



Advocis

390 Queens Quay West, Suite 209
Toronto, ON M5V 3A2
T 416.444.5251
1.800.563.5822
F 416.444.8031
www.advocis.ca

September 26, 2008

Mr. Winston Morris,
Superintendent of Credit Unions
Department of Government Services
PO Box 8700
St. Johns, NL A1B 4J6

Dear Mr. Morris:

RE: Newfoundland & Labrador's *Credit Union Act*

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

We appreciate the opportunity to provide our views on the contemplated legislative changes that would permit credit unions to sell life insurance products, including disability insurance, annuities and segregated funds, directly from their branches.

Advocis is a national professional association that is committed to preparing, promoting and protecting financial advisors in the public interest. We do this by providing a professional platform including career support, designations, best practices direction, education, timely information and professional liability insurance. This strengthens the relationship of trust and respect between financial advisors and their clients.

Our members represent life and health insurance licensees, and mutual fund and securities registrants who provide a full range of financial services, including estate and retirement planning, wealth management, risk management and tax planning. Most of our members are insurance licensed individuals who carry on business as either sole proprietors or independent, small incorporated businesses. Our 160 members in the province of Newfoundland and Labrador provide financial advice and services to thousands of Newfoundlanders. They operate in accordance with the requirements of the Insurance Act and Regulations, and those that are dually-licensed also operate in accordance with the requirements of the Securities Act and Regulations.

Advocis is committed to providing a fair and balanced regulatory framework that preserves the health and strength of the sector, provides a level playing field for all who operate in the industry, and protects consumers.

Advocis has been engaged for a number of years on the issue of insurance sales through banks and credit unions. We have participated in policy consultations at both the federal and the provincial level, as governments have considered requests from the bank and credit union sectors to permit in-branch sales of insurance. We have undertaken considerable research

concerning consumer and small business attitudes on these issues that supports the decisions of federal and provincial regulators not to expand in-branch sales of insurance.

Most recently, in 2005, Advocis participated in consultations in Ontario, concerning the expansion of credit union powers to permit in-branch sale of insurance. In 2006, Advocis made submissions on this issue in the 2006 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 and should not be permitted to share customer information with their insurance subsidiaries.

The proposed changes to the Newfoundland and Labrador's *Credit Union Act* (the Act) would give credit unions expanded powers to sell life insurance products (but not property and casualty insurance products) directly in their branches. Credit unions are already in the business of selling life and health insurance through licensed advisors, in the same manner and pursuant to the same regulatory framework as other participants in the industry. We are concerned that expanding insurance retailing powers of credit unions will leave consumers without adequate protection from the subtle pressures that arise in the context of tied selling and without adequate protection of their privacy rights.

Credit unions already sell insurance, on a level playing field

Currently, credit unions in Newfoundland and Labrador are permitted to engage in insurance business through subsidiaries and sell authorized types of insurance in-branch, on much the same basis as federally-regulated banks and trust companies. Subject to the approval of the Superintendent of Credit Unions, a credit union may establish an insurance company or insurance brokerage through a subsidiary or associated company. Credit unions also are permitted to administer authorized types of insurance, and to provide advice about authorized types of insurance. This includes insurance related to a credit card or charge card issued by the credit union; creditors' disability insurance, creditors' life insurance; creditors' insurance for loss of employment; and creditors' vehicle inventory insurance; export credit insurance; group life, accident and sickness insurance; mortgage insurance; and travel insurance.

The regulations under the Act expressly prohibit credit unions having premises adjacent to the office of an insurance company, agent or broker, unless the credit union clearly indicates to its members that the credit union and its premises are separate and distinct and there is a separate entrance and separate signage. These restrictions which are currently in place are intended to address consumer protection concerns that would arise where insurance products are sold in-branch.

The credit unions are asking the government of Newfoundland and Labrador to accord them preferential treatment, and to give them a carve-out from the laws that place appropriate restrictions on selling of insurance in-branch. The fact that sales would be made by credit union personnel who are licensed would not address the tied selling concerns that gave rise to the existing restrictions that are in place to protect consumers.

Consequences of Expanding Ability of Institutions to sell Insurance In-branch

Tied Selling Practices

Restrictions on distributing insurance “in-branch” exist with the goal of establishing a high level of consumer protection. If credit unions or other deposit-taking institutions are permitted to sell insurance directly, albeit through a licensed employee in-branch, they will direct customers to their insurance-licensed employees in the ordinary course of business transactions. A credit union, for example, may routinely require insurance on the life of the borrower before it will issue a small business loan or mortgage. Section 19 of the Act currently prohibits a credit union from requiring, directly or indirectly, that a borrower place insurance for the security of a credit union with a particular insurance agency or company, (which is the only form of coercive tied selling which is explicitly prohibited.) It will be difficult for the customer to decline the suggestion that they should, as a borrower, apply in-branch for recommended insurance. A borrower will tend to comply with the insurance product recommendation either: (a) because the borrower will fear offending the lender; (b) the borrower will want to please the lender or (c) the borrower will not be focused on the insurance aspect of the transaction. The consumer’s ability to choose an insurance product freely and in a considered way will be lessened as a result of tied selling practices.

Credit unions will be tempted, when selling one type of product such as a loan or even at time of opening a chequing account for a consumer, to sell the consumer life insurance at the same time. In the branch, tied selling may involve subtle pressure short of coercion. A business model and a regulatory framework that increases the risk of this should be avoided as a matter of consumer protection. Combining the usual business of a credit union and the business of insurance in shared premises, in-branch, will facilitate subtle forms of coercion that are difficult to detect or monitor.

Expanding the insurance powers of credit unions will expose consumers to tied selling pressure. In times when credit availability is tighter, this pressure may in fact intensify. Advocis, accordingly, opposes the removal of the restriction prohibiting the distribution of insurance products in credit union branches, since allowing credit unions to distribute insurance from or through their branches is not in the best interest of consumers. The leverage of credit granting is simply too easy and tempting for branch staff to apply and too difficult to detect or monitor.

Commingling of a Consumer’s Personal Information and Privacy

At present, when a credit union collects personal financial information concerning a client, and the credit union’s insurance subsidiary collects sensitive personal health information for the purposes of underwriting insurance coverage, the information is not shared. The customer’s personal privacy is respected. The application for the mortgage or other type of loan is kept separate from the application for life insurance and the credit union does not know any of the detailed health information relating to the individual.

However, if credit unions are permitted to sell a wide range of insurance products in-branch, the line between the credit union and the insurance subsidiary will vanish. The information will reside in one corporate entity, the credit union, and the personnel of the credit union may have access to all of the information that is collected. Even if limits are placed on the disclosure and use of a customer’s personal health information within the credit union, there will be a significant risk that such information may be shared or commingled, or accessed by personnel. As a result, a consumer’s privacy may be compromised and their contractual rights regarding the loan or mortgage may be detrimentally affected.

Credit unions, if allowed to sell life and health insurance in the branch, will be free to pass on relevant client information to the life insurance agent placed in the branch. Some information

about perceived risks that is not supposed to be shared between insurance and other parts of the credit union, may be communicated informally and recorded obliquely, to the detriment of the client. As part of the client agreement forms, the credit union will ask the consumer for its consent to market other products and services when the consumer becomes a customer of the credit union. Canadian consumers have voiced concerns about having financial institutions use their banking information to sell them other products such as health and life insurance. Consumers do not necessarily read the client forms carefully, and seldom decline the consent to share information or use 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 potential harmful impacts of privacy of information violations by allowing this information to be shared in-branch by both insurance employees and loan and mortgage employees. Safeguarding individual consumers and small businesses from the potential risks of implicit pressure and potential privacy violations must continue to be the main principles underlying any policies relating to the sale of insurance.

Level Playing Field

It is suggested that permitting credit union employees who meet insurance licensing requirements to sell a wide range of insurance products in-branch will serve to place credit unions on the same footing as other financial institutions. However, we have pointed out that this claim is incorrect. Credit unions are already on an equal footing with all others that operate in the industry. There is no evidence that the current level playing field needs to be tilted in favour of the credit unions, which enjoy the same right to sell insurance, through subsidiaries and not in-branch, as do federally-regulated financial institutions. As well, credit unions and other financial institutions currently have the ability to sell a wide variety of insurance products in-branch.

It also has been asserted that it is too costly for credit unions, under the current rules, to establish premises that are separate from their branches, for the sale of insurance by insurance-licensed employees. However, the current rules do not require the establishment of branch networks. Most insurance is sold at present by agents who are mobile in the community, rather than through branches. Credit unions are free to sell insurance through subsidiaries, outside of their branches, in whatever manner they consider to be most cost-effective, as is currently done in the rest of the industry.

The credit unions wish to capitalize on the advantages of selling, in-branch, to a captive customer-base. They wish, understandably, to reap the benefits and synergies of having simultaneous access to the corporate resources of the customer-information base of a credit union and an insurance marketing operation. Customers who wish to purchase authorized insurance products will be referred to insurance-licensed employees in-branch. If credit unions were given this preferential treatment, then existing consumer protection measures would be removed to the severe detriment of the consumer.

Consumers have ample access to insurance

The advocates for expanding in-branch insurance sales suggest that this will increase consumer choice and access to insurance products, particularly in rural areas.

We submit that there is no evidence that consumers in any part of the province lack ample choice in the insurance market. The people of Newfoundland and Labrador are well served by the expertise of licensed insurance agents. There is no evidence that customers in any part of the province lack ample access to licensed insurance professionals and a full range of insurance products.

Advocis is pleased to have been consulted on the proposed legislative change and given the chance to share with you our views. We would be pleased to meet with you to discuss our views on this matter, at your convenience.

Yours sincerely,



Teresa Black Hughes CFP, CLU, RFP, FMA, CIM
Chair, National Board of Directors



Kevin J. Dunphy CFP, CLU
Chair, Newfoundland and Labrador
Provincial Advocacy Committee

c.c. Honourable Kevin O'Brien, Minister of Government Services, Newfoundland and Labrador
Mr. Doug Connolly, Deputy Superintendent of Credit Unions, Newfoundland and Labrador