



March 24, 2006

Carol Shevlin
Policy Manager (A)
CCIR Secretariat
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Sent via email: ccir-ccrra@fSCO.gov.on.ca

Dear Ms Shevlin :

Re: **Managing Conflicts of Interest: A Consultation Paper on Enhancing and Harmonizing Best Practices**

Independent Financial Brokers of Canada (IFB) is pleased to provide our response to this consultation paper on enhancing and harmonizing best practices to manage conflicts of interest pertinent to the insurance industry.

IFB is a voluntary, not-for-profit association representing approximately 4,000 financial professionals across Canada. The majority of our members are licensed to sell life and health insurance products and mutual funds. A smaller number are licensed to sell other financial products like property and casualty insurance and securities. Many provide financial planning advice.

IFB is the only association dedicated to representing the concerns of independent advisors, and has done so for over twenty years. Our members are independent in that they must be able to offer clients a variety of products from multiple providers and strongly believe that the distribution of insurance through an independent sales force provides consumers with the best product to meet their insurance needs and the long-term customer support required to service such a policy.

In conjunction with our role as a member-oriented association, IFB is also a major provider of continuing education through its “Summit” programs. These Summits are held each spring and fall in Vancouver, Calgary and Toronto and attract over 3,000 members and non-members. Many organizations in insurance and financial services are represented at these Summits, including regulatory agencies. Speakers at advisor educational sessions frequently represent some of the leading authorities in these fields. IFB also sponsors an errors and omissions insurance plan for its members.

With this contextual framework in mind, we offer the following remarks on the recommendations contained in this consultation paper.

IFB supports a principles based approach to regulation.

IFB is pleased the IPRC has adopted a principles based approach to the regulation of conflicts of interest for the insurance industry. We believe this is an appropriate response given the positive results of the detailed analyses that have been undertaken by the IPRC, on behalf of the CCIR and CISRO, over the past year or so.

IFB, along with many of the other major players in Canada’s life and health insurance industry, has spent a great deal of time and resources reinforcing for agents and brokers the importance of disclosing potential conflicts of interests to deal with the concerns the IPRC has raised in relation to enhancing consumer protection and transparency. Most of these insurers and associations have made template conflict of interest disclosure letters available to their members and sales intermediaries along with detailed instructions as to their use. Furthermore, IFB has provided, and will continue to provide, educational sessions at its Summits specifically devoted to promoting the importance of managing and disclosing conflicts of interest to clients.

We are pleased that the IPRC has recognized the value of the efforts put forth by IFB and this industry group and we believe this group can add further value by working toward solutions to address the issues raised by the recommendations proposed in this paper.

Recommendation #1: Priority of the client’s interest.

IFB agrees that this principle should be paramount in any broker’s or agent’s conduct with a client and this view is reflected in our Code of Ethics which states first and foremost that:

“It is paramount that a broker shall place the interest of his/her client ahead of all other interests.”

This specific wording was adopted in response to recommendations made by the Joint Forum of Financial Market Regulators in their document entitled *Principles and Practices for the Sale of Financial Services and Products*. The purpose of this document was to standardize the wording used by financial services providers.

We note that the IPRC Principle associated with this recommendation states that *“An intermediary must place the interests of policyholders and prospective purchasers of insurance ahead of his or her own interests”* which goes beyond the Joint Forum definition in that it is not limited to clients but extends to prospective clients. By

deviating from the Joint Forum wording the IPRC appears to be recommending a higher standard of care for insurance intermediaries than for other financial services participants when dealing with the public. We wonder whether this is appropriate and whether it will create confusion amongst intermediaries (many of whom are licensed to sell insurance and mutual funds) and consumers. Also, as reflected in our definition, we believe that it is appropriate to have a higher standard for an existing client (most of whom will have been known to the broker for years) than for a prospective client who may be largely unknown.

The IFB Code of Ethics applies equally to all our members across Canada. We agree that harmonized language should be used wherever possible to avoid having instances where there may be different standards of conduct for agents and brokers operating in different jurisdictions. Such situations can lead to enforcement inequities and create confusion for consumers and intermediaries alike. This may be exacerbated in instances where the agent or broker is licensed in multiple jurisdictions.

Recommendation #2: Disclosure of conflict or potential conflict of interest.

As noted at the outset of this response, IFB has had a template conflict of interest disclosure letter available on our website since December 2004. In our instructions, we advise members to download it and adapt it to fit their particular conflict of interest, or potential conflict of interest, situation and to regularly review and update it. We also use our quarterly newsletter, *The Independent*, to reinforce the importance of using a written disclosure tool with clients not only in Ontario where it is required, but also across Canada as a good business practice. Agents and brokers have been receiving similar messages from life and health insurers and other associations. As a further measure of our support, IFB is highlighting the issue at our Spring Summits in B.C., Alberta and Ontario.

We are encouraged by the reduction in telephone and email queries we receive now, as compared to when our members were first becoming aware of the disclosure requirements and attribute this to their adoption of these procedures. We have also witnessed a reduction in negative reaction since brokers no longer feel threatened by having to disclose to clients the actual compensation they receive.

We note that the disclosure methodology proposed in this consultation paper is modeled on the wording required by Ontario under Regulation 347/04. IFB agrees that consumers across Canada should receive a similar level of disclosure, thereby enabling them to decide if they want to proceed with the transaction or recommendation. However, some provinces currently have legislation that prohibits an agent or broker from acting for a client in situations where a conflict of interest exists. IFB believes this is too restrictive in today's increasingly borderless financial marketplace. In our view, the fact that a conflict of interest, or potential conflict of interest, exists should not mean a consumer cannot continue to conduct business with that particular broker. Many financial advisers, like our members, have relationships with clients spanning many years, which would be unduly terminated under such a restrictive rule. Therefore, IFB urges the regulators to remove barriers to business based solely on the existence of a conflict of interest and

replace them with disclosure requirements. This lets the consumer judge whether he or she wishes to proceed. We do not see that these disclosure requirements have to be entrenched in legislation – they form part of fiduciary responsibility to a client.

IFB agrees that disclosure should be meaningful to the consumer and relevant to the transaction he or she is considering. Much of the discussion in previous consultation papers has been focused on what constitutes relevant disclosure at the point of sale. We have cautioned before that putting too much emphasis on disclosure relevant only to the sale, for example on the cost of the product or on the compensation received by the broker, may in fact deter a consumer from purchasing a product more suited to him or her in favour of a ‘cheaper’ alternative. This could have serious financial consequences for the consumer and possibly other family members in the long term. We must not lose sight of the fact that life and disability products are often complicated in nature and do not lend themselves to simple price comparisons.

The IPRC recommends that insurers should provide clear and concise information about their relationships with intermediaries and make this information publicly available to consumers. While IFB agrees that there may be value for some consumers, it was clear to us from the results of a survey we conducted with our members, that many clients who are in the market for life or disability insurance are more interested in the value of the product to them personally, than in the relationship between the broker and the insurer. Our members, being independent, are unlikely to have financially binding ties with insurers in any event.

However, IFB does agree that agents and brokers should disclose to consumers the companies they do business with. Consumers should be aware of situations where an agent or broker is limited as to the number of insurers s/he can represent and the extent to which this limits the agent’s ability to truly search the market for suitable products. Insurers who employ a ‘captive’ or career sales force should disclose this limitation to consumers as well.

Recommendation #3: Product suitability.

The IPRC is recommending that agents and brokers ensure the insurance product purchased by a client is suitable and that in doing so the broker must conduct (i) an initial assessment of a client’s insurance needs, (ii) this assessment should reflect the client’s personal and financial situation and (iii) that the actual product recommended must meet the client’s needs as determined by this assessment.

IFB agrees with the IPRC that recommending an insurance product is an integral part of the broker’s or agent’s advice to their client. Indeed, an independent broker’s livelihood depends on ensuring their client’s satisfaction and this is especially true over the longer term. A satisfied client is a source of future business. An unhappy one not only represents lost business but can be a potential source of a regulatory complaint or a claim under the broker’s E&O insurance plan.

It must be remembered, however, that there are certain responsibilities which should be borne by the client in this process as well. For example, some clients may have a pre-conceived notion of the product they want, which may conflict with the broker's advice, but insist the transaction proceed. Similarly, while a broker should make a concerted effort to be assured that any client and/or transaction associated with that client is legitimate, there will be instances in which the broker is intentionally misled and should not be held accountable. Finally, any evaluation of the broker's thoroughness in researching suitable products or assessing the client's needs should be limited to the time of the transaction or advice. In other words, the broker should not be held accountable for circumstances which s/he could not have reasonably known at the time the transaction took place or advice was given.

The IFB Code of Ethics requires our members to "make a diligent effort to learn the client's needs, objectives and circumstances, and to then offer products or services to fulfill them". In addition, "a broker must not recommend the replacement of any insurance policy unless s/he believes that such a replacement is in the best interest of the client".

IFB members through their adherence to our Code of Ethics are already held to a professional standard which requires that a thorough needs assessment must be completed for clients. However, to assist in standardizing this procedure, IFB would be willing to support the IPRC objectives by working toward a template document which our members could adapt to suit each client's needs – much like our disclosure letter.

The range and complexity of life and disability insurance products makes some of the IPRC suggestions on product suitability complicated to satisfy immediately. IFB is prepared to work with others in the industry to assist agents and brokers in compliance matters and to work through how best to manage these complexities so that consumers and regulatory authorities alike can continue to feel confident in the high level of service provided by life insurance brokers, like our members.

In conclusion, IFB looks forward to participating in the future development of guidelines and procedures relevant to these important issues. We believe that we, along with others in the life and health insurance industry, can provide significant assistance to the IPRC in advancing the principles and recommendations identified in this consultation paper and urge this Committee to allow time for this process to develop. In addition, IFB can add further value by incorporating relevant educational sessions at our various Summits, where we can reach a large number of member and non-member agents and brokers and through articles in our newsletter.

Finally, we encourage the IPRC to assess the implications of any procedures, rules or regulations related to managing conflicts of interest and product suitability separately for the P&C insurance sector and life/health insurance sector as they offer very different products, terms and pricing mechanisms.

IFB thanks the IPRC for the opportunity to provide our comments and trusts you will find them useful. Should you require further information or have questions, please feel free to contact me directly.

Yours truly,

A handwritten signature in black ink, appearing to read 'John Whaley', with a stylized flourish at the end.

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