



February 29, 2008

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Dear Mr. Grist:

Subject: CCIR Consultation Paper: An Approach to Risk-Based Market Conduct Regulation

Independent Financial Brokers of Canada (IFB) appreciates the opportunity to provide input to the development of risk-based regulation for the insurance industry as it applies to market conduct.

IFB is a professional, not for profit Association comprised of approximately 4,000 self-employed, independent financial advisors across Canada. The majority of our members hold life and health insurance licenses and mutual fund licenses. A smaller number are licensed as general insurance brokers or securities registrants. Our comments, therefore, will be restricted to the potential effects of this consultation paper on independent life/health insurance intermediaries.

We understand that the risk-based approach outlined in this consultation paper is intended to stimulate discussion and that the CCIR will use the input gathered from stakeholders to build upon the proposals identified to develop this approach further. In our response, we have identified two principles which overlay our discussion. We then identify some key building blocks which we see as fundamental to achieving the goal of reducing the day-to-day oversight of insurance regulators, while preserving the public's confidence in the life insurance industry and the distribution of its products.

The risk-based approach outlined in this consultation paper generally reflects the principles-based approach insurance regulators have already adopted with the industry. Most recently we have seen this approach successfully applied to the CCIR investigation into sales practices of insurers and intermediaries. This was an example where the industry and regulators worked together to improve intermediaries' level of disclosure of potential conflicts of interests to consumers. We believe that such examples demonstrate that this is a responsive industry dedicated to collaborative efforts to support those who provide life/health insurance products to the public.

Having said this, we have difficulty in extending some of the risk-based principles identified in this paper to independent brokers as we find them more fitting when applied at the insurance company level. In fact, we are concerned that under this model insurance regulators may be looking to insurance companies to provide more day to day market conduct supervision of intermediaries, and at the same time looking to reduce their own regulatory burden – an approach which we would not find to be appropriate. Regulators already have the means to enforce these standards on individual intermediaries through regular audits, monitoring of consumer complaints, etc.

Introduction

We have identified two key principles related to this discussion. The first relates to competition and the second relates to the need for increased harmonization.

Principle 1: Competition helps to ensure product availability and choice. Life and health insurance may be distributed by career agents who represent one company, independent brokers who represent multiple companies, salaried employees, and direct marketers. Any approach to market conduct regulation should be examined in the context of each of these methods of distribution, so as not to erect barriers which might disadvantage any one sales channel over another. For example, as noted above, IFB could not support an approach which infers greater supervisory or regulatory authority over independent brokers by insurance companies. Such an approach would undermine these brokers' independent status in the marketplace and may well reduce their ability to offer a range of competitive products to consumers. In the end, this would hurt consumers by reducing the choices available to them.

Ultimately, healthy competition benefits consumers by ensuring that insurance products are affordably priced, that there is sufficient product choice, and that a range of products is accessible. Regulation plays an important role in this process by ensuring that those who sell insurance to the public are appropriately licensed and meet minimum standards to maintain this license.

Associations, such as ours, aid by furthering the level of knowledge and understanding of these standards amongst intermediaries, and encouraging compliant business practices. Even where provincial regulation does not exist, our members are bound by the IFB Code of Ethics and we support voluntary adherence to industry standards. As an example of this, we developed information and tools for advisors to address the management and

disclosure of potential conflicts of interests to clients and have urged all brokers to adopt such practices, regardless of whether a mandatory provincial requirement to do so exists.

Principle 2: Increased regulatory harmonization and standardization is required for the success of a risk-based approach.

The second principle is the need for regulatory commitment to harmonization across provincial jurisdictions. This will greatly enhance the success of principles or risk-based regulation by reducing the regulatory fragmentation that exists today.

IFB recognizes and values the work insurance regulators have done to reduce inter-provincial/territorial barriers to-date. However, there still remains much to be accomplished. Intermediaries and their clients alike would greatly benefit from a regulatory landscape whereby the various jurisdictions adopt similar rules. This would reduce the time and cost currently incurred by advisors who are licensed, or who seek to become licensed, in multiple jurisdictions. A simplified regulatory environment, by reducing confusion, will increase the overall level of compliance which, in turn, will lead to a greater level of consumer protection.

Competition is hampered if advisors perceive that barriers to entry exist in a particular jurisdiction and this ultimately results in less choice for consumers. In addition, it can be difficult and sometimes confusing for national organizations, such as ours, to respond when differing perceptions of risk are set by various regulators.

Setting acceptable standards for the market conduct of intermediaries

Although insurance is distributed to the public in a number of ways, an insurance broker or agent is often the first point of contact for consumers considering the purchase of life/health insurance. It is important that consumers receive advice from knowledgeable, well-qualified professionals who can accurately assess their clients' financial needs and recommend suitable products. Below are the requirements we see as essential to securing this outcome.

i. Insurance advisors must be licensed

The licensing process demands that certain entry qualifications must be met by prospective life agent/brokers including their suitability for a position of trust and successful completion of the LLQP, among others. Many provincial jurisdictions have also specified ongoing requirements that must be met to retain the license. Some regulators provide consumers with the ability to check if a particular individual is validly licensed. This gives consumers a valuable tool to help detect improper market conduct and fraudulent behaviour. This, combined with an easily accessible complaint mechanism, helps reduce the likelihood that such behaviour will go undetected for any significant period of time and eases the burden of detection for regulators. Empowering consumers at all stages of the transaction makes them a powerful partner in regulation.

IFB believes that insurance should only be provided by licensed insurance professionals. This should be a basic standard in every jurisdiction. Insurance advice and sales by

unlicensed individuals puts consumers at risk and reduces public confidence. In this regard, we are pleased that the CCIR has recently issued a consultation paper on incidental insurance which will provide the opportunity for further discussion on this point.

ii. Adherence to a code of ethics

Just as companies must adopt good governance policies and practices to ensure successful market conduct outcomes, a code of ethics provides individual intermediaries with a similar framework for their business dealings. To date, some provinces have adopted a code of conduct or code of ethics for insurance licensees. Advisor associations have similar requirements. For example, IFB requires its members to adhere to a formal Code of Ethics as a condition of membership. IFB members are committed to serving the needs of their clients and putting their needs ahead of their own. It is the first principle in our association's Code of Ethics, and our members' livelihoods depend on it.

While it is widely recognized in common law that financial advisors have a fiduciary duty of care, we believe that adherence to a specific set of guidelines increases the likelihood that individual advisors will be cognizant of their responsibilities. Therefore, we support each jurisdiction adopting a formal code of ethics, ideally based on that developed by the Joint Forum of Financial Market Regulators (Joint Forum). This level of consistency would help advisors and consumers to understand the duty of care that is expected of all those who provide financial advice, irrespective of whether they belong to an association which has this requirement.

This paper has asked stakeholders to comment on governance practices for intermediaries. The paper sets out that "*Regulators will expect and rely on good corporate governance as a means of ensuring that individual firms and intermediaries are in compliance with marketplace standards*". We are concerned that applying this view of corporate governance to intermediaries may lead to the suggestion that insurance companies should have greater responsibilities to regulate or supervise intermediaries in order to save the resources of the regulators. While this approach may be appropriate in an employee-employer situation or for career agents, it is not when an independent broker is involved.

Independent brokers have chosen to represent more than one insurance company and it must be remembered that these companies compete in the market. Transferring or inferring market conduct supervisory responsibilities to companies will create conflict of interest situations for companies, vis-à-vis independent brokers. Regulatory insurance bodies are better positioned to evaluate marketplace compliance. Regulators function as impartial arbitrators and have a set process to follow in an investigation and dispute resolution systems in place that the broker can invoke.

iii. Ongoing education

This consultation paper notes there is value in regulators understanding the external environment they regulate, including relevant economic and business conditions. This is equally important when viewed in the context of individual licensees. Some provinces

(but not all) require life licensees to earn a set number of continuing education credits before their license can be renewed. It is challenging for those in the financial services field to ensure their knowledge is current. This is an industry where new and more complex products are developed and come to market on a regular basis. It is essential, therefore, that those who recommend these products to the public fully understand their value within a portfolio and the risk associated with such investments. IFB strongly believes in the value of ongoing education, as attested to by our being a major provider of educational events for financial advisors. We support CE as a requirement for all jurisdictions.

We note that Canada's anti-money laundering and anti-terrorist financing regulatory regime also takes a risk-based approach. It has set new obligations for life insurance brokers and agents as of June 2008, one of which is to adhere to ongoing training.

iv. Errors and omissions insurance

This is another area of regulatory inconsistency, yet is fundamental to consumer protection. Some jurisdictions require individual and corporate insurance licensees to maintain a prescribed amount of E&O insurance in order to acquire and retain their license. Others have no such requirement. Some insurers and MGAs require that those they do business with maintain E&O coverage. E&O insurance contributes greatly to consumer protection by providing individuals with a source of financial redress. IFB supports independent life insurance brokers in this by offering a comprehensive plan at an affordable cost. In addition, our plan separately offers corporate cover. We believe that consumers would be better served and more equally treated, if E&O coverage was required for all licensees, regardless of their jurisdiction of residence.

v. Building consumer awareness

A well-informed consumer is undoubtedly in a better position to make an educated decision when confronted with different insurance options. Regulators and the insurance industry have made significant improvements in making decision-making information more accessible to the public, through plain language documentation, websites, conflict of interest disclosures, complaint resolution mechanisms, etc. As noted above, providing consumers with the means to check if a particular advisor holds a valid license is another powerful tool.

vi. Improving regulatory understanding

Regulators need to understand the market they regulate. Several suggestions as to how this can be achieved have been identified in this paper. We would like to suggest that in addition, regulators engage intermediaries and their associations in regular discussions so they can gain insight and feedback related to marketplace issues. IFB Educational Summits provide examples of such an opportunity. Brokers know their clients' needs, the regulatory requirements that work and the ones which miss the mark.

Enforcing acceptable standards of market conduct for intermediaries

Monitoring compliance with set regulatory standards is of course the role of the regulator. Lack of compliance can be tracked using certain indicators, such as consumer complaints

and on-site audits. The means to do so already exists. Some provincial regulators use these tools now. Under a risk-based model, it is proposed that regulators would investigate more thoroughly the market conduct practices of licensees who have been identified as at higher risk for non-compliance. Those who demonstrate a greater level of compliance would receive less intrusive regulatory scrutiny.

This is an example where advisors who are members of an industry association, like IFB, benefit. We support our members by providing ongoing regulatory and compliance information, interpreting the effects of regulation on their business practices and providing tools to help them meet their compliance requirements, in addition to our code of ethics. We acknowledge that there are many life-licensed agents and brokers who choose not to belong to an association and must undertake this research on their own. We would expect that members of IFB and other advisor associations would be less likely to be the subject of regulatory scrutiny because of this support.

Conclusion

In conclusion, IFB generally supports an approach to regulation which is based on cooperation amongst all participants, including regulators. However, we reiterate that there should be no negative affects on those who operate independently within this market, and that the likelihood of success of the proposed system will be far higher if regulators and industry participants can rely on a similar licensing standard across Canada. This will ease the burden of regulation on participants and regulators alike and help ensure that Canadians, regardless of the jurisdiction in which they reside, receive competent advice from advisors and have access to financial restitution in the event of a dispute.

We thank the CCIR for the opportunity to present our views and look forward to continuing this dialogue as further refinements to the model are made.

Yours truly,



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