongly requests that FCNB not require the provision and constant updating of branch lists, as that would be an onerous regulatory burden upon the industry; instead, we ask that FCNB work with the industry on identifying what essential information is needed and can be readily provided, so that a less onerous requirement can be put in place.

With respect to Clause 35(1)(h) (page 17), CAFII strongly requests that FCNB change this requirement by adopting 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.

With respect to Clause 36(a) (page 17), we are not clear on what “where applicable” means in this context and we ask that FCNB add clarity on that point. We are also concerned about how a call centre located outside of New Brunswick, but which supports New Brunswick customers, would fit and comply with this business name registration requirement.

With respect to Clause 37 (page 17), CAFII strongly requests that this requirement be changed to a numeric range of employees -- as opposed to a list of actual employee names -- which would alleviate an onerous, regulatory burden compliance requirement. We reiterate the following from our January 31, 2020 submission on the FCNB's *Consultation Paper Insurance 2019: Incidental Selling of Insurance, Restricted Insurance Licensing Regime*:

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.

We note, by way of comparative example, that Manitoba's Insurance Agents and Adjusters Regulation requires, in its Clause 26(2)c, the following:

a statement of the number of persons who will be authorized to negotiate, solicit or transact insurance on behalf of the applicant when and if the license is issued. (Page 26.)

With respect to Clause 38 (page 17) around "Suitability," we recommend that the term/title "Knowledge" would be a better term than "Suitable"; that "knowledgeable" would be a better term than "suitable"; and that both of those alternate terms would be more consistent with the terminology used in the three existing Western Canada RIA regimes.

With respect to Clause 39(a) (page 18), while the requirements set out therein would be reasonable for the Designated Representative of the corporate licence holder, they would be very onerous and not achievable for financial institution (FI) branch personnel. Branch-level FI human resources policies and procedures do not currently screen for such requirements; and screening out based on such matters is not required in any of the three existing Western Canada RIA regimes. In those jurisdictions, the RIA licensee is responsible for the behaviour of its employees and for ensuring that they adhere to corporate and industry codes of conduct and guidelines; and CAFII strongly believes that should be the requirement in New Brunswick as well.

With respect to Clause 40(1) (page 18), we recommend that the words “for the related product or service” should be replaced with the following: “for the related debt obligation, product or service.”

Further with respect to Clause 40(1) (page 18), CAFII fully supports the requirement that an application for the classes/types of CPI specified therein shall use a form separate from the related debt obligation, product or service because that requirement will enhance the consumer’s ability to fully appreciate the nature of the insurance being offered and to assess whether it is appropriate for his/her needs. In that connection, we thank FCNB for adopting our previous recommendation and stipulating in 40(2) (page 18) that the application for insurance in subsection (1) can cover multiple classes or types of insurance.

However, that said, with respect to that same provision, we draw FCNB’s attention to the fact that use of the word “form” in this provision could be problematic – because it suggests a physical or standalone document. When an application for CPI is taken digitally, the application will be distinct from the application for the credit product but it can be part of the same digital flow. Therefore, the wording used by Alberta would be preferable, as follows:

Alberta, Insurance Agents and Adjusters Regulation

14(1) *When a holder of a restricted certificate negotiates or enters into a transaction with a person for credit-related insurance at the same time as a credit arrangement is being negotiated or entered into with the person, the holder must provide the person with a separate application for the insurance coverage.*

With respect to Clause 42 (page 19), we recommend that FCNB include additional language to clarify that informing a customer “in writing” includes digital or electronic communication; and that this same clarification point should also be added elsewhere in the Draft Rule wherever “in writing” is referenced.

With respect to that same provision, we want to draw to FCNB’s attention the fact that it is problematic to require that information be provided to a client ‘in writing at time of application’ because, particularly in the case of CPI, an application may be taken over the phone. It would be preferable to follow the approach taken by either (i) Alberta, which requires that information be provided to clients at time of application but does not specify that it be provided in writing (which allows for verbal disclosure); or (ii) Quebec, which allows for the required information to be delivered to the client when the certificate of insurance is delivered, if the client provides consent and the information is verbally disclosed to the client at time of application.

With respect to Clause 43 (page 19), CAFII has serious concerns about and strongly objects to this provision which imposes different and heightened disclosure requirements for a particular type/class of insurance products, in this case CPI products. We view this regulatory singling out as a “tilting of the level playing field” and a form of favouritism/bias. We have no objection to the disclosure requirements set out here, but they should apply equally to all types/classes of insurance, rather than just one. Should this Clause – which is not found in any of the three existing Western Canada RIA regimes -- remain in the final Rule, CAFII strongly implores FCNB to make it universal to all classes/types of insurance.

In a similar vein, CAFII has serious concerns about and strongly objects to Clause 45 because it squarely puts the regulator, FCNB, in a position of favouring one insurance distribution channel over a competing distribution channel. By forcing RIA representatives and employees to effectively refer clients to licensed insurance agents for a second opinion, the unintended but equally unacceptable consequence would be the tilting of what is otherwise a level playing field. Licensed agents will not recommend the simple, accessible, affordable CPI insurance products offered by FIs because such sales do not provide them with a commission. New Brunswickers and their fellow Canadians across the country are vastly uninsured and underinsured, and CPI provides them with an opportunity to obtain protection against unexpected life occurrences that could severely impair their ability to repay a major debt obligation, possibly leading to a catastrophic financial loss. This Clause – which is not found in any of the three existing Western Canada RIA regimes -- would effectively and practically eliminate that option, and thereby limit the degree of choice that consumers have in a competitive marketplace. We are strongly of the view that this Clause should be struck in its entirety.

That same provision may also cause FIs to breach inadvertently the Insurance Business (Banks and Bank Holding Companies) Regulations under the federal Bank Act, which prohibit banks from referring clients to insurance agents, brokers or companies.

With respect to Clause 46 (page 20) and Clause 52 (page 21), we believe that there is significant overlap between them and that it would be beneficial, and help to avoid confusion, to combine them.

With respect to Clause 75 (page 28), CAFII believes that use of the term “suitable” in subsection (1) and “suitability” in subsection (2) is inappropriate. Instead, we recommend that FCNB adopt the following wording found in Clause 28 of the *Manitoba Insurance Agents and Adjusters Regulation*:

*A person may not be the designated official under a restricted insurance agent licence unless
(b) the person has the qualifications, and satisfies the educational, training and other
standards, established under section 396.1 of the Act.*

With respect to Clause 77(2) (page 28), we believe that the expectation set out in this clause is too sweeping and broad. The designated representative has responsibility for, but not oversight of, all employees. Therefore, we recommend that FCNB adjust the wording of this responsibilities clause accordingly.

With respect to Clause 77(1) and 78(1) (both on page 28), CAFII views the two as highly duplicative. Given that 78(1) is more comprehensive, we recommend that you replace the current 77(1) with the current 78(1); delete the current 78(1) from its current position; and have the current 78(2) become 78(1).

Another feedback observation on Clause 77 (page 28) is that use of the term “firm” is not consistent with the terminology used in other provinces. We suggest that “entity” might be the best term, with other alternatives being “holder of the Certificate of Authority” or “owner of the Certificate.” In our view, it is also strongly advisable to make it clear that the sub-clauses found under 77 pertain to the licence holder and not to the entire FI; and also that they do not pertain to all insurance activities, just to those undertaken in relation to distribution.

With respect to Clause 81(3) (page 30), we note that the requirements set out therein are already set out in other relevant legislation and regulations, related to privacy and the use of personal information, such as the *Personal Information Protection and Electronic Documents Act (PIPEDA)*. It is also our view that the modifier words “without delay,” impose too onerous a requirement and should be modified.

With respect to Clause 84 (page 30), CAFII strongly recommends that clarification language be added to this provision to make it clear that brand names can also be displayed in relation to the activities authorized by the licence.

With respect to Clause 85(2) (page 30), CAFII strongly recommends that the language therein should be modified to indicate that it is acceptable to disclose potential conflict of interest information in the disclosure documents which are sent to the customer after a transaction has been completed.

With respect to Part 12 Duty to Report (pages 33-34), CAFII recommends that the notification/reporting period to the Superintendent be increased from 10 days to 15 days.

With respect to Clause 94(3)(b) (page 34), CAFII thanks FCNB for adopting our previous recommendation that it provide an exemption for RIAs that are federally regulated financial institutions (FRFIs), given that under the federal *Trust and Loan Companies Act*, FRFIs are exempt from having to carry errors and omissions insurance.

With respect to Clause 99 and Clause 104(1) under Part 14 Trust Accounts (pages 35-36), CAFII believes that, in the case of CPI, these matters are already fully covered by the wording set out in group master policies; and therefore, compliance with these provisions should not be a requirement to obtain or maintain an RIA licence for a CPI business.

With respect to Clause 105 (page 36), CAFII believes that the scenario contemplated therein applies to MGAs but not to CPI. Therefore, we recommend that reference to RIA licence holders be removed from this Clause.

Finally, with respect to Clause 112 (page 37), CAFII believes that an unintended drafting error can be corrected by changing the wording from “for 60 days after submitting the application” to “for 60 days after issuance of the licence,” as applicants cannot conduct activity until the licence is issued.

Concluding Comments

CAFII again thanks FCNB for the opportunity to provide key industry stakeholder feedback on *Draft Rule INS-001: Insurance Intermediaries Licensing and Obligations*. Should you require further information from CAFII or wish to meet with representatives from our Association on this submission or any other matter at any time, please contact Brendan Wycks, CAFII Co-Executive Director, at brendan.wycks@cafii.com or 647-218-8243.

Sincerely,



Rob Dobbins
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 credit protection, travel, life, health, and property and casualty insurance across Canada. In particular, credit protection 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 which helps ensure that Canadian consumers have access to insurance products that suit their needs. Our aim is to ensure that 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 Insurance; National Bank Insurance; RBC Insurance; ScotiaLife Financial; and TD Insurance – along with major industry players Assurant; Canada Life Assurance; Canadian Premier Life Insurance Company; Canadian Tire Bank; CUMIS Services Incorporated; Manulife (The Manufacturers Life Insurance Company); Sun Life; and Valeyo.