Advocis
10 Lower Spadina Avenue
Suite 600
Toronto, ON M5V 2Z2
416.444.5251
1.800.563.5822
F 416.444.8031
www.advocis.ca

June 18, 2018

Canadian Council of Insurance Regulators
Canadian Insurance Services Regulatory Organizations
c/o CCIR Secretariat
5160 Yonge Street, Box 85
Toronto ON M2N 6L9

Sent via email: ccir-ccrra@fsco.gov.on.ca

Dear Sirs/Mesdames:

Re: Guidance on the Conduct of Insurance Business and Fair Treatment of Customers

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments in regards to the Canadian Council of Insurance Regulators and Canadian Insurance Services Regulatory Organizations (collectively, the "Regulator") consultation draft of the Guidance on the Conduct of Insurance Business and Fair Treatment of Customers (the "Guidance").

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

Question #1: Does this guidance present contradictions with existing or future local instruments related to fair treatment of customers?

We do not believe that the Guidance presents substantive contradictions with existing local instruments related to the fair treatment of customers. The Guidance and other local instruments are designed to fundamentally adhere to the Insurance Core Principles of the International Association of Insurance Supervisors, so they are aligned in spirit.

The Guidance is perhaps more fulsome than other recently-published local instruments, such as the Financial Services Commission of Ontario's ("FSCO") consultation draft of its *Treating Financial Services Consumers Fairly* guideline,[1] as the Guidance also deals with business conduct principles including outsourcing, product design and product promotion.

Regardless, the business conduct principles in the Guidance are part of the same ecosystem of treating customers fairly. The business conduct principles provide greater detail on certain applications of the overarching principles (such as in regards to product design, conflicts of interest, complaint handling and privacy) in furtherance of integrating these ideas throughout business practices. We agree with Regulator's desire to cultivate a consumer-focused business culture that goes beyond strict legal requirements. We also see the Guidance as yet another example of the shift in regulatory focus from solvency regulation to market conduct regulation, which we believe is the right approach to advance the primacy of the consumer's perspective.

Question #2: Does this guidance strike the right balance between roles and responsibilities of Insurers, Distribution Firms, agents and representatives?

[1] FSCO backgrounder available at https://www.fsco.gov.on.ca/en/about/superintendent_guidelines/pages/default.aspx.

The critical role of advisors and planners continues to be understated in the Guidance and in the overall regulatory framework. The Guidance notes that "… agents and representatives are often the first to enter into contact with Customers, through their Distribution Firm." We feel that this critical point often does not garner the attention it deserves: financial advisors and planners are, in many cases, the consumer's only direct touchpoint with the entire financial services sector, so they must also be the key consumer safeguard. And if a key tenet of financial services regulation is to protect consumers, financial services regulation must be crafted from the consumer's perspective.

The way forward is clear: it is time to elevate financial advice and planning to a profession – by raising the proficiency standards of intermediaries and re-aligning the regulation of advice and planning so that it accords with the modern consumer's perspective, we could solve more consumer protection issues, more dynamically and effectively than prescriptive regulation ever could.[2] And as a profession, advisors and planners must be granted the same respect as other professionals and be granted a key role in their own regulation.

This brings us to our major concern with the Guidance: while we are supportive of the principles espoused in the draft, we are concerned with how the Guidance will be implemented. The Guidance is drafted at a high level, and to put its intention into action, some entity must be charged with taking the lead on the interpretation, implementation and enforcement of the concepts therein.

---

[2] Advocis has long been a key advocate for the professionalization of advisors and planners: in 2013, we launched the *Raising the Bar Professions Model* initiative and we were the driving force behind *The Financial Advisors Act, 2014*, which was the first piece of legislation in Canada that would have professionally recognized advisors and planners. That legislation had the support of all of Ontario's major political parties, but it died on the order paper with the call of Ontario's 2014 election. However, Advocis' efforts served as a call to action and a major reason the Government established its Expert Committee to study the issue.

Rather than sitting idly by as the Expert Committee process unfolded, Advocis continued the push towards professionalism. In fact, the centrepiece of Advocis' 2018-2022 strategic plan is to move beyond a membership association of advisors committed to professionalism and become a true professional association. This will be executed via a multi-faceted approach, with one of the key pillars being a new membership requirement: starting on January 1, 2019, all new members of Advocis will be required to achieve a recognized professional credential.

In conjunction with this requirement, Advocis will be launching two new designations aimed at newly-licensed advisors who are ready to establish themselves as professionals through a deeper understanding of the skills needed to build a sustainable business that is compliant with legal, regulatory and ethical standards.

Advocis is taking the lead to raise the professional bar for all financial advisors and planners so consumers can trust that they have the knowledge, competence and integrity to provide the high-quality professional service consumers deserve.

Advocis® is a trademark of The Financial Advisors Association of Canada.

We urge the Regulator to ensure that stakeholders such as Advocis, which represents the financial advisors and planners who interact directly with the public, be granted a leadership role throughout this initiative. Advocis' position stands in stark contrast to entities such as the CLHIA which, despite first and foremost representing the interests of their member insurance companies, have previously been trusted by the Regulator to lead the advancement of regulatory and public policy.

The Regulator must be cognizant of the competing loyalties that could challenge the CLHIA's ability to give full effect to the Guidance. Consider for a moment that the senior executives of CLHIA's member companies have a fiduciary duty to their respective companies and shareholders. Also consider that these same executives direct the actions of the CLHIA, being the trade association for the insurance companies. Further, an insurance company's duty to the consumer/client is to treat them fairly, which is a far lower duty than the fiduciary duty their executives owe to the company. The potential challenge to fulfilling the spirit of the Guidance is clear.

At the other end of the spectrum is Advocis: members of our professional association voluntarily agree to adhere to a Code of Professional Conduct[3] that features, as its primary tenet, the advisor's commitment to serving the best interest of the client. As such, Advocis and its member advisors do not face the competing loyalties that necessarily impair the ability of the CLHIA and its member companies to implement the Guidance. Therefore, it is clear that professional associations such as Advocis must be trusted with a leadership role if the Regulator and consumers are to fully realize the benefits of the Guidance.

Question #3: CCIR and CISRO are mindful that in some industry sectors, the introduction of this guidance may raise questions about the possibility that intermediaries may be subject to multiple audits by regulators, self-regulatory organizations and insurers in a given year. CCIR and CISRO will address any need for clarification and invite stakeholders to comment.

We agree with the Regulator's concern that the introduction of the Guidance alongside existing requirements may result in intermediaries being subject to multiple audits. Our members already feel a heavy compliance burden that detracts from the time they can spend face-to-face with their clients. Nonetheless, the principles in the Guidance are of the greatest importance and should permeate everything advisors and planners do. The question is how to achieve this most efficiently and effectively and without harming the ability of advisors and planners to provide the utmost in service to clients.

[3] The Advocis *Code of Professional Conduct* can be found at: http://www.advocis.ca/pdf/Advocis-CPC.pdf. The explanatory notes can be found at: http://www.advocis.ca/pdf/AdvocisCPC-ExplanatoryNotes.pdf.

Going beyond 'fair treatment' to the best interest of consumers

We believe the best way to make the concepts in the Guidance meaningful is to animate them through a duty to act in the client's best interest. However, given the gravity of a best interest duty, such a duty must be implemented in a particular and careful manner:

> *Subjecting advisors and planners to a best interest duty without granting them professional standing would be fundamentally unfair*

Certain stakeholders have argued that a best interest duty be implemented, and compliance therewith judged, by regulators who are distinctly separate and uninvolved with the day-to-day operation of providing retail clients with financial advice. Given this detachment, it is our position that regulators do not appreciate the complete nature of the work that advisors and planners do and are therefore not in a proper position to apply "best interest" principles to their daily practice. This is not intended to be a slight; this is just the reality that regulators are sensibly focused on "macro" issues of laying the groundwork for healthy, functioning and fair markets.

A best interest duty is a professional standard of care meant to ensure that a client receives the utmost in their advisor's care and judgment, driven by an underlying ethical responsibility to do what is right for that client. It necessarily involves subjective assessments that take into account the client's objectives, risk tolerance and financial position, as well as external conditions known at the time and projected out into the future. The breaching of a best interest obligation carries significant ramifications for the client, advisor, and the reputation of the industry as a whole, so a fair hindsight determination of whether a decision was in the client's best interest requires an understanding of the real-world practice dynamic in play when the advisor made that decision.

It would be manifestly unfair to apply a best interest duty to a professional group while failing to involve them in their own regulation. Critically, we draw attention to the fact that there is no other profession, whether it be law, medicine, or so on, whose members are subject to a best interest duty while not being accorded professional standing and given a voice in their own regulation. Regulators in those other industries recognize that they have an important role to play in setting the framework, but they cannot, should not and do not attempt to regulate the nuances of the day-to-day professional relationship between practitioner and client to judge whether a particular action is in the client's best interest. Instead, they respectfully leave professional proficiency and conduct regulation to accredited self-regulatory bodies, such as the College of Physicians and Surgeons of Ontario or the Chartered Professional Accountants of Canada.

In short, we support a best interest duty and believe that the duty should be a fundamental part of animating the principles in the Guidance – so long as the duty is interpreted and applied by those

Advocis® is a trademark of The Financial Advisors Association of Canada.

who are connected with the client-facing work of advisors and are therefore positioned to understand the nuances of an advisor's real-world practice.

> *Only advisors and planners themselves, through their own professional association, can interpret and apply a best interest duty in a manner that is fair to all stakeholders*

A best interest duty must be part of a regulatory framework that is flexible, contextual, principles-based and client-centered. This includes the granting of professional standing to financial advisors and planners and the creation of an official role for their professional association in interpreting and enforcing the best interest duty. This is no greater than the respect and deference granted to other professions.

A significant feature – indeed, perhaps the defining feature – of the "best interest" concept is its moral ambition, which lies in the expectation by the client of true good faith on the part of the advisor or planner. In this light, the ultimate focus of the duty is trained on the advisor or planner's motives and actions in advancing the client's overall interests, and not merely on the state of the client's accounts at any given point in time. Embedding a best interest obligation in the Guidance will make for a more robustly interpreted and applied obligation – which is of course an outcome very much in any client's best interest.

In interpreting and enforcing the best interest duty, the professional body would be enriched by the first-hand knowledge of its practicing member advisors, some of whom would serve as members of the professional body's hearing tribunals that consider whether a member breached the duty. As in the case of any profession, it is the professionals within it who best understand how the concept should be applied to the practice in which they work. Because of the involvement of active practicing members, the knowledge and understanding of the professional body would be constantly refreshed and in tune with the practices of the day. This flexible and evolving approach would be the superior way to address novel situations or changing market conditions.

We urge the Regulator to use the opportunity of the promulgation of the Guidance to advance the professionalization of financial advisors and planners and grant them agency in their own regulation – which also makes possible the animation of the Guidance's principles through the lens of a best interest duty.

3. CONCLUSIONS AND NEXT STEPS

We believe that the concept of "treating clients fairly" means going beyond the letter of the law. It means creating a business culture that puts consumers at the centre of everything that the financial services industry does. The Guidance represents key principles towards meeting that objective.

Once the principles are agreed to by stakeholders, the next step is to interpret the Guidance, integrate the concepts into daily business practices and have an accountability or enforcement structure that makes adherence with the Guidance truly meaningful. Here, the Regulator should leverage the position of Advocis, whose members owe a duty first and foremost to their clients, rather than other stakeholders who may be in a position of divided loyalty that makes it challenging for the principles to be fully realized.

To ensure that clients are treated with the utmost in ethical service, the Guidance should be informed by a best interest obligation. However, this duty must be interpreted and enforced by financial advisors and planners themselves, through their chosen professional association, rather than by regulators or other entities who are not attuned to their daily practice. This is the way that best interest obligations are applied in other professions, and advisors and planners deserve the same professional respect.

We look forward to working with the Regulator as it finalizes the Guidance. 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

Jim Virtue, CFP, CLU, CA
Chair, National Board of Directors

Corporation des assureurs directs de dommages du Québec

Traitement équitable des clients
Sommaire des commentaires de la CADD quant à la ligne directrice du Conseil canadien des responsables de la réglementation d'assurance

Introduction

Le présent document fait suite à une demande de consultation, du Conseil canadien des responsables de la réglementation d'assurance (CCRRA), au sujet d'une directive sur le traitement équitable des clients. Le document est divisé en deux parties, la première répond aux questions générales du CCRRA et la seconde énumère des commentaires et questionnements sur les orientations proposées

1. Commentaires généraux

On s'interroge sur la distinction qu'il y a entre consommateurs et clients. Est-ce que les règles s'appliquent aux consommateurs qu'ils soient clients ou non ou seulement s'ils deviennent clients ? Les attentes à cet égard ne sont pas claires. Il y a également une ambiguïté à propos de ce qui est inclus au « cycle de vie » d'un produit (p. ex. au niveau de l'inclusion ou non des carrossiers).

Quant à la distribution, il est question d'intermédiaire, de société de distribution et de société mandataire. Société de distribution et société mandataire sont des termes qui ne sont généralement pas utilisés en assurance de dommages au Québec. De plus, tout au long du document, les termes "agent" et "intermédiaire" sont utilisés indistinctement, ce qui rend difficile la compréhension de l'application des règles. La terminologie utilisée pour référer au réseau de distribution devrait être revue de manière à ce qu'elle soit plus simple et cohérente.

De façon générale, les qualificatifs utilisés dans le document mériteraient d'être précisés. Ainsi, les expressions suivantes nécessitent des éclaircissements: un niveau approprié d'expérience, promouvoir les produits et services de manière claire, communiquer aux clients de l'information précontractuelle et contractuelle claire, adéquate, gérer adéquatement tout conflit d'intérêts potentiel, traiter les plaintes en temps opportun.

De plus, la définition de « traitement équitable » aurait avantage à être plus précise afin d'en faciliter la mise en application.

Question 1 (Harmonisation):

> La présente directive présente-t-elle des contradictions avec des règlements locaux actuels ou futurs relatifs au traitement équitable des clients?

La directive reprend plusieurs éléments en lien avec la législation actuelle, les règlements ou d'autres lignes directrices, mais n'apporte aucune précision permettant une valeur ajoutée, notamment en termes d'attentes quant à leur application. Ceci entraîne malheureusement une duplication qui n'est pas nécessairement utile et peut même entraîner une certaine confusion (p. ex. : au niveau de l'impartition et du traitement des plaintes).

Le document dans son ensemble ne présente pas beaucoup de surprises. Il y a plusieurs similitudes avec la version actuelle des règles édictées par l'AMF, notamment avec la Ligne directrice sur les saines pratiques commerciales. On note, par ailleurs, que la rédaction du document donne l'impression qu'il a été rédigé pour le secteur de l'assurance de personnes.

Nous comprenons que l'AMF a indiqué son intention de faire une mise à jour des règles de traitement équitable des clients après la fin des consultations du CCRRA. La CADD s'attend donc à ce que l'AMF harmonise la Ligne directrice sur les saines pratiques commerciales avec la directive du CCRRA.

La rédaction du document est très 'québécoise' et on s'interroge sur l'impact d'une telle rédaction sur l'adoption éventuelle des règles dans les autres provinces. On ne retrouve pas dans le document d'attentes fermes envers les régulateurs provinciaux afin qu'ils s'engagent fermement à mettre en place des règles de conduite, quant au traitement équitable des clients, qui sont cohérentes avec les orientations du CCRRA. La CADD est d'avis qu'un tel engagement devrait être requis de la part de l'ensemble des régulateurs provinciaux afin d'assurer une cohérence et de faciliter la mise en application des règles par les institutions financières et leur réseau de distribution.

Question 2 (Responsabilités des agents et des représentants):

> La présente directive permet-elle d'atteindre un bon équilibre entre les rôles et responsabilités des assureurs, des sociétés de distribution, des agents et des représentants?

Les règles proposées par la directive mettent, à plusieurs égards, l'emphase sur les responsabilités de l'assureur, au point où il devient en pratique l'unique responsable de l'application de ces règles. La CADD est d'avis que la responsabilité devrait être partagée avec les intermédiaires. De fait, le traitement équitable des consommateurs est une responsabilité partagée entre tous les intervenants impliqués auprès du client dans le cycle de vie des produits et la directive doit apporter les nuances nécessaires à cet égard. On indique à un seul endroit que la responsabilité doit être partagée, mais cette précision parait insuffisante tant les obligations énumérées dans le document semblent échoir uniquement aux assureurs.

Il faut éviter de se retrouver dans un environnement où l'assureur est le seul en charge de la supervision de son réseau de distribution. Bien que nous comprenions que l'assureur a une part

de responsabilité, nous croyons qu'il demeure nécessaire de maintenir le distributeur imputable de ses actes et des actes de ses employés afin d'éviter toute déresponsabilisation de la part de ce type d'intervenant du marché. Il importe également de s'assurer de préserver la responsabilité de supervision des régulateurs par rapport à la distribution en général pour assurer un certain contrôle et une bonne compréhension de ce qui est fait dans l'industrie.

La CADD est d'avis qu'une approche équilibrée doit être privilégiée quant aux rôles d'encadrement, de contrôle et de surveillance que peuvent jouer les distributeurs, les assureurs et les autorités réglementaires.

Certains éléments ne tiennent pas compte de la LDPSF et de la Loi sur les assurances, notamment en matière de responsabilités des différents intervenants impliqués dans la chaîne de distribution. Dans le contexte législatif du Québec, ce sont les cabinets qui sont responsables du service à la clientèle, pas les assureurs.

Par ailleurs, dans le document l'impartition est abordée en terme très vague et vaste. Or, cette notion devrait être expliquée plus spécifiquement ainsi que la nature de l'impartition qu'on entend viser.

Question 3 (Responsabilité de superviser les intermédiaires):

> Le CCRRA et les OCRA sont conscients que, dans certains secteurs, l'introduction de la présente directive peut soulever des questions quant à la possibilité que des intermédiaires fassent l'objet de plusieurs audits de la part d'organismes de réglementation, d'organismes d'autoréglementation et d'assureurs au cours d'une année donnée. Ils apporteront les clarifications nécessaires et invitent les parties prenantes à soumettre leurs commentaires.

Cette question est difficile à répondre tant que la définition d'intermédiaire n'aura pas été éclaircie comme suggéré plus haut. On s'interroge également sur l'application de la directive aux tierces parties administratrices (TPA).

Ceci dit, on semble vouloir transférer beaucoup de responsabilités de supervision à l'assureur-manufacturier. Il ne faut pas oublier que les régulateurs jouent un rôle important par rapport aux intermédiaires. La supervision effectuée par les assureurs ne saurait remplacer celle requise des régulateurs.

Par ailleurs, nous nous attendons à ce que les régulateurs consultent l'industrie et notamment les assureurs, afin de déterminer la meilleure avenue pour introduire la directive et les lignes directrices qui en découleront auprès des intermédiaires.

2. Commentaires détaillés

Nous remarquons qu'il existe des disparités entre la législation actuelle, les règlements ou d'autres lignes directrices et la directive proposée par le CCRRA. Ces situations seront soulignées, lorsqu'applicable, dans le cadre des commentaires spécifiques à chacune des sections de la directive.

- **Page 7 – Conduite des activités**

On parle de produit adapté aux types de consommateurs. Cette notion de "types de consommateurs" est inédite en assurance de dommages au Québec. À notre avis, les régulateurs doivent faire preuve de prudence avant d'introduire des concepts complètement nouveaux dans un secteur d'activité donné, comme c'est le cas ici.

L'impact de l'introduction de cette notion, qui n'a fait l'objet d'aucune discussion formelle à ce jour dans le domaine de l'industrie de l'assurance de dommages, reste à déterminer. Nous estimons qu'une revue complète des impacts pratiques de l'introduction de cette notion de "types de consommateurs" devrait être entreprise avant d'y référer formellement dans une directive du CCRRA.

- **Page 8 – Traitement équitable des clients**

4eme point : Il y aurait lieu de spécifier ce qu'on entend par assurance de grande qualité, sinon il sera impossible de mettre ce concept en pratique. La portée de ce point est difficile à cerner en lien avec les attentes en matière de supervision.

- **Page 9 – Culture d'entreprise**

Lorsqu'on parle d'indicateurs mesurés, surveillés et axés sur le cycle d'amélioration, est-ce qu'on inclut les données sur les plaintes ? Si tel est le cas, nous sommes d'avis que les plaintes, prises dans un contexte isolé, ne sont pas un indicateur fiable pour mesurer le traitement équitable des clients. En effet, le fait qu'un client porte plainte ne signifie pas automatiquement qu'il a été traité inéquitablement. Il peut porter plainte pour une multitude d'autres raisons telles que, par exemple, l'efficacité opérationnelle des agents d'indemnisation. À l'inverse, ce n'est pas parce qu'un client ne porte pas plainte qu'il a nécessairement été traité équitablement.

Les assureurs directs s'attendent à ce que le régulateur définisse ce qu'il entend par «indicateurs», notamment en fournissant des exemples, sans toutefois imposer à toute l'industrie des indicateurs standardisés.

Il faudrait aussi s'assurer que l'introduction de tels indicateurs n'engendre pas la création d'attentes impossibles à rencontrer de la part des assureurs et intermédiaires. Les assureurs sont notamment tributaires de leurs systèmes informatiques pour générer des données, et la modernisation de ces systèmes peut s'avérer extrêmement couteuse. Un type de données peut en théorie s'avérer un bon indicateur, mais être impossible à générer par les assureurs. Les

assureurs doivent être consultés par les régulateurs afin de cerner adéquatement cette notion d'«indicateur».

Il est proposé d'enlever les mots «au moyen d'indicateurs» dans le dernier paragraphe :

> «L'organisation comprend l'importance de communiquer l'atteinte des résultats attendus à tous les paliers ~~au moyen d'indicateurs~~ en matière de traitement équitable des clients qui sont mesurés, surveillés et axés sur un cycle d'amélioration continue.»

- **Page 10 – Relations entre les assureurs et les intermédiaires**

En précisant les éléments que devraient inclure les ententes, on s'éloigne de la directive basée sur les principes. On semble également vouloir transférer les responsabilités de surveillance des intermédiaires dévolues aux régulateurs vers les assureurs. Cela deviendra lourd à gérer pour ces derniers. Tel que mentionné ci-haut, une approche équilibrée doit être privilégiée en ce qui a trait à la supervision des intermédiaires, le poids de celle-ci ne devant pas reposer uniquement sur les épaules des assureurs.

Dans le premier paragraphe on parle de : « stratégies claires de sélection, de nomination et de gestion d'ententes avec les intermédiaires ». Il y aurait lieu de préciser ce qu'on entend par nomination d'un intermédiaire.

- **Page 11 – Relations avec les organismes de réglementation**

Les attentes envers les assureurs en matière de divulgation semblent disproportionnées quant à leur rôle en matière de distribution de produits d'assurance. Le libellé de cette section suggère que l'essentiel des responsabilités en matière de divulgation est dévolu aux assureurs. Or, il importe de rappeler que le principal point de contact avec les clients demeure l'intermédiaire, pas l'assureur. Par ailleurs, dans cette section on fait référence aux assureurs et aux sociétés de distribution et ensuite aux intermédiaires. Il y aurait lieu d'être plus cohérent dans l'utilisation de la terminologie.

Au deuxième paragraphe on peut lire que « *tout intermédiaire avec lequel ils ont fait affaire et qui pourrait ne pas être apte* » la notion d'"intermédiaire apte" devrait être définie.

De façon générale, les exigences de communication énoncées dans cette section vont au-delà des attentes actuelles en matière de communication, par les assureurs aux régulateurs, de la conduite des intermédiaires.

- **Page 12 – Résultats recherchés pour les clients et attentes**

Est-ce qu'il y a une attente quant aux résultats qui sont recherchés ? Les membres de la CADD s'attendent à ce que le régulateur laisse aux assureurs le soin de développer eux-mêmes les indicateurs adaptés à leur entreprise.

On parle en termes trop génériques quand on parle d' «éthique et d'intégrité élevé».

Au niveau des attentes décrites à cette section, il nous semble, d'une part, que certaines d'entre elles ne relèvent pas directement du conseil. C'est le cas notamment de l'élaboration et de la mise en œuvre de politiques et de procédures à l'égard du traitement équitable. À cet égard, le rôle du conseil est de s'assurer que de telles pratiques soient implantées, sans en être l'auteur. D'autre part, nous sommes d'avis que les informations utilisées par le conseil ne devraient pas se limiter aux données et indicateurs.

Il est ainsi proposé de modifier de la façon suivante le paragraphe qui traite des responsabilités du CA et de la haute direction :

> *«La responsabilité globale du traitement équitable des clients incombe au conseil et à la haute direction»*

Il est également proposé de modifier le deuxième item :

> *«L'information relative à la gestion comprend toute celle utilisée par le conseil et la haute direction pour faire ce qui suit :»*

- **Page 13 – Conflits d'intérêts**

À la lecture de cette section, il est difficile de voir comment elle s'applique aux assureurs de dommages et d'évaluer la portée de ce qui est attendu des assureurs.

À quelle situation fait-on référence, dans le contexte de l'assurance de dommages, lorsqu'on évoque des conflits d'intérêts qui découlent de la situation suivante ?: « *l'intermédiaire ou l'assureur a une obligation envers au moins deux clients relativement à des questions identiques ou reliées, un intérêt dans l'issue d'un service rendu ou d'une opération réalisée pour le compte d'un client ou une influence importante sur la décision du client*».

Il convient de s'assurer que chaque situation est évaluée dans une perspective large, en tenant compte des interactions entre les assureurs, les sociétés de distribution, les agents et les représentants, afin d'avoir un système viable, dans son ensemble, qui règlera les conflits d'intérêts de façon appropriée.

Par ailleurs, on semble ici encore vouloir transférer beaucoup de responsabilités aux assureurs.

- **Page 14 – Impartition**

La notion d'impartition est reprise ailleurs dans le document et manque de cohérence dans son ensemble. Le libellé utilisé est beaucoup trop large et devrait uniquement viser les cas d'impartition qui ont un impact direct sur le client. À tire d'exemple, l'impartition des services informatiques n'a pas d'impact direct sur le client. Par contre, l'impartition de l'évaluation des dommages relatifs à un sinistre a un impact direct sur le client.

En outre, l'impartition fait déjà l'objet d'une ligne directrice spécifique de l'AMF. Il y aurait lieu d'y regrouper toutes les attentes relatives à l'impartition, afin d'éviter que ces dernières se retrouvent dans plusieurs documents réglementaires.

- **Page 15 – Conception d'un produit d'assurance**

Cette section devrait être harmonisée avec la réglementation actuellement en vigueur. De plus les lignes directrices de cette section nous semblent difficiles à mettre en pratique dans le contexte de distribution en ligne.

En assurance de dommages, on voit difficilement comment pourrait être mis en pratique la notion de refuser d'assurer un client. En effet, dans un contexte d'assurance de dommages, les notions d'interdire et limiter un produit d'assurance paraissent inappropriées et inapplicables. À notre avis, ces notions devraient être reformulées autour de l'obligation actuelle des agents d'offrir au client un produit qui correspond à ses besoins.

- **Page 16 – Stratégies de distribution**

La Ligne directrice sur les saines pratiques commerciales de l'AMF et la Loi sur la distribution des produits et services financiers (LPDSF) et les règlements afférents encadrent la distribution des produits d'assurance. Les rôles et responsabilités des assureurs tels que décrits dans la directive sont largement supérieurs à ce que prévoit la législation actuelle et on semble minimiser les responsabilités des intermédiaires faisant partie du réseau de distribution.

- **Page 17 – Communication d'information au client**

Il est difficile d'évaluer ce qui est attendu des assureurs dans cette section. Est-ce que cela inclut la publicité ? Est-ce que tout doit être fourni par écrit sur demande ? Les attentes énoncées ne sont pas adaptées au commerce électronique et semblent davantage destinées à l'assurance de personnes. Les attentes énoncées dans cette section vont également au-delà de ce qui est prévu dans le Code civil du Québec.

Il y aurait lieu de préciser l'information qui est requise et à quel moment celle-ci est requise. Nous suggérons aussi de préciser les attentes quant au niveau de détail attendu ;

> « le degré de détail de l'information requise variera en fonction des connaissances et de l'expérience d'un client ».

- **Page 18 – Promotion des produits**

La Ligne directrice sur les saines pratiques commerciales de l'AMF et la réglementation actuelle encadrent déjà la promotion des produits d'assurance. La notion de « *information facile à comprendre* » sera difficile à mettre en application parce qu'elle est variable d'un individu à l'autre. Cette notion doit être davantage définie et expliquée.

Cette section sur la promotion des produits suscite plusieurs interrogations:

Est-ce que l'attente est de corriger ses propres documents ou de faire corriger ceux des autres joueurs de l'industrie ?

Est-ce que l'obligation de divulgation s'adresse à l'assureur ainsi qu'à tous les manufacturiers (autres assureurs) avec qui l'assureur principal fait affaire pour certains produits ?

Est-ce qu'on s'attend également à ce que les assureurs surveillent les activités de tous ceux qui peuvent parler en leur nom ? Si tel est le cas, cela va au-delà de ce qui nous apparaît raisonnable.

Ici encore, les responsabilités énumérées dans cette section semblent reposer uniquement sur les épaules des assureurs, ce qui a pour effet de déresponsabiliser les autres intervenants impliqués dans la distribution de produits d'assurance.

- **Page 19 – Conseils**

La notion de conseil prodigué par l'agent est déjà encadrée dans la LDPSF. L'assureur n'est pas en relation directe avec le client, c'est l'intermédiaire qui donne le conseil.

La notion de « capacité de se payer le produit » pourrait nécessiter plusieurs autres questions afin d'être en mesure de l'estimer, ce qui pourrait mener à recueillir des renseignements personnels non nécessaires à la présentation d'une soumission et présenter des enjeux en matière de protection des renseignements personnels.

Il y aurait lieu de préciser ce qu'on entend par « ..le cas de conseils qui ne sont pas exigés par la loi mais que le client s'attend normalement à recevoir et auxquels il peut renoncer ».

- **Page 20 – Communication d'information aux titulaires de police**

Les attentes énoncées entrecoupent les attentes légales envers les assureurs, le code de déontologie des agents, la LPDSF et les directives sur le commerce électronique. Il faudrait donc harmoniser le tout afin d'éviter les contradictions.

Le libellé utilisé dans cette section précise les obligations dévolues aux assureurs en matière de communication d'information pouvant avoir un impact sur le risque, mais on fait totalement abstraction des obligations des assurés à cet égard. Il importe de rappeler qu'il incombe aux assurés de communiquer à leur assureur les circonstances pouvant avoir un impact important sur le risque assuré. Nous ne croyons pas que le projet de ligne directrice doive avoir pour effet de modifier ce principe reconnu depuis longtemps au Québec. Le silence sur les obligations des assurés est de nature à semer un doute à cet égard.

- **Page 21 – Traitement et règlement des demandes d'indemnisation**

Le règlement sur les saines pratiques commerciales de l'AMF et la Loi sur la distribution des produits et services financiers (LPDSF) encadrent la distribution et le traitement des demandes d'indemnisation. De plus, les rôles et responsabilités des assureurs sont largement supérieurs à ce que prévoit la législation actuelle et recoupent des responsabilités qui sont dévolues aux experts en sinistres.

- **Page 22 – Traitement des plaintes et règlement des différends**

Les définitions de plaintes et d'insatisfactions ne sont pas cohérentes avec les définitions de l'AMF. Tel que mentionné plus haut, nous sommes d'avis que les plaintes ne sont pas un indicateur fiable pour mesurer le traitement équitable des clients.

- **Page 23 – Protection des renseignements personnels**

La protection des renseignements personnels est déjà bien encadrée par des lois et règlements existants. Cette section n'apporte rien de nouveau et risque d'introduire de la confusion dans la manière dont sont gérés les enjeux relatifs à la vie privée.

3. Conclusion

La Corporation des assureurs de dommages du Québec (Cadd) remercie le Conseil canadien des responsables de la réglementation d'assurance (CCRRA) pour son invitation à commenter le projet de directive sur le traitement équitable des clients.

Si des informations ou précisions additionnelles étaient requises suite à la lecture de ce document, nous vous invitons à contacter M. Denis Côté, directeur général de la corporation, au 581 986-9762 ou par courriel à Denis.cote@outlook.com .

CADRI
CANADIAN ASSOCIATION
OF DIRECT RELATIONSHIP
INSURERS

18 June 2018

Mr. Patrick Déry
Chairman
Canadian Council of Insurance Regulators ccir-ccrra@fsco.gov.on.ca
5160 Yonge St., Toronto, ON, M2N 6L9

Dear Mr. Déry,

Re: CCIR/CISRO Guidance – Conduct of Insurance Business and Fair Treatment of Customers

Introduction

CADRI appreciates the opportunity to participate in consultations to refine CCIR's guidance to industry on the fair treatment of consumers. Treating consumers fairly is of utmost importance to CADRI members. Each has internal codes of conduct, policies, procedures and has made a significant reputational investment in ensuring its employees put customers' needs first.

First, let us congratulate CCIR and the Canadian Insurance Services Regulatory Organization (CISRO) in joining forces behind the guidance. This will encourage a consistent experience for consumers and is a step toward much-needed regulatory harmonization. We are very supportive of CCIR and CISRO's intent to create a national standard for a principles based approach to the fair treatment of consumers. We also understand that publishing these guidelines will place Canada in compliance with international standards.

CADRI was invited to review a draft of this guidance earlier this year. At that time, we focused on four areas of concern:

1. Harmonization of compliance between CCIR and its members,
2. Recognition that the guidance details activities governed by existing legislation and regulations,
3. Clarification of the term intermediaries and the scope of the guidelines as they pertain to outsourcing to partners in the value chain, and
4. Assumptions rooted in traditional rather than contemporary business models.

In the majority, the guidance is the same as originally circulated. To that extent, our comments, dated March 8th 2018, stand. At this point we will restrict our observations to new developments in the guidance.

CCIR's amendments and questions

Does the guidance present contradictions with existing or future instruments related to fair treatment?

It is hard to forecast how this guidance might contradict future instruments. We know that the Financial Services Commission of Ontario has guidelines in development. The very fact that Ontario is contemplating a separately-developed and differently-structured set of guidelines sets in place duplicative, and possibly contradictory expectations, for insurers.

Does the guidance strike the right balance between the roles and responsibilities of insurers, distribution firms, agents and representatives?

CADRI had previously raised issues about CCIR's intentions relative to the terms "intermediaries" versus outsourcing to preferred partners in the insurance supply chain.

On the question of Agents and Representatives' responsibilities, we understand that the definition varies between CCIR and the international body, the International Association of Insurance Supervisors (IAIS). Moreover, in the IAIS guidelines – Insurance Core Principles -- there is clarification that the insurer is not the "ultimate risk carrier" (CCIR) but that "the good conduct in respect of the relevant service(s) is a shared responsibility of those involved" (ICP). We, therefore recommend that CCIR revisit the definition to better align with the ICP to ensure that all parties – intermediaries and third-party suppliers – bear equal responsibility for consumer protection.

Relative to outsourcing, we have noted that CCIR has qualified the functions against which the guidance may apply. However, the inclusion of "policy servicing" is still broad enough to lead us to question whether insurers are being asked to regulate their preferred partners in health care, auto repair etc.

Certainly, we support, and it is good business practice to "re-assess … existing arrangements upon renewal to ensure they contribute to the achievement of fair Customers outcomes."

CCIR and CISRO are mindful that in some industry sectors the introduction of this guidance may raise questions about the possibility that intermediaries may be subject to multiple audits… CCIR will address the need for clarification and invite stakeholders to comment.

CADRI embraces CCIR's intent in the section on "Relationships between insurers and intermediaries". However, the spectre of "multiple audits" of any participant in the insurance value chain is duplicative and adds cost to operations and ultimately to the expense paid by consumers.

In conclusion

Treating consumers fairly is a principle that underpins the insurer-customer relationship.

We continue to urge CCIR to encourage its members to adopt this guidance instead of developing their own codes.

In addition, we submit that CCIR's guidance would greatly benefit from recognition of the respective risk-bearing responsibilities of the players throughout the insurance value chain. In this light, we recommend that CCIR align its definitions with the IAIS Insurance Core Principles.

Finally, whether through outsourcing or preferred partner networks, CADRI members seek to mitigate reputational risk from questionable business practices. Therefore, the marketplace encourages ethical treatment of consumers. However, seeking to have insurers regulate these partnerships remains unfeasible. We continue to recommend that CCIR review the guidance as it pertains to outsourcing with the intention of narrowing its scope to a practical framework which applies to activities under direct control of the insurer.

CADRI appreciates the opportunity to comment on the guidance developed by CCIR to conform to international standards.

Yours sincerely,



Alain Thibault
CEO and Chairperson

cc: Tony Toy, Policy Manager, CCIR tony.toy@fsco.gov.on.ca

cafii acifa
The Canadian Association of Financial Institutions in Insurance | Association canadienne des institutions financières en assurance

802-21 St. Clair Ave E, Toronto, ON M4T 1L9
☎ (416) 494-9224 (416) 967-6320
info@cafii.com www.cafii.com

June 18, 2018

Ms. Louise Gauthier
Chair, CCIR/CISRO Fair Treatment of Customers (FTC) Working Group
Attention: ccirccrra@fsco.gov.on.ca

Subject: **CCIR/CISRO Guidance—Conduct of Insurance Business and Fair Treatment of Customers**

Dear Ms. Gauthier:

The Canadian Association of Financial Institutions in Insurance (CAFII) is pleased to offer its general observations and specific comments on the CCIR/CISRO Guidance – Conduct of Insurance Business and Fair Treatment of Customers consultation document.

General Comments

Our Association appreciates the emphasis which CCIR/CISRO is placing on the fundamental principle that customers need to be treated fairly; and we applaud the fact that the two regulatory organizations are working together in the interests of harmonization. We agree with the basic thrust of the draft Guidance, including that the interests of customers must be paramount and that information about financial transactions must be communicated in an accurate and transparent manner. We are generally comfortable with and support the draft Guidance because it is rooted in a principles-based approach, rather than prescriptive rules. We also find it helpful that the document is positioned at a high level, while still providing sufficient detail and clarity to ensure its usefulness.

CAFII agrees that treating customers fairly means putting their interests first and taking the time to understand their needs, as well as making every reasonable effort to ensure that they understand the benefits and limitations of the product(s) being considered, along with their rights and responsibilities as customers.

Definitions

We recommend that the definitions and terms used in the CCIR/CISRO Guidance align as closely as possible with those utilized in the International Association of Insurance Supervisors' Insurance Core Principles (ICPs) 18 and 19. In that connection, we believe that the Guidance's definitions of "Distribution Firm" and "Agent Firm" – which are not found in the ICPs -- are confusing; and we recommend that they be removed entirely.

Preamble

We recommend that CCIR/CISRO state clearly in the preamble that in the interests of clarity and consistency for industry participants, harmonization across jurisdictions, and, ultimately, for maximum customer protection, CCIR and CISRO member policy-makers and regulators are strongly encouraged to adopt the CCIR/CISRO FTC Guidance as their own provincial/territorial guideline, unless there is a compelling need or reason for adopting one that is unique to their particular province or territory. In addition, it would helpful to state in the preamble that in any such case, the unique FTC guideline should be aligned with the CCIR/CISRO document to the maximum degree possible, and any differences should be explained, with suggestions on how organizations are expected to reconcile differences between the CCIR/CISRO Guidance and any separate provincial/territorial guideline.

Even where different jurisdictions' guidelines have similar objectives, small differences in emphasis and language can produce significant, and often unnecessary, additional burden on the compliance efforts of organizations.

Question #1: Does this guidance present contradictions with existing or future local instruments related to fair treatment of customers?

Currently, only Quebec (*Sound Commercial Practices Guideline, June 2013*) has its own version of a Fair Treatment of Customers Guideline in place, which it is expected to update in the summer of 2018, while Ontario is expected to release an official and final version of *its Treating Financial Consumers Fairly Guideline* in the near future, having completed a consultation period on a draft version of the document in May 2018.

We do not see any significant contradictions between the CCIR/CISRO Guidance and these other two provincial guidelines; and it is precisely for that reason -- although they are all structured, written, and organized in different ways --that we question the purpose and efficacy of stating expectations of the industry in different ways, when the customer protection objectives are similar, if not identical, across all jurisdictions.

Question #2: Does this guidance strike the right balance between roles and responsibilities of insurers, distribution firms, agents and representatives?

We concur with the CCIR/CISRO Guidance's recognition that while insurers bear ultimate responsibility for ensuring fair treatment of customers, and insurers need to have careful oversight of their intermediaries, distributors, agents and representatives, that does not absolve those entities of responsibility for being in full compliance with the expectations of this Guidance themselves. Our insurer members make every effort to ensure that their distributors, agents, and representatives practise fair treatment of customers, including where necessary by incorporating specific language to that effect in their contracts with such third parties.

Scope

With respect to the section on scope—as well as to the preceding point on Agents and Representatives' responsibilities—we again encourage the use of language that is aligned as closely as possible with ICP 19. In that connection, we note that ICP 19.08 states that "the insurer has a responsibility for good conduct throughout the insurance life-cycle, as it is the insurer that is the ultimate risk carrier. *However, where more than one party is involved in the design, marketing, distribution and policy servicing of insurance products, the good conduct in respect of the relevant service(s) is a shared responsibility of those involved"* (the text in italics is what is missing in the draft Guidance). The section that reads "In the provision of products and services, Insurers should, upon first contact with Customers, make a commitment to them and hold it throughout the life-cycle of the product, regardless of the distribution channel used by the insurer" would then become a separate paragraph in the Guidance.

Conduct of Business

It is our view that the "tone at the top" is a critical feature of a business culture that fosters fair treatment of customers. We would therefore encourage, within the Guidance, the addition of an assertion that the business culture of an organization should consistently promote the importance of customers, and that the leadership of the organization needs to speak and act in accordance with that principle.

Explicitly specifying those features as part-and-parcel of an exemplary business culture would provide a valuable reinforcement of the important observations made in the section on "Corporate Culture."

With respect to the 7th bullet in this section -- which states: "take into account a Customer's disclosed circumstances when that customer receives advice and before concluding insurance contracts"—since not all products have an advice component, we suggest slightly modifying this statement as follows: "take into account a Customer's disclosed circumstances when providing that customer with advice for applicable products and before concluding insurance contracts."

With respect to the bullet that reads "have contractual arrangements between each other, that ensure fair treatment of Customers," we recommend the following alternative text: "ensure contractual relationships related to carrying out insurance business provide for the fair treatment of customers."

Fair Treatment of Customers

With respect to the 4th bullet and its words "ensuring that any advice given is of a high quality," since not all products require advice, we suggest alternative language such as "ensuring that any advice given, when applicable, is of a high quality."

Corporate Culture

We would encourage greater clarity within the Guidance around what "indicators" refers to—for example, does this include complaints? We would also encourage the use of language that is explicit about CCIR/CISRO's taking a risk-based approach to the Guidance, consistent, for example, with the approach taken by OSFI in its sound business and financial practices-related *Guideline E-13: Regulatory Compliance Management (RCM)*.

We feel that the statement "All levels of the Organization embrace the corporate culture and recognize the risks that could hinder the achievement of expected results regarding the fair treatment of Customers as well as the means to mitigate such risks" could be written in clearer language that is easier to follow.

We would suggest replacing the statement "The Organization understands the importance of reporting the achievement of expected results throughout the organization, using indicators in terms of fair treatment of Customers that are measured, monitored and driven by a cycle of continuous improvement" with the following alternative statement: "Organizations are expected to monitor their FTC activities and strive for continuous improvement. They are also expected to understand the importance of reporting their measured activities related to the fair treatment of customers across the organization."

Question #3: CCIR and CISRO are mindful that in some industry sectors, the introduction of this guidance may raise questions about the possibility that intermediaries may be subject to multiple audits by regulators, self-regulatory organizations and insurers in a given year. CCIR and CISRO will address any need for clarification and invite stakeholders to comment.

We appreciate the recognition that regulators must deploy an even-handed and reasonable approach to audits of industry players. Audits are only one mechanism available for monitoring compliance with regulatory expectations.

Relationships with Regulatory Authorities

The statement that insurers are expected to communicate and report to regulatory authorities about intermediaries that are unsuitable or not duly authorized should reference existing, relevant industry guidelines, legislation, and regulations, including CLHIA Guideline 8.

With respect to the bullet which reads "implement the necessary mechanisms to promptly advise regulatory authorities if they are likely to sustain serious harm due to a major operational incident that could jeopardize the interests or rights of Customers and the organization's reputation," we recommend deleting the opening words "implement the necessary mechanisms to promptly."

Customer outcomes and expectations

We request that clarification be provided with respect to the final bullet which reads as follows: "Remuneration, reward strategies and evaluation of performance take into account the contribution made to achieving outcomes in terms of fair treatment of Customers." We recommend the following ICP 19 statement which would provide clearer guidance in this area: "Where compensation structures do not align the interests of the insurer and intermediary, including those of the individuals carrying out intermediation activity, with the interests of the customer, they can encourage behaviour that results in unsuitable sales or other breach of the insurer's or intermediary's duty of care towards the customer."

Conflicts of Interest

In the opening statement, we recommend that the language be amended to say the following: "CCIR and CISRO expect that any potential or actual conflicts of interest, which cannot be properly managed, be avoided and not affect the fair treatment of Customers."

In addition, the language in the second to last bullet "and does not put an unreasonable onus on the Customer" is vague; and we recommend the use of more precise language. We do not believe that remuneration should be viewed as creating a conflict of interest without looking at the broader context of other factors and controls. We recommend language that is closely aligned with ICP 19, with a particular focus on the need to manage conflicts of interest.

Outsourcing

There is a section on Outsourcing, and another section on Intermediaries. It may make sense to combine these sections into one. In the bullet which reads "Retain full and ultimate responsibility for those outsourced functions and, consequently, monitor them accordingly," we recommend deleting "full and" from the text.

Design of Insurance Product

In the second bullet, we recommend replacing "Product development" with "The product development process." Regarding the section which reads "target the Consumers for whose needs the product is likely to be appropriate, while preventing or limiting, access by Consumers for whom the product is likely to be inappropriate," we would suggest that it is not "access by Consumers" but rather "sales to Consumers" that is the critical issue.

Disclosure to Customer

We recommend clarifications to two sections, perhaps using the following wording: "The information provided to customers should be sufficient to enable Customers to understand the characteristics of the product they are buying and help them understand whether and how it may meet their needs"; and "be accessible in written format, on paper or another durable medium, such as digital."

Product Promotion

We recommend that greater clarity be provided around the following statement: “To this end, the Insurer ensures that any promotional material regarding its products is reviewed by independent functions prior to being disseminated.”

Advice

Not all channels offer advice; yet the Guidance, as written, does not adequately recognize the marketplace reality that some alternate distribution channels are not advice-based. We encourage alignment with ICP 19.8.4, which notes that “the supervisor may wish to specify particular types of policies or customers for which advice is not required to be given.” In addition, the sentence “Before giving advice, appropriate information should be sought from Customers for assessing their insurance demands and needs” would be more easily understood if “demands” was replaced by “objectives.”

Claims Handling and Settlement

It would be helpful to clarify what is meant by "accessible" and what is the procedure to which this is referring. With respect to the comment about “common timelines” in the second bullet, common timelines could be fairly challenging depending upon the product because in order to properly adjudicate a claim, documentation is required (from the customer or other parties). As such, a time period can't necessarily be defined since it depends upon when the documentation is received.

Concluding Observations

We believe that a critical building block for enhancing the fair treatment of customers is raising their level of financial literacy. Customer education around financial literacy is a shared, multi-stakeholder responsibility. While customers are ultimately responsible for their purchase decisions, governments and regulators have an important role to play, alongside the industry, in providing education which can help customers better understand the benefits and limitations of products and improve their financial literacy.

In that connection, we believe that in their communications, CCIR and CISRO should emphasize, where appropriate, customers’ responsibilities with respect to financial and insurance products, in addition to their rights. CAFII members are committed to playing their part by ensuring that communications are easy to understand and written in plain language wherever possible. Our members will continue to make efforts to ensure the ease of understanding of our communications, but we believe it is also important to emphasize that customers need to read their policies, understand their features, and ask questions if there is anything they are uncertain about.

CAFII members place strong emphasis on ethical behaviour: not just on complying with regulations – as important as that is – but in a recognition that the principles which the regulations uphold are fundamental to our own businesses. We provide comprehensive and rigorous training to our own employees and to the staffs of suppliers we may engage to interact with consumers and customers on our behalf, such as third party administrators. We also have rigorous monitoring and controls; and together these are examples of areas where CAFII members dedicate significant resources to upholding the principles set out in the CCIR/CISRO Fair Treatment of Customers (FTC) Guidance.

With respect to any new expectations of the industry which may be introduced in the finalized FTC Guidance, we ask that a reasonable period of time for implementation be provided, with a minimum of 90 days provided for adjusting to new regulations; and that a longer period of at least six to nine months be built-in for implementing changes that require modifications to IT systems or processes.

CAFII appreciates the opportunity to comment on the CCIR/CISRO *Guidance—Conduct of Insurance Business and Fair Treatment of Customers* and we look forward to continued communication and input on policy matters. Should you require further information from CAFII or wish to meet with representatives of our Association at any time, please contact Brendan Wycks, CAFII Co-Executive Director, at brendan.wycks@cafii.com or 647.218.8243.

Sincerely,



Peter Thorn
Board Secretary and Chair, Executive Operations Committee

About CAFII

CAFII is a not-for-profit industry Association dedicated to the development of an open and flexible insurance marketplace. Our Association was established in 1997 to create a voice for financial institutions involved in selling insurance through a variety of distribution channels. Our members provide insurance through client contact centres, agents and brokers, travel agents, direct mail, branches of financial institutions, and the internet.

CAFII believes consumers are best served when they have meaningful choice in the purchase of insurance products and services. Our members offer travel, life, health, property and casualty, and creditor's group insurance across Canada. In particular, creditor's group insurance and travel insurance are the product lines of primary focus for CAFII as our members' common ground.

CAFII's diverse membership enables our Association to take a broad view of the regulatory regime governing the insurance marketplace. We work with government and regulators (primarily provincial/territorial) to develop a legislative and regulatory framework for the insurance sector that helps ensure Canadian consumers get the insurance products that suit their needs. Our aim is to ensure appropriate standards are in place for the distribution and marketing of all insurance products and services.

CAFII is currently the only Canadian Association with members involved in all major lines of personal insurance. Our members are the insurance arms of Canada's major financial institutions – BMO Insurance; CIBC Insurance; Desjardins Financial Security; RBC Insurance; ScotiaLife Financial; and TD Insurance – along with major industry players American Express, Assurant, Canadian Premier Life Insurance Company, CUMIS Services Incorporated, Manulife (The Manufacturers Life Insurance Company), and The Canada Life Assurance Company.

CAILBA
Canadian Association of
Independent Life Brokerage Agencies

60 Adelaide St. East,
Suite 1300, Toronto,
ON, M5C 3E4

T 416-548-4223
F 416-340-9977
E info@CAILBA.com

June 18, 2018

Via email to: CCIR Secretariat at

ccir-ccrra@fsco.gov.on.ca.

Re: Comments on CCIR/CISRO Fair Treatment of Consumers(FTC) guidance

The Canadian Association of Independent Life Brokerage Agencies (CAILBA) wishes to comment on the CCIR/CISRO FTC guidance.

CAILBA is a voluntary trade association that acts as the single voice for Managing General Agents (MGAs) across Canada. Working closely with our insurance carrier counterparts, we help our members to stay abreast of change and to effectively implement compliance and regulatory updates that support fair treatment of consumers. We foster best practices across Canada in order to better the insurance industry and build unity in the MGA community nationally.

On behalf of the Board and our membership, CAILBA would like to thank CCIR/CISRO for the opportunity to comment and participate in the public consultations on the Conduct of Insurance Business and Fair Treatment of Customers guidance document.

We believe that while modelled after international standards developed by the IAIS, CCIR/CISRO has successfully achieved its goal of guidance tailored to the specifics of the Canadian insurance market. CAILBA feels the expectations have been made clear and are thoughtful, taking into account the various market participants and reflects how they interact with customers. From CAIBA's perspective, it respects the varied and unique nature, size and complexity of our member's activities in the distribution of financial products and services.

CAILBA appreciates the concern voiced regarding harmonization and the risk of contradiction with existing or future local regulatory frameworks. In response to **Question #1** "Does this guidance present contradictions with existing or future local instruments related to fair treatment of Customers" CAILBA doesn't believe this to be the case. It's CAILBA's hope that jurisdictions will rely on this guidance, or their existing guidance perhaps with some updating as needed, rather than creating their own guidance.

CAILBA
Canadian Association of Independent Life Brokerage Agencies

Question #2 asks "Does this guidance strike the right balance between roles and responsibilities of Insurers, Distribution Firms, agents and representatives?"
Generally, we believe it does. We appreciate the approach with clarification of expectations of specific entities. Our assumption is that Distribution Firms are intended to define MGAs. We have some concern that confusion may be caused by the current definition, which defines them to include sole proprietors, notwithstanding that some MGA contracts are held by sole proprietors.

Question #3 states "CCIR and CISRO are mindful that in some industry sectors, the introduction of this guidance may raise questions about the possibility that intermediaries may be subject to multiple audits by regulators, self-regulatory organizations and insurers in a given year. CCIR and CISRO will address any need for clarification and invite stakeholders to comment".
CAILBA does not feel this will be overly burdensome on any one entity. Harmonization of approach or process by those with oversight/supervision responsibilities, for example by use of common audit questionnaires, could relieve pressure felt here by those lucky enough to receive multiple requests.

The 'Advice' principle outlines specific accountabilities for insurers & intermediaries, then within that, specifically for Insurers & Distribution Firms. Regarding the reference to 'completing file reviews after the fact', CAILBA would like clarification that CCIR/CISRO expects these reviews would be risk-based, consistent with existing industry guidance and approaches.

CAILBA would like to take this opportunity to ask for CCIR/CISRO's formal support of industry best practices, like The Approach. For example, we like the references used at the top of pg. 23, Privacy protection. Similarly, more specific language could be added under 'Advice', in the text box at the top of pg. 19: "CCIR and CISRO expect that, when advice is given, it is done so under the parameters of industry best practices such as *The Approach*, and that Customers receive relevant advice before concluding the contract, taking into account the Customer's disclosed circumstances."

CAILBA looks forward to on-going dialogue, including having input with other stakeholders, on actioning the principles within this guidance.

Best regards,

Earleen Moulton
CAILBA Board, Regulatory Compliance

Eric Wachtel
CAILBA Board, Legislative Matters

June 15, 2018

BY EMAIL

Canadian Council of Insurance Regulators
Canadian Insurance Services Regulatory Organizations
c/o CCIR Secretariat
5160 Yonge Street, Box 85
Toronto ON M2N 6L9
E-mail : ccir-ccrra@fsco.gov.on.ca

Dear Sirs/Mesdames:

Re: **CCIR and CISRO Fair Treatment of Customers Guidance – Notice of Publication (the "Consultation")**

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to provide the following general comments on the Consultation.

We strongly support the dialogue started by the CCIR and CISRO to reiterate their expectations and align with best international practices. We are broadly supportive of many of the principles-based expectations with regard to the fair treatment of customers as set out in the proposed guidance. Regulation in general should be risk and principles-based, as well as technologically neutral and flexible. Consumers of financial products, including products in the insurance industry, should expect to receive reasonably consistent advice and information, regardless of the delivery channel.

We agree that the industry's focus must be on delivering strong consumer protection throughout the life-cycle of an insurance product. Consumers are directly impacted by improper advice from distributors that may lack appropriate training, and thus public confidence in the industry is undermined. The ability to access independent insurance advice is very important, especially given factors such as the aging population and other vulnerable investors.

[1]The CAC represents more than 15,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at http://www.cfasociety.org/cac. Our Code of Ethics and Standards of Professional Conduct can be found at http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx.

[2] CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 155,000 members in 165 countries, including more than 148,900 CFA charterholders and 149 member societies. For more information, visit www.cfainstitute.org.

One of the stated goals of the guidance is to find a balance between the roles and responsibilities of, among other parties, insurers and distribution firms. We agree it is a difficult balancing act, but note that many end users of insurance products rely heavily on the advice provided by insurance representatives, and may have little interaction with the insurer or any other party. With respect to outsourcing of tasks, the guidance explicitly notes that both insurers and distributions firms retain full and ultimate responsibility for those outsourced functions. To the extent issues for consumers are caused by intermediaries, the party who retained them should, in most cases (absent fraud or other circumstances that could not have been foreseen or controlled) remain responsible for those issues.

We look on a global basis at consumers of financial services holistically, including consumers of banking, securities and insurance products. We have previously provided comments to other regulators, including the Autorité des marchés financiers with respect to their review of potential conflicts of interest relating to the sale of insurance products. Insurance products play a large role in the financial well-being of retail investors. Canadian securities regulatory authorities have already mandated a number of changes in the distribution of securities products to address issues such as conflicts, and we believe these changes can and should be harmonized to the insurance sector. We note in particular that sales of insurance products are often made by dually-licensed salespersons, which exacerbates potential conflicts in that the salesperson might be incentivized to sell the lesser-regulated product. In addition, there are a number of hybrid investment products currently in the market which combine features of both securities and insurance products, leading to investor confusion with respect to the regulatory regime and realistic expectations of their advisors.

We look forward to the opportunity to comment further on any local consultations with a view to implementing the proposed guidance, at which time we may be in a position to comment on whether the specific proposals contradict a local regulatory framework.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council for*
Canadian CFA Institute Societies

The Canadian Advocacy Council for
Canadian CFA Institute Societies

June 18, 2018

Mr. Patrick Déry
Superintendant, Solvency, Autorité des marchés financiers and
Chair, Canadian Council of Insurance Regulators
2640 Laurier Boulevard, 6 étage
Québec, PQ
G1V 5C1

Via e-mail : ccir-ccrra@fsco.gov.on.ca

Dear Mr. Déry,

The Canadian Life and Health Insurance Association Inc. (CLHIA) appreciates the opportunity to comment on the Canadian Council of Insurance Regulators' (CCIR) and the Canadian Insurance Services Regulatory Organizations' (CISRO's) consultation document, *Guidance: Conduct of Insurance Business and Fair Treatment of Customers*.

The CLHIA represents life and health insurers accounting for 99% of the business in Canada. Canada's life and health insurers play a key role in providing a social safety net to Canadians. We protect over 75% of Canadians through a wide variety of life, health, and pension products. The industry paid over $88 billion (almost $1.7 billion a week) in benefits in 2016, with over 90% paid to living policyholders. The industry also plays a strong role in support of the Canadian economy. Almost 155,000 Canadians work within the sector (as employees or independent agents). The industry is a major investor in Canada with more than $810 billion in assets, over 90% of which comprise long-term investments, providing an important source of stable capital for the federal and provincial governments and businesses.

The life and health insurance industry supports the fair treatment of customers principles put forward in the draft Guidance. We strongly encourage the CCIR and the CISRO to urge their members to coordinate their treating customers fairly initiatives under this draft guidance as we believe the overarching principles and public policy objectives of any such initiatives will be the same in each jurisdiction.

In the attached appendix we set out our comments on the draft Guidance and respond to the questions raised in the consultation document. Many of our comments build on our March 9th pre-consultation submission to the CCIR, a copy of which is enclosed for convenience. We note that some of our pre-consultation comments are addressed in the current draft Guidance, while others are not, and we provide further details on a number of industry concerns.

Canadian Life and Health Insurance Association
79 Wellington St. West, Suite 2300
P.O. Box 99, TD South Towe
Toronto, Ontario M5K 1G8
416-777-2221 www.clhia.ca

Association canadienne des compagnies d'assurances de personnes
79, rue Wellington Ouest, bureau 2300
CP 99, TD South Tower
Toronto (Ontario) M5K 1G8
416-777-2221 www.accap.ca

The life and health insurance industry commends the CCIR and CISRO for developing this important draft guidance, which we believe will become fundamental tool in helping to ensure the fair treatment of customers. We stand ready to work with regulators on this important matter and look forward to further opportunities to engage with you on the fair treatment of customers.

Sincerely,

Original signed by

Lyne Duhaime
President, ACCAP-Québec and Senior Vice-President, Distribution

Appendix

Response from the Canadian Life and Health Insurance Association (CLHIA) to the Canadian Council of Insurance Regulator's (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO's) consultation document, *Guidance: Conduct of Insurance Business and Fair Treatment of Customers*

The CLHIA is pleased to comment on the Canadian Council of Insurance Regulators' (CCIR) and the Canadian Insurance Services Regulatory Organizations' (CISRO's) consultation document, *Guidance: Conduct of Insurance Business and Fair Treatment of Customers.*

The life and health insurance industry supports the principle of the fair treatment of customers. Insurers in Canada provide a service that benefits Canadians, and view the fair treatment of customers as central to their mission. We believe the fair treatment of customers is evident in insurers' current market conduct compliance practices and company specific policies and procedures. For example, insurers have integrated needs based methodologies into their sales practices, and insurers make use of consumer centric practices in all distribution models, product development and design, and in dealings with consumers. Many of these market conduct practices are codified in CLHIA Guidelines, which set standards of practice for life and health insurers.

Our comments, set out below, offer observations on the draft Guidance. Many of our comments build on our March 9 pre-consultation submission to the CCIR, a copy of which is enclosed for convenience. We also respond to the three questions posed in the consultation document, which are:

1. **Does this guidance present contradictions with existing or future local instruments related to fair treatment of customers?** In our section-by-section comments below, we identify a few areas where there are some inter-jurisdictional differences and where the language or references used are not consistent with industry practices.

2. **Does this guidance strike the right balance between roles and responsibilities of insurers, distribution firms, agents and representatives?** We offer detailed comments on this question immediately below.

3. **CCIR and CISRO are mindful that in some industry sectors, where the introduction of the guidance may raise questions about the possibility that intermediaries may be subject to multiple audits by regulators, self-regulatory organizations and insurers in a given year. CCIR and CISRO will address any need for clarification and invite stakeholders to comment.**

   We believe the industry and our regulators have a shared interest in ensuring that reviews and oversight activities are conducted in an efficient a manner. To the extent that there may be overlap in some of these activities, we believe that certain intermediaries like MGAs could help to coordinate reviews. We are interested in discussing this further with the CCIR and CISRO.

2. Does this guidance strike the right balance between roles and responsibilities of insurers, distribution firms, agents and representatives?

In order to attain the appropriate balance between the roles and responsibilities of insurers, intermediaries and regulators, we believe the draft Guidance must address the key areas of comprehensive oversight, the principle of proportionality, and harmonization. Please find our comments below.

Comprehensive Oversight

Throughout Canada today, insurers are expected to have practices in place that support fair outcomes for customers. In many cases, insurers rely on the work done by intermediaries to assist with these practices and, over the years, the industry has taken steps to clarify roles and responsibilities for oversight and to standardize industry practices (e.g., CLHIA Guideline G18, *Insurer-MGA Relationships*). Such standards reflect the industry's belief that, in some cases, intermediaries may be in the best position to fulfill these activities.

However, we note that, for the most part, the activities of intermediaries are not the subject of a regulatory licensing and oversight regime that requires them to treat customers fairly. If regulators have specific expectations of intermediaries beyond their current obligations (i.e. to maintain an agent license and sometimes continuing education, and errors and omission coverage), the law may need to change to support those expectations. That said, we believe that setting regulatory expectations for intermediaries through the draft Guidance is a positive step.

As stated in the International Association of Insurance Supervisors (IAIS) Insurance Core Principle (ICP) 19.0.8, the fair treatment of customers is a shared responsibility of all who are engaged in distribution:

> "The insurer has the responsibility for good conduct throughout the insurance life-cycle, as it is the ultimate risk carrier. However, where more than one party is involved in the design, marketing, distribution, and policy servicing of insurance products, the good conduct in respect of the relevant service(s) is a shared responsibility of those involved".

In recent years, the industry has called for a regulatory licensing and oversight regime that would place certain oversight requirements on intermediaries – particularly those acting as distribution firms (i.e. managing general agents) – in order to ensure more robust and consistent practices. For example, the CLHIA's 2016 public policy paper, *Improving Advisor Oversight*, proposes a model where intermediaries acting as distribution firms would be licensed and have a role in oversight, especially in areas where an individual insurer may not have a full view of an advisor's insurance book of business. We believe that, without such a regulatory structure in place, there is a real risk that some intermediaries may see their activities as outside of the scope of the draft Guideline, which can ultimately place customers at risk.

We would strongly encourage the CCIR and the CISRO to clearly state their expectations of intermediaries to treat customers fairly in the draft Guidance.

Proportionality and the Risk Based Approach

We believe that some parts of the draft Guidance may be written to address the principle of proportionality, but are concerned that it is not more explicitly set out in the document. This is particularly relevant to supporting a risk-based approach and range of activities that intermediaries and insurers may adopt in helping to ensure fair outcomes for customers. As stated in our pre-consultation submission, many intermediaries are small businesses and they may not have the capacity to implement costly processes, but they can still meet the objectives of the proposed policies by using methods relative to their capacity.

We would suggest that the CCIR and the CISRO include language relating to the principle of proportionality in the "Supervision of the Conduct of Business of Insurers" or the "Scope" section of the draft Guidance. This language could draw from the International Association of Insurance Supervisors (IAIS), which allows for flexibility in implementing supervisory and oversight requirements to achieve the desired outcome.

Harmonization

In developing regulatory expectations for the fair treatment of consumers, we believe the CCIR and its members should work together to ensure a harmonized approach to regulatory oversight. Further, we support policy harmonization based on the Insurance Core Principles 18 and 19 of the IAIS, as the CCIR and the CISRO have done with this draft Guidance.

We are particularly concerned that at present, there is the potential for at least three differing sets of regulatory expectations for the fair treatment of customers in Canada. For example, there are those that are set out by the CCIR and the CISRO in this draft Guidance; those set out in FSCO's draft guideline; and those set out by the AMF's Sound Commercial Practices Guideline. We note that the CCIR and the CISRO are in positions to coordinate harmonization of regulatory expectations for the fair treatment of customers through the regulatory guidance and leadership they provide. We strongly recommend that the CCIR and the CISRO work with their member jurisdictions on a coordinated approach to developing regulatory expectations for the fair treatment of customers.

Harmonization increases the understandability of expectations and subsequently supports the fair treatment of customers. Moreover, we believe that consumers would be best served by a national approach, which would provide them with similar rights and expectations, regardless of where they live in Canada.

Below, we provide section-by-section comments on the draft Guidance.

Definitions

The life and health insurance industry appreciates the work that has been done to further develop the definitions in the draft Guidance. We believe this section can be further refined to better reflect current regulatory requirements and common industry terminology, as suggested below.

Intermediary

We note that the definition for "Intermediary" has been broadened and appears to capture any individual or entity that may be involved in the distribution of life and health insurance products and services and is not an insurer. We support this approach and, for further clarity suggest this definition could be further revised, as noted below in bold, to ensure it reflects the coordinated, cooperative approach and clarity required to assist in treating customers fairly.

> "Is given a broad meaning that encompasses agents and representatives and distribution firms authorized to distribute insurance products and services, **including licensed agents, managing general agents, third party administrators and national accounts**. In Canada, Intermediaries that are subject to licensing and supervision can vary from jurisdiction to jurisdiction. This guidance applies to all Intermediaries that are authorizes to do business within any jurisdiction, which includes licensing, registration or exemption."

Distribution Firm

We are unclear about what is meant by "distribution firm". In Quebec this term has a specific legislative meaning. Outside of Quebec it does not. For clarity, and given the expanded definition for Intermediary, we recommend removing this definition from the draft Guidance.

Agent Firm

We note that the term "Agent Firm" is not currently used in legislation, nor is it commonly used within the industry. Again, we are unclear of what entities are intended to be captured by "agent firm" and believe it is made redundant by the expanded definition for Intermediary. We recommend removing this definition from the draft Guidance.

We believe the above recommendations would align the draft Guidance more closely with the ICP definition of intermediaries. For example, ICP 18.0.2 states: "some intermediaries do not have direct contact with the customer but act with other intermediaries to place business with insurers (such as whole sale intermediaries). Even though they do not necessarily deal directly with the purchase of insurance, they perform one of the functions in the chain of soliciting, negotiating, or sell insurance, and are within the scope of this ICP". Without such changes, we believe a real risk exists that, based on the drafted definitions, certain entities involved in the distribution of life and health insurance could consider themselves to be exempt from this Guidance.

Organization

We are not sure of the purpose of this definition and suggest it be removed. We would also note that, as drafted, it excludes agent firms. Should each of these definitions remain, "organization" should be revised to include "agent firm".

Consumer and Customer

We are unclear about the difference between a "customer" and a "consumer" for the purposes of the draft Guidance, which appears to use the terms interchangeably. In life and health insurance, generally, the process of advice giving is the same, regardless of whether someone is a potential or existing client. It is the expectation of insurers that advisors selling their products act with integrity, professionalism, and competence whenever they are working with a prospective or existing client. Having one definition would add an element of clarity and we would recommend the term "customers" as is used in the ICPs.

Preamble

We appreciate the revisions that have been made to this section of the draft Guidance. In addition, we suggest the first sentence of the last paragraph be revised as follows:

> "This guidance provides Insurers and Intermediaries with the necessary…"

Supervision of the Conduct of Business of Insurers

Points of Clarification

In the second paragraph we understand the "customer-outcomes" assessed by supervisors to pertain to sales suitability, and the client's needs being met. It may be clearer to use more precise language in this section and refer to sales suitability if it is what is intended.

In the third paragraph we have noted the term "firm-specific". We understand this to mean insurer and intermediary specific. The term "firm" has a specific meaning in Quebec. Unless the intention is for this Guidance to only apply in Quebec, we would suggest that "intermediary-specific" be used.

Information Sharing

As stated in our pre-consultation submission, the draft Guidance notes that all jurisdictions have a framework in place for supervisory purposes. To support robust communications between insurers and regulators, we encourage all CCIR member jurisdictions to adopt a self-evaluative privilege, as is the case in Alberta and Manitoba.

Scope

We note that the exclusion of reinsurance was removed from the pre-consultation version the draft Guidance. We do not believe that it is the CCIR and the CISRO's intention to include reinsurers in the scope of this draft Guidance, which is focused on retail customers. As such, we strongly recommend that the sentence excluding reinsurers be reinserted. In which case, the first paragraph of this section would read as follows:

"In order to promote the fair treatment of Customers to insurer and industry participants, this guidance applies to Insurers and Intermediaries. It does not apply to insurers only engaged in reinsurance."

Conduct of Business

As noted in our pre-consultation submission, we believe the bullet that states "have contractual arrangements between each other, which ensure fair treatment of consumers" should refer to an insurer's requirement for intermediaries to follow policies and procedures as opposed to ensuring an outcome. This approach would align ICP 19.2, which calls on insurers "[…] to establish and implement policies and procedures on the fair treatment of customers, as an integral part of their business culture". It would also align with the Sound Commercial Guideline in Quebec, which focuses on the performance of specific actions when it states: "Among the best practices identified by the AMF, institutions can refer to the following: the development of objectives, strategies and initiatives in line with the institution's fair treatment of consumers vision and values". We suggest this bullet in the draft Guidance be amended along these lines:

> "have contractual arrangements requiring intermediaries to follow policies and procedures that are intended to ensure customers are treated fairly."

Fair Treatment of Consumers. We agree and support this principle.

Corporate Culture. We agree and support this principle.

Relationships Between Insurers and Intermediaries

As stated in our pre-consultation submission, the third bullet is very prescriptive in nature in terms of what needs to be included in a contract. We would recommend taking a more principle based approach in this area to give more flexibility to create contracts that reflect the specific relationships between insurers and intermediaries. This approach would also be consistent with the principle of proportionality.

Relationships with Regulatory Authorities

The second bullet states that there needs to be reporting to regulatory authorities in the event of "a major operational incident" that could jeopardize the rights of consumers. We are unsure of what is meant by an operational incident in this context. We also note that, for life and health insurers, obligations exist in regulations and legislation on steps to take regarding an operational incident and, for the most part, we believe that in such cases insurers would work with their prudential regulator. To avoid overlap and possible confusion with existing requirements, we suggest removing this point.

Customer Outcomes and Expectations

We support this principle. In addition, we wish to reiterate the comments from our pre-consultation submission related to the final bullet, which deals with advisor remuneration. While insurers expect sales today to be suitable, advisors are compensated based on sales. Under CLHIA Guideline 13, *Compensation Structures: Managing Conflicts of Interest*, it is an industry standard to consider the influence that sales-related compensation has on advisors' sales practices, and to monitor to make sure that sales practices are not unduly influenced by sales-related compensation. We trust that such practices would meet the expectations set out in the draft guidance.

Conflicts of Interest

The industry supports this principle. As stated in our pre-consultation submission, we believe aligning this section of the draft Guidance more closely with the CCIR and the CISRO's three principles for managing conflicts of interest would provide greater clarity, and could address both managing and avoiding conflicts. For example, the boxed principle could be expanded along the following lines.

> "CCIR and CISRO expect that any potential or actual conflicts of interest must be properly managed and not affect the fair treatment of Customers. In particular:
>
> - the interests of the consumer must be placed ahead of those of the advisor;
> - actual and potential conflicts of interest must be disclosed; and
> - the recommended product must be suitable to the needs of the consumer
>
> Where they cannot be managed, conflicts of interest should be avoided."

With respect to the examples provided, we are concerned that, as written, the draft Guidance may not fully consider how the potential for conflicts of interest can be managed. In particular, the second example is very broad stating that "conflicts of interest may arise from inducements as benefits offered to an insurer or intermediary or any person acting on its behalf, incentivizing that firm/person to adopt a particular course of action".

We can see that this example has been taken from ICP 19.3.5; however, the qualifying language has not been incorporated into the draft Guidance. We note that ICP 19.3.5 goes on to state, "Where intermediaries who represent the interests of customers receive inducements from insurers, this could result in a conflict of interest that could affect the independence of advice". Thus, incentives are not automatically assumed to result in a conflict of interest.

ICP 19.3.8 talks about the use of disclosure to manage the potential conflicts of interest. While it notes that disclosure cannot manage all conflicts that arise, we firmly believe that potential conflicts around an advisor's pay, in normal circumstances, can be effectively managed by disclosure. Current insurer processes help to ensure that appropriate disclosure has been made by the advisor and are outlined in the CLHIA Reference Document, *Advisor Disclosure*.

As such, we would suggest that the example noted above be removed from the draft Guidance. If the example cannot be removed, we would suggest that it be revised along the following lines:

> "conflicts of interest may arise from inducements as benefits offered to an insurer or intermediary or any person acting on its behalf, incentivizing that firm/person to adopt a particular course of action, where such inducements are not appropriately managed"

We understand that the public policy objective of this section is for advisors to put their clients' interests ahead of their own. Similarly, we understand the public policy objective to refer to situations where the advisor has an interest outside of their normal remuneration from which they would derive a benefit for the sale of an insurance product. However, we would note that where ICP 19.3.3 suggests that compensation structures should align with the interest of consumer, it does not mean that compensation cannot be volume based. Instead, it means that aggressive sales practices should not be encouraged. It also examines scenarios where the advisor has an interest other than their remuneration that creates a conflict, or where they have an additional ability to exert influence on their clients.

Outsourcing

We support this principle. However, we note that that there is overlap between this section and the section "Relationships between insurers and intermediaries". As stated in our pre-consultation submission, we believe that the scope of this section should be limited to outsourced activities that could ultimately impact a client. For example, an outsourced activity such as data analytics or computer support is sufficiently removed from the customer, and it would not make sense for a contract to contemplate fair treatment of customers as it is not foreseeable that the customer would be impacted by the outsourced activity. We suggest the second bullet under "Expectations to achieve this outcome" should be revised along these lines:

> "insurers only deal with third parties who have policies, procedures, and processes for the fair treatment of Consumers when the work outsourced could foreseeably impact the fair treatment of a customer".

Also as noted in our pre-consultation submission, the fifth bullet references a privacy component in contracting. As this is a requirement under PIPEDA, the applicable privacy legislation should be referenced:

> Principle 4.1.3: An organization is responsible for personal information in its possession or custody, including information that has been transferred to a third party for processing. The organization shall use contractual or other means to provide a comparable level of protection while the information is being processed by a third party.

Design of Insurance Products

We support the underlying principles of this section and appreciate the wording changes made since reviewing the pre-consultation draft.

Under expectations to achieve this outcome (intermediaries), the notion remains that intermediaries would inform insurers with target market information. As noted in our pre-consultation submission, this is not currently common practice. Certainly, insurers may use a variety of research approaches, such as focus groups, surveys, and advisor consultation, when developing products. We see these activities as essential to a highly competitive insurance marketplace and do not support formalizing such processes under regulatory guidance.

Distribution Strategies

The life and health insurance industry supports the application of distribution strategies that allow consumers to have access to insurance products that meet their needs. As noted in our pre-consultation submission, we believe the draft Guidance should be expanded from expectations of insurers in this area to also include expectations of intermediaries.

We suggest mirroring some of the language adopted in ICP 19.0.8 which states that where more than one party is involved in the design, marketing, distribution and policy servicing of insurance products, treating Customers fairly in respect of the relevant services is a responsibility that is shared amongst involved insurers and intermediaries.

Disclosure to the Customer & Disclosure to the Policyholder

As suggested in our pre-consultation comments, we believe these two sections of the draft Guidance should be combined to avoid duplication and confusion. In the second bullet of "Disclosure to Customer", there is a reference to a durable medium. ICP 19.7.5 also includes the example of a durable medium being one that is electronic. We suggest similarly including electronic mediums as an example

so that this draft guidance supports the use technology to better serve customers. A revised bullet along the following lines could achieve this:

> "be accessible in written format, on paper or another durable medium (electronic, for instance)"

Product Promotion

We agree with this in principle. We appreciate the slight modification referencing *"independent functions"* reviewing promotional material prior to it being disseminated. In most cases, such a review would take place within the insurance company and we trust that this approach would meet the expectations set out in the draft Guidance.

Advice

We support this in principle. For when there is an advice giving relationship, the industry has developed best practices for needs-based selling outlined in our reference document *The Approach: Serving the Client Through Needs Based Selling*. Also, circumstances where advice is not provided (e.g., creditor's group insurance) the life and health insurance industry follows standards to help ensure that customers are treated fairly, such as those set out in CLHIA Guideline G7, *Creditor's Group Insurance*.".

Claims Handling and Settlement

We agree with this section in principle. As noted in our pre-consultation submission, the fourth bullet describes "claim determinative factors such as depreciation, discounting or negligence…" which does not appear to apply to life and health insurance.

Complaints Examination and Dispute Resolution

Outside of Quebec, insurers are the only party involved in the process of distributing insurance products that have a statutory requirement to have a complaints process. This requirement can be found in the *Insurance Companies Act* (federal) and provincial legislation. We suggest that the draft guidance could be made clearer by referring to the precedence of insurers' obligations under the law.

We would also note that it is useful for intermediaries such, as MGAs and advisors, to have complaints processes in place through which a complaint can be properly investigated. This draft Guidance may be an opportunity to set an expectation for complaints handling among all those that are engaged in the distribution of insurance products.

Protection of Personal Information

We support this principle as it relates to the protection of personal information and refer to our earlier comment on the need to be clear that legal obligations would take precedence over the draft Guidance. In particular, we believe that this section should refer to PIPEDA or the applicable provincial legislation. There is already a strong legal framework in which all who gather the personal information of consumers must operate.

In Conclusion

The life and health insurance industry appreciates the opportunity to provide these comments to the CCIR and the CISRO on the draft Guidance. We wish to reiterate the industry's support for the work being done on the fair treatment of customers, and trust that our comments will be considered as the drafting process continues. We are available to discuss our comments further. Please feel free to contact Erica Hiemstra, Assistant Vice President, Distribution (ehiemstra@clhia.ca, 416-359-2013) or Justin Glinski, Director, Distribution Policy (jglinski@clhia.ca, 416-359-2027) for any further discussions.

Sussex Centre, Suite 902
90 Burnhamthorpe Road West
Mississauga, Ontario, L5B 3C3
905-306-8600
www.edwardjones.com

Edward Jones

June 15, 2018

Via email: ccir-ccrra@fsco.gov.on.ca

Canadian Council of Insurance Regulators (CCIR)
Canadian Insurance Services Regulatory Organizations (CISRO)

Re: Request for Comment: Guidance - Conduct of Insurance Business and Fair Treatment of Customers ("the Proposal")

Dear Sirs/Mesdames:

Edward Jones welcomes the opportunity to provide our comments with respect to the Proposal recently drafted by the CCIR and CISRO.

Background

Edward Jones is a limited partnership in Canada and is a wholly owned subsidiary of Edward D. Jones and Co., L.P., a Missouri limited partnership. Edward D. Jones and Co., is a wholly owned subsidiary of The Jones Financial Companies, L.L.L.P., a Missouri limited liability limited partnership. We are registered with the Investment Industry Regulatory Organization of Canada (IIROC) as an investment dealer and have more than 770 financial advisors located across Canada managing over $30 billion in assets under care.

Edward Jones Insurance Agency and Edward Jones Insurance Agency (Québec) Inc. are subsidiaries of Edward Jones and have agreements in place with Manulife, Canada Life and Sun Life to distribute Life and Accident & Sickness insurance products in the provinces of Canada. All Edward Jones advisors are dual-licensed for the sale of securities and insurance.

Edward Jones' primary focus is on the serious, long-term, individual investor and our core value is 'our clients' interests come first. A customer-centric culture is well-established at Edward Jones and is the primary touchstone for all areas of our organization. Our entire firm is structured around this guiding principle and we endeavor to deeply serve the needs of our clients for both investments and insurance.

Overview

We agree with, and fully support, the spirit of the Proposal as it is intended to enhance consumer protection by communicating to insurers, distributors and intermediaries the expectations of the CCIR and CISRO for the fair treatment of customers.

We support any efforts to foster the fair treatment of customers and further inspire confidence in the insurance industry.

Sussex Centre, Suite 902
90 Burnhamthorpe Road West
Mississauga, Ontario, L5B 3C3
905-306-8600
www.edwardjones.com

Edward Jones

Comments

To expand upon the above responses, our general comments with respect to the Proposal are as follows:

Regulatory and supervisory harmonization

The CCIR and CISRO should continue to align with best international practices to enhance customer protection and to harmonize regulatory and supervisory requirements. The Proposal reflects the customer-focused culture at Edward Jones as well as the regulatory rules and best practices seen in the securities industry. Where a higher standard of conduct exists today, Edward Jones applies it, as a minimum, as a corporate policy equally across both our securities and insurance lines of business.

Market conduct

There is a benefit for customers and the insurance industry with having Distribution Firms and Agent Firms assume greater responsibility for the supervision of the market conduct of representatives -- along the same lines as is found in the insurance industry in Québec and the securities industry in Canada.

Distribution strategies

There is an opportunity for the creation and adoption of standards in the insurance industry that would support better electronic communication of application and policy information from multiple insurance carriers to the distributor/intermediary. Improved accessibility of this information will contribute to the fair treatment of customers. Electronic data feeds from insurers to a secured, client management system of intermediaries is an example of this communication.

Relationships between insurers and intermediaries

We believe that the relationships between insurers and intermediaries are quite healthy. There is an opportunity for insurers to review and update their agreements with intermediaries on a more frequent basis in order to refresh the servicing and fair treatment requirements for customers.

Design of insurance products

We agree that the customer's best interest should be at the core of the development and design of insurance products and compensation structures by insurers. Conflicts of interest with customers are to be actively avoided and where this cannot be done, disclosed and managed by the insurer and/or intermediary.

Sussex Centre, Suite 902
90 Burnhamthorpe Road West
Mississauga, Ontario, L5B 3C3
905-306-8600
www.edwardjones.com

Edward Jones

Disclosure to customers

We note that compensation disclosure has not been specifically addressed in the Proposal. We recommend compensation disclosure in support of customer transparency.

Advice

We concur with the CCIR's and CISRO's position that clients must receive relevant advice before concluding the insurance contract, taking into consideration the client's disclosed circumstances. The expectations set out for insurers and intermediaries to achieve this outcome are reasonable for the fair treatment of clients as a financial services profession and directly align with the practices required today in the securities and mutual funds industry. Given that many advisors are dual-licensed in Canada for insurance and securities or mutual funds, the Proposal effectively supports harmonization amongst the financial services industries.

Below are our responses to specific questions

Questions

Below are our responses to the specific questions raised by the CCIR and CISRO in the Proposal:

1. Does this guidance present contradictions with existing or future local instruments related to the fair treatment of customers?

No. The Proposal does not appear to present any contradictions with existing instruments. While we are not in a position to comment on future local instruments, the Proposal seems to be in alignment with existing rules, regulations, and guidelines pertaining to dealing with customers.

2. Does this guidance strike the right balance between roles and responsibilities of Insurers, Distribution Firms, agents and representatives?

Yes. The Proposal results in a shared responsibility for the fair treatment of customers.

3. CCIR and CISRO are mindful that in some industry sectors, the introduction of this guidance may raise questions about the possibility that intermediaries may be subject to multiple audits by regulators, self-regulatory organizations and insurers in a given year. CCIR and CISRO will address any need for clarification and invite stakeholders to comment.

Sussex Centre, Suite 902
90 Burnhamthorpe Road West
Mississauga, Ontario, L5B 3C3
905-306-8600
www.edwardjones.com

Edward Jones

While we recognize and welcome the need for independent audits, through collaboration and harmonization, we see an opportunity for the regulators and self-regulatory organizations to increase efficiencies with the audits. For example, by conducting joint audits rather than individual audits.

In summary, we fully endorse the spirit of the Proposal and would be pleased to discuss any of our comments further.

Yours truly,

Julie A. Rice
Compliance Division

cc: Wayne Bolton, Chief Compliance Officer, Edward Jones
David Gunn, Principal, Ultimate Designated Person, Edward Jones
Nawaz Meghji, General Counsel (Canada), Edward Jones

FAIRNESS



Responding to CCIR/CISRO proposed New Guidance on Fair Treatment of Customers (FTC)

2 Consumers' viewpoints

June 1, 2018

TABLE OF CONTENTS

Key Issues **Page**

Introduction……2

Common Principles of Consumer Protection……3

Rulings from Canada's Supreme Court……..4

Culture Stressing Integrity……..5

Managing Conflicts of Interest……..6

Incentives Management……..7

Conduct Risk Training Programs……8

"Trust, but Verify"……9

FTC Strategies, Policies and Procedures……10

Intermediaries……..11

FinTechs……...12

Changing Customer Expectations……13

Concluding Viewpoint……...13

Code of Professional Values for Canada's Insurance Intermediaries……14

"Ethical conduct, and compliance with both the letter and spirit of applicable laws and regulations, is critical to public trust and confidence in the financial system." **Financial Stability Board, May 2017**

Introduction

It is of paramount importance for consumers in general and customers in particular to be heard on regulatory developments directly affecting their interests. Financial institutions, insurers included, agent firms, representatives, distribution firms and intermediaries cannot speak on behalf of the consumer without encountering conflicts of interest.

These consumers are fortunate to have worked with multiple aspects of qualitative risk management in financial services, as opposed to quantitative risk management, such as risks associated with earnings, capital, liquidity and leverage ratios, which is aimed since the global 2008 financial crisis at ensuring that taxpayer money is not used to bailout financial institutions.

Conduct risk and culture are now the focus of financial consumer protection enhancement. **Conduct risk** can be defined as the risk arising from market players conducting their business in a way that could harm policyholders, borrowers, investors, annuitants, depositors and group insurance members or that does not ensure fair treatment of customers. **Culture**, in turn, is generally understood to be a system of shared values which govern how people behave in organizations or professional groups. By and large, they reflect core ethical values towards consumers, and reputation is inextricably intertwined with them.

Other insurance regulators around the world have issued guidance on consumer protection risk assessment worthy of consideration by Canada. The March 2017 exemplary guide of the Central Bank of Ireland is a case in point.

This submission is meant to provide some perspectives from a consumer viewpoint, numbered for ease of reference, in relation to selected key issues supporting the new FTC Guidance for the conduct of business in insurance.

References, where available, will be furnished upon demand.

Common Principles of Consumer Protection, a key issue

In February 2011, the G20 called on the OECD, the Financial Stability Board and other relevant international organizations, such as the International Association of Insurance Supervisors (IAIS), to develop **common principles on consumer protection** in the field of financial services. These principles were endorsed more than six years ago at the G20 meeting on 14-15 October 2011. Principle 3 regarding FTC and Principle 6 dealing with Responsible Business Conduct, among other relevant G20 high-level principles, are highly pertinent to how culture is managed and (mis)conduct risk is mitigated.

No insurance customers in Canada should be harmed by further delays in implementing enhanced consumer protection measures that were globally developed and endorsed by the G20, Canada included, in response to the 2008 global financial crisis.

Viewpoint on Performance

The following perspectives are raised here in regard to the above key issue:

1. Financial consumers across Canada deserve a regulatory framework that is superior to the one currently in place where jurisdictional warfare, lack of harmonization and box-checking exercise have been the norms for too long. The Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO) are to be commended for proactively formulating the new Guidance away from these counterproductive activities.
2. It has been noted with great appreciation that the G20 high-level principles 3 and 6 have been embedded in the new Guidance in a manner consistent with internationally-suggested effective approaches to support their implementation. Together they ensure regulated entities have as an objective to consider the best interests of their customers and be responsible for upholding financial consumer protection.
3. The three key components of responsible business conduct, namely organizational culture, corporate governance and conflicts of interest, are inherently behavioral and qualitative in nature. The new Guidance rightly outlines (on pages 9, 12 and 13) the essence of these vital components. When put in practice they should align with each other to achieve sustainable impact that helps mitigate conduct risk.
4. The new Guidance unequivocally shows that the provinces and the territories share a set of expectations pertaining to responsible business conduct to entrench the FTC for the benefit of all Canadians.

Rulings from Canada's Supreme Court, a key issue

In the 2014 decision rendered in *Bank of Montreal v Marcotte,* the Supreme Court ruled in favour of financial consumers by applying provisions of the Quebec Consumer Protection Act to banks. Canada's highest tribunal emphasized that the modern approach to reconciling conflicts between provincial and federal laws is to have both laws apply when there is **consistency of purposes**. In making this decision the Supreme Court referred to its 2007 ruling rendered in *Canadian Western Bank v Alberta,* a landmark decision in Canada's constitutional law, whereby it unanimously ruled that insurance is not "at the core" of banking and strongly called for "cooperative federalism". In the Matter of a Reference by the Governor in Council concerning the proposed Canadian Securities Act the Supreme Court unanimously concluded in 2011 *"that the day-to-day regulation of securities (all aspects of contracts, public protection and professional competence)...essentially remains a matter of property and civil rights",* an exclusive authority of the provinces and the territories, as is the case with the business of insurance.

In its recent review of best practices in financial consumer protection, the Financial Consumer Agency of Canada (FCAC) respected the Supreme Court's firm resolution, and in concordance with its mandate, abstained from reviewing measures in securities and insurance law.

No insurance customers in Canada should be harmed by federal-provincial relations that are less than optimal in serving the best interests of the consumer.

Viewpoint on Cooperation

The following perspectives are raised here in regard to the above key issue:

5. The main benefits of increased cooperation and coordination among the involved regulators are well outlined in the IAIS Insurance Core Principle 25. It is comforting to Canadians that *"Through CCIR, **all** jurisdictions have a framework for information sharing* (confidentiality safeguarded) *and cooperative market conduct supervision"* (emphasis added) to address risks associated with consumer protection in a coordinated manner.
6. CCIR/CISRO's Question #1 (on page 5 of the new Guidance) in regard to early identification of possible contradicting FTC instruments is a dynamic canvass. Answers from respondents will allow all CCIR/CISRO members to address conduct risk meaningfully.
7. At present, some regulated entities are mandated by law to (a) treat customers fairly and (b) act responsibly; others are not. This state of affairs is troublesome for the insurance buying public in that it adversely impacts enforcement for jurisdictions, like Ontario, that expect and rely on good corporate governance.
8. There are currently no provisions requiring fair treatment of consumers in the federal

statutes governing financial institutions. Although the 2019 overall legislative revision might be delayed until 2024, the Government of Canada remains committed to modernize and enhance the federal financial consumer protection framework for banks and possibly for the credit business of insurers.

Culture Stressing Integrity, a key issue

Because significant misconduct is evidence of a culture that undermines, or even supplants, the written rules, the Office of the Superintendent of Financial Institutions (OSFI) has *"come to see conduct as a prudential issue".* The 2017 draft Corporate Governance Guideline of the OSFI (yet to be adopted) specifically provides, as framework enhancement, that the board of directors ♦is responsible for the institution's culture, ♦approves and oversees the codes of ethics and conduct, and ♦promotes, with senior management, a risk culture that stresses **integrity** (emphasis added).

No insurance customers in Canada should be harmed by ENRON-like codes of ethics and conduct that simply showcase governance, risk management and compliance (GRC).

Viewpoint on Culture / Integrity

The following perspectives are raised here in regard to the above key issue:

9. In sync with enhanced corporate governance, the new Guidance refers to a "customer-centric culture" that fosters consumer confidence via fundamental core values (outlined on page 7) supporting integrity/fairness. Moreover, the newly established CCIR Framework for Cooperative Market Conduct Supervision rightfully provides for specific-entity reviews of ethical standards and their adherence, away from a 'sales-focused culture' and closer to consumer protection risk.
10. Integrity and fairness matter most in effective conduct risk management. This was highlighted by the FCAC of its recent findings of insufficient controls by domestic larger banks to prevent sales of products that are misrepresented or unsuitable for customers.
11. The federal government has announced in its Budget 2018 that consumer protection in banking will be enhanced. Legislation will be introduced to strengthen the FCAC's tools and mandate and to advance bank consumers' rights and interests. As stated by the FCAC in its May 15, 2018 report on best practices in financial consumer protection, the *"findings also apply to the other federally regulated financial institutions statutes"* in respect of their credit business, insurers included.
12. Some provinces, such as Alberta and Saskatchewan, require banks to hold a restricted certificate/license to engage in the sale of authorized types of insurance. Others do not. Depending on how the 'insurance business' of banks will be dealt with in the upcoming Bank Act narrow-focused legislative amendments, the new Guidance might have to be modified to achieve equality in FTC application. The use of bank customer personal information for selling insurance would be of particular interest, given that with bank

customer information insurance sales may potentially quadruple.

Managing Conflicts of Interest, a key issue

In its July 2017 progress report to G20 Leaders the Financial Stability Board reported that requirements to manage conflicts of interest are an important tool in reducing misconduct risks in the financial sector. **Conflicts of interest** are generally understood to mean circumstances where some or all of the interests of customers to whom a licensee (or its representative) provides financial services are inconsistent with, or diverge from, some or all of the interests of the licensee or its representative. This includes actual, apparent or potential conflicts of interest. They arise as a result of both providing personal advice to retail clients and manufacturing financial products. On matters of **outsourcing** it has been observed that conflicts management could better demonstrate a firmer commitment to maintaining and reviewing policies and procedures, with some focus on **training**.

No insurance customers in Canada should be harmed by conflicts of interest, inadequate conflicts management or complacency in thinking that, because something hasn't happened yet, it won't happen.

Viewpoint on Conflicts of Interest

The following perspectives are raised here in regard to the above key issue:

13. The new Guidance aligns the 2006 CCIR/CISRO-endorsed three principles on conflicts management with enhanced supervision by (a) connecting the principles to the duty of fairness, (b) providing examples of arising conflicts, (c) explaining the need for certain processes, and (d) clarifying expectations to achieve the public policy outcome.
14. With respect to outsourcing, training is highly relevant and should have been mentioned in the new Guidance (on page 14) as a reminder to all readers that without training, conduct risk as well as reputation risk are much higher. At the federal level, regulation making authority in regard to *"the training of a bank's employees, representatives, agents and other intermediaries"* (Bill C-29 of 2016) is being contemplated for enhanced financial consumer protection.
15. In its latest (2014) detailed assessment report on Canada's financial sector, the International Monetary Fund recommended that OSFI guideline (B-10) on outsourcing of business activities, be amended to more clearly establish the requirement that the screening processes in place, when the financial institution is entering into outsourcing relationships, will ensure high ethical and professional standards.
16. In a few provinces, for instance British Columbia, OSFI guidelines (B-10 included) have been adopted for application to provincially incorporated insurers and oversight by the province's Financial Institutions Commission.

Incentives Management, a key issue

In its March 2018 supplementary guidance on the use of compensation tools to address misconduct, the Financial Stability Board strongly suggests that ▪incentives should be aligned with conduct risk and ▪related processes should include, at a minimum, non-financial assessment criteria such as the quality of risk management, degree of compliance with applicable rules and broader conduct objectives of the firm, including FTC outcomes, into individual performance management and compensation plans at all levels of the organization and as part of the broader governance and risk management framework. The suggestion is also made that such processes be supported by ongoing programs including formal training courses that reinforce appropriate standards of behavior.

No insurance customers in Canada should be harmed by variable rewards and compensation for sales performance that elevate the risk that consumer protection measures would be flouted by unsound commercial (market conduct) practices.

Viewpoint on Incentives Management

The following perspectives are raised here in regard to the above key issue:

17. In perfect harmony with internationally-accepted sound compensation practices the new Guidance (on page 12) clearly indicates that remuneration/incentives, reward strategies and evaluation of performance should take into account the contribution made to achieving FTC outcomes.
18. In its July 2015 report on the results of the insurers' self-assessment of commercial practices, Quebec's AMF clarified that the term **incentive** must be *"used in its broad sense and includes, in particular, bonuses, commissions, salaries, premiums and fees in compensation programs, as well as other benefits (sales contests, promotions, privileges and gifts)."*
19. Consumers believe that supervisory reviews that include the effectiveness of incentives management encouraging ethical behavior, acting in good faith and the prohibition of abusive practices can, in turn, help (i) support firms' efforts to prevent misconduct, (ii) ensure products are suitable for clients, and (iii) safeguard both market and firm integrity.
20. The stated CCIR/CISRO's expectation (on page 22 of the new Guidance) that individual complaints be analyzed for root causes identification and correction is particularly critical for effectively managing incentive risks that may lead to legal violations or consumer harm.

Conduct Risk Training Programs, a key issue

In its public reporting of June **2005** on reputation risk management practices (training provided to employees included) at selected financial institutions, the federal prudential regulator noted that, *"in some cases, training programs were weak in such areas as **codes of conduct or conflict of interest**"* (emphasis added).

Almost 13 years later, the federal market conduct regulator pointed out in its March 2018 report on retail banking sales practices at selected firms that *"Training on creditor insurance is covered by a voluntary code of conduct...The review revealed that bank employees are not always adequately informed or knowledgeable about **creditor insurance products**"* (emphasis added).

By way of comparison, the Consumer Financial Protection Bureau of the United States reminded supervised entities, in a compliance bulletin dated November 28, 2016, that they are expected to implement *"comprehensive training"* that addresses *"expectations for incentives, including standards for ethical behavior"*, among several other topics.

In its Culture and Conduct Risk 2018 survey, Thomson Reuters Regulatory Intelligence indicates that training on conduct risk is a key indicator for regulators that a firm has taken its compliance/risk management obligations seriously and has maintained and updated the knowledge and skill sets of all staff as necessary. The survey of more than 600 financial services firms across the world notes *"...there is cause for concern regarding the persistence of firms reporting that they haven't implemented training but know they need to."*

No insurance customers in Canada should be harmed by weak conduct risk training programs or by supervisory findings and/or expectations that are not proactively pursued.

Viewpoint on Conduct Risk Training Programs

The following perspectives are raised here in regard to the above key issue:

21. In achieving customers outcomes and expectations the new Guidance (on page 12) clearly states the involved regulators' expectations that relevant staff should be trained to deliver appropriate outcomes in terms of FTC.
22. Consumers are of the view that a CCIR Annual Statement on Market Conduct dealing specifically with aspects of training would be timely.
23. *"Tell me and I forget, teach me and I may remember, involve me and I learn"* - Benjamin

Franklin **+** *"Leadership and learning are indispensable to each other*" - John F. Kennedy

24. Consumers query who between CCIR/CISRO (the provinces and the territories) and the OSFI and the FCAC (the federal authorities) is responsible for overseeing the banks' training programs in regard to the banks' authorized types of insurance.

"Trust, but Verify", a key issue

With legislation helping, the head of OSFI has put the "trust but verify" approach to supervision in practice. Pursuant to Canada's Insurance Companies Act, insurers have a legal obligation to send to the federal prudential regulator a copy of their participating (insurance) policies and related (corporate) policy respecting the management of each of the participating accounts. In a speech on June 2015 on culture, conduct and the effectiveness of regulation, the Superintendent stated:

> *"If we saw repeated major misconduct in the institutions that we supervise, we would have to ask ourselves if our "trust but verify" approach was really reliable. We would be drawn toward, and perhaps ultimately obliged to implement, a rules-based approach characterized by detailed and inflexible requirements and independent verification of every item on the checklist. And that would be a real loss for us, for the financial services industry, and, most importantly, for the* ***public interest****."*

The public interest reference is worth emphasizing here as it forcefully puts the priority on culture rather 'checking a box', a phrase which means to complete a task to the barest minimum standard. No wonder the OSFI has proposed in its 2017 draft Corporate Governance Guideline that *"attitude towards regulatory compliance"* be an integral part of every firm's risk appetite statement.

No insurance customers in Canada should be harmed by regulated entities that cannot be trusted by the regulatory authorities to do the right thing (being ethical) and to do things right (being compliant).

Viewpoint on the Trust-but-Verify Approach

The following perspectives are raised here in regard to the above key issue:

25. The trust-but-verify approach essentially means that the authorities keep close track of episodes of misconduct in the regulated firms, and they are typically proactive in bringing any issues to the attention of the authorities.
26. The CCIR/CISRO's stated expectation (on page 11 of the new Guidance) that any serious harm due to a major operational incident that could jeopardize the interests or rights of

customers and the organization's reputation be reported to the involved regulators is proactive, warranted and welcomed.

27. Not verifying that expectations of "**operational compliance"** (new OSFI Guideline E-21 covers non adherence to internal core values or unethical behavior more broadly) are being followed by regulated firms can open the door to a wide range of potential problems, most notably, corruption and fraud. As of May 1, 2015, **"regulatory compliance"** no longer addresses risk arising from non-conformance with ethical standards - (updated OSFI Guideline E-13).
28. In turn, regulated firms would do well to take the words "trust, but verify" to heart when it comes to their own FTC processes followed by their employees. Operational risk specifically includes the risk of loss resulting from inadequate or failed internal processes and people.

FTC Strategies, Policies and Procedures, a key issue

At present, federally regulated insurers are not required under Canada's Insurance Companies Act to establish FTC strategies, policies and procedures, the responsibilities of the conduct review committee of the board of directors are limited to ensuring compliance with the provisions dealing with related party transactions only, and there is no legal obligation to report to the federal Superintendent any unsound commercial practices.

Moreover, compliance failure with a voluntary code of conduct and ethics cannot be enforced by the federal market conduct regulator. Unlike treatment of non-compliance with a legislated "consumer provision", breaches of a code are not subject to administrative monetary penalties and do not form part of the insurer's compliance history. The same is true for banks.

In its March 2018 report on domestic bank retail sales practices the FCAC recommended that *"banks establish a formal sales practices governance framework that clearly defines roles and responsibilities to ensure all elements of sales practices risk are effectively managed, including the effective monitoring and reporting of mis-selling and market conduct obligations".* Additionally, indications are that Canada's Bank Act will be amended to expand the duties of the board's conduct review committee to oversee compliance with the long-awaited enhanced consumer protection measures, **10 years after the financial crisis.**

No insurance customers in Canada should be harmed by delays in consumer protection reform that are now beyond the limits of fairness.

Viewpoint on FTC Processes

The following perspectives are raised here in regard to the above key issue:

29. In its latest country report (March 2014) on observance of the Insurance Core Principles (ICP), the International Monetary Fund recommended that the proactive initiatives by

CCIR to *"enhance consistency of conduct of business regulatory regimes across provinces"* be continued.

30. In full adherence with ICP 19, the new Guidance (on page 11) provides that insurers and distribution firms are expected to make their FTC strategies, policies and procedures available to the regulatory authorities for compliance assurance.
31. Proper FTC processes are likely to be particularly important with respect to retail customers, because of the greater asymmetry of information that tends to exist between the insurer or intermediary and the individual retail customer.
32. The remarkable progress made by CCIR/CISRO in implementing, via the new Guidance and ahead of banking and securities, the G20 high-level Principles 3 (FTC) and 6 (responsible business conduct) should be recognized by the IMF when it assesses again (this year or next) Canada's regulatory regime and supervisory practices against the international standards. Without the leadership shown by CCIR/CISRO, Canada would probably be farther behind the call for enhancement of consumer protection in the field of financial services.

Intermediaries, a key issue

The G20's renewed policy and regulatory focus on financial consumer protection are unequivocally clear: licensed/certified agents, whether tied or independent, brokers, advisors, intermediaries, and other authorized representatives, across all financial market sectors, should be subject the internationally endorsed duty to treat customers fairly. Contrary to certain advocacy groups, the G20 Leaders did **not** endorse the so called fiduciary duty. What is expected is fair and full consideration of the client's interests. By way of contrast, a fiduciary must act solely and selflessly in the interests of the beneficiary.

The International Monetary Fund (IMF) recommended in 2014 to the Canadian insurance regulators that they consider establishing proportionate expectation tailored for intermediaries, focusing on achieving fair treatment outcome for customers.

No insurance customers in Canada should be harmed by intermediaries who are not acting responsibly by neglecting their fiduciary-like responsibilities (such as being trustworthy, which is a condition of licensing/certification in every Canadian province and territory).

Viewpoint on Intermediaries

The following perspectives are raised here in regard to the above key issue:

33. As recommended by the IMF, the new Guidance shows a thoughtful effort to establish proportionate expectation tailored for intermediaries.
34. Responses to Question #2 (on page 5 of the new Guidance), which is concerned about striking the right balance, would allow all CCIR/CISRO members to be better informed in achieving the most acceptable proportion.
35. The eleven core principles guiding the conduct of business of all intermediaries across

Canada (on page 7 of the new Guidance) really amount to a comprehensive code of professional values. These values/responsibilities are known to be high priorities with the insurance buying public and they are outlined at the end of this submission.

36. Most intermediaries demonstrate their belief that “Ethics is good business”. They are the people safeguarding trustworthiness in the industry.

FinTechs, a key issue

The federal government published Bill C-74 is giving more flexibility to insurers and banks in their technology-related activities, including customers’ data sharing with technology companies. This openness is significant for all parties concerned because digital is the new norm for customers. The CCIR/CISRO members are consistent throughout Canada in their common description of **conduct risk** which basically means operating ethically and responsibly and having the customer’s interests at the heart of the business. In consequence, regulatory arbitrage, whereby regulated insurers and/or intermediaries are able to benefit from differences in regulation in different jurisdictions, is not an option.

However, many FinTechs are acting like financial service providers but are not supervised like regulated entities thus fueling shadow banking as well as shadow insurance and, in the process, creating regulatory arbitrage concerns. These unsupervised operations become a source of **systemic conduct risk**, both directly and through its interconnectedness with the regular financial markets.

No insurance customers in Canada should be harmed by inconsistent frameworks that generate regulatory arbitrage concerns and systemic risk of regulators’ creation.

Viewpoint on FinTechs

The following perspectives are raised here in regard to the above key issue:

37. The fast growing shadow system can indeed be used to avoid financial regulation and lead to a build-up of leverage and risks within the system. Enhancing supervision and regulation of the shadow system in areas where these concerns are highest, such as FTC and responsible business conduct, is therefore of paramount importance.
38. In monitoring the shadow system, insurance authorities need to be mindful of the incentives to expand shadow insurance, including the insurance business of banks, created by the legislative proposals of Bill C-74 and related rules yet to be introduced.
39. Financial institutions themselves may use shadow entities to circumvent their prudential and/or conduct requirements (guidelines included) and take on additional risks. It is also noteworthy that new regulations or changes to existing laws can create new regulatory arbitrage opportunities, and may lead to innovation or mutation in the shadow system.
40. According to recent surveys, FinTechs are now beginning to leverage new technologies with the goal of enhancing their customer experience. In doing so, they are creating new

underwriting, claims, distribution, brokerage platforms, product descriptions, quotation service and integrating automation, among several other applications.

Changing Customer Expectations

As customers are expecting more from digital experiences offered by FinTech companies, they are expecting the same level of customer experience from their regular financial service providers as well. FinTechs are disrupting the traditional financial services industry, providing innovating solutions for convenience, accessibility, and tailored products and services.

A change management plan that addresses integrity culture as much as technology has become a necessity for insurers and intermediaries doing business in Canada.

Concluding Viewpoint

Unfair customer outcomes and poor commercial practices impact the lives of large numbers of financial consumers from coast to coast. Reducing conduct risk and promoting ethical behavior by requiring insurers and intermediaries to consistently consider the interests of their customers increases customers' trust that regulated entities will treat them fairly. Effective conduct supervision and management of conduct risk therefore also have wider social and economic benefits that go beyond the supervisory framework.

Where poor practices are widespread, consumer trust in the sector as a whole is undermined, with resultant impacts on sustainability. Effective monitoring and management of conduct risk therefore also supports the broader objective of financial stability. Equally, promoting stability of the financial sector, including supervisory action, enhances both consumer trust and consumer protection.

The interaction between conduct risk and solvency risk means that addressing these risks through supervision requires appropriate coordination and cooperation among market conduct and financial soundness authorities.

The simple fact that the OSFI is an active associate member of CCIR is comforting to the consumer and it shows that cooperative federalism is viable.

Jean-Pierre Bernier and Christine Nicoll, Consumers in the Greater Toronto Area

CODE OF PROFESSIONAL VALUES FOR CANADA'S INSURANCE INTERMEDIARIES



1- I will act with due skill, care and diligence when dealing with customers

2- I will maintain good and sound relationships with peers and with the regulatory auhorities

3- I will establish and implement policies and procedures on FTC, as integral parts of my business culture

4- I will act in compliance with the laws, regulations and guidelines to which I am subject

5- I will promote products and services in a clear, fair and not misleading manner

6- I will provide customers with timely, clear and adequate pre-contractual and contractual information

7- I will take into account a customer's disclosed circumstances when that customer receives advice and before concluding insurance contracts

8- I will avoid or properly manage any potential conflicts of interest, before concluding an insurance contract

9- I will handle complaints in a timely and fair manner

10- I will have and utilize appropriate policies and procedures for the protection and use of customer information

11- I will have contractual arrangements with peers, that ensure FTC

Fair-mindedness is a rewarding strategy



May 28th, 2018

We would like to thank CCIR and CISRO for inviting FSCA in commenting on the Draft Guidance for the fair treatment of consumers as part of the public consultation on this subject.

The Financial Services Consumer Alliance (FSCA) is an informal alliance of consumers whose sole objective is to increase consumer protection in the financial industry. To achieve this goal, FSCA has taken a different approach by empowering former and current insurance executives and other parties in anonymously sharing information about the financial industry. We then corroborate the information received through two independent sources of information. Because of the possibility of retaliation, FSCA protects its anonymous sources of information by ensuring these sources cannot be identified even by FSCA.

This means that FSCA is able to provide in depth advice about changes to regulations or implementation of new regulations through the use of information not available to other parties. We are sharing part of this information in this submission and our contribution to the Guidance for the fair treatment of consumers.

HARMONIZATION

Consumers want to clearly know who they are dealing with and in particular with the intermediaries they may end up using when purchasing insurance. This is however impossible for consumers to achieve since the term intermediaries has such a broad meaning encompassing many terms such as agent, representative, broker...; terms that have different meanings across different provincial jurisdictions.

We believe that the first step in clarifying who is dealing with the consumer in order for this consumer to be fairly treated is for regulators to recognize the duality of intermediaries.

All intermediaries operate under a double mandate defining who they are acting for with most provincial jurisdictions only recognizing one of the mandate only while the tribunals and judiciaries have in their decisions recognized the existence of two mandates.

The first mandate is between the intermediary and the insurer. In most provincial jurisdictions, this is defined as the agent mandate (in Quebec this is defined as the representative mandate and in some other provinces it is defined as the broker mandate). In all provinces, an intermediary must sign an agent contract to have a mandate from the insurer, and the insurer can only offer this mandate to intermediaries who are licensed.

Recommendation #1: Insurers should only offer contracts to intermediaries in compliance with the jurisdiction where the intermediary is licensed and where he will be soliciting insurance business. This means that for example in Quebec, where only a representative can offer insurance, the intermediary should be offered a representative contract based on Quebec laws and regulations and not an agent contract; same for provinces where it is a broker and not an agent who can sell insurance. Words do matter.

Recommendation #2: Insurers limit the authority of their agents through the agent contract and will use this has a way to deny their responsibility in the actions of its agents. Several court cases have pointed out that these limitations were unfair to consumers since the agent contract is not disclosed to the consumer and the consumer has no way of knowing the true authority of the agent. Judges have therefore used the rule of what a regular person would have believed that authority to be in order to define whether or not an agent was acting for the insurer. We believe this to be unfair to the consumer. We believe that insurers should make their agent contract public and that the consumer has a right to know of any contractual obligations or limitations that would influence his decision in using a particular intermediary.

It is important to note that intermediaries can have a single mandate with one insurer which is defined as being a captive agent or can have mandates with many different insurers which is not recognized explicitly in many provinces. For our purpose, we will define this intermediary as being a multi-insurers agent (agent who has signed an agent contract with more than one insurer.)

In most provinces, the intermediary must disclose to the consumer which insurer he can represent. In our opinion, this is not working and often does not occur.

Recommendation #3: Regulators should develop different licenses reflecting whether or not an intermediary can sell the products of one insurer or multiple insurers. The insurers that an intermediary represents should be listed on the license registry of the province where the intermediary is licensed and all intermediaries should have to provide a link to that registry on any of their web sites or internet advertisements.

We have seen web sites of intermediaries and even insurers stating that it was the responsibility of the Consumer to find out if the insurer or intermediary was licensed to solicit insurance in a particular province. This is not acceptable. As licensed entities regulated by the government, insurers and intermediaries should clearly state where they are licensed to act in any forms of advertisement used to solicit the public and provide a link to such information.

The second mandate is between the consumer and the intermediary. This mandate is made up of two components or duties. The first duty is what we call the duty of advice where the intermediary must determine the needs (an obligation) and possibly the wants (an opportunity) of the consumer and develop a financial solution to solve that need or want. The second duty is to find the best product in terms of price and value that will resolve that need or want. This second duty (product recommendation) **can be restricted** by the mandate/contract between the insurer and intermediary.

Recommendation #4: Only Quebec has any forms of regulations that apply to the mandate between consumer and intermediary by making the duty to advise an obligation subject to a code of conduct of ethics. All provincial jurisdictions should have regulations applying to the mandate between consumer and an intermediary defining the duty to advise and duty to provide a product that is suitable (in a restricted mandate) or a product that is in the best interest of the consumer (in an unrestricted mandate). Consumers should be able to easily know who is restricted to act or to offer a product versus who is NOT restricted to act or offer a product.

AGENTS AND REPRESENTATIVES' RESPONSIBILITIES

In the Guidance draft, it is stated that intermediaries "*must comply with the duties that are associated to their registration or license*" This seems simple but often it is not. Life insurance is a contract and the jurisdiction applicable to this contract is where this contract was formed. For Canadians who move their residence from one province to another, this can complicate their financial situation and access to the right intermediary.

For example, let's assume a consumer living in Quebec has $100,000 in mutual funds and $100,000 in segregated funds. This consumer decides to move to Ontario. With mutual funds the process for this move is clear and simple. The consumer would have to find a new investment representative licensed in Ontario where the mutual fund would be transferred in kind to that new representative as we are dealing with trust units. If the Quebec representative was to continue servicing and taking mutual fund deposits on behalf of the consumer, he would be committing an infraction because each new deposit to a mutual fund is considered a new sale and therefore the Quebec representative would be selling in the province of Ontario where he is not licensed.

For life insurance and segregated funds, which are a life insurance product governed by insurance laws, this is not the case. We are dealing with a contract which does not change or can be transferred when the consumer moves to another province. Transfer in kind cannot be done for a contract.

New deposits to a segregated funds are not considered new sales since they are premium payments. As a result, when the consumer moves to Ontario, who is responsible for the segregated funds purchased in Quebec? Can the servicing and the handling of the new deposits to the segregated be handled by an Ontario intermediary unlicensed in Quebec even if the segregated fund as a contract is still under Quebec jurisdiction? Does the Ontario intermediary has the knowledge of Quebec laws to correctly administer this contract? If the Ontario intermediary commits a fault, which regulator is responsible? If it is the Quebec regulator, this regulator would have to charge the Ontario intermediary with having dealt in insurance in a province where he is not licensed.

We have surveyed insurers and intermediaries and nobody could provide any answers to these questions. Some insurers have basically indicated they simply did not know and prefer to stay silent on this issue with all hoping that when faced with this complexity, consumers would simply cancel/surrender their segregated funds and transfer these funds IN CASH to their current jurisdiction. This is unfair to the consumer who may be forced to surrender some important forms of guarantees.

RECOMMENDATION #5: Laws and regulations pertaining to insurance should reflect the fact that insurance is a contract not portable across provinces and come up with a regulatory solution as to whom will be responsible for these contracts at point of sales and at point of service. We strongly encourage regulators to come up with a form of uniform service license which would allow intermediaries to service but not sell new insurance contracts across Canada.

SCOPE

In the Guidance draft it is stated that to ensure the fair treatment of consumers, insurers " *are responsible for fair treatment of Customer s throughout the life-cycle of the insurance product*". Our research has uncovered several breaches of this responsibility. As we will demonstrate under the Conduct of Business Section, Insurers are simply **NOT** servicing policies appropriately throughout the life-cycle of the product.

CONDUCT OF BUSINESS

The Guidance draft lists the expectations applying to insurers and intermediaries in the conduct of their business in order to fairly treat consumers. Below we have listed the expectations NOT met by insurers and intermediaries:

act in compliance with the laws, regulations and guidelines to which they are subject

Our research shows that insurers tend to operate or tailor their insurance operations based on a Pan-Canadian system. Insurers want to operate uniformly across the country and therefore many insurance executives believe that conducting their business based on the Insurance Laws of one province will make them compliant in all other provinces.

When we questioned some of these executives, we were astounded by their ignorance as to the differences existing between provincial jurisdictions in regards to insurance laws.

RECOMMENDATION #6: Regulators must cooperate between themselves and recommit to make laws and regulations as uniform as possible across the country. Regulators should also come up with a national course targeting insurance executives involve in the marketing and sale of insurance educating them of the Insurance Laws and their differences for the various provincial jurisdictions.

Each regulator of each province should come up with a certification program for Insurance Branch Manager, MGA Directors, Insurance Wholesalers... It is amazing to see that an agent or representative, in order to pass their license, must take an exam on the Insurance Laws of the jurisdiction where they will be licensed **WHILE anyone with absolutely no knowledge can be put in charge of managing agents or representatives selling insurance.** It seems the only qualification required is the ability to entertain agents and representatives.

In the Mutual Fund Industry, anyone designated as a branch manager or alternate branch manager of an MFDA member must pass the Branch Managers' Examination Course where the objective of the course is to develop a skill set and knowledge base that supports an individual responsible for supervising mutual fund dealing representatives. **Why is this not a requirement in the insurance industry?**

How can you expect the best from insurance agents and representatives when the worst is allowed to lead these agents and representatives?

promote products and services in a clear, fair and not misleading manner

When it comes down to the sales of Universal Life, this requirement is simply ignored. We have evidence in writing demonstrating the willingness of insurance executives to ignore this rule because they believe that the insurers are fully protected against any civil claims because consumers have to sign a disclosure page stating that the values showed on a Universal Life illustration are not guaranteed. Many insurers believe this give them the right to build illustration software to produce illustrations that are absolutely imaginary and where the cash values showed on the illustration cannot be achieved even if the illustrated rate of return is achieved by the consumer. Insurers have used fictitious illustrations to promote the sales of Universal Life as an investment. We have proof of this.

To be fair to consumers, Universal Life illustrations should:

Allow the agent and representative to illustrate a variable rate of return instead of a constant rate of return when investing in an equity type of investment where volatility will determine the gains or losses of the consumer.

If the option of doing a variable rate of return is not made available, an additional disclosure page should be required explaining to the consumer that the use of a constant rate of return, when in fact the rate of return will vary on a monthly basis, could result in the cash values showed on the illustration being overstated by as much as 40% even if the consumer achieves an average rate of return that equals the constant rate of return used on the illustration.

On the illustration, it should be clearly indicated that the illustration rate does not include the cost of the Management Expense Ratio (MER).

If a Bonus exists and is credited for the Universal Life, and this Bonus is used to return part of the MER back to the consumer, this Bonus cannot be included/credited in the illustrated cash values if the MER is not also included/debited.

provide Customer s with timely, clear and adequate pre-contractual and contractual information;

Insurers want to sell Universal Life as an investment and use this product to compete against Mutual Funds and Segregated Funds. However there are absolutely no regulations applying to Universal Life such as the requirement to provide a prospectus for a Mutual Fund. In fact, segregated fund contracts are exempt from the prospectus requirements of securities laws because of their guarantees. Such guarantees do NOT exist under Universal Life and therefore they should be considered securities and a prospectus should be required if the Universal Life is sold as an investment.

take into account a Customer 's disclosed circumstances when that customer receives advice and before concluding insurance contracts.

Our research shows that the consumer is getting no information on the investment he is selecting for his Universal Life. The illustration provides no information. The information is usually found in the policy contract. However this contract is provided to the consumer at policy delivery when he has been approved for insurance which can be up to 6 months after the illustration has been produced and application submitted. This is not fair for the consumer and this practice cannot be tolerated any longer.

Illustration software allows the agent and representative to print a commission page allowing the agent or representative to disclose his remuneration associated with the sale of a life insurance product. Up to 50% of the remuneration of the agent or representative comes from the Sales Bonus that will be paid to him by the insurer. You would therefore assume that this bonus would be shown on the Commission illustration page. However it is not included and therefore this page misrepresents the level of commission that will be paid by the insurer.

avoid or properly manage any potential conflicts of interest, before concluding an insurance contract;

We have great concerns about the increase number of MGAs owned by insurers. There is a risk of a conflict of interest and it is not clearly disclosed to the consumer.

In fact, we have documented the practice of some insurers of not paying a Commission Bonus if the agent or representative does not sell the insurance product of the insurer owning the MGA. Also if the agent sells the products of another insurer, his sales credits are not accounted in various incentives such as qualifying for a sales conference in an exotic location.

Recommendation #7: It is not a surprise that we recommend that the industry do away with incentives solely based on sales such as qualifying to exotic trips under the guise of a conference. MGAs should be required to state if they are owned in whole or in part by an insurance company and the MGA should not be allowed to implement a remuneration scheme that would favor the insurer which owns the MGA.

service policies appropriately throughout the life-cycle of the product;

The existence of orphan policies where no licensed intermediaries is responsible for servicing the policy contrary to what is stated by the insurer to the consumer proves that insurers are not willing to deal fairly with consumers and that they are NOT committed to servicing a policy through the life-cycle of a product.

We have concrete proof and evidence that one insurer went as far as removing the name of agents from many life policies in order to increase the lapse rate of this block of policies. Without the name of an agent on these policies, lapses notices were NOT sent and were instead destroyed. Unaware that their policy was in danger of lapsing because the consumer believed a licensed intermediary was looking after it when it was not the case, many consumers lost and are still losing their insurance coverage on this basis.

Servicing commission paid from the premium paid by consumers can be paid to former intermediaries who are no longer licensed and who legally cannot provide service on these policies since they are no longer licensed. Insurers are not required to inform the consumer that their intermediary is no longer licensed and instead ask that the consumer contacts the former agent for changes in regards to their policies. Some insurers close a blind eye to the activities of former intermediaries who are no longer licensed and who still continue to provide service on what they have sold in the past.

Basically the consumer is required to pay for a service that cannot be provided to him. Is this fair? In the mutual fund industry there is a class action against firms that have charged service fees when no service was provided. Will this need to happen in the insurance industry for this unfair practice to stop?

Insurers are paying service fees to MGAs which is usually equaled to 3% of the inforce premiums. This is the fee that the insurer is paying in order to outsource its service obligation to the MGA. Instead, MGA have used this service fee as a way to entice other intermediaries doing business with competing MGA to change MGA by paying this service fee as a top up to the remuneration of the intermediary. There is even a court case in Quebec where a representative sued the MGA for failing to meet its promise to pay him the service fee on the policies he sold. When surveyed, insurance executives of various insurance companies, have assured us that they would not tolerate this practice and that the service fee had to go towards servicing policies and COULD NOT BE uses to influence intermediaries in placing business with another MGA. They could not explain the civil lawsuit that demonstrated that MGAs are not following this guideline.

Recommendation #8: Quebec is the only province that has made the existence of orphan policies illegal in this province. Other provinces should follow the example of Quebec.

Payment of the MGA service fee by the MGA to an agent or representative should be considered as a conflict of interest and should be made illegal in all provinces.

The only way to manage permanent insurance through its life-cycle is through the use of in force illustrations which allow intermediaries to adjust the original illustration to the current economic environment and current state of the policy.

Insurers have moved away from providing in force illustration software to their intermediaries and if these illustrations are made available it is through a special request. The need to do in force illustrations is not advertised by insurers because they want their intermediaries to concentrate on selling insurance instead of servicing insurance they have sold. In all insurance companies surveyed, not one intermediary could indicate to us any form of training on in force illustrations that should have been provided by insurers. Training solely focuses on new sales techniques and not servicing techniques. Considering the complexity of managing a Universal Life this lack of training is a deterrent to the fair treatment of consumers.

Fair Treatment of Customers

minimizing the risk of sales which are not appropriate to the Customer s' needs

It has been proven that Universal Life illustrations can be easily used by an intermediary to commit fraud against a consumer. Still, insurers are doing nothing to improve their illustration software. In the USA, the regulators have implemented regulations pertaining to the use of illustrations to sell insurance in order to reduce the opportunity of fraud such as having a maximum illustration rate for illustration software.

Currently intermediaries can used any illustration rate as there are no maximum in the software. Intermediaries such as Thibault (one of the biggest case of fraud in Quebec) have used this to create illustrations at more than 12% (16% rate of return when the MER is added) to support their fraud. A maximum rate of return of 6% is needed for illustration software in order to minimize the opportunity of fraud and misrepresentation.

In order to sell an insurance product, all provincial jurisdictions require that the intermediary do a need analysis. However the intermediary is not required to submit this need analysis to the insurer with the application for insurance. Why?

We still see today intermediaries selling low level amount of insurance below the need of the consumer in order to sell permanent insurance for higher commission when temporary insurance was required. The only way to prevent this is to have the need analysis submitted with the application and the insurer to question the intermediary when permanent insurance is sold which does not cover the need for insurance.

CORPORATE CULTURE

In the last twenty years, we have seen insurers investing less and less in the development of their employees. Taking myself as an example, as soon as I took employment with Maritime Life, this

company encouraged me and supported me in obtaining my FLMI, which is one of the greatest insurance courses allowing employees to learn about everything that applies to insurance; from law, accounting, actuarial sciences, marketing, customer service... The knowledge I acquired through the FLMI program served me well during my career allowing me to make the right decision for the consumer and company when dealing with complaints and disputes.

This has changed and most companies, as a cost saving opportunity, do not invest in the education of their employees. As a result, employees are promoted in positions where they do not have the necessary knowledge to make decisions that would fairly treat the consumer. For example, I had an intermediary who made a complaint against our Director of New Business. The intermediary had delivered the policy, collected the premium and sent everything to the New Business department. The New Business lost the premium cheque and was demanding that the intermediary go to the consumer to get a new cheque. The intermediary however refused demanding that the New Business Department provide a letter of apology explaining what happened. The New Business Department refused and the Director of the New Business Unit stated that the policy was not in force and that the client was not insured. In talking with the Director of the New Business Unit, it became evident that he had no knowledge of Insurance Laws and as a result did not understand when the insurance coverage of a life policy becomes effective something that is well covered in the FLMI courses.

Basically, you cannot have a consumer driven corporate culture if the executives leading that culture have little knowledge about insurance. You can't drive a culture that is empowered to deal with consumers if the employees have little knowledge of insurance. We could state that insurers put more value in hiring executives that have been formerly trained in business (MBA) with no knowledge of insurance than hiring competent executives trained and experienced with insurance.

RELATIONSHIPS BETWEEN INSURERS AND INTERMEDIARIES

In managing their relationships with Intermediaries, insurers are expected to have effective systems and controls in place and communicate clear strategies for selecting, appointing and managing arrangements with Intermediaries as part of their overall distribution plan.

This however cannot happen unless there are “CLEAN SIGHT OF DISTRIBUTION RELATIONSHIPS BETWEEN INSURERS AND INTERMEDIARIES”. This is not the current state of the insurance industry and distribution relationships is a hodgepodge of sales and servicing contracts making it impossible for insurers or MGAs to monitor their intermediaries.

Many insurers allow intermediaries to have multiple agent contracts by contracting through different distribution channel. An intermediary can have a sale contract with an insurer through an MGA and contract directly with the same insurer. Intermediaries when transferring distribution channel or MGA can elect to not transfer their existing block of business to their new MGA or distribution channel and as a result intermediaries can have dozens of servicing contracts with the same insurer in addition to the selling contract.

In fact, our research has revealed something that is hidden. The life insurance business of an intermediary is owned by the MGA through the service fee that is paid by the insurer to the MGA. If the MGA refuses to release this service fee to the new MGA, then the intermediary must continue to service his block of business through the old MGA while putting his sales through the new MGA. When this happens several times if the intermediary changes MGA often, the business of the intermediary becomes so fragmented that it is impossible for the insurer to control and manage the

intermediary.

In order for the old MGA to release the block of business and its servicing fee, the new MGA must purchased that servicing fee based on a multiple of its value. The new MGA often refuses to buy the transfer fee of this block particularly if there is a perceived liability risk with the service of this block. The new MGA will take the new business of the intermediary but not his past business.

Recommendation #9: All insurers should have a policy that automatically transfer the block of business to a new MGA if the intermediary changes MGA. This should not be optional. A new MGA should not be able to contract a new intermediary if it is not willing to take the service of the existing block of business of this intermediary.

In addition, intermediaries can contract with as many MGA as they want with each MGA demanding a share of the business of this intermediary which creates a potential conflict of interest.

Recommendation #10: Intermediaries should not be able to contract with as many MGA they want. We suggest a maximum number of 2 MGAs.

As previously mentioned the agent contract should be disclosed to the consumer as this is where the authority of the agent is defined.

RELATIONSHIPS WITH REGULATORY AUTHORITIES

implement the necessary mechanisms to promptly advise regulatory authorities if they are likely to sustain serious harm due to a major operational incident that could jeopardize the interests or rights of Customer s and the organization's reputation.

Why would an insurer inform the regulators about the actions of an intermediary when the actions of the intermediary could negatively impact the insurer? We have examples of many cases where the insurer decided not to inform the regulator about the infractions of an intermediary.

In one of the cases, we have emails between executives of an insurer discussing the actions of an agent who had falsified several signatures of his clients. Since the actions of the agent could cast a negative light on the insurer, the executives decided not to report this intermediary to the regulator. While the insurer canceled the agent's contract for cause, that agent was allowed to conserve his book of business. Since insurance policies are contracts and can't be transferred to another insurer, the intermediary was allowed to convince his clients to surrender their policies with the existing insurer by replacing them with new policies with a new insurer. To justify these surrenders the agent was allowed to tell his clients that the products that he had sold originally were now inadequate and needed to be replaced. The clients in question lost many of their guarantees under their segregated fund.

In another case, the agent name was Thibault and he was responsible for a high number of fraud which led to one of the biggest bankruptcy in the Quebec financial industry for an intermediary. This agent, years before, had bribed an employee of the insurer using the drug addiction of the employee to convince him to inflate the values of his life policies which the agent then used to borrow funds against these policies. When the insurer found that out, the insurer canceled the contract of the agent and even sued the agent to recover what they had lost because of this fraud. This was never reported to the regulators and the agent continued to sell with other insurers resulting in hundred more people losing their money because of the fraud of this agent.

Recommendation #11; The law should specify that all cases where an agent has a contract canceled by an insurer that this insurer must report the agent and the reason for canceling the contract to the regulator.

CUSTOMERS OUTCOMES AND EXPECTATIONS AND CONFLICTS OF INTEREST

Remuneration, reward strategies and evaluation of performance take into account the contribution made to achieving outcomes in terms of fair treatment of Customers.

Remuneration for insurance, based on a heaped scale instead of a level scale, is by its nature unfair to consumers. However added incentives add to this level of unfairness. This includes:

1)Trips to exotic locations, marketing dollars...all incentives based on sales that are not disclosed to consumers.

2)Sales Bonus which can double the remuneration which is usually not disclosed.

When an intermediary signs a direct contract with an insurer (no MGA involved), the sales bonuses can be retroactive to all sales made since the beginning of the year and as a result can lead to a substantial payment at the end of the year if the intermediary concentrates his sales with that insurer. If there was an MGA involved this would not happen as the bonus offered by the MGA would be calculated based on all sales made with all insurers and not one particular insurer.

We are particularly concerned with MGA owned by insurers. In those instances, we have seen these MGA offer a sales bonus to the intermediary if that intermediary sells the product of the insurer than owns the MGA. If the intermediary sells the product of another insurers, the intermediary will not get a sales bonus, his sale will not count towards qualifying toward the yearly exotic conference trip... This is unfair to the client because the insurer is applying a large amount of influence in trying to convince the intermediary to recommend the product of that insurer even if it is not in the best interest of the Customer.

Chargebacks are another area of concern. With large commission paid upfront, if the policy is canceled by the Customer, the intermediary is left owing a large amount of money to the insurer. To pay this money, the intermediary's only choice is to sell more life insurance from this particular insurer. It was disclosed to us, that there has been intermediaries who have owed more than a million dollars in chargeback to a single insurer.

Recommendation #12: Insurers should be obligated to report intermediaries to the regulator who have chargebacks of more than $10,000 with a single insurer and such insurers should be forced to implement a special compliance plan to monitor the sales of this intermediary.

OUTSOURCING

We are worried about the trend of intermediaries in using cloud based applications. This can involved need analysis, financial planning software. Intermediaries are entering the personal information of their clients in these applications where the data will reside on the server of a third party without the

authorization or knowledge of the client.

Recommendation #13: Confidentiality laws should be respected and enforced!

DESIGN OF INSURANCE PRODUCT

Insurance contracts are contracts of good faith and this good faith not only applies to Consumers but it also apply to the insurers. In additional, it has been recognized in various legal precedents that Consumers are at a disadvantage when dealing with an insurer and that contracts should be interpreted from that basis.

We are concerned with a trend involving the unfair pricing of life insurance product used as a way by an insurer to increase its sales and to gain an unfair competitive advantage against other insurers.

Actuaries are required through the code of ethics of their profession to fairly and conservatively price their insurance products. However many insurers are designing insurance products with guarantees that are conditional and which can be unilaterally removed or changed by the insurer. As a result, the insurer can unfairly price an insurance product while protecting itself by being able to increase its pricing in the future. There is no way for the Consumer to know this and to know that the pricing assumptions used by the insurer cannot be supported in the future in any conditions.

FSCA is now dealing with such a legal case involving an insurer where we are claiming that the insurer used an interest rate in its pricing of its segregated funds guarantees that could not be supported and that the insurer should have known this violating its legal duty to use conservative pricing in the development of its insurance products.

DISTRIBUTION STRATEGIES

Consumers can purchased insurance through various distribution channels offered by insurers. Each distribution channel has to treat the consumer differently because of contract or legal considerations. These channels are:

The intermediary to insurer channel: This channel applies to the single insurer agent who is usually captive to a particular insurer and therefore sell under the name of that insurer. These single insurance agents usually operates from an insurer branch. The single insurance agent can sell insurance from other insurers if his insurer has created an MGA to specifically allow the single insurance agent to sell insurance products of other insurers under its supervision and control. Access to other insurers can be also given to the single insurance agent through the use of inter-corporate contracts (insurer to insurer contract).

Recommendation #14: Using a captive intermediary has its positives and negatives. To be fair to the Consumer this has to be disclosed to the Customer. Captive agents should not used terms such as “independent” even if they can sell the product of other insurers. The test is simple. If an agent sells insurance under the name of an insurer he is never independent even if sells the product of another insurer. Consumers must understand that the block of business of the intermediary is owned by the insurer who ultimately is responsible for the service of all policies sold by the intermediary. We also believe that the insurer, for captive agents, is responsible for the advice given to the Consumer and is part of the advice mandate between agent and Consumer.

The intermediary to insurer channel can also also apply to multi-insurers agent since many insurer allow that kind of intermediary to sign a contract directly with the insurer even if the intermediary is independent. We consider the agent to be independent if he sells insurance under his name and not the the name of the insurer. This can lead to abuses as this type of contract is largely dependent on sales where the agent can negotiate a sales Bonus which could be as large as the sales Bonus paid to a MGA (which pool the sales of hundred of agents). This can quickly lead to abuses in order for that agent to meet the sales' volume requirement in order to qualify for his sales bonus. This make the agent particularly vulnerable to chargebacks. In Quebec, we have seen for one insurer, 75% of its sales in this channel being based on different strategies involving rebating.

Recommendation #15: We don't see any positives for consumer in dealing with multi-insurer agents that contract directly with the insurer when this multi-insurance agent can contract through a MGA to get access to various insurers removing most sources of conflicts of interest or incentives to commit infractions. As a result, this channel should disappear as it is unfair to Consumers.

The intermediary to intermediary channel: This channel often referred as the MGA channel applies to multi-insurers agents or representatives who want to be perceived as being independent by the Consumers when doing a product recommendation.

The main message of this channel transmitted to Consumers is about the advantage of dealing with someone who is independent. It is important to underline that when the intermediary is acting as the agent of the insurer under the agent mandate, he is not independent. It is when the agent is acting under the Consumer mandate in order to provide advice and to recommend the best product that the agent is acting independently of the insurer.

Recommendation#16: The regulators should ensure that the representations made to he public as to the independence of the agents are true and accurate and should ensure that no insurers can restrict or offer incentives that would influence that independence without it being disclosed to the Consumer.

Consumer to insurer channel: This channel allows the consumer to buy insurance directly from the insurer without the use of a licensed intermediary. There are no mandates as there are no agents or representatives and the insurer has no mandate to provide financial advice or recommend a product.

Under this channel, there is two categories of distribution/offerings. There is the purchase of insurance directly from the insurer under a group insurance contract held by a unlicensed third party. This includes:

Bank mortgage insurance: where the lender has a group insurance contract with the insurer and can sign up those who are taking a mortgage with this lender for mortgage life insurance...
Employer group insurance: the employer signs directly or through an intermediary a group insurance contract with the insurer and each employee can buy additional and optional insurance directly from the insurer without the use of a licensed intermediary.
Retailer insurance: where a retailer signs a group insurance contract with an insurer allowing to offer insurance in its stores or web sites...
Association and institutional insurance: where an organization such as universities can offer insurance to its alumni without the involvement of a licensed intermediary's
Direct insurance: where an insurer offers its product directly to the public without the used of a licensed intermediary. The main difference here is that the Consumer is purchasing an individual contract which he will own instead of being added to a group contract that he does not own.

Recommendation#17: We do not believe that you can put the Jinny back in the bottle. Insurance sold directly to the public without the use of an intermediary has been going on too long to stop this practice. Is advice necessary for the public to get this kind of insurance/ In the end this should be the consumer's choice whether or not he wants advice. However we recommend that in all cases, the option to get advice should be offered to the public. Finally 100% of the consumers don't understand that under a group contract they do not own the insurance and if the contract is canceled between the insurance and the organization, the consumer will lose his insurance. This should be clearly disclosed to the consumer.

PROTECTION OF PERSONAL INFORMATION

There are different parties that can be involved in the business of insurance through the internet in addition to insurers and intermediaries. These third parties are the information web site and Comparison/Quote web sites.

The main difference between the information web site and Comparison/Quote websites is that the latter require the customer to provide his personal information such as email address in order to have access to the services offered by the web site. Information web sites only offer information for free without any prerequisites.

Recommendation#18: Comparison/Quote web sites should be regulated and licensed

Richard Proteau
Consumer Advocate
Financial Services Consumer Alliance
info@consumerights.ca

IBC BAC | Insurance Bureau of Canada
Bureau d'assurance du Canada

David McGown
Senior Vice-President, Strategic Initiatives
Vice-président principal, Initiatives stratégiques

777 Bay Street, Suite 2400, P.O. Box 121, Toronto, ON M5G 2C8
416-362-2031

Sent by email Patrick.Dery@lautorite.qc.ca

June 15, 2018

Mr. Patrick Déry
Chair, Canadian Council of Insurance Regulators
Autorité des marchés financiers
2640, boulevard Laurier 6e étage
Québec, Québec G1V 5C1

Dear Mr. Déry,

On behalf of Insurance Bureau of Canada (IBC), I want to thank the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO) for providing the property and casualty insurance industry with the opportunity to review and comment on the draft guidance, *Conduct of Insurance Business and Fair Treatment of Customers.* IBC's comments focus on the following matters:

1. The importance of harmonized fair treatment of consumers guidance across the country;
2. The different roles and responsibilities of insurers and intermediaries; and
3. The technical aspects of the supervisor expectations.

Harmonized Fair Treatment of Consumers Guidance

We noted in our March 7th letter to you on the previous version of the draft guidance that in a provincially regulated market with individual regulators, it is easy for duplicative and conflicting regulations and industry expectations to emerge. A benefit of the CCIR-CISRO draft guidance is having national consistency of supervisor expectations of insurers and intermediaries based on international standards.

We are very supportive of CCIR and CISRO's direction to create a national standard for a principles-based approach to the fair treatment of consumers. Regardless of a province's insurance laws, with a principles-based approach, supervisor expectations for how insurers and intermediaries treat consumers should be uniform across the country.

At the same time that CCIR and CISRO are developing the draft guidance, the Financial Services Commission of Ontario (FSCO) is also developing its guideline, *Treating Financial Services Consumers Fairly.* And the Autorité des marchés financiers (AMF) has been operating with the *Sound Commercial Practices Guideline* for several years. While similar, there are differences, particularly between FSCO's draft guideline and the CCIR-CISRO draft guidance. Notably, even though both documents cover similar supervisor expectations, the FSCO draft guideline contains more prescriptive expectations than the CCIR-CISRO draft guidance, which, for the most part, is consistent with a principles-based approach. Two examples are below.

- With respect to managing conflicts of interest, CCIR and CISRO expect insurers and intermediaries to take reasonable steps to identify, avoid and manage conflicts of interest, disclose them when appropriate and, when they cannot avoid a conflict, decline to act. Conversely, FSCO's draft guideline states that financial institutions should develop certain policies and communicate them to certain internal and external stakeholders. Similarly, FSCO's draft guideline states that financial institutions should conduct audits specific to product and commission conflicts of interest.

- With respect to providing advice, both documents have similar expectations about assessing consumer demands and needs by collecting certain information. However, FSCO's draft guideline puts an expectation on financial institutions to apply a three-step process for ensuring a product offered is in the consumer's best interest. FSCO's guideline also states that insurers should provide documentation for the three-step process that shows the linkage between each step.

There is no inherent problem with these expectations in FSCO's draft guideline, but we wonder why two documents with similar objectives pertaining to the fair treatment of consumers are being developed at the same time with different supervisor expectations. Differing expectations can have an adverse effect on insurers conducting business in multiple provinces that want to be agile and adopt uniform business practices. They can also make the CCIR-CISRO guidance less relevant.

In the March 2018 consultation paper, *Financial Institutions Act & Credit Union Incorporation Act Review Preliminary Recommendations*, the B.C. government states its interest in having the Financial Institutions Commission (FICOM) adopt the CCIR-CISRO guidance. Specifically, the B.C. government notes the importance of consistency for insurers that operate in multiple jurisdictions.

> *Because insurance companies often operate in multiple jurisdictions, consistency is important. Ideally the Canadian Council of Insurance Regulators (CCIR) would develop a national code of conduct for insurers that FICOM could adopt. Otherwise, FICOM could look to existing national industry codes/standards as much as possible to avoid inconsistencies with other jurisdictions. Both the code and any accompanying rules would be subject to ministerial approval and public consultation.*

We urge the regulators to use the CCIR-CISRO guidance as the base for their own supervisory efforts and to maintain consistent insurer and intermediary expectations from province to province. CCIR and CISRO's principles-based approach makes the guidance applicable across the country. The CCIR-CISRO guidance also complements CCIR's Annual Market Conduct Statement and the objective for more cooperative supervisory practices.

Roles and Responsibilities of Insurers and Intermediaries

In our March 7th letter, we noted that a challenge with developing fair treatment of consumers guidance is dividing responsibilities and expectations between insurers and intermediaries. For the most part, CCIR and CISRO confirm which supervisor expectations apply to insurers, intermediaries or both. However, in a few instances, the draft guidance contains statements that

appear to imply that insurers are directly responsible for the actions of independent and separately regulated intermediaries.

- In the *Scope* section, CCIR and CISRO state that "Where more than one party is involved in the design, marketing distribution and policy servicing of insurance products, treating Customers fairly in respect of the relevant services is a responsibility that is shared amongst involved Insurers and Intermediaries". Yet, also in the *Scope* section, CCIR and CISRO state that "The Insurer is responsible for fair treatment of Customers throughout the life-cycle of the insurance product, as it is the Insurer that is the ultimate risk carrier".

- In the *Conduct of Business* section, CCIR and CISRO state that "the Insurer remains ultimately responsible for servicing policies throughout their life-cycle, and ensuring that Intermediaries have appropriate policies and procedures in place in respect of the policy servicing activities performed on the Insurer's behalf".

- The *Relationships between Insurers and Intermediaries* section contains only expectations on insurers, all of which combined, appear to indicate CCIR and CISRO's expectations that insurers are responsible for ensuring that independent and separately regulated intermediaries meet the fair treatment of consumers' expectations in the guidance.

- The *Relationships with Regulatory Authorities* section contains CCIR and CISRO's expectation that insurers "communicate and report to the regulatory authorities any Intermediaries with whom they have transacted that may be unsuitable or not duly authorized, all of which would have the undesirable result of impairing fair treatment of Customers".

There are limits to an insurer's ability to monitor intermediary actions and ensure that consumers are treated fairly throughout all stages of the insurance product life-cycle. Insurers cannot be expected to supervise a business partner's conduct to the same degree as a regulator with legislative authority.

We believe that it is a reasonable expectation that insurers have effective systems and controls for selecting, appointing and managing arrangements with intermediaries. We also believe that it is reasonable for insurers to have written agreements that clearly define roles and responsibilities. It is the insurer's responsibility to create an environment with their intermediaries to promote the fair treatment of consumers. But, where an intermediary is separately regulated, and where the insurer has no direct ability to affect or monitor behaviour, the insurer should not be responsible for enforcing supervisor expectations on the independent intermediary or held accountable for any adverse behaviour by the intermediary.

We recommend clarifying in the *Scope* section that fair treatment of consumers is a shared responsibility among insurers and intermediaries. We also recommend amending the expectations in the *Relationships between Insurers and Intermediaries* section to focus on practices that are within an insurer's control.

Our suggested expectations are below. We removed the expectation pertaining to insurers being satisfied that intermediaries are providing information to help consumers make informed

decisions. We also removed the list of provisions to include in written agreements. Insurers and intermediaries should be able to tailor their agreements to their business needs. Of course, the importance of fair treatment of consumers remains.

- *In managing their relationships with Intermediaries, Insurers are expected to:*
    - *have effective systems and controls in place and communicate clear strategies for selecting, appointing and managing arrangements with Intermediaries as part of their overall distribution plan;*
    - *conduct due diligence in the selection of Intermediaries to assess, amongst other things, that they are authorized and have the appropriate knowledge and ability to conduct insurance business and, for Distribution Firms, have appropriate governance policies and procedures with respect to fair treatment of Customers;*
    - *have written agreements in place to clearly define the conditions, scope and limits of contracted services, clarify roles and promote the fair treatment of Customers;*
    - *manage contracts, once in place, to monitor Intermediaries' compliance with their contract conditions; and*
    - *analyze complaints concerning Intermediaries in respect of products distributed by Intermediaries on their behalf, to enable them to assess the complete Customer experience and identify any issues to be addressed.*

Technical Aspects of the Supervisor Expectations

Below are comments on specific supervisor expectations.

- In the *Governance and Corporate Culture* section, the fourth bullet states that "Appropriate measures are taken to ensure that their employees and others meet high standards of ethics and integrity, beginning at recruitment". Insurers would benefit from an understanding of the word "others" in this expectation.
- In the *Conflict of Interest* section, the first bullet states that conflict of interest may arise from "compensation structures, performance targets or performance management criteria that are insufficiently linked to Customer outcomes". Compensation structures do not need to be linked to a Customer outcome but rather should not negatively affect the insurers' fair treatment of Customers objectives. We recommend substituting the words "are insufficiently linked to" with the words "cause adverse effects on".
- In the *Disclosure to Customer* section, the second bullet states that disclosures "be accessible in written format, on paper or another durable medium". Not all disclosures need to be in written format or even electronic format. In some instances, verbal disclosures are adequate. We recommend adding the phrase "when appropriate" to the end of this bullet.

- In the *Advice* section, the first bullet indicates that insurers should collect certain information to assess a customer's demands and needs, such as "financial knowledge and experience; needs, priorities and circumstances; ability to afford the product; and risk profile". For certain products, such as auto insurance, legislation prohibits insurers from soliciting financial information. Depending on the nature of the product, the importance of this information could vary. We recommend removing the information examples and keeping the expectation as "Before giving advice, appropriate information should be sought from Customers for assessing their insurance demands and needs".

- Also in the *Advice* section, the second bullet states that "Where advice is provided, this is communicated to the Customer in written format, on paper or in a durable and accessible medium, and a record kept in a "client file"". When discussing a customer's insurance demands and needs, insurers and intermediaries often give advice verbally in the course of the discussion. These discussions often lead to learning details material to issuing coverage, such as whether the customer has a child away at school or is planning an addition to his/her home. This bullet should reflect that giving advice verbally is appropriate.

- In the *Disclosure to Policyholder* section, the second bullet states that insurers are expected to disclose information "on terms and conditions…changes in policy terms and conditions or amendments to the legislation applicable to the policy". Because some changes to policy terms and conditions may be immaterial, such as editorial changes, clarifications or format changes, we recommend adding the phrase "as appropriate". Because amendments to legislation are public policy matters, which may or may not be material, we recommend adding the phrase, "when required by law".

Thank you again for the opportunity to review the draft guidance. We hope our commentary helps CCIR and CISRO finalize the document.

Sincerely,



David McGown
Senior Vice President, Strategic Initiatives

c.c.: Tony Toy, Policy Manager, Canadian Council of Insurance Regulators

30 Eglinton Avenue West, Suite 740
Mississauga ON L5R 3E7
Tel: (905) 279-2727
Website: www.ifbc.ca

June 18, 2018

Submitted by email: ccir-ccrra@fsco.gov.on..ca

To: Members of the Canadian Council of Insurance Regulators (CCIR)
Members of the Canadian Insurance Services Regulatory Organizations (CISRO)

Subject: Proposed Guidance on the Conduct of Insurance Business and Fair Treatment of Customers

Independent Financial Brokers of Canada (IFB) is pleased to comment on the above-noted Guidance. IFB is a national, professional association representing approximately 3,500 individually licensed financial advisors. Most IFB members are life insurance licensed. Many have other financial licenses, such as for mutual funds, and/or have accreditations which allow them to provide more comprehensive advice to clients.

An important part of the work IFB does is to provide a unified voice for advisors who are independent, and often owners of their financial practice. IFB provides input to regulators, government officials, industry stakeholders and others who seek to influence the development of public policy and regulation, to ensure that independent advice remains a viable choice for consumers.

IFB supports the objectives reflected in the fair treatment of customers (FTC), and its principles-based approach. Much of what has been proposed provides a structure to the FTC that already exists in various industry and regulatory responsibilities. We expect that the CCIR/CISRO or its member jurisdictions will next need to build upon these high level principles to provide further guidance on how success in meeting the FTC will be adjudicated.

In this regard, IFB believes an opportunity exists for CISRO and/or the CCIR to adopt a harmonized code of conduct, or consumer protection code that would apply to all insurance stakeholders. This would standardize the regulatory expectations on market conduct and the fair treatment of customers that all those involved in the distribution of life insurance would be held accountable against.

Codes of conduct express a common set of expectations for firms, employees and contracted personnel around what constitutes an appropriate standard of conduct, as well as the prevention of undesirable or unethical behaviour.

IFB members must agree to abide by the IFB Code of Conduct, which has as its first principle, the requirement to place the interests of the client above one's own. This is in keeping with the FTC principles. Many insurance intermediaries are covered by codes of conduct/ethics that require them to place the interest of the consumer ahead of all others. Some Codes are voluntary industry codes adhered to by members of associations, like IFB, while others are required by regulation (Life Insurance Council of Saskatchewan). Each of these codes, however, vary in their requirements.

A consistent approach across financial sectors, despite the differences in regulatory oversight, is desirable. Consumers should not be subject to a different standard of fairness based on the financial sector. Some securities regulators are looking at a best interest or similar requirement, while others are not. Lack of a harmonized approach leaves consumers at risk. Many advisors are dual-licensed, and subject to different regulatory regimes, which increases the possibility of conflicting compliance requirements.

Scope

We agree that treating customers fairly should be a shared responsibility throughout the life-cycle of the insurance product. In reality, though, there is not an equal sharing because insurers influence how products are designed, and sold to customers at point of sale and throughout the life of the policy.

To help mitigate this asymmetry, advisors should have a mechanism to provide feedback about products, post-sale service practices or other barriers that may impair the FTC throughout the life-cycle. Advisors meet with clients and can be an invaluable information resource in helping to achieve the FTC.

Conduct of Business and Corporate Culture

IFB agrees that the FTC should be central to the outcome of any business transaction. However, recent examples demonstrate the difficulty that large, integrated organizations can face in successfully integrating a top-down business culture. Senior leadership of the firm, including members of the Board of Directors, may set policies to demonstrate the firm's commitment to a culture of appropriate behaviour for its employees and contractors. However, the recent investigation by the FCAC into bank sales practices in Canada indicated that pressure on middle managers resulted in sales targets being placed on customer service reps that resulted in poor customer sales practices. In the US, the Board of Wells Fargo appeared to be ignorant of sales practices in the bank itself and that customers were sold unsuitable products Many insurers are large, complex financial institutions that will need to be cognizant of these internal risks and adopt appropriate mitigation measures, such as building the TCF into their business plans and strategic planning processes.

Similarly, regulators will need to have the appropriate skills and capacity to be able to undertake supervision of these measures, and adjudicate compliance. We have noted an increasing trend for financial services regulators to employ professional staff who are highly- educated but who lack industry knowledge. We think it is important for regulators to have, or have access to, those who have training on specific products and business models, and understand the possible risks they present.

For consumers, fairness is complicated by the sale of products which can be difficult to understand, and by generally low levels of financial literacy. While these can be obstacles, significant improvements have been taken to produce reports and documents that are written in simpler language, provide more transparent cost disclosure, and better awareness of alternatives in the event of a complaint. Recent examples include the introduction of CRM2 and the revised disclosure document for segregated funds.

We remain concerned about the industry trend of mergers and acquisitions that is leading to the outright exit of small to medium sized firms, or these firms being absorbed into large entities. More recently, insurers have been purchasing MGAs. Fines against a bank-owned mutual fund dealer were levied in response to the firm paying higher commissions for the sale of in-house (proprietary) products, despite the dealer having access to a wide shelf of funds. Regulators will need to monitor these developments and consider their impact on competition and the FTC if consumers are faced with reduced choice and/or access to independent advice.

Below are some concluding comments.

Customer complaints.
We suggest the CCIR/CISRO consider the development of a whistleblower program as a tool to assist in ensuring the FTC for insurance customers. Other financial regulators have done so, and have achieved success where they might not have otherwise.

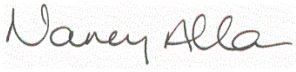
Non-compliance.
The paper discusses the various elements that should be included in a FTC program but doesn't address non-compliance or how a regulated body can demonstrate compliance where there is a discrepancy, for example, between the advisor and MGA, or MGA and insurer.

Proprietary firms and products.
We continue to wonder how these firms can meet the FTC standards when they offer a restricted product shelf or compensate sales of in-house products at a higher level.

In closing, IFB is very supportive of the fair treatment of customers' guidance. It reflects a modern, flexible and principles-based approach to regulation. We look forward to continuing to work with the CCIR/CISRO as you work toward an implementation strategy.

Thank you for the opportunity to comment. Please contact the undersigned if you wish to discuss our comments, or have questions.

Yours truly,



Nancy Allan
Executive Director
Email: allan@ifbc.ca
Tel: 905.279.2727

Insurance Institute

A Foundation of Fairness:

The Insurance Institute of Canada responds to CCIR/CISRO's Guidance: Conduct of Insurance Business and Fair Treatment of Customers.

June 11, 2018

June 11, 2018

A Foundation of Fairness

The Insurance Institute of Canada responds to CCIR/CISRO's Guidance: Conduct of Insurance Business and Fair Treatment of Customers.

Introduction:

With productive-disruption affecting every sector of Canada's economy, it is more critical than ever that customers have easy access to educated and ethical professionals who can guide them through the process of matching their needs to available financial services.

In Canada's property and casualty (p&c) insurance industry, these professionals are trained and examined by the Insurance Institute of Canada (the Institute). Our mission is to not only educate students with the technical knowledge they need to serve customers properly but to instil a high standard of ethical obligation throughout our customer focused industry.

CCIR/CISRO's Guidance, "Conduct of Insurance Business and Fair Treatment of Customers," brings the need for greater consumer consideration to the forefront with the attention and detail that it deserves.

It is both in line with the trends working through society and leading in the care owed to customers going forward. The Institute commends CCIR/CISRO'S effort to ensure that customers are treated ethically at all times by the p&c insurance industry. In its detail, the Guidance offers many points of discussion for the industry and the Institute is pleased to support this process and your objectives.

In fact, the values of fairness discussed in the Guidance strongly align with those already being taught by the Institute today. Fairness is essential for both the customer and the p&c insurance industry. It is an indispensable element of the trust and confidence equation that underpins the credibility of insurance as a product.

Canadians have every reason to believe that the insurance they buy will be there when they need it. A share of credit for this is due to regulatory officials and agencies that work in the public interest to develop standards and supervise the industry.

Another share of the credit goes to insurers who seized the initiative to establish the first Insurance Institute in 1899. They saw insurance education as the best way to professionalize the industry through common standards, practices and ethical behaviour. Over time, successive generations of trained professionals have added to this foundation

of fairness that underpins everything that Canada's insurance business is able to accomplish for customers today.

The Institute is proud of the continuous contributions we make to the knowledge and professionalism of the P&C insurance industry. Our work is done collaboratively, from a non-partisan, non-profit perspective. In this document, we speak to those areas in the Guidance where our experience as educators and examiners provides relevant insight that we hope will add to your work on behalf of the customer.

The Guidance provides clear and specific requirements. In so far as our educational offerings match the objectives expressed in the Guideline, our mission to teach and inculcate these values is validated for yet another generation of students.

Further, the Guidance appears at a time when the very nature of insurance risk is being challenged by an increasing number of destructive weather events. These involve wildfires, overland flooding or wind; perils that produce complicated insurance claims requiring the expertise of highly trained and competent professionals.

One more situation where Chartered Insurance Professionals (CIPs) are ready to work with customers, using their knowledge and integrity to best match available insurance coverage against an ever-changing mix of requirements.

Response to Questions Posed by CCIR/CISRO:

#1: In terms of harmonization: Does this guidance present contradictions with existing or future local instruments related to fair treatment of Customers?

A) Development of the Guidance compliments the ongoing work in several provinces to include and serve the customer in a more responsive, market-oriented fashion.

#2: Does this guidance strike the right balance between roles and responsibilities of Insurers, Distribution Firms, agents and representatives?

A) As the industry's educator and examiner, we cannot comment specifically on the balance, but we do support the Guidance's values and feel the effort is a timely reminder that everyone in the industry must live by these values, requirements, and obligations in all aspects of product development, sales, and service.

Discussion & Response:

1) SCOPE:

> … Agents and representatives must respect their regulatory obligations, codes of conduct/ethics of Insurers and Distribution Firms. They must maintain an appropriate level of professional knowledge and experience, integrity and competence. Insurers, Distribution Firms, agents and representatives should collaborate to achieve fair treatment of Customers.

In listing considerations for insurance industry workers, the Guidance makes clear that its requirements and expectations are universal. They apply to insurers and intermediaries and are intended to influence every level of the customer relationship. Treating customers fairly must be a shared responsibility.

In pursuit of fair treatment for customers, we believe it is important to bring ethical issues to the forefront and provide learning opportunities to enhance the professional ethics of everyone in the P&C insurance industry.

Ethics inform everything that is taught at the Institute. Sales, underwriting, and service all require a detailed understanding of how to serve the customer's best interests and what constitutes fairness.

Our ethics training is grounded in our Code of Ethics. This code, which mirrors many aspects of the Guidance, is discussed in depth below but it is a vital document that commands the attention of our community. Violations can lead to the loss of designation for the Charted Insurance Professional (CIP), a blow to their professional standing and to the personal investment they've made in themselves.

To learn how to untangle ethical complications, the Institute uses case studies that allow students to live the situation. Each case requires them to practice the ethical challenges they could face in their careers. This facilitates rigorous and ethical decision-making intended to guide insurance professionals at every level in identifying, avoiding, and, when necessary, resolving ethical dilemmas.

Outside of course-work, either as a CIP or while working to achieve the designation, insurance professionals are supported on their path with timely and supplemental content about issues that could arise in the course of business.

A high-profile source for these discussions is the **Quarterly Ethics Column** written by some of the industry's leaders and experts.

Excerpts from the Quarterly Ethics Column:

"**Maintaining Focus**"
Brokerages would, no doubt, welcome efforts by sales team members to become the best performers possible. But pursuit of sales cannot trump the primary goal of a brokerage: to serve as a trusted advisor to clients. With the ever-changing landscape — including introduction of new products — awareness, understanding and focus is crucial to meeting the specific needs of each particular client.

"**Beyond Chitchat**"
A long-standing and friendly relationship between a broker and client is always welcome. But busy schedules, brief chats and assumptions should never take the place of a comprehensive review of a client's risk come renewal time. This sort of annual review is necessary to meet a broker's professional obligations to the Client, insurer and insurance industry as a whole.

"**Rock and a Hard Place**"
Adjusters are required to juggle multiple tasks. But a busy environment, demanding workload and unexpected meetings should not influence interactions with clients. As the first points of customer contact, adjusters must maintain a professional demeanour by listening, showing empathy and putting clients at ease.

As new courses are developed in response to needs within our community, they are imbued with the modern sensibility of a customer's central role. A good example is our "Commercial Insurance Program," where the values discussed in the Guidance around **ongoing training and collaboration** is well represented.

COMMERCIAL INSURANCE PROGRAM:

1) Commercial Insurance Essentials:

"The course highlights critical workplace skills and collaboration between insurance professionals. As the first course, it contains key components of commercial insurance, commercial insurance stakeholders, risk management practices are discussed and the identification of exposures. There is discussion of commercial claims, the application of coverage.

2) Commercial Exposures and Solutions:

"The program's second course looks at typical exposures, risk controls, and coverage solutions in commercial insurance. …. **the course continues to build from course 1 on the collaborative skills needed to deliver outstanding service to internal and external stakeholders**."

2) Applied Commercial Solutions:

"The program's final course ties together skills and themes from the previous two courses … students **learn how corporate strategy affects coverage decisions, giving participants the skills they need to move towards building a sustainable commercial portfolio**. The course finishes by examining how emerging industry trends are disrupting the status quo- and what to expect for the future."

2) CONDUCT OF BUSINESS:

In the field of insurance, conduct of business encompasses industry-wide as well as Insurer/Intermediary specific activities with Customers. Sound conduct of business includes treating Customers fairly throughout the life cycle of the insurance product. This cycle begins with product design and runs until all obligations under the contract are fulfilled.

The Institute's main contributions to the sound conduct of the insurance business are the tens of thousands of superbly educated professionals who work in Canada's P&C insurance industry today, upholding the values of customer fairness at all points.

Their education is a force multiplier, influencing the rigour of those working with them who might not enjoy the same depth of training and consideration as a member of the CIP Society. This makes the industry stronger, modelling insurance principles and practices that can be learned on the job.

The Institute's education products give insurance professionals all possible angles of a situation to ensure they have the knowledge they need to offer the best possible advice to customers. This provides security to the public and enhances consumer confidence.

As directed by the P&C industry, we offer two formal designations: Chartered Insurance Professional **(CIP)** and Fellow Chartered Insurance Professional **(FCIP)**. An additional stream, Advanced Chartered Insurance Professional **(ACIP),** offers advanced course work for aspects of sales, underwriting and claims.

Employers look for and often demand these credentials as a way of substantiating an individual's adherence to national standards of professionalism, technical expertise and leadership in the insurance industry.

Each path of study prepares professionals to work as a broker, agent, underwriter, adjuster or risk manager and to offer the level of professionalism inherent in the concept of fair conduct of business as advanced by the Guidance.

CHARTERED INSURANCE PROFESSIONAL (CIP):
The CIP designation is considered an educational cornerstone for the profession. It indicates that all CIPs have met the same rigorous test of knowledge and ethics. The CIP Program integrates practical and theoretical knowledge about the P&C sector and offers the option of choosing areas of specialization.

FELLOW CHARTERED INSURANCE PROFESSIONAL (FCIP):
The FCIP is the highest professional designation in the P&C insurance industry. Graduates come away with a comprehensive understanding of strategic leadership and advanced management principles that are an important part of every P&C executive's responsibilities.

ADVANCED CIP COURSES:
Beyond CIP, members can amplify their education with higher-order courses focusing on critical thinking skills and advanced study of practice.

The CIP community benefits not only from its internationally recognized and high quality education, but also from regular access to ongoing advanced research commissioned by the Institute and fulfilled by experts in their field. This research is intended to illuminate emerging trends that have the potential to affect the customer/insurer dynamic.

For instance, a recent paper explored, "Automated Vehicles: Implications for the Insurance Industry in Canada." Other topics examined include "Artificial Intelligence" and the "Sharing Economy". Three hot-button issues for p&c insurance and for society at large.

These research reports, and others, present a complete industry perspective to our community and are one more example of how the Institute fosters a common national understanding around emerging issues.

Just as we are committed to providing CIPs with the knowledge and updates they need to develop a successful career in the industry, we are also concerned with supplying the industry with the professionals it requires to meet customer needs of today and the future.

Currently, the Institute is partnered with the Conference Board of Canada, to assess the changes in the industry's workforce. The project will determine a benchmark and extrapolate over the next five to ten years, delivering the following:

- Insights about how the skill requirements of the P&C insurance industry's workforce are changing.
- A comparison of how the P&C insurance industry's demographic trends contrast with the rest of Canada's labour force.
- An understanding of the strategic implications of key emerging issues for the industry's professional work force and appropriate recommendations to manage these challenges.
- A 10-year outlook (2017-2027) projecting the potential change in the P&C insurance industry that may be attributable to demographic trends and to emerging issues.
- Identification of the degree to which the perceptions of the industry (CEO, HR and employees) are consistent with the demographic realities and the key emerging issues that are likely to have the most influence on the composition of the industry's future workforce.

This major research initiative illustrates our commitment to ensuring the P&C insurance industry has the employees it needs with the correct training for proper business conduct in insurance enterprises.

3) Fair Treatment of Customers:

Fair Treatment of Customers encompasses concepts such as ethical behaviour, acting in good faith and the prohibition of abusive practices.

&

4) Customer Outcomes and Expectations:

CCIR and CISRO expect fair treatment of Customers to be a core component of the governance and corporate culture of Insurers and Distribution Firms.

The CIP Society's Code of Ethics, our expectations and touchstone for how professionals conduct themselves in the industry, speaks to many of the requirements set out in the Guidance.

CIP SOCIETY'S CODE OF ETHICS:

1) **Institute graduates shall, in exercising their professional responsibilities, and in all professional matters, "subordinate personal interests to those of the public, the client or employer or the Institute and profession as the case may be".**
    - Matches the Guidance requirement for managing conflicts and potential conflicts of interest

2) **Institute graduates shall not violate any law or regulation duly enacted by any governmental body whose authority has been established by law, and no Institute graduates shall knowingly lend themselves, their names or their services to any unlawful act of their employer or client.**
    - Matches the Guidance for compliance with laws, regulations and guidelines.

3) **Institute graduates shall not wilfully misrepresent or conceal material fact in insurance and risk management business dealings in violation of any duty or obligation.**
    - Matches the Guidance to provide customers with timely, clear and adequate pre-contractual and contractual information.

4) **Institute graduates shall not sign or associate themselves with any letter, report, statement or representation, which they know is false or misleading, or which is prepared in a manner, which might tend to be misleading or to misrepresent the actual situation.**
    - Matches the Guidance to promote products and services in a clear, fair and not misleading manner.

5) **Institute graduates shall treat as confidential any information, documents, or papers relating to the business affairs of their employer or client and shall not disclose or produce such information, documents or papers, without the consent of the employer or client concerned, except as required to do so by law.**
    - Matches the Guidance to have and to utilize appropriate policies and procedures for the protection and use of customer information.

6) **Institute graduates shall use due diligence to ascertain the needs of their client or principal and shall not undertake any assignment if it is apparent that it cannot be performed by them in a proper and professional manner.**
    - Matches the requirement to "take into account a customer's disclosed circumstances when that customer receives advice and before concluding insurance contracts." And the need to "take into

account the interests of different types of consumers when developing and distributing insurance products".

7) **Institute graduates shall not fail to use their full knowledge and ability to perform their duties to their client or principal.**
    - Matches the ethos that all customers be treated fairly and to the best of each professional's ability, utilizing their updated knowledge to help each consumer through the specifics of their situation.

8) **In all dealings graduates shall conduct themselves with dignity and shall avoid conduct, which would discredit the profession of insurance or the Institute.**
    - To do otherwise would negate all of the training that each professional has received from the Institute while disregarding their own personal investment in their career path and success.

The Code of Ethics, and the teaching that accompanies it guide CIPs in all sorts of situations. This training is especially helpful in a crisis where a customer's needs are immediate and sometimes overwhelming, as can be the case during a catastrophic natural disaster such as the Fort McMurray wildfire. How insurance adjusters treat customers in the course of doing their jobs in crisis situations is directly correlated with levels of satisfaction in surveys with policyholders.

Given that their work so directly impacts the question of whether the industry is seen as fair or unfair speaks to the need for well-trained adjusters. The Institute provides the education that helps them acquire the right skills and tools to settle claims properly while inspiring a sense of fairness for the customer.

These skills are taught in our **"Claims Professional Series"** as part of the CIP program where the knowledge required to improve fundamental claims-handling techniques is explored. This includes the principles of investigation, evaluation, negotiation, mediation and settlement. Third level courses take the student into the scope of claims management, which is part of the chain of responsibility for treating insurance customers fairly.

Just as all other CIPs, adjusters are obliged to refresh their knowledge and keep it up-to-date. The Institute assists in this requirement through our **"Continuing Education OnDemand"** suite of online courses and development opportunities. Our national schedule of webinars and seminars, including the Adjusters' Series, are also available to help members stay current with industry trends and the new learning that emerges after each major insurance event such as a natural disaster.

In total, the Institute's curriculum, both formal and informal, provides the training for staff to deliver appropriate outcomes to customers that align with the CIP Society's Code

of Ethics. As illustrated, our Code and CCIR/CISRO's Guidance for the fair treatment of customers are in harmony.

5) Conflicts of Interest

CISRO expects Insurers and intermediaries to manage and avoid any potential or actual conflicts of interest.

CIPs are well trained to recognize, avoid and resolve any potential for conflict of interest. The requirements that they must avoid such conflicts are very clearly spelled-out in the Code of Ethics, particularly points 1 and 7:

From the CIP Society's Code of Ethics:

1) **Institute graduates shall, in exercising their professional responsibilities, and in all professional matters, "subordinate personal interests to those of the public, the client or employer or the Institute and profession as the case may be".**

7) **Institute graduates shall not fail to use their full knowledge and ability to perform their duties to their client or principal.**

To be clear, the Code of Ethics is much more than a 'suggestion' for how insurance professionals conduct themselves in the course of business. Adherence to the Code is mandatory. Its principles are the required conduct for the CIP. Those who breach it risk losing their designation, their credential; a big loss given the investment each student makes in acquiring their CIP status.

As noted, helping the CIP community maintain its awareness of professional standards and obligations, even as they change, is a major undertaking at the Institute. We help the CIP in this regard with access to Continuing Education, our national schedule of ongoing seminars and the quarterly ethics columns as featured above. These tools keep ethical issues, such as the need to avoid even the suggestion of conflicted interest, in the forefront of the community's thinking.

6) Design of Insurance Product

CCIR and CISRO expect that the design of a new insurance product or significant adaptations made to an existing product take into account the interests of the target Consumers' group.

Education at the Institute takes students inside the many products that are available to protect customers today, whether as individuals or businesses.

As in all things when the customer is involved, the Institute's Code of Ethics guides the approach to conceiving and designing new insurance products. It is the bedrock that helps set the tone for what product designers hope to achieve.

This is another area where customer consideration is a shared responsibility. The Institute contributes to this by providing relevant information and training to ensure that the target market and its needs are understood

Nevertheless, if anyone is intent on such a plan, the system has many checks and balances, most notably the tens of thousands of ethically aware CIP who populate the industry today. They are obliged to raise objections and to advocate on behalf of fairness for the customer.

7) Disclosure to Customer:

CCIR and CISRO expect that a Customer is given appropriate information in order to make an informed decision before entering into a contract.

And…

8) Advice:

CCIR and CISRO expect that, when advice is given, Customers receive relevant advice before concluding the contract, taking into account the Customer's disclosed circumstances.

Insurance remains one of those products that some customers say is too complicated to understand. We disagree with this pervasive piece of conventional wisdom and our CIPs work hard to demystify insurance principles for customers.

In preparing insurance professionals to work with customers, the CIP designation provides them with a well-rounded and comprehensive education that includes both technical and practical knowledge. With this type of training, they can reliably advise customers before, during and after point of sale, helping them make informed decisions.

Determining a customer's level of risk is a serious professional responsibility with implications for the client and the ongoing business. A mistake has the potential to leave

some perils uncovered at the customer level and it can create a fiduciary problem if the risk is priced incorrectly. While this can result from an honest oversight, it has the potential to create an unfair situation for the customer.

Specific courses in the Institute's CIP Program, such as the, "**Broker and Agent Professional Series,**" teach representatives the principles of risk assessment and management. In addition to CIPs, this learning is open to other industry professionals who are looking to further their risk qualifications, leading to a certificate in Risk Management.

For those new to the P&C Insurance industry, basic principles on risk and claims are offered though our General Insurance Essentials (GIE) program, a way to help motivated employees on the path to professional designations.

Agents, brokers and adjusters who wish to be licensed also opt for training through the Institute, which offers specific education for licensing purposes.

In each step of education at the Institute, students are given an understanding of the limits and imperatives of advising and disclosing to customers but also their obligations to the regulatory environment. As their obligation to the customer become more explicit through documents such as the Guidance, the nuances of their training and education will become more valuable in a changing customer environment.

9) Claims Handling and Settlement

CCIR and CISRO expect claims to be examined diligently and fairly settled, using a simple and accessible procedure.

It speaks to the professionalism of Canada's P&C insurance industry that it was able to swiftly handle and settle approximately $3.8 billion dollars' worth of damage claims related to the Fort McMurray wildfire with a minimum of formal customer complaints.

Many customers spoke about the knowledge, value and comfort they received from adjusters who descended on the disaster scene from across Canada. Residents were most appreciative to find their adjusters there to meet them when they were allowed to return to town for the first time. Many were able to begin their claims process right at that moment.

While a disaster puts a premium on the fair and ethical treatment of customers as contained in the Guidance, the Institute trains adjusters and others to display these values not only in times of crisis but during the regular course of business as well.

We are already in an era where more frequent extreme weather events are increasing the pressure on the claims and settlement process. With our training The Institute is prepared to help the industry meet this increased need, while adhering to all of the values in the Guidance.

10) In Closing:

As we consider the state of the P&C insurance industry in relationship to the Guidance, we are reassured that our members operate at a very high level of trust and fairness. They do their best to share and spread the values acquired during their education and experience.

In the 120 years since our founding, the Institute has advanced national industry standards through a common language of ethics and practices across all regulatory jurisdictions. We are committed to fulfilling this role well into the future, staying ahead of changing requirements as identified by our partners: Insurers, regulators and customers.

LLOYD'S

June 18, 2018

Canadian Council of Insurance Regulators
Canadian Insurance Services Regulatory Organizations
ccir-ccrra@fsco.gov.on.ca

Dear Members:

Re: Conduct of insurance business and fair treatment of customers proposed guidance

Thank you for the opportunity to comment on the Canadian Council of Insurance Regulators ("CCIR") and the Canadian Insurance Services Regulatory Organizations ("CISRO") guidance paper on the *Conduct of Insurance Business and Fair Treatment of Customers* (the "proposed guidance").

Lloyd's

As you may be aware, Lloyd's is not an insurance company but an insurance market within which capital providers – termed "members" or "Lloyd's Underwriters" – join in syndicates to both cooperate with and compete against each other to underwrite risks on a several liability basis. Our unique legal structure means that where Lloyd's has a licence to underwrite risks, that licence is granted to Lloyd's Underwriters. Moreover, Lloyd's Underwriters are separate and distinct from the Corporation of Lloyd's (the "Corporation"), which is a statutory corporation. The Corporation does not write Canadian insurance business itself, but provides the infrastructure, services and oversight for a market of Lloyd's underwriters.

Lloyd's in Canada

Lloyd's Underwriters have a long history in Canada and have been providing insurance coverage to Canadians since before Confederation. Since 1932, the Corporation of Lloyd's has maintained a local representative office in Montreal to liaise with the local market and facilitate communication with regulators. Today, Lloyd's is the world's premier (re)insurance market for large, complex, and difficult to place risks and continues to provide significant capacity and underwriting expertise to the Canadian market.

After the U.S., Canada is Lloyd's second largest international market. Lloyd's is currently ranked in the top ten largest property and casualty insurers in Canada(1). In 2017, Lloyd's Underwriters wrote approximately CAD$58bn globally in gross premium of which CAD$3.3bn was Canadian.

Lloyd's oversight of Market Conduct

Lloyd's is encouraged to note that the proposed guidance seeks to align with international practices to enhance consumer protection. Lloyd's own Conduct Risk Minimum Standards(2) (the "Minimum Standards") are consistent with international standards set by the International

Sean Murphy, Attorney In Fact in Canada for Lloyd's Underwriters
1155 Metcalfe Street Suite 2220 Montréal Québec H3B 2V6 Telephone 1 514 861 8361 Fax 1 514 861 0470 www.lloyds.com

Association of Insurance Supervisors ("IAIS") and we feel align well with the current proposed guidance(3). The Minimum Standards are designed to reflect Principle 6 of the Financial Conduct Authority ("FCA") Handbook, which states "a firm must pay due regard to the interests of its customers and treat them fairly." The FCA Handbook itself is in keeping with international conduct standards, namely, Insurance Core Principle 19 as adopted by the IAIS, which requires insurers and intermediaries to "treat customers fairly" in their conduct of business.

Lloyd's Conduct Risk Minimum Standards are designed to meet the requirements of the FCA Handbook and to provide practical guidance for its implementation, having particular regard to the operation of the Lloyd's market, including the roles of leaders and followers in the Lloyd's market and the roles of brokers and coverholders in the distribution of products. Lloyd's conducts reviews of managing agent compliance with MS11 and the UK conduct regulator, the FCA, endorses our approach to managing oversight of conduct risk in the market.

Lloyd's is committed to the fair treatment of customers and is therefore currently undertaking a review of its existing standards and updating the standards that have an impact on the fair treatment of customers. The overarching aim is for managing agents to maintain effective and proportionate controls and arrangements for the fair treatment of Lloyd's customers, having careful regard to the local conduct requirements and good business practices in all territories that they are operating in.

Lloyd's believes that the implementation of the proposed guidelines complement Lloyd's own Minimum Standards. It is our opinion that this will accomplish CCIR and CISRO's goal of closer harmonization with international conduct standards and help the industry better understand regulators expectations for consumer protection in Canada.

---

(1) assets.ibc.ca/Documents/Facts%20Book/Facts_Book/2017/Fact-Book-2017.pdf. Accessed 15 June 2018

(2) *Lloyd's Minimum Standards, MS11- Conduct Risk*; https://www.lloyds.com/~/media/files/the-market/operating-at-lloyds/minimum-standards/minimum-standards-2/ms11-conduct-risk.pdf?la=en; Accessed 15 June 2018

(3) Lloyd's Minimum Standards are statements of business conduct which managing agents are expected to comply with to operate at Lloyd's

Yours sincerely,



Sean Murphy
President & Attorney in Fact, Lloyd's Canada

SM/kk

Sean Murphy, Attorney In Fact in Canada for Lloyd's Underwriters
1155 Metcalfe Street Suite 2220 Montréal Québec H3B 2V6 Telephone 1 514 861 8361 Fax 1 514 861 0470 www.lloyds.com

Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

June 18, 2018

Re: GUIDANCE – CONDUCT OF INSURANCE BUSINESS AND FAIR TREATMENT OF CUSTOMERS

Dear Sirs/Mesdames:

The Mutual Fund Dealers Association of Canada ("MFDA") thanks the Canadian Council of Insurance Regulators ("CCIR") and the Canadian Insurance Services Regulatory Organizations ("CISRO") for this opportunity to provide our comments on the draft guidance on Conduct of Insurance Business and Fair Treatment of customers (the "Guidance").We support the objective of the Guidance to enhance consumer protection and the efforts of the CCIR and CISRO to work collaboratively with regulatory partners and partner with industry stakeholders to increase regulatory and supervisory harmonization.

The MFDA is the national self-regulatory organization that oversees mutual fund dealers in Canada. MFDA Members are mutual fund dealers that are licensed with provincial securities regulatory authorities. MFDA Members administer approximately $632 billion in assets and employ 82,000 Approved Persons (partners, directors, officers, compliance officers, branch managers, employees, and agents of the dealer who are subject to the jurisdiction of the MFDA). MFDA Members are responsible for managing a significant portion of the Canadian wealth management landscape, overseeing more than half of the over $1 trillion mutual fund assets in Canada. MFDA Members primarily service mass market retail clients who represent approximately 80% of Canadian households.

We note that the trend toward financial product and service convergence, multiple licensing of financial service providers and a focus on the provision of financial advice and not just product sales necessitates a consistent and harmonized approach to regulating similar products and financial service providers. Many Approved Persons of MFDA Members are dually licensed as insurance agents and provide financial advice related to securities, insurance and other investment products such as Guaranteed Investment Certificates. The standard of conduct applicable to these individuals and the protection available to their clients should not be materially different based on the registration and regulatory framework under which the investment product is being sold, or advice is being provided. Outcomes and objectives should be consistent across all financial service sectors.

Currently, there are fundamental differences in the regulatory framework for insurance and securities that may limit efforts to achieve full harmonization. MFDA Rules and securities legislation sets out detailed requirements for Members, including particulars respecting: business structures; capital requirements; insurance; books and records; client

reporting, and business conduct. MFDA Rules are focused on key areas of investor protection and include suitability requirements, know-your-client ("KYC") obligations, the requirement that conflicts of interest be resolved having regard to the best interests of clients, and the duty to deal fairly, honestly and in good faith with clients. MFDA Rules are supplemented by detailed guidance to assist Members and their Approved Persons in the interpretation, application of and compliance with MFDA By-laws and Rules. We have found that clear and objective standards supplemented by practical and detailed guidance have been effective in changing behavior and client outcomes. We support the guidance provided by CCIR and CISRO and encourage regulators in each jurisdiction to adopt the guidance as objective and enforceable regulatory standards.

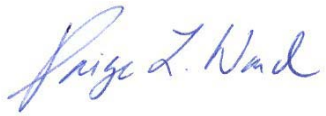
Another key difference with respect to the regulatory framework for mutual fund distribution and insurance is the oversight of intermediaries. MFDA Rules require Members to supervise the activities of their Approved Persons for compliance with MFDA requirements. In particular, MFDA Policy No. 2 (*Minimum Standards for Account Supervision*) imposes minimum standards for Member supervision of Approved Persons with regard to KYC and suitability requirements, which has resulted in a high degree of proactive control over advice giving. Members are expected to promote and enforce a culture of compliance to address all regulatory obligations.

A harmonized and consistent regulatory approach and framework for insurance and mutual funds includes not only similar requirements but also consistent levels of regulation of intermediaries including: proactive onsite prudential and business conduct examinations of MGAs and their insurance agents, robust complaint handling and investigation procedures. In addition, fitness for registration standards should be harmonized with other insurance and securities regulators. Fair treatment of customers requires effective oversight of intermediaries by insurers and regulators.

****

We encourage the CCIR and CISRO to recommend, and insurance regulators in each jurisdiction to adopt, similar standards to ensure effective oversight of insurance intermediaries and allow for equivalent fair treatment of customers under both regulatory regimes. In particular, opportunities for greater harmonization exist in jurisdictions in which one regulator is responsible for regulating both securities and insurance. We would be happy to meet with the CCIR and CISRO to discuss opportunities to collaborate to promote greater harmonization and consistency across financial service sectors.

Yours truly,



Paige L. Ward
General Counsel, Corporate Secretary & Vice-President, Policy

cc: Mark Gordon, President and Chief Executive Officer

PRIMERICA®

Head Office/Siège Social
2000 Argentia Road,
Plaza 5, Suite 300
Mississauga, ON L5N 2R7

Mailing Address/Adresse postale:
P.O. Box 174/C.P. 174
Streetsville, ON L5M 2B8

June 18, 2018

Canadian Council of Insurance Regulators (CCIR)
Canadian Insurance Services Regulatory Organization (CISRO)
ccir-ccrra@fsco.gov.on.ca

Re: Guidance Conduct of Insurance Business and Fair Treatment of Customers

CCIR-CISRO:
Primerica Financial Services ("Primerica") is pleased to provide comments on CCIR-CISRO proposed Guidance on Fair Treatment of Customers.

About Primerica
Primerica has been serving the Canadian public since 1986. Through Primerica Life Insurance Company of Canada (PLICC), we are represented by approximately 12,000 licensed life insurance agents across the country. Our agents serve clients in the often-overlooked Canadian middle-market and nationally have over $114 Billion of life insurance in-force protecting Canadian families. We also have one of the largest mutual fund sales forces representing our other subsidiary, PFSL Investments Canada Ltd.

Primerica dedicates its efforts to providing middle-income families with access to simple, yet essential financial products and services through one of the nation's largest and exclusive (captive) sale forces. We consider our focus on middle-income Canadians one of the distinguishing features of our company since they are often overlooked by other financial service providers, particularly those providing personal advice. It is with this experience and a focus on preserving access to affordable financial products and services that we submit our comments to the CCIR and CISRO.

We commend the CCIR and CISRO for focusing its attention on how the conduct of insurance business impacts the fair treatment of consumers. Overall we agree with the areas identified and the approach the CCIR has taken. The following comments are provided to highlight areas where we believe additional consideration should be given.

Harmonization

The Canadian financial services sector consists of diverse business models operating in a highly regulated market. We recognize that the primary mandate of regulation is public protection and we support of this goal. We believe that a well-regulated financial services industry is good for customers and good for business. At the same time, it is paramount that financial services regulators be mindful of unintended consequences of regulation that may result in unnecessarily restricting access to certain products and services. It is also crucial that regulation is consistent and harmonized to ensure clarity and avoid the undue cost of compliance for insurers, intermediaries and customers. In light of similar consultations currently being undertaken in other provinces, we encourage the CCIR to require all jurisdictions to harmonize and coordinate their respective efforts along with CCIR's proposed guidance.

Agent and Representatives' Responsibilities

We agree with the principle that responsibilities related to the fair treatment of consumers be shared

third-party intermediaries. We believe that effective regulation should be designed with clear roles, objectives and expected outcomes in mind with special attention to any gaps that may exist in certain models such as the Managing General Agent (MGA) model where we believe MGAs should be subject to licensing requirements tailored to their activity and responsibilities.

Scope

We commend the CCIR's initiative for outlining regulatory expectations for both insurers and intermediaries in an effort to promote a more comprehensive approach to the fair treatment of Customers.

Fair Treatment of Customers

We agree with this guidance and believe that there are existing regulatory requirements and industry guidelines supporting needs based selling that can be relied upon. Canadian Life and Health Insurance Association (CLHIA) members have developed and continue to prescribe to best practice document; *The Approach: Serving Client Trough Needs Based Sales Practices.*

Governance and Corporate Culture

We agree on the importance of creating a consumer-centric corporate culture. Regarding the third bullet related to mechanisms and controls being established to identify and deal with any departure from the organization's strategies, we are of the view that utilizing certain business metrics and monitoring consumer complaints are effective tools in ensuring that consumers are continuously being treated fairly. Similarly, as noted in the preamble of the Guidance document, various insurers and intermediaries should be given some degree of latitude to develop, implement and monitor policies and procedures that best suits the nature, size and complexity of their activities.

Relationship between Insurers and Intermediaries

We agree on the importance that the relationship between insurers and intermediaries is clearly outlined in binding contracts to ensure the fair treatment of customers. CLHIA members have developed and continue to prescribe to industry standards that are set out in G18, *Insurer-MGA Relationship.*

Relationship with Regulatory Authorities

We agree with this principle and believe that the fair treatment of Customers can best be achieved when insurers and regulators work together. We are also of the view that stronger relationships and communication with the industry will enhance the regulator's understanding of the issues that the industry faces and industry's appreciation of the pressures on regulatory authorities.

Regarding the regulators' expectations of insurance companies when dealing with intermediaries, CLHIA members have developed and continue to prescribe standards that are set out in G8, *Screening Agents for Suitability and Reporting Unsuitable Agents,* in an attempt to identify unsuitable or not duly authorized intermediaries.

Customer's Outcomes and Expectations

Governance and Corporate Culture

CCIR and CISRO expect fair treatment of Customers to be a core component of the governance and corporate culture of Insurers and Distribution Firms.

On the last bullet, "remuneration, reward strategies and evaluation of performance take into account the contribution made to achieving outcomes in terms of fair treatment of Customers", we would appreciate clarification on specific expectation, as it applies to insurers and intermediaries.

Conflict of Interest

CCIR and CISRO expect that any potential or actual conflicts of interest be avoided or properly managed and not affect the fair treatment of Customers.
We agree that the disclosure and management of conflicts of interest is an important principle. The common objective in most conflict of interest rules is to put the client's interest ahead of the licensee's. Standard procedure in the life and health insurance industry is to provide customers with information about the advisor to mitigate potential conflicts of interest.

Conflicts of interest can be effectively managed by recognizing a potential or existing conflict, judging the risk of it leading to harm, implementing controls to mitigate the risk and disclosing relationships that may be relevant to recommendations being made. As such, the inherent risk of a conflict of interest arising can be substantially reduced if a licensee engages in needs-based selling. Similarly, we are of the view that the potential for conflict is dependent on the complexity of the products and the imbalance of knowledge between the clients and the advisor.

While insurers can ensure they consider the potential for conflict in their compensation structures, we believe the conflict arises at the intermediary level. For example, the MGA would have a better view of a conflict that may be created by the access to multiple carriers and as such we believe should share some of the responsibility for mitigating and controlling the risk.

The expectation should be that each firm should analyze its unique business model and identify areas where conflicts might arise. We believe our business model with (a) simple product line (b) a clear and simple disclosure the client can understand and (c) an exclusive sales force, fosters a culture of treating customers fairly while substantially reducing the potential for conflict of interest.

Disclosure to Customer

CCIR and CISRO expect that a Customer is given appropriate information in order to make an informed decision before entering into a contract.
We support this principle and currently consider these objectives in our business and would be willing to review further enhancements to provide consumers with meaningful disclosure where necessary. Similarly, there are existing regulatory requirements and industry guidelines that support needs based selling. As previously noted, Primerica prescribes to CLHIA's best practice document; *The Approach: Serving the Client Through Needs Based Sales Practices.*

A needs-based sales approach, coupled with meaningful disclosure to enhance a client's understanding of their transaction is the best way to achieve suitability in life insurance sales, particularly when it comes to term life insurance products that are simple in nature. Suitability of segregated funds can be more complex given that the client may need to be involved in understanding the risks involved in the funds included in an IVIC policy.

Protecting of Personal Information

CCIR and CISRO expect protection of confidentiality of personal information policies and procedures adopted by Insurers or Intermediaries to reflect best practices in this area and ensure compliance with legislation relating to privacy protection.
We support this principle and agree that compliance with PIPEDA is sufficient in addressing concerns around cybersecurity. We are also of the view federal and provincial privacy commissioners are best suited to establish guidelines around protection of consumer's private information and due process following a breach. Similarly, we believe that a move towards a harmonized standard amongst different jurisdiction is warranted to avoid regulatory overlap and effective consumer protection.

Conclusion
We appreciate the opportunity to comment on this important issue. As always we remain open to discussion and willing to work with regulators during the consultation and beyond.

Sincerely,



John A. Adams, CPA, CA
Chief Executive Officer

Sun Life Financial

Sun Life Assurance Company of Canada
227 King St South
Waterloo ON
N2J 4C5

June 18, 2018

Canadian Insurance Services Regulatory Organizations (CISRO)
& Canadian Council of Insurance Regulators (CCIR)

Sent via email: ccirccrra@fsco.gov.on.ca

Dear Sir/Madam:

RE: Consultation – Guidance Conduct of Insurance Business and Fair Treatment of Customers

We would like to thank you for the opportunity to respond to the ongoing consultation *Guidance Conduct of Insurance Business and Fair Treatment of Customers* ("FTC Guidance"), published on May 3, 2018. Our views expressed here supplement the submission from the Canadian Life and Health Insurance Association (CLHIA), made on behalf of the industry, which we support.

Comments provided are in our capacity as one of Canada's largest financial services organizations that provides life and health insurance, retirement savings, and asset management solutions to millions of people in Canada, and internationally.

We fully support the principle of fair treatment of clients. As a provider of a range of trusted financial products and services, Sun Life is proud to help clients achieve lifetime financial security and live healthier lives. Treating clients fairly is the cornerstone of our ability to fulfill that purpose. It is also why Sun Life is actively working with our industry colleagues to implement standards and best practices in this area.

In response to CCIR's questions and the proposed guidance, we would like to highlight two key points:

Harmonize regulatory expectations

We strongly encourage CCIR members to work together in a coordinated manner towards a single, harmonized guideline for the fair treatment of clients across Canada. Work by provincial regulatory bodies, the FSCO (draft guidelines), and the AMF (sound commercial practices guidelines) highlight the importance of this topic and the critical need to create a common framework to avoid inconsistencies or contradictions across the jurisdictions. Financial consumers should be treated fairly throughout Canada, regardless of their provincial or territorial

jurisdiction. We believe a common, harmonized regulatory guideline would help achieve that objective. We urge the CCIR to seize this opportunity and lead its member regulators in this direction.

License, regulate distribution firms (e.g. MGAs)

The distribution of life insurance products has evolved over the years and distribution firms, such as Managing General Agencies (MGAs), have taken on an increasingly important role in the life and health insurance market. Today, it is far more common for a licensed advisor contracted with an MGA firm to sell a variety of products issued by several different insurers. Given this reality, the MGA is often in a much better position than the insurer to assess and oversee the advisor's overall sales practices.

We encourage CCIR to take a leadership role in working with the jurisdictions to formalize the responsibilities of MGAs and other distribution firms and institute a licensing regime. In our view, this fundamental change would improve the oversight of advisors and help ensure the many clients served in this growing distribution channel are treated fairly.

We commend CISRO and CCIR for the consultation on such an important subject, and we would welcome the opportunity to meet with your boards and share our experiences and expertise, as required.

Sincerely,

Léo Grépin
Senior Vice-President, Individual Insurance and Wealth

TRG
GROUP BENEFITS

June 18, 2018

Via e-mail to: ccir-ccrra@fsco.gov.on.ca

CCIR Secretariat
5160 Yonge Street, Box 85
Toronto ON M2N 6L9

To Whom It May Concern:

Re: CCIR and CISRO FTC Guidance - Notice of Publication

Thank you for the opportunity to provide feedback on the proposed Guidance on Fair Treatment of Customers (FTC).

In an era of heightened disruption and increased compliance, your collaborative approach is a welcome opportunity. The collaboration is evident when we see your guideline framed as "principles-based" versus "prescriptive", "common expectations" versus "a singular directive" and an approach to provide the "necessary latitude to determine how to achieve results based on the nature, size and complexity of their activities". On behalf of benefit advisors across Canada, we thank you for your partnership approach.

We are interested in the rights and the protection of Canadian consumers and this mandate has never been more relevant than it is today. I am submitting feedback on behalf of TRG Group Benefits & Pensions Inc. We are a benefits and retirement advisory firm, based in Vancouver, British Columbia. Our customers are businesses, not-for-profit organizations and unions.

We would also like to advise CCIR of the recent development of an advocacy group specifically for benefit advisors – the National Coalition of Benefits Advisors (NCBA). Until now, an advocacy group dedicated to employee benefits has not been present in our industry. We strongly believe it is important to properly profile the unique skill set required to sell and manage these complex products. We also believe that the consumer, and our industry, would benefit from increased scrutiny, licensing requirements, and oversight relative to benefits. We encourage both regulators and licensing bodies to consider this notion and potentially address them within your proposed guidelines.

Our submission offers the following observations/recommendations:

Identifying the Consumer (Business/Group vs Individual)

The metrics that may get used to measure Fair Treatment of an individual consumer might be different than a business/group consumer since these two types of consumers are different. If the objective is to

ensure that the consumer is to be treated fairly, there needs to be specific licensing and continuing education for the group product advisor vs. the individual product advisor.

Where the business/group customer is compromised today is perhaps due to how licensing does not effectively reflect the knowledge and skills necessary for the group product advisor. Group products have a unique set of parameters associated with them and the current regulatory and licensing environment could use some attention to ensure Fair Treatment of consumers. Under the current guidelines, there are no licensing requirements specific to the sale of group products. A group benefits advisor follows the same licensing process as a life insurance agent in Canada, yet the role and skill set necessary to consult in the group product arena are far removed from the current model of licensing.

Addressing Scope in the Guidelines

Another key element to the discussion is scope. The guideline refers to insurers and intermediaries as separate entities. The future could likely result in these entities becoming one in the same. The definition of intermediary and Fair Treatment of a consumer will be best served if the guideline explicitly defines an intermediary as anyone who may play a role in the placement, service and management of a financial product in Canada. An intermediary in fact could be one in the same as the insurer. In situations where the insurer or entity who solely represents one insurer exists, these should be explicitly addressed and clearly identify a limited ability to deliver objective advice, and ultimately, Fair Treatment of customers.

As the legal profession takes extraordinary lengths to ensure the protection of the customer where a conflict exists, we believe the above-mentioned situations should be governed distinctly with conflict disclosures to ensure the consumer is protected appropriately.

Independent Advice

The legal and real estate professions address independent advice formally in any sales transactions. More specifically, in the legal profession, it's a matter of due process to bring independence to the transaction where the lawyer will not offer advice if a conflict exists. The same principle should apply to the benefits industry in order to avoid a compromised situation for the consumer.

When independent advice is not available, there should be clear acknowledgement of the risks the consumer or business is accepting. Insurers will be in an advantaged position to have the independent advice channel subsidize their direct-to-market strategy. As such, a direct-to-consumer relationship may not be able to deliver Fair Treatment to the consumer, given the absence of objective advice.

We propose a principles-based guideline to create additional focus on the professional standards of licensing and ongoing education and the oversight or monitoring of those providing the direct advice to the consumer.

Concluding Thoughts

While the current guideline provides a well thought-out explanation of what Fair Treatment could look like, we are hopeful that CCIR will consider the feedbackwe have outlined above. Specifically, we would like to see infrastructure developed for licensing and education for group product advisors, and proper

disclaimer guidelines put into place for any insurer-direct advisor relationships. We look forward to continuing the discussion to ensure that all guidelines implemented properly address our mutual goal: Fair Treatment of Customers.

We thank you for allowing us to share our feedback.

Yours truly,



Rob Taylor
Managing Director – TRG GROUP BENEFITS & PENSIONS INC.