

DISCUSSION PAPER

Opportunities for Reforming the New Brunswick Licensing Framework for Other-than-Life Insurance Agents and Brokers

August 2013

Financial and Consumer
Services Commission

INSURANCE DIVISION

Background

The *Insurance Act* (“the *Act*”) requires all individuals carrying on the business of insurance as agents or brokers to be licenced. Part XV of the *Act* deals with the licensing of agents and brokers and other intermediaries. The *Agents and Brokers Regulation*, which establishes the terms, conditions and qualifications for other-than-life agents and brokers, was first introduced in February 1995 and since that time the *Regulation* has not been updated. A copy of the current *Act* and *Regulations* can be viewed at:

www2.gnb.ca/content/gnb/en/departments/attorney_general/acts_regulations.html

Introduction

The Insurance Division of the Financial and Consumer Services Commission will be developing and analyzing policy options to reform the current licensing scheme for other-than-life insurance agents and brokers. As a first step in this review, the Insurance Division has prepared this Discussion Paper to facilitate dialogue and consultation with stakeholders who wish to provide feedback on reforming the current licensing framework.

The main objective of this review is to ensure that the regulatory framework reflects the current insurance marketplace while providing robust protection for consumers.

Submissions

Submissions should be made electronically to information@fcnb.ca, no later than October 31, 2013.

Alternatively, written submissions may be sent by mail or fax to:

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Financial and Consumer Services Commission
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Fax: (506) 453-7435

Please note that we cannot keep submissions confidential. Any comments received during the comment period will be made public.

Issue 1 - Levels and Types of Licences

The licensing provisions of the *Insurance Act* related to other-than-life intermediaries distinguish between residents and non-residents, and agents and brokers. Likewise, the *Agents and Brokers Regulation* establishes two levels of other-than-life agent licences (class I and class II) and four levels of other-than-life broker licences (class I, II, III, and IV).

The discrepancies in the *Insurance Act* between non-residents and resident agents and brokers reflect a time when most individuals dealing with insurance clients were resident in the Province with a few non-residents doing infrequent business in the Province. Today's marketplace is significantly different. The Insurance Division believes that this distinction between non-residents and residents should be eliminated so that non-residents meet the same standards and operate within the same regime as resident agents and brokers. However, consideration must also be given to the Agreement on Internal Trade related to labour mobility which has recently incorporated individuals working within financial sectors.

In the current marketplace, there are some agents who sell for more than just a specific insurance company and some brokers who have very restricted markets. This can create confusion for consumers. It also raises questions as to why they are treated differently and not on a level playing field. Most jurisdictions have eliminated the distinction between agent and broker and only issue agent licences. The Insurance Division believes that it is time for New Brunswick to follow suit.

The Insurance Division believes that roles and responsibilities for a particular level of licence should be spelled out in the Regulation and that they should be consistent for all individuals whether they are agents or brokers and regardless of the size of their particular organization. Further, the role and responsibilities of a particular level of licence should relate to the educational requirements for that licence.

Discussion Questions

- 1.1 Should the *Insurance Act* and Regulations be amended to eliminate the distinction between resident and non-resident other-than-life intermediaries?
- 1.2 Should the *Insurance Act* and Regulations be amended to eliminate the distinction between agent and broker licences and move to a common licence for all other-than-life insurance intermediaries?
- 1.3 What levels of licences should there be, and what should be the corresponding role and responsibilities for each level?
- 1.4 Which activities by staff of a brokerage or an agency should not require the individual to hold a licence?

- 1.5 Should a licence holder be obliged to move to the next level of licence?
- 1.6 If a licence holder were obliged to move to the next level of licence, what should the time limit be for moving to the next level of licence?
- 1.7 Are there any other matters for consideration on this issue?

Issue 2 - Educational and Experience Requirements

Ensuring that insurance intermediaries have appropriate education is a key component of consumer protection. The educational requirements contained in the *Agents and Brokers Regulation* have not been updated in some time. As stated above, the Insurance Division believes that the roles and responsibilities attached to each level of licence should reflect the educational requirements of that level of licence. The Insurance Division believes that further information is required in order to determine what course requirements are appropriate for each different level of licence.

Given that there are variations in educational requirements across the country, the licensing regime should permit the recognition of equivalent educational standards from other jurisdictions.

While education is critical in the proper development of insurance intermediaries, practical experience gained through supervised on-the-job training ensures that intermediaries are properly trained. For new licence holders, direct supervision is necessary to ensure consumer protection and appropriate development. Some licensing regimes include probationary periods where a new licence holder's activities are restricted until they reach a minimum level of experience. Upon reaching the minimum level of experience, individuals would be free to work more independently and with fewer restrictions, if any, on their licences; although they are still subject to overall supervision by a managing licence holder.

Discussion Questions

- 2.1 Referring back to question 1.3, what should the corresponding educational requirements be for each level of licence?
- 2.2 Should there be a probationary period, for individuals entering the profession? If so, what should the probationary period be?
- 2.3 If there is a probationary licence, what restrictions should be placed on a probationary licence?
- 2.4 Should there be further educational requirements for an individual to move from a probationary licence?
- 2.5 Referring back to question 1.3, should there be minimal experience requirements to move to the different levels of licence? If so, what should those minimum requirements be?
- 2.6 Should there be a requirement for licence holders to complete mandatory continuing education?

2.7 Are there any other matters for consideration on this issue?

Issue 3 - Supervision

Under the *Agents and Brokers Regulation*, a licensee with an other-than-life agent licence class I must be under the supervision of his or her employer. Similarly, a licensee with an other-than-life broker licence class I must be under the supervision of his or her employer. A licensee with an other-than-life broker licence class II must be under the supervision of a holder of a broker licence class III or IV.

Going forward, the nature of supervision will depend greatly on the levels and types of licences that are in a new licensing regime. However, generally speaking the Insurance Division believes that the following are necessary key elements:

- a managing licence holder who is responsible to provide an effective level of oversight and active supervision of all insurance activities within an operation;
- on-sight supervision of branch offices by a senior licence holder;
- direct supervision of new entrants by a senior licence holder.

Discussion Questions

- 3.1 What level of licence(s) should be subject to direct supervision under the *Regulation*?
- 3.2 What should be the nature of supervision for each corresponding level of licence?
- 3.3 What requirements should an individual meet to be a supervisor?
- 3.4 What obligations would the supervisor have, how long would the supervision last and how many licensees should an individual be able to supervise at one time?
- 3.5 Are there any other matters for consideration on this issue?

Issue 4 - Licence Renewals

Pursuant to the *Insurance Act*, the Superintendent of Insurance must determine whether an individual is eligible to have his or her licence renewed. Where issues arise with respect to an individual's eligibility, the Superintendent may require an investigation to be completed in order to assist in making a determination. Therefore, requiring a regular renewal allows for the confirmation of an individual's eligibility by sponsors and the Office of the Superintendent.

The *Licence and Examination Fees for Agents and Brokers Regulation* establishes renewal periods for agents and brokers. In 2009, New Brunswick moved to two year licences for most licence holders to lessen the regulatory burden. As well, we staggered our renewal dates to increase the effectiveness of the application review process. These changes attempt to balance efficiency with regular monitoring to ensure consumer protection.

The Insurance Division believes that these changes have improved the licence renewal process. That said, we are seeking feedback on other initiatives that could increase the efficiency of the renewal process while still ensuring a regular review of licence holders.

The *Insurance Act* requires that applications be sworn. New Brunswick is the only jurisdiction that still has this requirement. While this adds some assurances as to the veracity of the information provided, it also adds to the administrative burden for the applicant. It is also a barrier to moving to an online licensing system. The Insurance Division believes that this requirement should be eliminated in favour of a certification as to the truthfulness of the information provided.

There are times when issues going to eligibility are only disclosed when a renewal application is filed. The issues can require an investigation and, in some cases, a hearing. This can lead to delays in the licence being renewed and can result in individuals being unable to carry on business pending the investigation or a hearing. The Insurance Division believes that there should be authority to issue a temporary licence in situations where there is not a significant risk to consumers.

Discussion Questions

- 4.1. What improvements could be made to increase the efficiency of the renewal process while ensuring a regular review of licence holders?
- 4.2. Should there be a filing date for licence renewal applications which predates the expiry date with a late filing fee?
- 4.3. Should the Act authorize, in appropriate cases, the issuance of temporary licences pending an investigation or hearing respecting eligibility?

4.4. Are there any other matters for consideration on this issue?

Issue 5 - Compliance and Enforcement Matters

The Insurance Division believes that there are some minor changes needed related to enforcement and compliance under the Act and Regulations. The intent is to ensure that the process is more effective and efficient.

There are many incidents where the Insurance Division must investigate general business practices of insurance intermediaries and deal with unlicensed individuals engaged in the business of insurance. Further, as financial regulators adopt risk based approaches to compliance, greater reliance is placed on the gathering of information through questionnaires and surveys of market participants and similar methods. Therefore, the Division believes that the Act should be amended to clarify the Superintendent's power to obtain information relating to any contract of insurance, relating to any settlement or adjustment, or respecting any activities related to the business of insurance.

Section 352 of the *Insurance Act* allows for the revocation or suspension of a licence on particular enumerated grounds. The Insurance Division would like to know if the enumerated grounds are appropriate or should they be amended. Further, should other regulatory sanctions be available. The Division believes that the Act should permit interim suspensions of a licence or the imposition of restrictions pending an investigation and/or hearing where there is a significant risk to the public.

Individuals should not be permitted to avoid enforcement action simply by surrendering their licence. If the matter is not dealt with, the individual may seek a licence at a later time when it may be more difficult to deal with or he or she may seek a licence in another jurisdiction. Therefore, the Insurance Division believes that the Act should be amended to clarify the Superintendent's jurisdiction to deal with individuals who are no longer licensed.

The Insurance Division believes that the Act should be amended to authorize the publication of decisions by the Superintendent to grant or refuse a licence or to revoke or suspend a licence. The publication of decisions will make the licensing process more transparent for licence holders and consumers. Further, publication of decisions will help educate other licensed individuals on the appropriate conduct in carrying on the business of insurance. Finally, publication would allow insurance regulators in other jurisdictions to be informed of determinations with respect to individuals who may be or may wish to be licensed in their jurisdictions.

Discussion Questions

The Insurance Division does not have any specific questions with respect to this section. However, we welcome any feedback on the proposals set out above.

Issue 6 - Trust Accounts

Section 364 of the New Brunswick *Insurance Act* requires all life and other-than-life agents and brokers to hold a trust account. Agents and brokers are required to pay any payment received from an insurer or an insured into the trust account immediately. Trust accounts offer consumer protection as well as protection for the insurer. Several jurisdictions require trust accounts. Licence holders are not permitted to co-mingle other funds in trust accounts and are not entitled to use the funds in the trust account for any purpose not authorized by section 364. Agents and broker are not permitted to withdraw money from a trust account, unless the withdrawal is for money paid to or on behalf of an insurer or an insured, the money is payment of commission, or the money paid into the trust account was done by mistake.

In the current insurance marketplace, there are a significant number of agents and brokers who do not receive payments from clients or insurers, as many payments are made directly to the insurer or the insured. There are also agents who work directly for an insurer and can deposit any payments directly into the insurer's account. In light of these facts, the Insurance Division is considering an amendment to the *Act* so that the trust account requirements apply only to agents and brokers who receive trust funds. Also, the Insurance Division is considering requiring annual trust reconciliation statements.

Discussion Questions

- 6.1 Should the *Act* be amended so that agents and brokers who do not receive any payments from clients or insurers are not required to maintain a trust account?
- 6.2 Should the *Act* be amended so that employees of an insurer who deposit payments directly into an insurer's account and whose access to the account is limited to making deposits are not required to maintain a trust account?
- 6.3 Should the *Act* be amended to include other instances where an agent/broker can withdraw money from a trust account? If yes, which specific withdrawals should be allowed and why?
- 6.4 Should licence holders be required to file an annual reconciliation?
- 6.5 Are there any other matters for consideration on this issue?

Issue 7 - Errors and Omissions Insurance

A licence holder can be exposed to liability to an insured or an insurer. Therefore, professional liability insurance is a key element of consumer protection. It can also protect the licence holder by covering potential losses and defraying costs of defending an action. Most jurisdictions require that licence holders carry errors and omissions insurance and many also require fidelity insurance against losses arising from dishonesty of employees, a proprietor or partners, directors and officers. Some jurisdictions require that the policy include an extended reporting period.

The Insurance Division is considering introducing a requirement for licence holders to carry errors and omissions insurance issued by an insurer licenced in New Brunswick and a further requirement to hold fidelity insurance issued by a licensed insurer. Proof of insurance would be a prerequisite to the issuance or renewal of a licence. Further, a licence holder's licence would be automatically suspended on the effective termination or non-renewal date of the insurance policies. The policy would require the insurer to notify the Office of the Superintendent when the policy is terminated or not renewed.

The minimum errors and omissions coverage in the other jurisdictions is either \$500,000 or \$1,000,000 for any one occurrence with an aggregate amount of \$2,000,000 or \$5,000,000. The minimum coverage for fidelity insurance for those jurisdictions where it is required is \$100,000.

Discussion Questions

- 7.1 Should the *Insurance Act* and Regulations be amended to require that every general insurance licensee or agency that holds a general insurance licence have errors and omissions insurance?
- 7.2 What should be the elements of the insurance coverage?
- 7.3 Should the coverage include an extended reporting period and, if so, what should that period be?
- 7.4 What is the appropriate amount of coverage for errors and omissions coverage?
- 7.5 What is the appropriate amount of coverage for fidelity insurance coverage?
- 7.6 Are there any other matters for consideration on this issue?

Issue 8 - Duty to Report

Issues of consumer protection can arise where a licence holder is subject to disciplinary action by another regulatory entity, has been charged or convicted of an offence or has had a civil judgment against him or her. Currently, there is no obligation for the licence holder to report these matters to the Office of the Superintendent until the individual applies to renew his or her licence. This has the potential to cause consumer harm and may require immediate action by the Office. Further, where matters are only disclosed upon a renewal application, this can delay the renewal of an individual's licence as the Insurance Division obtains information and reviews the matter. The delay can be even greater where a hearing is required. The *Adjusters Regulation* requires adjusters to report these types of issues to the Insurance Division within 10 business days.

We believe establishing a similar mandatory self reporting requirement in the *Agents and Brokers Regulation* would enhance consumer protection and resolve the challenges outlined above. The requirement would be that all licence holders notify our Office within 10 days of any disciplinary investigations or decisions, civil judgements involving fraud, breach of trust, or criminal charges and convictions.

Further, licence holders should be required to report the following information to the Insurance Division within 10 days:

- Change in name;
- Change in contact information;
- Change in employer.

Some of these changes would require a new application and the issuance of a new licence.

Discussion Questions

- 8.1 Should the *Regulation* be amended to require a mandatory self reporting requirement for agents and brokers?
- 8.2 If the *Regulation* was amended to include mandatory self reporting, what types of incidents should agents and brokers be required to report?
- 8.3 How much time should an insurance intermediary have to report an issue?
- 8.4 Which type of these issues should require a new application?
- 8.5 Are there any other matters for consideration on this issue?

Issue 9 - Lapse in Licence / Reinstatement

Where an agent or a broker ceases to hold his or her licence for a period of time, issues of eligibility to obtain a new licence may arise. Neither the *Insurance Act* nor the Regulations contain any provisions related to the reinstatement of a licence. The *Life Insurance Agent Licensing Regulation* provides that a life insurance agent who ceases to hold his or her licence for two years is required to retake the Life Licensing Qualification Program examination. Likewise, the *Adjusters Regulation* includes provisions for the reinstatement of a licence.

To ensure consumer protection, the Insurance Division believes that agents or brokers who have not been licenced for an extended period of time should be required to requalify by taking courses and to be under direct supervision. Further, where appropriate, some individuals who have not been licenced for a lesser period could have conditions imposed on their licences.

Discussion Questions

- 9.1 What is an appropriate period for requiring an individual who has had a lapse in their licence to requalify?
- 9.2 What should the requalification requirements be for the various licence levels? Should they vary based on the individual's length of absence? If yes, how should they vary?
- 9.3 What information should be provided by someone who is seeking reinstatement?
- 9.4 Are there any other matters for consideration on this issue?

Issue 10 - Partnership or Corporate Licence

The *Insurance Act* permits (but does not require) the issuance of agents or brokers licences to a partnership or corporation that is incorporated expressly for the purpose of acting as an insurance agent, broker, adjuster or damage appraiser. However, regulations have never been created to put these provisions into effect. The Insurance Division is considering regulatory amendments to allow for the licensing of partnerships or corporations subject to the provisions in the Act. Individuals would still be required to obtain individual licences.

Discussion Questions

- 10.1 Should other-than-life insurance agencies or brokerages be required to obtain a partnership or corporate licence? Please elaborate on why?
- 10.2 What should be the requirements on an agency or brokerage applying for a partnership or corporate licence?
- 10.3 What parameters should be on a corporate or partnership licence?
- 10.4 Should each agency or brokerage require a designated representative?
- 10.5 Should each branch of an agency or brokerage require a separate licence?
- 10.6 Are there any other matters for consideration on this issue?

Issue 11 - Other Issues

The Insurance Division welcomes any comments on any other matters that are not covered in this paper.