

# **An Approach to Risk-based Market Conduct Regulation**

## **Position Paper**

**Presented by the Third Party Administrators'  
Association of Canada**

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# Introduction

Thank you for the opportunity of presenting this position paper on the recent consultation paper on An Approach to Risk-based Market Conduct Regulation. The Third Party Administrators' Association of Canada (TPAAC) is an association of a number of Third Party administrators who have formed an association for the purpose of providing its members a voice in the larger insurance market with insurers and regulators. As well, we wish to present a unified approach to the provision of services to consumers. We do not represent the industry as a whole but believe we can present views that would be shared by most TPA's in our field. In an effort to ensure prospective members of the Association work towards best practices in our industry, they undergo a process audit and answer questions that measure their current practices opposite those standards.

We wish to respond to the consultation paper; however, we first wish to express appreciation to the great work being done by the CCIR in approaching the industry to change how stakeholders view the services we offer opposite the needs of the consumer. We feel these initiatives are intended to make us look at the end in mind, the consumer, which allows us to shape practices that reflect those end objectives.

Our discussion will be confined to our industry for the most part but will also address the overall Insurance industry and how the Risk Based approach will allow for a more focused approach to providing services and products to the consumer and at the same time respect the entrepreneurial spirit that this industry generates.

# Risk Based Market Regulation

We believe this is the most forward thinking method to be able to deal with the ever changing market and the dilemma, which is that fixed rules will never be able to remain current relative to changing industry practices. As an illustration there are a number of areas where insurance products and services are being offered that do not fall under the purview of the CCIR members such as TPA's, incidental selling of insurance products by unlicensed individuals, services being offered by insurance agents that do not fall under their licensing regulations etc. Current regulation and guidelines are not equipped to foresee all the changes that have or are occurring in the marketplace.

## ***Effect of Risk Based Evaluation***

We see that putting the onus on the providers to assess the risk associated with the services and products they offer allows for a certain degree of self evaluation and effective governance. However, even with this approach there is always the danger that without consequences for poor governance, service providers could go towards the least cost approach often at the expense of their customers and ultimately their own company and industry. To avoid this and to be able to ensure best practices are being used by all companies we feel Associations such as Advocis, TPAAC, CLHIA, etc. can establish standards that their members must adhere to, to be in good standing in the organization. These Associations can work closely with the CCIR in helping identify areas of concern to both organizations and the members that the Associations represent, to ensure best practices are being met. As a result of this close consultative process, changes in the industry can be responded to by those who work in it and recognize potential challenges that may need to be addressed.

## ***Application of Association Mandates***

If Associations are the key element in the establishment and maintenance of Risk Based Regulation in close consultation with the CCIR, it is paramount that membership in these Associations becomes an expectation if not a requirement of the CCIR. This will allow for a uniform application of agreed to Best Practices. It does not prevent the Association members from being able to conduct business practices in a competitive fashion with other members or achieve their business objectives. It does ensure, however, that members of their respective Associations will use best practices to the benefit of the customers they serve. A good example of this is the CLHIA where over the years they have worked closely with the CCIR to ensure their members satisfy the concerns of the CCIR in protecting the consumers from practices that would detrimentally affect the consumer. If in consultation with the CCIR all aspects of the industry are represented by the various industry sector Associations, there is little chance of

areas of the industry being left unattended and thus not subject to risk evaluation inherent in the Risk Based Regulation methods being considered.

### ***Implementation***

This approach, we believe, would meet the objectives expressed in the consultative paper and at the same time expedite the implementation of the Risk Based approach. Here is how we envisage this being done:

- Identify and engage the Associations that represent the disparate participants of this industry
- In consultation with each of these Associations have them identify all aspects of their various industry segments that can impact the consumer
- Ask each of the Associations to identify how they might protect consumers in areas where the consumer is currently or could be at risk.
- Ensure that practices are in place by members of the respective Associations to meet these identified risks
- Have these practices publicised for the public in such a way that consumers can know what to expect from industry participants they engage to provide services.
- Have ongoing consultative meetings with each of the Associations on a periodic scheduled basis where reports are submitted by the various Associations:
  - Illustrating how their members are meeting best practices,
  - Indicating how the Association is helping those who do not meet best practices to change to meet those requirements,
  - And, if necessary, identify any actions that had to be taken by the Association to correct behaviour detrimental to the industry.
- Identify changes in the industry that might impact the consumer negatively and how the Association is meeting those concerns.

Using an approach similar to this would allow the CCIR members to meet their mandate in applying the risk based approach to regulation and remove the need for legislative regulations for the industry. This is not to say that there may not be some necessity to have legislated or

voluntary regulation in some areas, but the bulk of the industry would be governed by a risk based regulation approach.

## **Conclusion**

We believe there are many approaches that can be taken to a Risk Based Regulatory approach. However, one that involves the Stakeholders of all aspects of the industry through their representative Associations in consultation with the CCIR will reasonably and hopefully ensure the CCIR's objectives are met; that is to protect the consumer from any adverse experience.

Thank you for the opportunity of presenting this Consultative paper.