



**Canadian Life
and Health Insurance
Association Inc.**

**Association canadienne
des compagnies d'assurances
de personnes Inc.**

Frank Swedlove
President

Via e-mail: code.consult@fin.gc.ca

February 25, 2014

Ms. Jane Pearse
Director, Financial Institutions Division
Financial Sector Policy Branch
Department of Finance Canada
L'Esplanade Laurier
15th floor, East Tower
140 O'Connor Street
Ottawa, ON K1A 0G5

Dear Ms. Pearse:

The Canadian Life and Health Insurance Association (CLHIA) is pleased to respond to the Finance Department's consultation paper, "*Canada's Financial Consumer Protection Framework*".

Established in 1894, the CLHIA is a voluntary trade association that represents the collective interests of its member life and health insurers. Our members account for 99 per cent of the life and health insurance in force in Canada, and contribute to the financial well-being of millions of Canadians across the country by providing a wide range of financial security products, including individual and group life insurance, health and disability insurance, annuities, RRSPs, RRIFs and pensions. During 2012, life and health insurers made benefit payments of \$66.4 billion -- or \$1.3 billion a week -- to policyholders and beneficiaries across the country. Our products are primarily distributed through over 80,000 licensed agents who provide advice and service to Canadians.

We commend Finance for contemplating a financial consumer code, but would strongly encourage that the initiative be restricted to banking. A robust financial consumer protection framework already exists for consumers of life and health insurance, where market conduct is the responsibility of the provinces. This differs from banking, where consumer protection responsibility rests at the federal level. A financial consumer code would appropriately fill a gap regarding federal consumer protection for banking. But to extend the code to other financial products, such as life and health insurance, would create an additional regulatory layer that, in our view, is entirely unnecessary and could raise constitutional issues.

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In the attached document, we outline the consumer protection regime that applies to consumers of life and health insurance products and services. We then draw upon that experience to comment on the proposals in your paper.

We would be pleased to discuss further at your convenience.

Sincerely,

Original signed by

Frank Swedlove

FS:241

cc: Carolyn Rogers, Chair, CCIR and Superintendent and CEO, Financial Institutions Commission (B.C.)
cc: Phil Howell, Vice-Chair, CCIR and CEO and Superintendent of Financial Services, Financial Services Commission of Ontario
cc: Patrick Déry, Vice-Chair, CCIR and Surintendant de l'encadrement de la solvabilité, Autorité des marchés financiers
cc: Doug Murphy, Vice-Chair, CCIR and Superintendent of Insurance Credit Unions & Trust and Loan Companies, Government of Nova Scotia



I. Consumer Protection Regime for Life and Health Insurance Customers

Life and health insurers operate under a well-established pan-Canadian framework of legislation, regulation, supervision and reporting that supports the objectives of consumer protection. This framework is significantly different than that for banks.

FCAC oversees federally-regulated financial entities, like banks and federally incorporated or registered insurers, with respect to the consumer provisions of the applicable legislation. For banks, FCAC becomes *de facto* their market conduct regulator. For insurers, on the other hand, federal legislation is focused on solvency, and market conduct falls primarily under provincial jurisdiction.

FCAC has responsibility for the oversight of the consumer provisions of the federal *Insurance Companies Act*, which are important but form only a small subset of the consumer protection framework that applies to insurance. They are:

- An obligation to be a member of a complaints body;
- An obligation to establish and file complaint procedures with FCAC and to disclose information to customers with respect to complaint handling;
- Obligations relating to disclosing borrowing costs, calculating borrowing costs and providing mortgage renewal information;
- Disclosure requirements in advertising for loans, credit, payment or charge cards;
- An obligation with respect to consumers' right to prepay; and
- For institutions with equity exceeding \$1 billion, an obligation to publish an annual accountability statement.

Provincial and territorial insurance regulators are responsible for regulating insurance product features and contract wording, marketing practices, consumer disclosure, complaint handling, and the conduct and licensing of insurers and insurance agents. These rules are set out in legislation, regulation and guidance notes. As well, provincial and territorial insurance regulators belong to the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO), which coordinate market conduct regulatory approaches.

Provincial marketplace regulation for life and health insurance companies and/or agents includes:

- A requirement for agent licensing, including (in most jurisdictions) continuing education and errors & omissions insurance obligations.
- A duty of care for insurers to screen, monitor and report respecting the suitability of those agents.



- A requirement that agents manage conflicts of interest through written disclosure of the insurers they represent, how they are paid and any actual or potential conflicts of interest.
- Regulatory prohibitions on unfair and deceptive practices, including misleading illustrations, misleading statements, inducements to lapse, unauthorized charges and unreasonable delays.
- An obligation to be a member of a third-party dispute resolution body.
- An obligation to have a complaint handling protocol in place.
- An obligation to report complaint data to provincial regulators through the CCIR's National Complaint Reporting System every six months.
- Regulatory or legislative requirements regarding policy disclosure and delivery.
- A 10-day free-look period after delivery of a new policy during which the policyholder can cancel, or "rescind", the policy for full refund of premiums.
- Significant provisions dealing with the formation and workings of insurance contracts, including payment of claims.

In addition to the above, a number of CCIR documents establish expectations for marketplace behaviour. We would draw your attention to two in particular:

- In 2000, CCIR released "Principles for Consumer Protection". These principles include full and plain disclosure, educated and ethical intermediaries, redress mechanisms, and fair and effective regulators.
- In 2006, CCIR released "Best Practices for Managing Conflicts of Interest. This requires that intermediaries give priority to the client's interest, make written disclosure of conflicts or potential conflicts of interest, and make product recommendations that are suitable to the client's needs and circumstances. (These obligations are also reflected in provincial Codes of Conduct that apply to insurance agents.)

Provincial regulation is further augmented by industry guidelines developed through the CLHIA. These are reviewed by CCIR and adopted by the CLHIA Board of Directors. Examples include a Guideline which sets out standard processes for the Coordination of Benefits between two or more group benefit plans, and a Guideline which sets out standard criteria for screening an agent for suitability and reporting unsuitability. The second example provides granular guidance to a high-level regulatory requirement to screen and report.



II. Comments on Finance consultation paper

Section 2 of the paper, "The Existing Landscape: Canada's Financial Consumer Protection Framework" refers to the *Bank Act*, but also states that the framework "extends to non-bank federally regulated financial institutions, such as insurance companies and trust and loan companies, where applicable". It then states that the framework prescribes disclosure requirements for various products, requires access to accounts and consumer funds, limits certain business practices such as negative option billing, and prescribes expectations for consumer complaints handling.

We understand this to be a description of the regime that is in place at the federal level and that there was no attempt to capture the significant regime that is in place in the provinces. However, that is not clearly stated and, as such, the paper provides an incomplete and potentially misleading description of the country's financial consumer protection framework. As noted above, a very comprehensive framework exists provincially for consumers of life and health insurance products. It would be useful, particularly if consumers are the audience, for them to have a clearer picture by either noting the limitations of the description or noting the other areas in which consumers of provincially-regulated financial products and services are protected.

Section 3 of the paper, "Establishing a Comprehensive Set of Principles for Consumer Protection", suggests principles which could anchor the financial consumer code. For consumers of life and health insurance products and services, these are, to a large degree, already embedded in provincial insurance regulation and/or CCIR principles.

References you may wish to consider, in addition to the *G20 High-Level Principles on Financial Consumer Protection*, would be the CCIR's *Principles for Consumer Protection* and the International Association of Insurance Supervisors' (IAIS) Insurance Core Principle 19, *Conduct of Business*.

The IAIS material could form a useful basis for discussion as to the principles that could apply to FPIs covered by this initiative. It includes the following points:

- That FIs act with due skill, care and diligence when dealing with consumers
- That FIs have policies and procedures on the fair treatment of customers
- That FIs take into account the interests of different types of customers when developing and marketing insurance products
- That FIs promote products and services in a manner that is clear, fair and not misleading
- That regulatory requirements are set regarding the timing, delivery and content of point-of-sale information
- That, where advice is part of the sales process, it is appropriate given the customer's disclosed circumstances
- That any conflicts of interest are properly managed
- That policies are serviced appropriately throughout the life of the contract
- That FIs have policies and processes to handle claims in a timely and fair manner



- That FIs have policies and process to handle complaints in a timely and fair manner
- That there are legislative provisions regarding the collection and use of personal information to third parties
- That FIs have policies and procedures for the protection of private information on consumers

Section 4, "Possible Enhancements to the Existing Framework", asks what else could be done to enhance protection for consumers, in a number of areas. Additional measures are in place for consumers of life and health insurance products and services, as outlined above. Rather than repeat these, we have tried to offer observations or suggestions that might be helpful in terms of the development of a federal banking code.

Addressing needs of seniors and vulnerable Canadians We agree that increasing efforts to build financial literacy will be an important component of addressing the needs of all, including seniors and vulnerable Canadians. We believe that some of the challenges facing seniors and immigrants (e.g., access, language, education) can be mitigated through a multilingual and multicultural advice channel. Life and health insurance agents, for instance, generally work on a one-to-one basis and build long-term relationships with clients. As well, it is becoming more common for agents to seek additional accreditation to serve the senior market. That being said, this may not translate specifically to a financial consumer code. At a high level, two of the points set out in IAIS's ICP 19 on Conduct of Business are applicable and could be adapted to a financial code:

- That FIs act with due skill, care and diligence when dealing with consumers
- That FIs have policies and procedures on the fair treatment of customers

Responsibility of Financial Institutions to Consumers The paper states that the existing regime is prescriptive in nature and doesn't set an expectation of FI responsibility towards customers. Further, it notes that other jurisdictions have developed principles of how FIs should treat consumers, and/or set out rules that address practices not considered to be in the best interests of consumers. Provincial insurance regulators have long embraced the latter approach (i.e., specific prohibitions against unfair and deceptive practices). A newer approach is the concept of fair treatment of customers, explicitly included in IAIS Insurance Core Principle 19 on Conduct of Business, and adopted in 2013 in Quebec's Commercial Practices Guideline. Other provincial insurance regulators are considering the degree to which their regimes capture or need to capture this principle.

ICP 19 may be useful in your considerations. ICP 19.2 speaks about policies and procedures on the fair treatment of customers, and then provides guidance as to what that means. For instance, FTC involves achieving outcomes such as:

- Developing and marketing products in a way that pays due regard to interests of customers



- Providing customers with clear information before, during and after the point-of-sale
- Reducing the risk of sales which are not appropriate to customers' needs
- Ensuring that any advice given is of a high quality
- Dealing with customer complaints and disputes in a fair manner
- Protecting the privacy of customers' information

Disclosure In the context of life and health insurance, disclosure obligations are set out in a number of ways -- obligations under insurance legislation and regulations to be clear and not misleading, and consequences for failing to disclose; CCIR principles and provincial Codes of Conduct; and insurer and association standards. We would suggest two useful references for your consideration. The first is CCIR's Principles for Consumer Protection, which set high-level expectations as follows:

Consumers can expect

- *To be fully informed when they are making decisions about purchasing insurance, including with whom they are entering a contract*
- *Full, true and plain disclosure about products and services*
- *Contracts that are written in clear, direct language*

The second reference is the IAIS Insurance Core Principles. ICP 19.4 talks about products and services being promoted "in a manner that is clear, fair and not misleading". ICP 19.5 suggests supervisory requirements with regard to the timing, delivery, and content of information provided to customers at point of sale. It provides guidance with respect to the content of information as follows (although the example is insurance-specific, it could be adapted for other financial products):

Product information should include key information like:

- *Name of insurer*
- *Type of insurance*
- *Level and timing of premium*
- *Other charges*
- *Beginning/end of coverage*
- *Prominent and clear information on significant or unusual exclusions of limitations*

The level of information may vary according to the complexity of the policy and experience of the typical customer

Investment policies should include a warning that past performance is not an indicator of future performance

Customers should receive information about their rights and obligations (including right to cancel, claim benefits, complain)



Comprehensiveness The paper states that "the financial consumer code should comprehensively protect consumers of financial products and services" and asks "what needs to be included in order to achieve the objective of a comprehensive financial consumer code?". The paper does not define "financial products and services". Nor does it recognize that, for consumers of some financial products and services, i.e. those under provincial jurisdiction, legislative and regulatory protection, as well as consumer codes, already exist. Thus, the concept of a truly comprehensive code for all financial consumers cannot be realized without the participation of the provinces. For the purposes of this exercise, we recommend that the "comprehensiveness" be restricted to banking products and services.

Section 5, "Continuing the Conversation: Engagement" asks about processes and stakeholders for future discussions.

We believe it will be important to either restrict the scope explicitly to banking products and services (i.e. "Canada's Banking Consumer Protection Framework"), or to recognize that "Canada's Financial Consumer Protection Framework" is much broader than just federal principles and a code and, for consumers of many important financial products and services, like life and health insurance, includes a comprehensive provincial regime. If the decision is to reflect a Canadian framework that is broader than banking, we would submit that it will be important to engage CCIR and provincial regulators in the process, to ensure that the framework is comprehensive and does not impose a secondary layer of regulation where it is not needed.