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Laura Albanese
Parliamentary Assistant to the Minister of Finance
c/o Budget Secretariat
Frost Building North
95 Grosvenor Street, 3rd Floor
Toronto ON M7A 1Z1

VIA COURIER AND EMAIL: cucpa.consultation@ontario.ca

Dear Ms. Albanese:

Re: Review of the *Credit Unions and Caisses Populaires Act, 1994*

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments in regards to Ontario's five-year review of the *Credit Unions and Caisses Populaires Act, 1994* (the "Review").

Advocis is the largest and oldest professional membership association of financial advisors and planners in Canada. Through its predecessor associations, Advocis proudly continues over a century of uninterrupted history serving Canadian financial advisors and their clients. Our 11,000 members, including 6,000 of whom are based in Ontario, are licensed to sell life and health insurance, mutual funds and other securities, and are primarily owners and operators of their own small businesses who create thousands of jobs across Canada. Advocis members provide comprehensive financial planning and investment advice, retirement and estate planning, risk management, employee benefit plans, disability coverage, long-term care and critical illness insurance to millions of Canadian households and businesses.

As a voluntary organization, Advocis is committed to professionalism among financial advisors. Advocis members adhere to a professional Code of Conduct, uphold standards of best practice, participate in ongoing continuing education programs, maintain professional liability insurance, and put their clients' interests first. Across Canada, our members devote countless hours working one-on-one on financial matters with individual Canadians. Advocis advisors are committed to educating clients about financial issues that are directly relevant to them, their families and their future.

Introductory Comments

Credit unions have historically played an important role in servicing the financial needs of their local communities. However, as noted in the consultation paper, much has changed in the last five years: the credit union sector has consolidated into fewer, but much larger, institutions, becoming increasingly

bank-like and distant from the grassroots trade or cultural communities they originally were established to serve.

Given this rapid consolidation, we believe that the Review must focus on modernizing the consumer protections related to credit unions to reflect the institutions they are today: as credit unions progressively resemble banks, the protections offered to their consumers should increasingly mirror those established to protect bank clients. One key area of consumer vulnerability pertains to the sales of insurance products, either directly in-branch or online, and this is the focus of our comments in this submission.

Advocis has been engaged for many years on the issue of insurance sales by both banks and credit unions: we have participated in policy consultations at the federal and provincial level, and we have undertaken considerable research concerning consumer and small business attitudes on the issue. Time and time again, our research has concluded that deposit-taking institutions should not be able to sell insurance products in-branch or online, as this grants them preferential treatment vis-à-vis other industry participants and gives rise to serious consumer protection concerns (as discussed in detail in the next section).

In 2005, Advocis participated in Ontario's consultations regarding whether to expand credit union powers to permit in-branch sales of insurance. In 2006, Advocis made submissions on this issue in the federal review of financial institutions legislation. Ontario subsequently concluded that the consumer protection provisions that restrict credit unions from selling insurance in-branch should remain in place. The federal government also concluded that banks should not be permitted to sell insurance in-branch or share customer information with their insurance subsidiaries.

We commend Ontario for its past decisions to restrict the in-branch sale of insurance products, thereby protecting the consumers of credit unions. We strongly recommend that, upon the completion of the current Review, Ontario maintain and restate this restriction and, further, extend it to online sales.

Consumer Protection Concerns Arising from In-branch Retailing of Insurance Products

Tied Selling Practices

If deposit-taking institutions are permitted to sell insurance directly, in-branch, they will naturally direct customers to their insurance employees in the ordinary course of business. A credit union, for example, may suggest that a borrower of funds take out a life insurance policy before the credit union will approve a small business loan or mortgage. Often, the "suggestion" of purchasing insurance becomes a *de facto* condition precedent: a would-be borrower may find it difficult to decline the suggestion because (i) the borrower may fear offending the lender and jeopardizing the underlying loan; or (ii) the borrower may not be focused on the insurance aspect of the transaction.

This example demonstrates how tied selling exerts subtle pressure on the consumer that negatively affects the consumer's ability to choose an insurance product freely and in a considered way. In order to protect consumers, regulators should promote a framework that prevents tied selling. While this type of tied selling is typically prohibited by legislation or regulation, this behaviour is very difficult to detect and monitor in practice.

Advocis believes that the only way to ensure consumers do not face undue pressure is to not put them in that situation in the first place: financial institutions, including credit unions, should not be able to combine their usual deposit-taking and lending business with their insurance business in a shared premises, in branch, as this physical combination facilitates a tied selling environment. The leverage of granting credit is simply too easy and tempting for branch staff not to apply and too difficult for regulators to detect or monitor.

Privacy Concerns: Commingling of Consumers' Personal Information

An application for life insurance may require the applicant to disclose detailed health information. Clearly, this is sensitive personal information that the consumer would not disclose if not for the need to satisfy the application's requirements, and the consumer would prefer that this information be strictly used for insurance underwriting purposes and not shared with other business divisions of the financial institution.

However, in a situation where insurance products are retailed in the branches of financial institutions, there is a risk that the consumer's personal privacy will not be respected and the information will be used to inform banking decisions about the consumer, such as the risk a consumer represents for a mortgage application. Even if there are regulations or corporate policies that dictate that such information must not be commingled, the line between the banking side and the insurance side of the institution could easily be breached, as the information resides in one corporate entity.

When material information about consumers is contained under the one "roof" of the credit union branch, despite the good intention that firewalls be in place, credit union personnel may nonetheless have access to that information. Even if the access is not direct, information about perceived risks may be communicated between the banking and insurance divisions informally and recorded obliquely, to the detriment of the client.

Further, as part of client agreement forms, the credit union may ask consumers for their consent to market other products and services to them. Canadian consumers have voiced concerns about financial institutions using their banking information to sell them other products such as life and health insurance. Consumers do not necessarily read the client forms carefully, and seldom decline the financial institution's request to use their information for other marketing purposes. The risk is that the privacy of the consumer will be lessened with the potential for detrimental effects which can result from the commingling of the information.

We believe the risk is too high that consumers will be subject to potential privacy violations, with their information shared within a branch between insurance employees and loan and mortgage employees. Safeguarding individual consumers and small businesses from the risks of undue pressure and privacy violations must be an underlying principle in the sale of insurance.

Level Playing Field

Credit unions have argued that they require the ability to sell insurance products in-branch to be on equal footing with other financial institutions. However, we have repeatedly pointed out that this claim is incorrect. Even without the ability to retail insurance products from within their branches, credit unions can operate as others in the industry do, such as federally-regulated banks: they can, subject to

obtaining regulatory approval, create subsidiaries that run insurance operations in locations that are physically separate from their banking operations.

Further, credit unions do not even need to establish physical branches for insurance operations, if they would prefer not to do so. Presently, most individual insurance is sold by licensed insurance agents who are mobile in the communities they serve, rather than through branches. This mobility would better allow credit unions to serve their grassroots constituents and further ensures that even Ontarians in rural communities have ample access to insurance professionals and a wide array of insurance solutions.

Allowing credit unions to retail insurance products from within their branches (or from locations that are adjacent to the branches, with only a superficial physical separation between them) places them in a preferential position vis-à-vis other industry participants. It grants credit unions a captive customer base and the credit union will naturally wish to reap the benefits selling multiple products and services to consumers from one point of sale. While this may seem to offer a convenience for consumers, the value of that convenience is outweighed by the negative effects of the tied selling and privacy concerns articulated above. It also places consumers at risk that they will be dealing with a credit union employee who is not properly licensed to service their insurance needs, lacking the requisite training or regulatory accountability.

Ultimately, the in-branch retailing of insurance products brings about issues such as tied selling, the commingling of personal information and the creation of an unlevel playing field, which detrimentally impact the health of the insurance sector and significantly erode longstanding consumer protection safeguards. We urge Ontario to maintain its longstanding restriction in furtherance of the public interest.

Protecting Consumers in the Online Channel

Similar consumer protection concerns arise with sales of insurance products in the online channel, when consumers purchase such products on a credit union's website. We believe that regardless of the access point that consumers use to purchase financial products, such as a physical branch or virtual site, the regulatory framework governing credit unions should protect consumers from the potential abuses of tied selling, privacy violations and unlicensed salespersons.

Therefore, like the separation of physical branches for banking and insurance services, we believe that credit unions must also separate their *online* banking site from their *online* insurance site. It is critical that consumers clearly know with which entity, credit union banking division or insurance subsidiary, they are interacting and sharing personal information. Such clear distinctions eliminate ambiguities regarding the consumer's intention, ensuring that regulations intended to protect consumers can be of greatest effect.

To achieve this separation, the insurance subsidiary should have its own web address with its own distinct domain, rather than being hosted on the credit union's domain. The online insurance division should also have its own separate and distinct marketing and promotional materials, to firmly characterize it as a distinct entity in the minds of both consumers and the division's staff. Further, any interactions between the consumer and the insurance subsidiary that constitute activities of an "agent" under the *Insurance Act* must come from a fully-licensed agent of the insurance subsidiary.

These important safeguards should be mandated by law, but many of the laws and regulations governing credit unions pre-date the explosive growth of the online channel. It is time that these regulations are modernized to reflect the prevalence of the online sphere. As an example of this modernization, in 2011, the federal government updated the regulations governing chartered banks to prohibit them from promoting and selling unauthorized insurance products on their websites. We strongly urge Ontario to use the opportunity of this Review to enact similar regulatory updates for credit unions and caisses populaires.

Ontario Must Not Import Quebec's Legislative Framework through the TCA

We understand that pursuant to the Ontario-Quebec Trade and Cooperation Agreement (the "TCA"), Ontario may be contemplating certain changes to the *Credit Unions and Caisses Populaires Act, 1994* to align it more closely with Quebec's legislation governing credit unions and caisses populaires.

The TCA is a trade agreement that seeks to further the economic partnership between Ontario and Quebec. Its objectives include the promotion of open and efficient markets between the two provinces in persons, goods and services. While the TCA seeks to reconcile barriers to trade, it recognizes that standards between the two provinces need not be identical where there is a "legitimate objective" behind the maintenance of divergent standards. Clearly, both Ontario and Quebec entered into the TCA expecting that legitimate differences in their respective regulatory landscapes would continue to exist, given the distinct and unique policy concerns in each province.

One of the enumerated legitimate objectives is in the area of consumer protection. In our view, Quebec does not adequately protect consumers of credit unions and caisses populaires, as in 1999, with its *Act respecting the distribution of financial products and services* coming into force, Quebec allowed caisses populaires to sell insurance products directly from within their branches. This raises the serious consumer protection concerns that are articulated above. In contrast, as noted, Ontario has reviewed the issue multiple times, and has consistently held that maintaining the restriction on credit union in-branch retailing of insurance products is in the best interests of Ontarians.

Therefore, we urge Ontario to resist pressure brought about by the TCA to weaken its regulations to match those of Quebec; doing so would be to the detriment of Ontarians and counter to the purposes of such trade agreements. Ideally, since one of the main tenets of the TCA is to "maintain and enhance policies governing ... consumer protection standards" (*emphasis added*), Quebec could "harmonize up" by matching Ontario's restriction on credit union in-branch retailing.

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Advocis looks forward to working with the Government of Ontario as it modernizes the regulation of credit unions and caisses populaires. Should you have any questions, please do not hesitate to contact the undersigned, or Ed Skwarek, Vice President, Regulatory and Public Affairs at 416-342-9837 or eskwarek@advocis.ca.

Sincerely,

A handwritten signature in black ink, appearing to be 'G. Pollock', with a long horizontal flourish extending to the right.

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

A handwritten signature in black ink, appearing to be 'David Juvet', written in a cursive style.

David Juvet, CFP, CLU, CH.F.C., CHS, FLMI, AMTC
Chair, National Board of Directors