

January 31, 2020

Insurance Division c/o David Weir  
Financial and Consumer Services Commission  
200-225 King St.  
Fredericton, NB E3B 1E1  
[consultation@fcnb.ca](mailto:consultation@fcnb.ca)

SENT VIA EMAIL

Dear Sirs/Mesdames:

**Re: Incidental Selling of Insurance**

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments on the FCNB's proposal to implement a restricted insurance licensing regime.

**1. ABOUT ADVOCIS**

Advocis is the association of choice for financial advisors and planners. With more than 13,000 members across the country, Advocis is the definitive voice of the profession, advocating for professionalism and consumer protection. Our members are provincially licensed to sell life, health and accident and sickness insurance, as well as by provincial securities commissions as registrants for the sale of mutual funds or other securities. Members of Advocis are primarily owners and operators of their own small businesses, creating thousands of jobs across Canada. Advocis members provide advice in several key areas, including estate and retirement planning, wealth management, risk management, tax planning, employee benefits, critical illness and disability insurance.

Professional financial advisors and planners are critical to the ongoing success of the economy, helping consumers to make sound financial decisions that ultimately lead to greater financial stability and independence both for the consumer and the country. No one spends more time with consumers than advisors and planners, educating them about financial matters and helping them to reach their financial goals. Advocis works with decision-makers and the public, stressing the value of financial advice and striving for an environment in which all Canadians have access to the advice they need.



## 2. OUR COMMENTS

### Executive Summary

Advocis appreciates the opportunity to provide comments to the FCNB's consultation on incidental selling of insurance (ISI). We believe that it is essential that consumers are adequately protected and that a level playing field exists for all who distribute life and health insurance products irrespective of where consumers purchase them.

The current provincial regulatory regimes across Canada result in a significantly uneven playing field between, on the one hand, insurance agents and agencies distributing individual life, health, accident and sickness or income replacement insurance products, and on the other hand, distributors of other forms of insurance, particularly creditor group insurance protection.

Advocis recommends the following:

- In order to engage in the sale of ISI products, individual sales representatives should be required to hold a restricted or limited licence and pass certain limited educational courses specific to the relevant type of insurance to demonstrate proficiency.
- Individual licensees should participate in continuing education.
- Individual licensees should carry errors and omissions insurance as a means of further protecting consumers. Individual licensees should be subject to consumer disclosure requirements, including insurance regulatory principles for managing conflicts of interest.
- Individual licensees should be subject to certain product suitability requirements.
- Individual sales representatives holding a restricted licence should be supervised by a fully (LLQP) licensed individual.

In addition:

- Consumers have little in the way of meaningful disclosure regarding ISI products.
- Proper disclosure and plain language are critical to assisting consumers in making an informed decision regarding their insurance coverage if they have a pre-existing condition.
- Conflicts of interest are appropriately managed by adhering to the principles of priority of the client's interest, meaningful disclosure, and product suitability.
- Sellers of ISI products should be trained to a level that they could adequately explain the application process, the claims process and various other important aspects of the policy.
- Consumers have a right to expect that they will be receiving accurate information and unbiased advice that is in the consumer's best interest, and that validating the product recommendation is suitable must rest with the seller, implying a thorough personal and financial situation analysis that is not currently the norm in the ISI sales process.



## **Specific Comments on the Proposed Regulatory Regime including Recommended Enhancements**

### *Licensing of the Business, Not Individual Sellers*

Advocis continues to believe that restricted licensing of the individuals selling ISI, rather than of business entities, would ensure optimal consumer protection. If individual sellers of ISI are licensed, they can be personally subject to regulatory discipline, which encourages compliance with the rules and best practices in the sale of insurance. This also would enhance regulatory accountability and promote professionalism.

The proposed regime results in a two-tier system where the legal or corporate entity that holds the restricted licence can be subject to regulatory discipline but not the individuals who actively sell the incidental insurance products. In our view, it is practically more difficult to discipline or revoke the licence of a restricted licensee that is a business entity, including large financial institutions, than to discipline or sanction an individual. Accordingly, Advocis recommends restricted licensing of the actual individuals who sell ISI.

### ***Prerequisite Educational Requirements and Continuing Education Requirements***

The FCNB's proposed regime requires that the licence holder "has reasonable and demonstrable policies and procedures to ensure that any employee carrying on insurance on its behalf is knowledgeable, competent and suitable, taking into account the class or type of insurance and that these employees comply with these policies and procedures."

We strongly recommend that all ISI sellers should be required to take a training course and pass an examination. The proposed regime has no specific educational qualification requirements. We believe a minimum proficiency requirement to sell ISI products is necessary and would help ensure consumer protection and make the roster of individuals more meaningful.

### *Continuing Education Requirement*

Advocis recommends that in order to ensure that those selling ISI remain knowledgeable and competent, they be required to complete periodic continuing education courses to ensure that their knowledge is current and up-to-date.

Individuals who sell insurance in most provinces in Canada are required to receive continuing education in order to ensure that they are up-to-date on regulatory developments. We do not see why there should be an exception for ISI sellers.

### *Requirements Relating to Supervision and Management of Those Selling Incidental Insurance*

Under the proposed regime, no person is required to be designated responsible for the management and supervision of those selling incidental insurance products, nor is it required that there be a person who is responsible for supervision at each of the restricted



licensee's premises.

Advocis recommends that there be a requirement for on-site supervision of the sellers. Adequate supervision and adherence to standards are more likely to be maintained when ISI sellers at a restricted licensee's place of business are supervised by a fully licensed (LLQP) individual. This person would provide guidance and advice and would be accountable to FCNB in the event of a consumer complaint. This would promote consumer protection and institutional accountability.

### ***Consumer Disclosure Requirements Could be Enhanced***

Advocis supports the consumer disclosure requirements which have been included in the proposed regime. Overall, the disclosure requirements address many of our key areas of concern and incorporate recommendations that we have made in response to ISI consultations from other provincial regulators.

#### *Summary of Contract Terms*

Advocis supports providing consumers with a summary of contract terms, including limitations, exclusions and restrictions. We agree that this information should be provided to the consumer before they complete the application form so that it can form part of the consumer's decision-making process.

#### *Right of Rescission*

One of the four main recommendations of the CCIR-CISRO ISI Working Group in their November 2008 Incidental Selling of Insurance Report was that consumers should be given the opportunity to reassess the purchase of the ISI product with a reasonable "cooling off" period, and also should be advised that they can consult with an insurance professional for advice after the sale and that there are potentially "similar" products offered through different channels. Advocis supports the FCNB's proposal to permit the rescission of contracts of insurance on or before the expiry of 20 days for certain types of insurance.

#### *Separate Application for the Insurance Coverage*

Advocis supports the FCNB's proposal to require a separate application for most types of insurance coverage. It is our view that this will provide some protection for the consumer against tied selling pressures and help the consumer understand that, for example, the credit arrangement (such as a personal loan) is separate from the credit insurance and that the two items can be purchased separately.

#### *Copy of the Application for the Incidental Insurance Product to be Provided*

The FCNB's proposal provides that the restricted insurance licence holder must, on request, provide a person making an application for insurance with a copy of the completed application form. We support this inclusion, as it will help make it clear to the consumer that this is a



separate product that is not required to be purchased. Also, given the issue of post-claim underwriting (or the fact that the investigation of whether the consumer is eligible to receive the insurance will only occur once a claim is initiated), in the event of a claim dispute or in the event another consumer-related problem should occur, the consumer will have the document in hand.

#### *Tied Selling Provisions Are Necessary*

The FCNB's proposal prohibits restricted insurance licence holders and their employees from "making the provision of goods or services conditional upon the consumer's purchase of insurance through it or from an insurer specified by the licence holder or its employee; or advising a consumer who wishes to purchase insurance in relation to goods or services that the consumer must purchase the insurance through the licence holder or from a specific insurer." Advocis strongly supports the FCNB's proposal to include prohibitions against tied selling within the proposed amendments.

#### *Disclosure Required When ISI Product is Post-Underwritten*

There has been considerable discussion regarding the difficulty that consumers experience in understanding the application, coverage and underwriting processes for incidental insurance products. One of the CCIR-CISRO ISI Working Group Report's key recommendations is that insurers should use plain language in application forms and documents and should clearly explain the consequences of filling out forms improperly. New Brunswick should not miss this opportunity to address this important issue through regulation.

Advocis recommends that, prior to the completion of an application for incidental insurance, the consumer should be provided with an explanation of the underwriting process and when the underwriting will occur. This information should be provided before the application is completed, so that it can form part of the decision-making process of the consumer.

We support regulatory provisions which require that the consumer be provided with a separate written explanation of the post-claim underwriting process, including the importance of the health questions that are set out in the application and the implications if the health questions are not fully and accurately answered.

The explanation should include:

- Any exclusions, restrictions and limitations applicable
- The extent to which any pre-existing conditions limit a policy's coverage
- When and under what circumstances the contract will be void ab initio or voidable including any time period expressed by law or by the contract which limits the time period in which an insurer can void the contract (the contestability period).



The consumer must be made aware when they apply for an incidental insurance product the extent to which coverage will be underwritten after a claim is made and that coverage is not assured until such time that underwriting has been completed. This disclosure should be in writing, and should be signed by the consumer. The statement should indicate that the consumer is stating that they have never had any medical condition, treatment, assessment, test or question that have not been specifically disclosed on the application/enrolment form to the extent required.

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We urge the FCNB to adopt our recommendations and implement a regulatory regime which has as its primary goal the protection of New Brunswick consumers. Should you have any questions, please do not hesitate to contact the undersigned, or Ed Skwarek, Vice President, Legal and Regulatory Affairs at 416-342-9837 or [eskwarek@advocis.ca](mailto:eskwarek@advocis.ca).

Sincerely,

Greg Pollock, M.Ed., LL.M., C.Dir., CFP  
President and CEO

Abe Toews, CFP, CLU, CH.F.C., CHS, ICD.D  
Chair, National Board of Directors