

# Canadian Council of Insurance Regulators

## Response to Consultation Paper «Managing conflicts of interest»

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## Introduction

BFL Canada is in total agreement with 2 principles put forth by the IPRC:

1. **Priority of the client's interest:** An intermediary must place the interests of policyholders and prospective purchasers of insurance ahead of his or her own interests.
2. **Disclosure of conflict or potential conflict of interest:** consumers must receive disclosure of any actual or potential conflict of interest that is associated with a transaction or recommendation.

We wish to comment on certain aspects of those principles and more specifically about their application.

With respect to the third principle, we are in total disagreement with IPRC on its conclusion that actual or potential conflicts of interest from performance-linked benefits and financial links are more effectively managed by product suitability requirements, disclosure of concentration of business with specific insurers and disclosure of compensation information.

Consequently, we will also comment further on principle 3. **Product suitability:** The recommended product must be suitable for the needs of the consumer.

## Priority of the client's interest

While harmonization is not only desirable, but essential with respect to this principle, in our opinion, it must remain a principle rather than be expanded into specific procedures or instructions addressed to individual brokers. Individual brokers must be allowed to exercise judgment, just as other professionals such as doctors, lawyers and accountants.

It is brokerage firms that must be regulated in such a way to provide an environment conducive to putting priority of the client's interest first. Regulating their financial ties to insurers (loans, block transfers, ownership, concentration of volume, etc) would go a long way towards this objective. Autorité des marchés financiers (AMF), in Québec, is presently working on regulation of financial ties between brokerage firms and insurers and we feel they are on the right track. IPCR should be inspired by the direction AMF is taking.

Furthermore, it would be appropriate and informative for the consumer, in our opinion, for all jurisdictions to differentiate between agents and brokers – in theory and in practice. A brokerage firm with extensive financial ties to an Insurer is in fact an agent and should not be allowed to do business as a brokerage firm.

Finally, the public should be educated about the difference between a broker and an agent.

## Disclosure of conflict or potential conflict of interest

With respect to this principle, we feel it should be expanded into specific rules to ensure transparency.

Some jurisdictions have already implemented rules of mandatory disclosure. However, some of these rules are not clear or precise and require individual interpretation.

As financial ties between brokerage firms and insurers are the main source for any potential conflict of interest in our Industry, it should not be up to individual brokers to decide if and when a certain situation requires.

The CCIR should encourage those jurisdictions that have not yet embraced this need for transparency to do so and those jurisdictions who have already intervened, to revisit their rules to ensure they leave no room for interpretation by individual brokers.

Naturally, harmonization across jurisdictions in this area is also essential to affording the same protection to consumers across the country.

Notwithstanding the above, there is one issue we believe should not be subject to specific disclosure by commercial brokers: the extent of the search by the broker for a competitive price and suitable product within the markets available to that broker.

The situation may be very different for personal lines insurance but when it comes to commercial insurance, there often is no annual search for competitive price or product suitability.

The reasons for this are:

- a. With respect to commercial accounts, it is generally not considered a good practice to “shop” the market every year for conditions. Clients and insurers alike want to establish long-term relationships. Many clients want their broker to negotiate with their Insurer first and if conditions (price and suitability) are not satisfactory to the client, only then do they want their broker to “shop”. Conversely, insurers do not grant much credibility to clients who “shop” for price every year; they do not perceive such clients as candidates for long-term relationships. It should be up to the commercial client to decide, based upon their broker’s recommendation, whether or not to shop at any given renewal.
- b. Commercial clients, more often than not, do not purchase “off the shelf” products. The products they buy are customized, to some extent (sometimes entirely), to their specific business needs.

One might wonder how commercial clients are able to assess the work done by their broker.

How do you assess the work of any other professional? How about your doctor? Does he need to prove to you that he made all the tests or that the prescription medication he

recommends is better than any other one for such or such reason. No.

The relationship is based on trust and your doctor communicates with you to assess your condition and diagnose your illness and he discusses with you the various options which he believes are appropriate. It is from this interaction that you know that your doctor is thorough or not, that he listens to you or not, etc, etc.

Individual insurance brokers are professionals in the eyes of the law – it would be appropriate to treat them as such i.e. to let them exercise their profession. If brokerage firms are regulated with respect to all financial ties to insurers, there is no need to regulate or try to judge the effort of the individual brokers in obtaining competitive or suitable products for their clients; this is especially true with respect to commercial insurance where annual shopping is often not in the best interest of clients.

## Product suitability

An insurance product never addresses all the needs or requirements of a consumer, whether he be an individual or a company no matter how well the assessment of the client's needs is performed by the broker. Therefore, a broker's recommendation can never totally meet the client's needs.

An insurance product is not simply a limit of insurance, a deductible and a premium. It is a full fledged contract with a large number of clauses, all of which can impact the extent of the protection afforded the Insured. To recommend one contract over the other requires the exercise of judgment. Two professionals may have a very different opinion even though they both assessed the situation thoroughly. How can suitability be assessed when dealing with a very complex situation?

Furthermore, brokers never explain each clause in the contract to their clients – they normally skim through it or highlight certain sections of it , when they do at all. (while most commercial clients possess the business knowledge to understand an insurance contract, most individual clients (personal lines) do not).

In other words, insurance is not an exact science nor is suitability and this avenue suggested by IPRC is a slippery one unless of course, suitability is reduced to a few fixed criteria (which do not represent reality) that in the end do not really protect the consumer from conflict of interest.

This avenue would of course require that each jurisdiction define suitability which most probably they will all define differently and quite imperfectly in view of the fact that it is a rather complex notion – getting even more complex with commercial clients.

It seems it would be much simpler to address, head-on, financial ties between brokerage firms and insurers, rather than burden the individual broker with the possibility of additional regulation.

Complete disclosure of all ties between brokerage firms and insurers, is clear, precise, leaves no room for interpretation, and provides the consumer sufficient information about the context in which the transaction is made AND does not attempt to regulate the professional acts that individual brokers perform such as exercising judgment and making a recommendation. Furthermore, it easily applies to both personal lines and commercial insurance brokerage.

Why are we shying away from the simplest, most effective measure possible? Are we trying to be politically correct or are we taking into account special interest groups besides consumers?

With respect to the suggestion that, when a product is offered without advice, the broker or agent should inform the client that no advice is being offered – we are quite alarmed at the possible consequences of this.

First, it is important to mention that such conduct is contrary to the profession of insurance broker. Professionals are there to advise clients not merely enter into a commercial

transaction with them. What are the standards to which you hold your legal advisor or doctor? Why should it be any different for your broker? Is insurance brokerage a professional occupation at all?

We fail to see how such conduct by a broker can be in the interest of the client and more generally be in line with the objective of protecting consumers at large. Personal lines and small commercial clients are especially vulnerable and in need of advice and it should not even be possible for the broker to refuse to provide it.

The principle of product suitability is another way of saying that the client's interest must come first and that the broker must be competent and act professionally. We give doctors and lawyers responsibilities but we also afford them the benefit of the doubt; we should do the same for insurance brokers.

## Conclusion

If the Industry is regulated in a manner to provide individual brokers with an environment free of financial pressure from brokerage firms and insurers, individual brokers will be able to perform professional services in the best interest of consumers. Therefore, any regulation should be targeting brokerage firms not individual brokers.

As an industry, we should refrain from trying to regulate professional acts aside from stating the obvious; that professional services should be rendered in the client's best interest. Just as lawyers and doctors, insurance brokers should be held to principles - not specific rules about how they should perform professional services. If insurance brokers are truly professionals, let's not try to regulate their activities as mere commercial activities.

In addition, we should not forget that the needs of individual consumers vs. commercial consumers are very different and so are the products and services they demand and have access to. Therefore, "one size fits all" is not an effective way of dealing with various situations in our industry.



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