

INSURANCE BROKERS ASSOCIATION OF CANADA
ASSOCIATION DES COURTIERS D'ASSURANCES DU CANADA

June 6, 2003

Mr. Jim Hall
Chair
Joint Forum of Financial Market Regulators
5160 Yonge Street, Box 85, 17th Floor
North York, Ontario
M2N 6L9

Dear Mr. Hall,

The Insurance Brokers Association of Canada (IBAC) is pleased once again to provide you with comments on three of the Joint Forum's consultation documents in support of the Practice Standards Project. We greatly appreciate the opportunity for input on this important matter.

At the outset, however, we express disappointment with the relatively minor nature of the changes made to the consultation documents from their original version. This revised version of the consultation documents addresses few, if any, of the concerns we expressed last September. Accordingly, our general and specific concerns with this proposed Code are similar to those we initially provided.

Our specific comments can be found below under the headings corresponding to the documents of relevance to our industry. In general terms, however, you will notice the emergence of recurring themes throughout our comments.

One of our greatest concerns is that the overall intent of the Code and supporting documents seems, at times, to be to fill perceived "gaps" or inadequacies in provincial legislation. We will cite examples where the Code and supporting documents would impose obligations on brokers that are "higher" than those currently specified in relevant provincial laws. We believe this to be neither appropriate nor feasible.

Similarly, the documents propose measures that are potentially, if not fully, inconsistent with certain federal or provincial laws. We believe that a Code such as this one should be drafted to ensure consistency with, but without exceeding, the specific requirements of laws from all affected jurisdictions. While we acknowledge that there may be significant variations between various provincial measures in a given area, at no time should this Code be used to "raise the standard" above what is common to all, to the extent that a common standard can be found at all.

In addition, we also have concerns that some of the measures proposed in the Code and supporting documents appear to either lack relevance to, or consideration for, the nature of the P&C sector. Specifically, we refer to provisions that are at odds with how P&C regulators and industry associations currently operate, or that would significantly increase the administrative burden of insurance brokerages, most of which are small businesses.

Finally, we have significant concerns about the overall compliance and administrative burden that this Code—regardless of its final form—would impose on P&C insurance brokers. Brokers are facing an increasing burden of federal and provincial laws and regulations with which they must comply in order to do business.

These laws, regulations, and other Codes such as this one are becoming increasingly complex to understand and administer. Moreover, they do not appear to surface in a coordinated manner, with each one being proposed with apparent disregard for what is already in existence, sometimes even creating inconsistencies between items. (The references to rebating and “personal information” contained in this Code are examples of such inconsistencies). The ultimate result of this growing body of rules and regulations is to increase the cost of operating a business in Canada—particularly for the thousands of small businesses for whom we speak.

Document 1: Principles and Practices for the Sale of Products and Services in the Financial Sector

3. Legitimate Business Interests

We propose the deletion of the second sentence of the paragraph because it is overly broad and confusing. For example, the word “reasonable” could be interpreted in many different ways

4. Professionalism

f. Financial Accountability

In spite of the addition of the word “should”, we continue to have concerns with the second sentence of the section. We believe that all financial intermediaries, including P&C brokers, should adhere to their respective industry best practices in the area of financial accountability. The suggestion that intermediaries should strive to exceed the obligations that are specified in their relevant provincial laws is, in our view, overly idealistic and superfluous.

5. Confidentiality

We question the relevance of this section. By January 1, 2004, all intermediaries will be bound by either the *Personal Information Protection and Electronic Documents Act (PIPEDA)*, the new piece of federal legislation dealing with private sector privacy matters, or a provincial equivalent. Intermediaries will therefore be bound by new legislation of some form which will have to be respected regardless of this Code.

To the extent that this section is needed at all, we would recommend that it be reworded in a very general way in order to ensure consistency with all the pieces of private sector privacy legislation intermediaries will have to comply with across the country. This could be achieved by adding a period after the word “regulations” in the first sentence, and the deleting the remainder of the text. The sentence would therefore read as follows: “Intermediaries must protect clients’ personal information and take all reasonable steps to ensure that personal information is not divulged and is only used for the purpose for which it was collected, unless the client provides proper authorization, as required by applicable laws and regulations.”

7. General Information Disclosure

a. Product Information

We have serious concerns with this item which, at the outset, appears to have been drafted with intermediaries other than Property & Casualty (P&C) insurance brokers in mind. The inclusion of passages such as “actual results may differ significantly from those shown” and “unusual results or a period that generated much better than normally anticipated performance.” illustrates the point of a lack of relevance to the P&C sector. Making this point further obvious is that the entire “Product Information” text was carried over verbatim from this document to the companion piece intended specifically for P&C insurance brokers without as much as a deletion of the passages that clearly don’t apply to the sector.

We are also concerned that, as worded, this item appears to limit or control the examples given to a client. For example, the requirement to disclose “important assumptions underlying any illustrations or examples that have been provided to the client” is a near-impossible task for P&C brokers to do given the endless possibilities associated with the way clients handle their personal property and the wording of different policies. Brokers would therefore likely refrain from providing clients with any examples if required to disclose “important assumptions” while doing so.

In the course of carrying out their duties, however, P&C brokers currently provide their clients with multiple examples in order to help them make an informed decision. To limit P&C brokers from providing their clients with examples would not only prevent them from practicing their jobs to the best of their ability, but would also deprive the clients of the information they expect from a broker.

We are also concerned that, as worded, this item does not take into account the nature and knowledge base of the individual client. For example, an intermediary will discuss “product information” very differently with someone known to little or no knowledge of the subject matter than with one who has in-depth knowledge because of training or experience. On a related note, we would suggest additional wording to suggest that providing “product information” to a client should not absolve that individual from reading his or her policy.

Notwithstanding the foregoing, the issue of product information is a contentious one that has generated considerable litigation in the P&C sector. Therefore, to the extent that the issue of “product information” should be addressed in a Code such as this one at all, greater care must be taken to ensure that its provisions are suitable to the sector, even if this means adopting wording that is considerably different for P&C brokers than other intermediaries.

b. Intermediary/Business Relationship Information

In spite of the revisions made to the text, we continue to have concerns with the portions of the text dealing with compensation. The text in question appears to have been drafted with intermediaries other than Property & Casualty insurance brokers in mind, in addition to being ill-suited for the SME community (of which most insurance brokerages are a part).

More importantly though, in line with previous examples, the disclosure of remuneration details to clients could hold many insurance brokers to higher standards than those specified by provincial laws. A requirement for insurance brokers to disclose remuneration information to clients would also saddle them with a significant administrative burden, particularly since their compensation arrangements vary with the companies with which they deal.

To the extent that this Code should make any mention of remuneration, references should not extend beyond what is common knowledge, i.e., that most insurance brokers are remunerated directly by insurers through commissions, and not by the buying public. We also would not take issue with disclosure requirements for intermediary fees over and above commissions.

8. Client Redress

The revised wording to the last sentence does little to address our concerns about the proposed measures concerning client redress. Specifically, the new wording suggests that intermediaries should undertake duties that are not only the purview of regulators, but also duties for which they have neither the appropriate qualifications nor training to do. Furthermore, this sentence raises the possibility that intermediaries would be held to account for any incorrect information they may have supplied to the consumer concerning redress mechanisms; information for which they are not ultimately responsible.

Therefore, we suggest the deletion of the entire last sentence of the paragraph. Alternatively, the duty of intermediaries should not go beyond making written information concerning redress mechanism available to consumers, provided that such information is prepared by the regulating body ultimately responsible for it, and clearly identifies this body as

the one the consumer should contact for additional information. However, such a task would have to be carried out in a way that is neither costly nor administratively onerous.

9. Compliance

We believe the first sentence proposes undue intrusiveness into the individual business decisions of associations. Associations in the P&C sector are voluntary in nature, and vary greatly in size and mandate. Some associations choose not to have codes of conduct for their members, sometimes for no other reason than not having sufficient resources to administer them. We believe that proposals concerning the types of services and lines of business that voluntary associations should be in are neither realistic nor appropriate. If implemented, they would also significantly add to the cost of doing business.

In the P&C industry, the matters referred to in the second sentence are currently handled by regulators, not by industry associations. Requiring industry associations to enter such lines of business would therefore result in a duplication of existing mechanisms.

The last sentence implies that intermediaries who are not members of an industry association would be held to a lower standard than those that are. Moreover, it also implicitly discourages industry association membership because non-members would only be subject to one compliance process whereas association members would be subject to two, one being the government or its agent, the other being the association. We therefore suggest that the adherence to industry best practices could apply to all intermediaries, whether or not they are members of an industry association.

10. Definitions

We suggest that the definition of “personal information” be amended to be consistent with the one provided in the *Personal Information Protection and Electronic Documents Act (PIPEDA)*, and any other pieces of provincial privacy legislation that may apply. The definition of “personal information” proposed by this Code seems very dissimilar from the PIPEDA’s. In keeping with previous comments, the definitions in this Code should not result in intermediaries being held to a higher standard than provided in legislation.

Document 2: A Consumer’s Guide to Financial Transactions

Introductory Paragraphs:

We support the addition of the last sentence of the first paragraph which reads as follows: “If you do not fully disclose your needs, it is possible that the salesperson may unknowingly offer products which are not suited to your financial requirements.”

We suggest it be followed by a sentence from Item 7. See item 7 for details.

We support the addition of the third paragraph which reads as follows: “In your dealings with a salesperson or company, you should always seek further information if you do not feel comfortable with your level of understanding of products or services that you are purchasing. Asking questions will help you avoid any potential misunderstandings regarding the information that is being presented to you.”

Item 5:

See comments provided under “Confidentiality” section of “Principles and Practices” document.

Item 7:

To reduce the administrative and cost burden on intermediaries, we suggest ending the paragraph after the word “involved” and the removing all the words that follow. The paragraph would therefore read as follows: “You should expect to receive all relevant information before making a decision about a financial product. This includes product features, risks and benefits, [and] the companies involved.”

Furthermore, we suggest that this sentence be moved to the end of the first paragraph of the document. The numbered item 7 would therefore disappear.

Item 8:

See comments provided under “Client Redress” section of “Principles and Practices” document.

Document 3: Companion Piece—Examples for Property & Casualty Insurance Agents

2. Needs of the Client

We propose the deletion of the last sentence of the section which discusses the updating of information. We believe it is worded too prescriptively, could expose the insurance broker to undue risk in the event of error, and most importantly, is a near-impossible task to undertake.

3. Legitimate Business Interests

See comments provided under same section of the “Principles and Practices” document.

4. Professionalism

c. Advertising and all other Client Communications

The term “rebating of commissions” provided in the example must be deleted. Rebating is currently allowed in Alberta, and may also eventually be allowed in other provinces. A practice that is allowed by law cannot be prevented in a Code such as this one.

f. Financial Accountability

See comments provided under same section of the “Principles and Practices” document.

5. Confidentiality

See comments provided under same section of the “Principles and Practices” document.

7. General Information Disclosure

a. Product Information

See comments provided under same section of the “Principles and Practices” document.

b. Intermediary/Business Relationship Information

See comments provided under same section of the “Principles and Practices” document.

8. Client Redress

See comments provided under same section of the “Principles and Practices” document. Moreover, in many cases, this information is already in the policy wordings provided to consumers by insurers.

9. Compliance

See comments provided under same section of the “Principles and Practices” document.

10. Definitions

See comments provided under same section of the “Principles and Practices” document.

IBAC thanks the Joint Forum for the opportunity to present its views on this important matter once again. Please do not hesitate to contact Francesca Iacurto, our Director of Public Affairs, if you have any questions, or would like to further discuss any matters raised herein. She can be reached by telephone at (613) 786-9937, or by e-mail at fiacurto@ibac.ca.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Brian Gilbert', written in a cursive style.

Brian Gilbert
President

c.c. Executive Committee
Board of Directors
Member Associations