Financial Institutions Act &
Credit Union Incorporation Act Review

Input Received from Stakeholders in Response to FIA/CUIA Review Initial Public Consultation Paper

BRITISH COLUMBIA | Ministry of Finance

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FINANCIAL INSTITUTIONS ACT & *CREDIT UNION INCORPORATION ACT* REVIEW

STAKEHOLDER RESPONSE TO INITIAL PUBLIC CONSULTATION PAPER

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OVERVIEW

Review of the *Financial Institutions Act* and *Credit Union Incorporation Act*

The Ministry of Finance is currently undertaking a broad review of the *Financial Institutions Act* (FIA) and *Credit Union Incorporation Act* (CUIA).

The FIA provides the regulatory framework for credit unions, insurance companies and intermediaries, and trust companies, and the CUIA provides the framework for incorporation and corporate governance of credit unions.

An effective regulatory framework helps to ensure that British Columbians continue to benefit from a financial services sector that is strong, stable, and inspires public confidence and trust. To ensure that the framework continues to be effective, efficient and modern, both the FIA and CUIA contain a requirement that a review of the legislation be initiated every ten years.

The FIA/CUIA review will consider the regulatory tools BC has to oversee credit unions, insurers and intermediaries, and trust companies, and whether changes to the legislative and regulatory framework are needed.

Initial Public Consultation Paper

On June 2, 2015, the Ministry of Finance released the FIA/CUIA review initial public consultation paper. The purpose of the paper was to seek input from stakeholders in the financial services sector, and other interested parties, for consideration as part of the review.

The paper identified a number of important issues to be explored in the review, and posed a series of questions related to each issue. Stakeholders were invited to provide input on those issues and on any other issues with the regulatory framework they wished to be considered in the review. The deadline for making written submissions was September 15, 2015.

Response to Initial Public Consultation Paper

The Ministry of Finance received more than 40 written submissions in response to the FIA/CUIA review initial public consultation paper. Submissions were received from the credit union system and individual credit unions, insurers and insurance sector and intermediary organizations and associations, trust companies, public sector organizations, businesses, banking and other organizations, and individual British Columbians.

Most of the written submissions primarily related to either credit union or insurance sector issues, with a small number primarily about trust sector or other issues. Many of the written submissions covered a broad spectrum of overall/framework, credit union, and/or insurance or trust issues. A high-level summary of the input received about each issue can be found in the *Input Received from Stakeholders* section of this report.

Ministry of Finance staff met with a number of stakeholders, including credit unions, insurance sector and intermediary organizations and associations, trust companies, individuals and others, to discuss their written submissions.

Posting of Report and Written Submissions on Ministry Website

The consultation paper indicated that a public report on the input received – this report – would be prepared and released after the written submissions had been reviewed. After the consultation period ended, the Ministry also received a number of requests for copies of the stakeholder submissions.

As this is a public consultation process, and in the interests of transparency and fairness, the FIA/CUIA review submissions will be posted on the Ministry of Finance website at the time this report is released so that all those interested are able to access them. All FIA/CUIA review submissions received by the Ministry, with the exception of those from individual British Columbians if they did not consent to posting, and those where the submitter specifically requested confidentiality, will be posted on the website.

Objectives of the Review and the Legislative and Regulatory Framework

Financial sector stability and consumer protection are important public policy objectives for government, and governments dedicate significant time and resources to regulation of the financial services sector because of the sector's significant impact on the economy and on society as a whole.

An effective regulatory framework helps to ensure that British Columbians continue to benefit from a financial services sector that is strong, stable, and inspires public confidence and trust. Government is committed to providing an effective and balanced regulatory framework which protects the interests of depositors, policyholders, beneficiaries, members and the public, while ensuring the financial services sector is not unduly burdened so that it is able to innovate, take reasonable risks, and compete effectively.

The primary objective of the FIA/CUIA regulatory framework is to maintain stability and confidence in the financial services sector by reducing the risk of failures and providing consumer protection.

There are also a number of important complementary and supporting objectives:

- to create an environment where the financial services sector, and the entities within it such as financial institutions and intermediaries, can continue to grow and prosper;
- to promote sound risk management and appropriate/responsible risk-taking;
- to enable early detection and timely intervention and resolution of issues;
- to reflect international standards, while respecting the particular needs and circumstances of BC's financial sector and taking into account the nature, structure, size, scope and complexity of institutions; and
- to foster member engagement in cooperative and mutual financial institutions.

Role of Stakeholder Input and Future Public Consultations

Input from stakeholders – credit unions, insurers and intermediaries, trust companies, other interested parties and members of the public – is an important component of the FIA/CUIA review. The initial public consultation paper provided an opportunity for stakeholders to comment and provide input during the early stages of the review process, prior to the development of policy options.

The input received from stakeholders during the initial consultation period will be used to help inform the analysis of FIA/CUIA review issues and development of policy options by Ministry of Finance staff. This work is currently underway.

There will also be opportunities for industry and other stakeholders to provide input during later stages of the review process. After analysis of the issues and input received during the initial consultation period, the Ministry plans to prepare and release a consultation paper which identifies the proposed changes and seeks further public input.

Ultimately, any proposed changes to the FIA and CUIA would be subject to consideration and approval by the Minister of Finance and Cabinet, and approval of the Legislature of British Columbia.

Review Timing

In the last FIA review, the legislative amendments were introduced about two years after the initial public consultation paper was released. The regulations were completed and came into force about six to eight months after that, with the entire process taking between two and a half and three years.

It is expected that this review will take at least the same amount of time, and it may require additional time as the length of time needed to complete the review will be impacted by the nature and extent of the required changes and various other factors, such as the input received from stakeholders in response to the future public consultation paper detailing the proposed policy and legislative changes.

INPUT RECEIVED FROM STAKEHOLDERS

Overview

The remainder of this report provides a high-level summary of the input received from stakeholders in response to the FIA/CUIA review initial public consultation paper.

As in the consultation paper, the issues are grouped into four main sections: a general section which contains the issues that likely impact all financial service sectors (i.e., credit unions, insurers and insurance intermediaries, and trust companies); and a separate section for each of the credit union, insurance (including both insurance companies/insurers and intermediaries such as agents and brokers) and trust sectors which contains the issues that primarily, or exclusively, apply to that sector.

For each issue, there is a brief description of the issue and a list of the questions that were posed in the initial consultation paper. This is followed by a summary/overview of the input received from stakeholders about that issue. A fuller description of each issue can be found in the initial public consultation paper, and the actual detailed feedback from stakeholders can be found in their submissions posted on the Ministry website.[1]

Please note: This is meant to be a relatively concise overview of the input received, not a comprehensive account, and not all details and nuances of the input and perspective provided by each stakeholder have been captured in the summaries. In addition, while stakeholder input is an important part of the review process and will be used to inform analysis of the issues, this summary of the feedback received from stakeholders about each issue is not intended to represent or signal future government policy, or to suggest that any particular changes will be proposed.

The acronym "FICOM" is used to refer both to the Financial Institutions Commission (Commission) and to the organization headed by the Superintendent of Financial Institutions which supports the Commission. Generally the wording used by stakeholders in their submissions (whether "FICOM" or "the Commission", etc.) has been adopted in this paper when describing their input. Please note, however, that it is the Commission which has the primary statutory authority for the regulation of financial institutions in BC. A fuller description of the roles and responsibilities of the Commission and the Superintendent can be found in the FIA/CUIA review initial public consultation paper.

[1] A copy of the initial public consultation paper can be found at http://www.fin.gov.bc.ca/pld/files/FIA_CUIA_Review_Paper.pdf.

OVERALL / FRAMEWORK ISSUES

Issue 1: Financial Consumer Protection

Governments provide financial consumer protection through laws designed to prevent fraud and unfair practices and protect the most vulnerable members of society. Voluntary and industry codes can provide additional consumer protection. In recent years, regulators have increasingly focused on ensuring consumers of financial products and services are treated fairly.

Questions posed in the consultation paper:

1) 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?

2) Should BC credit unions be required to have an internal complaint handling process and to offer member access to an independent ombudservice?

3) Should ombudservices be mandated for addressing consumer complaints against mutual insurers and/or insurance agents and brokers?[2]

4) Should authorization requirements for financial institutions and licensing requirements for insurance agents and brokers specifically require fair treatment of consumers?

5) Should branch closure notification rules be considered in BC, perhaps as part of a market conduct code? If so, what rules would be appropriate in BC?

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

Summary of feedback received:

Market code of conduct

The credit union system submission expressed support for an industry driven, voluntary market code of conduct, although one credit union cautioned that any adoption of a market code of conduct should be based on real, not perceived need. Submissions from the credit union and insurance sectors suggested that codes be tailored by sector. Of those who expressed support for a market code of conduct in respect of the insurance sector, almost all suggested that such a code be national in scope, with some suggesting that it be based on work already being undertaken by the Canadian Council of Insurance Regulators (CCIR). Nearly all of those who commented indicated that if a market code of conduct is adopted, it should be principles based and not formalized in legislation.

[2] Although there is no BC requirement to do so, mutual insurers have established an ombudservice for their industry, the Mutual Insurance Companies OmbudService.

One submission expressed support for requiring credit unions to provide notification of branch closures. No submissions from within the credit union sector expressed support for such a requirement.

Several insurance company organizations indicated that there was no need for business authorizations to specifically require fair treatment of consumers as the most effective means of addressing the fair treatment of consumer is by requiring agents to use sales practices that support this outcome. Two organizations representing life agents indicated that it was reasonable and important to apply a common, over-riding principle of fair treatment of consumers to all financial institutions.

Ombudservices

The credit union system submission expressed support for an independent ombudsperson being established within Stabilization Central Credit Union. Others, however, suggested that there was no need for an ombudservice for credit unions and that, because they are member owned, credit unions are already very responsive to member concerns.

The credit union system submission also suggested that government consider establishing a credit union ombudsperson in BC. The role of this person would be to investigate complaints relating directly to regulatory issues between insured institutions and the regulator.

Some submissions suggested that no additional legislative requirements were needed in respect of the insurance sector given that, as noted in the paper, BC requires insurers to implement internal processes for the resolution of consumer complaints, and most insurers are also required to belong to an ombudservice (e.g., the General Insurance OmbudService for property and casualty insurers and the OmbudService for Life & Health Insurance).

Some submissions suggested mandating ombudservices for mutual insurers, with commenters noting that federal mutual insurers are already required to be members of an independent organization to address consumer complaints and that the Mutual Insurance Companies Ombudservice (MICO) is open to all mutual insurers licensed in Canada.

Submissions were not supportive of requiring an ombudservice for insurance agents and brokers, with one commenter noting that consumers can already make complaints regarding agents and brokers to the Insurance Council of BC. One submission noted that the recently established BC Civil Resolution Tribunal, along with online tools being developed, could be integrated with legislation and dispute resolution services already in place for the insurance industry.

Use of corporate and business names

Most submissions on the use of corporate and business names called for increased flexibility to allow credit unions to use brand names and/or regional trade names. One credit union recommended that the CUIA be amended to permit a credit union that has acquired the assets of or amalgamated with another credit union to use trade names consisting of the names of the transferring or amalgamating entities (excluding the words “credit union” or “limited”).

Some commenters also called for an amendment to the CUIA to make it clear that it is permissible to use trade names in advertising and on signs. However, other submissions indicated that the words “credit union” should be required at all times, as it can lead to confusion

for consumers when some credit unions fail to include "credit union" in their name, or only include it in fine print.

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

Consumers and investors can play an important role in imposing market discipline. The disclosure by financial institutions of comprehensive financial and risk information on a timely basis reduces uncertainty and allows consumers and investors to make more informed decisions about which institutions to do business with. Market discipline can help to promote safety and soundness in financial systems.

Questions posed in the consultation paper:

1) 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?

2) 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)?

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

Summary of feedback received:

Input about this issue came largely from the insurance sector. There was general support for providing information to regulators, although some commenters were opposed to public disclosure of sensitive financial and risk information, or information that is proprietary in nature. One submission noted that, while proprietary information should remain private, clarity is needed with regard to what constitutes proprietary information.

One submission suggested that if FICOM were permitted to publish information it collects from financial institutions online, the financial institutions would be less likely to self-disclose to FICOM, ultimately leading to less transparency. One commenter suggested that FICOM be limited to publishing only consolidated financial information. Another noted that, should BC consider making financial and risk information available, government may wish to consider harmonizing with parallel provisions in Alberta.

Two submissions suggested that compliance information and/or information on substantiated complaints about particular financial institutions be made public. One submission suggested that regulators issue report cards on the compliance status of financial institutions.

There was broad support for better harmonization of the information that is required to be provided to regulators and/or to the public. There was general support for BC participation in the national insurance complaint reporting system. There were also numerous suggestions that provincial and national reporting requirements be harmonized, and that publically available information be the same for both provincial and federally regulated insurers.

There was general support for information sharing among regulators provided that the information be used only for regulatory purposes. There was some suggestion that information collected by and shared amongst regulators should be protected from provincial freedom of information laws.

There was also some input about this issue from the credit union sector. The credit union system submission suggested that the FIA be amended to allow for information sharing with system owned entities. One credit union commented that the regulator should have the capacity to disclose consolidated financial information about the BC credit union system to other governmental authorities, but that they should not have the capacity to publish disaggregated financial information of individual credit unions. Another credit union recommended that FICOM take a cautious approach to the publishing of information given that the information FICOM collects from credit unions can contain sensitive competitive and personal member information. The credit union also noted that requiring smaller credit unions to report data to national databases could be an unnecessary burden and should be handled through FICOM.

Issue 3: Financial Literacy

Financial literacy can benefit consumers by helping them to improve their personal financial situation, and complements the regulatory framework by increasing private sector and consumer oversight of financial institutions and their products. Governments around the world are focusing on ways to increase consumer financial literacy, and a number of financial literacy initiatives are being undertaken by financial institutions.

Questions posed in the consultation paper:

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

2) 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?

3) Should legislative changes to bolster financial literacy and/or protect consumers from financial abuse be considered?

4) 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?

5) Do governments, including the BC provincial government, need to better communicate government policies in areas such as earthquake disaster relief? Are there other measures government should be taking with respect to earthquake or catastrophic loss insurance?

Summary of feedback received:

Submissions received on this issue generally noted that financial institutions are already contributing to and fostering financial literacy through a variety of initiatives and programs.

One submission indicated that credit unions have an obligation to deliver member education to ensure that members have the knowledge, skills, and confidence to make the right financial decisions. The submission also made some specific recommendations for changes, such as requiring that credit unions cash any Government of Canada issued cheque (up to $1,500) without charging fees or requiring an account.

The Council to Reduce Elder Abuse (CREA) suggested that financial institutions provide their clients with information about the risks of financial abuse and ways to protect against such abuse, and suggested the "AccountSmart Tools for Seniors" developed and promoted by the Bank of American Fork as an example of a helpful financial tool for older adults to mitigate the risks of financial abuse and/or exploitation.

Others indicated that the life and health insurance industry plays an active role in contributing to and fostering financial literacy, but cautioned that a specific requirement that insurance advisors foster financial literacy would give rise to a number of challenges. For example, it was suggested that such a requirement could substantially lengthen the sales process and even result in consumers abandoning the purchase of needed insurance. It was also noted that the challenge of assessing financial literacy makes enforcement difficult.

Some submissions called for the provincial government to play a stronger role in promoting financial literacy, particularly by offering more financial literacy programs in schools. Some suggested greater provincial alignment with federal financial literacy initiatives. One credit union suggested that the province broaden its scope when looking at issues of financial literacy, noting that financial abuse of elders, while important, is not the only important issue; there are other important issues such as retirement planning, home purchasing, and budgeting. The credit union also called for more collaboration between financial institutions and government to promote financial literacy and specifically called for a central or provincial authority which would address the potential conflict of interest with respect to financial institutions financially benefitting from interest or fees (e.g., interest from unpaid credit card balances).

An insurance agent association noted that improved financial literacy is needed to ensure that consumers are aware that non-traditional sellers of insurance may not be regulated and may not recommend appropriate coverage. The association also called for government to prohibit the use of inducements to the purchase of insurance, including the practice of making the purchase of insurance and a non-insurance product contingent on each other, and to require mandatory disclosure of the use of credit scoring by insurers.

Despite broad support for government playing a stronger role in promoting financial literacy, there was almost no support for specific legislation around financial literacy.

However, a number of submissions, including the credit union system response, were supportive of amending provincial legislation to permit financial institutions to report concerns about financial abuse to next of kin in specific circumstances. One commenter indicated that insurance advisors need clear direction about when and how to report suspected cases of financial abuse, and suggested that advisors have a designated authority where they can turn to report suspected cases of financial abuse or to obtain advice. Some commenters noted that the *Adult Guardianship Act* permits and provides protections for any person to report suspected abuse or neglect to a designated agency, but that there is no authority that permits financial institutions to notify next of kin about suspected abuse.

The Public Guardian and Trustee of British Columbia noted that the perpetrator of financial abuse is often the next of kin, and that disclosure of concerns about potential financial abuse to the next of kin by a financial institution may have the unintended consequence of alerting the abuser to the fact that the abuse has been discovered, potentially bringing an increased risk of harm to the vulnerable adult. CREA encouraged government to examine the issue of disclosure of suspected abuse to next of kin, with a view to determining whether a change to ensure consistency with federal legislation in reporting to next of kin outweighs the potential risks.

A number of submissions, particularly from the insurance sector, suggested that government should better communicate government policies regarding catastrophic risk and disaster preparedness. One submission suggested that insurers and their representatives can efficiently provide this information at the time of sale or renewal, but that government support in raising public awareness is also critical as it provides a complementary and independent source of information on this important issue.

Another submission called for government to clarify to consumers which earthquake-related losses, if any, would be eligible for disaster assistance funding. The submission also suggested that government establish an earthquake recovery task force; establish a financial backstop for disasters; require essential service institutions to prepare for disasters; work with the private sector to promote disaster management planning and funding; develop a provincial earthquake strategy for strata properties; and consider a consumer and corporate tax credit or grant for earthquake insurance premiums paid. In addition, the submission requested that government eliminate insurance brokers' liability for potential lawsuits emanating from consumers' failure to purchase earthquake coverage. Finally, a credit union suggested that government provide public education not just on the cost of disasters but also about the importance of things like renters insurance.

Issue 4: Technological Change

Continuing advances in technology have enabled financial institutions to offer new products and services and have greatly increased choice and convenience for consumers. These advances have significantly impacted how consumers access financial services and the way businesses operate. However, while technological change has created new opportunities, it also has the potential to create new risks and challenges for consumers and financial institutions.

Questions posed in the consultation paper:

1) 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?

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

3) 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?

4) 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?

Summary of feedback received:

One insurance industry submission responded that the current framework is sufficiently flexible to permit insurers to respond to technological changes, including customer demand for services to be provided in electronic form. Another indicated that consumers should be able to choose the method of communicating with an insurer or intermediary and that the duty of care placed on insurers and intermediaries when they use electronic transactions should be no different from that required for more conventional means. Several submissions from the insurance industry supported the recommendations set out in the Canadian Council of Insurance Regulators (CCIR) "Electronic Commerce in Insurance Products" position paper.[3] One commenter called for legislation and regulation that would facilitate electronic commerce and also suggested that legislation governing electronic commerce specific to financial products be developed.

The credit union system submission suggested that the FIA and CUIA be rewritten to be technologically neutral. The credit union system suggested the following:

- allow for electronic delivery of annual general meeting (AGM) notices where an email address is provided and consent to receive electronic correspondence is granted by the member;

[3] Canadian Council of Insurance Regulators, "Electronic Commerce in Insurance Products," http://www.ccir-ccrra.org/en/init/Elec_Commerce/ECC_position_paper_2013_EN_final.pdf, May 2013.

- do not reference use of signatures as appropriate identity verification tools, whether on paper or in electronic format, as it is much more prudent to verify identities through PINs, passwords, or user-set challenge questions; and

- do not put anything in the statute regarding online services, records retention and storage, but instead create guidelines.

Some credit unions called for a change to legislation to allow for alternate methods of communication about matters more generally. For example, one suggested legislative amendments to allow members to consent to receiving records and notices electronically, such as is permitted under the province's *Business Corporations Act*. The commenter also called for changes to the *Business Practices and Consumer Protection Act* to provide that members/customers may consent to receiving notices respecting disclosure of the cost of credit electronically. Another credit union suggested changes to the regulatory framework to allow for greater collaboration with financial technology start-ups in the lower mainland who are exploring alternative business models for payments, lending, and financial literacy.

An insurance sector organization suggested that where insurers offer the opportunity to purchase policies online, whether directly with the insurer or through an intermediary, this capability should be supported with optional access to a live agent, broker or insurer representative in the event of technical difficulty or questions not answered by the online resource. They indicated that this live agent access should be multi-channel; via email, live online chat or telephone contact. One submission suggested that consumers purchasing insurance online should be able to stop the transaction at any time to seek advice from an advisor and should be given a paper copy of the policy and provided information about the insuring company so they can ask follow up questions.

Several submissions highlighted products or services that they thought should not be available for purchase directly by consumers online. A number of submissions suggested that direct online sales should be limited to simple products although one commenter suggested that rather than restricting the types of products available the focus should be on disclosure. One insurance sector submission suggested that life insurance products (including segregated funds and most annuities) that have cash values, are promoted as investments, or that have complex attributes, are not appropriate for sale online in a non-face-to-face environment. The submission indicated that health insurance products are complicated and require ample review and discussion. A submission from another organization also commented that life and health insurance products are complicated and not appropriate for online purchase. One submission suggested that the purchase of title insurance should require the involvement of a lawyer and not be sold directly online.

Data breaches were identified as a concern in two submissions about record storage and retention. One submission suggested that given the importance of data in the financial services sector, the regulator should adopt outsourcing guidelines similar to what the federal Office of the Superintendent of Financial Institutions (OSFI) has done. Another suggested that government look to the federal approach for rules and expectations around the regulator's access to data. Others called for data to be stored in Canada and for government to seek audit and technical advice with respect to record storage and retention.

Most submissions on record storage and retention expressed the opinion that existing laws and regulations around record storage and retention were adequate. One noted that the storage and retention of sensitive consumer information is largely already addressed in existing privacy legislation. Another noted that record storage and retention policy and practice is challenging and that they rely on the relevant FIA and CUIA sections, FICOM information bulletins and federal requirements to guide them. The commenter further indicated that there should not be statutory or regulatory limitations on the kinds of data and information entrusted to a third party service provider.

Issue 5: Out of Province Business

The FIA permits retail credit unions to operate extra-provincially on a reciprocal basis. The CUIA requires that BC credit unions first obtain FICOM and Credit Union Deposit Insurance Corporation (CUDIC) approval, but does not provide a specific framework for exercising that discretion. In 2010, the federal government implemented changes to permit the creation of federal credit unions which can operate across Canada subject only to federal regulation.

The federal and provincial governments share jurisdiction over foreign insurers in Canada, and BC and the federal government have different approaches to regulating insurance and determining whether licensing is required for particular insurance transactions.

Questions posed in the consultation paper:

1) Are changes or clarifications needed to BC's legislative framework for regulating extra-provincial credit unions, either for BC credit unions operating extra-provincially or for credit unions from other jurisdictions operating in BC?

2) 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?

3) 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?

Summary of feedback received:

The credit union system submission noted that the FIA currently adds an additional layer of regulation to all extra-provincial credit unions, including those that become federally incorporated. The system suggested that the FIA be amended so that the additional layer of regulation applies only to extra-provincial credit unions that are not federally incorporated.

One credit union suggested that the prohibition against a credit union carrying on business outside of BC as set out in the CUIA is no longer necessary and recommended clarification of the legislative framework and more discussion with government to create a legislative framework that best positions British Columbians and their credit unions for success.

One individual submission called for government to support regionalized financial institutions that are restricted to operating or having a head office in BC.

An insurance sector organization indicated that all entities insuring risks in BC should be required to be licensed and that streamlining BC's regulatory framework for out-of-province insurers (to the extent they are subject to a comparable regulatory regime in their home jurisdiction) would minimize any incremental burden associated with requiring these entities to be licensed.

Another insurance sector organization indicated that an unauthorized insurer should be permitted to place business in BC only in rare and exceptional circumstances. Similarly, one organization suggested that exemptions should only be considered where the insurance coverage is genuinely unique to such an extent that it is not available from a BC or Canadian provider. They also indicated that the consumer should know where the insurance provider is located.

One organization suggested that all online insurance communications with residents of BC, regardless of origin location, should be afforded the protections set out in the FIA and the *Insurance Act*. Another called for a review of the definition of "insurance business" to ensure that life or health insurance sold online to a BC consumer is subject to the protections of the FIA and the *Insurance Act*, regardless of the origin of the communication.

Submissions from the insurance sector indicated that further exemptions to allow the purchase of insurance from unauthorized insurers are not required. One commenter stated that 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. Others called for standardization of regulatory requirements with neighbouring provinces.

Most of those who commented on the issue of online transactions by out-of-province entities simply noted that the protections afforded to consumers in legislation should apply equally, regardless of where or how the transaction is done. One credit union noted that an emerging issue is the use of technology by out-of-province entities and that this must be carefully examined in the context of financial institution regulation and the transformative changes taking place due to new entrants such as Apple pay and fully automated investment houses.

Issue 6: Regulatory Powers and Guidelines

International regulatory standards have increasingly focused on regulators having the appropriate tools to evaluate financial institutions, including their risks and governance, and the ability to intervene on a timely basis to address issues at an early stage. Guidelines issued by the regulator can clarify supervisory expectations, allow for proactive addressing of emerging risks, and help to ensure that prudential and market conduct standards are up-to-date and flexible.

Questions posed in the consultation paper:

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

2) 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.)?

3) 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?

4) What major transactions should be subject to Commission approval? Should the FIA set out criteria for approval of major transactions?

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

6) Are any changes to solvency regulation of insurance companies in BC required?

Summary of feedback received:

A number of submissions with a variety of views were received on this issue. Opinions were mixed with respect to whether FICOM should have the authority to issue enforceable guidelines. Generally there was more support for enforceable guidelines from the insurance sector. For example, one insurance agent organization indicated that FICOM should have the ability to issue enforceable market conduct rules for all and prudential rules for any institutions that are not subject to federal regulation.

An insurer organization stated that if greater use of guidelines is contemplated there must be meaningful consultation processes with stakeholders, including industry, the public and other regulators, to help ensure harmonization. Greater harmonization was also mentioned in other submissions. For example, one insurance sector submission encouraged the BC government to avoid creating duplicative legislation/regulation that conflicts with federal standards. Another insurance organization suggested that BC harmonize its prudential and governance regulations with those of the federal government.

One submission called for flexibility to accommodate conflicting or multi-layered requirements due to different regulatory requirements across jurisdictions. They also asked that any principles-based and risk-based expectations be applied according to the risk profile, size, scope

and complexity of the insurance company, and indicated that requirements must be scalable to what makes sense in the context of an individual company.

One organization stated that the regulator should have the ability to issue enforceable rules, with the authority to do so provided in legislation, but that the rules should be subject to consultation, Minister of Finance approval and notice. The organization indicated that any revision of conduct and solvency expectations outside of legislation or regulation should be subject to an automatic sunset clause.

The Financial Institutions Commission stated that the FIA should delineate the Commission's authority to issue guidelines after conducting mandatory public consultation on draft guidelines and following due process.

The credit union system submission strongly recommended that the interpretation of guidelines be consistent with their purpose and that no credit union be unduly penalized for a lack of prescriptive adherence to any given requirement in a guideline. The system recommended that government consider establishing a credit union Ombudsperson in BC and indicated that there should be appeal mechanisms for decisions made outside the statutory scope of the FIA and CUIA.

Some individual credit unions were opposed to guidelines having the force of law, with one cautioning that any proposal to expand FICOM's discretionary authority over credit unions, individually or collectively, needs to be thoroughly vetted, in line with government's stated policy objectives of "(promoting) sound risk management and appropriate/responsible risk-taking" and "(enabling) early detection and timely intervention and resolution of issues." One credit union stated that regulatory expectations should be bound by the legislative requirements rather than "unwritten" rules.

Another credit union indicated that, to respond to an evolving world, the regulator needs the authority and ability to issue enforceable prudential and market conduct requirements or rules, but they reiterated that the deeply rooted community knowledge of local credit unions is not appropriately factored into classic risk assessments. The credit union indicated that prudential regulation should be developed in the context of the efficiency of the systems being regulated.

Other feedback

A reciprocal insurance organization suggested that the regulatory framework for reciprocals should differ from that for insurance companies. It noted that the regulatory burden on all insurers has been increasing and that the solvency standards developed for corporate insurers are not appropriate for reciprocals. It suggested that regulatory changes need to be reviewed in light of the unique nature of reciprocals and adapted appropriately.

An insurance sector organization asked for provincial legislation and regulations which 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 the policyholder benefits are at risk.

One submission stated that extra-provincial insurers authorized in BC are subject to solvency oversight by both the incorporating jurisdiction and by BC as a secondary regulator. It suggested that where the principal regulator has generally harmonized its solvency standards with OSFI's

standards, BC, as secondary regulator, should generally defer to the oversight and regulatory requirements of the principal regulator. It also acknowledged that limited exceptions to this approach may be appropriate where BC risks present an unusual exposure. Another commenter stated that FICOM should require all new insurers in the province to meet OSFI's solvency and governance standards.

Powers and structure of the regulator

A number of credit union submissions commented on the powers and structure of the regulator. The submission from the credit union system recommended that the governance structure of FICOM and CUDIC be reviewed. The submission noted that the FIA provides no substantial separation between the boards and presidents of CUDIC and FICOM, and that, over time, this has resulted in transparency and accountability being compromised. It suggested that independence of the governance structures would allow the regulatory and deposit insurance functions to work together while maintaining the degree of separation that is necessary for a balanced regulatory environment.

The system submission indicated that credit unions in other provinces, as the sole contributors to the deposit insurance fund, act as either as observers or voting members of the deposit insurance corporation. The system recommended that a representative from the credit union system be appointed to the board of CUDIC, and that this board be separated entirely from the board of FICOM.

This recommendation was supported by a number of individual credit unions. It was noted that, while the FIA creates a variety of entities – administrative authorities, the Commission, Superintendent, Financial Services Tribunal and CUDIC – to the credit union system these are now all 'FICOM'. Commenters indicated that there is not adequate separation of roles and responsibilities consistent with Organisation for Economic Co-operation and Development (OECD) principles, and that there is also a loss of transparency in the conduct of these authorities, partly due to the structures established by the legislation and partly due to the manner in which certain duties are discharged.

Specific concerns were raised by some credit unions about the process for and effect of the variable deposit insurance assessment policy, implemented in 2014. Some indicated that it has effectively introduced a new independent set of financial penalties that are used to 'enforce' compliance with FICOM guidelines. They indicated that they do not believe that this was intended under the FIA/CUIA.

Specific concerns were also raised in the Central 1 and other credit union submissions about the process for domestic systemically important financial institution (D-SIFI) designation of Central 1, and potentially other credit unions. Central 1 indicated that the authority to designate a D-SIFI should be provided to the Commission in the FIA, and that it would be of great benefit to the system if the D-SIFI qualifying criteria and obligations were developed and statutorily defined. Given that OSFI aligns itself with international standards, Central 1 recommends using learnings from OSFI's approach for regulating domestic systemically important banks ("D-SIBs") when considering an appropriate supervisory framework for D-SIFIs in British Columbia. Central 1 indicated that an effective framework for the regulation of D-SIFIs must not interfere with operational management. The credit union system submission similarly

noted that Central 1 is subject to additional requirements as a D-SIFI and indicated that it is important that similar future measures are not punitive to attaining the purposes of its members.

Several submissions from industry organizations representing financial institutions also commented on the importance of the regulator having adequate resources, financial or otherwise, to enable it to have an effective governance framework and carry out its responsibilities. It was noted that international industry standards highlight the importance of having appropriate supervisory oversight and expertise within the regulator. A credit union expressed concern that FICOM is under-resourced and indicated that this presents challenges for individual credit unions and the credit union system.

Additional Overall / Framework Issues Feedback

Summary of feedback received:

A number of submissions contained suggestions or comments that fit within the overall framework discussion, but did not fall within a specific area. Some of the comments were very specific or technical in nature and are not described here; however, some examples are set out below.

The credit union system submission encouraged government to take a more holistic view with respect to legislative and regulatory amendments for future environmental initiatives. For example, the submission noted that while the CUIA currently requires that credit unions send members paper notices of AGMs, government also requires that credit unions pay recycling fees for the paper correspondence that is sent to members and credit unions are subject to fines for non-compliance.

One submission recommended the creation of a new delegated administrative authority to license and regulate conduct of financial planners.

The Financial Institutions Commission recommended that the FIA explicitly include a stated purpose of the Act and set forth the objectives of FICOM, which should include promotion of safety and soundness of financial institutions; protection of the public from undue loss and unfair market conduct; and timely intervention to deal with issues before they threaten the stability of the province's financial system. The Commission also recommended that FICOM be reconstituted as structurally separate and arm's-length from government, with authority to set operating and human resource policies that allow it to carry out its mandate, and with the FIA clarifying the respective mandates of the Superintendent and the Commission. They indicated that they believe that Commission members should be independent of both government and supervised institutions. Finally, they recommended that FICOM be provided with additional well-tailored, proportionate tools and the ability to hire and retain sufficient expert staff to exercise its powers fairly and appropriately and in a timely manner.

CREDIT UNION SECTOR

Issue 1: Deposit Insurance

Deposit insurance contributes significantly to consumer confidence and market stability and is an important component of the financial system. The predominant function of deposit insurance coverage is to promote confidence and financial stability, and to prevent chaotic depositor runs. There are a number of factors to consider when determining the appropriate level and scope of deposit insurance coverage.

Questions posed in the consultation paper:

1) What is the optimal and appropriate level and system of deposit insurance?

2) Should a limit on deposit insurance protection be reintroduced, and if so, what limit? Should any limits be reviewed on a regular basis (e.g., every five or ten years)?

3) If a limit was reintroduced, should certain exceptions be made (e.g., unlimited protection for registered retirement savings products), similar to what has been done in other jurisdictions?

4) Are other reforms to BC deposit insurance coverage needed? Is the scope of coverage appropriate (i.e., should certain products or types of deposit be excluded or included)?

Summary of feedback received:

A significant number of submissions were received on this issue from credit unions, other financial sector organizations, and individuals.

Overall, most individual credit unions making submissions expressed strong support for retaining unlimited deposit insurance. A number of reasons for keeping the current rules were provided, including: financial stability for BC consumers and businesses; the economic benefit to the province outweighing any moral hazard or liability risk; and the nature of the cooperative BC credit union system reducing concerns about moral hazard. Some noted that moving away from unlimited deposit insurance may be incorrectly perceived by some consumers as government having a lack of confidence in the system.

Other reasons given for keeping unlimited deposit insurance included that: unlimited deposit insurance provides competitive neutrality with credit unions in other Western provinces and Canadian banks (which are perceived by many depositors as effectively too big to fail); Canadian banks can effectively offer depositors higher deposit coverage through multiple accounts with related financial institutions; the current system is simpler to understand, especially for unsophisticated retail depositors; and credit unions have proven to be prudent stewards of depositors' money.

The credit union system submission recommended government consider the deposit insurance regime, and any changes to it, on a principles based approach, with the regime respecting five principles:

1. Maintenance of a competitive credit union system;
2. Supports provincial money staying in the province;
3. Recognizes the value of self-regulation in the system;
4. Is easily understandable by depositors; and
5. Any transitions must be well thought out and very carefully managed.

Other credit unions recommended against maintaining unlimited deposit insurance or indicated that their business model did not rely upon it and suggested that a tiered approach be considered, potentially allowing some credit unions to maintain unlimited coverage with appropriate premium rates. Concerns about unlimited coverage included a view that unlimited deposit insurance protection requires heightened prudential oversight which hampers creativity and innovation. One submission recommended a shift to a self-insurance model by credit unions and indicated that any move away from unlimited coverage must come with a corresponding lighter regulatory approach.

Credit union submissions cautioned that any move to limited deposit insurance be undertaken carefully and with the right economic conditions. It was also recommended that, if there is a transition back to limited deposit insurance, special coverages be maintained for public sector municipality, university/college, school and hospital (MUSH) and certain other deposits. It was noted that most investment policies of these organizations limit the placing of deposits with a financial institution unless the institution has unlimited deposit insurance or is reviewed by a credit rating agency (which is not available to most credit unions).

Several organizations in the banking, investment and advisor fields also commented on deposit insurance. While some viewed unlimited deposit insurance as critical to maintaining public confidence in and competitiveness of credit unions, and to supporting brokered deposit business, others recommended that BC follow international best practices and standards and benchmark BC deposit insurance protection with the federal deposit insurance coverage of $100,000. Commenters suggested that the original reasons for the 2008 reforms, global financial instability and concerns about significant capital flight, have passed and that maintaining unlimited deposit insurance carries unjustifiable risk to the province. They further noted that other jurisdictions have moved to reduce deposit insurance changes adopted in response to the 2008 global financial crisis and recommended that BC do the same as they believe that an effective deposit insurance guarantee can still be achieved by covering most, but not all depositors, and that a significant value of deposits should not be fully covered.

Some of the submissions recommended that certain items be either exempted from limits (e.g., registered retirement savings plans) or excluded from deposit insurance coverage (e.g., foreign currency deposits).

Submissions from individuals recommended that government provide clear information on its role in the deposit insurance coverage regime. The submission from the Financial Institutions Commission recommended that government review unlimited deposit insurance and, as soon as circumstances permit, move to limit deposit insurance coverage with careful planning of the transition. The Commission indicated that it concurs with recommendations made by international organizations on deposit insurance.

Issue 2: Credit Union Governance

The basic governance framework for credit unions is set out in the CUIA, supplemented by rules in the FIA. As the credit union sector becomes increasingly sophisticated and credit union boards face greater governance responsibilities, the regulatory and corporate governance framework for credit unions may need to be updated. The current member engagement framework and certain voting processes may also need improvement.

Questions posed in the consultation paper:

1) Are changes to the credit union governance framework needed?

2) Are changes needed to foster member engagement and/or deter frivolous proposals? If so, what changes are needed? How can member engagement be increased?

3) Do CUIA rules on mergers and acquisitions provide appropriate disclosure and approval mechanisms?

4) Are changes to the voting process for election of directors and other special resolutions needed? Should there be more clarity around endorsement of nominees or proposals by a credit union? Should member thresholds and other voting processes be in legislation or credit union rules?

5) Should credit unions be required to have a common bond? Should the criteria for what can be a common bond be changed?

Summary of feedback received:

A number of submissions commented on credit union corporate governance issues, including the credit union system submission and submissions from individual credit unions and credit union members. All indicated strong support for legislation that fostered effective "democratic member control", one of the seven defining principles of cooperatives.

Governance and member engagement

On the issue of whether changes are needed to foster member engagement and/or deter frivolous proposals, the credit union system submission and a number of credit union submissions noted that the current threshold for member proposals (the lesser of 300 members and 5 percent of the membership) was adopted some time ago when credit unions were considerably smaller. These submissions recommended that the provision be updated to reflect the growth in size of credit unions and changes in technology (e.g., social media making it easier to obtain members' support for bringing forward resolutions). They indicated that the costs in terms of mailing of member materials and staff time and resources can be considerable and recommended adopting a higher threshold of a minimum of 1 percent of members (but not less than 100 members).

These submissions also recommended dropping the statutory signature requirement, and indicated it can be confusing and cumbersome. One submission recommended that government consider further limits on the frequency with which resolutions can be brought forward in a given year.

Other submissions from a credit union and some credit union members recommended maintaining the status quo on member proposals. The credit union indicated that: the current legislation has adequate tools for dealing with vexatious or irrational special resolution proposals; "nuisance" issues are generally dealt with appropriately by the membership at meetings; and open debate avoids suspicion that management is trying to control debate on issues.

Individual credit union members supported maintaining the current rules for proposals and, in addition, recommended changes to improve board accountability to members. They indicated that board control over, and recommendations respecting, director nominations are undermining democratic member control and recommended that credit unions be required to have year-round online member forums where members can create discussion on any topic of shared interest, including board elections. They also suggested that creating an ombudservice that is charged with investigating and acting on complaints of members may be useful.

One individual submission referred to certain credit union and other cooperative association practices that they believe are anti-democratic and recommended that FICOM monitor management practices and intervene promptly and forcefully. A credit union member also raised concerns about conflicts of interest among directors and officers of credit unions holding positions in other entities that are part of the business group.

The Financial Institutions Commission indicated that there are inconsistencies among credit unions regarding the provision of information to members to allow them to make informed choices on matters subject to their decision (e.g., selection of directors, mergers, acquisitions). They recommended that the legislation be amended to authorize the Commission to require credit unions to adopt disclosure and voting practices that will engage members, provide them with adequate information and encourage the exercise of voting rights, as set out in guidelines issued by the Commission.

One credit union indicated they would like to see legislation that recognizes board oversight on internal policy, strategic direction and other matters and does not pass those responsibilities on to the regulator. Another credit union noted that the current governance framework, with FICOM governance guidelines, credit union rules and the legislation's checks and balances, works well.

Major transactions

The Financial Institutions Commission recommended that the legislation provide the Commission with the authority to approve, reject and impose prudential conditions on all major transactions (i.e., acquisitions, divestitures or investments) by a financial institution.

A number of credit union submissions indicated that no changes are needed to the current framework for mergers and acquisitions. One credit union indicated that changes should not be made to current rules on acquisitions, branch closures or product and service changes, as the discretion of directors to manage or supervise the management of the credit union should not be fettered.

Common bond

The credit union system submission recommended that the legislation be amended to allow, but no longer require, a credit union to have a common bond, reflecting rules in some other

provinces and the new reality of online banking and increased mobility of members. However, the submission noted that there are diverging views among credit unions and some submissions received by the Ministry supported maintaining the common bond requirement as a foundation for credit unions and an integral part of the member/owners connection.

Other issues

Several issues not raised in the paper were also raised in credit union submissions. Some, including the credit union system submission, supported a change to allow unincorporated associations (e.g., local Toastmaster Clubs), to be members of credit unions. A submission also recommended adopting the Alberta approach of permitting a member to be able to vote individually as well as on behalf of a business of which they are the sole proprietor.

It was suggested that the language in credit union legislation appears to unintentionally limit the ability of credit unions, even with approval of members by special resolution, to update aspects of a credit union's constitution. There was a recommendation that more clarity be provided in the legislation with regard to credit unions issuing shares in series, to allow credit unions to simplify and streamline share structures and voting on major transactions. Finally, the system submission recommended that the government review and update the current language in the provisions respecting standard of care for directors and officers.

Issue 3: Capital Requirements

Capital adequacy requirements set out the amount of capital a financial institution has to hold. Holding capital helps a financial institution ensure it has the financial resources to operate successfully and, if not, helps to ensure the firm's depositors and creditors do not incur losses by enabling repayment of the amounts/investment they are owed.

Questions posed in the consultation paper:

1) Is BC's current capital framework for credit unions adequate or are changes needed?

2) Should BC's capital requirements benchmark national and international capital standards and be more principles/risk-based? Should different capital standards be applied depending on the size and complexity of financial institutions?

3) Are there issues with the commercial lending threshold, and should it be re-evaluated? Should BC consider adopting a more risk sensitive approach to commercial loans (i.e., rather than assigning all commercial lending a 100 percent risk weighting)?

4) Credit unions have less access to capital markets and may be at a disadvantage compared to other financial institutions when it comes to raising capital. Are there other innovative capital instruments available to credit unions that are not contemplated under BC's current framework and, if so, should they be?

5) Do the CUIA rules on membership and equity share redemption need to be revised?

Summary of feedback received:

The credit union system response and several credit union submissions expressed support for the Basel III objective of creating a safer global banking environment through standardization of capital and liquidity best practices.[4] However, the submissions cautioned that the new standards were designed mainly for internationally active joint-stock banks, not cooperative provincially-focused credit unions, and recommended that consideration be given to the nature of the credit union system, which has limited access to capital and which takes a collaborative approach to both capital and liquidity management. They indicated that there is no "one size fits all" approach, which has been recognized by regulators in other countries (e.g., the US Federal Reserve), and recommended that Basel III capital requirements be adapted for a cooperative framework, including allowing membership shares to count as common equity tier 1 (CET1) capital. Other credit unions indicated that the current framework was generally appropriate for credit unions, although some adjustments to aspects of the framework are needed (noted below).

Submissions from other organizations, including from banking organizations and the Financial Institutions Commission, recommended that BC adopt Basel III as the appropriate benchmark. The Commission noted that there are several BC-specific risk considerations that argue for a

[4] In 1988, the Basel Committee on Banking Supervision established an international risk-based capital adequacy framework for deposit-taking institutions (Basel 1) which required an institution to hold sufficient capital to support its particular business activities. Over the past two decades, the Basel Committee developed enhanced standards: Basel II and then Basel III, which was developed in light of the financial crisis and increases capital standards and strengthens supervisory and disclosure requirements.

stronger capital and liquidity regime, including the unlimited deposit insurance guarantee, the concentration of deposits and loans in two credit unions, and credit unions' focus and concentration on residential and commercial real estate in BC. The Commission recommended that the FIA continue to require that financial institutions hold adequate and appropriate forms of capital and liquidity but delete all current references to specific targets, which should instead be set out in guidelines issued by the Commission.

The banking organization noted that, as credit unions get into more "bank-like" business, the importance of a robust framework for credit unions has been highlighted by national and international organizations. The organization suggested that, given the growing complexity and size of credit unions, to ensure the safety and soundness of Canada's financial system as a whole the credit union movement should operate within a robust prudential policy, supervisory and regulatory framework consistent with that of federally regulated financial institutions. They also suggested that, where provincial supervisors and regulators do not adopt elements of this prudential framework, they should provide an explanation as to why they were not adopted.

Commercial lending and residential mortgage rules and restrictions

In addition to the broader question of adoption of international standards, a number of specific concerns were identified by credit unions about aspects of the current system. A key concern identified by many credit unions is the commercial lending concentration restriction that they indicate effectively caps commercial lending at 30 percent of assets. Credit unions indicated that this limit makes credit unions less competitive than banks, may result in an unbalanced investment and lending portfolio which could be too dependent on residential mortgages in some property markets, and is interfering with business plans of some credit unions looking to shift their focus away from mortgage lending and towards small business lending (to better serve members). They also recommended that the current regulations be amended so that the definition of commercial loan excludes lending to an entity, including a trust, whose sole purpose is to hold residential properties for non-commercial purposes.

Another key concern raised in the credit union system submission, and other credit union submissions, related to the current rules for residential mortgages. It was recommended that loan-to-value ratios of up to 80 percent be risk weighted at 0.35 as current BC rules are inconsistent with those in place for banks and credit unions in other jurisdictions. A mortgage insurance company also recommended that BC harmonize its rules on high ratio mortgages with other jurisdictions.

Other adjustments recommended by credit unions to benchmark federal rules included amendments to permit collective loan loss provisions to be counted towards Tier 2 capital for BC credit unions and the adoption of a 10 percent threshold deduction for investments in subsidiaries, similar to the federal bank capital framework. Some submissions noted that the current restriction on investments in subsidiaries is problematic, restricts credit union business opportunities and can be confusing. Several submissions from credit unions supported the continued maintenance of system capital as a component of credit unions' capital base.

Other input

One credit union recommended that the review look at historical barriers which limit future economic growth and recommended a thorough review and inclusion of the concept of social

capital. Several credit union submissions noted that the financial services industry is facing a much larger range of competition and changing ways of doing business due, in part, to the rapid pace of technological advancement. They indicated that, as such, how services are delivered to members may look very different in a few years and recommended that a more level regulatory playing field between existing financial institutions and the various potential newcomers into the financial services industry be considered.

Issue 4: Liquidity Requirements

Maintaining consumer confidence in a financial institution's ability to pay out deposits when demanded is vital. Liquidity regulation is intended to help ensure that financial institutions maintain a cushion of readily available funds (cash or other assets easily convertible to cash) to respond to changes in customer demands, such as an unusually high level of withdrawals.

Questions posed in the consultation paper:

1) Are the current legislated liquidity requirements for credit unions appropriate or are changes needed? If so, what changes?

2) Should BC's liquidity requirements reflect national and international liquidity standards and be more principles/risk-based? Should different standards and rules be applied depending on the size and complexity of financial institutions?

Summary of feedback received:

A number of submissions were received on the issue of credit union liquidity requirements, including from credit unions, the Financial Institutions Commission, and individuals.

The credit union system response indicated that it would be effective to apply the OSFI approach to liquidity regulation for Canadian banks on a system level for credit unions in BC, as has been implemented to some extent in Quebec. The submission indicated that Central 1, as the manager of the credit unions' liquidity vested in the mandatory liquidity pool (MLP), calculates all the core OSFI metrics (namely, the liquidity coverage ratio (LCR), net cumulative cash flow (NCCF), and net stable funding ratio (NSFR)) and also conducts a comprehensive series of systemic liquidity stress tests to safeguard the BC credit union system.

One credit union noted that Basel III standards would require that each credit union, at the smallest level, be strong on its own and that this is not the way to build a strong system or even a strong portfolio as it does not consider the structure of the credit union system. They suggested that the MLP is an effective tool in the credit union system. Another credit union emphasized the long history and importance of credit unions working together to mitigate liquidity risk.

A number of submissions, including the credit union system response, recommended that, if government decides in favour of applying the OSFI metrics to individual credit unions, mandatory deposits at Central 1 be counted as Central Bank deposits for the LCR and as unencumbered assets in the NCCF. The system response noted that Central 1 is currently working with FICOM to establish specific protocols and procedures around access to the liquidity pool that will clarify how credit unions will be able to access the liquidity pool in times of stress.

An individual suggested that there is no reason why the existing rules need to be changed given the history of credit union liquidity. A credit union indicated that BC's regulatory scheme should be tailored to the industry being regulated, rather than simply following national or international standards. They recommended that BC adopt and adhere to a principles/risk-based approach that provides objectivity, clarity and certainty in regulation.

The Financial Institutions Commission indicated that, as with capital requirements, Basel III standards for liquidity requirements also are appropriate for adoption in BC, provided they are adjusted for the specific characteristics of the BC credit union system. They indicated that the LCR is appropriate but that the liquidity framework needs to be tailored to recognize that credit unions hold liquidity at Central 1.

Issue 5: Responsibility and Regulation of Central Credit Unions

Central credit unions – Stabilization Central Credit Union and Central 1 Credit Union – are critical components of the BC credit union system. While Central 1 is currently jointly regulated by FICOM and OSFI, FICOM will soon become the sole prudential regulator of Central 1 and, accordingly, the sole prudential regulator of the primary payments and clearing provider for Canadian credit unions (outside Quebec). The rules in the CUIA and FIA were not developed in contemplation of this.

Questions posed in the consultation paper:

1) Are changes or clarifications to Stabilization Central's mandate/role, powers or corporate governance structure needed?

2) Are changes or clarifications to Central 1's mandate/role, powers or corporate governance structure needed?

3) Are any changes needed in light of the removal of federal oversight and regulation of central credit unions?

Summary of feedback received:

Stabilization Central

The submission from Stabilization Central noted that its current mandate to help protect the credit union system is impeded by challenges in the current regulatory framework, including lack of clarity about its mandate/role in the legislation, limitations on access to key information, and restricted involvement in the oversight of credit unions. Stabilization Central indicated that it was created in 1989 in response to the industry's demand for a system-based stabilization entity and originated from the principle that the credit union system should deal with its own problems and not rely on a government body to intervene and resolve the financial and operating challenges encountered by BC credit unions. They noted that there are number of additional principles upon which Stabilization Central is based, including: a significant reputational risk to credit unions should one fail; the advantage of intervention at an early stage before a regulatory standard is breached; and the significant value of a system-controlled entity that brings greater focus to prevention programs and risk mitigation.

Stabilization Central indicated that the FIA legislation does not provide much clarity with respect to its mandate and role, although it does require all credit unions to be members and authorizes FICOM to delegate powers of supervision to it. They indicated that, in many respects, the current framework sets out a voluntary stabilization regime, whereby the role and mandate of Stabilization Central are set out in its Constitution and Rules and essentially form a contractual agreement among BC credit unions. They further indicated that, although this approach is flexible, it does not support a long-term vision of the role and mandate of the stabilization authority and that the present lack of clarity is not consistent with international standards of banking supervision (e.g., one of the core principles of an effective system of banking supervision as established by the Basel Committee on Banking Supervision is that the system has clear responsibilities and objectives for each authority involved in the supervision of banks and banking groups). They indicated that this lack of clarity makes it difficult for Stabilization Central to resource itself for a long-term vision.

Stabilization Central recommended that it be granted the authority of a self-regulatory organization for British Columbia credit unions and that the FIA be amended to allow Stabilization Central to have greater access to information about credit unions (including copies of examinations, investigations and audit reports) and to add it to the listed parties with whom FICOM may share information for purposes of administering the legislation. They noted that, in the event that Stabilization Central is given significantly more powers as an enhanced self-regulatory organization, it may be necessary to consider some alternate governance structures.

The credit union system submission and the individual credit union submissions commenting on this issue supported an enhanced role for Stabilization Central. The system submission noted that a system-owned entity is a strength that reinforces the cooperative nature and prudential management of the credit union system. One credit union noted that early identification of risk and appropriate proactive guidance, addressing problems prior to regulatory intervention and examination, help to make the system stronger and the credit union noted that clarity in legislation of this important role is desirable.

Another credit union concurred with the credit union system submission's view that there is an opportunity to leverage Stabilization Central's capacities in a more fulsome way to support meaningful and responsive regulation of the credit union system. However, the credit union noted that this is a complex process that requires significant research and debate within and among credit unions throughout BC. A submission from another credit union noted that the 2008 legislative amendments and reduced cooperation among regulators have impacted the capacity of Stabilization Central to function as the important self-regulatory organization envisaged by the original 1989 legislative framework. Its submission urged the government to reinstate Stabilization Central capacity through protocols, if not statutory reforms.

Finally, one credit union submission noted that an enhanced role for Stabilization Central supports its vision of a move to a self-insurance model to manage deposit holders' risk. The credit union suggested that an enhanced self-regulatory role for Stabilization Central would allow government to reduce its fiscal accountability by transferring that burden onto the credit union system. They suggested that consideration of enhanced powers for Stabilization Central, such that they would be enabled as an in-system regulator, would include: administration of the fund for depositor protection; monitoring and examination of credit unions; support for credit unions in terms of financial assistance and obtaining services; and promoting risk management tools and activities.

Central 1

A number of submissions recognized the importance of Central 1 Credit Union. One submission from an individual credit union noted that the credit union system is just that – a system. They pointed out that Central 1 and Stabilization Central are critical components of the system. Another credit union recognized the legitimacy of Central 1 as the BC credit union system voice, representing all credit unions on those matters where a single voice is critical for input and consultation.

Another credit union submission noted that a number of significant changes on the horizon could have an unprecedented impact on the credit union system, including: how payments and settlement will work after implementation of federal legislation (Bill C-43); what the capital/liquidity landscape would look like if one or two large BC credit unions convert to the federal framework; and how these changes may necessitate changes in the role of Central 1 and FICOM. They suggested that the province considering modelling based on these anticipated changes to ensure drafted legislation is appropriate for credit unions remaining in the system.

Some submissions recommended that the review look at Central 1's role with respect to credit unions in Ontario or suggested that the lack of enforcement powers of the BC regulator in another jurisdiction means that some form of interprovincial agreement is needed.

The credit union system response referred to the CUIA provision which stipulates that Central 1 may provide services to its members if, in the opinion of the directors, the services are incidental or conducive to the sound operation of its members or attaining the purposes of its members. The submission noted that this section is critical in expressing the importance of having a system-owned entity to promote collaboration and provision of services best provided to a group (as opposed to each financial institution individually), and indicated that it is essential that regulatory changes do not interfere with Central 1's capacity in respect of "attaining the purposes of its members".

The credit union system response indicated that member credit unions are satisfied with the statutory governance framework as set out in part 6 of the CUIA. The submission indicated that the specifics of Central 1 governance are set out in it rules, which may be changed by special resolution of members, and that this procedure was used in 2015 to update the corporate governance structure by allowing for appointment of additional directors to fill any skills gaps on the board of directors and compelling directors to conduct a governance review every three years.

The submission from Central 1 provided historical background and current information about Central 1, and stated that Central 1 is a "sophisticated, rated institution, with many specialized business lines" that "has become a trusted partner of credit unions nation-wide." Central 1 recommended that the development of more specific regulatory tools be guided by public policy which has at its core a recognition that BC derives immense benefit from having a provincially-headquartered financial services sector. The Central 1 submission recommended the following measures to maximize the benefit credit unions derive from Central 1: amendment of provincial legislation to specifically address the powers currently incorporated by reference into the FIA from *the Cooperative Credit Associations Act* (Canada); application of Basel III capital and liquidity standards to Central 1, with consideration for cooperative structures; collaborative development of designation criteria and associated incremental regulatory requirements for

domestic systemically important financial institutions (D-SIFIs); collaborative development of access protocols for the mandatory liquidity pool (MLP); and a holistic review of the MLP with the objective of maximizing its overall utility for the BC credit union system.

One credit union emphasized the importance of the MLP and recommended that Central 1 be required to invest the MLP prudently, but also to achieve adequate returns. Another credit union indicated that, with upcoming federal legislative changes to central credit union regulation, the province should enter into an indemnity agreement with the Bank of Canada for liquidity events.

The Financial Institutions Commission noted that, under the current legislation, a central credit union is treated differently than all other credit unions and, as a result, FICOM's ability to exercise supervisory authority over a central credit union is more constrained than for other credit unions. The submission recommended that a central credit union be subject to the same prudential standards and guidelines as all other credit unions in BC, and any additional measures that apply to institutions designated as systemically important. On the latter issue, the Commission recommended that the FIA delineate the Commission's authority to designate institutions as systemically important and suggested that the designation process include the same indicators that were considered in identifying Central 1 as a D-SIFI (interconnectedness, limitations on substitutability, complexity and size).

The Financial Institutions Commission pointed out that the activities of Central 1 extend well beyond the boundaries of the province and that Central 1 now plays a crucial role in providing payments, clearing and liquidity services to credit union systems across the country (excluding Quebec). They indicated that, when exercising its responsibilities as primary regulator of Central 1, FICOM will need the authority to consider extra-provincial supervision issues arising out of Central 1's role in Ontario and its involvement in liquidity agreements with centrals from other provinces. They indicated that FICOM will also need more staff with a high level of supervisory expertise to take on the supplementary responsibilities vacated by OSFI.

Additional Credit Union Sector Feedback

Summary of feedback received:

A number of submissions from credit unions and others commented on the taxation of credit unions and recommended that government reconsider the decision to phase out the preferential tax rate for credit unions.

A banking organization recommended that credit unions, particularly those that are large and systemically important, be encouraged to transition to the federal credit union regime.

A credit union indicated that collective solvency has been used in favour of system crisis resolution and recommended that the ability of Central 1 to invoke a call on capital to ensure solvency be maintained. It also suggest that a credit union system-owned payments solution, with membership in the Canadian Payments Association, is the only reasonable way the system can operate and retain its unique capabilities, as forcing credit unions to use a bank-owned payments system puts credit unions at the whim of the big banks who could administer charges on the system to create an unfair competitive advantage.

Finally, some credit unions raised concerns about the impact of federal legislation, Bill C-43, on credit unions and the credit union system. They suggested that the Bill undermines the credit union approach of working collaboratively to generate co-operative scale.

INSURANCE SECTOR

Issue 1: Insurance Retailing and Licensing Exemptions

Insurance products are generally sold by licensed agents who provide advice and help consumers to understand products. However, the FIA provides a number of exemptions from the requirement that insurance be sold by a licensed agent. These exemptions generally relate to insurance to cover a good or service the consumer is acquiring from the seller (e.g., where credit insurance is sold incidentally to the arranging of credit by a financial institution).

Questions posed in the consultation paper:

1) Are the current exemptions appropriate? Should any additional exemptions be provided?

2) Should insurers have more responsibility for exempt sellers? Should they be required to provide more direct oversight?

3) Should the FIA be amended to give the Insurance Council increased powers to license and regulate incidental sellers of insurance?

4) Should certain insurance products only be sold by licensed agents? If so, which ones?

5) 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?

6) 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?

Summary of feedback received:

A large number of submissions were received on this topic. Insurance companies, other financial institutions, and related organizations generally indicated that the current approach to licensing and exemptions is working well, whereas organizations representing insurance agents, and the Insurance Council of British Columbia, generally indicated that the current exemption regime approach is not protecting consumers, is inconsistent with the principle of fair treatment of consumers, and should be significantly reformed.

Licensing exemptions

A number of submissions, including from organizations in the insurance, banking and credit union sectors, indicated that the current approach to licensing exemptions is appropriate and effective. A banking organization indicated that banks generally have long standing relationships with their customers across a broad range of products (credit cards, mortgages, deposit accounts, etc.) and that maintaining long-term, favourable relationships with customers is therefore extremely important to banks. They further indicated that the federal regulatory regime that applies to authorized insurance products offered by banks is robust and provides all of the consumer protections that are needed, and that duplicative regulatory regimes do not provide

additional protection to consumers and may create unnecessary burdens that impact the banks' ability to effectively offer these important insurance products to their customers.

The Insurance Council supported the concept of a level playing field when it comes to the licensing and regulation of the distribution of insurance products and indicated that all consumers of insurance products should be afforded equal rights and protections, regardless of how, or from whom, they purchase insurance. The Insurance Council suggested amendments to the FIA to establish responsibilities relating to the sale of insurance under a licensing exemption, and to create, either directly or indirectly, a duty on the person relying on the licensing exemption and on the insurance company whose product is being sold (further discussed below).

The Insurance Council recommended expanding exemptions in certain areas, such as for funeral directors, to streamline regulation, but removal of exemptions in other areas. The Insurance Council recommended that all insurance activities of motor vehicle dealers be regulated and the exemption removed because to exempt a group from licensing regarding the sale of one insurance product, but require licensing for other products as is the case of motor vehicle dealers, is neither appropriate nor in the public's best interests. The Insurance Council indicated that the variety of insurance products that have been developed to be sold incidental to the sale of a motor vehicle requires licensing and oversight.

An organization representing insurance brokers supported a review of the regulatory regime for insurance products sold by vehicle dealers and supported the Insurance Council having responsibility for regulating all insurance activities conducted by vehicle dealers.

The Insurance Council indicated that it has a number of concerns with the sale of credit insurance by unlicensed staff of financial institutions and others, including concerns that clients could be sold credit insurance they do not need and, more importantly, that the needs of clients may not be the paramount consideration behind the sale. A number of possible options to address its concerns with the current existing licensing exemption were proposed, including (among others): limiting the licensing exemption so that it only applies to an amount not exceeding $50,000 (as is done for the sale of funeral services insurance); including additional conditions for the licensing exemption, such as mandatory successful completion of an education program similar to that required to hold a life insurance agent licence (as is done for the travel insurance exemption); and mandatory disclosure to clients about certain issues (e.g., that he/she should seek a second opinion from a licensed life insurance or that the client is not required to purchase insurance from the financial institution as a condition of obtaining a loan or mortgage).

The Insurance Council also recommended that, if the licensing exemption for credit insurance or other insurance remains, there be a prohibition on insurance that is sold on a post-claims underwriting basis.

A number of organizations representing insurance agents indicated that BC should abolish licensing exemptions and require that incidental insurance sellers, particularly those selling credit insurance, obtain a licence. One organization representing property and casualty insurance brokers indicated that the current exemptions are failing the public in terms of coverage exclusions, claims denials, lack of proper disclosure and explanation to consumers at point of sale, the high levels of disputes, and the high levels of loss. They indicated that, due to the complexity of all insurance products, licensed insurance brokers and agents should be involved in their sales, with very few exceptions.

An organization representing life agents indicated that it does not support exemptions from licensing for anyone selling insurance products, including those sold incidental to the sale of another product, such as mortgage life/disability insurance or other forms of credit insurance sold by a financial institution or travel agent. Of particular concern to this organization is creditor insurance, such as that provided by banks to cover disability/death for mortgages, because it can extend over many years. The organization indicated that consumers should be made aware of alternatives that may be better suited to them, and receive full, transparent disclosure about how claims will be adjudicated.

Another organization representing agents indicated that the best way to protect consumers is to require the individual licensing of incidental insurance salespersons who would then be subject to proficiency and continuing education requirements and to regulatory discipline. The organization indicated that individual licensing promotes the professionalism of intermediaries and sheds greater light on the insurance aspect of the transaction.

A title insurance company indicated that there is no need for lawyers to be subject to any form of licensing or regulation by insurance regulatory authorities when providing services relating to ordering title insurance in the context of a real estate client retainer because the professional practice of providing legal advice is already a well supervised and regulated undertaking. The insurer suggested that BC consider the approach taken in Ontario, where there is an express exemption from registration as an insurance broker where the lawyer is acting for a client in his/her professional capacity. In addition, the insurer indicated that there is little value in the insurer's employees having to seek licensing as an agent or nominee as is currently being done in BC and recommended an exemption be granted.

Insurer oversight of exempt sellers

Input on this issue also differed between insurers, and organizations representing insurers or banks, and organizations representing agents. One insurer organization indicated that insurers already shoulder an appropriate level of responsibility for their exempt sellers and that the current system is working well for most such relationships. Another noted that life and health insurers are already accountable in BC for overseeing the exempt sellers that distribute their products and that this responsibility is reinforced in industry standards and guidelines.

Life insurance agents, however, indicated that more direct oversight should be required of insurers. One organization indicated that insurers should be required to ensure sellers are knowledgeable, competent, and recommend suitable products, amongst other requirements.

The Insurance Council recommended that amendments to the FIA be considered to impose specific obligations or requirements on an insurance company if a complaint arises as the result of the sale of insurance by a person who is exempt from the FIA's licensing requirements or, failing that, that licensing exemptions should come with mandatory disclosure requirements that will ensure a consumer is aware they are dealing with an unlicensed and unregulated person.

An organization representing property and casualty insurance brokers indicated that insurers should not have more responsibility for exempt sellers and that the Insurance Council and other appropriate regulators should have oversight, with no exceptions.

One credit union noted that although the current exemptions are appropriate, deeper oversight with respect to adequate training would be of benefit to consumers, and that this could be

accomplished through a mandatory, annual, online knowledge session. The credit union suggested that insurers be held accountable for the level of knowledge and training given to the exempt sellers. Another credit union indicated that unlicensed or exempted sellers should be required to have a mandated level of product knowledge.

Increase in Insurance Council powers

One organization representing property and casualty insurance brokers recommended that the FIA be amended to give the Insurance Council powers to license and regulate incidental sellers of insurance and indicated that, because of the complexity of all insurance products, licensed insurance brokers and agents should be involved in their sales, with very few exceptions. Three organizations representing life agents also supported reforms to give the Insurance Council powers to license and regulate incidental sellers.

Restricted licensing model

While no submissions favoured the restricted licensing model, and organizations representing insurance intermediaries recommended individual licensing of all persons selling insurance, a number of submissions indicated that a restricted licensing model may be an acceptable alternative.

Organizations representing life agents indicated that a restricted agent model may be an acceptable alternative but that all insurance products should be sold only by licensed agents, even if restricted licensees. One organization indicated that, if this model is adopted, concerns about lack of individual licences could be partially alleviated by onsite supervision by a fully licensed agent who could provide guidance and advice to the salesforce and be accountable to the regulator in the event of a consumer complaint, promoting consumer protection and institutional accountability.

An organization representing property and casualty insurance brokers indicated it does not support the restricted insurance agent model and that there should be fewer insurance products exempted from sales licensing and more precise regulation of the sales of these products.

Submissions from life insurer organizations indicated that, while their members prefer the status quo in BC, they would be open to the adoption of a restricted licensing model harmonized with existing regimes in other western provinces. One submission indicated that credit unions are disadvantaged relative to the banks with respect to the distribution of travel insurance as all other western provinces have adopted a restricted licensing model for banks, credit unions and travel agents. The submission recommended that BC adopt a model similar to other provinces and allow credit unions to distribute travel insurance in their branches.

Travel agents

The Insurance Council indicates that regulatory requirements could be streamlined by allowing the insurance activities of travel agents (and funeral directors) to be regulated by their principle regulator, Consumer Protection BC. This recommendation is supported by an industry association representing travel agencies. However, an organization representing insurance agents indicated that the current exemption regime for travel insurance is not working in a manner that provides consistent protection to the public and recommended that travel insurance, and the regulatory structure relating to its sale, be reviewed.

Issue 2: Regulation of Insurance Intermediaries

The Insurance Council of British Columbia is established under the FIA and its mandate is to provide a robust level of protection to the public respecting the sale of insurance products and services by licensed insurance agents. While all Insurance Council members are appointed by government in BC, councils in some other provinces have members elected by industry or appointed by major industry associations. Most BC professional self-regulatory bodies in other industries have elected members, or a mix of elected and appointed members.

Questions posed in the consultation paper:

1) Should some or all members of the Insurance Council of BC be elected?

2) 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?

3) 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?

4) Should special brokers in BC be required to obtain licences directly from FICOM?

5) Are changes needed to the licensing framework for insurance adjusters?

Summary of feedback received:

Election of Insurance Council members

A number of submissions were received about the appointment process for Insurance Council members. The Insurance Council recommended that the layperson and insurance company representative positions continue to be appointed by Order in Council (OIC), but that life, general, and adjuster licensee representatives be elected. The Insurance Council also recommended that only persons who are serving, or have served, at least one two-year term as a non-voting member be eligible for election as a voting member.

Several organizations representing insurance agents commented on this issue. One supported the election of members of the Insurance Council because it broadens the transparency of and engagement in the process, and also suggested that the governance structure of the Insurance Council be reviewed. Others recommended that the Insurance Council of BC be structured like councils in other provinces, with a mix of members elected by industry and appointed by major industry associations. Another indicated that the issue is not whether insurance council members are elected or appointed, but rather whether they have sufficient understanding of the distribution of insurance products and how insurers operate to be fair and effective in how they regulate and how they discipline wrongdoers.

Some insurer organizations also commented on this issue, supporting appointment of Insurance Council members by industry associations, including those from alternative distribution channels (e.g., direct insurance), and recommending that the residency requirement be repealed to allow for better representation.

A number of submissions suggested that it was essential that Insurance Council members be knowledgeable about the industry and committed to good governance, fairness, transparency and accountability. One submission suggested that elections do not always result in the best choice and that there should be consideration of the model used by FICOM in the credit union system of recommended candidates.

Council regulatory tools and structure

The Insurance Council recommended that the representation of licensed insurance agents and salespersons as voting members be increased. The Insurance Council also made a number of other recommendations, including amending the FIA to give a hearing committee the authority to decide a matter, not just prepare a report to Council, as the hearing committee may be the most appropriate decision maker in some circumstances. Other recommendations included: increasing maximum fines; allowing Council to assess investigation costs even where no other disciplinary action is warranted; clarifying that Council may publish its decisions on its website or other websites; and expanding Council's rule-making authority to include regulation of the replacement of life insurance contracts.

Several submissions indicated either that they were unaware of any deficiencies in the Insurance Council's tools or structure or that the Insurance Council already has the right tools, while others recommended that the review include an assessment of the Insurance Council's regulatory tools and structure. One organization recommended improved coordination between supervisory and intermediary authorities and another encouraged better coordination with other jurisdictions on licensing processes and supported a shared electronic licensing system. An organization representing agents noted that the Council has done a commendable job with regard to agent licensing and conduct matters, but that it is structurally limited to what it can do because it is structured on a product sector basis. The organization indicated that it is time to fundamentally rethink the regulation of financial services and professionals in the advice industry.

Oversight framework

Most submissions commenting on the oversight framework indicated either that the framework is effective or that they were unaware of any problems with it. One organization noted that the key elements making the existing framework effective include the right to a hearing and the requirement to issue reasons in writing. They indicated that it is critical to the functioning of the system that the Financial Services Tribunal remains an independent entity. One organization representing property and casualty insurance brokers recommended that a review of the effectiveness of the oversight framework be part of an overall review of the Insurance Council.

Special brokers

An organization representing brokers indicated that there are no issues with the current framework in BC and that no changes are required. The Insurance Council also indicated that it has the tools necessary to regulate the various models of distribution of insurance. Another submission indicated support for special brokers continuing to be under the umbrella of the Insurance Council.

Adjusters

One organization representing insurers indicated that licensing of adjusters within a jurisdiction hampers an insurer's ability to respond in the event of a large scale catastrophe and that a license is an unnecessary regulatory burden as adjustors act on behalf and under supervision of an insurer within an established set of parameters. The Insurance Council indicated that it is confident the current regulatory model can accommodate the timely movement of additional insurance adjusters into BC when required. Another submission suggested that the current framework is working well.

Issue 3: Protection of Confidential Information

Regulators need adequate information from regulated entities to be effective, and risk-based regulatory models rely on companies implementing a self-assessment system that identifies risk and reports compliance to the regulator. Insurers have expressed concern that these self-assessments may not be adequately protected. This may impact the quality and timeliness of disclosure and, consequently, the ability of the regulator to protect the public interest. Concerns about the protection of information are also relevant to cooperation and sharing of information among regulators.

Questions posed in the consultation paper:

1) 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?

2) 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?

3) 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?

Summary of feedback received:

Insurance industry associations and organizations indicated that protection of confidential information provided to regulators to assist in their regulatory oversight function is an issue of great importance to the industry.

The insurance industry associations indicated that the sharing of commercially sensitive, confidential information with regulators can be essential for effective oversight of financial services markets, and that the current legislation in BC does not achieve the right balance between open government and appropriate protection of confidential information relating to financial institutions. They recommended that the legislation be amended to encourage insurers to share this information by protecting it from disclosure.

Insurance associations recommended that government exempt insurer information from freedom of information requests and identify information provided for a self-evaluative audit as privileged information. They indicated that, unlike BC's FIA, the Alberta *Insurance Act*

provides additional protection for insurer information, including self-evaluative privilege and prohibiting disclosure for freedom of information purposes. It was also noted that Manitoba and Saskatchewan have adopted self-evaluative privilege provisions as part of recent insurance legislation reforms.

The insurance associations noted that privilege for self-assessment documents would lead to more candid responses and a greater ability on the part of the regulator to develop guidance that responds to the real challenges that insurers are facing; that it promotes open and transparent self-assessments by companies and ultimately contributes to consumer protection improvements through regulators' use of such assessments; and that the benefits of implementing a compliance self-evaluative privilege outweigh the costs of limiting evidence available in court proceedings. It was also noted that, under a compliance self-evaluative privilege, 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.

Another organization noted that freedom of information legislation is about making government accountable to the public by making its operations more transparent; it is not about allowing the public to indirectly obtain confidential information about the private businesses that government regulates.

One submission suggested that privacy legislation in BC has reduced the capacity of government to protect consumers by keeping financial results and consumer complaint data secret. It also noted that disclosure practices in British Columbia fall short of other those in other jurisdictions which make available to consumers and other stakeholders basic information about the health of insurance companies.

Another submission noted that there needs to be balance between the rights of consumers and the stability of the system, but that it is not aware of any issues which take this out of balance currently.

Issue 4: Long-term Disability Plans

The provision of long-term disability (LTD) benefits by an employer is optional, and employers (and other benefit plan sponsors) in BC are not required to insure their LTD benefit plans. LTD plans insured by a licensed insurance company are regulated as an insurance product, but those managed directly by the employer are not. The federal and Ontario governments require LTD benefit plans to be insured to protect these benefits if an employer becomes insolvent.

Questions posed in the consultation paper:

1) Does BC have the right approach to long term disability benefits?

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

3) Are there consumer protection issues related to Administrative Services Only (ASO) plans? How can consumer awareness be increased?

Summary of feedback received:

Submissions received on this issue generally supported requiring LTD benefit plans to be insured. Insurers and industry associations encouraged BC to change its current approach to LTD benefit plans and follow the lead of the federal and Ontario governments which require these plans to be underwritten by licensed insurers.

An insurance industry association noted that when an employer becomes insolvent and its LTD plan is uninsured, disabled employees can sometimes lose their benefits. The association indicated 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, as government regulators monitor insurance companies to ensure they maintain sufficient assets to meet their liabilities. They further noted that, should the assets of the insurer be insufficient to cover all claims, long term disabled employees would be covered [to a certain extent] by the industry's compensation association (Assuris).

One submission noted that the current approach of requiring the employer to notify employees that an ASO (administrative services only) plan is not provided by a licensed insurer does not protect consumers as many individuals do not understand the difference between an ASO and an insured plan and, even if they do, may not consider the risk material enough to warrant the purchase of additional insured coverage. Another submission noted that employees do not necessarily understand the implications of the various options and that it would be helpful if employers would consider involving professional advisors to support their employees, explain the program offered, and avoid confusion at the outset.

One submission indicated that the suggestions for addressing concerns about LTDs are positive, but encouraged the province to consider the cost of implementation and the accessibility of insurance for some organizations. It suggested that, whatever model is adopted, employers/sponsors should be required to adequately and regularly provide and explain their benefit plans, and if/how they are insured, to employees.

Issue 5: Rebating

Rebating refers to the practice of giving money or other items of value to a customer to induce the sale of an insurance product. The FIA formerly had a very broad prohibition on rebating for insurance products, but after the previous review of the FIA the legislation was amended to eliminate the blanket prohibition and allow rebating up to a prescribed maximum of 25 percent of the value of the premium.

Questions posed in the consultation paper:

1) Is the current FIA rebating framework effective and appropriate?

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

3) 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?

Summary of feedback received:

Many submissions provided input about rebating, with a wide divergence of views expressed. Some submissions recommended returning to an absolute prohibition on any rebating of premiums and others recommended eliminating the prohibition entirely (i.e., not regulating rebating and leaving it up to agents to decide whether to provide a rebate or not). Others generally supported the current approach, with or without certain modifications.

Organizations representing insurance brokers and agents, in both the property and casualty and life insurance fields, recommended that government return to a full prohibition on rebating, similar to that for coercive tied selling. They noted that insurers set rates, not insurance brokers, and that any rebating offered by the agent or broker is a sacrifice of his/her commission (and that the current allowable rebate of 25 percent of the premium exceeds the amount of commission paid to property and casualty insurance brokers in almost all cases). These organizations indicated that even nominal rebating does more harm than good to the industry and consumers and creates the possibility of tempting the consumer to purchase products for reasons other than the inherent value of the product to the consumer. They further stated that rebating is involved in almost all significant and costly frauds that have been perpetrated on the insurance industry for decades. They recommended that rebating be prohibited, consistent with the approach of most jurisdictions in Canada.

Others indicated that rebating may create an appearance of affordability that is not sustainable, and that 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.

Some organizations representing property and casualty insurers, however, recommended eliminating any regulation of rebating. One noted that the robustness of current prudential and market conduct regulations, both federally and provincially, has eliminated any argument that may have existed in the past for restrictions on rebating and that the rebating threshold reduces competition and provides little, if any, benefit to consumers.

Others were generally supportive of the current provisions, or suggested modifying them somewhat. For example, one organization representing life and health insurers indicated that the current rebating framework represents an appropriate balancing of competing interests and that the current threshold should not be increased. The Insurance Council recommended that rebating be limited to the amount of the commission received by a licensee for the sale of that insurance product [as opposed to the premium].

A few submissions provided input about referrals. Industry associations representing agents generally indicated that current industry requirements to disclose referral arrangements to consumers are adequate, effective and consistent with voluntary and mandated standards in other jurisdictions. One noted that it is important for consumers to understand a referral fee may be paid, but that the quantum need not be disclosed.

Some submissions suggested that agents should be required to disclose that they are receiving a fee for referring a client to another person, although not the amount of that fee, but that agents should not have to disclose where they pay a referral or finder fee for lead generation services. A different submission indicated support for ongoing disclosure of referral payments.

Additional Insurance Sector Feedback

Summary of feedback received:

Some feedback not directly related to the insurance sector issues raised in the initial public consultation paper was also provided.

In addition, a credit union questioned the purpose of physical separation between insurance and financial services business and whether it was in the best interest of the consumer or advancing any consumer protection measures. The importance and impact of the ICBC model on the insurance industry was also noted.

TRUST SECTOR

Issue 1: Regulatory Framework for Trust Companies

BC regulates provincially incorporated trust-only trust companies, but the primary solvency regulator of extra-provincial trust companies operating in BC (including all deposit-taking trust companies) is the regulator in their home jurisdiction. Provinces, including BC, are responsible for the market conduct of all trust companies (trust-only and deposit-taking) in their jurisdiction.

Questions posed in the consultation paper:

1) Are there concerns with potential conflicts of interest between financial institutions and subsidiary trust companies? Is further regulation needed in this area? If so, how should the problem be addressed (e.g., through specific trust company regulations, a code of market conduct, or regulation of the primary entity)?

2) Do the capital requirements for provincial trust-only trust companies need to be updated?

3) Are there other issues with the current provincial framework for oversight of trust companies?

Summary of feedback received:

One submission called for government to adopt minimum standards or a code of conduct to regulate interest generated from trust funds where a trustee and agent are jointly responsible for administration of uninvested cash balances in registered accounts (i.e., RRSPs and RRIFs). The submission suggests that legislative changes are needed to require that interest income earned through investment of client funds must be paid directly into client's account. It suggested that the channelling of payments through a corporate affiliate or other third party should be disallowed. The submission also recommended that the FIA provision which permits the Financial Institutions Commission to prohibit the use of a form of contract that is unfair, misleading or deceptive, be amended to clearly apply to trust documents.

A submission from a banking organization noted that federally regulated trust companies are subject to both federal regulation and fiduciary obligations established and enforced by the courts. The organization believes that concerns about conflicts of interest between federally regulated financial institutions and their federally incorporated trust companies appear misplaced. With respect to the concerns raised about uninvested cash balances, the organization noted that: the amounts held in registered accounts are not meant to be long-term, interest bearing accounts, but rather short-term, temporary accounts that generally hold small amounts of cash to be re-invested; engaging an agent other than a bank-owned subsidiary to set the interest rate to be paid would result in less efficiency and increased costs and would not be in the best interest of consumers; and consumers remain free to move such balances to other, higher interest bearing accounts if they wish.

One submission from a credit union indicated that there has been so much consolidation in the industry that it has become unclear, from a consumer perspective, what a trust company does versus a bank or credit union. The submission recommended increased clarity, but did not support more extensive legislation or duplication of trust law. It indicated that the powers credit

unions can exercise in relation to certain trust activities should be clearer and that credit unions using such powers, and any trust company, should have to comply with the higher fiduciary obligations of a trustee. It also suggested that such clarity could aid in the question of conflicts of interest and that, for subsidiary trust companies, independence of directors can be an important step to resolve conflicts of interest. The submission also noted that it would make sense to harmonize capital requirements with those noted under Basel III, with appropriate modifications to reflect the credit union legal structure and different risk profile.

Issue 2: Regulation of Trust Business

Historically, financial services sector legislation has only regulated trust business undertaken by corporations. Although some individuals conducting trust business may be regulated under other frameworks (e.g., lawyers and real estate or bankruptcy trustees), individuals and non-corporate entities offering trust services are not subject to licensing under financial institutions statutes, and, unlike for deposit and insurance business, there is no general prohibition against individuals and non-corporate entities undertaking trust business.

Questions posed in the consultation paper:

1) Should financial institutions legislation be expanded to regulate or generally prohibit (subject to exemptions) trust business carried on by individuals or associations?

2) If the legislation is expanded to regulate trust business carried on by individuals or associations, what exemptions should be provided (e.g., for lawyers, real estate agents, bankruptcy trustees or individuals providing services to corporate entities)? Should a distinction be made between trust activities for personal and business related purposes?

3) Are further exemptions needed in respect of trust business undertaken by corporate entities (e.g., broker dealers)?

4) Given that practically all deposit-taking trust companies are now federally regulated, should BC still be requiring trust companies to obtain a business authorization? Does this remain a core element of financial institutions regulation?

5) Should government consider adopting minimum standards, a code of conduct or another mechanism to regulate interest generated from trust funds, where the interest from the fund benefits third parties or the public?

Summary of feedback received:

There was general support for expanded legislation to regulate trust business carried on by individuals or associations. One association representing financial advisors and planners suggested that financial institutions legislation be expanded to cover trust services performed by individuals or associations, with an exemption for those who do not offer trust services as a commercial business to the general public. A submission from a group of trust companies recommended that work as a professional executor/trustee be defined and that any individual or corporation deemed to be operating as a professional executor or providing trust services professionally be ordered to obtain a license or face administrative penalties. Other submissions also supported the regulation of individuals and associations that carry on trust business.

The British Columbia Council to Reduce Elder Abuse (CREA) raised concerns that unregulated individuals offering trust services may pose a serious risk to older adults and recommended that government further explore this issue. The Public Guardian and Trustee of British Columbia recommended regulation of individuals and associations who offer trust services to ensure that the public is served by competent and ethical fiduciaries. The Public Guardian and Trustee also suggested that, as private fiduciaries with a professional designation (e.g., lawyers, accountants) are already bound by the profession's code of conduct and are insured, they could be exempt from licensing requirements.

One credit union indicated that there are efficiencies and consumer advantages to individuals conducting trust business, as some institutions will not service smaller estate and trust clients, leaving those consumers with little or no choice. However, it suggested that this area is open to significant abuse, conflict of interest, and risk to individual consumers of these services and so requires regulatory oversight. The credit union further suggested that to maintain efficiency, regulation should be appropriately sized to the operations offered and the level of risk to consumers. It indicated that regulation should extend to all individuals who carry on a trust business, whether or not they are designated professionals, with the relevant distinction being between those individuals who perform these services as a business versus for personal purposes, such as family members administering an estate or acting as a power of attorney for a relative.

A submission from an investment industry organization noted that its members have concerns about an information bulletin issued by FICOM indicating that under the FIA, deposit agents cannot act as nominee and when acting as trustee must be authorized. The organization indicated that it would be impractical and inconsistent with securities legislation for dealers to require each client to become a member of a credit union. It recommended against an interpretation that investment dealers acting as deposit agents, holding credit union GICs in nominee accounts, are engaged in "unauthorized" trust business. It further indicated that, if such an interpretation is taken, an exemption under the FIA is necessary to permit investment dealers acting as deposit agents for credit unions and investment dealers to hold credit union GIC deposits in nominee name.

Some submissions suggested that federally incorporated trust companies should only be subject to federal legislation. For example, one submission from an association representing banks indicated a strong belief that federally incorporated trust companies and the banks that own them should only be subject to federal legislation and regulation, and recommended that any twofold oversight structures be removed. Another submission suggested that since the federally chartered banks have acquired most of the larger trust companies nationally, with only five BC-incorporated trust companies remaining, government may wish to consider withdrawal from regulation of the trust sector completely, and amendment of the CUIA to facilitate credit union operation in this sector, thereby strengthening the credit union sector and removing a trust company regulatory oversight obligation from FICOM. A credit union indicated that it seems most prudent and efficient to have a national regulatory framework that is either administered federally or provincially, but not both.

Some submissions suggested that government consider adopting a code of conduct that stipulates, in general terms, the allowable uses of interest that is generated from trust funds (e.g., that earned interest be used for charitable purposes or for the public benefit).