

Modernizing the New Brunswick Insurance Licensing Framework

Insurance
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FINANCIAL AND
CONSUMER SERVICES
COMMISSION



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INTRODUCTION

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The *Agents and Brokers Regulation* establishes the terms, conditions and qualifications for other-than-life agents and brokers. The Regulation has been in place since February 1995 and has not been updated since that time. The Financial and Consumer Services Commission (FCNB) has been concerned for some time that the Regulation and some provisions in the *Insurance Act* related to agents and brokers are no longer appropriate for the current insurance marketplace.

FCNB previously released the discussion paper entitled **Opportunities for Reforming the New Brunswick Licensing Framework for Other-than-Life Insurance Agents and Brokers**. The purpose of the paper was to facilitate dialogue and consultation with a wide variety of stakeholders on reforming the current licensing framework. FCNB received responses from the following 11 stakeholders:

- The Canadian Association of Direct Relationship Insurers (CADRI)
- The Canadian Association of Financial Institutions in Insurance (CAFII)
- The Canadian Life and Health Insurance Association (CLHIA)
- The Dominion of Canada General Insurance Company
- Huestis Insurance Group
- The Insurance Brokers Association of New Brunswick (IBANB)
- The Insurance Bureau of Canada (IBC)
- The Insurance Institute of Canada
- SouthEastern Mutual Insurance Co.
- Stanley Mutual Insurance Co.
- TD Insurance Company

FCNB has reviewed the stakeholder submissions and has carried out an extensive review of regimes in other Canadian jurisdictions. This Position Paper sets out FCNB's recommendations for a new licensing framework for agents and brokers in New Brunswick and reports on some initiatives that have been undertaken since the Discussion Paper to improve the insurance licensing framework. The goal of the framework is to establish a regime that reduces administrative burdens and levels the playing field for market participants while ensuring that consumers are properly served and protected.

Stakeholders are encouraged to comment on the proposals put forward in the Paper. FCNB will benefit greatly from this input as we move forward to make final recommendations. Although the main focus of the paper is the licensing framework for other-than-life agents and brokers, many of the items discussed also impact other insurance intermediaries, including life insurance agents and adjusters. In particular, issues 1.5, 2, 3.1, 5, and 6 apply to all intermediaries. Issues 7 and 8 also apply to life and other than life (with an issue for adjusters in 8.2). Therefore, we also welcome any feedback from these intermediaries and other stakeholders.

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FCNB will review all submissions and make final recommendations for the licensing framework to Government, which is responsible for making any legislative or regulatory amendments.

RECENT INITIATIVES

Sworn Applications

The *Insurance Act* was amended to eliminate the requirement for intermediaries to have new applications sworn and instead to require applicants to provide a declaration that the information within the application is true, accurate and complete. Requiring sworn statements created an additional step to the licensing process and increased costs to applicants. It was also a barrier to moving to an online licensing system. FCNB is confident that requiring a declaration will accomplish the same goal as requiring that an application be sworn.

Online Licensing

FCNB has commenced the process of creating an online licensing system. The first phase of the project, which will be introduced in the fall of 2015, will allow new applicants for an intermediary licence to complete their application online and check the status a submitted application. Phase 2, which we plan to make available in 2016, will include functionality to complete intermediary and insurer licence renewal processes and new insurer applications online. The new system will simplify the application and renewal processes, improve the processing time of applications, licences and other transactions and enable clients to interact with us at their convenience.

Compliance and Inspection Authority

The Financial and Consumer Services Commission has undertaken a Commission wide review of the compliance and inspection authority in the various Acts that it oversees, including the *Insurance Act*. The review covers such things as maintaining of books and records, public interest orders and administrative penalties. That review and related recommendations are ongoing and are separate from this Paper. However, FCNB felt that there are certain topics specific to the *Insurance Act* that are relevant to this paper.

Submissions should be made electronically to secretary@fcnb.ca no later than January 22, 2016.

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

Financial and Consumer Services Commission
200-225 King St.
Fredericton NB
E3B 1E1
Attention: Insurance Division

Fax: (506) 453-7435

Please note that we cannot keep submissions confidential. Any comments received during the comment period will be made public.

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ABOUT FCNB

Established on July 1, 2013, the Financial and Consumer Services Commission (FCNB) is responsible for administering and enforcing the legislation regulating insurance, caisses populaires, credit unions, co-operatives, pensions, securities, and trust and loan companies as well as a wide range of consumer protection 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.

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1 – Levels and Types of Licences

Item 1.1 – Distinction between Resident and Non-Resident Other-Than-Life Agents

Position

FCNB recommends the elimination of the distinction between resident and non-resident other-than-life agents and brokers.

FCNB recommends a mechanism for the recognition of equivalent qualifications for applicants from other jurisdictions.

Commentary

Section 352 of the *Insurance Act* deals with, among other things, licensing of resident other-than-life agents and brokers. Section 353 deals exclusively with licensing of non-resident other-than-life agents and brokers. There are significant differences between the two licensing regimes. Having a separate regime for non-residents reflects a time when most individuals dealing with insurance clients were resident in the Province, with a few non-residents doing infrequent business in the Province. Today's marketplace is significantly different than when the distinction between resident and non-resident other-than-life agents and brokers was introduced. Today there are many non-resident licence holders who do regular business in New Brunswick.

A separate regime is no longer appropriate. Resident and non-resident life agents are treated the same. Likewise, there is no distinction between resident and non-resident adjusters. No other jurisdiction has a separate regime for non-residents.

All individuals carrying on other-than-life business should be held to the same standard regardless of their place of residence. This provides consistent protection for New Brunswick consumers. It will help to ensure a level playing field for all licence holders. It will also ensure that we are meeting our obligations under the *Agreement on Internal Trade*.

Given that there is some variation of educational qualifications among jurisdictions, there needs to be authority for the recognition of equivalent qualifications for applicants from other jurisdictions.

Item 1.2 – Distinction between Agent and Broker

Position

FCNB recommends:

- the elimination, for licensing purposes, of the distinction between agents and brokers;
- the licensing of all other-than-life licence holders as "agents";
- a restriction on who can hold themselves out publicly as a "broker" or "brokerage".

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Commentary

Many consumers do not completely understand the distinction between an agent and a broker. More importantly, the line between brokers and agents has become blurred in the current insurance marketplace. Agents frequently sell products of companies other than their own company because of arrangements made between their employer and other insurance companies. Likewise, some brokers have limited product markets to offer to consumers.

Most jurisdictions only license individuals as agents and do not issue distinct broker licences. Eliminating the current distinction will lead to greater harmonization with other jurisdictions.

Eliminating the distinction will further serve to support efforts to ensure that all individuals involved in the sale of insurance products are on a level playing field when it comes to licensing and qualifications.

The fact that an individual will receive an agent licence from the Insurance Division does not prevent him or her from holding themselves out publicly as a “broker”. Likewise, it does not prevent a business from holding itself out as a “brokerage”. However, to ensure that consumers are not misled, FCNB recommends that the *Insurance Act* be amended to prohibit agents from holding themselves out publically as a “broker” or a “brokerage” unless:

- they are a party to 2 or more subsisting agency contracts with different insurers, and
- none of the agency contracts require the insurance agent to deal only insurance offered by one insurer.

Item 1.3 – Levels of Licences

Position

FCNB recommends a regime that has the following three separate levels of agent licences:

- Level 1 agent – allows the holder to carry on personal lines insurance;
- Level 2 agent – allows the holder to carry on personal lines and commercial lines insurance;
- Level 3 agent – allows the holder to manage an insurance agency and carry on personal lines and commercial lines insurance.

Commentary

It is important that the roles and responsibilities for a level of licence correspond with the agent’s educational training. Given the current educational offerings, it is logical that licensed activities be divided between personal lines and commercial lines.

There will be no requirement for a level 1 or a level 2 agent to move to another level. For example, a level 1 agent will be permitted to stay at that level for his or her entire career, but will be limited to carrying on personal lines insurance. Further, there will be no limitation on where the agent carries on business. In the existing regulatory regime, a level 1 agent is required “to conduct all duties relating to the licence at the place of business of his or her

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employer”. This regulatory restriction will be eliminated. Decisions on limiting where an agent can carry on business will be the responsibility of the management of the insurer or agency.

Item 1.4 – Minimal Experience Requirements

Position

FCNB recommends restricting a Level 3 agent licence to an individual who has at least four years’ experience as an agent, including at least two years’ experience as a Level 2 agent.

FCNB recommends that there be no minimal experience requirements for individuals seeking a level 1 or level 2 licence.

Commentary

A level 3 agent can have significant supervisory responsibilities. Therefore, they require sufficient experience before being eligible for a level 3 licence. The minimum experience requirements as a level 2 agent will ensure that they understand both personal and commercial lines.

New agents may wish to enter the industry as either a level 1 agent doing personal lines or a level 2 agent doing commercial lines (and perhaps personal lines as well). Therefore, it is not necessary to put a minimal experience requirement as a level 1 agent on an individual seeking to become a level 2 agent. New entrants will gain experience during a probationary period as discussed under Issue 3 – Supervision.

Item 1.5 – Definition of “Agent” and Activities That Do Not Require a Licence

Position

FCNB recommends a new definition of “agent” that will capture the essence of what both agents and brokers do. Anyone whose activities fall outside the definition of “agent” would not require a licence.

FCNB recommends the following definition:

“insurance agent” means a person who, for compensation,

- (i) solicits insurance on behalf of an insurer, insured or potential insured,
- (ii) transmits an application for insurance from an insured or potential insured to an insurer,
- (iii) transmits a policy of insurance from an insurer to an insured,
- (iv) negotiates or offers to negotiate insurance on behalf of an insurer, insured or potential insured or the continuance or renewal of insurance on behalf of an insurer or insured, or
- (v) examines, appraises, reviews or evaluates an insurance policy, plan or program or makes recommendations or gives advice with regard to any of the above.

but does not include an insurer.

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Commentary

The recommended definition captures activities of both agents and brokers. It covers a broad scope of activities that should fall within the licensing regime. Individuals should only carry on these activities if they are licensed. If an individual is assessing a client's needs or providing advice or making recommendations, or is involved at any stage of these activities, he or she must be licensed. The fact that an individual does not have direct contact with clients is not determinative. If the individual makes recommendations to a licensed agent/broker, who then communicates with the client, this does not diminish his or her role in the process and does not exempt him or her from the requirement to be licensed.

The following are examples of activities that can be carried on by staff of an insurer, agency or brokerage that do not require the individual to be licensed as an agent:

- Greeting customers and directing them to the appropriate staff;
- Answering phone calls and directing the calls to the appropriate staff;
- Managing correspondence on behalf of licensed agents;
- Performing accounting responsibilities, receiving customer payments, reporting unpaid balances to customers, making bank deposits;
- Handling human resource matters;
- Filing;
- Requesting documents as instructed by licensed agents (e.g., MVR reports);
- Supplying documents to clients under the direction of licensed agents (e.g. application forms, renewal forms; wood-stove questionnaires); or
- Providing information technology services.

2 – Corporate and Partnership Licences

Item 2.1 – Agency Licence

Position

FCNB recommends all corporations and partnerships carrying on business as an insurance agency or brokerage be required to hold an agency licence.

FCNB recommends that the licensing of corporations and partnerships also apply to life agencies and brokerages and adjusting firms.

Commentary

Many agents and brokers carrying on business in the province are employed by an agency or a brokerage. Consumers identify with the agency or brokerage in addition to the individual agent or broker. Therefore, agencies and brokerages should be subject to direct regulation. Requiring the agency or brokerage to obtain an agency licence strengthens consumer protection.

Where an agency has branch offices, the branch offices will not require a separate licence. However, each branch location must be listed on the agency licence and will be subject to the oversight of the primary office location. The requirement to hold a corporation or partnership licence will also apply to life agencies and brokerages and adjusting firms.

Item 2.2 – Requirements to Obtain an Agency Licence

Position

FCNB recommends that an agency must meet the following minimum standards to obtain a licence:

- Be registered with the New Brunswick Corporate Registry;
- Represent at least one insurance company authorized to carry on business in New Brunswick;
- Have a designated representative; and
- Provide proof of errors and omissions insurance specific to the agency (not just vicarious liability).

Commentary

To obtain an agency licence, the agency must be registered with the New Brunswick Corporate Registry. An agency can only carry on business in the name that is listed on its agency licence. If the agency intends to carry on business using a “trade name” that is different from its legal corporate name, it must ensure that that trade name is registered with the Corporate Registry and listed on its licence. The agency must have at least one contract with a licensed insurance company. As discussed in Item 1.2 above, if the agency intends to hold itself out as a “brokerage” it must have at least 2 subsisting agency contracts with different insurers, and none of the agency contracts can require the agency to provide insurance offered by only one insurer.

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Further, as discussed below, each agency must have a designated representative. Finally, each agency will be required to carry its own errors and omissions insurance specific to the agency (not just vicarious liability).

Item 2.3 – Designated Representative

Position

FCNB recommends that each agency be required to have a designated representative.

FCNB recommends that anyone seeking to be named the designated representative be required to hold a level 3 agent's licence.

FCNB recommends that a designated representative only be responsible for up to three branch offices.

Commentary

The requirement for a designated representative will ensure that one individual is the primary contact for the agency. The designated representative will be required to hold a level 3 agent's licence. Further, a designated representative will be limited to being responsible for up to three branch offices. Therefore, should any agency have four branches it would require two designated representatives.

Item 2.4 – Continuous Licence

Position

FCNB recommends that agencies be issued a continuous licence.

FCNB recommends that agencies be required to provide an annual filing and pay an annual fee.

FCNB recommends that agencies that do not provide the annual filing be subject to a late filing fee or an automatic suspension of their licence.

Commentary

To minimize the administrative burden on agencies, FCNB recommends that agencies be issued a continuous licence. However, agencies will be required to file an annual statement of affairs and pay an annual fee. The annual filing will require, among other things, the following information:

- Names of the owners of the agency,
- Name of the designated representative(s),
- Addresses of all branch offices,
- Names of all licensed and unlicensed employees,
- Proof of errors and omissions insurance,

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- A list of all insurers with whom the agency does business.

The annual filing date will be specified. Late filings will be subject to a late fee. Should the filing not be provided within 60 days, the agency's licence will be automatically terminated without the Superintendent taking any action.

Item 2.5 – Reporting Requirements

Position

FCNB recommends that an agency be responsible to report within 15 business days any of the following:

- Departure of any employee, including where an employee is terminated, retires or leaves the company for any other reason;
- Detailed reasons for the employee's departure;
- Change of ownership of the agency;
- Any change in errors and omissions coverage;
- Any errors and omissions claim against the agency or any employee; and
- Change in name of the agency.

FCNB recommends that any failure to report within 15 business days will be subject to a late fee.

Commentary

These reporting requirements will assist FCNB in the monitoring of the insurance marketplace and to keep information up to date. A failure to report within 15 days will result in a late fee. Further, it may also result in disciplinary action.

3 – Supervision

Item 3.1 – An Agency’s Supervisory Responsibilities

Position

FCNB recommends that the agency be responsible for the overall supervision of the employees of the agency.

Commentary

An agency is responsible for the supervision of all its employees. “Supervision” means reasonable and prudent oversight of all insurance activities carried on by employees. The primary goal is to protect consumer interests and ensure compliance with the *Insurance Act*, regulations and rules. A secondary goal is to build competency of employees. The designated representative can appoint other level 3 agents to assist in the supervision. As indicated in the previous section, where there are more than three branches, there must be additional designated representatives. The nature and level of supervision will depend on several factors including, but not limited to, number of agents working for the agency, the qualifications and experience of those agents, the nature of the business being conducted and the hours of operation. Therefore, considering these factors, some agencies may require more than one level 3 agent to assist in supervision. Others may not need a level 3 agent in attendance during all hours of operation. However, frequent and meaningful attendance would be required. Likewise, technology can support oversight practices, but is only part of the complete process that includes frequent and meaningful attendance.

The agency’s supervisory responsibilities would include, but not be limited to, ensuring that:

- All staff are adequately trained and properly licensed;
- Appropriate written procedures are in place, which include, but are not limited to, such matters as the proper file maintenance and binder controls;
- Trust monies are handled properly and all books and records are properly maintained;
- Staff are compliant with the Act, Regulations and Rules;
- All licence holders operate in accordance with any conditions and restrictions on their licences;
- Errors and omissions insurance is properly maintained;
- Regular reviews of the work of licensed staff are carried out to ensure that there are no issues related to compliance, competence or ethics. Regular reviews would include auditing samples of client files.

An agency will be required to clearly demonstrate the appropriateness of the supervision provided and be held accountable for its decisions. Improper practice by supervised employees may bring a firm’s competence into question if the conduct occurred due to inadequate supervision, including lack of policies, procedures and training.

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Item 3.2 – Supervision of Branch Offices

Position

FCNB recommends that a branch office must have an agent with at least 2 years' experience in regular attendance.

Commentary

As discussed, an agency is responsible for the overall supervision of staff, including branch offices. However, each branch should have an agent with at least 2 years' experience available on a regular basis to supervise staff. This helps to ensure appropriate oversight. Again, the nature of the regular attendance will depend on the several factors set out above.

Item 3.3 – Probationary Period for New Entrants

Position

FCNB recommends that new level 1 and level 2 agents have a 12 month probationary period during which they would be under direct supervision.

Commentary

To obtain a licence an agent is required to demonstrate a minimum educational standard. However, experience is also important. Therefore, new level 1 and 2 agents will be required to work under direct supervision of an agent with at least two years' experience. This probationary period would be for 12 months. A level 2 agent, who has at least 12 months prior recent experience as a level 1 agent, would only be required to be under direct supervision for 3 months. During this probationary period, the new agent will be required to have all business reviewed and approved by his or her supervisor. The proof of the review must be documented by the supervisor, through countersignatures or notation on systems. A level 1 agent can be supervised by a level 1, 2 or 3 agent. A level 2 agent must be supervised by a level 2 or 3 agent. The firm will ultimately be responsible to ensure appropriate monitoring of new agents. At the end of the probationary period, the agent would no longer work under restrictions.

4 – Educational and Experience Requirements

Item 4.1 – Educational Qualifications

Position

FCNB recommends the following educational qualifications for the various licence types:

Licence Level	Educational Requirements
Level 1 Agent	<p>To obtain a Level 1 licence a candidate must meet one of the following qualifications:</p> <ul style="list-style-type: none"> a. successfully complete and attain a mark of at least seventy-five per cent (75%) on the Fundamentals of Insurance Examination that is offered by the Insurance Brokers Association of Canada; b. successfully complete the course CAIB I of the Canadian Accredited Insurance Brokers Program that is offered by the Insurance Brokers Association of Canada; c. successfully complete and attain a mark of at least eighty per cent (80%) on the Introduction to General Insurance Examination that is offered by ILS Learning Corporation¹; or d. successfully complete the following courses that are offered by the Insurance Institute of Canada: <ul style="list-style-type: none"> • C11 – Principles and Practice of Insurance, or, C81& C82 – General Insurance Essentials parts 1 & 2; and • C130 – Essential Skills for the Insurance Broker and Agent
Level 2 Agent	<p>To obtain a Level 2 licence, a candidate must meet the qualifications for a Level 1 licence and one of the following qualifications:</p> <ul style="list-style-type: none"> a. successfully complete the courses CAIB II and CAIB III of the Canadian Accredited Insurance Broker Program that are offered by the Insurance Brokers Association of Canada; or b. successfully complete C131 “Advanced Skills for the Insurance Broker and Agent” offered by the Insurance Institute of Canada.

¹ The ILS Learning Corporation “Introduction to General Insurance Examination” course of study will only be accepted upon a commitment from ILS to have the course available in both English and French within a reasonable time.

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Level 3 Agent	To obtain a Level 3 licence, a candidate must meet the qualifications for a Level 1 and Level 2 licence and one of the following qualifications: a. successfully complete the course CAIB IV of the Canadian Accredited Insurance Broker Program that is offered by the Insurance Brokers Association of Canada; or b. successfully complete C132 “Practical Issues to Broker Management” offered by the Insurance Institute of Canada.
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Commentary

As stated previously, FCNB strongly believes that an agent’s responsibilities must be tied to his formal education. The courses being recommended correspond with the responsibilities set out for the three different licensing levels. They ensure that all licensed individuals have met the same minimum educational standard and levels the playing field for licensees.

FCNB has canvassed other Canadian jurisdictions in reaching its recommendations. We think that it is critical that courses provide sufficient information with respect to primary insurance products, proper client service, regulatory expectations and ethical standards. FCNB intends to work with other jurisdictions to review the current curriculum for courses to ensure that they meet appropriate minimal standards.

Any other-than-life agent wishing to sell accident and sickness insurance would be required to complete the Accident and Sickness portion of the Life Licensing Qualification Program (LLQP) and obtain a separate accident and sickness licence.

As part of the transition, individuals will be credited for courses for the level of licence that they are granted. The transition provisions will be discussed below under Issue 10.

There will be no regulatory requirement for further courses for the agent to continue in his or her career at a particular licence level, unless he or she wishes to move to another licence level.

FCNB will be seeking rule-making authority to prescribe educational requirements.

Item 4.2 – Continuing Education

Position

FCNB recommends studying the issue of continuing education further before determining whether to introduce mandatory continuing education.

Commentary

Several jurisdictions outside of Atlantic Canada have mandatory continuing education. FCNB believes that continuing education is important in enhancing consumer protection. It is

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important that agents keep abreast of best practices and emerging trends. We also believe that regular continuing education on the subject of ethics is crucial. However, monitoring continuing education can present a real challenge. It would be necessary to have a system of accreditation for courses to ensure that they meet minimal standards and a system for monitoring compliance with continuing education requirements. Therefore, FCNB is not recommending adopting mandatory continuing education at this time. Rather, FCNB proposes to study the matter to determine the feasibility of introducing mandatory continuing education at a later time.

Despite not immediately moving to mandatory continuing education, FCNB strongly encourages all agents and other industry participants to complete approximately 15 hours of continuing education on an annual basis. At least 3 to 5 hours should be devoted to the subject of ethics. Further, we strongly recommend that insurers, and particularly sponsoring insurers, promote continuing education with employees and agents with whom they have contracts. Likewise, agencies should make continuing education a regular part of employee training. Finally, professional associations should consider introducing mandatory continuing education for members.

5 – Licensing Processes

Item 5.1. – Multi-Year Licensing

Position

FCNB recommends maintaining two year licences rather than moving to continuous licences or three year licences.

FCNB recommends expanding the number of individuals who are eligible for a two year licence. In particular, individuals who have been licensed for at least two years will be eligible for a two-year licence. Further, individuals who have conditions on their licences will not be automatically disqualified from holding a two year licence. Finally, FCNB recommends that Level 3 and 4 adjusters be eligible for two year licences.

FCNB continues with efforts to harmonize as much as possible the various licensing regimes that we oversee. Therefore, this issue may be revisited as part of a larger project.

Commentary

In 2009, the Insurance Division introduced two year licences for other-than-life agents and brokers and life agents. Individuals who had been licensed continuously for six years and who did not have conditions on their licences were eligible for a two year licence. FCNB believes that a two year licence provides an appropriate balance between reducing the administrative burden on licence holders and effective regulatory monitoring. However, the prerequisite to have been licensed for six years has meant that many individuals have not been eligible for a two year licence. This has limited the potential for efficiencies. Granting a two-year licence after two years will allow more agents to be eligible while still allowing more frequent monitoring at the early stages of their career. The self-reporting obligation discussed in Issue 6 will supplement the Insurance Division's monitoring capabilities. Further, some individuals with conditions on their licences do not require annual renewal and should be permitted to obtain a two year licence. The Superintendent will maintain the discretion to issue a one year licence where it is determined that an annual review is necessary.

With respect to adjusters, Level 3 and Level 4 adjusters, who currently only receive a one year licence, will be eligible for two year licences. Level 1 and Level 2 adjusters' licences would still be issued for one year. The Superintendent will maintain the discretion to issue a one-year licence for a Level 3 or a Level 4 adjuster where it is determined that an annual renewal is necessary.

Item 5.2 – Application Date

Position

FCNB recommends requiring renewal applications to be filed 30 days in advance of a licence's expiry date. All applications would need to be received by FCNB by that date or be subject to a late fee.

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FCNB recommends moving the the expiry date for Level 3 and 4 adjusters to October 31st, with an application date of October 1st.

Commentary

The Insurance Division has struggled with individuals who do not file their renewal application on a timely basis. This causes extra work for licensing staff. Introducing an application filing date will allow staff to better manage the workflow and help to ensure that licences are renewed prior to expiry. Individuals who fail to file their renewal application by the application date will be subject to a late fee.

Adjuster renewals currently fall within two other renewal periods, which effects workflow. To further increase efficiency, the expiry date for Level 3 and 4 adjusters will move to October 31st, with an application date of October 1st. Level 2 adjuster renewals will continue to be on the anniversary date of the issuance of the licence. Level 1 adjuster licences are not eligible for renewal.

5.3 Termination of Sponsorship Notices

FCNB recommends that the time limit for providing a termination of sponsorship notice be shortened from 30 days to 15 days.

FCNB recommends that sponsoring insurers who fail to provide a notice within the required time be subject to a late filing fee.

Commentary

When an insurer terminates sponsorship, an agent's licence is automatically suspended. Currently, the *Insurance Act* requires an insurer to provide notice of termination "forthwith". However, the Act goes on to provide that it is an offence for an insurer to provide reasons for termination beyond 30 days. Many companies do not file a termination notice "forthwith". Some do not file the notice within the 30 days. This has the potential for creating risk for consumers as an ineligible person continues to hold a valid licence. Further, this delay can cause problems for agents who are transferring to another company as the Office requires a termination notice from the previous sponsor to ensure that there were no issues. In the past, prosecution of the insurer for failing to file the notice within 30 days has not been feasible. Moving the notice period to 15 days will help speed up the termination process and, in some cases, the licensing process. Introducing a late fee will encourage insurance companies to act in a timely manner. The late fee will be for each month or part of a month the notice has not been provided. If companies terminate sponsorship, but are still investigating the matter, they will be required to report the termination and notify the Insurance Division that they are still investigating.

6 – Compliance and Enforcement Matters

Item 6.1 - Enhancement of Insurance Division’s Investigation and Review Authority

Position

FCNB recommends amending the *Insurance Act* to:

- Strengthen the Insurance Division’s authority to obtain information on an intermediary’s insurance business practices;
- Extend the Division’s authority to obtain information from an insured about a particular contract, adjustment or settlement to include a beneficiary or an assignee;
- Clarify that agents, and other insurance intermediaries have an obligation to furnish information to the Insurance Division.
- Clarify that insurers have an obligation to provide information to the Insurance Division with respect to agents with whom they are doing business.

Commentary

Allowing the Insurance Division to obtain information on an intermediary’s insurance business practices enhances the Division’s ability to protect consumers. At times, the current provisions can prove limited or cumbersome. Therefore, FCNB recommends amending the Act to ensure that it has the authority to obtain information relating to any contract of insurance, to any settlement or adjustment, or respecting any activities related to the business of insurance. This will allow the Division to gather information through questionnaires and surveys of market participants and similar methods to assess market conduct risk and trends in the marketplace. FCNB also recommends amending the Act to clarify that an employee of FCNB can obtain the information on the Superintendent’s behalf.

Currently, the Act allows FCNB to obtain information from an insured “relative to any contract issued by the insurer or to the insured” or “relative to any settlement or adjustment under any such contract”. FCNB recommends extending this authority to beneficiaries and assignees, as there may be situations where they will possess relevant information necessary to any review being conducted.

Item 6.2 – Jurisdiction over Former Licence Holders

Position

FCNB recommends amending the *Insurance Act* to authorize the Insurance Division to investigate and take action against intermediaries who no longer hold a licence for conduct that occurred when they held a licence.

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Commentary

Intermediaries who give up their licence should not avoid an investigation or sanction for misconduct that occurred when they were licenced. Therefore, FCNB recommends authorizing it to investigate and take action against intermediaries who no longer hold their licence. Allowing this authority will ensure that a file can be properly dealt with at the appropriate time. This will provide a record should the individual later seek a licence in New Brunswick or in a different jurisdiction.

Item 6.3 – Interim Suspensions

Position

FCNB recommends amending the *Insurance Act* to authorize the Insurance Division to impose an interim suspension on an agent while an investigation is ongoing.

Commentary

Some allegations of misconduct raise very serious public risk, such that delay in taking action could lead to public harm. In these circumstances, the Superintendent should have the authority to suspend the individual or impose conditions on his or her licence pending the full investigation and hearing. The authority would only be exercised in exceptional circumstances. The Superintendent would be required to issue a decision and the matter would be appealable to the Financial and Consumer Services Tribunal.

Item 6.4 – Imposition of Conditions

Position

FCNB recommends amending the *Insurance Act* to clarify the Insurance Division's authority to impose conditions on an existing licence.

Commentary

Where a licence holder's circumstances change during the term of his or her licence, it may be appropriate to add conditions to his or her licence. Likewise, a disciplinary determination may be that conditions be added to a licence. Therefore, FCNB recommends amending the Act to clarify the authority to impose conditions during the term of a licence.

Item 6.5 – Intermediaries' obligation to Report Matters Affecting Eligibility

Position

FCNB recommends that all intermediaries be required to report within 10 business days any criminal charges, any disciplinary investigations and/or decisions, any bankruptcy filings or proposals, any change in other employment or business activities, any civil actions and any errors and omissions insurance claim.

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FCNB recommends that intermediaries report within 10 business days any change in the agent's name, employer or contact information.

FCNB recommends that the failure to report the above within 10 business days result in a late fee.

Commentary

The fact that an intermediary is subject to criminal charges, disciplinary action, bankruptcy proceedings, etc. may affect their eligibility to hold a licence or may require that his or her licence be subject to conditions. Therefore, intermediaries will be required to report such incidents within 10 business days. This will enhance consumer protection. It will allow the Insurance Division to review the issues and, where necessary, take action in a timely manner. It will also avoid delays during the renewal process.

It is expected that an intermediary will report all of these matters. Many of them will not affect the agent's licensing status. However, whether the matter is relevant to the intermediary's eligibility to hold a licence, is for the Insurance Division to determine. Matters going to eligibility could require a determination of eligibility by the Superintendent following an opportunity for the intermediary to be heard.

In addition, an intermediary will be required to report within 10 business days any change in the intermediary's name, employer, sponsor or contact information. Where the intermediary changes his or her employer or sponsor, he or she will be required to submit a new application with the corresponding application fee. The application should be submitted in advance of the change. Other changes to a licence would not require a new application, but could be subject to an administrative fee.

Failure to report the information within 10 business days will result in a late fee. Further, it may also result in disciplinary action.

Item 6.6 – Insurers' Obligation to Report

Position

FCNB recommends amending the *Insurance Act* to impose an obligation on all insurance companies to report any intermediary who has demonstrated incompetency or untrustworthiness.

FCNB recommends amending the *Insurance Act* to require insurers to provide written notice and reasons when they terminate an agency contract.

FCNB recommends that the failure to report the above within the required timeline result in a late fee.

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Commentary

As discussed in the previous section, the *Insurance Act* requires a sponsor that is terminating sponsorship to report the reasons for termination to the Insurance Division. This allows the Insurance Division to review situations where an agent's sponsorship has been terminated for cause. However, FCNB is concerned about gaps. Many intermediaries have contracts with several insurers in addition to their sponsor. In fact, some may do more business with these other insurers than with their sponsors. In some situations, sponsorship is not technically "terminated", but just lapses when the licence expires and the intermediary chooses a new sponsor upon renewing their licence. Therefore, the sponsor may not complete a notice of termination of sponsorship. To close these gaps, FCNB recommends amending the Act to impose an obligation on all insurance companies to report any issues of incompetency or untrustworthiness with respect to an agent within 15 days.

Insurance companies enter into agency contracts with agencies and brokerages. Where an insurer terminates such a contract, they should be required to report the termination. This will facilitate better monitoring of insurance intermediaries. FCNB proposes amending the Act to require insurers to provide written notice with reasons within 15 days when they terminate an agency contract.

Failure to meet the above timelines would result in a late fee.

Item 6.7 - Publication of Decisions

Position

FCNB recommends amending the *Insurance Act* to allow the publication of licensing and disciplinary decisions.

Commentary

Many jurisdictions publish licensing and disciplinary decisions. This enhances the transparency of the licensing regime. Publication of decisions helps to educate other licenced individuals on expected conduct in carrying on the business of insurance. Further, publication allows insurance regulators in other jurisdictions to be informed of determinations with respect to individuals who may be or may wish to be licenced in their jurisdictions. Recently, the Canadian Insurance Services Regulatory Organizations (CISRO) and the Canadian Council of Insurance Regulators (CCIR) created the Canadian Insurance Regulators Disciplinary Actions (CIRDA) database. CIRDA brings together regulatory decisions issued by insurance regulator members of CISRO and CCIR. Amending the *Insurance Act* to allow publication of decisions will allow the Commission to fully participate in CIRDA.

7 - Trust Accounts

Item 7.1 – Requirement to Hold a Trust Account

Position

FCNB recommends that trust accounts only be required by agents who receive “trust monies”.

FCNB recommends that “trust monies” be a defined phrase.

FCNB recommends that trust accounts be permitted to be established at a bank, trust company, credit union or caisse populaire.

Commentary

By accepting money that is intended for another person (i.e., an insurer or an insured), an agent holds that money in trust. Requiring that money to be placed in a trust account protects both the insured and the insurer. A separate trust account prevents the co-mingling of trust monies with other monies of the business and limits opportunities for the unintentional use for purposes not authorized by the *Insurance Act*. Further, a trust account protects the trust monies from the agent’s or agency’s creditors and simplifies the agency’s financial records in case of the need for a review. Several jurisdictions require agents to hold trust accounts.

The *Insurance Act* currently requires all agents and brokers to hold a trust account regardless of whether they obtain trust monies or not. In the current insurance marketplace, there are a significant number of agents and brokers who do not receive payments from clients or insurers, as many payments are made directly to the insurer or the insured. There are also agents who work directly for an insurer and can deposit any payments directly into the insurer’s account.

Amending the *Insurance Act* to require only agents who receive “trust monies” to have a trust account will reduce an unnecessary administrative burden on licence holders. The phrase “trust monies” will be defined to mean “all monies received or receivable by an agent or agency in the course of business from the public on behalf of insurers and all monies received by agent or agency on behalf of the public from insurers.” As such, agents who do not receive payments directly will no longer be required to have a trust account.

Currently a trust account must be set up at a bank. FCNB recommends allowing accounts to be set up at a bank, trust company, credit union or caisse populaire. The trust account must be separate and apart from all other accounts and designated as a trust account in which all monies paid to an agent on behalf of insurers or insureds are deposited.

If an agent works for an agency, he or she will not be required to have his or her own separate account, but will be required to use the agency’s trust account. Where an agent or agency is resident in another jurisdiction, the Superintendent will have the authority to accept a trust account in that jurisdiction, but will also have the authority to impose conditions where appropriate.

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Front line employees of an insurance company who accept cash payments from consumers and place the money in the company's account immediately upon receipt will not be required to have a trust account. In this case they represent the insurance company. However, insurance companies need to ensure that safeguards are in place to protect consumers. In particular, companies need to have a documented process and restrict the ability of staff to access funds in the company's account.

Item 7.2 – Restrictions on Withdrawing Money from a Trust Account

Position

FCNB recommends amending the existing provisions restricting the withdrawal of trust monies to authorize the Superintendent to permit specific disbursements.

Commentary

The Act currently prohibits an agent from withdrawing money from a trust account except:

- money paid to or on behalf of an insurer or an insured,
- the commission of an agent or broker and any deductions to which, by the written consent of the insurer, he is entitled, and
- money paid into the trust account by mistake.

FCNB recommends adding a clause that allows for “another disbursement authorized in writing by the Superintendent”, similar to the provision found in Newfoundland and Labrador. This provides greater flexibility. FCNB does not believe that moneys being held in trust should be used for investments, which had been requested by some stakeholders. Likewise, they cannot be used to pay for operational costs, including the cost of maintaining a trust account.

Item 7.3 – Payment of Return Premiums to an Insured

Position

FCNB recommends the elimination of the requirement for an insured to make a written demand for the return of any return premium and place an obligation on the agent to return money owed to insureds.

Commentary

The *Insurance Act* currently requires an agent to remit trust funds to an insured upon the insured making a “written demand” for the payment of any return premium. Requiring the insured to make a written demand places the onus on consumers, when it should be on the agent who is holding that money in trust. Therefore, the Act will be amended by removing the requirement on the insured to make a written demand. Agents will be required to return any amounts owing to the insured within 15 days of receiving the payment. The onus on the agent to remit funds to an insurer within 15 days of a written demand will remain as there may be valid reasons for the agent and the insurer to organize their business relationship in such a manner.

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Item 7.4 – Regulatory Oversight of Trust Accounts

Position

FCNB recommends that all agencies and agents file an annual trust account reconciliation.

FCNB recommends that the *Insurance Act* or Regulations be amended to clarify that the Insurance Division can require that trust accounts be audited.

Commentary

To ensure that trust accounts are being properly maintained, all agencies or agents not affiliated with an agency will be required to file an annual trust account reconciliation worksheet in a form prescribed by the Commission. Nova Scotia requires such an annual filing. Forms filed late will be subject to a late filing fee. Further, failure to file the form within a prescribed time could lead to the suspension of a licence.

As part of FCNB's regulatory oversight there needs to be clear authority that the Division can audit the trust account or order the agency or agent to have an independent audit performed at the agency's or agent's expense.

8 – Errors and Omissions Insurance

Item 8.1 – Requirement to Carry Errors and Omissions Insurance

Position

FCNB recommends that all agents (both other-than-life and life) be required to carry errors and omissions insurance. An exception would be an agent that is employed by an insurance company and covered for any claims, who would be exempt from the requirement to carry errors and omissions insurance.

FCNB recommends that each agency would also be required to carry its own E&O specific to the agency (not just vicarious liability).

FCNB recommends that the *Insurance Act* be amended to authorize the creation of Regulations or Rules to require adjusters and adjusting firms to carry errors and omissions insurance.

Commentary

In the course of carrying on the business of insurance, a licence holder may become liable to an insured or an insurer. Errors and omissions insurance offers greater protection to consumers and insurance companies. Errors and omissions insurance also protects a licence holder by covering potential losses and defraying costs of defending an action. Most jurisdictions require that licence holders carry errors and omissions insurance and many also require fidelity insurance against losses arising from dishonesty of employees, a proprietor, or partners, directors and officers. An agent that is an employee of an insurer could be exempted from the requirement to have errors and omissions insurance if they provide a letter from the employer insurer that the agent will be covered for any claims.

Currently, adjusters and adjusting firms are required to carry a \$5000 bond. There is no authority to require them to carry errors and omissions insurance. FCNB recommends creating the authority to require errors and omissions. The issue of appropriate amounts of errors and omissions insurance for adjusters and adjusting firms would be studied in the future.

Item 8.2 – Levels of Errors and Omissions Insurance

Position

FCNB recommends that all agents be required to carry the following coverage:

- Liability insurance of at least \$1,000,000 in respect of any one occurrence and an overall policy aggregate of at least \$2,000,000 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 defense and investigative expenses;

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- Coverage would be for all of the insurance products that the agent is licensed to sell; and
- The coverage would require a 12 month extended reporting period.

FCNB recommends that the insurer who issues the policy be required to provide advance notice to the Office of the Superintendent before terminating or refusing to renew the policy.

FCNB recommends that a licence holder's licence would be automatically suspended on the effective termination or non-renewal date of the insurance policies.

Commentary

FCNB carried out a jurisdictional scan of other Canadian jurisdictions in considering the correct type and amounts of coverage. We believe that the recommendations being put forward represent best practices and best protect consumers.

All insurance coverage must be provided by an insurance company licensed to do business in New Brunswick. To ensure compliance, proof of insurance would be a prerequisite to the issuance or renewal of a licence. Further, an errors and omissions insurer will be required to provide advance notice to the Office of the Superintendent before terminating or refusing to renew the policy. A licence holder's licence would be automatically suspended on the effective termination or non-renewal date of the insurance policies. The licence will be reactivated when the agent provides proof of insurance coverage. This will allow the Insurance Division to ensure that all licence holders are carrying errors and omissions insurance at all times.

9 – Reinstatement of a Licence after Ceasing to Carry on Business

Item 9.1 – Lapse Requiring Requalification

Position

FCNB recommends that an other-than-life agent who ceases to carry on business for four years or more be required to requalify for a licence.

Commentary

It is expected that an agent who ceases to carry on the business of insurance for a short period of time will retain sufficient industry knowledge that would allow him or her to reenter the industry without the need for retraining. However, the longer the individual is absent from the industry; the greater the need for re-education. The *Life Insurance Agent Licensing Regulation* provides that a life insurance agent who ceases to hold his or her licence for two years is required to retake the Life Licensing Qualification Program examination. Likewise, the *Adjusters Regulation* includes provisions for the reinstatement of a licence. Based on feedback from stakeholders, FCNB is recommending that agents who have not been licensed for more than four years need to requalify by taking enumerated courses and be under direct supervision. The Superintendent will still have authority to impose conditions on individuals who have not been licensed for a lesser period, if required by the particular circumstances.

An agent who ceases to hold his or her licence in New Brunswick, but who continues to carry on business in another jurisdiction on a continuous basis, will not be considered as having ceased to carry on the business of insurance. Again, the Superintendent will retain the authority to impose conditions should the circumstances require.

Item 9.2 Reinstatement Process

Position

FCNB recommends that individuals seeking reinstatement be required to complete an application for a new licence and provide full information on previous industry experience.

Commentary

To enhance consumer protection, the Insurance Division requires anyone who has had a lapse in licence to file an application for a new licence. A new licence application provides greater information than a renewal application. It is also important to know whether the person has carried on any business while their licence was lapsed. Therefore, the individual will be required to disclose this information to the Insurance Division.

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Issue 10 - Transition

Item 10.1 - Transition of Currently Licensed Individuals

All individuals holding an agent's licence class I, a broker's licence class I and a broker's licence class II at the time of the new regime coming into force will receive a Level 1 licence. Those who have held a licence for less than 12 months will be subject to direct supervision until they reach that threshold.

All individuals holding a broker's licence class III at the time of the new regime coming into force will receive a Level 2 licence.

All individuals holding a broker's licence class IV at the time of the new regime coming into force will receive a Level 3 licence.

All individuals holding an agent's licence class 2 will be reviewed in advance of the new regime coming into force to determine the appropriate level of licence. Matters to be considered will include education, training, and work experience.

All individuals holding a non-resident licence will be reviewed in advance of the new regime coming into force to determine the appropriate level of licence. Matters to be considered will include education, training, work experience and level of licence in the home jurisdiction and other jurisdictions.

Level 3 and 4 adjusters will be staggered into the two year licences for administrative purposes. Therefore, during the first year approximately half of these adjusters will receive a one year licence and the other half will receive a two year licence. The following year, those who received a one year licence will receive a two year licence.

Item 10.2 - Coming into Force of Renewal Application Date

The requirement to have applications submitted by the filing date would not come into effect until 3 months after these amendments come into force. Likewise, the late filing fee for missing the application date would not come into force until 3 months after the amendments come into force. With the adoption of a renewal application date, the current timelines related to notice of renewals will be restructured to ensure intermediaries have the ability to meet the new timelines.