

# Consultation Paper Insurance 2019

Incidental Selling of Insurance  
Restricted Insurance Licensing Regime

Insurance Division  
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FINANCIAL AND  
CONSUMER SERVICES  
COMMISSION



COMMISSION DES SERVICES  
FINANCIERS ET DES SERVICES  
AUX CONSOMMATEURS

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# Introduction

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Established in 2013, the Financial and Consumer Services Commission is responsible for the administration and enforcement of provincial legislation that regulates insurance, securities, pensions, credit unions, trust and loan companies, co-operatives and a wide range of consumer legislation.

Our mission is to protect consumers and enhance public confidence in our financial and consumer marketplaces through the provision of regulatory and educational services.

The New Brunswick *Insurance Act* prohibits anyone from acting or undertaking to act as an insurance agent or broker unless that person holds a licence or is otherwise authorized to do so under the *Act*. Traditionally, consumers purchased insurance through licensed insurance agents who were employed by insurance companies or through independent brokers who had direct contracts with insurance companies. Over time, there has been a significant growth in the sale of insurance from other sources. In particular, several non-insurance businesses are now marketing and selling insurance products in conjunction with the sale of other products or the provision of services. This is commonly referred to as “incidental selling of insurance.” The Canadian Council of Insurance Regulators (CCIR), in its “Incidental Selling of Insurance Report” (ISI Report) (see [www.ccir-ccrra.org/Documents/View/2777](http://www.ccir-ccrra.org/Documents/View/2777)), defined an “incidental seller of insurance” as:

“a person who, in pursuing activities in a field other than insurance, offers as an accessory, for an insurer, an insurance product which relates solely to goods sold or services offered by the person or secures a client’s enrolment in respect of such an insurance product.”

This would include insurance products being offered by automobile dealers, banks, credit unions, mortgage brokerages and retailers. In many cases, the insurance products are related to loans that are obtained to purchase a product. For example, a consumer may obtain a loan to purchase a vehicle and the automobile dealership may offer insurance that might pay off the balance of, or make payments on, the loan in case of disability or death.

The Financial and Consumer Services Commission proposes to regulate the incidental selling of insurance through a restricted insurance licensing regime similar to regimes adopted in Alberta, Saskatchewan and Manitoba. The primary objective is to protect consumers by ensuring that those who engage in incidental selling of insurance are knowledgeable and accountable and that consumers have sufficient information to allow them to make an informed decision about purchasing insurance.

The Commission has prepared this Consultation Paper to facilitate dialogue with stakeholders who wish to provide feedback on the proposed framework for regulating the incidental selling of insurance.

# 1. Licensing of Incidental Sellers of Insurance

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The Commission proposes that the *Insurance Act* be amended to authorize the Superintendent of Insurance to issue a restricted insurance licence to certain types of businesses to allow the business and its employees to act as an incidental seller of insurance. The employees would not be required to hold an individual licence, but would operate under the business's restricted insurance licence and would be permitted to solicit, negotiate, sell or arrange certain prescribed classes or types of insurance.

## ***Definition of "Incidental seller of Insurance"***

The Commission proposes that "incidental seller of insurance" be defined to mean:

“a person that, in the course of selling or providing goods or services to the person's customers or clients, solicits, negotiates, sells or arranges insurance, or offers to sell, negotiate or arrange insurance, that relates to those goods or services.”

This is the definition currently used in Manitoba.

## ***Eligible Businesses***

The Commission proposes that a restricted insurance licence could be issued to any of the following businesses:

- A deposit-taking institution – a bank, credit union, caisse populaire, or loan or trust company;
- A sales finance company – a corporation, other than a financial institution<sup>1</sup>, that provides consumer loans, or provides or arranges for credit;
- A transportation company that provides transportation service for goods;
- An automobile dealership, a watercraft dealership, a recreational vehicle dealership, a farm implement dealership or a construction equipment dealership;
- A mortgage brokerage licensed under the *Mortgage Brokers Act*;
- A customs brokerage;
- A freight forwarding business;
- A vehicle rental business (incl. construction equipment rentals);
- A portable electronics vendor – a business that sells or leases portable electronic devices or provides the devices in connection with a transaction between the business and a consumer;

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<sup>1</sup> “Financial institution” would be defined similar to the definitions in the Manitoba and Saskatchewan regimes.

- A business engaged by one of these businesses to solicit, negotiate, sell or arrange insurance on its behalf.

### ***Classes and Types of Insurance***

Under the existing restricted insurance licence regimes in other jurisdictions, licence holders are only permitted to deal with certain classes or types of insurance. The Commission proposes to allow restricted insurance licence holders and their employees to solicit, negotiate, sell or arrange the following classes or types of insurance:

- **Cargo insurance** – insurance within the class of property insurance that provides coverage only against damage to or the loss of goods in transit;
- **Creditor’s critical illness insurance** – a group insurance policy, or a creditor’s group insurance policy, that is within the class of accident and sickness insurance and will pay all or part of the amount of a debt of a debtor to the creditor insured under the policy, in the event of a diagnosis of a covered illness or medical condition with respect to,
  - Where the debtor is a natural person, the debtor or the spouse of the debtor;
  - A natural person who is a guarantor of all or part of the debt;
  - Where the debtor is a body corporate, any director or officer of the body corporate; or
  - Where the debtor is an entity other than a natural person or a body corporate, any natural person who is essential to the ability of the debtor to meet the debtor’s financial obligations.
- **Creditor’s disability insurance** – a group insurance policy, or a creditor’s group insurance policy, that is within the class of accident and sickness insurance and will pay all or part of the amount of a debt of a debtor to the creditor insured under the policy, in the event of bodily injury to, or an illness or disability of:
  - Where the debtor is a natural person, the debtor or the spouse of the debtor;
  - A natural person who is a guarantor of all or part of the debt;
  - Where the debtor is a body corporate, any director or officer of the body corporate; or
  - Where the debtor is an entity other than a natural person or a body corporate, any natural person who is essential to the ability of the debtor to meet the debtor’s financial obligations.
- **Creditor’s life insurance** – a group insurance policy, or a creditor’s group insurance policy, that is within the class of life insurance and that will pay all or part of the amount of the debt of a debtor to the creditor insured under the policy or, where a debt is in respect of a small business<sup>2</sup>, a farm or

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<sup>2</sup> “Small business” would be defined similar to the definitions in the Manitoba and Saskatchewan regimes.

fishery, all or part of the amount of the credit limit of a line of credit owing to the creditor, in the event of the death of:

- Where the debtor is a natural person, the debtor or the spouse of the debtor;
  - A natural person who is a guarantor of all or part of the debt;
  - Where the debtor is a body corporate, any director or officer of the body corporate; or
  - Where the debtor is an entity other than a natural person or a body corporate, any natural person who is essential to the ability of the debtor to meet the debtor's financial obligations.
- **Creditor's loss of employment insurance** – insurance within the class of credit protection insurance that will pay, without any individual assessment of risk, all or part of the amount of a debt of a debtor to the creditor insured under the policy in the event that:
    - The debtor, if the debtor is a natural person, becomes involuntarily unemployed; or
    - A natural person who is a guarantor of all or part of the debt becomes involuntarily unemployed.
  - **Creditor's vehicle inventory insurance** – insurance within the class of credit protection insurance that provides coverage against direct and accidental loss or damage to vehicles that are held in stock for display and sale purposes by a debtor of a creditor, if some or all of those vehicles have been financed by the creditor.
  - **Export credit insurance** – insurance within the class of surety insurance, which provides coverage to an exporter of goods or services against a loss incurred by the exporter due to non-payment for exported goods or services.
  - **Guaranteed asset protection insurance** – insurance within the class of property insurance or automobile insurance that:
    - Provides coverage to a motor vehicle, recreational vehicle, watercraft, farm implement or equipment owner or lessee, in the event of the unrecovered theft of the motor vehicle, recreational vehicle, watercraft, farm implement or equipment or its total loss, for some or all of the amount owed on the purchase financing for the motor vehicle, recreational vehicle, watercraft, farm implement or equipment or on the lease agreement, after credit for money received in respect of the theft or loss from any other insurance under which the owner or lessee has coverage for the value of the motor vehicle, recreational vehicle, watercraft, farm implement or equipment; and
    - May also provide coverage for some or all of the cost of purchasing or leasing a replacement motor vehicle, replacement recreational vehicle, replacement watercraft, replacement farm implement or replacement equipment.

- **Mortgage insurance** – insurance against loss caused by default on the part of a borrower under a loan secured by a mortgage or charge on, or other security interest in, real property.
- **Portable electronics insurance** – insurance within the class of property insurance that provides coverage against damage to or the loss of a portable electronic device.
- **Rented-vehicle accidental injury or death insurance** – insurance within the class of automobile insurance that provides coverage to a vehicle renter and other occupants of the rented vehicle for bodily injury or death and reimbursement for medical expenses resulting from a vehicular accident involving the rented vehicle that occurs during the rental period.
- **Rented-vehicle contents insurance** – insurance within the class of property insurance that provides coverage to a vehicle renter and other occupants of the rented vehicle against damage to or the loss of personal property in the rented vehicle during the rental period.
- **Rented-vehicle liability insurance** – insurance within the class of automobile insurance that provides coverage to a vehicle renter and other authorized drivers of the rented vehicle for liability arising from its operation.

### ***Travel Insurance***

Alberta, Saskatchewan and Manitoba have included travel insurance within their restricted insurance licensing regimes for certain entities. The Commission proposes to continue issuing a separate travel insurance agent licence to any individual who solicits, negotiates, sells or arranges travel insurance.

### ***Funeral Insurance***

Alberta and Manitoba have included “funeral services insurance” or “funeral expense insurance” within their restricted insurance licensing regimes. Funeral services insurance, or funeral expense insurance, is life insurance that is specifically purchased to cover the future cost of funeral or cremations services. The Commission proposes not to include this type of insurance as part of the restricted insurance licensing regime. In January 2006, the Insurance Division issued a bulletin clarifying that anyone selling funeral services or funeral expense insurance had to be licensed as a life insurance agent under the *Insurance Act*. The Commission proposes to maintain the requirement that all individuals soliciting, negotiating, selling or arranging funeral services or funeral expense insurance hold a life insurance agent licence.

### ***Equipment Warranty Insurance***

Alberta and Saskatchewan include “equipment warranty insurance” within their restricted insurance licensing regimes. Saskatchewan defines “equipment warranty insurance” as “insurance within the subclass of boiler and machinery insurance that provides coverage against loss of or damage to a motor vehicle, recreational, marine, farm implement or construction equipment, arising from its mechanical failure, but does not include automobile insurance or insurance incidental to automobile insurance.”

The Commission does not consider warranties or extended warranties to be insurance where the warranty is sold incidentally to the product and is sold by the “distributor” of the product or an affiliate of the distributor with a non-arm's length relationship. A “distributor” is defined by the *Consumer Product Warranty and Liability Act* to include “a producer, processor, manufacturer, importer, wholesaler, retailer or dealer.” Anyone other than a distributor or an affiliate of the distributor would not be selling the warranty incidentally. Therefore, the Commission proposes to exclude equipment warranty insurance from the restricted insurance licensing regime.

***Specific Classes or Types of Insurance for Businesses***

The Commission proposes that the eligible businesses listed above would be limited under the restricted insurance licensing regime to being licensed for the following classes or types of insurance:

<b>Business</b>	<b>Eligible Class or Type of Insurance</b>
Deposit Taking Institution	Creditor’s Critical Illness Insurance Creditor’s Disability Insurance Creditor’s Life Insurance Creditor’s Loss of Employment Insurance Creditor’s Vehicle Inventory Insurance Export Credit Insurance Mortgage Insurance
Sales Finance Company	Creditor’s Critical Illness Insurance Creditor’s Disability Insurance Creditor’s Life Insurance Creditor’s Loss of Employment Insurance
Transportation Service	Cargo Insurance
Automobile Dealership, Watercraft Dealership, Recreational Vehicle Dealership, Farm Implement Dealership or Construction Equipment Dealership	Creditor’s Critical Illness Insurance Creditor’s Disability Insurance Creditor’s Life Insurance Creditor’s Loss of Employment Insurance Guaranteed Asset Protection Insurance
Mortgage Brokerage	Creditor’s Critical Illness Insurance Creditor’s Disability Insurance Creditor’s Life Insurance Creditor’s Loss of Employment Insurance Mortgage Insurance
Customs Brokerage	Cargo Insurance
Freight Forwarding Business	Cargo Insurance
Vehicle Rental Business	Rented-Vehicle Accidental Injury or Death Insurance Rented-Vehicle Contents Insurance Rented-Vehicle Liability Insurance
Portable Electronics Vendor	Portable Electronics Insurance



**Consultation Questions:**

- 1.1 How should "incidental seller of insurance" be defined?
- 1.2 What businesses should be eligible to receive a restricted insurance licence? Please elaborate on your response.
- 1.3 What classes or types of insurance should be permitted to be solicited, negotiated, sold or arranged under a restricted insurance licence? Please elaborate on your response.
- 1.4 Do you agree with the classes or types of insurance that the Commission proposes to exclude from the restricted insurance licensing regime, thereby requiring individuals who sell those products to be fully licensed? Please elaborate on your response.
- 1.5 What other terms should be defined, and how should they be defined? Please elaborate on your response.
- 1.6 For which classes or types of insurance should specific businesses be eligible to seek a licence? Please elaborate on your response.
- 1.7 Please comment on any other matters for consideration on this issue.

## 2. Obtaining a Licence

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### *Licensing Requirements*

The Commission proposes that to obtain or renew a restricted insurance licence, a business must:

- Complete an application in a form approved by the Superintendent that includes:
  - The type of insurance for which the licence is to be issued;
  - The number of employees who will be authorized to solicit, negotiate, sell or arrange insurance on behalf of the applicant when and if the licence is issued.
- Pay the appropriate application fee;
- Be registered with the New Brunswick Corporate Registry, where applicable.
- Be sponsored by an insurer that:
  - Is licensed in New Brunswick for the class of insurance for which the restricted insurance licence will be issued, or that includes the type of insurance for which the restricted insurance licence will be issued; and
  - Has an agreement with the business that allows the business to act as an incidental seller on behalf of the insurer.
- Have a designated representative; and
- Provide proof of errors and omissions insurance.

The Superintendent would be authorized to issue a restricted insurance licence to a business where the Superintendent is satisfied that the business:

- Meets all the requirements for licensing under the *Act*, the regulations or the rules;
- Is suitable to hold a licence and the proposed licence is not for any reason objectionable; and
- Intends to carry on business as an incidental seller.

The licence would authorize the business and its employees to solicit, negotiate, sell or arrange the classes or types of insurance that are specified on the licence and that are offered in the course of the business activity specified on the licence.

### ***Ability of Superintendent to Require Additional Information***

As indicated above, the employees of a restricted insurance licence holder would be permitted to solicit, negotiate, sell or arrange certain types of insurance, but would not be individually licensed. Based on a review of the other restricted insurance licensing regimes, the Commission is not proposing that an applicant for a restricted insurance licence provide the names of all employees who will be engaged in the business of insurance. However, the Commission proposes that, upon request, a restricted insurance licence holder must supply a list of all employees engaged in the business of insurance and any additional information required by the Superintendent with respect to any such employee(s).

### ***Sponsorship by an Insurance Company and Duty to Report***

The Commission proposes that every insurer that intends to sponsor a business seeking a restricted insurance licence be required to have reasonable screening procedures to determine whether the business is suitable to act as an incidental seller and to use those procedures before sponsoring the business.

Further, where the insurer terminates its sponsorship of a restricted insurance licence, the Commission proposes requiring the insurer to provide the Superintendent with written notice of the termination, with reasons, no later than 15 days after the termination.

### ***Obligations of Insurer***

The Commission proposes that any insurer whose products are marketed and distributed through a restricted insurance licence holder must:

- Establish reasonable and demonstrable policies and procedures to ensure that anyone who solicits, negotiates, sells or arranges insurance on behalf of the licence holder is knowledgeable and competent, taking into account the class or type of insurance; and
- Ensure that the policies and procedures are complied with.

To further enhance consumer protection, the Commission is also proposing that any insurer whose products are marketed and distributed through a restricted insurance licence holder must provide the Superintendent detailed written notice, within 15 days of becoming aware, where the insurer has reasonable grounds to believe that the restricted insurance licence holder or any employee of the licence holder engaged in the business of insurance is not suitable to carry on the business of insurance.

### ***Designated Representative***

As indicated, a restricted insurance licence holder is required to have a designated representative. A designated representative would be a single individual who is the primary contact for the business for regulatory purposes and who is responsible for supervising insurance activities of the licence holder.

The commission proposes that anyone seeking to be named the designated representative of a restricted insurance licence holder must:

- Be a director, officer or a management employee of the licence holder if it is a corporation;

- Be a member of the partnership if the licence holder is a partnership; or
- In a case where the restricted insurance licence is issued to an individual in connection with a business — carried on by the individual — that is not a corporation or a partnership, is that individual.

#### Replacement of a Designated Representative

The Commission proposes that if a designated representative of a restricted insurance licence holder ceases to be the designated representative, the licence holder must, within 10 business days:

- Notify the Superintendent in writing and provide reasons; and
- Submit a new eligible candidate.

If the business does not submit a new candidate within 10 business days, the restricted insurance licence is automatically suspended. The Superintendent will also have the authority to appoint a temporary designated representative for up to 14 days, unless extended.

#### Designated Representative's Responsibilities

The Commission proposes that the designated representative would be responsible for the reasonable and prudent oversight of all insurance activities carried on by the restricted insurance licence holder and its employees. The Commission proposes that a designated representative's supervisory responsibilities include, but not be limited to, ensuring that:

- The licence holder complies with the Act, Regulations and Rules;
- The licence holder operates in accordance with any conditions and restrictions on their licences;
- The licence holder has reasonable and demonstrable policies and procedures to ensure that any employee carrying on insurance on its behalf is knowledgeable, competent and suitable, taking into account the class or type of insurance and that these employees comply with these policies and procedures;
- The licence holder has appropriate written procedures, which include, but are not limited to, such matters as proper file maintenance;
- Trust monies are handled properly and all books and records are properly maintained;
- Errors and omissions insurance is properly maintained;
- Regular reviews are conducted of the work of employees carrying out insurance to ensure that there are no issues related to compliance, competence or ethics. Regular reviews would include auditing samples of client files.

Further any notices or documents that need to be served on the licence holder would be served on the designated representative.

#### *Designated Representative's Duty to Report*

The Commission proposes that a designated representative be required to report within 10 business days any of the following:

- Change in name of the licence holder;
- Change of ownership of the licence holder;
- Any misconduct with respect to the business of insurance by the employees of the licence holder;
- Any change in errors and omissions coverage; and
- Any errors and omissions claim against the licence holder or any employee with respect to the business of insurance, with details.

#### ***Errors and omissions insurance***

In the course of carrying on the business of insurance, a restricted insurance licence holder may become liable to an insured or an insurer. Liability insurance offers greater protection to consumers and insurance companies. It also protects a licence holder by covering potential losses and defraying costs of defending an action. Therefore, the Commission proposes that restricted insurance licence holders must maintain the following coverage for the business and its employees with respect to carrying on the business of insurance:

- Liability insurance of at least \$2,000,000 in respect of any one occurrence and an overall policy aggregate of at least \$5,000,000 in respect of an occurrence with regard to negligent acts, errors or omissions with extended coverage for loss resulting from fraudulent acts pertaining to the licensed activity;
- Fidelity insurance against losses arising from dishonesty (including fraud) of employees, a proprietor or partners, directors and officers for an amount of not less than \$100,000.00 in coverage;
- Coverage amounts would be exclusive of defence and investigative expenses;
- Coverage would be for all of the insurance products that the restricted insurance licence holder is licensed to sell or arrange; and
- The coverage would require a 12-month extended reporting period.

The Commission further proposes that the insurer who issues the policy be required to provide 30 days' notice to the Superintendent before cancelling or refusing to renew the policy. Finally, the Commission

proposes that a licence holder's licence be automatically suspended on the effective termination date or non-renewal date of the insurance policy, unless a new policy is in place.

### ***Conditions, Revocation or Suspension of a Licence***

The Commission proposes that the Superintendent be authorized to impose any terms and conditions on a restricted insurance licence holder that the Superintendent considers appropriate. This is consistent with the Superintendent's authority under section 390 of the *Insurance Act* to impose terms and conditions on other licensees.

The Commission proposes that the Superintendent be granted the discretion to revoke, suspend, or refuse to renew or reinstate a restricted insurance licence if, after giving the licensee an opportunity to be heard, the Superintendent determines that the licensee:

- Contravened a provision of the Act, the regulations or rules;
- Made a material misstatement or omission in the application for the licence;
- Committed a fraudulent act or practice;
- Failed or refused to comply with any limitation or conditions placed on the licence;
- Demonstrated incompetence or untrustworthiness to transact the business for which the licence was granted;
- Allowed an employee on salary or otherwise to solicit, negotiate, sell or arrange insurance on its behalf where the person had an application for a licence as an insurance agent or adjuster refused, or had a licence suspended or revoked by the Superintendent, without having first obtained the written approval of the Superintendent; or
- Is otherwise unsuitable to be licensed.

Further, although individual employees of a restricted insurance licence holder will not be licensed, the Commission proposes that the Superintendent be authorized to prohibit any person from soliciting, negotiating, selling or arranging insurance on behalf of the licence holder where the Superintendent determines, after giving the individual an opportunity to be heard, that they have committed a fraudulent act or practice or demonstrated incompetency or untrustworthiness, or is otherwise unsuitable.

As with other licences, these decisions could be appealed to the Financial and Consumer Services Tribunal.

### **Consultation Questions:**

- 2.1 What should the requirements be for obtaining or renewing a restricted insurance licence? Please elaborate on your response.

- 2.2 Do you foresee any operational challenges with authorizing the Superintendent to obtain a list of employees engaged in the business of insurance and information on any such employee? If so, what do you propose? Please elaborate on your response.
- 2.3 What should the requirements be for insurers who sponsor a restricted insurance licence? Please elaborate on your response.
- 2.4 What obligations should be on an insurer whose products are being sold by a restricted insurance licence holder (e.g., establishing policies and procedures and duty to report)? Please elaborate on your response.
- 2.5 What should the eligibility requirements be for a designated representative and what should the process be for replacing a designated representative? Please elaborate on your response.
- 2.6 Should the designated representative be fully licensed for the area of insurance that is being offered by the restricted insurance licence holder? For example, should the designated representative for a restricted insurance licence holder offering creditor's life insurance products be required to hold a full life insurance licence? Please elaborate on your response.
- 2.7 What should supervisory responsibilities be for a designated representative and what should they be required to report? Please elaborate on your response.
- 2.8 Where a restricted insurance licence holder has multiple locations, in addition to a designated representative, should there be an on-site supervisor of insurance business at each location? If so, what should be the eligibility requirements to be an on-site supervisor? What should be the supervisory responsibilities for an on-site supervisor? Please elaborate on your response.
- 2.9 Are the proposed requirements for errors and omissions insurance sufficient? If not, what do you propose? Please elaborate on your response.
- 2.10 Do you foresee any operational challenges with requiring an errors and omissions insurer to provide 30 days' notice to the Superintendent before being permitted to cancel or refuse to renew an errors and omissions policy? If so, what do you propose? Please elaborate on your response.
- 2.11 Do you foresee any operational challenges with authorizing the Superintendent to prohibit any person from soliciting, negotiating, selling or arranging insurance on behalf of the restricted insurance licence holder? If so, what do you propose? Please elaborate on your response.
- 2.12 Please comment on any other matters for consideration on this issue.

## 3. Market Conduct, Disclosure Requirements and Right to Rescind

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### *Use of Personal Information*

The Commission proposes that restricted insurance licence holders and their employees be prohibited from using personal information provided by a consumer purchasing insurance for any purpose other than the purpose for which the information was provided and only when the consumer provides consent. The consent must be identified as a consent to use personal information and specifically identify the purpose for which the information may be used by the licence holder or an employee.

Further, the Commission proposes that restricted insurance licence holders and their employees be prohibited from releasing personal information provided by a consumer to anyone who is not an employee of the licence holder, unless the consumer provides consent. The consent must be identified as a consent to release personal information and specifically identify the personal information that may be released, to whom the personal information may be released and the purpose for which the released personal information may be used. The prohibition against the release of personal information would not apply if the personal information is released to the insurer on whose behalf the licence holder is transacting insurance, or a person as required by law.

For clarity, restricted insurance licence holders and their employees must, upon request, provide the Superintendent and staff with any information related to the carrying on of the business of insurance.

### *Prohibitions with Respect to Employees*

The Commission proposes that a restricted insurance licence holder must obtain the Superintendent's written approval before allowing one of their employees to solicit, negotiate, sell or arrange insurance on its behalf where the employee had been refused an insurance licence or has had an insurance licence revoked or suspended.

Also, the Commission proposes prohibiting a restricted insurance licence holder from permitting a person to solicit, negotiate, sell or arrange insurance on its behalf unless the person has been suitably trained to be able to knowledgeably solicit, negotiate, sell or arrange the class or type of insurance involved.

### *Separate Insurance Application*

To enhance the consumer's ability to fully appreciate the nature of the insurance product being offered and to assess whether the insurance is suitable for their needs, the Commission proposes that restricted insurance licence holders and their employees be required to provide the consumer with a separate application for the insurance coverage. The requirement would apply for the following classes or types of insurance:

- creditor's critical illness insurance;
- creditor's disability insurance;



- creditor's life insurance;
- creditor's loss of employment insurance;
- guaranteed asset protection insurance;
- mortgage insurance; or
- portable electronics insurance.

Further, upon request, the restricted insurance licence holder must provide the consumer making an application with a copy of the completed insurance application.

### ***Prohibition Against Tied Selling***

The Commission proposes to prohibit restricted insurance licence holders and their employees from:

- Making the provision of goods or services conditional upon the consumer's purchase of insurance through it or from an insurer specified by the licence holder or its employee; or
- Advising a consumer who wishes to purchase insurance in relation to goods or services that the consumer must purchase the insurance through the licence holder or from a specific insurer.

However, this would not prevent a restricted insurance licence holder or its employees from advising a consumer who is seeking a loan that they must purchase insurance to protect the lender against default by the borrower. To clarify, a lender can insist that the borrower purchase insurance to protect the lender against default by the borrower, but they cannot insist that the borrower purchase the insurance from them or from a specific insurer.

### ***Disclosure Requirements***

When insurance is sold incidentally to the sale of goods or the provision of services, the consumer's focus may be on the particular goods or services and not on the insurance. The sales environment may not allow the consumer to make an informed decision with respect to the need for the particular insurance product being offered. Therefore, it is important to ensure that the consumer has access to appropriate information about the insurance product to make an appropriate choice.

The Commission proposes that a restricted insurance licence holder or its employee, at the time the consumer applies for insurance coverage, must:

- Inform the consumer that they are contracting with, or considering contracting with, an insurer and not with the licence holder;
- Inform the consumer of the name of the insurer that is providing the insurance, that they may contact the insurer for further information or clarification, and how to contact that insurer;

- Provide the consumer with a summary of the terms, including limitations, exclusions and restrictions, of the insurance<sup>3</sup>;
- Provide the consumer with a summary of the circumstances under which the insurance commences or terminates and the procedures to follow in making a claim;
- Notify the consumer that, upon approval of the application,
  - the insurance policy and documentation describing the insurance coverage will be sent to the consumer, or
  - a certificate will be sent to the consumer if the insurance applied for is group insurance;
- Inform the consumer of the cost of the insurance and any direct or indirect compensation, inducement or benefit from the insurer to the licence holder or employee for soliciting, negotiating, selling or arranging the insurance.

Where the consumer is applying for creditor’s disability insurance, creditor’s life insurance, creditor’s loss of employment insurance, guaranteed asset protection insurance, mortgage insurance, or portable electronics insurance, a restricted insurance licence holder or its employees must provide the consumer with a statement that sets out the right to rescind the insurance contract and to obtain a full refund of the premium.

Where the consumer is applying for creditor’s disability insurance, creditor’s life insurance, creditor’s loss of employment insurance, guaranteed asset protection insurance, or mortgage insurance, a restricted insurance licence holder or its employees must provide the consumer with a statement that the duration of the insurance is less than the term of the amortization period of any related loan, or that the amount of the insurance is less than the indebtedness, if that is the case.

Where a consumer is applying for rented-vehicle accidental injury or death insurance, rented-vehicle contents insurance, or rented-vehicle liability insurance, a restricted insurance licence holder or its employees must inform the consumer that the insurance may provide a duplication of coverage already provided by the vehicle renter's automobile insurance policy or by another source of coverage.

Where a consumer purchases an insurance product through a restricted insurance licence holder or its employees, the licence holder must ensure that, within 20 business days of the insurance coverage coming into force, the consumer is provided with:

- Documentation evidencing the insurance coverage;
- Documentation setting out that the person is contracting with an insurer and not with the licence holder; and

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<sup>3</sup> For credit-related insurance products, it is expected that this disclosure will include information on pre-existing conditions and the consequences of misrepresentation in accordance with the Canadian Life and Health Insurance Association’s Guideline G7 - Creditor’s Group Insurance.

- The policy and documentation describing the insurance, or, in the case of group insurance, a certificate.

### Insurer's Responsibility

An insurer on whose behalf a restricted insurance licence holder or its employees are marketing, soliciting, negotiating, selling or arranging insurance must ensure that reasonable and demonstrable procedures are in place respecting the disclosure requirements set out under this topic and ensure that the procedures are being followed.

### **Right to Rescind**

In addition to ensuring that consumers have enough information about an insurance product, it is important that consumers have enough time and resources to adequately assess the suitability of the insurance product. According to the CCIR ISI Report, the practice in industry is to provide consumers with a cooling off period, usually 10 days, during which the consumer can cancel the insurance product and obtain a full refund of the premium. This, among other things, would allow the consumer to review the documentation, re-evaluate the need for the insurance, and, if they wish, to seek advice from a fully licensed insurance agent. The ISI Report recommended that the cooling off period be extended to allow consumers sufficient time to confirm that the insurance product is suitable for their needs. The Canadian Life and Health Insurance Association's Guideline G7 - Creditor's Group Insurance - indicates that for creditor's group insurance products, the cooling off period should not be less than 20 days.

The Commission proposes that a consumer be permitted to rescind the contract of insurance on or before the expiry of 20 days, or any longer period specified in the policy or group insurance certificate, from the date the consumer received the policy or certificate. A consumer who rescinds the insurance contract within this time is entitled to a full refund of the premium paid. The Commission proposes that the right to rescind apply where the following classes or types of insurance are purchased through a restricted insurance licence holder:

- creditor's critical illness insurance;
- creditor's disability insurance;
- creditor's life insurance;
- creditor's loss of employment insurance;
- guaranteed asset protection insurance;
- mortgage insurance; or
- portable electronics insurance.

A right to rescind for the other classes or types of insurance would not be appropriate given the short duration of those contracts.

### **Consultation Questions:**

- 3.1 What restrictions or protections should be in place with respect to personal information? Please elaborate on your response.
- 3.2 What prohibitions should be in place for employees of a restricted insurance licence holder? Please elaborate on your response.
- 3.3 What, if any, should the prohibitions be related to tied selling? Please elaborate on your response.
- 3.4 With respect to the right of a lender to insist that a borrower purchase insurance to protect the lender, what class or type of insurance should this apply to? Specifically, should it only apply to insurance that protects the lender against default by the borrower? Please elaborate on your response.
- 3.5 Do you foresee any operational challenges with requiring a separate application for certain classes or types of insurance? If so, what do you propose? To which classes or types of insurance should it apply? Please elaborate on your response.
- 3.6 Do you foresee any operational challenges with requiring a copy of a completed application to be provided to the consumer upon request? If so, what do you propose? To which classes or types of insurance should it apply? Please elaborate on your response.
- 3.7 What should the disclosure requirements be for restricted licence holders and their employees? Please elaborate on your response.
- 3.8 How long should a consumer have to rescind a contract for a full refund? Please elaborate on your response.
- 3.9 To which classes or types of insurance should a right to rescind apply? Please elaborate on your response.
- 3.10 Please comment on any other matters for consideration on this issue.

# Providing Feedback

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The Commission is publishing this Consultation Paper for a **60-day comment period**. Please send your comments in writing on or before **31 January 2020**.

All submissions should refer to “**Consultation Paper – Incidental Selling of Insurance**”. This reference should be included in the subject line if the submission is sent by email. Regardless of whether you are sending your comments by email, you should also send or attach your submissions in an electronic file in Microsoft Word format.

**Please address your submission to:**

E-mail: [consultation@fcnb.ca](mailto:consultation@fcnb.ca)

Alternatively, submissions may be sent by mail or fax to:

Insurance Division c/o David Weir  
Financial and Consumer Services Commission  
200-225 King St.  
Fredericton, NB E3B 1E1  
Fax: (506) 453-7435

We cannot keep submissions confidential as they may be subject to a request under the *Right to Information and Protection of Privacy Act*. Additionally, any submissions or comments received during the comment period may be published; therefore, you should not include personal information directly in comments. It is important that you state on whose behalf you are making the submission.

**If you have any questions, please refer them to:**

David Weir  
Senior Technical Advisor, Insurance  
Financial and Consumer Services Commission  
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