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January 22, 2016

Financial and Consumer Services Commission
200-225 King St.
Fredericton NB E3B 1E1

Attention: Insurance Division

Submitted by email: secretary@fcnb.ca

Dear Sir/Madam:

Subject: Position Paper on Modernizing the New Brunswick Insurance Licensing Framework

Independent Financial Brokers of Canada (IFB) appreciates the opportunity to comment on this Position Paper. Our comments will focus on the proposals as they relate to life insurance intermediaries.

IFB is a national, voluntary, not for profit association comprised of approximately 4,000 financial services professionals. The majority of our members are licensed to provide life/health insurance, although many are also securities registrants (predominantly mutual funds) or hold complementary licenses such as property & casualty insurance. Our members are independent in that they must be able to offer clients the products or services of more than one company.

IFB provides its members with compliance support, and a comprehensive and affordable professional liability program for individuals and agencies. We also sponsor high quality educational events on a national and regional level several times per year for both members and non-members. An important part of the work we do is advocacy so that government and industry stakeholders are aware of the potential impact of regulatory or policy decisions on the independent channel of distribution.

Introduction

IFB supports the goal of the Framework which is to balance the Commission's consumer protection mandate with steps to reduce administrative burden and encourage a level playing field for market participants. This is consistent with IFB's view that regulation should seek effective ways to protect consumers, while minimizing the regulatory burden and costs for advisors.

A major contributor to the current regulatory burden and costs for financial advisors is the lack of harmonization that exists across jurisdictions. As noted in this Paper, it is common today for advisors to be licensed in multiple jurisdictions. While many provinces have similar requirements, the details often

vary, which leads to confusion and uneven levels of protection for consumers. It is our hope that the FCNB will seek to harmonize its requirements and reduce these inconsistencies wherever possible.

Our specific comments are below:

1 – Levels and Types of Licences

IFB agrees with the recommendation that distinguishing between resident and non-resident agents and brokers is no longer relevant, and to recognize non-resident educational qualifications. This is consistent with the approach in place for licensing of life agents and recognizes that it is common for intermediaries to be licensed in more than one jurisdiction.

The Commission has also recommended removing the licensing distinction between agents and brokers. We are pleased there is no intent to prevent an individual broker or brokerage from holding out as such to the public provided they meet the proposed definition in the *Insurance Act* to represent two or more insurers. IFB members are proud of their ability to source products from various companies in order to access the best product for their client. Therefore, the ability to identify their business as such to the public is an important distinction for them.

To ensure consumers are not misled, and are well-advised as to the services being provided, we suggest FCNB may want to pursue a requirement for written disclosure of the companies the agent/broker can deal with, or alternatively any restrictions such as offering the products of one company. This disclosure requirement exists in a number of other jurisdictions. IFB, along with others in the industry, have templates and guidance available to assist brokers with this disclosure.

We agree that certain, limited activities should not require a license. Where the intermediary provides advice, product recommendations or engages in the purchase/sale of a product, such activities should require a license. Consistent with this view, IFB believes that those who sell incidental insurance products¹ should be fully licensed, and held to the same regulatory standards as other insurance licensees. We note that some jurisdictions (BC, Alberta, Saskatchewan & Manitoba) have chosen to implement a restricted agent license in order to sell incidental insurance products. While this approach is not optimal in our view, it helps protect consumers who purchase such products by offering regulatory oversight and recourse in the event of a complaint.

2 – Corporate and Partnership Licenses

The proposal to introduce an agency license does not distinguish between sole proprietorships and other agencies or corporations. Requiring a separate license for those life insurance brokers operating a sole proprietorship would increase the regulatory and cost burden for these small enterprises, as would separate corporate E&O insurance. We trust there is no intent to capture sole proprietorships in this definition.

The requirement for a corporate or agency license is consistent with the approach adopted in a number of other jurisdictions, as is the requirement for separate corporate errors and omissions insurance.

¹ [CCIR Final Report on ISI, November 2008](#). According to the Report, the definition relates, but is not limited to, insurance sold by automobile dealers, by travel agents and agencies, by mortgage brokers, by retailers and through branches of lending institutions such as banks, credit unions, finance companies and pay-day lenders. These insurance products may pay off the balance of, or make payments on, a loan, a credit card or a credit line in case of disability or death. They may also be out-of-Canada health insurance or even prepaid funeral expenses. The common factor is the context in which the insurance product is offered.

Many agencies (such as managing general agencies, or MGAs) offer a wide range of services to both advisors and insurers under contractual agreements. E&O insurance provides additional protection for consumers, agencies, and advisors and contributes to a more consistent regulatory environment. IFB has considerable expertise in this area and would be pleased to offer our assistance as the Commission undertakes this process.

Item 2.5 references the agency's reporting requirements specific to employees. We seek confirmation that these requirements are not intended to extend to reporting of independent advisors who place life insurance business through the agency.

3- Supervision

Similarly Item 3.1 outlines the agency's supervisory responsibilities. Although the Commission identifies this section as relevant to life insurance, it refers only to "employees". We interpret this section to apply to agencies who employ staff, and not to supervision of life insurance advisors placing business through the agency. If this is not the intent, we request further clarification.

4 – Educational and Experience Requirements

Although the paper does not indicate that Section 4 relates to life agents, it is our position that mandatory continuing education is an important professional development tool that encourages intermediaries to update their knowledge of the industry, their regulatory responsibilities, and is an important contributor to consumer protection. Education and training are important components of a robust regulatory system. Mandatory CE is a licensing requirement in virtually all other jurisdictions.

Although many insurance agents in the Atlantic Provinces will already require CE in order to hold licenses in other jurisdictions, in our view, each regulator should set CE requirements to ensure its licensees meet a minimum educational standard. The Commission notes that monitoring and accrediting a mandatory system may be challenging. However, it forms part of a modernized licensing framework and we believe can be undertaken with relative ease. For example, recognizing CE earned in other jurisdictions, or as part of an ongoing requirement for an accreditation (e.g. CFP), as equivalent would reduce the Commission's administrative burden. We note that the MFDA intends to introduce a CE requirement for mutual fund advisors, and seeks to do so in a cost-effective and harmonized manner. IFB suggests any framework should be flexible, allow for a range of content and providers, and be harmonized with other jurisdictions in terms of credits required per licensing period. Some of the points we made in our submission to the MFDA² may be helpful. In it, we describe two accreditation models which work well for IFB as a major educational provider.

The first is the Alberta Insurance Council's. Under this system, accredited providers pay an annual fee and are provided with guidelines for evaluating course material for conformance to AIC CE requirements. At the time of renewal of its accredited standing, the provider can be subject to a spot check of some of the courses it has accredited over the previous year in order to verify that appropriate standards have been used in assigning course credits.

The second is the Financial Planning Standards Council model, under which the accredited provider pays a fee and is provided guidelines for course accreditation, and must then submit each course or event for evaluation by FPSC's education department.

² [IFB Comments on MFDA Continuing Education Discussion Paper](#)

IFB's preference is a model such as the one used by the Alberta Insurance Council, because it allows the course provider to be much more nimble, and avoids the need for the oversight body to create an infrastructure to manage its CE system. By contrast, the FPSC system, while workable, is much more expensive and turnaround of course approvals can sometimes be delayed during periods of heavy activity.

IFB encourages the Commission to implement a mandatory CE requirement. IFB would be pleased to provide input to the development of a system that recognizes the ethical and compliance issues pertinent to the insurance industry and the need for ongoing professional development, while avoiding unnecessary cost or duplication with other mandatory CE requirements.

5 – Licensing Processes

IFB has no objection to maintaining a 2 year license cycle for life insurance agents.

Re Item 5.3, Termination of Sponsorship Notices, IFB encourages the Commission to eliminate the supervision restriction on life insurance brokers, as Ontario and Quebec have done. We have written in the past to the Superintendent of Insurance outlining the difficulties the supervision requirement presents for life insurance brokers, especially for those who are semi-retired or place insurance on an occasional basis with clients in New Brunswick.

IFB does not object to a supervisory requirement or mentoring arrangement for newly licensed life insurance agents, but is hopeful that the Commission, and regulators in the other Atlantic Provinces, will revisit this restriction as it applies to experienced, independent brokers. In our view, it would remove a barrier to market participants that is not necessary, especially given the updated provisions contained under this modernized Framework.

6 – Compliance and Enforcement Matters

Re Item 6.2- Jurisdiction over Former License Holders. IFB agrees with the recommendation to amend the *Insurance Act* to prevent licensees from avoiding investigation or sanctions by relinquishing their license. This is consistent with a risk-based approach to regulation and measures to strengthen consumer protection. Ontario's *Insurance Act* was amended in 2014 to implement a similar change³.

Re Item 6.3 – Interim Suspensions. Issuance of interim orders should be reserved for only the most urgent and egregious instances of misconduct. There must be a balance of the interests of the agent for procedural fairness with the need to protect the public. In this regard, the onus rests with Superintendent to be held to a high standard of proof before considering such action.

We recommend including a time limit after which an interim order will expire. Under Ontario's *Securities Act* such orders expire in 15 days. Under Ontario's *Insurance Act* interim orders expire in 21 days, except in very specific circumstances when additional time is required. We suggest that a shorter period, like 15 days, is preferable for the individual involved. This helps to balance the interests of the respondent's access to justice and procedural fairness with the need to obtain interim and temporary relief on an urgent basis to protect the public.

Item 6.5 Intermediaries' Obligation to Report Matters Affecting Eligibility. The Commission recommends that all intermediaries be required to report changes that may affect their license within 10 business

³ [Insurance Act \(Ontario\), Section 392.7](#)

days, including the requirement to self-report “any errors and omissions claim” (not including a notice of claim). IFB would like to receive further clarification of the intent of this requirement as claims range broadly in their level of severity, with fraud and misconduct clearly at the egregious end of that range. Certainly, the FCNB would want to have this information available within a short period, but perhaps not claims arising from administrative oversight for example. As well, under the proposed Framework, the FCNB will receive additional information from E&O insurers who will be required to promptly report agents whose insurance is terminated, from agents who will need to report any claims at license renewal, and from insurers which will have a statutory duty to report unsuitable agents.

With regard to the requirement to report a change in sponsor, which would necessitate a new application and fee, we reiterate our previous comments that IFB would like to see an end to the sponsorship requirement for experienced life insurance agents.

Item 6.7 Publication of Decisions is consistent with a number of other jurisdictions and ensures greater disclosure and transparency for the public, as well as for other industry stakeholders.

8- Errors and Omissions Insurance

IFB supports a mandatory requirement for life insurance agents and agencies to maintain errors and omissions insurance. E&O provides consumers with the ability to seek financial restitution without resorting to potentially expensive legal action, as well as protection for advisors against unsubstantiated claims.

The coverage recommended generally aligns with that in other provinces, however, not all provinces require E&O coverage to be exclusive of defense and investigative expenses. IFB agrees that defense costs should be outside of the limits and this is a feature of [IFB's plan](#).

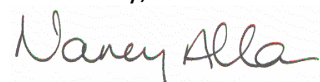
We note that Manitoba and Quebec mandate extended reporting coverage, however it for a period of five years, rather than one. The IFB plan offers optional extended reporting coverage for periods ranging from one to ten years.

We are not of any other provincial life insurance regulator requiring fidelity or crime insurance coverage and so we believe the requirement for fidelity insurance applies to adjusters and adjusting firms only. If this is not the case, IFB would like to receive further clarification.

IFB supports improving compliance with the E&O requirement by requiring the insurer to notify the Superintendent before terminating or refusing to renew a policy. This will help address gaps in advisor coverage.

We appreciate the opportunity to provide our comments. If you have questions, or wish to discuss further, please contact the undersigned or Susan Allemang, Director Policy & Regulatory Affairs (email: sallemang@ifbc.ca).

Yours truly,



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