



Financial and Consumer Services Commission
Insurance Division, c/o David Weir
200-225 King St.
Fredericton, NB E3B 1E1
Email: david.weir@fcnb.ca

Dear Mr. Weir and Staff of FCNB:

RE: Consultation Paper – Incidental Selling of Insurance in New Brunswick

Thank you for the opportunity to submit our comments regarding the Incidental Selling of Insurance. As “The Commission proposes that a restricted insurance licence could be issued to[...] a mortgage brokerage licensed under the *Mortgage Brokers Act*”, we have consulted with our member brokers and agents in New Brunswick. Our comments within this document represent their collective thoughts as part of the mortgage brokering sector.

We felt it most effective to simply respond to each of your Consultation Questions as asked, adding comments to certain relevant points made in the [Consultation Paper](#) itself. These are noted with “MPC:” and have been **printed in red**. If you have any questions or comments, please contact me or our Director of Government Relations and Regulatory Affairs, J.P. Boutros, at jpboutros@mortgageproscan.ca.

Sincerely,

Paul Taylor
President and CEO
Mortgage Professionals Canada
ptaylor@mortgageproscan.ca

About Mortgage Professionals Canada

Mortgage Professionals Canada (MPC) is the national mortgage industry association representing 11,500 individuals and 1,000 companies, including mortgage brokerages, lenders, insurers and industry service providers. Our members make up the largest and most respected network of mortgage professionals in Canada. MPC represents members’ interests to government, regulators, media and consumers. With our members, the association is dedicated to maintaining a high standard of industry ethics, consumer protection and best practices.

The mortgage broker channel originates over 35% of all mortgages in Canada and 55% of mortgages for first-time homebuyers, representing approximately \$80 billion dollars in economic activity annually. With our diverse and strong membership, Mortgage Professionals Canada is uniquely positioned to speak to issues impacting all aspects of the mortgage origination process.

Mortgage Professionals Canada's comments and responses are listed in red, below FCNB's respective comments and questions.

Section 1, Licensing of Incidental Sellers 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."

MPC believes this definition aligns with the intent of the CCIR ISI definition, and as such, we are comfortable with it as presented.

Section 1 Consultation Questions:

1.1 How should "incidental seller of insurance" be defined?

MPC: The definition is acceptable.

1.2 What businesses should be eligible to receive a restricted insurance licence? Please elaborate on your response.

MPC: The Commission has correctly identified Mortgage Brokerages as businesses who are practically required to sell insurance products incidental to their main business of originating and funding mortgages. Thank you for including our business segment in your considered eligibility. We have no recommendations regarding any other industry segment who could potentially be considered.

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.

MPC: Our consultation group did not mention any additional products outside of the five (5) identified in the consultation paper. Unless the Commission receives additional commentary from an individual agent or broker who was not directly consulted by our committee, we feel the products as outlined should be sufficient.

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.

MPC: Similar to our above comment, failing the Commission receiving a request to consider an additional product type from an individual agent or broker in New Brunswick, we believe the products as presented are adequate.

- 1.5 What other terms should be defined, and how should they be defined? Please elaborate on your response.

MPC: No comment on this issue.

- 1.6 For which classes or types of insurance should specific businesses be eligible to seek a licence? Please elaborate on your response.

MPC: No comment on this issue.

- 1.7 Please comment on any other matters for consideration on this issue.

MPC: Nothing to add.



Section 2, Obtaining a Licence:

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.

MPC: If contractual arrangements between insurers and agents/brokers exist pre-implementation, we recommend these agreements be considered evidence of current competence of practice by the brokerage business and its servicing agents and brokers in the delivery of the insurer's products. Practically speaking, had there been any shortfall in the provision of these products, the insurer's service scores and loss ratios would have required corrective actions were taken.

For sales agreements created post ISI licensing requirement implementation, we suggest proof of product training be required, by the insurer to FCNB, and that there be an acknowledgement by the ISI licensed individual, to the insurer and FCNB, that those authorized to sell under the business' ISI are adequately trained and competent.

Designated Representative

MPC finds all points listed regarding "Designated Representative" to be acceptable.

Errors and omissions insurance

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;

MPC: We recommend that for mortgage brokers The Commission align these policy minimums with mortgage brokers' current requirements as set in Rule MB-001, which are liability insurance of \$500,000 in respect to any one occurrence, and an overall policy aggregate of \$1,000,000. We also recommend The Commission consults with insurers to confirm their ability to amend and offer policy wordings (if necessary) to ensure NB agents and brokers can meet this new coverage obligation prior to its enforcement.



Section 2 Consultation Questions:

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

MPC: A pre-existing brokerage licence should be obligatory, along with other requirements which have been outlined here.

- 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.

MPC: No.

- 2.3 What should the requirements be for insurers who sponsor a restricted insurance licence? Please elaborate on your response.

MPC: Insurers should make training products available for their sponsored licencees, in an effort to assist in the ongoing training and competent delivery of their products by newcomers to the brokerage. Any new agents of brokers will need to be trained prior to being added to the roster of individuals the business' ISI grants authority to. As such, training products should be made available in a timely manner to the sponsored individual.

- 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.

MPC: Since the ISI should not grant binding authority to the mortgage agent or broker, the insurer is responsible for all underwriting and issuance of policies, as well as all claims management and settlement processes. The agent or broker are merely originators and introducers of insurance product customers to the insurers, not their representatives.

- 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.

MPC: The designated representative should be licensed as an agent or broker. The administrative form(s) should be simple.

- 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.

MPC: No. These sales are "incidental". By definition, mortgage brokers and agents who sell them are not insurance specialists.

- 2.7 What should supervisory responsibilities be for a designated representative and what should they be required to report? Please elaborate on your response.

MPC: Supervisors should be responsible for the proficiency of their salespeople, and be responsible for ensuring their application submissions are accurate and in line with the mortgage applications.

- 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.

MPC: No. The nature of a mortgage origination sales force often means that agents and brokers work remotely from their office. As such, licensed brokers provide the same oversight of applications for their agents regardless of their physical address. Electronic submissions can be reviewed anywhere.

- 2.9 Are the proposed requirements for errors and omissions insurance sufficient? If not, what do you propose? Please elaborate on your response.

MPC: We believe the E&O requirements are perhaps too stringent, and policy minimums should be aligned/harmonized with mortgage brokers' current requirements as set in Rule MB-001, which are liability insurance of \$500,000 in respect to any one occurrence, and an overall policy aggregate of \$1,000,000. We also recommend The Commission consults with insurers on this important point.

- 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.

MPC: The insurers themselves can better answer this question. While it is not uncommon for regulators to require cancellation notifications from insurers for certain products and business sectors, MPC does not have a valid comment on the ease of which such mechanisms are implemented or their feasibility.

- 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.

MPC: We have no issue with this at all.

- 2.12 Please comment on any other matters for consideration on this issue.

MPC: We have no further comments on other considerations in this section.

Section 3, Market Conduct, Disclosure Requirements and Right to Rescind

Prohibition Against Tied Selling

MPC: We have included some comments regarding this below, answering Consultation Question 3.3.

Disclosure Requirements

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;
MPC comment: This must be the responsibility of insurers, not of the licence holders, since the agent or broker has no practical control over the insurer's business operations. If the insurer's fulfillment is delayed, that is beyond the control of the mortgage agent or broker.
- Documentation setting out that the person is contracting with an insurer and not with the licence holder; and
- The policy and documentation describing the insurance, or, in the case of group insurance, a certificate.

Insurer's Responsibility

Right to Rescind

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:

- mortgage insurance
MPC comment: For home purchasers with a less than 20% down payment, mortgage insurance can't practically be opted-out of or rescinded. Following a purchase, it is legally required to be obtained to ensure funding.

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



Section 3 Consultation Questions:

- 3.1 What restrictions or protections should be in place with respect to personal information? Please elaborate on your response.

*MPC: Any such restrictions or protections should be in line with the *Mortgage Brokers Act*.*

- 3.2 What prohibitions should be in place for employees of a restricted insurance licence holder? Please elaborate on your response.

MPC: As outlined.

- 3.3 What, if any, should the prohibitions be related to tied selling? Please elaborate on your response.

MPC: The Consultation paper correctly identified instances where lenders may make the funding of a mortgage conditional on the borrower's purchase of an insurance product, to provide the lender with additional protection. We do not see an issue with this unless the insurance product is underwritten and issued by the lender issuing the funds. If the borrower is provided options for insurance product types, this is not, in our view, the traditional definition of tied selling. If the lenders were prohibited from requiring certain insurance types, they would effectively have to self-insure against some risks, which ultimately translates to higher interest costs for borrowers. Since lenders are not insurers, the actual cost to New Brunswick consumers would be much higher. Insurers have significant actuarial experience and data to draw on for pricing; lenders would not. As such, to feel comfortable their risk is managed, they will likely require more funds in capital reserves than the insurers. Additionally, some lenders may simply decide not to fund mortgages in the province if forced to assume traditional insurance risks with their mortgage fundings. We would suggest a thorough examination of the business practices in this sector take place prior to any amendments to permitted practices is suggested.

- 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.

MPC: We feel that no additional structure should be implemented at this time.

- 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.

MPC: No. Given that incidental sellers of insurance as not specialists, the insurer's underwriters need full details.

- 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.

MPC: No.

- 3.7 What should the disclosure requirements be for restricted licence holders and their employees? Please elaborate on your response.

MPC: The disclosure requirements should be in line with provincial mortgage broker disclosures, and should be kept simple and with minimum burden.

- 3.8 How long should a consumer have to rescind a contract for a full refund? Please elaborate on your response.

MPC: This is not our segment of expertise.

- 3.9 To which classes or types of insurance should a right to rescind apply? Please elaborate on your response.

MPC: Notwithstanding our comments regarding mortgage insurance above, we do not feel this is our area of expertise to comment on.

- 3.10 Please comment on any other matters for consideration on this issue.

MPC: We have no further comments on other considerations in this section.

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