

MARKET CONDUCT

Response to the CCIR and CISRO consultation paper of February 2006

Draft

March 2006

Insurance Brokers Association of Canada

About IBAC

The Insurance Brokers Association of Canada (IBAC) is the national trade association representing over 29,000 property and casualty (P&C) insurance brokers through its 11 member associations.

Although our provincial member associations may be submitting their own submissions in this matter, we are presenting our professions position from a national perspective.

Preliminary

IBAC would firstly like to acknowledge and applaud the process being followed by the Industry Practices Review Committee in dealing with the issues brought forth in this consultation process. We are appreciative of the consultative nature adopted by the Committee, and believe that an open and frank exchange of opinions and positions is the most inclusive way of reaching a beneficial consensus.

The Committee preliminarily has three recommendations, and that following a thorough fact-gathering review sees no evidence for making recommendations in two other matters. IBAC will present its position on the entire report dealing first with the actionable points and then how these will affect the non-actionable topics.

We'd like to stress the underlying manner of adoption being proposed by the IPRC. We fully support the fact that should any recommendation be adopted, that they be done so on a voluntary basis, using a principle-based approach, and on a provincial jurisdictional basis.

For reasons that will become apparent, IBAC would like to deal with the recommendations in the following order: the first recommendation, the third, and then the second.

1. Recommendation #1

Priority of the client's interest

IBAC is of the view that this principle is already well entrenched, and respected throughout the profession. From educational materials to council by-laws to codes of conduct, the principle of placing the clients interests ahead of the intermediaries is the cornerstone of the profession, and is what historically has differentiated the profession from other providers of professional services.

We would propose that it may be challenging to come up with common wording throughout a province that would properly articulate this concept for both the wealth management industry and the risk management industry.

2. Recommendation #3

Product suitability

Following extensive consultations with our membership, along with other stakeholders, we must raise some of the concerns we have regarding this recommendation. We do not believe that subjecting these parameters to intermediaries is in the best interest of consumers. We further believe that this question should be dealt with based on a double-sided approach.

The first facet being that the intermediary must provide the client with professional expertise regarding the information required for the client to be able to make an informed decision. In other words, the broker must provide the client information about the features of an insurance product. This is both the principle established by the first recommendation, and the result of executing the first recommendation.

The second facet is that we strongly believe in the consumers' primordial right to decide on the suitability of the product, and the consumers' eventual purchase of the product they feel is most suitable. In short, product suitability lies ultimately with the consumer, not the intermediary.

The market is the greatest regulatory force on behalf of consumers. Should the consumer decide that the product is not suitable for their needs, they have an opportunity on a yearly basis of changing either the provider or the intermediary. Consumer choice is the foundation of a liberal economy such as ours.

3. Recommendation #2

Disclosure of conflict or potential conflict of interest

Following the first two recommendations of priority of the client and product suitability is how to deal with the possibility of the existence of conflicts of interest. The broker has placed the interests of the consumer first in his advice, the consumer has chosen the product most suitable, and in some cases there may exist a conflict of interest that may arise. How to deal with this?

We'd like to differentiate the two types of conflicts raised by the IPRC: actual and potential. We are of the view that it is practically impossible to define what "potential" conflicts are. The adjective "potential" implies some circumstance or event that changes over time; specifically in the future. It is simply unrealistic and implausible to predict future events or circumstances which at that time should be disclosed. Therefore because this term is un-defineable, it would make no sense in having any type of disclosure regime for this.

With regards to actual conflicts of interests, we'd like to offer one example where this may occur. Conflicting interests in an insurance contract occur when the provider of an

insurance product is directly or indirectly a party to the contract. Ex: a mortgage provider who's listed has having an interest in the contract if they were also the provider of the insurance.

In terms of aggregation of insurance consumers as a buying group, it is difficult to assess whether large volumes are an advantage or disadvantage to the individual consumer. Similarly, it is difficult to recognize whether the placement of small volumes are an advantage or disadvantage to the individual consumer.

Therefore we strongly believe that upon request, the consumer should be given information that is relevant to their circumstances. We'd like to reiterate the portion of our submission filed in August 2005 with the IRPC that are excerpts from the guidelines "Principles and Practices" developed by IBAC and its member organizations with respect to the sale of products and services that the industry follows and brokers adhere to. They clarify the role and disclosure obligations for the industry.

Upon request by a client and wherever relevant to the transaction, the P&C broker must include the names of organizations or persons that are, to his or her knowledge, directly providing remuneration to the P&C broker.

Upon request by a client and where the outcome of a transaction may be influenced, the P&C broker must also disclose the relationship between the P&C broker and the firm whose product is being considered; and any relationship(s) among the firms directly involved in a transaction.

The P&C broker should also disclose any other direct or indirect relationships that are relevant to, and may have influence in, the transaction.

Upon request by a client and wherever relevant to the transaction, the P&C broker must also disclose:

- *all fees payable by the client,*
- *the method of the P&C broker's remuneration (disclosure of specific amount is not required, but disclosure of the type of compensation is, i.e., fixed and percentage commission, salary, or other) and*
- *must disclose the existence of any other benefits from sales incentive programs related to the transaction*

We believe that voluntary adoption of this regime is practical from the perspective of the intermediary, as well as beneficial and empowering for the consumer.

Other matters raised in the 2005 consultation

Two other issues were raised in the 2005 consultation: 1) defining independence, and 2) the prohibition of performance-linked benefits.

IBAC takes the position regarding the first issue, that there is no useful or pragmatic purpose in defining such a qualification for an industry as varied as insurance distribution. Concerns have been raised about the true independence of insurance intermediaries. We believe that due to the wide fragmentation of the modes of delivery of insurance products (brokers, captive agents, direct writers, credit unions, on-line), it would be impossible to get consensus that would be satisfactory to all players in the industry, nor beneficial to consumers.

As for the second issue of performance-linked benefits, we are of the view that these types of benefits do not disadvantage and are not financially detrimental to consumers of insurance products. On the contrary, they provide even more incentive for brokers to prudently represent the best interests of their clients. They only reinforce the importance of the first (priority of the client), and the third (product suitability) comments we have presented.

Consultation Questions

1. IBAC does not believe that the principles outlined in this paper reflect best practises in managing potential conflicts of interest because this is something one cannot define.
2. As with the adoption of any new practises, there is an inherent challenge in applying these to the day-to-day marketplace. However, a voluntary jurisdictional-specific principle-based approach is one that we believe, generally speaking, would best allow for the pragmatic and seamless implementation of any principle.
3. Each provincial association must ensure that they work closely with their regulators to ensure practical suggestions in the voluntary implementation of any new principle. Once agreement has been reached, then there are opportunities for communicating to their members the effect this may have for them.