

February 7, 2022

Corporate Secretary
Financial and Consumer Services Commission
85 Charlotte Street, Suite 300
Saint John, NB E2L 2J2

SENT VIA EMAIL

Dear Sirs/Mesdames,

Re: Consultation re Rule INS-001
Insurance Intermediaries Licensing and Obligations

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments to the Financial and Consumer Services Commission of New Brunswick (“FCNB”) in regard to the Consultation regarding Rule 001, *Insurance Intermediaries Licensing and Obligations* (“Proposed Rules”).

1. ABOUT ADVOCIS

Advocis is the association of choice for financial advisors and planners. With over 17,000 member-clients across the country, we are the definitive voice of the profession. Advocis champions professionalism, consumer protection, and the value of financial advice. We advocate for an environment where all Canadians have access to the professional advice they need.

Advocis members advise consumers on wealth management; risk management; estate, retirement and tax planning; employee benefits; and life, accident and sickness, critical illness and disability insurance. In doing so, Advocis members help consumers make sound financial decisions, ultimately leading to greater financial stability and independence. In all that they do, our members are driven by Advocis’ motto: *non solis nobis* – not for ourselves alone.

2. INTRODUCTION

We appreciate the FCNB’s efforts to modernize insurance regulation in the province by enhancing provisions related to market conduct and implementing an errors and omissions insurance requirement for life agents. However, we are concerned about whether there is a need to create a new licensing category for insurance intermediaries: we believe that doing so might not address the challenges in this space while adding regulatory burden on industry



participants. Lastly, we encourage the FCNB to strengthen proficiency standards by implementing continuing education requirements for insurance intermediaries.

3. OUR COMMENTS

3.1 MGA Licensing Framework

We are uncertain about the need for a separate licensing regime for intermediaries who are managing general agents (“MGAs”). We believe that the reasoning behind this proposal has not been adequately explained. We recognize that there are currently a number of concerns associated with intermediaries, including MGAs, but we are unclear how a separate MGA licensing category would address those concerns.

The 2021 Fair Treatment of Customers (“FTC”) reviews (“FTC Reviews”) conducted by the Canadian Council of Insurance Regulators (“CCIR”) highlighted deficiencies in adherence to FTC principles amongst both insurers and intermediaries.¹ These include a finding that contractual agreements between insurers and MGAs do not sufficiently outline expectations regarding each parties’ roles and responsibilities. Insurers did not adequately monitor MGAs or ensure that MGAs understood their delegated responsibilities. Further, the FTC Reviews found that there were no formal mechanisms in place for ongoing reviews of marketing materials provided to MGAs and consumers.

To address some of these issues, the CCIR in the FTC Reviews recommended that insurers review and update their contractual agreements with intermediaries (including MGAs) and proactively monitor intermediaries who have been delegated the responsibility to train and supervise agents.² None of the solutions mentioned in the FTC Reviews recommended that jurisdictions develop a separate licensing regime for MGAs. To our knowledge there is no evidence that a specific MGA license category would resolve the problems identified in the FTC Reviews.

This proposal also appears to be at odds with the position taken by the CCIR's Agencies Regulation Committee in a 2012 position paper (“CCIR Position Paper”).³ While the CCIR Position Paper acknowledged the importance of developing methods for identifying and classifying the business model of MGAs, they rejected a specific licensing regime for this category. They noted that there are no consumer protection goals that would be advanced through an MGA-specific licensing regime. Instead, they recommended solutions consistent

¹ CCIR- CCRRA, “CCIR Cooperative Fair Treatment of Customers (FTC) Review – Consolidated Observations Reports” (October, 2021). At: <https://www.ccir-ccrra.org/Documents/View/3669>

² *Supra* note 1.

³ CCIR-CCRRA, “Position Paper: Strengthening the Life MGA Distribution Channel” (September, 2012). At: <https://www.ccir-ccrra.org/Documents/View/2688> at pages 12-13.



with the 2021 FTC Reviews to have insurers implement enhanced control systems for the screening and monitoring of agents in MGA contracts.⁴

The unclear benefits of creating an MGA-specific licensing regime must be balanced against the potential additional costs of compliance, which could be particularly burdensome for smaller businesses and individual advisors. The Proposed Rules could also add unnecessary barriers to an agent's ability to transition between the career and MGA distribution channels or vice versa.

Additionally, regardless of whether a separate MGA license category is ultimately created in New Brunswick, we would ask the FCNB to keep two points in mind: First, an advisor's responsibilities do not depend on whether he or she works directly for an insurance company or via an MGA distribution channel; all advisors are obligated to comply with laws and regulations in advancing the best interests of their clients. Second, the screening and monitoring of life agents must remain shared responsibilities between insurers and intermediaries. The CLHIA Guideline G8 advises that while insurance companies may delegate certain duties to MGAs, it is the companies that retain ultimate oversight responsibility.⁵

From the perspective of the client, there should be no difference as to whether the life agent providing service works in the career channel, through an MGA, or through an MGA operating with an MGA-specific license. We would like to better understand the FCNB's thought process behind its consideration of an MGA licensing category, and we would welcome a further discussion on this topic. We believe that we should strive for a regulatory framework that clearly delineates expectations with respect to how MGAs and insurers can effectively support life agents and, most importantly their clients.

3.2 Errors & Omissions Insurance

We support the introduction of a requirement to maintain errors and omissions ("E&O") insurance for life agents. E&O insurance offers important protection to consumers should something go wrong in the advisory relationship. An E&O insurance requirement is a hallmark of other recognized professions, such as doctors and lawyers; we see the FCNB's introduction of this requirement as a further affirmation of the important role that life agents have in providing professional advice to their clients.

3.3 Education & Professionalism

While licensing may be an entry point into the industry for insurance agents, we believe that licensing alone is not sufficient to ensure professionalism and high quality of service. Intermediaries should demonstrate their commitment to growing their knowledge, and keeping

⁴ *Ibid.*

⁵ See Canadian Life and Health Insurance Association, "Guideline G8 Advisor Suitability: Screening, Monitoring and Reporting". At: [https://www.clhia.ca/web/CLHIA_LP4W_LND_Webstation.nsf/page/A6B35FE70A23B88D85257BBA004DFF83/\\$file/G8.pdf](https://www.clhia.ca/web/CLHIA_LP4W_LND_Webstation.nsf/page/A6B35FE70A23B88D85257BBA004DFF83/$file/G8.pdf).



it current, through the completion of Continuing Education (“CE”) credits. We believe the FCNB’s current review of its insurance rules is an outstanding opportunity to introduce a CE requirement for the province’s life agents. We are hopeful that, should the FCNB include such a requirement in its Proposed Rules, it could spur its fellow Atlantic provinces to also move on this matter.

We also commend the FCNB for considering a higher standard for professionalism through its current consultation on a title protection framework. In recent years, there has been a shift in consumer expectations with respect to the role of financial advice and planning. Clients no longer see their advisor primarily as transactional conduits to financial products, but instead place the greatest value on the often multi-year advisory relationship that helps clients achieve their financial objectives. By regulating the titles of ‘financial advisor’ and ‘financial planner’, the FCNB will enable consumers to identify those intermediaries who have earned their trust through enhanced skill, knowledge and adherence to a professional code of conduct.

4. **CONCLUSION**

We welcome many of the changes in the Proposed Rules as steps that will better protect consumers. However, we have reservations about the need for a separate licensing regime for MGAs and we would invite a deeper conversation with the FCNB to better understand its policy objectives in this regard.

We commend the FCNB’s intention to introduce an E&O insurance requirement for life agents and we see the Proposed Rules as an ideal opportunity to also introduce a CE requirement. We look forward to assisting the FCNB in developing a title protection framework that will benefit every New Brunswicker. Should you have any questions, please do not hesitate to contact the undersigned, or James Ryu, Vice-President, Advocacy and General Counsel at jryu@advocis.ca.

Sincerely,

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

Rob Eby, CFP, RRC
Chair, National Board of Directors