

August 2, 2005

Stephen Paglia  
Policy Manager (A)  
CCIR Secretariat  
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Dear Mr. Paglia:

The following submission is made on behalf of The Dominion of Canada General Insurance Company (“The Dominion”), in response to the invitation to make submissions in reply extended in the Report of the CCIR and CISRO Industry Practices Review Committee, entitled: “Relationships Between Insurers and Sales Intermediaries Consultation Paper”, dated June 3, 2005 (the “Report”).

### **The United States and Canada: Very Different Environments**

We agree with the general comments in the Report suggesting that events that transpired in the United States during the last few years have led to greater scrutiny of the distribution of insurance products in Canada, with a particular eye for actual conflicts of interests or perceived conflicts of interest that would or may be detrimental to the consumer. However, it is important to note some very salient differences between the U.S. and Canadian markets that are relevant to the matters raised in the Report. Firstly, the legislative and regulatory environment is very different in Canada, where a very strong and highly-regarded federal regulator controls prudential and other matters for approximately two-thirds of the industry. In contrast, in the United States there is no central regulator and no harmony of state legislation, resulting in a fair degree of confusion and opportunity for market practices that simply would not be tolerated in Canada. Secondly, and related to the first point, is the fact that the impugned practices of certain individuals and organizations in the insurance industry in the United States are prohibited in Canada. The fact that “it” could and did occur in the United States does not mean that “it” could or will happen here. We urge the IPRC to consider that the nature of the problem, if there is one, is most likely quite different in Canada than in other jurisdictions.

All of which, of course, brings us to the heart of this reply and the Report; that being, what is “the problem?” We suggest that in the wake of the scandals in the United States, the swift and often unjustified reaction was that the same opportunities for market abuse that were alleged to prevail there were prevalent here. The “opportunities” to which we refer are that insurers and distributors of insurance products (“distributors” or “distributor”) may engage in business practices that represent actual conflicts of interest in the marketplace, or that may contribute to a perception of there being such conflicts. With respect, we suggest that any inquiry into such practices must be tempered with reference to fact.

Having said that, we agree that public confidence in the insurance industry could be stronger, but we are of the view that this temporary situation probably has more to do with ill-conceived product reforms that have resulted in rate volatility and market availability issues that have dominated the Canadian market in recent years, as opposed to any actual or perceived conflicts of interest. Nevertheless, we consider the IPRC Report to be an important statement regarding what might be done to address pre-emptively any such conflicts in policy terms.

### **The Importance of Enhancing Consumer Confidence and Knowledge**

As a general matter, The Dominion supports strongly any measures which increase opportunities for consumers to become more well-informed about the products they consider and purchase and about the relationship between distributors/intermediaries and insurance companies. Empowering consumers with knowledge, however, is one variable in a sensitive balance. It would be detrimental to consumers, ultimately, if companies and distributors of insurance products were to be encumbered by complying with an onerous regime of rules, codifying all manner of behaviour in the commercial marketplace. We believe that acceptable parameters of conduct may be expressed by regulators, and that the market will remedy extremes.

### **The Ontario Disclosure Practice as a National Template**

In the fall of 2004, we had the privilege of participating in the development, from a principled standpoint, of the form and extent of the voluntary disclosure of commissions and the code of rights and responsibilities that was implemented in Ontario. The result of this action, combined with the new practice guidelines of RIBO, is that any consumer in Ontario wishing to become better-informed about the arrangements a particular company enters into with distributors of its products can now obtain this information easily. The disclosure encompasses a range of activity, most particularly and importantly, the financial relationship, if any, that prevails between a company and the distributor(s) of its products. This includes any loan made by the company, or other equity investment.

In our view, this type of disclosure satisfies all public policy goals without inhibiting sound and productive business relationships. Consumers are capable of reading the very

straightforward and well-drafted disclosures, and deciding for themselves whether the scope of a company-distributor relationship is appropriate to them.

### **What is a “Conflict of Interest”? What is “Independence”?**

At the core of many of the policy variations proposed in the PRC paper is the concern that the nature of a relationship between a company and distributor may present a “conflict of interest”. Such a conflict, the paper explains, may be real or perceived, and may be manifest in the financial relationship and incentives that flow between a company and distributor, or may result from non-financial rewards or gifts made by a company to a distributor. The relationship and conflict may affect the independence of a distributor, causing him/her to act in a manner that is not consistent with the best interest of the consumer.

With respect, The Dominion submits that independence is not something that can or should be codified. If they are provided adequate and fulsome disclosure, consumers are capable of determining for themselves whether a distributor is “independent”, and whether a company is acting within the scope of what the reasonable person would consider to be appropriate in a business context. As the Report acknowledges, consumers understand and accept a cardinal rule of the free market; that good performance may, quite justifiably, be rewarded. There is nothing offensive in a company providing incentive to a competent broker to enhance and encourage continued productivity. What is offensive is where a company does this in a manner that will harm the consumer, or will encourage the broker or distributor to advise the consumer in any way that is not in his/her best interest.

Accordingly, The Dominion supports a general policy position that reinforces the notion that the best interest of the consumer is paramount. Frankly, we believe that this makes good business sense as well. In The Dominion’s broker contract, this principle is very clearly stated.

### **Disclosure Remedies to Mitigate Any Perceived or Actual Conflict of Interest**

Whereas we support the independent broker distribution channel, and we also offer an incentive program that rewards excellent broker performance, we believe strongly that a good broker must be truly independent, which means that he/she will always act in the consumer’s best interest. If that means that the broker places a consumer with a company other than The Dominion, then so be it. The consumer is being better served, as that company likely responds to their individual circumstances and needs more fully.

The scope of disclosure required in Ontario should be considered in every jurisdiction, in our respectful view. While we recognize that regional or jurisdictional conditions may require some modifications, the general approach implemented in Ontario is very responsive to the public policy concerns articulated in the Report. It is comprehensive, easy to understand, and accessible.

All disclosures should be effected annually, and in the manner most accessible to the consumer. In our view, there should not be phases or tiers of disclosure, as suggested in the Report, whereby some information is made available before or at point of sale, and some is made available after the time of sale. Among the disclosure items that the Report suggests may be made post-sale is that regarding ownership of the distributing entity. This is precisely the sort of information that the consumer should have before or at the time of sale, as it speaks most eloquently to the matter of independence, with which the Report is so concerned.

### **The CCIR Survey**

In November of 2004, the various members of CCIR, using CCIR administration to facilitate the survey, asked insurers a number of questions about their practices. These results form the basis for the document on which we are now commenting. This review should be conducted annually, with appropriate follow-up as the various regulators judge appropriate. The Dominion has taken the position, in response to a Freedom of Information request in Ontario, that this information should be publicly available.

### **Conclusion**

It is important that we clarify what exactly these policy enquiries and contemplated initiatives are intended to remedy or address. As set out above, we are of the view that the unfortunate market occurrences in the United States that seemed to provide the impetus for this initiative, are largely irrelevant in Canada. However, we do recognize the ongoing and ultimate imperative of working collaboratively to inform and educate the consumer, thereby enabling each individual to access the information he/she requires to make a decision regarding the financial services and products offered by the insurance industry.

We trust the foregoing is helpful and would be pleased to discuss these matters further at your convenience.

Yours truly,

Vivian Bercovici  
Vice President, General Counsel  
and Corporate Secretary