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Daniel Padro
Senior Policy Advisor
Deposit Taking Institutions Policy Unit
Ministry of Finance
95 Grosvenor Street
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VIA EMAIL: Daniel.Padro@ontario.ca

Dear Mr. Padro:

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

We are writing on behalf of Advocis, the Financial Advisors Association of Canada.

Thank you for the opportunity to participate in Ministry of Finance Roundtable discussion on credit unions. We understand that the Government of Ontario will be reviewing the *Credit Unions and Caisses Populaires Act, 1994*, in October 2014. We would be pleased to work with the Province and share our views regarding any proposed legislative or regulatory amendments, particularly in regards to the ability of credit unions to sell insurance products and services directly from within their branches, and online.

Advocis is the country's 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 of serving Canadian financial advisors and their clients. Our 12,000 members, including about 6,000 of whom are 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 an established 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, no organization's members spend more time working one-on-one on financial matters with individual Canadians than do ours. Advocis advisors are committed to educating clients about financial issues that are directly relevant to them, their families and their future.

We have always advocated for a fair and balanced regulatory framework that preserves the strength of the financial services sector and provides a level playing field for all who participate in it while ensuring that consumers are protected. We have been engaged for many years on

the issue of insurance sales through banks and credit unions: we have participated in policy consultations at both 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 such as banks or credit unions should not be able to sell insurance products in branch, as this grants them preferential treatment vis-à-vis other industry participants and gives rise to serious consumer protection concerns.

While we appreciate that the most recent roundtable hosted by Finance was intended to focus on the online sale of insurance products by credit unions, Advocis feels that to fully understand our comments at the meeting, that an expanded explanation of our thoughts will assist in understanding our policy position.

In 2005, Advocis participated in consultations in Ontario concerning 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 in-branch sales of insurance in credit unions 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 the Ontario government for continuing to protect the consumer and maintaining a level playing field by restricting the in-branch sale of insurance. However, 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 more closely with that of Quebec.

Protecting Consumers in the Online Channel

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 enact similar regulatory updates to its provincially-regulated credit unions.

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

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/caisse populaires, as in 1999, with its *Act respecting the distribution of financial products and services* coming into force, Quebec allowed caisse populaires to sell insurance products directly from within their branches. This raises several serious consumer protection concerns that are explained in the next section. In contrast, as noted above, 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 governing credit unions 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, which would also level the playing field with federally-regulated banks operating in the province.

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.

Instead, Advocis believes that the only way to ensure consumers do not face undue pressure is to not place 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 credit granting is simply too easy and tempting for branch staff not to apply and too difficult 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 division 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 consumer's creditworthiness for a mortgage. 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 intention that firewalls be in place, personnel of the credit union may nonetheless be able to access 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 having financial institutions use 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 it is simply too risky to expose consumers to the potentially harmful impacts of privacy violations by allowing this information to be shared in-branch between insurance employees and loan and mortgage employees. Safeguarding individual consumers and small businesses from the risks of implicit pressure and potential 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 branches for insurance operations, if they would prefer not to do so. Presently, most insurance is sold by licensed insurance agents who are mobile in the communities they serve, rather than through branches. This mobility also ensures that even consumers 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 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 also seem to be convenient for consumers, the value of that convenience is outweighed by the derogatory effects of the tied selling and privacy concerns articulated above. It also places consumers at a risk that they will not be dealing with a credit union employee who is not properly licensed to service their insurance needs, thereby 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.

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Advocis looks forward to working with the Government of Ontario in its upcoming review of credit unions. We would welcome the opportunity to meet with you at your convenience to discuss our views on this matter. 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,



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