



July 5, 2013

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**Re: Licensing of Incidental Sellers of Insurance  
Amendments to Insurance Agents and Adjusters Regulation**

Dear Mr. Scalena and Mr. Moore:

The Canadian Association of Financial Institutions in Insurance (CAFII) is writing to you in response to the *Draft Regulation on Licensing of Incidental Sellers of Insurance: Amendments to Insurance Agents and Adjusters Regulation*, which was circulated to industry stakeholders on June 3, 2013. CAFII appreciates the opportunity to provide written commentary on the Draft Regulation, as well as your granting of a short extension to the stated July 2 deadline for submissions.

CAFII members are significant incidental sellers of insurance across Canada. Incidental insurance products such as creditor insurance offer a cost-effective way for consumers to manage risk and ensure peace of mind if their financial circumstances were to change.

We have organized our feedback into four sections: *Broad/Overarching Issues*; *Specific Concerns*; *Housekeeping Matters*; and *Overall Approach*.

We have endeavoured to be as thorough as possible in this written submission. However, given the tight timeframe posed by the July 2 deadline, and given that we have identified a number of significant concerns and issues with respect to the Draft Regulation, we would appreciate an opportunity to meet with you for further discussion before the Regulation advances to the next stage. We're confident that through further dialogue, our concerns can be addressed and greater harmonization achieved with existing ISI restricted licence regimes in Canada, where consumers are being well-served by insurance providers operating under prudent risk-based and principles-based regulation.

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## ***Broad/Over-Arching Issues***

### **Need For Integration/Packaging With Respect To Release Of Related Regulatory Documents**

Manitoba Finance has advised that the draft ISI Regulation was written as part of a package of changes to the province's insurance legislation that will include the amendments to the *Insurance Act* (i.e. Manitoba Bill 27) that are not yet in force, along with revisions to the *Manitoba Classes of Insurance Regulation* (which is to be updated in due course).

CAFII strongly recommends that these related regulations be released simultaneously for consultation, as an integrated package.

### **Need For Reasonable Lead Time For Implementation Of Regulatory Changes**

CAFII members have appreciated the open, consultative approach that has typically been used for provincial legislative and regulatory reviews.

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 necessary systems changes are made, forms revised, staff trained, and consumers notified of how the changes affect them.

## ***Specific Concerns***

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

The Draft Regulation, throughout, fails to capture and incorporate the federal *Trust and Loan Corporations Act*. For example, the definitions of "deposit-taking institution" and "financial institution" should be expanded to incorporate this federal Act.

While this is an issue throughout the Draft Regulation, where it would have most impact is with respect to the exemption for financial institutions from having to carry errors & omissions insurance.

CAFII strongly recommends that Manitoba make an adjustment to be consistent with the ISI restricted licence regimes in Saskatchewan and Alberta, and to ensure that trust and loan companies are adequately captured within the Regulation.

### **Sections 23 and 25: Definitions; and Classes of Insurance**

CAFII has a concern with respect to the classes of insurance defined in these sections and referred to throughout the Draft Regulation, as some of them do not exist in Manitoba's current legislation. In particular, "creditor's disability insurance" and "creditor's loss-of-employment insurance," both defined in Section 23, do not currently exist as classes of insurance.

CAFII strongly recommends that Manitoba harmonize with the insurance definitions set out in Saskatchewan's or Alberta's ISI Regulations.



### **Section 23: Personal Accident Insurance Not Included**

Personal Accident Insurance is not included in Section 23's definitions of products to which the ISI regime applies, nor is it found in the classes of insurance for which a restricted license may be issued. Yet, Personal Accident Insurance was included in the Draft ISI Framework that Manitoba released in 2011; and the Saskatchewan ISI regime includes it.

CAFII strongly recommends that Manitoba include Personal Accident Insurance in its ISI Regulation, under a definition that is harmonized with Saskatchewan.

Given that Personal Accident Insurance is generally not sold incidental to another product, our recommendation that it be added to the Manitoba Regulation is dependent upon adoption of our recommendation below with respect to 26(6).

### **Section 23: Definition of "Personal Travel Insurance" Too Limited**

The definition of "Personal Travel Insurance" is much narrower than what is set out in Alberta's and Saskatchewan's Insurance Regulations. For example, trip interruption and property loss coverage are included in the Saskatchewan Regulations but not in Manitoba's Draft Regulation. The Manitoba Draft Regulation captures only group insurance policies, given the wording that appears in paragraph (a) of the definition.

However, many travel agencies offer Personal Travel Insurance (e.g. travel medical coverages) on an individual, rather than group, basis. Therefore, as presently drafted, the limitation in this definition would prevent these agencies from offering individual travel insurance under a restricted license.

CAFII strongly recommends that Manitoba's definition of Personal Travel Insurance be harmonized with the definition set out in Alberta's or Saskatchewan's Insurance Regulations.

Given that Personal Travel Insurance is generally not sold incidental to another product, our recommendation to harmonize with the definition set out in the Alberta or Saskatchewan Insurance Regulations is dependent upon adoption of our recommendation below with respect to 26(6).

### **Sections 26(1)(c): Applying for a Restricted Licence**

The wording of Section 26(1)(c) should be revised to permit applications for multiple classes or types of insurance.

### **Sections 26(2)(a)(i): More Inclusive Terminology Required**

This subsection stipulates that an application for a restricted insurance agent licence must be accompanied by a written recommendation from an insurer that "has an agreement with the applicant under which the applicant is authorized to **sell** *[emphasis added]* the insurer's insurance products as an incidental seller."

CAFII strongly recommends that the wording of this subsection reflect both individual and group products distributed under restricted licences. With respect to group products, consumers are offered coverage and enrolled in the group; they are not sold an individual insurance policy. We recommend harmonization with *Section 15.11(2)(b) of the Saskatchewan Insurance Regulations, 2003, RRS c S-26 Reg 8*, which simply requires the recommendation of an insurer that "has entered into an agency contract with the applicant."



### **Sections 26(2)(b) and 28: Designation of Operating Agent**

These sections stipulate that an application for a restricted licence must include the designation of a director, officer or employee of the organization who will be its "operating agent" and thereby responsible not only for receiving notices and holding the licence on behalf of the organization, but also for supervising employees who offer or arrange insurance.

This supervisory role goes far beyond the responsibilities expected of the designated office holder in Alberta's and Saskatchewan's Insurance Regulations. We see this as an unreasonable, onerous duty to place upon specific individuals who work in large organizations such as financial institutions. Typically, financial institution staff who are involved in offering a product such as creditor insurance do not all report to the same person. Therefore, it would be practically impossible for the operating agent to discharge his/her supervisory obligations.

CAFII recommends that the Regulation be revised to require 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 its 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.

### **Section 26(2)(c), 30(1)(c) to (e), and 30(2)(b): Maintaining Records of Persons Authorized To Transact Insurance**

In Section 26(2)(c), the Draft Regulation requires that the application for a restricted licence include a statement of the number of persons who will be authorized to transact insurance on behalf of the applicant.

In Sections 30(1)(c) to (e), and 30(2)(b), the restricted licence holder is required to maintain a current record of all persons authorized to transact insurance on behalf of the restricted licence holder, including the person's name, date on which the authorization began and ended, the business address from which the person works, whether the person is an employee of the restricted licence holder or of a qualified entity, and the class of insurance the person is authorized to transact.

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.

Therefore, CAFII strongly recommends that organizations with 500 or more employees be exempt from such record-keeping requirements. This is how Alberta and Saskatchewan have resolved this issue, ie. by including the roster requirement 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.

To parallel the approach followed in the Alberta and Saskatchewan ISI regimes, CAFII suggests that restricted licence applicants provide a numerical range for the number of employees who will be authorized to transact insurance, rather than state a precise number.



### **Section 26(2)(d)(ii): Requirement To Submit Policies And Procedures With Licence Application**

This section seems to indicate that an application for a restricted licence must be accompanied by reasonable and demonstrable policies and procedures to ensure that anyone who transacts insurance on behalf of the applicant is knowledgeable.

We recommend that this requirement be removed, as it is inconsistent with Alberta's and Saskatchewan's ISI Regulations.

As an alternative, revising the wording to read "~~evidence acceptable to the superintendent~~ that the applicant has . . ." should meet Manitoba's objective, while removing the apparent requirement to submit copies of policies and procedures with the application for the superintendent's review and approval.

CAFII advocates harmonization and consistency of rules across provinces. Given that CAFII member financial institutions operate on a national basis and must comply with multiple sets of regulations where a business activity falls within provincial jurisdiction, we strongly encourage Manitoba to work towards achieving greater harmonization with Alberta and Saskatchewan on this and other dimensions of the ISI regulation.

### **Section 26(6): Problematic Definition Of "Incidental Seller Of Insurance" In Subsection 380.1 Of The Insurance Act**

This section is problematic for sales of Personal Accident Insurance and Travel Insurance. Section 26(6) speaks to who may be issued a restricted agent license, and refers to an applicant who is "an incidental seller as defined in subsection 380.1 of the Act" (definition set out below).

*380.1(1) In this section, "incidental seller of insurance" means a person that, in the course of selling or providing goods or services to the person's customers or clients, sells, negotiates or arranges insurance, or offers to sell, negotiate or arrange insurance, that relates to those goods or services.*

*380.1(2) Issuing restricted insurance agent licenses*

*Despite sections 370 and 372, the superintendent may, in accordance with the regulations, issue a restricted insurance agent license to an incidental seller of insurance who*

- (a) meets the eligibility requirements of the regulations for such a license;*
- (b) applies for the license in the manner provided by the regulations: and*
- (c) pays the fee for the license prescribed in the regulations.*

Taken together, the definitions set out in 380.1(1) and 380.1(2) with respect to a "restricted license holder" seem to exclude Personal Accident Insurance and Personal Travel Insurance, as these products are generally not sold incidental to the sale of another product or service.

In addition, CAFII member employees don't "sell" the coverage; rather, they "enrol" the client in the financial institution's plan. Enrolment is not addressed in either the Manitoba Insurance Act's definition of an ISI agent or in the Draft Regulation.

Therefore, CAFII strongly recommends that the limitation created by defining "incidental seller of insurance" be removed via one of the following approaches:

- Remove section 380.1(1) of the Insurance Amendment Act; and revise Section 380.1(2) to replace "incidental seller of insurance" with "person" as follows:



*Despite sections 370 and 372, the superintendent may, in accordance with the regulations, issue a restricted insurance agent license to a person who...."*

**OR**

- Deem banks to be incidental sellers under the Regulation.

#### **Section 27: Employees Of Other Entities**

This Section of the Draft Regulation authorizes the holder of a restricted licence to act on its licence powers through the employees of another qualified entity, without that qualified entity having to obtain its own restricted licence.

CAFII recommends that – in the interests of (a) harmonization with other provincial ISI regimes; (b) fostering regulatory compliance; and (c) an optimal fees/revenue model for Manitoba Finance – qualified entities be required to obtain their own, separate restricted licences.

#### **Section 27(2): Superintendent's Powers**

This section of the Draft Regulation states that in order to use another entity (such as a third party telemarketer) to offer insurance products, the holder of a restricted licence must enter into a contract with the other entity " . . . that the superintendent believes provides adequate consumer protection and adequate control by the restricted licence holder . . . "

This provision appears to require the restricted licence holder to obtain the superintendent's approval before engaging a third party distributor; and suggests that the superintendent has significant discretion in reviewing and vetting contractual arrangements that licensees negotiate with third parties (e.g., telemarketers) as a condition of maintaining the restricted insurance agent license.

CAFII acknowledges that the Superintendent should have oversight authority to ensure compliance with the regulatory framework and with conditions that may be imposed on the license. However, our view is that an organization should not be expected to obtain the superintendent's approval prior to every arrangement that it enters into with an outside party. If the intent of Section 27(2)(b) is to give the superintendent the latitude to request contracts from licensees on an exceptional basis, where a situation so warrants, CAFII would be comfortable with that.

CAFII recommends that Manitoba follow the approach used in Saskatchewan's Regulations, which make it clear that contracts must, "in the opinion of the superintendent," provide adequate authority for the restricted insurance agent to meet its obligations (see s. 15.11(1)(f) of Saskatchewan's Insurance Regulations).

We note also that the Insurance Councils of Saskatchewan has set criteria for approval of agency contracts, which provide the basis for ensuring that licensees meet their obligations. CAFII recommends that Manitoba adopt a similar approach, such that businesses are not expected to submit or seek the superintendent's approval of their third party contracts.

#### **Section 30(1)(f): Consumer Disclosures**

This Section stipulates that before an employee of the restricted licence holder or a qualified entity permits a consumer to complete an application for insurance, they must provide the consumer with a notice containing certain information as set out in (i) to (v).



This notice requirement seems to suggest that, before a consumer applies for insurance, he/she must receive detailed written disclosures covering information such as the terms of the insurance, and circumstances under which the insurance commences or terminates. It would be impossible for CAFII member financial institutions to disclose this information in writing when transacting with customers over the telephone, and it would also be extremely difficult to disclose that amount of detail verbally without contributing to a negative customer experience.

CAFII strongly recommends that Manitoba's ISI Regulation be harmonized with the disclosure requirements in Alberta and Saskatchewan. These provinces require that licensees provide a "summary" of information about the terms of the insurance and applicable conditions, and that the information be provided at the time of application rather than prior to application. This approach is much more workable when dealing with consumers who choose to purchase insurance from their financial institution over the telephone: the most relevant and concise information is provided to them so that they can assess the merits of the product and whether it meets their needs.

#### **Sections 30(2)(a) and 30(2)(c)(ii): Purchase of Insurance In Relation to Goods and Services**

Section 30(2)(a) states that a restricted licence holder must not make its provision of goods or services conditional upon the consumer's purchase of insurance through it or from an insurer specified by it or conditional upon the consumer's purchase of other insurance.

Similarly, Section 30(2)(c)(ii) prohibits an employee of a restricted licence holder from telling a consumer that should he/she wish to purchase insurance in relations to the goods or services, he/she may only purchase insurance through the restricted licence holder or a qualified entity or from a specified insurer.

With respect to Section 30(2)(a), there is no equivalent in Saskatchewan's ISI regime. Financial institutions have the right, generally speaking, to require that a loan be insured.

With respect to Section 30(2)(c)(ii), there is no equivalent section in the Alberta or Saskatchewan ISI regimes.

CAFII therefore recommends that Sections 30(2)(a) and 30(2)(c)(ii) be removed from the Manitoba Regulation, particularly given that their requirements are covered in Section 30(1)(f)(ii).

#### **Section 31: Qualified Entity's Responsibilities**

This section specifies that a qualified entity is subject to the same roster and disclosure requirements as the restricted licence holder.

For the reasons mentioned previously, these requirements will be onerous and impractical for qualified entities – most of which are also large, complex organizations. CAFII therefore strongly recommends that Manitoba harmonize with the Alberta and Saskatchewan ISI Regulations on this matter.

#### **Omission: Right of Rescission/Cooling Off Period**

The Draft Regulation does not specify a Right of Rescission or minimum Cooling Off Period, as a consumer protection measure.

CAFII believes that this oversight should be redressed, and that Manitoba should harmonize on this point with the Alberta and Saskatchewan ISI Regulations.

### **Housekeeping Matters**

- Section 16 is not preceded by the title "Part 1" which seems to be an oversight;
- The organization of Section 16 is inconsistent with other parts of the Draft Regulation. To be specific, Section 16 is organized as follows: 16.1(1), 16.1(2), etc.; whereas the other parts of the Regulation are organized as 26(1), 26(2), etc.
- Section 21 immediately follows Section 16, but yet there is no mention of any section having been omitted
- The first part of Section 31 is mis-numbered/labeled. For consistency, it should be labeled as 31(1).

### ***Overall Approach***

CAFII's feedback on the overall approach taken to the Draft Regulation is that it goes too far in prescribing rules and requirements for restricted licence holders.

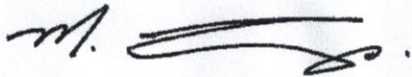
We strongly recommend that Manitoba adopt a more principles-based approach to ISI regulation, and set guidelines that drive industry players toward a particular outcome rather than creating rigid requirements that create additional costs and compliance burden for businesses while adding little or no benefit in terms of consumer protection.

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

As noted earlier, CAFII would like to meet with you to discuss our feedback and concerns about the Draft Regulation before it advances to the next stage. We would be prepared to meet in-person in Winnipeg or by conference call, as you prefer.

Once again, thank you for including CAFII in the consultation and we look forward to continuing to work with you towards a practical, efficient and effective ISI regulatory regime in Manitoba.

Yours truly,



Mark Cummings, Chair  
Canadian Association of Financial Institutions in Insurance