

Naomi Solomon
Managing Director
nsolomon@iiac.ca

Via Email: fiareview@gov.bc.ca

September 16, 2015

FIA & CUIA Review
Policy & Legislation Division
Ministry of Finance
PO Box 9470 Stn Prov Govt
Victoria B.C. V8W 9V8

Dear Sirs / Mesdames:

Re: Financial Institutions Act (FIU) & Credit Union Incorporation Act (CUIA) Review – Initial Public Consultation Paper (June 2015)

The Investment Industry Association of Canada (the "IIAC") appreciates the opportunity to provide input on the FIA & CUIA Review Initial Public Consultation Paper (the "Initial Consultation"). The IIAC is the national association representing the investment industry's position on securities regulation, public policy and industry issues on behalf of our 148 investment dealer member firms ("IIAC Members") that are regulated by the Investment Industry Regulatory Organization of Canada ("IIROC"). These dealer firms are the key intermediaries in Canadian capital markets, accounting for the vast majority of financial advisory services, securities trading and underwriting in public and private markets for governments and corporations that is fundamental to economic growth.

The IIAC is concerned that restrictions under FIA legislation on permitted corporate trust business and how British Columbia credit unions must receive deposits¹ may be interpreted in an overly broad manner that would capture IIROC Dealer Member intermediaries acting as deposit agents, and may result in unintended consequences impacting dealers and investors. Dealers ought not be subject to FIA restrictions intended for other purposes or alternatively, if a broad interpretation of the FIA is taken,

¹ Pursuant to section 82 of the FIA, a credit union can generally only accept deposits from members, a member acting as trustee or a person acting as trustee or agent, however under section 70 of the FIA, a corporation is prohibited from carrying on trust business unless it is a trust company or a corporation carrying on a prescribed trust business or class of trust business.

dealers must be exempted from the subject restrictions so as not to create an artificial barrier to legitimate deposit-taking business in respect of B.C. credit union guaranteed investment certificates (BCCU GICs) that are accepted and held in nominee accounts on behalf of clients by IIROC Dealer Members.

The IIAC is also concerned about any contemplated limitation to deposit insurance coverage that may affect BCCU GIC investors as such change would practically inhibit this deposit-taking business in which IIAC's Members act as intermediaries.

Background

The B.C. provincial deposit business increased its competitiveness as a result of the lifting of limitations on deposit insurance coverage in 2008, in response to the global financial crisis. As a result, British Columbia developed a robust credit union financial services sector, with B.C. credit unions taking around one quarter of deposits as a fraction of total financial institution deposits in British Columbia². In an environment of increased investment in BCCU GICs, investment dealers located in B.C. have participated as intermediaries holding BCCU GICs in nominee accounts for their clients.

The IIAC's Members have been able to facilitate their clients' investment objectives and needs through BCCU GICs which have been attractive to both retail and institutional investors given, among other things, the public confidence engendered by unlimited deposit coverage for these investments. Institutional investors have been able to use BCCU GICs as a means to retain investment in B.C. and B.C. credit unions have been able to compete for these deposits in the absence of public bond ratings.

Investment dealers in B.C. have, however, been alerted to the current review by B.C.'s Financial Institution Commission (FICOM) of credit union compliance with the FIA in regard to BCCU GIC deposits held by investment dealers in nominee accounts on behalf of clients. FICOM issued an information bulletin³ (the "information bulletin") in which it was indicated that deposit agents cannot act as nominee and when acting as trustee must be authorized. At this time, the Initial Consultation is considering the issue of regulation of trust business undertaken by corporate entities and the need for investment dealer exemptions, as well as whether to limit deposit insurance coverage in the context of the global standards. The IIAC is taking the opportunity to respond to the Initial Consultation in the circumstances, in order to prompt a review of the application of the information bulletin in respect of dealers' deposit taking business and any needed change to the regulatory framework to allow continued participation by investment dealer intermediaries in the B.C. deposit-taking business, as well as to support continuing unlimited deposit insurance coverage for BCCU GICs in order not to undermine the public trust and competitiveness of B.C.'s deposit-taking business.

² [Credit Union Supervision in British Columbia](#), Auditor General of British Columbia, March 2014 (the "AG Report").

³ See Bulletin Number [CU-2014-02](#).

Initial Consultation Question on Regulation of Trust Business

The IIAC's Members that act as deposit agent in respect of BCCU GICs are concerned with the information bulletin issued by FICOM indicating that under the FIA, deposit agents cannot act as nominee and when acting as trustee must be authorized. If FICOM interprets that acting as nominee is equivalent to engaging in trust business, this would be an overly broad application of the FIA restrictions since holding assets in a nominee account does not result in dealers undertaking a trust business. It would also create a conflict between the requirements under securities legislation which govern investment dealers and the legislation governing credit unions and trust companies in relation to the deposit-taking business in which dealers are involved as deposit agents, producing an ineffective regulatory framework that would unreasonably restrict dealers in B.C. from engaging in legitimate provincial deposit-taking business.

Dealers acting as deposit agent for credit unions register their clients' BCCU GIC deposits in nominee name rather than in client name with the credit union, because it is inefficient to require each client to become a credit union member and for each client's deposit to be held in a separate account requiring new account documentation, it facilitates tax reporting that is handled by dealers and generally it is required that dealers hold client assets in nominee name under securities legislation⁴. Dealers cannot maintain a material number or amount of off-book client named positions and to the extent possible, off-book client name positions are required to be converted into on-book nominee name positions⁵. Otherwise, dealers must produce a report on client positions held outside the dealer, which is onerous and costly for dealers that would have to build this capability not generally now existing, merely for the purpose of holding these BCCU GICs in client name despite lacking feasibility.

Given FICOM's current review of credit union compliance with the FIA, the IIAC's Members are concerned that credit unions could be restricted from continuing to take deposits registered in nominee name by the dealer acting as deposit agent. Dealers will have no practical recourse if the BCCU GICs are not permitted to be held in nominee name. As a temporary measure, some dealers have become members of credit unions while holding BCCU GIC deposits in nominee accounts; however this does not address whether the FIA would be interpreted as prohibiting dealers from acting as deposit agent if dealers hold the BCCU GICs in nominee accounts, on the basis that this is "unauthorized" trust business.

In the result, if this is FICOM's interpretation, it will be impracticable for dealer intermediaries to conduct this deposit-taking business in B.C. although it has been structured in this manner for many years. The artificial barrier under such an interpretation of the regulatory framework would arguably be detrimental to investors, credit unions and the dealer intermediaries who wish to service clients. No legitimate public protection rationale is advanced by prohibiting dealers from holding BCCU GICs for clients in nominee name, as the dealers are subject to self-regulatory organization (SRO) segregation

⁴ See s. 14.6 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) and s. 14.6 of the Companion Policy to NI 31-103 (31-103CP).

⁵ See s. 14.14.1 of NI 31-103 and IIROC Notice [15-0013](#) - *Client Relationship Model - Phase 2* (January 19, 2015), at pp. 6, 9.

rules supported by written custodial agreements that contain prescribed terms and conditions that serve to meet the protection of customer property entrusted to a member firm, and dealers are subject to additional capital requirements if proper custodial documentation is not obtained.⁶

In the circumstances, in answer to the question of whether further exemptions are needed in respect of trust business undertaken by corporate entities, in particular broker-dealers, the IIAC recommends that FICOM not adopt an interpretation of the application of the FIA that would consider investment dealers acting as deposit agents that hold BCCU GICs in nominee accounts as engaged in “unauthorized” trust business and that the B.C. Ministry of Finance enact in the FIA a provision clearly allowing investment dealers to hold BCCU GIC deposits in nominee name. In the alternative, if a broad interpretation of the FIA restrictions is maintained that would capture dealers acting as deposit agent for credit unions, a regulatory exemption is necessary to be granted from s.70 of the FIA to investment dealers acting as deposit agents for credit unions, to permit dealers to hold BCCU GICs in nominee accounts.⁷ The goal would be to ensure an effective and balanced regulatory framework, which will help investors in B.C. continue to benefit fully from the financial services sector and maintain their confidence in it. A prescriptive prohibition with a foundation that is not clearly substantiated should not be imposed on legitimate provincial deposit-taking business undertaken by investment dealers that are subject to SRO rules. Preventing dealers from continuing to act as intermediaries in respect of B.C.’s deposit-taking business that is well-established with the public would be unproductive.

Initial Consultation Question on Deposit Insurance Coverage

The IIAC’s Members that are engaged as intermediaries in B.C.’s deposit-taking business are also concerned that limiting deposit insurance coverage will have a detrimental impact and that this issue should be addressed together with the application of the information bulletin published by FICOM respecting investment dealers acting as deposit agent for credit unions.

Clarity on continued recourse to deposit insurance coverage is necessary to avoid negative market consequences. Currently, as acknowledged in the Initial Consultation, the Credit Union Deposit Insurance Corporation (CUDIC)⁸ represents that all money on deposit with a BC credit union, regardless of whether it is placed directly with the credit union or through a broker is 100 percent guaranteed. Recourse to unlimited deposit insurance for BCCU GICs if purchased through a broker and held in a nominee account should remain in place.

By comparison, the Canada Deposit Insurance Corporation (CDIC) does provide recourse to coverage for each beneficiary of “in trust for” accounts, including such accounts held by dealers subject to SRO rules.⁹

⁶ See IIROC Notice [MR-0080](#) – “Evidence of Deposits” and Custody Agreements (July 1, 2001).

⁷ See examples of exemptions from s. 70 of the FIA: [B.C. Reg. 173/2008 Trust and Deposit Business Exemption Regulation](#), and [BC Reg 142/2000 Mutual Fund Trustee Exemption Regulation](#).

⁸ The statutory corporation of the BC government administered by FICOM which administers and operates the deposit insurance fund.

⁹ See CDIC website: [How does the CDIC coverage work for ITF Accounts?](#)

Investors in BCCU GICs should also have coverage eligibility in the same manner when holding the investment in a nominee account. Each beneficiary holding BCCU GICs in dealer nominee accounts should remain eligible for deposit insurance coverage, so that clients of investment dealers will not shift away from holding BCCU GIC investments and to allow provincial deposit-taking business to effectively continue. This would also be aligned with the principle that deposit insurance should adequately cover a large majority of depositors.

In addition, maintaining unlimited deposit insurance coverage is critical so as not to undermine public confidence in B.C. credit union financial institutions and to remain competitive. The other western provinces have unlimited coverage and Ontario is considering increasing deposit insurance coverage¹⁰, demonstrating a competitive environment for credit union deposit-taking business across Canada. Retail and institutional clients of investment dealers (including public sector depositors) will not be served by limiting coverage for BCCU GICs as it will negatively impact confidence and investment in BCCU GICs and investors could instead choose to place their investments in other jurisdictions. A limitation on coverage would also be questionable in view of credit unions' established sound risk management as it was recognized in B.C.'s AG Report that the insurance deposit fund size has been properly maintained since the limit on deposit insurance was removed (the funding for which comes from the credit unions).

In conclusion, the IIAC advocates that in conjunction with a review of the application of the information bulletin issued by FICOM that may impact investment dealers acting as deposit agent for credit unions; that deposit insurance coverage for these instruments remain payable to the beneficiaries of the nominee accounts and be unlimited. The IIAC urges the Ministry of Finance to expedite the resolution of these issues in order to eliminate unnecessary regulation and promote financial stability and certainty so that the financial services sector, including its intermediary dealer entities, can continue to service clients' investment needs as appropriate with BCCU GICs.

Thank you for considering our submission. We would be pleased to meet in person with the Ministry of Finance to discuss our comments on the Initial Consultation and welcome the opportunity for ongoing dialogue in the consultation process.

Yours sincerely,

"Naomi Solomon"

¹⁰ See Ontario Minister of Finance's [Credit Unions and Caisses Populaires Act, 1994 - Five Year Review Consultation Paper 2014](#) . A majority of respondents to Ontario's consultation have requested increased deposit insurance coverage, including recommending that deposit insurance coverage be unlimited.