SUBMISSION

on

Initial Public Consultation Paper for the Review of British Columbia's Financial Institutions Act & Credit Union Incorporation Act

to

Ministry of Finance

by the

Canadian Life and Health Insurance Association

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TABLE OF CONTENTS

I. INTRODUCTION

The Canadian Life and Health Insurance Association (CLHIA) appreciates this opportunity to provide input on the Initial Public Consultation Paper for the Review of British Columbia's Financial Institutions Act & Credit Union Incorporation Act.

The CLHIA represents companies which together account for 99 per cent of Canada's life and health insurance business. The industry, which provides employment to more than 15,000 individuals in British Columbia and has investments in the province of $70 billion, protects some 3.2 million British Columbia residents through products such as life insurance, annuities, RRSPs, disability insurance, critical illness and long term care insurance, and supplementary health plans. In 2013, the industry paid British Columbia residents $8.9 billion in benefit payments. A large majority of life and health insurance providers that carry on business in Canada are licensed to operate in British Columbia, with two headquartered in the province. More detailed information is available here.

Part II of this submission sets out the industry's views on the Overall / Framework Issues of relevance to the life and health insurance industry while Part III sets out our comments on the Insurance Sector Issues described in the Consultation Paper.

II. COMMENTS ON OVERALL / FRAMEWORK ISSUES

Issue 1: Financial Consumer Protection

Q1. ***Should BC consider adopting a market conduct code for fair treatment of consumers that would apply to financial institutions? If so, should there be one code for all financial institutions or separate codes for different types of financial institution?***

The life and health insurance industry fully supports the fair treatment of customers. In addition to the legislative and regulatory market conduct provisions that protect consumers, CLHIA members are committed to conducting their businesses in accordance with the industry's Code of Ethics. Support for fair consumer outcomes is also included in CLHIA's guidelines, such as Guideline G1, *Product Disclosure*; Guideline G8, *Advisor Suitability: Screening, Monitoring and Reporting*; Guideline G11, *Policyowner Statements and Notices*; and Guideline G14, *Confirming Advisor Disclosure*.

The industry also supports well-drafted provincial codes, where necessary, to address gaps in existing guidelines, regulations and laws. If BC determines that a separate code with respect to fair treatment of customers is required, we would recommend the following:

- That separate tailored codes be developed for the different types of financial institutions (e.g., life and insurance companies, property and casualty insurance

companies, credit unions, trust companies) to properly reflect differences among the various parts of the financial services industry, and the services they provide.

- That BC work collaboratively with other provincial governments to build one or more harmonized codes for all of Canada. Such efforts reduce the complexity and the cost of compliance, and also help to avoid confusion for customers in our highly mobile society. To this end, we acknowledge the work in progress by the Canadian Council of Insurance Regulator's (CCIR) Insurance Core Principles Implementation Committee, which was formed to ensure that Canada's market conduct regulatory regime reflects the Insurance Core Principles of the International Association of Insurance Supervisors (IAIS).
- That BC work in consultation with the industry to ensure that any codes harmonize with existing regulation and industry standards.

Q3. ***Should ombudservices be mandated for addressing consumer complaints against mutual insurers and/or insurance agents and brokers?***

In life and health insurance, the vast majority of consumer complaints are resolved through our industry's company first approach to complaint handling, which includes recourse to the insurer's own ombudsperson. Should a consumer remain dissatisfied with the outcome of their complaint, they can then take their case to the OmbudService for Life & Health Insurance (OLHI). A minority of complaints, which are directly related to the service or actions of an independent agent, fall outside of OLHI's mandate.

The life and health insurance industry supports the goal of providing effective complaints processes and dispute resolution for customers of life and health insurance agents and brokers. To this end, we acknowledge the new work underway by CCIR's OmbudServices Oversight Standing Committee (OOSC), which is chaired by BC, and has a mandate to "ensure that third party dispute resolution systems in the insurance sector, including OLHI and GIO, fulfill the public interest objectives of complaint resolution as an important component of a well-functioning consumer protection policy framework." Should BC choose to take action on this issue, we would suggest it should be pursued in consultation with this CCIR committee, with the goal of developing a solution that could be implemented in all provinces for all Canadians to access.

As we understand it, the question regarding "mutual companies" in the Consultation Paper is short form for a reference to "mutual fire insurance companies". In the next paragraph, our reference to mutual companies is to life and health insurers.

Federally regulated mutual companies are already required to be members of a third party dispute resolution organization, like OLHI (see sections 486.1 and 604.1 of the federal *Insurance Companies Act*). To our knowledge, there are no BC-incorporated life and health insurers that operate under the mutual model.

Q4. ***Should authorization requirements for financial institutions and licensing requirements for insurance agents and brokers specifically require fair treatment of consumers?***

In general, the most effective means of addressing the fair treatment of consumers is by requiring agents to use sales practices that support this outcome.

The CLHIA believes that the existing requirements related to sales practices are thorough and that compliance by agents with these requirements will result in consumers being treated fairly. If BC is of the view that more is required, then language could be added to the statement of principle in Section 7 Usual Practices: Dealing with Clients of the Insurance Council of British Columbia Code of Conduct that satisfies this objective.

Q6. ***Does BC have the correct framework for use of corporate and business names and logos, and the disclosure of identity for financial institutions?***

The CLHIA agrees that the identity of financial institutions should be clear to consumers. We do not have any concerns with the applicable rules in this area.

Issue 2: Market Discipline / Public Disclosure of Key Financial Risk Information

Q1. ***Should BC financial institutions be required to make additional financial and risk information available publicly, including online? If so, which types of information? What are the benefits and risks or issues associated with more stringent public disclosure requirements?***

The life and health insurance industry is made up of insurers that are regulated under the federal *Insurance Companies Act* (ICA) as well as insurers incorporated in BC or under the Insurance Acts or other legislation in various provinces. The public availability of financial and risk information for all these insurers is addressed in the statutes referred to immediately above.

In 2004, corporate governance amendments applicable to BC-incorporated financial institutions were made which made the FIA provisions consistent with equivalent provisions in the ICA (and indeed with the Alberta *Insurance Act* which had previously harmonized with the ICA). We agree with this harmonized approach.

To the extent that BC considers disclosure of financial and risk information for insurers incorporated in BC, it may wish to harmonize with parallel provisions in Alberta.

Q2. ***Should FICOM be permitted to publish information it collects from financial institutions online? Are there certain types of information that should not be published or exemptions that should be provided (e.g., to particular types or sizes of institution)?***

Please refer to our comment in Q1 above regarding the public disclosure of key financial risk information. Aside from this, the CLHIA does not see a need for publishing other forms of information that FICOM may collect from financial institutions. Information that is provided to a regulator is subject to access to information laws which provide for disclosure where it is appropriate.

Q3. ***Should financial institutions in BC be required to provide information to national databases for regulatory purposes, and should FICOM be allowed to do so?***

The CLHIA is of the view that providing information to the National Complaint Reporting System (NCRS) is worthwhile and important. If BC were to join the NCRS, as is now the case in other provinces, industry members would file BC-based consumer complaints in the system. Similarly, FICOM should be able to access the BC-related information in the system.

With respect to other types of databases, that should be addressed on a case-by-case basis.

Issue 3: Financial Literacy

Q1. ***What role should financial institutions and intermediaries play in contributing to and fostering financial literacy? Are there any legislative impediments to their doing so? Do financial institutions need additional tools to help fight financial abuse?***

The life and health insurance industry plays an active role in contributing to and fostering financial literacy. Insurers have extensive information on their websites for the general public, as well as information and support for members of group benefits and group retirement plans. They also support a wide variety of community and public education initiatives.

CLHIA initiatives to address this issue include:

- "Ready, Set, Life" financial literacy web page, including consumer education materials, tools and a glossary of insurance terms;
- Clear communication campaign to industry members, with an online newsletter, seminars, webinars and reference documents; and
- Work with the Financial Consumer Agency of Canada (FCAC) and the Financial Literacy Leader on national financial literacy issues.

Insurers are also very active in this area through training and support for group plan members (e.g., Sun Life's "Money Up" program and Great-West Life's SmartPath program) and direct support for community and public education initiatives.

Advisors play a key "front-line" role in educating consumers. Advisors have access to their clients during "teachable moments" in their lives (i.e., times when people are more receptive to learning because of a particular life event -- like getting married, having a family, or retiring). Through these interactions, they have the opportunity to raise awareness about and advise their clients on the products and services that can help to secure their financial future. Even

sophisticated consumers can benefit from advice. The resulting outcomes for consumers who obtain advice tend to be better than for those who do not.
Advisors understand their duty to explain a specific product or recommendation in a way the customer understands. We do not believe that a specific requirement for advisors to foster financial literacy is needed or appropriate. It could give rise to a number of challenges. In many cases, it could substantially lengthen the sales process and could even result in consumers abandoning the attempt to purchase needed insurance. As well, the challenge of assessing financial literacy makes enforcement difficult.

We don't believe there are legislative impediments related to financial literacy.

With respect to additional tools to help fight financial abuse of vulnerable persons, financial institutions must continue their efforts to raise awareness of the issue with their clients and to be alert to the "red flags" that signify that there may be a problem. As one example of a possible tool to help with these efforts, consideration should be given to the amendment made to federal privacy legislation earlier this year to allow greater disclosure to a government institution or next of kin where there are reasonable grounds to believe that an individual may be the victim of financial abuse. Some provinces have developed web site information to provide some public education with respect to financial abuse or fraud.

Q2. ***What role should the provincial government have with respect to promoting financial literacy? Is there a need to duplicate or complement efforts being undertaken at the federal level, particularly for provincially regulated institutions?***

We believe that BC should be active in areas of specific provincial jurisdiction, especially education. BC should consider requiring schools to teach financial literacy to children in a fun and engaging way from their first year in school right through high school, and committing to using clear language for communications with BC consumers.

On a broader front, BC should continue efforts that complement national initiatives being coordinated through the Financial Literacy Leader and the Financial Consumer Agency of Canada. One example of such a partnership is *The City* education program developed by the British Columbia Securities Commission and FCAC.

Q3. ***Should legislative changes to bolster financial literacy and/or protect consumers from financial abuse be considered?***

Protecting consumers from financial abuse and promoting financial literacy are critical objectives, and we believe that the initiatives referred to in our responses to Q1 above and Q4 below will help to achieve these objectives. Although we believe that legislative changes are not necessary at this time, we encourage BC to work with the financial services industry and other interested stakeholders on these issues.

Q4. ***The federal government has tabled legislation to permit federally regulated entities to report concerns about financial abuse to next of kin in specific circumstances. Should similar and/or other changes be considered with respect to BC financial institutions?***

As indicated above with respect to Q1, BC should give consideration to permitting financial institutions to notify government institutions or next of kin where there are reasonable grounds to believe that an individual may be the victim of financial abuse.

Issue 4: Technological Change

Q1. ***Are there any barriers or impediments to using new technology in the current legislative and regulatory framework (e.g., for member engagement, provision of products and services, etc.)? What changes are needed to ensure the regulatory framework continues to enable and accommodate technological change, now and in the future?***

The industry believes that the current structure for the use of new technologies is sufficiently flexible to permit insurers to respond to technological changes, including customer demand for services to be provided in electronic form.

Indeed, the industry applauds BC's approach, under the *Insurance Act*, for allowing electronic declarations, including designation of beneficiaries.

If there is one area where it may be time to reconsider BC's approach, given consumers' changing demands, this would be to permit termination of insurance contracts electronically, where the individual agrees to such an option. This is an issue to be addressed under the *Insurance Act*.

Q2. ***Are any changes needed to ensure consumers continue to be protected and provided with the information they need to make informed choices?***

BC's current legislative and regulatory framework, together with life and health insurance industry standards, provide consumers with protection and access to the information they need to make informed decisions, regardless of the channel through which they choose to purchase life or health insurance.

For example, CLHIA Guidelines G1, *Product Disclosure*, and G9, *Direct Marketing,* provide clear guidance on product disclosure and direct sales to ensure products are transparent and consumers' rights are clearly disclosed. These disclosures help to ensure that all consumers, including on-line consumers, have the information they need to make informed decisions.

The risks identified in the Consultation Paper, like the amount and quality of information consumers can obtain, are not new concerns, but it's important to reconsider them in the context of technological change. To that end, we would make the following points:

- On-line access to information could mean the consumer has ready access to more information than they might have in the past;
- The use of technology in distribution doesn't preclude agent involvement;
- Not all consumers have the same insurance needs and they won't all need the same type or amount of information to make an informed decision;
- Insurers need to be able to respond to consumer demand and offer products through the channels consumers want to use.

In October 2013, CCIR adopted a position paper, *Electronic Commerce in Insurance Products*. The paper includes a number of consumer protection recommendations that are satisfied by current industry standards. Should BC see the need to make changes with respect to on-line distribution or other technological changes, we would suggest aligning with CCIR's recommendations. This is the approach that Quebec has put forward in its current consultation on the *Act Respecting the Distribution of Financial Products and Services*.

Q3. ***Are there certain financial products or services that should not be available for purchase directly by consumers online without using a professional broker or financial advisor at a regulated institution?***

Financial advisors have traditionally played an important role in helping customers make informed decisions by identifying their needs and understanding products that are suited to those needs. At the same time, consumer preferences related to how information is obtained and how business is transacted may be undergoing fundamental changes.

Within the on-line context, life and health insurers need to be comfortable that it is the appropriate distribution channel for a given product. In making these decisions, life and health insurers may consider the complexity of their on-line offerings, their ability to explain products and services to on-line consumers and how to make advice available to on-line consumers.

Rather than restricting the types of products available to consumers in a given channel, we believe the focus should be on good disclosure, regardless of channel, and as per CLHIA Guidelines, so consumers can make informed choices.

Q4. ***Are there consumer protection and regulatory issues related to record storage or retention? Should there be limits on what kinds of data can be entrusted to a third party service provider for storage and/or processing?***

The FIA contains provisions whereby insurers must maintain "facilities that the superintendent considers satisfactory by which the superintendent may obtain access" to certain records, essentially insurance contracts. The key, from our perspective, is that the regulator has access to records when it needs it to carry out its mandate.

Extraprovincial insurers must also follow the rules established by their location of incorporation. For example, federally-incorporated insurers must abide by the rules found at sections 260 to 270 of the ICA, relating to company records, accounting records and customer records. These records can be outsourced for processing but the regulator (OSFI) can require such processing to be done in Canada if it considers it appropriate. OSFI's Guideline B-10, *Outsourcing of Business Activities, Functions and Processes*, describes expectations for federally-regulated financial institutions, such as appropriate security and data confidentiality protections, when engaging in outsourcing, including to foreign jurisdictions. With respect to the location of records, the insurer is expected to ensure that OSFI can access in Canada any records necessary to enable OSFI to fulfill its mandate.

If the province considers that FICOM does not have appropriate access to records to fulfill its mandate, it may wish to study the federal approach to see if it could draw from and adapt some of the rules and expectations now in place for federally-incorporated insurers. We note that FICOM has adopted OSFI Guideline B-10 by reference and further that BC's Personal Information Protection Act already governs privacy matters.

Issue 5: Out of Province Business

Q2. ***Are changes needed to BC's approach to insurance regulation? Should certain exemptions be available in respect of individuals and entities (including societies and self-insurers) seeking to purchase insurance outside BC? On what basis should exemptions be provided****?*

In the context of the life and health insurance industry, further exemptions to allow the purchase of insurance from unauthorized insurers (e.g., operating outside of the country) are not required. In circumstances where a type of insurance protection is sought that is not available from authorized insurers, the FIA provides sufficient flexibility to allow such protection to be purchased from unauthorized insurers. In this regard, we have not heard of any concerns with the operation of section 76 and the regulations made pursuant to that section. From a BC resident's perspective, it would be an important comfort to know that the life or health insurance protection that has been purchased is from an insurer that is subject to the province's regulatory oversight.

With respect to BC's regulatory framework for self-insurance, the industry has noted a technical problem with section 5 of the Insurance Company Exemption Regulation, which suggests that a person that self-insures can provide life insurance. Only life insurers can provide this product and the technical problem should be corrected as part of the work flowing from the current Consultation.

Q3. ***Are changes to the current legislative framework needed to address the use of technology by out of province entities providing financial products and services to British Columbians? Do the current definitions of what constitutes "carrying on***

business in BC" need to be revisited in light of increased e-commerce/online distribution of financial products?

From a policy perspective, it makes sense that if a life or health insurance product is being sold online to a resident of British Columbia, whether the origin of the communication is from within BC, elsewhere in Canada or outside the country, then that transaction should be subject to the protections of the FIA and the *Insurance Act*. Our view is that current provisions do indeed cover such communications or transactions. That being said, for greater certainty, the definition of "insurance business" in section 1 of the FIA and any other relevant provisions should be reviewed as part of the current Consultation, to ensure that this is indeed the case.

Issue 6: Regulatory Powers and Guidelines

Q1. ***Does FICOM have adequate tools to address current and emerging risks (at an individual and system-wide level) in a timely and effective manner?***

Subject to our comment in the next paragraph and the discussion under Q2 immediately below, a review of the tools that are available to FICOM at present under Part 7 of the FIA (e.g., require information, inquiries, investigations, cease or remedy orders, orders for compliance, administrative penalties, etc.) suggests that FICOM has sufficient tools. As well, regulatory cooperation has been facilitated by the recent Memorandum of Understanding entered into by a number of provincial regulators.

While the CLHIA is not aware of any specific deficiencies in the legislative tools available, it is important to keep in mind that in order to have an effective governance framework, a regulator needs to have adequate resources, financial or otherwise, to enable it to carry out its responsibilities. The need for a supervisor to have adequate resources and capacity is one of the guiding principles of the IAIS and should form part of the BC regime to ensure that FICOM can fulfill its mandate.

Q2. ***Should FICOM have the ability (i.e., with authority provided in legislation) to issue enforceable prudential and market conduct requirements and standards/rules? If so, what limits on that power and accountability mechanisms are needed (e.g., oversight/approval role for government, appeal process, etc.)?***

As noted immediately above, FICOM generally has sufficient tools to manage its mandate. Consequently, provided consumers are adequately protected, changes or increases to regulatory powers may not be necessary.

Should BC choose to review its regulatory powers, the CLHIA is ready to participate in such a review. For example, the Consultation Paper correctly sets out that OSFI and Quebec make greater use of guidelines, as compared to BC. Our experience is that OSFI takes a very consultative approach, with the industry and the public, in developing its prudential guidelines and that is a key reason why that regulator's expectations in the guidelines are respected by

the industry. Indeed, as noted earlier, FICOM has adopted some of OSFI's guidelines by reference. Quebec also consults well in developing its guidelines. The Consultation Paper also points to the rule-making powers of the Insurance Council and of the BC Securities Commission. Indeed, it should be noted that insurance regulators in New Brunswick recently obtained the ability to make rules, although there is yet very limited industry experience with this new approach.

We are familiar with the use of guidelines by regulators to set expectations for the life and health insurance industry and this approach certainly works. As noted, an essential characteristic of this approach is that there be meaningful consultation processes with stakeholders, including industry, the public, and other regulators to help ensure harmonization. We expect that, if needed, a similar approach would work well in BC.

Q3. ***To respond to emerging risks in a timely manner, does FICOM need powers to revise conduct and solvency expectations outside of legislation or regulation? If so, what limits and accountability mechanisms are needed?***

Please refer to Q1 and Q2 immediately above. Generally, FICOM appears to have sufficient tools.

Q4. ***What major transactions should be subject to Commission approval? Should the FIA set out criteria for approval of major transactions?***

In order to properly address this question, it would be helpful to have a general description of the types of transactions that have needed FICOM approval in the last few years. As well, direct discussions with affected companies (i.e., BC-incorporated entities) should be considered.

Q5. ***Do the FIA frameworks for reciprocals, mutual insurers and societies offering insurance need to be reviewed? If so, what issues need to be addressed?***

We are not aware of any specific issues that need to be addressed. As a general comment, the framework for reciprocals, mutual insurers and societies should operate to promote a level playing field with similar financial institutions in other provinces.

Q6. ***Are any changes to solvency regulation of insurance companies in BC required?***

We understand that this question relates to insurance companies that are incorporated in BC. In this regard, Assuris (an independent, industry-funded compensation association) is recommending that consideration be given to ensuring that BC provide for a rapid response and transfer of an insurance company or prepaid medical company to the federal *Winding-up and Restructuring Act* if the solvency of the company is in doubt and policyholder benefits are at risk. The CLHIA supports this recommendation.

III. INSURANCE SECTOR ISSUES

Issue 1: Insurance Retailing and Licensing Exemptions

Q1. ***Are the current exemptions appropriate? Should any additional exemptions be provided?***

The CLHIA believes that the current exemptions are appropriate and effective.

Q2. ***Should insurers have more responsibility for exempt sellers? Should they be required to provide more direct oversight?***

In BC today, life and health insurers are accountable for overseeing the exempt sellers that distribute their products. This responsibility is reinforced in industry standards like CLHIA Guideline G7, *Creditor's Group Insurance*, which states, "The insurer shall establish reasonable procedures to monitor the activities of those handling enrolments."

Insurers require that exempt sellers abide by the requirements of G7. For example, as detailed in G7, training programs should place a special emphasis on front-line personnel who deal directly with consumers and need a sound understanding of the products and the limits of their function -- including when to refer a consumer to a supervisor or the insurer. In addition, insurers take a risk-based approach to identifying situations where training and monitoring efforts might need to be reinforced, and take action as needed. Monitoring activities, such as site visits and "secret shoppers", in which the insurer's representatives present themselves as customers, similarly focus on front-line personnel and help identify areas of risk.

The life and health insurance industry has a history of working collaboratively with BC on exempt seller issues. For example, CLHIA and FICOM recently consulted on initiatives to ensure life and health insurers continue to be aware of industry standards relating to the distribution of creditor's group insurance. We support and appreciate such opportunities for ongoing dialogue and cooperation to ensure appropriate consumer disclosures and protections are working well.

Q3. ***Should the FIA be amended to give the Insurance Council increased powers to license and regulate incidental sellers of insurance?***

See our response to Q5, below.

Q4. ***Should certain insurance products only be sold by licensed agents? If so, which ones?***

For the reasons given in the response to Issue 4, Question 3 under Overall/Framework Issues, there should be no requirement that certain types of products only be sold by licensed agents. A balance is needed to ensure that consumers' freedom of choice is not encroached upon. If consumers choose to purchase through a non-advice channel, measures need to be

taken to provide good information (and access to advice, should the consumer wish it), so that the consumer is in a position to make an informed decision.

Q5. ***Should the restricted insurance agent model used by some other provinces, and applicable to travel agencies in BC, be looked at with respect to the sale of other types of incidental insurance such as credit insurance and/or product and vehicle warranties? If so, which types?***

In the industry's view, the regulatory approach to the distribution of life and health insurance sold incidentally to another product should take the following into consideration:

- offering an appropriate level of consumer protection;
- providing a proportionate response to any issues related to this form of insurance without imposing undue administrative, compliance or economic costs;
- offering the BC regulator a clear line of accountability (i.e., is there a sensible contact point if a problem arises or a disciplinary action is necessary?); and,
- contributing to a healthy, competitive market and to providing choice for consumers.

BC currently achieves these objectives through licensing exemptions where the life and health insurer is fully accountable for its products and shares contractually with the distribution entity the responsibility for distribution. If a problem were to arise (e.g., in the context of the sale of a creditor's life insurance product through an auto dealer), FICOM's recourse is to the life insurer that underwrites the product.

If necessary, BC could consider regulations to augment the licensing exemptions so that all exempted distributors would have to comply with specific disclosure requirements about the insurance product. (CLHIA Guideline G7, *Creditor's Group Insurance*, would prove a useful reference for identifying key disclosure elements.) If a problem arose, FICOM would have recourse to the distributor for its failure to comply with the regulation.

An alternate approach, and one which the CLHIA has supported in those jurisdictions where the government has proposed it (i.e., Alberta, Saskatchewan and Manitoba), is the restricted corporate licensing approach. This would require that the distribution entity hold a corporate licence, which would be administered by the Insurance Council of BC. That entity would be directly accountable for the training and supervision of the salespersons and for the distribution of the insurance product. If a problem arose related to the sales practices surrounding the sale of the product, the regulator's recourse would be to the distribution entity that carried the corporate licence. Of course, the manufacturer would retain accountability for the product itself, would contractually require that any corporate entity have processes and procedures in place to abide by all regulatory and contractual obligations, and would have oversight processes to ensure that those contractual obligations are being met.

Should BC consider a restricted licensing regime, the industry would recommend harmonizing with the regimes in place in other provinces, that appropriate and good language for a head

office exemption be included, and that consideration be given to providing restricted licensees with some form of representation on the Insurance Council.

We believe that the current exemption approach in BC is effective and provides the flexibility to develop, through regulations, uniform exemptions for distributors of incidental insurance, coupled with specific disclosure obligations. If British Columbia were to consider going beyond this, then it should consider a restricted corporate licensing regime, harmonized with those jurisdictions which already have such regimes.

Q6. ***Is the current restricted licensing regime for travel agencies effective and appropriate? Should travel agents, who are already regulated by Consumer Protection BC, be provided with an exemption under the FIA?***

BC consumers purchase travel insurance through a number of channels, including travel agents. CLHIA Guideline G5, *Travel Insurance*, outlines practices for providing consumers with information to make an informed decision and applies regardless of the distribution channel.

While the consumer protection licensing regime now in place is somewhat helpful, it applies to only certain distributors of travel insurance. We submit that the better approach would be to put in place the exemption model used elsewhere in BC, which would "level the playing field" for travel insurance distributors while ensuring appropriate consumer protections are in place.

Issue 2: Regulation of Insurance Intermediaries

Q1. ***Should some or all members of the Insurance Council of BC be elected?***

The membership of the Insurance Council is drawn from representatives from the public, the agent/broker community, and insurance companies. Each brings their expertise and understanding of industry practices to Insurance Council decisions, but the primary objective of all is to represent the public interest.

As noted in the Consultation Paper, some Councils have a process where their agent/broker members are elected. We do not have first-hand knowledge as to whether this is preferable to an appointment model, but would suggest that BC consult with other jurisdictions on this matter. The Consultation Paper also notes that industry associations, such as the CLHIA, make appointments of insurer representative appointments.

We believe there are advantages to this appointment process: first, it increases transparency for all interested parties; and second, it reinforces the industry's commitment to effective regulatory supervision of intermediaries. The CLHIA has a well-established nomination process to seek out and appoint qualified people in other provinces. The CLHIA recommends

that a similar process be used in BC to appoint at least some industry members to the Insurance Council.

Q2. ***Does the Insurance Council have the right regulatory tools and structure for its role? Are any improvements needed to enhance coordination between the supervisory and intermediary regulatory authorities?***

The mix of principles-based bulletins and more prescriptive rules that the Insurance Council uses provides an effective balance of flexibility and clarity. The CLHIA is not aware of any deficiencies in these regulatory tools or the structure. The CLHIA notes that the Insurance Council has a history of consulting with the industry, both formally and informally. These informal consultations, in particular, have been helpful in identifying potential issues and proactively working with the industry to change practices.

The issue of coordination between separate supervisory and regulatory authorities is not unique. Wherever such a separation exists, it is important to ensure each authority has strong leadership so there is effective communication between the bodies. There are no obvious structural changes that would enhance coordination.

Q3. ***Is the current oversight framework, including appeals to the Financial Services Tribunal, effective? If Insurance Council members are elected, are changes needed to other aspects of the accountability framework?***

The CLHIA is not aware of any problems with the current oversight and appeals framework.

As noted in the response to Q1 about Insurance Council members, industry appointees and elected members are expected to represent the interests of the public. Accordingly, providing for industry appointments or elections should not require changes to the accountability framework. In situations where the CLHIA appoints members to councils, the CLHIA is careful to ensure that appointees are not involved in the CLHIA's advocacy activities. The CLHIA notes that an appointment process may make it easier for members to carry out their duty to represent the public, especially where members may wish to seek a second term.

Issue 3: Protection of Confidential Information

Q1. ***Does BC's financial institutions legislation achieve the right balance between open government and appropriate protection of confidential information relating to financial institutions? If not, what changes are appropriate?***

BC's financial institutions legislation contains some good provisions to protect confidential information (i.e., sections 218 and 219 of the FIA), but improvements are needed. The current review serves as a good opportunity to modernize the existing rules, with a view to ensuring that the system for financial institutions operating in BC can be as effective and stable as possible. To accomplish this, we recommend (i) greater protection for confidential financial

services information and (ii) the addition to the FIA of an insurer self-assessment privilege (see our comments re Q2 and Q3 immediately below).

With respect to the protection for confidential financial services information, we suggest that the starting point for analysis should be the Alberta *Insurance Act* provisions, given that British Columbia is a member of the New West Trade Partnership (along with Alberta and Saskatchewan) and fostering harmonization is one of the goals of that agreement. The most relevant Alberta provisions are sections 816 and 816.1 of the Insurance Act.

Q2. ***Would insurer self-assessment privilege provide a net public benefit by enhancing internal compliance systems and confidential disclosure to the regulator? Do the benefits outweigh the costs of limiting evidence available in court proceedings?***

As noted above, the life and health insurance industry recommends that a compliance self-evaluative privilege be enacted into law for effective risk management. More and more, self-assessment exercises by those regulated are an integral part of financial services regulators' supervisory approach. They help companies to identify any existing non-compliance and to take necessary remedial steps. They are used by senior management in their essential role of evaluating the effectiveness of the policies and controls that are in place. In turn, this supports the adoption and implementation of strong corporate governance practices to address potential non-compliance and reduce risk in the future. The self-assessments are shared with regulators, which assists them to be aware of the problems that were identified and how they have been corrected.

The extension of privilege to self-assessment documents would mean that third parties would not have access to those documents that the company has specifically created to identify and address any potential non-compliance. **Third parties would continue to have access, as part of the litigation process, to the underlying documents/evidence from which the self-assessment is created.** By providing this protection to insurers, a self-evaluative privilege promotes open and critical self-assessments (initiated by companies on their own or requested by insurance regulators) and the consumer protection improvements that can be gained from regulators' use of the results of such assessments.

Enactment of a compliance self-evaluative privilege would have many benefits:

- Consumers would benefit from greater scrutiny of company compliance with laws and regulations designed to protect consumers – at no additional taxpayer expense.
- Insurers would benefit from protection against the release of information lacking in context which could lead to unwarranted litigation.
- Regulators would benefit by being able to redirect resources currently consumed in examinations of compliant companies towards areas of greater need.

It is important to note that the incorporation of a compliance self-evaluative privilege in the FIA would not inhibit the exercise of regulatory and supervisory authority in protecting insurance

consumers. In fact, it would endorse / enhance such supervision by promoting full and frank disclosure between insurers and supervisors and make regulatory review more efficient and effective.

Finally, you may wish to note that in addition to Alberta and Manitoba, earlier this year Saskatchewan (the third member of the New West Trade Partnership) also legislated a self-evaluative privilege provision in its Insurance Act re-write, which will come into force on a day to be fixed by proclamation.

Q3. ***Should the issue of privilege be addressed in the context of insurers alone, financial institutions generally or through a more comprehensive review related to all industries?***

We believe that the concept of a self-evaluative privilege would certainly be valid in the context of insurers and financial institutions more broadly. That being said, given the current review of the FIA, we suggest that the issue be addressed at this time for financial institutions covered by that Act. After the FIA Review, the government may then choose to consider the issue in a broader context.

Issue 4: Long-term Disability Plans

Q1. ***Does BC have the right approach to long term disability benefits?***

The CLHIA encourages British Columbia to change its approach to this issue. It is critically important to ensure that employees on long term disability (LTD) are protected in the event of a plan sponsor's financial stress or insolvency. History has shown that when an employer becomes insolvent, and its LTD plan is uninsured, disabled employees can sometimes lose their benefits. Such loss has occurred across Canada, including in provinces such as BC that have notification requirements.

It is the industry's strongly held view that in order to protect those on LTD, such plans should always be provided on an insured basis. Some other jurisdictions have enacted a notice requirement but this has not prevented employer/plan failures and the resulting loss of income replacement benefits.

Q2. ***Should employers and other plan sponsors be required to insure LTD benefit plans? Would this deter employers from providing these benefits?***

The federal government and the Ontario government now require that long term disability plans be insured to ensure there are adequate funds available to support ongoing LTD claims in the event of an employer's bankruptcy. We believe that requiring that LTD plans be offered on an insured basis provides the maximum protection for disabled employees and ensures that they are paid, regardless of their plan sponsor's financial situation.

With insured plans, the risk and financial liabilities for providing the LTD benefits are transferred to the insurer. In order to meet expected future payment obligations, the insurer sets up a reserve fund that requires actuarial valuation and reporting. As an added level of protection, insurers are required to hold a capital cushion to support their obligations. This capital can be drawn upon in the event that more workers than expected experience disabilities.

The key point is that the insurer's responsibility with respect to disability benefits continues even when the plan sponsor experiences financial difficulties or after the plan is terminated. Indeed, after a plan sponsor's bankruptcy, the insurer will continue benefits for disabilities that began while the group policy was in force.

Government regulators monitor insurance companies to ensure they maintain sufficient assets to meet their liabilities. In the extremely unlikely event that a Canadian insurance company became insolvent, disabled employees and other policyholders rank ahead of other creditors in such situations. Should the assets of the insurer be insufficient to cover all claims, long term disabled employees would be covered by the industry's compensation association (Assuris) - which would continue to ensure that payments of up to $2,000 per month or 85% of the promised monthly income benefit, whichever is higher, are made to such employees.

We do not believe that a requirement to insure LTD benefits would deter employers from offering this coverage. As described in more detail at pages 4 - 5 of CLHIA's 2010 Policy Paper "Protecting Canadians' Long Term Disability Benefits", plan sponsors may choose to offer benefits to their employees on an uninsured basis because some of them may have a view that there are cost savings in doing so. This is largely a perception only, as over the entire lifetime of a benefit plan, insured and uninsured plans have similar costs.

Q3. ***Are there consumer protection issues related to ASO plans? How can consumer awareness be increased?***

As indicated in our responses to Q1 and Q2 immediately above, the most effective option to achieve the public policy objective of fully protecting individuals on LTD, with minimum administrative cost and complexity, is clearly to require that LTD plans be offered on an insured basis.

Issue 5: Rebating

Q1. ***Is the current FIA rebating framework effective and appropriate?***

The public policy concern with rebating is that it may create an appearance of affordability that is not sustainable. This creates a risk that a consumer may purchase a policy that they cannot afford in subsequent years when the rebate is no longer available. If the consumer's

insurability has changed during this time, he or she may not be able to replace a policy that lapses because it is no longer affordable.

The Consultation Paper describes the discussions that preceded the review of the *FIA* that resulted in the current rebating framework. The CLHIA believes this framework represents an appropriate balancing of competing interests.

Q2. ***Is the threshold of 25 percent of the premium appropriate? Would a different level be more appropriate, and if so, what level?***

Increasing the threshold above 25 percent increases the risks to the consumer described in the response to Question 1 above. If the decision is made to continue with the current rebating framework, the CLHIA recommends that the threshold not be increased.

Q3. ***Are the current disclosure rules on referral payments adequate to protect consumers? Should agents also be required to disclose the amount of any referral payment?***

The Consultation Paper describes a specific set of circumstances involving property and casualty insurance and strata developments that gave rise to concerns about referral fees paid by an agent. In general, where an agent pays a referral fee or finder fee for lead generation services, this is unlikely to harm the consumer and, accordingly, should not require disclosure.

Where an agent receives a fee for referring a client to another person, the agent should be required to disclose the fact that he or she is receiving a fee. There should be no additional requirement to disclose the amount of the fee.

IV. CONCLUSION

The industry appreciates this opportunity to provide input on the Initial Public Consultation Paper for the Review of British Columbia's Financial Institutions Act & Credit Union Incorporation Act and stands ready to assist, in any way it can, as the review process moves forward.