



February 21, 2006

Mrs. Carol Shevlin
Policy Manager (A)
CCIR Secretariat
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Toronto ON M2N 6L9

Sent via email: ccir-ccrra@fSCO.gov.on.ca

Dear Mrs. Shevlin:

Re: **Canadian Council of Insurance Regulators Discussion Paper on Privilege and Whistle-Blower Protection**

Independent Financial Brokers of Canada (IFB) is pleased to provide our comments on the CCIR *Discussion Paper on Privilege and Whistle-Blower Protection*.

IFB is a voluntary, not for profit association representing approximately 4,000 independent financial advisors across Canada – most of whom are licensed to sell insurance products and mutual funds. IFB is proud to be the only association dedicated to meeting the needs of independent advisors and has done so for over 20 years. Our members must be independent, in that they must be able to offer clients a range of products from a variety of providers. We believe that only by offering such choice can a consumer receive the best advice and the most suitable product to meet his or her financial needs.

Our comments will pertain primarily to Section 4.0, Description of Whistle-Blower Protection, as these proposals would have the most direct impact on our members. However, in advance of that we want to note our reservations with some of the introductory remarks made in Section 2, Risk-Based Regulation and Self-Assessments, and, in particular, that:

- regulators have been looking at methods to undertake risk-based regulation, and
- regulators encourage insurers to introduce good governance practices that reduce insurers' risk of non-compliance.

We are unclear from these remarks as to whether the intention is that these risk-based initiatives would pertain only to insurers and the provisions they would put into place to ensure their own good governance or if they would be broader in scope. We would be very concerned if it was the latter so that, in effect, the regulators are looking to others (in this case the insurance companies or managing general agencies) to be involved in the regulation of independent brokers, like our members. Our members have chosen to be independent brokers and would find measures which download regulation to the companies to be intrusive and unwelcome. Our members already operate in a highly-regulated environment, adhere to this association's code of conduct and participate in other industry initiatives, for example, disclosing potential conflicts of interest to consumers –all of which provide oversight of their conduct.

Proposed Whistle-Blower Protection

In general, IFB supports the CCIR proposal to introduce whistle-blower protection for those who provide information of corporate, or individual, wrong doing to insurance regulators. A person with such knowledge should have a confidential reporting avenue open to them and be protected from fear of retaliation. It is likely this information will most often come from an individual closely associated with the corporation, like an employee. As noted in the paper, an agent or broker who has a contract to sell the products of a particular insurer may also have knowledge of such wrong-doing. Ultimately, it is in the interests of consumers to identify such high risk situations as early as possible and we support provisions to protect agents and brokers who come forward to assist in the protection of their clients.

In order for whistle-blowers to be comfortable stepping forward, there must be a reporting system with identifiable steps to be followed in submitting such disclosures.

Equally important, however, is that information be readily accessible and well-publicized to identify the ramifications of allegations which are egregious in nature. Obviously, unfounded accusations could have long-term negative consequences in an industry like insurance, which is based largely on trust and personal reputation.

It concerns us, therefore, that this Discussion Paper fails to differentiate between situations encompassing employer/employee relationships, and relationships where no employment relationship exists, such as those between an independent broker and client and broker to broker.

In an employment situation, there may well be more clearly defined audit trails to determine the merit of the disclosure. Where no employment relationship exists, however, the alleged act of wrong-doing takes place 'in the field' and by virtue of this will lead to a more subjective interpretation by the party, or parties, involved.

Agents and brokers operate in a competitive business environment. This competitive relationship may lead to improper motivation for reporting on others and potentially dire consequences for the broker reported on. For example, inaccurate or spiteful reporting of a fellow agent/broker could result in an insurer canceling the contract it has with the

aggrieved agent/broker, thereby putting him or her out of business. In our view, the aggrieved person should not have his/her right for redress taken away and there should be established consequences for the reporter. We recognize that this paper proposes that “the whistle blower would not have protection against a law suit if the information provided was not provided in good faith”, however, we submit that establishing “good faith” may be difficult to prove in such situations. Therefore, in our view, the application of whistle-blower regulations beyond those encompassing employment situations will create too many opportunities for unfounded accusations and may well contribute to an unhealthy business climate in the field.

Reporting of Unlicensed Insurance Companies and Persons

The CCIR paper also suggests that:

“The whistle-blower protection is to protect persons who volunteer information about an insurer, insurance agent, insurance broker or insurance adjuster engaged in wrongdoing or who inform the regulator of a person or entity that should be licensed but is not.”

We are unclear why the reporting of unlicensed insurance agents/brokers or companies needs to be included in separate whistle-blower proposals since such a situation would clearly be contrary to existing legislation contained in the various provincial *Insurance Acts and Regulations*. Enforcement rests with the various provincial/territorial regulatory bodies which already have mechanisms in place to pursue public complaints and whose responsibility it is to license, monitor and supervise existing participants and screen new applicants for suitability. Implementing additional layers of regulation, in our view, will create duplication and confusion.

Conclusion

IFB recognizes that whistle-blower statutes have become increasingly common in Canadian legislation and IFB does not object to provisions related to the insurance sector provided its application is limited to insurance companies and their employees. We believe that there are already regulatory avenues available to adjudicate complaints and supervise agent/broker market conduct without introducing more options, with potentially problematic results.

IFB appreciates the opportunity to respond to this discussion paper and trusts you will find our comments useful.

Yours truly,



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