

CANADA DEPOSIT INSURANCE CORPORATION

REVIEW OF

DEPOSIT INSURANCE INFORMATION BY-LAW

CONSULTATION PAPER

FEBRUARY 2003

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INTRODUCTION

The *Deposit Insurance Information By-law* (By-law) was introduced in 1996 by the Canada Deposit Insurance Corporation (CDIC) to govern statements made by financial institutions about their standing as a CDIC member institution and about the eligibility of certain deposits for deposit insurance.

The By-law has been in place for over five years. A general review is timely to ensure that it continues to reflect the principles on which it was based. These principles are that:

- An informed public serves the interests of consumers and the financial system as a whole;
- Consumers bear responsibility to become reasonably informed about deposit insurance and to make their own decisions;
- Effectiveness of delivery and affordability of information on deposit insurance are primary considerations;
- Pertinent information on eligibility/non-eligibility of deposits should be made available at the relevant distribution point; and,
- Practices and procedures for providing information should be straightforward and open to review.

CDIC believes that these principles continue to be relevant for purposes of this review.

BACKGROUND

The primary focus of the current By-law is to provide accurate and timely information about deposit insurance where depositors conduct most of their banking: – at branches of member institutions.

The By-law addresses what representations can be made about what is, or is not, a deposit eligible for deposit insurance, and who is a member institution. The overriding consideration for any representation is to ensure accuracy and statements that are not misleading.

When first introduced, the By-law relieved member institutions of certain restrictions previously imposed on what could be represented about deposit insurance. At the same time, the By-law maintained a degree of control over the content of information provided to depositors, about who was a member institution and what constituted an insured deposit.

A procedure to confirm with CDIC whether deposit products being offered were eligible for deposit insurance was established. This resulted in the development of the deposit register and a related clearance process. The By-law currently requires member institutions to maintain deposit registers at each place of business or point of service and to make these registers available to clients upon request.

The current By-law also permits member institutions to provide limited information to depositors about CDIC and CDIC insurance coverage. For example, it regulates the use by member institutions of the words "Member of Canada Deposit Insurance Corporation" and the use of the CDIC membership sign. Furthermore, in certain circumstances it requires members to disclose the fact that a deposit is not insured by CDIC. This is termed "negative stamping".

The form of CDIC's membership sign (decal) is contained in Schedule I of the By-law while the text of the CDIC brochure *Protecting Your Deposits* is provided in Schedule II. The full text of the current By-law is attached to this paper as Appendix A.

WHY A REVIEW?

At the time the By-law was first developed, it was understood there would be advances made in the industry regarding the future distribution of deposit products. Since these were not fully apparent in 1996, CDIC chose to address these issues later by means of a review. In addition, it is now timely to review whether the mechanisms of the deposit register and the related clearance process introduced with the By-law have remained effective.

Moreover, many relevant issues flowing from recent developments in the financial services industry are not currently addressed by the By-law. These include, for example: the evolution of channels of product distribution including the electronic delivery of products; product delivery under a brand name; the sharing of locations (both physically and electronically) by member institutions with other members and/or with non-members; the marketing of products of member institutions with the products of non-member institutions; and, the marketing of member products by non-members. Further, the advent of Canadian wholesale banks as well as the potential for member institutions to become subsidiaries in large holding company structures can foster confusion for depositors.

It is important that appropriate and accurate information is given to depositors in order for them to make informed investment decisions. However, survey and focus group evidence confirms that there continues to be confusion among a large segment of the population regarding what products are eligible for deposit insurance. Much of the confusion pertains to the eligibility of mutual funds and foreign currency deposits as well as to the limitations on coverage.

Accordingly, the focus of this review is on matters that enhance depositor awareness of deposit insurance eligibility and its limitations. Enhanced awareness about deposit insurance information will assist depositors in making better-informed investment decisions. CDIC is seeking a balance between the strategies of providing information to depositors on its own, for example by means of annual public awareness campaigns, and/or requiring that its members provide more information to their depositors. Surveys and focus groups have indicated repeatedly that depositors expect information about deposit insurance to come to them from their financial institutions.

REVIEW PROCESS

CDIC has taken a consultative approach to this review. A working group made up of member institutions¹, the Canadian Bankers Association and the Trust Companies Association of Canada was established to discuss various aspects of the By-law, the related clearance process for deposit products and how CDIC and its members can collaborate in making improvements to the current system. The role of the working group is advisory and is not a substitute for the larger consultative process encompassed by this review. CDIC appreciates the efforts of the working group in providing valuable input.

Once comments have been received regarding this consultation paper, CDIC will issue a draft amending by-law for additional consultation. Further work will take place with the Regulations Section of the Department of Justice to finalize the amending by-law, which will then undergo review by means of publication for comment in the Canada Gazette.

At each stage of this consultative process, CDIC will continue to consult with its membership, with trade associations, regulators and supervisors and with other interested parties. Review papers will be posted on CDIC's web site, accessible at www.cdic.ca

CDIC anticipates finalization of the review process during the third quarter of 2003.

Comments should be forwarded by March 31, 2003 to:

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DISCUSSION POINTS

The various aspects of the By-law CDIC is considering for amendment are set forth below. Each is prefaced with background discussion, contains an explanation of the issue to be addressed along with possible solutions. In the summary preceding each area of discussion, a reference to the sections of the By-law that would require amendment is included.

- **USE OF DEPOSIT REGISTER :**

SUMMARY

Current: Member institutions are required to deliver the deposit register only on request by a depositor (By-law Section 8(1)).

Issue: As most depositors are unaware of the existence of a deposit register, the request for it does not occur frequently. Enhancing awareness of the deposit registers with depositors and with member employees would increase awareness of deposit insurance.

Possible amendment: Require delivery of deposit registers to depositors in specific circumstances; require a “one time” distribution to existing depositors of the deposit register during a transition phase; require members to ensure distribution of registers to depositors, no matter the channel of distribution used (“delivery” will have to be defined – electronic, web based availability, etc.); and, require members to provide positive stamping.

Background

During the late 1980s and early 1990s, information about depositor awareness was obtained by CDIC from two sources primarily: from depositors with failed institutions who advised about the information they had received from these institutions; and, information received from surveys conducted by CDIC itself. These sources indicated that a significant number of depositors believed that most deposits and many non-deposit products were insured. More recent survey results have confirmed the same findings. The results show, for example, that more than one-third of those recently surveyed are of the view that mutual funds are insured by CDIC and another third did not know.

In first drafting the By-law, CDIC sought to enhance depositor awareness about what types of deposits were insured and about CDIC membership. It considered a number of tools to achieve this goal.

The first was to expand the requirement for a negative indication of insurability; that is, to require not only that ineligible deposit products bear the “negative stamp”, but also other non-deposit investment products, such as mutual funds. CDIC concluded at the time that since the Canadian Securities Administrators (CSA) required sellers (including CDIC member institutions) of securities and mutual funds to include such a negative indication, CDIC would not impose the requirement. To this day the CSA continues to require it.

Other options considered at the time included requiring a positive indication of insurability on every eligible deposit product. A major problem with this option was ensuring that the depositor was also aware of the coverage limitations involved. A positive indication alone would not reveal the degree of actual coverage for any given amount of deposit, which could mislead depositors. Another problem was that, since single deposit products (rather than deposit accounts) make up the vast majority of deposits, this option could be operationally difficult and costly. Electronic and telephone banking presented other issues.

The acceptable middle ground for CDIC and its members was the deposit register: that is, for financial institutions to list the deposit products offered by them that were eligible for deposit insurance. The register would also contain coverage limitation information, and the text of the CDIC brochure, *Protecting Your Deposits*, which outlines the general extent and limitations of coverage. The register would be provided at the request of the depositor. In order to ensure that the information being provided was accurate, CDIC established a clearance process by which it confirmed the eligibility of member products for coverage prior to the member including the product in its deposit register.

Member institutions supported this initiative. When the relevant section of the By-law came fully into effect in March of 1998, each member had by that point cleared its list of deposit products with CDIC and deposit registers were distributed to each place of business. CDIC continues to clear new deposit products prior to their introduction by members. CDIC also established a compliance process to monitor members’ adherence with the requirements under the By-law.

Issue

At first, the novelty of deposit registers encouraged employees of member institutions to distribute them or identify them to customers. With time, however, knowledge of the existence of deposit registers, both by depositors and employees at the branch level, declined and is now severely lacking. In short, the goal of using deposit registers as a tool to enhance the awareness of deposit insurance is not being achieved. By means of this consultative review, CDIC is seeking a collaborative solution.

Currently, member institutions are required:

- to maintain an up-to-date deposit register that contains a list of eligible deposit products and the text of the CDIC brochure *Protecting Your Deposits*;
- to display the deposit register prominently at each of its places of business or points of service;

- to provide it to customers on request.

Possible solutions

A number of options are being considered to increase public awareness of deposit registers. For example, CDIC or member institutions could reference registers in advertising. Alternatively, or in addition, delivery of deposit registers to depositors in specific circumstances could be required. These options would likely encourage member institutions to make deposit registers more readily available in all places of business and points of service. They would also encourage increased training of staff at the branch level since customers would more likely be requesting the deposit register.

CDIC is therefore considering the requirement of member institutions providing the deposit register at specific times, such as:

- when a new account is opened; or
- when the relationship with a depositor first begins; or
- when a term deposit is made.

Whether the transaction is done electronically or in person should be irrelevant to the requirement, although what constitutes “delivery” of the register may vary depending on the channel used. How delivery is defined for these various purposes will require clarification and is discussed later in this paper.

CDIC also could consider requiring a “one time” distribution of the deposit register to existing depositors during a specified transition phase. This is in response to the results of recent surveys and focus group sessions that have disclosed misunderstandings about the extent of coverage on the part of existing depositors.

In considering the above, CDIC also is looking at the various channels of distribution used by member institutions, and in particular whether special rules should apply when the primary distribution source is a third party, such as deposit brokers. To date, CDIC has imposed no requirements on third parties to disclose information about deposit insurance, nor has CDIC required its members in turn to require, for example, that deposit brokers provide information about deposit insurance. The latter is being considered since, for many CDIC members, the majority of deposits are contracted through a broker. Deposit brokers could be leveraged to provide information to depositors about coverage.

Focus group and survey evidence supports the need for a more concerted effort to ensure that the deposit register, a tool already in existence, is used for its intended purpose: to enhance awareness of deposit insurance.

Positive stamping is also an option to be considered. This would require that a statement as to the potential eligibility for deposit insurance be made on the physical evidence of a deposit being made, be that in the form of a receipt, an instrument, a statement, etc. Issues that would need to be addressed, in addition to those raised above, would include:

- Applying positive stamping only to retail deposits: – There are deposits that, while covered by the definition of a deposit contained in the CDIC Act, are not deposit-types that one could request of the member institution. For example, money held in certain suspense accounts of a financial institution may be eligible for deposit insurance, yet an individual could not deposit money into such an account.
 - Evidence of the deposit appearing on a consolidated statement: – a statement that includes information about eligible deposits as well as ineligible deposits or other financial investment information such as status of mutual fund accounts. Confusion could occur when different messages are provided on one document.
 - Delivery of the positive stamp is challenging when telephone, Internet or ATM banking is considered.
 - Positive stamping is an “after-the-fact” statement and may not be timely in assisting depositors about their deposit choice. It will, however, provide confirmation of eligibility.
- **NEGATIVE INDICATIONS OF INSURABILITY (“negative stamping”)**

SUMMARY

Current: Member institutions must provide for a negative stamp on instruments or documents evidencing ineligible deposits (By-law Sections 9 and 9.1).

Issue: If there were a requirement to provide some form of positive indication of insurability to depositors, would a negative stamp continue to be useful in enhancing consumer awareness? With the various methods of delivery of confirmation of transactions being used today, flexibility in delivery of the message of non-insurability should be a consideration.

Possible amendment: If deposit registers are delivered to depositors (effectively a form of positive disclosure), it may be reasonable to consider eliminating the need for negative stamping. If not eliminated, could the types of specified statements be expanded or some flexibility or approval process be developed.

Background

Since its inception, CDIC has required that all instruments evidencing a deposit that is not eligible for deposit insurance (such as a foreign currency deposit) bear an indicator that it is not eligible (“negative stamping”). Negative stamping was supported by the industry as an

alternative to positive stamping. The decision was made not to require registers to be delivered to potential depositors and negative stamping was maintained.

Negative stamping sometimes occurs after-the-fact: – that is, the depositor does not obtain an indication of non-eligibility for insurance until the depositor receives the evidence of deposit. This evidence may be delivered shortly after the conclusion of the deposit transaction, or may be provided only at the end of a month when the transaction appears on a statement (consolidated or otherwise). It has been suggested that there is little usefulness to such “after-the-fact” statements if the intent is to have a bearing on investment decisions.

CDIC has not required the negative stamp to appear on the array of documentation that a depositor may receive prior to concluding a transaction (e.g. brochures, application forms, etc.). It is required to be included on the evidence of the deposit, and if the deposit is made by telephone, the negative indication of insurability must be communicated orally.

Negative statements continue to be useful to confirm eligibility and member institutions are familiar with them. Their current systems automatically provide for the generation of the negative disclosure, thus maintaining negative stamping causes minor expense.

Issue

In the event that a form of positive disclosure is required to be provided, CDIC would consider whether negative stamping would also be continued.

In the event that negative stamping continues, a technical issue should be addressed. At the time that the By-law was drafted, it was anticipated that a particular document (receipt, term sheet, etc.) would be issued to evidence the deposit. It appears that for many members, the only evidence of such deposits sent to depositors is a reference to the deposit within a generic statement that can contain references to both deposits that are eligible for deposit insurance and those that are not. Furthermore, if the deposit is negotiated over the telephone or Internet, delivery of the appropriate negative stamp is cumbersome.

Possible Solutions

CDIC would consider the elimination of the requirement for negative stamping provided realistic and workable solutions that provide better information to depositors are put in place, and that they support the principles enunciated in the introduction to this paper. At the very least, there would be need for a requirement to deliver accurate and timely information to depositors about deposit insurance.

With respect to the content of the negative stamp, CDIC will consider additional specified statements as well as consider whether an approval regime would perhaps work in this context as well.

With respect to the delivery of the message, negative stamping will be addressed in the context of defining “delivery”.

- **MEMBERSHIP REFERENCE IN ADVERTISING:**

SUMMARY

Current: Member institutions may refer to their status as members in specific advertising by stating: “Member of Canada Deposit Insurance Corporation”. Member institutions are not required to include in their general advertising statements about CDIC membership. They are permitted to include the membership statement in advertising dealing with deposit products exclusively. (By-law Section 4)

Issue: Members would like to use a shortened form of reference and use the reference in conjunction with their brand names. The difficulty with brand names is that confusion could ensue as to who is the member. Clarity as to membership can be jeopardized. In order to increase awareness, CDIC could require member institutions to include the membership statement in advertising dealing exclusively with deposit products as well as permitting or requiring the statement in advertising by the member institution that references no specific product, such as a member institution’s letterhead or a generic advertisement.

Possible amendment: Permit the statement “Member CDIC” or pre-approved variations thereof. Require the membership statement in advertisements dealing exclusively with deposit products and permit it in generic advertising. Pre-approved statements dealing with branding might be permitted. Require oral membership statements in telephone banking.

Background

The purpose of membership reference is to alert the public to the distinction between CDIC members and non-members. The rationale for controlling such references, particularly in advertising, is to reduce the possibility of membership standing being used in ways that mislead depositors.

Prior to the adoption of the By-law, CDIC’s practice was to allow references only in print advertisements where the product being advertised was insurable by CDIC and the reference appeared immediately below the member’s name and logo, usually at the top of the advertisement. References on other documents such as corporate letterhead or corporate brochures were prohibited.

Consultation with industry at the time of drafting the original By-law suggested that the industry was satisfied with these restrictions, that they worked reasonably well and that no changes were needed.

Issue

The By-law incorporated the same permissions and restrictions. Currently, member institutions may refer to their status as members of CDIC in advertising exclusively concerning insurable deposits. Their reference must appear below the name of the member institution and read: “Member of Canada Deposit Insurance Corporation”. Member institutions are not required to include such statements in their general advertising. However, they are permitted to include the membership statement in advertising dealing with deposit products exclusively. Public awareness of the eligibility for insurance coverage of deposit products could be further enhanced if this were a requirement, rather than an option.

Member institutions have requested permission over the past few years to expand the kinds of references that can be made to membership in CDIC, as well as expand the types of advertising in which such references can be included. (For example, to insert the membership reference in a poster that highlights the name of the member institution but doesn't refer to a specific product: – a generic advertisement).

The link to the full name of the member institution is also an issue raised by member institutions, particularly those that use marketing names, or are members of a group and use a common reference name and logo. In such cases, the member institution is only one of a number of related entities under the same banner. Only the deposits at the member institution are eligible for insurance. This issue is discussed later in this paper in the context of membership signage.

CDIC is also looking at branding issues faced by some of its members (where the brand name is better known than the legal name, for example) and whether any accommodation can be made in such circumstances without the possibility for further confusion.

As well, member institutions have requested, in the interests of space restrictions, that they be permitted to use a shortened reference to Canada Deposit Insurance Corporation, such as “Member CDIC”.

Possible Solutions

CDIC could consider permitting a number of variations of its name to accommodate space restrictions, such as “Member CDIC” in addition to “Member of Canada Deposit Insurance Corporation”, as well as consider allowing the membership reference to appear other than directly beneath the name of the member institution when only the member institution is referenced in the advertisement.

Options include:

- requiring, rather than permitting, members to include the membership statement in advertising dealing exclusively with deposit products. This requirement would further enhance the consumer's awareness of which products are eligible for deposit insurance. This has been the approach taken at the Federal Deposit Insurance

- Corporation (FDIC), which by regulation requires insured banks to include official advertising statements in all advertisements (subject to exceptions).
- permitting membership references in advertising by a member institution where there is no reference to a product (insured or non-insured). For example, a member institution's letterhead or generic advertisement could include a CDIC membership statement. What constitutes "advertising" in this context would require definition and control would have to be exercised by the member to ensure that misleading statements are not made.
 - whether permitted statements could include reference to the limitation of deposit insurance coverage (such as: "up to \$60,000 - see deposit register for details"; etc.). For example, the FDIC incorporates into its signage the upper limit of individual coverage. It is optional for the member to include it. CDIC has previously used the approach of permitting a number of possibilities when, in connection with negative stamping, it allows any one of a series of statements to be used depending on the circumstances.
 - allowing statements in brand-only advertisements like: "when you place deposits with [brand name], they will be held in a member of Canada Deposit Insurance Corporation". Such statements would likely require pre-approval to ensure clarity.
 - requiring that an oral statement be made when deposits are initiated by telephone with the assistance of an operator. Telephone banking is a reality today. Depositors doing their banking over the telephone do not have the benefit of seeing the CDIC sign or the deposit register. The statement would merely be that X is a member/is not a member of CDIC.
- **SIGNAGE REQUIREMENTS:**

SUMMARY

Current: Member institutions must have, at each of its places of business, a CDIC membership sign prominently displayed during hours of operation. The form of sign is contained in Schedule I of the By-law and lists each of the member institutions doing business in that location. (By-law Section 5)

Issue: Can the signage be used more effectively to increase awareness and avoid confusion, particularly when: member institutions and non-member institutions operate from the same location; institutions operate from remote locations and may be operated under a trade name; numerous members operate from the same location; or business is done at locations through ATMs.

Possible amendment: Requiring the display of the CDIC membership sign (or a modified membership statement) at more locations including: every public/customer access to a place of business; at each location within the place of business that a customer could make a deposit; on ATM's operated by the member institution (or its group of companies); during Internet banking; and/or on its web site.

Background

As noted above, the purpose of membership references is to alert the public to the distinction between CDIC members and non-members. Over the years, the primary tool used for this purpose has been the requirement of displaying a membership decal – a membership sign – in the form of a stylised Canadian flag with the name of the member institution and with confirmation of its membership in CDIC appearing in the centre. Each member institution has been required to display the sign at each place of business. This did not change when the By-law came into effect although the description of where the sign was to be displayed was expanded. Currently, the sign must be displayed prominently during hours of operation at each place of business of the member institution.

A distinction was made in the By-law between places of business (where there is to be a representative of the member institution) and points of service. The sign need only be displayed at places of business, not points of service, while the deposit register is to be available at both. This was to distinguish between what would be considered permanent physical locations of the member institution – a place of business – from a more casual location at which some form of business could be initiated – a point of service.

The form of sign identifies each of the member institutions doing business in that location (see Schedule I to the By-law). Member institutions are free to place the sign at any location provided it is prominently displayed. The usual location is on doors or windows. There are no other requirements for it to be displayed.

Issue

A number of areas of confusion have arisen related to signage, particularly in the following circumstances:

- member institutions and non-member institutions operating from the same location;
- member institutions operating from a remote location that bears no resemblance to a traditional financial services branch;
- member institutions operating under a trade or brand name;
- numerous member institutions operating from the same location;
- members operating solely through electronic means without a physical presence; and,
- locations containing Automated Teller Machines (ATM) with no individuals present.

Furthermore, in many cases today, transactions can be done electronically over the Internet or by telephone. Attendance at a branch or other place of business by the depositor may not take place.

When the current By-law was first drafted, many of the foregoing scenarios were still at the idea stage and had not been implemented. For that reason, at the time of making the by-law, CDIC was asked to delay consideration of web sites, ATM product delivery, and various other aspects of electronic banking until the delivery channel had been fully developed. These channels, as well as others, are sufficiently developed to address at this time.

The FDIC requires its sign to be displayed “at each station or window where insured deposits are usually and normally received in its principal place of business and in all its branches...” Members of FDIC are also permitted to display the sign more broadly but “...if there are any non-insured institutions which share in the remote service facility, any insured bank which displays the official bank sign must clearly show that the sign refers only to a designated insured bank or banks”. It is not required on ATMs. (See Part 328, 32 Fed. Reg. 10189, U.S.A., as amended)

Possible solutions

CDIC is considering whether the CDIC membership sign (or a modified version of the sign) or a specified membership statement should be required at more locations than currently required. For example, consideration could be given to requiring membership identification:

- at every public/customer physical access to a member’s place of business;
- at each location within the place of business that a customer could make a deposit;
- on ATM’s operated by the member institution (or its group of companies);
- over the internet while banking electronically; and/or
- on member institution web sites.

Any solution would be in addition to the requirement that the signage be prominently displayed during business hours. It has been determined that most institutions display the sign on main entrance doors without consideration of whether the sign is visible to customers within the branch. If the member is required to display the sign at each access point to the branch, as well as at each location within the branch where the deposit is made, the requirement to display the sign prominently would be met and membership status would be clarified.

The second option duplicates the FDIC requirement. This would address scenarios where more than one member institution, or both a member and non-member, are conducting business from the same location. The signage at the desk could be helpful in ensuring that the depositor/investor is aware that only transactions with the member would potentially be covered by deposit insurance. Clarity in the wording will be of utmost importance to achieve this goal.

The third option would require members that operate ATM's (as well as any ATM's attached to branches irrespective of whether the member operates the ATM) to display a membership sign either on the ATM's exterior, or on the screen once activated. One consideration in this connection is that more than deposit accounts may be accessible and any message must be clear that only certain deposits are eligible for deposit insurance.

The fourth solution would require members that operate over the Internet to display the sign (or an indication of membership) when deposit transactions are taking place. This would allow the member to confirm its membership and provide useful information about deposit insurance to the depositor.

The last solution mentioned is a requirement that member institutions display the membership sign on their web sites. Members have requested this option. While CDIC is receptive to this option, it must be clear who the member institution is, particularly when the web site is related to a group of financial services companies. The sign could not be used such that it could mislead a depositor into concluding that monies placed with any of the companies would be covered by CDIC.

- **FLEXIBILITY OF REPRESENTATIONS**

SUMMARY

Current: Member institutions are constrained as to what they can, or cannot, discuss with depositors, or write, about CDIC and CDIC coverage. If requested, member institutions may discuss with depositors only those subject matters contained in the CDIC brochure *Protecting Your Deposits*. (By-law Section 8(2))

Issue: A number of member institutions have requested that members no longer be so constrained. Furthermore, situations occur where additional information to depositors is necessary to avoid confusion.

Possible amendment: Possible options include: permit members to make any non-misleading statements; permit only specified statements; permit specified statements and other statements if prior approval is obtained; or require pre-approval of statements in specified situations.

Background

Before the By-law came into effect, and in accordance with the CDIC Act, member institutions were restricted from making statements about what was insured. The only available representation was through the display of a membership sign. If asked about deposit insurance coverage, members were to refer the inquiry directly to CDIC. The current By-law reduced these restrictions to some degree.

At present, member institutions are constrained as to what they can, or cannot, discuss with depositors about CDIC or CDIC coverage. Furthermore, as noted above, written statements are effectively restricted to statement of membership and the deposit register. If requested by a depositor, member institutions may discuss the subject matters contained in the CDIC brochure *Protecting Your Deposits*. This limitation concerning subject matter was included at the request of industry. The restriction addressed a concern expressed by many member institutions that if their employees were permitted to speak freely about deposit insurance coverage, potential existed for misrepresentation. Member institutions were not confident they would be able to train employees sufficiently with respect to all aspects of deposit insurance. It was felt that being restricted could cause employees to exercise care in addressing deposit insurance issues.

Issue

A number of member institutions have now requested that they be constrained in this manner no longer. Furthermore, a number of situations have occurred in which additional information provided to depositors has been necessary to avoid confusion. For example, in situations where one member institution assumes the deposit liabilities of another, it could be useful for the member to initiate communication with depositors regarding this matter; not wait for a request for information. Furthermore, the intricacies of coverage in certain circumstances can fall outside the scope of the information contained in the brochure *Protecting Your Deposits*.

Another example of the usefulness of additional information about coverage occurs when a member institution offers its products through a variety of retailers under a number of brands. Depositors need to be made aware, at the opening of any of these branded accounts, that these deposits are aggregated with any deposits they may have made into other branded accounts with the same institution.

The foregoing issues must be considered in conjunction with ensuring that no matter what information is provided by member institutions, it must be accurate and that employees are adequately trained.

Possible solution

CDIC is considering a number of options:

- Permit any representations that are not misleading;
- Prescribe a series of permitted statements;
- Permit specified statements and other statements if prior approval is obtained;
- Require delivery of specified information statements in certain circumstances.

The first option would permit member institutions to speak freely, or write freely, about deposit insurance coverage, provided their statements are not misleading. This could occur without a depositor requesting information. In accepting this option, CDIC would be

exposed to the risk of misstatements made about CDIC and/or deposit insurance. Indeed, erroneous statements of this nature made in the 1980s led to the full ban on member institutions providing information in the first place. The parameters for the subject matter of any discussion could be limited in order to provide CDIC with some comfort that only areas of the *CDIC Act* or the By-laws that are open to the least amount of interpretation could be discussed; – perhaps continuing the practice of limiting the scope of subject matter to those referenced in the CDIC brochure.

The second option – prescribing a series of permitted statements – seems to address a number of concerns about whether a statement would be misleading. However, as a practical measure, the usefulness of specified statements – those that cannot be tailored to the situation at hand – could be limiting and potentially counterproductive.

The same concern applies in part to the third option in that the practical usefulness of specified statements may be limited. Providing for an approval process whereby CDIC would review statements to be made in particular contexts could alleviate this concern and build into the process needed flexibility.

The fourth option addresses situations where statements should be made to depositors. The statements could, for example, address aggregation scenarios or transfers of deposits from one institution to another as a result of acquisition, merger or closure. They could also address scenarios where member institutions and non-member deposit-takers are operating from the same location – such as a bank and a wholesale bank – one that is taking non-retail deposits and is not required to be insured by CDIC. CDIC could provide pre-approval of statements or communications to depositors.

- **REPRESENTATIONS BY THIRD PARTIES:**

SUMMARY

Current: The By-law states no one may make misrepresentations (By-law Section 3). CDIC currently relies on its member institutions to ensure that information is correct about insurance coverage.

Issue: Deposit brokers advertise regularly about deposit products they broker. Furthermore, misleading statements might be made by non-members sharing premises with members.

Possible amendment: Include a series of representations that would be acceptable in third party advertising about deposit products that are eligible for CDIC insurance. Also, a negative indication of CDIC insurance coverage may be required when members share premises with non-members.

Background

CDIC By-laws pertain in the first instance to CDIC member institutions. The fact that members market their products through third parties, such as deposit brokers, does not diminish the responsibility to ensure that accurate statements are made about deposit insurance. CDIC looks to member institutions to exert the necessary influence over brokers to ensure that no misleading statements are made.

Recognizing that deposit brokers compete with one another, advertise and make advertised statements regarding the eligibility for insurance of products they broker, CDIC issued an information bulletin a number of years ago listing a series of statements that were not misleading and could be included in advertising that marketed only eligible deposit products. The Canadian Federation of Independent Deposit Brokers has worked with CDIC to develop a training manual about deposit insurance coverage for use by deposit brokers.

Brokers have tended to police one another with respect to misrepresentations in advertising and have promptly ceased to make misstatements once brought to their attention.

Issue

Deposit brokers advertise regularly about deposit products they broker and sometimes make erroneous statements such as: "All our GIC's are insured by CDIC". The current constraint in the By-law is that no one may make misrepresentations about what is insured, or who is a member.

Another reality is that member institutions share premises with non-members. Statements about deposit insurance can easily be attributed to the non-member when in close quarters. This can be particularly confusing when there are two types of coverage being offered under the same roof, albeit for different products. This would occur, for example, if a credit union (deposits insured by provincial organization) and a federal trust company or bank (deposits insured by CDIC) share premises. Or where the non-member offers mutual funds and is a member of another compensation scheme. This can be confusing to the customer, not only because different entities may be insuring deposit products or providing a different type of coverage, but also because coverage limitations are different. As the need to reduce overhead increases, the sharing of premises will likely become more and more prevalent giving rise to a greater possibility for confusion.

Possible Solutions

With respect to deposit broker advertising, consideration could be given to publishing a series of representations that would be acceptable to CDIC. This may, or may not, be possible to include in the By-law. CDIC is reluctant to direct its regulations at non-members and looks to its member institutions for compliance with regulations that affect their deposit products. It may be necessary for the member institution to include in its agreements with third parties, such as deposit brokers, certain terms and conditions such that no

misrepresentations about the eligibility for deposit insurance of the member's products are made.

With respect to misrepresentations by non-members with whom premises are shared, it may be necessary to require member institutions who do share premises to stipulate clearly their membership status, and that the other entity using the premises is not covered by CDIC. This would be a requirement that the member would be expected to carry into their arrangement with the non-member as well. A prominent display of a negative indication of insurability at the place of business of the non-member within the premises could be considered.

- **TECHNICAL AMENDMENTS:**

A number of matters, mostly technical in nature, need to be addressed as well.

- **content of the deposit register**

SUMMARY

Current: No flexibility of language in deposit registers. (By-law Section 7)

Issue: Members have requested flexibility while maintaining clarity of message.

Possible amendment: Permit flexibility, through an approval process.

Issue

In order to ensure that information being provided by members is correct, CDIC stipulated in the By-law what was to be contained in the deposit register. In CDIC's procedural document for clearance of deposit register products (its *Guide to Member Institutions*), matters like the specific wording of introductory language, the placement of information on the deposit register, and manner of reference to CDIC is stipulated. Member institutions have been ensuring that their deposit registers meet these administrative requirements.

However, some member institutions have suggested that the wording currently required in the deposit register be more flexible. This would include matters such as where on the register certain information is to appear, i.e. the name of the member institution, the status as a member institution, as well as flexibility to reflect on the register the logo of the institution, its address, or other information that may be relevant to assist depositors. Members have also suggested that rather than having prescribed information, there be some flexibility to change specific language suggested by CDIC provided the meaning is maintained. Some institutions have indicated they would like to have their deposit registers blend more readily with their overall advertising/marketing strategies.

CDIC regularly considers the wording of the brochure *Protecting Your Deposits* to ensure that it continues to address the information needs of consumers about deposit insurance coverage. As part of this review, the brochure will once again be updated. These changes would be reflected in any amendments to the By-law since the text of the brochure is provided as Schedule II to the By-law.

Possible Solution

CDIC is considering including some discretion for members. However, this may entail additional scrutiny by CDIC of information being provided by members. An avenue that may be followed to accommodate changes to prescribed language could be to institute a process whereby variations to the prescribed language would be approved by CDIC.

- **combining deposit registers:**

SUMMARY

Current: Each member institution must maintain a separate deposit register. (By-law Section 7)

Issue: Member institutions that are members of a group of related member institutions would like to combine their deposit registers.

Possible amendment: Flexibility could be provided to permit combined deposit registers.

Issue

Some member institutions that are affiliated with each other, or operate out of the same location, would like to present to their customers a single deposit register – without the necessity of repeating some of the information numerous times for each of the member institutions in their group as currently required. The caution to be addressed in opening up this area is that, if there are also non-member institutions in the group of companies operating from the same premises, depositors or investors may be more easily misled into concluding that their investment with a non-member is insured since the deposit register may appear to be for the group rather than for member institutions only.

Possible Solution

CDIC, as noted above, is open to more flexibility in all areas of the presentation of the information on the deposit register provided the result is not misleading. This is another possible area to involve an approval regime.

- **Clearance system**

SUMMARY

Current: The clearance system is not included in the By-law.

Issue: Members require clarity about what is required of them.

Possible Amendment: Describe the clearance process (currently administrative only) in the By-law.

Issue

The clearance system provides members with confirmation from CDIC as to the eligibility for deposit insurance of their products. Through this system, the content of the deposit registers is also confirmed. The clearance system is not referenced directly in the By-law. It is indirectly captured by means of a required statement in the annual Return of Insured Deposits. It would be clearer for member institutions if this currently administrative process were outlined in the By-law.

Possible Solution

Include in the By-law the process to clear a product for inclusion on the deposit register. In the event that other statements can be submitted for pre-approval, the clearance process would likely be included in the By-law as well.

CONCLUDING COMMENTS

CDIC welcomes any and all comments with respect to the foregoing, as well as suggestions in other areas not directly addressed by this paper.

Further, there may be solutions not identified herein. CDIC would be pleased to receive submissions on other appropriate options that meet its stated objectives.