Assurances

Assurances

Harmonization/Networking — The Legal Perspective

Alison R. Manzer

Volume 61, Number 3, 1993

URI: https://id.erudit.org/iderudit/1104958ar
DOI: https://doi.org/10.7202/1104958ar

See table of contents

Publisher(s)

HEC Montréal

ISSN

0004-6027 (print)
2817-3465 (digital)

Explore this journal

Cite this document

Manzer, A. (1993). Harmonization/Networking — The Legal Perspective. *Assurances*, *61*(3), 383–418. https://doi.org/10.7202/1104958ar

Article abstract

La réglementation des institutions financières au Canada est sujette à des chevauchements et à des conflits de juridiction. L'auteure traite des préoccupations et des obstacles à l'harmonisation ainsi que des divers moyens pour l'atteindre aux niveaux fédéral, provincial et interprovincial, et du besoin d'harmonisation au niveau international. L'auteure nous présente également les questions juridiques que soulève la mise en réseau (networking) qui permet aux institutions financières de vendre les produits d'autres institutions financières soit par référence, par ententes d'entreprise en participation ou par la mise en marché conjointe de produits. À mesure que la réglementation des institutions financières est modifiée pour permettre aux institutions financières de se livrer à des activités qui, jusqu'à présent, leur étaient défendues, la mise en réseau assumera un rôle de plus en plus important pour la survie de l'industrie de l'assurance.

Harmonization/Networking — The Legal Perspective*

by

Alison R. Manzer**

La réglementation des institutions financières au Canada est sujette à des chevauchements et à des conflits de juridiction. L'auteure traite des préoccupations et des obstacles à l'harmonisation ainsi que des divers moyens pour l'atteindre aux niveaux fédéral, provincial et interprovincial, et du besoin d'harmonisation au niveau international.

L'auteure nous présente également les questions juridiques que soulève la mise en réseau (networking) qui permet aux institutions financières de vendre les produits d'autres institutions financières soit par référence, par ententes d'entreprise en participation ou par la mise en marché conjointe de produits. À mesure que la réglementation des institutions financières est modifiée pour permettre aux institutions financières de se livrer à des activités qui, jusqu'à présent, leur étaient défendues, la mise en réseau assumera un rôle de plus en plus important pour la survie de l'industrie de l'assurance.

~

Harmonization: The Goal

1. Current Economic Needs

Harmonization of legislation relating to financial services should support the development of the financial services industry

---

* Rewritten from materials prepared for The Canadian Insurance Congress, May 3rd and 4th, 1993, Montreal Quebec.

** From the firm Cassels, Brock & Blackwell, Barristers & Solicitors, Toronto.

and permit it to address both global and regional economic needs. These economic needs include recognizing the globalization of the financial services industry. It is no longer possible for the Canadian economy, or for the financial services sector, to operate in isolation. The vast majority of financial services and transactions must compete on a national and international basis. The electronic transfer of funds has resulted in instantaneous movement of vast sums of money, often across international borders. This has changed many of the concerns and issues facing the participants in the financial services sector, including the imposition of new requirements of inquiry regarding source and use of funds to discharge international duties regarding money laundering and currency exchange violation. In addition the state of the economy is changing rapidly, requiring a flexibility of response in product mix and pricing.

2. Level Playing Field

The Canadian model for competition is a "level playing field" statute and regulation. A level playing field is intended to lead to more effective competition, and accordingly to more effective delivery of services on a cost competitive basis to the consumer. The issue is as to whether the level playing field is created by the provision of identical rules, which mean that each participant in the financial services sector is competing using the same rules, or whether it is better done by rules designed to permit essentially equivalent performance by the financial institution. These involve quite different formulation of legislation and regulation as a consequence of the fundamental differences among participants in the industry sectors. The differences arise not only as a consequence of the different nature of the core businesses but as a consequence of history relating to those participants. The different sectors have had different access to capital, size, performance histories and other differences which would impact upon a level playing field which is designed to permit a roughly equivalent performance.

3. Compliance Cost

Harmonization should ease compliance costs. In a harmonized environment the financial institution is required to comply with essentially a single set of legislative requirements.

This is more cost effective both for the regulator and for the industry participant and will tend to lead toward greater efforts at compliance. Self-monitoring of compliance, and compliance as opposed to sanction, are clearly desired goals of legislation. If compliance can be reasonably achieved, the regulated entity is more likely to comply than to search for the "loopholes". The legitimate desires of legislation will thereby be more cheaply and effectively accomplished.

It is necessary in the current economic environment to reduce the cost of government and reducing the cost of regulation in a key industrial sector is desirable goal of the regulator. It is also desirable to decrease the cost of the financial services provided to the public, and decreasing compliance costs may permit stabilization, or decrease, of pricing for financial services.

4. Competitive Services

Canada will require an active and competitive financial services sector to enhance the possibility of improved economic performance. The growth of Canadian industries requires reasonably priced access to capital, on a national and international basis. This will require effective competition, leading to effective pricing and adequate availability of products in the financial services industry.

5. International Standards

Harmonization must include harmonization with international standards, particularly those relating to capital and liquidity. The international standards to be considered will involve those which relate to participation in the North American Free Trade Agreement, and the Free Trade Agreement and on the

broader international basis will need to consider risk based capital. Harmonization with international standards is now necessary with the United States as a consequence of the Free Trade Agreement, and if the North American Free Trade Agreement is enacted will require further consideration of Mexico, and possibly other Latin American countries and their standards. This arises as a consequence of the necessity of permitting operation of these financial institutions in Canada. In addition broader participation in the global financial network requires some consideration to meeting international standards.
386 Otherwise Canadian industry will be ghettoized. Also many Canadian financial services companies are involved in national or international corporate groups and this will require those companies' active participation in the international requirements of the consortium.

Where Are We Now?

1. British Columbia

On November 1, 1989 the Financial Institutions Commission was formed by an amalgamation of the Credit Union Deposit Insurance Corporation of British Columbia with the Office of the Superintendent of Financial Institutions. This created a unique combination of regulator and deposit insurance. On September 15, 1990 British Columbia passed the *Financial Institutions Act* which combined the statutes and regulations governing credit union, trust and insurance.

The *Financial Institutions Act*, in addition to combining legislation for each of the regulated financial services sectors, created a substantially revised legislative format. Harmonization among sectors has accordingly been adopted in the Province of British Columbia. There can be no closer harmonization than a single statute which governs all of the financial services sectors under the jurisdiction of the province.

The legislation is also designed to give greater discretion to, and self-governance for, the financial institutions. This has

been done, in the view of the British Columbia legislative authorities, without sacrificing public protection. Public protection has been observed by recognizing the need of consumer protection and enhanced disclosure by the financial institutions. It is interesting to note that the attitude that regulation can be accomplished by enhanced disclosure has been adopted by the recently retired senior regulator of banking in New Zealand. With rising costs of regulation it is likely that the British Columbia greater self-regulation, with disclosure will be adopted.

Jurisdiction harmonization has been substantially achieved in the Province of British Columbia, by use of "designated jurisdiction" legislation. The Province of British Columbia accepts regulation, for issues such as financial solvency by the jurisdiction of incorporation of the financial institution. British Columbia has determined that if adequate safeguards exist in the home jurisdiction, that they will simply accept both the legislative requirements, and the review process undertaken by the regulator in the jurisdiction of incorporation. British Columbia accordingly has developed a system of working with the other regulators, and accesses inter-provincial information sharing. Joint on site examinations are organized where that is desirable.

The Province of British Columbia has essentially achieved harmonization for institutions which are incorporated in jurisdictions other than British Columbia. The provisions of the British Columbia Act are not exactly in accordance with other provincial jurisdictions, or with the Federal legislation. However, as a consequence of "designated jurisdiction" regulation the only harmonization issue remaining outstanding is the issue of level playing field for British Columbia incorporated financial institutions. This arises because if the designated jurisdiction regulation differs from British Columbia regulation, British Columbia is permitting operation in British Columbia based upon the regulation of the designated jurisdiction. Accordingly, there may not be a level playing field between institutions permitted to undertake business in British Columbia if the British

Columbia legislation differs significantly from that of the designated jurisdiction.

2. Quebec

Quebec has recently released a study entitled "Promoting the Financial Sector: Dividends for Quebec". That report indicates that the Province of Quebec has accepted the concept of harmonization of financial services legislation and regulation. The Quebec report, essentially identifies three areas of legislative
388 interest: financial soundness; operations and corporate governance and consumer protection. Quebec has indicated the need for coherence in the legislation with regard to issues of financial soundness, suggesting that these should be on an international basis and not simply relating to Canadian requirements. The suggestion has been made that operations and corporate governance has more leeway, and needs merely to be generally harmonized. Quebec intends to reserve consumer protection for its continued regulation. The Quebec report has suggested that the home jurisdiction solution to multi-jurisdictional regulation would be suitable. Quebec accordingly appears to be suggesting that the British Columbia approach in this area could also be substantially adopted by Quebec.

There are some differences in the Quebec model, as compared to that of British Columbia. The Quebec model is suggesting a narrower application of designated jurisdiction, limiting it to issues of compliance with regulations regarding financial solvency. There would also be delegation of some areas of corporate governance, provided they do not impact perceived of consumer protection. Quebec's desire to continue regulation over areas of consumer protection appears to be broadly based.

Quebec has indicated a desire to continue regulation over Quebec-based financial institutions, intending to recognize the uniqueness of the Quebec financial services sector environment. In addition Quebec will continue to regulate consumer protection matters for all institutions operating in Quebec. Quebec is not, however, extending the purview of Quebec jurisdiction over

companies operating in Quebec and incorporated elsewhere other than over consumer protection matters. The Quebec Report in fact indicates a strong desire to move toward Canadian-wide jurisdiction harmonization, and inter-sector harmonization.

3. Ontario

Ontario has recently released the Insurance Legislative Reform Project Report, this is not a government report but is a report prepared by an independent committee. The policy advisory group of the Ministry of Finance is currently reviewing both the report and the submissions made in response to the report. This review process will determine the policies intended to be reviewed, and the position to be taken by the Ministry on the policy issues identified.

Early indications are that harmonization has not been particularly effectively addressed in either the ILRP report, or in the policy reviews. The harmonization issues have been raised repeatedly by the legal profession and the industry but do not appear to be receiving attention from the Ministry of Finance. The position taken to date is that Ontario intends to maintain its equals approach for the loan and trust industry, which will substantially limit the method by which harmonization can be achieved. Equals approach has not been specifically enunciated for application in the insurance industry in Ontario. In general the insurance industry has been regulated in Ontario by informal recognition of designated or home jurisdiction, particularly for Federal institutions. This is however not statutorily recognized and there has been a broad based review, as a consequence of Ontario's very comprehensive approach to consumer protection or licensing issues. There seems to be some sympathy for a designated or home jurisdiction approach for the insurance industry in Ontario.

Ontario's move towards harmonization is essentially a suggested adoption of the Federal legislation. Provided that other jurisdictions enact legislation substantially in accord with the Federal legislation, this may achieve inter-jurisdiction of

harmonization. Ontario appears to recognize the desirability of harmonization, without indicating that from a policy viewpoint they have specific and appropriate suggestions which would permit harmonization on an inter-jurisdictional basis.

The Ontario Policy Review Project is proceeding with three separate review teams, with credit union, loan and trust and insurance being reviewed separately. Although the teams are indicating that there will be cross consultation and co-ordinating meetings are being held, it appears that a single fully coordinated approach to the policies and problems is not being undertaken. This may raise difficulties with inter-sectoral harmonization.

Ontario clearly presents a hurdle to full harmonization with its equals approach for loan and trust. This arises as a consequence of the move towards inter-sector harmonization, in the most recent legislative amendments. If the equals approach is not dropped for loan and trust, which is the most recent position taken, then this will require modification to the approach which might otherwise be available in the insurance industry. It would result either in inequality between financial institution sectors by having equals applicable in loan and trust but not in insurance, or it would result in a need to move insurance more towards the protection of the equals approach if it is maintained for loan and trust. Recent discussions with policy advisors in Ontario have indicated that the loan and trust equals approach will not be dropped in the next round of legislative reform. Harmonization will be pursued, but not at the expense of an elimination of the equals approach. The equals approach has been legislation in Ontario since 1987. Although there are some clear constitutional questions as to whether the equals approach is in fact valid legislation, it has not to date been challenged, and certainly has not been overturned. The equals approach may be effectively rationalized, if harmonization is achieved by coherence of legislation in areas of particular concern. The continuation of the equals approach would, however, require that there be greater harmonization with regard to the legislation governing financial soundness, operations and corporate governance and consumer protection, than is currently the case.

4. The Prairie Provinces

It appears that the Prairie Provinces are only now commencing a review of the status of their insurance industry legislation. It is likely that the Prairie Provinces will follow the Federal model but this is far from clear. These provinces are participating in the harmonization discussions but the final approach they will take has not been stated.

5. The Atlantic Provinces

The Atlantic Provinces had early indicated an interest in harmonization and networking as an issue. A report of the Superintendents of Insurance for the four Atlantic Provinces in 1988, indicated that they recognized clearly the need for harmonized legislation. Networking was the particular focus of the reviews undertaken in 1988. The Atlantic Provinces were substantially defeated in putting forward coordinated recognition of the need for a single legislative regime regarding a number of matters, regarding particularly networking arrangements. As a consequence, the Atlantic Provinces have not moved substantially from the existing legislation base.

6. Federal

Perhaps the Federal approach should be included as a hurdle to harmonization. The Federal incentives have clearly been attempting to expand Federal jurisdiction into areas previously the purview of provincial legislation, and the federal authorities have been late participants in the harmonization review process. As noted in the Quebec Report, the Federal incentives have both directly and indirectly purported to expand Federal jurisdiction. The permitted creation of financial services conglomerates or groupings, with the application of Federal rules to subsidiaries, expands jurisdiction over companies which are otherwise subject to provincial jurisdiction. The expansion of the regulatory requirement of compensation system membership accomplishes a similar purpose, with the generally Federally based compensation systems in effect regulating provincial

institutions. This expanded jurisdiction, currently overlapping and possibly intended to be at the expense of provincial regulation, may impose further hurdles to harmonization.

The Federal authorities joining the harmonization discussions in April of 1991 has, to date has complicated the harmonization process, because of the duplication of legislation and encroachment on provincial jurisdiction by the Federal authorities. Some areas of particular concern to the provincial authorities include matters, such as the proxy and prospectus
392 requirements for securities issued for Federally regulated financial institutions which encroaches on the provincial regulation of securities. The provincial authorities will necessarily resist the encroachment on their traditional areas, even in circumstances where a home jurisdiction approach can be worked out.

Areas of Particular Concern

1. Incompatibility → Non-Compliance

There are a number of areas of regulatory intervention which can result in inability to comply if legislation is not harmonized. Those areas dealing with corporate governance, capital and liquidity, and investment powers are particularly prone to this result. This is exacerbated for loan and trust by the legislated equals approach of Ontario, which imposes Ontario standards if the institution operates in Ontario. As a consequence of the desire to more closely coordinate loan and trust regulation with insurance regulation in Ontario this may impact on the insurance industry. The Federal legislation takes a similar approach purporting to govern federally incorporated institutions **and their subsidiaries**, regardless of the jurisdiction of incorporation of the subsidiary. This can result in either the necessity of complying with the more rigid of the regimes, if this is possible, or in some instances inability to comply.

2. Reporting Costs

The reporting costs of the institution are greatly increased by the necessity of preparing different reports for each of the different jurisdictions in which it operates. The reporting process is costly enough, with the detailed reviews now required to be undertaken. With each of the jurisdictions requiring reporting on different matters or in different format the reporting costs are increased. The regulatory reporting also does not necessarily accord with either the tax reporting required by Revenue Canada or the accounting reporting required for the financial statement purposes. The nature and extent of reporting, and accordingly the costs of reporting, are increasing. This includes reporting to the regulators and to shareholders, policyholders and creditors.

3. Review Costs

Many insurance companies face multiple regulatory reviews as a consequence of their operation in several Canadian jurisdictions. In addition to direct regulatory review, there is also review by the compensation systems to ensure compliance with the financial standards established for membership in the compensation fund. As a consequence the industry is being asked to bear an unreasonable level of review costs. Review costs arise as a consequence of demands on time and attention in complying with the delivery of information for the review process and the time expended with the authorities on review.

In addition the costs to government are higher than would appear to be reasonably required as a consequence of duplication in the review process. The costs for review are being paid by the taxpayers in circumstances where the review is essentially treading over territory previously reviewed. In Ontario there has been a reasonably sensible approach for the insurance industry to adopt the Federal review for Federal companies. This however has not generally being the case and review costs have been higher than would be the case with full recognition of home or designated jurisdiction.

4. Inter-Sectoral Harmonization

In addition to harmonization between jurisdictions, there has been a concerted move in several jurisdictions in Canada to harmonize legislation among financial services sectors. This was very clear in the enactment of the Federal legislation in 1992, and appears to be the thrust of the majority of the jurisdictions reviewing further reform. Both Ontario and Quebec have stated that it is their intention to look toward harmonization among the sectors. British Columbia has achieved harmonization among the

sectors by the enactment of the *Financial Institutions Act*. In the Province of British Columbia there is a single piece of legislation governing each of the financial services sectors. The intention is both to recognize the blurring of the lines between the various participants in the financial services industry as to the business undertaken, and to promote growth and self-sufficiency in the financial services sector. The creation of a "level playing field" is a stated goal of the regulators. The move towards liberalizing ownership, particularly at the Federal level, in order to permit the formation of financial conglomerates, and the existence in Quebec for some time of such financial conglomerates, essentially dictates moving towards rationalization of regulation between the various sectors.

There seems to be some misunderstanding as to the need for harmonization as among sectors. Harmonization appears to have been focusing on core business, and the need to either maintain or eliminate the four pillars of core business. Ownership, and permitted flexibility in ownership, does not necessarily address harmonization as among sectors. Rather, with the continued maintenance of separation of core business, issues such as capitalization continue to ensure that there is not a level playing field among the participants in the financial services industry. It appears accordingly that harmonization must consider not only rationalization by way of changes in ownership, but rationalization by way of greater coherence in legislation governing each of the core business participants.

If it is desired to create a level playing field the question is as to whether the rules should be identical, or the rules should be designed to permit similar or essentially identical performance. In Canada the different participants in the financial services industry have evolved differently as a consequence of past regulation, history and the nature of the core business. Enacting the same rules will therefore not provide a level playing field if the intention is to permit similar access to capital markets and to consumers. The choice must be made as to whether the movement towards the level playing field is merely one of providing the same rules of the game, or is one which is designed to permit more level performance. This will fundamentally affect the nature of inter-sectoral harmonization.

5. International Participation

Globalization of financial services and the need for international harmonization also has to be recognized. Canada has attracted international investment in the financial services sector for some time. The composition of the Quebec industry is heavily oriented towards Quebec ownership, however, the Quebec report clearly indicate the desire for increased international investment. The liberalization of the Quebec foreign investment restrictions to permit 30% foreign investment, is designed to encourage investment. The insurance industry in Ontario, particularly the property and casualty insurance industry has been substantially internationally owned for some considerable time. On the other hand, the members of the Canadian financial services industry are international participants. Canadian banks have long been participating in the international forum, and a number of other Canadian financial institutions are participants in international networks or consortiums. It is suggested that this trend will continue with the shrinking of the global economy, the increased efficiency of telecommunication and the computerization of securities trading. The Canadian industry will therefore need to ensure that its institutions comply with international standards particularly relating to financial soundness.

International standards for capital requirements for banks were established by the 1988 Basle Accord. The Basle Accord is binding upon the signatories, being the ten leading industrial countries, but each country is permitted to adapt as required. The Basle Accord is currently applicable only for international banks, but most jurisdictions are expanding the concepts of the Basle Accord to other participants in the financial services industry. The Quebec Report has suggested the adoption of such standards, and it appears that the legislative reform in Ontario will be pushing towards the risk-based capital assessment system

of the Basle Accord. Risk-based assessment of capital has been substantially adopted in the United States, British Columbia and is being recommended for adoption in a number of other jurisdictions. The banking industry has been subject to the concepts of risk-based capital assessment for some time.

The Basle Accord defines the composition of capital and determines the amount of capital required to be maintained. The amount of capital is determined from a formula based on the size of the assets, with the assets being weighted by credit risk. In the insurance industry there is also clearly a stronger need to identify liability profile and to ensure an adoption of risk weighting suitable to the liability profile. The liability profile of banks is of lesser concern as the liability profiles are essentially consistent and generally short term. In addition to the banking industry, the compensation systems to which the insurance industry is now generally required to belong, use risk-based capital in assessing the financial strength of the participating institution. Negotiations are still ongoing as to the precise nature and extent of the risk-based capital tests, however it is likely that a move towards greater coherence with the banking industry and the needs of the Basle Accord will be undertaken. There are some differences required as a consequence of the liability profile of the insurance industry, which will suggest some modifications.

Why the Growing Interest and Concern

1. Changing Regulatory Environment

Changes in the political and regulatory environment have eliminated much of the practical control that existed through the policy governance previously undertaken by the provincial superintendents of insurance. With the financial services sector being subject to intense public and political scrutiny, much of the statutory and regulatory change is being driven by the policy groups of the relevant Ministries. In addition, the increasing reliance upon compensation systems, has essentially imposed the need for regulation which arises from the membership requirements of the appropriate compensation system.

2. Risk of Technical Violations

The changes in the financial services industry in recent years have included a change in attitude of the regulators and an attempt to expand jurisdiction in many instances. The growing formation of financial groupings or conglomerates and the growth of participants in the industry on an inter-provincial and international basis have encouraged or permitted this "jurisdictional grab".

As a consequence of these changes, institutions are now subject to multiple levels of regulation, in many instances reporting to three, four or more regulatory authorities. The governing legislation in many instances differs between Federal and provincial regulators, provincial jurisdictions, the applicable compensation system and among sector participants for industry groupings. The cost of compliance is skyrocketing as a consequence, and in many instances it is becoming close to impossible to avoid technical violations. Many of the statutory regimes in recent years have greatly expanded the penalties, personal liability and capability of regulatory interference in the event of violation of statute or regulation, technical or otherwise. These concerns and consequences have accelerated tremendously during the period since 1987, and unless

controlled, are likely to continue to accelerate in the face of the growing number of failures in the financial services industry. It should be noted that, notwithstanding that there have been a growing number of failures in the financial services industry, that regulation does not always equal financial success.

Even the most well managed and well meaning of financial services participants is finding it increasingly difficult to ensure that they are in full compliance. The imposition of compliance monitoring on auditors is increasing difficulties in the relationship between the institutions and the auditors and the auditors and the regulators. It is accordingly of concern that there at least be consistency in the reporting process, reporting materials, and in the necessary areas of compliance. This could permit a single reporting process, notwithstanding a multiple review process.

3. The Cost of Internal Controls, Reporting, Liaison

The cost of internal controls, regulatory liaison and audit have increased in face of the increasing reporting and compliance requirements. Each of the jurisdictions has been moving toward increasing internal control requirements as the first line of review for the financial services industry. The Federal legislation clearly moved in this direction in 1992. Ontario had started the process in the mid 1980s and is moving strongly in this direction and a similar process is being recommended for Quebec. The Province of British Columbia has also enacted legislation which relies on greater discretion and responsibility for the financial institution.

It is clear that among the jurisdictions in Canada, the review, reporting and financial statement process is not consistent. As a consequence in many instances several versions of financial information will need to be prepared. Reports for income tax, internal control, internal management, regulatory reporting, and often regulatory reporting to multiple jurisdictions, is required with different information in each. The gathering, correlation and analysis of this type of information,

and the management and administrative time necessary to ensure compliance as a consequence comes with a cost. The industry is being asked to bear a heavier and heavier burden of monitoring its compliance.

The requirement for regulatory liaison has also increased over the past several years. This is a cost both in the level of staffing which must be maintained at the regulatory level and for the industry. Regulatory liaison is increasing directly as a consequence of increasing discretion at the hands of the regulator and decreasing certainty provided in the statute and regulation. Although I do not necessarily believe that this is the appropriate way of providing the necessary flexibility of the financial services sector, it is clearly the way in which most legislation is proceeding. Increasing discretion means decreasing certainty, and accordingly it is necessary to obtain more regular informal, or formal ruling, feedback from the regulatory authority. When it is not possible for the institution or its legal or accounting advisors to determine whether a proposed course of action will comply, because compliance is not clearly defined, it is necessary to obtain the input of the regulator or run the risk of non-compliance. With the increasing sanctions for non-compliance, this is a risk which often cannot be run.

Audit costs must necessarily increase. Auditors have been requested to take on a much greater role of monitoring and review. Monitoring and review includes well being reports, the necessity of reporting non-compliance, and increased liability in the event of incorrect reporting. The necessity also of increased involvement of the actuary in the financial statement and financial review process will also increase time and expenses necessary in undertaking the audit and financial reviews.

It is likely that many of these increasing costs will not be controlled or minimized in the near future. The Quebec Report indicates that the growing cost and expense is inappropriate and that means must be found to reduce and possibly minimize the costs of compliance. The Province of British Columbia has also clearly recognized the necessity of minimizing the costs of

compliance. British Columbia has moved towards a system which has decreased the cost of the operation of the regulatory authority. They have in addition attempted to harmonize reporting requirements, using a joint review and reporting process based upon a home jurisdiction concept, in order to minimize cost to the financial institution. It is suggested that harmonization at the very least should ensure that reports and reviews are not required to be done in a multi-jurisdictional basis. The increasing costs could hamper the cost effectiveness of the industry.

400

4. Increasing Levels of Multi-Jurisdictional Regulation

In addition to the growing difficulties of direct regulatory compliance noted above, a further level of effective regulation has been imposed in recent years. The necessary participation in compensation systems, which are separate from the regulatory regime, in essence imposes a further level of reporting and regulation. The Province of British Columbia has eliminated, for some British Columbia institutions, this difficulty by combining the deposit insurance function of the Credit Union Deposit Insurance Corporation with the Office of the Superintendent of Financial Institutions. Participation in the compensation systems requires, in addition to the payment of premiums, reporting and controls on financial soundness of the institution. The compensation systems in Canada do not currently rely upon the reporting and regulatory supervision of the governing statutes except in British Columbia, but rather impose their own separate and independent standards of financial soundness. This has also been the system in the United States for some time under the Federal deposit insurance corporation system. It is interesting to note that the FDIC is being divested of its regulatory aspects, and is being reverted to purely an insurance or reinsurance, type of system. The FDIC will be relying upon the usual regulatory authorities and their reviews and standards of financial soundness in the future. I would suggest that this would be suitable in Canada, as the additional level of compensation

system regulation is merely imposing another level of reporting and compliance.

By moving towards international standards, whether directly based upon the Basle Accord or not, it should be possible to co-ordinate the financial soundness requirements. Compensation systems do not purport to regulate in the areas of operations and corporate governance or consumer protection, to any significant extent. Accordingly, it appears that financial soundness is the one area where there is a direct need for common regulation, including the compensation systems. One method of proceeding to achieve this is either to have complete correspondence of the regulatory requirements, or to remove the regulatory aspects from the compensation systems and to place them with the appropriate governing jurisdiction as is the system in British Columbia. The stated purpose of the system in British Columbia is to reduce the cost of regulatory monitoring and administration the cost of compliance to the financial institution.

5. New Product Launch — Expenses and Difficulty

It is becoming increasingly expensive to launch new products in Canada. Financial institutions which are subject to multi-jurisdictional statue and regulation need to ensure product compliance with each of these jurisdictions' requirements. The majority of product issues will be provincial only regulation, however, there may also be required some review of Federal requirements where the product is tending towards the fringes of the core business permitted to be undertaken. In many instances the new product launch will require legal opinions, reviews and compliance with at least all ten of the provincial statutes. This can end up with an excessive cost on the issuance of a new product. The legal costs alone, let alone the costs of additional reviews and discussions with the regulators can drive the cost of a new product to the point where it is uneconomic to undertake the launch. It is difficult to see how current harmonization efforts will address this issue. The majority of harmonization discussions are orienting toward corporate governance issues, particularly those relating to financial solvency. It is unlikely that

there will be harmonization of the consumer protection portions of the legislation in the next several reform reviews. It is encouraged that at least a coherence of legislation approach be undertaken in order to permit greater ease of presentation of products. As noted in the introduction changes in the economy require a more flexible approach to the provision of financial services in order to meet the legitimate needs of industry and individuals in Canada.

Models for Achieving Harmonization

1. Single Regulation

One method of achieving harmonization is to have a single regulatory body which deals with the areas of concern such as corporate governance and financial soundness. I would suggest that this is a practical and legal impossibility in the Canadian political environment. This is further exacerbated by the constitutional difficulty arising from the requirement that banking be regulated solely at the Federal level. The single regulatory body would necessarily be the Federal government, as no other jurisdiction in Canada can regulate the banking industry. Otherwise what would be necessary would be single regulation at the provincial level in a number of sectors, and single regulation at the Federal level for banking. Given the crumbling of the four pillars, and the move towards greater integration of corporate groups, this is not a practical solution. Otherwise essentially the provincial authorities are being pushed out of the area of regulation of financial institutions.

2. Home Jurisdiction

A further method is to have a home jurisdiction-based regulatory environment. This in essence would require the home or incorporation jurisdiction to take sole responsibility over the particular area of regulatory attention. This type of regulation can work in the Canadian environment, and in fact has been suggested by the Quebec Report. In addition, home or incorporation jurisdiction responsibility has been enacted in the

British Columbia *Financial Institutions Act*. This type of regulation will, however, only work if each of the jurisdictions is satisfied with the level and nature of the regulation in the home jurisdiction.

Home jurisdiction regulation has been adopted by the European Economic Community, particularly in their banking industry, and appears to have been well received on an international basis. The European Economic Community model uses the jurisdiction of incorporation as the governing legislation for financial institutions. The capability of moving to a home jurisdiction model will require coherence on essential matters between the statute and regulation of each of the jurisdictions which are subscribing to this system, and will require confidence in the regulatory process in that jurisdiction. Reporting requirements on a home jurisdiction system can either be to the single jurisdiction, with that jurisdiction reporting to the remaining jurisdictions, or can be on a system of reports being submitted to each jurisdiction, based upon the legislation of the home jurisdiction, for independent review.

One of the concerns for home or designated jurisdiction is that it must be combined with essential coherence in the legislation. Otherwise financial institutions will engage in jurisdiction shopping, looking for the most lenient jurisdiction in the areas of particular concern. Home or designated jurisdiction accordingly cannot proceed without greater coherence of the legislation.

3. The Quebec Model

The recently released Quebec study entitled "Promoting the Financial Sector: Dividends for Quebec", identifies, I would submit appropriately, three categories of legislative interest. These are: 1) financial soundness; 2) operations and corporate governance; and 3) consumer protection. The study goes on to suggest that statute and regulation governing financial soundness should essentially be common among Canadian jurisdictions, including the Federal jurisdiction, operations and corporate

governance should be harmonized so as to ensure that there are no inconsistencies and consumer protection should continue to be regulated at the local level.

The Quebec Model does not completely follow the European Economic Community's model. By maintaining extensive jurisdiction over what are deemed to be consumer protection matters, the model becomes somewhat confusing. There would under that model be three levels of harmonization. Home or designated jurisdiction for financial matters would have
404 full regulation and reporting in the jurisdiction of incorporation. Some form of mixed review on corporate governance matters and local jurisdiction over consumer protection would address the other areas. This model, although moving in an appropriate direction, may be unduly confusing and provide an unnecessary continued level of multi-jurisdictional review.

Considering the political and regional realities of Canada, the Quebec division of legislative interest would however appear to more clearly recognize practical difficulties. Consumer protection has essentially remained a provincial or a local matter in most areas of government intervention. Consumer protection may need to more adequately recognize the local expectations and environment. There are still sufficient regional differences still in Canada so as to indicate some rationale for continued consumer protection at the local level.

4. Coherent Legislation

Another method of proceeding is to use a system of cooperation and direct consultation in order to ensure direct correspondence between the statute and regulation of each jurisdiction, such that the reporting requirements, the level, nature and extent of compliance, and the regulatory review are identical. The reporting process in this system is essentially delivery of copies of an identical report for independent review by each of the jurisdictions. The institution has assurance of compliance by compliance with one of the legislative regimes. The cost to government continues to be the cost of the

overlapping reviews. This, however, can be minimized by a direct correspondence between reports to be submitted. British Columbia has taken a serious attack on the lowering of compliance costs, by use of home jurisdiction and coordinated review of financial institutions. Reports are accepted by British Columbia based upon the home jurisdiction reporting requirements.

It is suggested that harmonization based on coherent legislation should be based upon one existing legislation. The reform review could then focus upon continuing needs and shortcomings requiring change. The Federal legislation is likely most suitable for this purpose as the majority of the jurisdictions appear to be generally adopting the Federal model.

5. Model Law System

Much of the law enacted in the United States, in recent years, has used a model law system to reach coordination among the states, and where applicable, the states and the Federal authorities. The model law system was used for the enactment of the Uniform Commercial Code, which governs much of the commercial law applicable throughout the United States. In particular, issues relating to personal property security, have been substantially codified through the use of the Uniform Commercial Code. The use of a model law system does not result in full coherence of legislation. In most instances, individual jurisdictions have adopted the Code in essence, but have included differences to recognize consumer economic needs of the individual state. This is effectively a variation on the coherence model, although formulated with greater coherence of the core portions of the law to be enacted.

The model law system essentially arises from a designated group, generally in consultation with industry and professional groups, establishing the suggested form of model law. The model law is generally based upon a codification system, which attempts to codify statute and applicable common law. The model law is then presented with suggested adoption to the

various individual authorities having jurisdiction. In most instances, jurisdictions adopt the model law, with limited amendments required to accommodate local concerns. The result is harmonization by way of substantially coherent legislation and regulation.

6. Function Delegation

A variation on the home jurisdiction model of harmonization is the function delegation method. This system, rather than delegating full regulation of the financial institution to a home jurisdiction, delegates certain aspects of the regulation to a specified jurisdiction. This permits that jurisdiction to develop specific expertise in the particular area of regulation. For example, in the Canadian environment, corporate governance and financial solvency of the insurance industry could be delegated to the federal authorities. They currently undertake the vast majority of such regulation based upon the large number of federally incorporated insurance companies, and are better equipped both with expertise and manpower to regulate in this area. Full delegation of the provincial aspects of licensing and marketing regulation could then remain solely with the provincial authorities. This would greatly simplify the applicable legislation and regulation, eliminate overlap, and permit a more effective structuring of the regulatory authority.

International Harmonization

It is necessary to consider, in addition to Federal and provincial harmonization, and inter-provincial harmonization, the need for international harmonization. The use of home jurisdiction can be accomplished in the Federal-provincial and inter-provincial harmonization efforts. This is presently not available on an international basis, although the European Economic Community is proceeding towards home jurisdiction as among the European countries.

In the international forum coherence of statutory and regulatory provisions, rather than the adoption of the systems of

home jurisdiction for a single regulatory body, will likely be required for the near future. At the present point in time, the adoption of home jurisdiction regulation would not be realistic. It may, however, be a goal which should be achieved in the future. The European economic market is moving rapidly toward achieving coherence of legislation, and home or designated regulation in the financial services industry. The Free Trade Agreement and the North American Free Trade Agreement will require a move toward this type of regulation implementation proceeds. At the present point in time access to markets only has been legislated.

Problems, Hurdles, Changes

1. The Equals Approach - Quebec, Ontario and Federal

The past perception of Quebec as being a hurdle to harmonization can hopefully be dismissed. Rather, Quebec is moving forward with harmonization incentives, which incentives are based upon the three part division of regulatory interest, and the use of home jurisdiction regulation for areas other than consumer protection. The Quebec Report suggests that the use of a form of home jurisdiction legislation, with licensing and restriction from access to the market, is a more suitable method of dealing with the operation of financial institutions in individual jurisdictions. This method of minimizing legislative compliance requirements has been adopted by British Columbia in the *Financial Institutions Act.*

Ontario has not in the past had equals approach in the insurance industry. The specific application of equals has been in the loan and trust industry. In the insurance industry separate regulation and statute has been maintained but particularly for Federal companies there has generally been an acceptance of regulation by the home or designated jurisdiction. This has not necessarily been extended to all jurisdictions, but has certainly been recognized for the Federal jurisdiction which encompasses the majority of insurance companies operating in Ontario. However, Ontario has not moved to full recognition of

designated or home jurisdiction which imposes some hurdle to harmonization for other provincially incorporated companies. Also the extensive purview of licensing and consumer protection issues in Ontario as well as a number of other provinces, may slow harmonization discussions involving Ontario. Ontario must also resolve its position with regard to equals in the loan and trust industry prior to being able to effectively participate in harmonization discussions. With inter-sectoral harmonization being moved towards, the equals approach cannot be maintained in the loan and trust industry, while harmonization discussions
408 are being held in other industries.

The approach of the Federal government has been hurdle to harmonization. The Federal authorities were late in joining harmonization discussions, effectively preventing harmonization in the insurance industry in the early stages. In addition the Federal government has moved towards effectively expanding its jurisdiction without any clear statement as to its intention with regard to other jurisdictions. The enactment of legislation which purports to govern both federally enacted institutions and their subsidiaries, regardless of the place of incorporation is clearly an extension of jurisdiction. The federal basis of the compensation system further exacerbates the jurisdictional expansion of the Federal government. It appears that the Federal authorities' position is that harmonization is great, as long as it is harmonization by coherence to the Federal legislation. This may present an effective hurdle to harmonization.

2. Leap-Frogging Legislative Amendment

Harmonization is difficult to achieve in circumstances where legislative amendment is proceeding independently in each jurisdiction. It was the intention of the Federal authorities that the 1992 reform package would essentially provide the template for the legislation in the rest of Canada. There has been some acceptance of this intention in other jurisdictions. However, a review of the Ontario Insurance Legislative Review Project report indicates that it has fallen behind the Federal incentives, largely as a consequence of timing and the Quebec

Report has gone ahead in many areas. Similarly, the Province of British Columbia has also enacted innovative legislation, addressing many of the issues of harmonization and considered several of the concepts of the Federal legislation, particularly in the investment and lending areas but to different effect.

The general acceptance of the Federal model should assist in moving toward harmonization, as opposed to the independent reform process of the past which has resulted in lack of a uniform approach.

3. Constitutional Overlapping Jurisdiction

The constitutional sharing of jurisdiction over financial institutions in Canada is going to continue to complicate the harmonization process. The desire of the provincial authorities to maintain jurisdiction in some traditional areas of authority and the restrictions on provincial and Federal authority in other areas, will continue to present difficulties in choosing an appropriate method of harmonizing statute and regulation. It is suggested that the use of harmonized legislation, with home jurisdiction regulation, could solve the constitutional issues. This would leave only banking legislation, which is Federal jurisdiction solely, causing inequity. The level playing field issues caused by banking regulation can be addressed by harmonization of the legislation.

4. Politicization, Lack of Consultation

As noted previously, there has been a change in the regulatory environment with increasing political attention to the financial services sector. This has resulted in formalization regulatory reform, through statutory and regulatory amendment, rather than the use of the superintendent's policy and guidelines. Although, from a legal viewpoint, this is desirable in that it provides legal force to the governance of the financial institution, there are some undesirable aspects. In general legislative and statutory reform proceeds under political guidance with less

ongoing input from the industry and from the regulators who will deal with the issues arising from the reform.

5. Consistency of Approach

At the present point in time it is difficult to achieve consistency of approach among the jurisdictions. There are tremendous differences of attitude, particularly in areas of licensing and consumer protection which may cause difficulty in achieving coherence or a designated jurisdiction approach. The view is still that the attitude or approach of each of the provincial jurisdictions is right for that jurisdiction.

Many of the jurisdictions are hampered by lack of resources or by the small number of institutions incorporated in that jurisdiction. Designated jurisdiction approach may be difficult in circumstances where the larger provinces do not recognize that other provinces have the capability of effectively regulating institutions formed in that jurisdiction. Jurisdiction shopping could result in unacceptable standards of regulation as a consequence of lack of resources.

In some circumstances regulators view the local or regional market as being different from, or of such a size, as to warrant differences in regulation. Historical differences also may force differences in the approach to regulation. There is a perceived difference to the insurance industry operating in Quebec from that operating in Ontario, which may perpetuate a difference of view and regulatory approach.

6. Regulatory Resources

Governments throughout Canada are now facing a need for retrenchment and cost cutting. Nonetheless each of the jurisdictions have reasonably extensive regulatory bodies for the regulation of financial institutions. Dismantling of these organizations where home or designated jurisdictions, or use of a single legislative body has been chosen, would be difficult given the nature of bureaucracy. The desire of maintaining both control and jobs and bureaucratic authority, could hamper the move

towards single legislation or more comprehensive designated jurisdiction regulation.

Networking

1. What Is It?

Networking is defined in section 442 of the *Insurance Companies Act* (Canada) as the capability of acting as an agent with regard to the provision of any service provided by a financial institution or a company in which a financial institution is permitted to have a substantial investment. It is expanded at section 442(b) by the capability of entering into an arrangement for similar purposes, and at section 442(c) by the capability of referring any person for the purposes of obtaining any such services. In other words, networking simply refers to the fact that on a non-ownership basis, financial institutions can work together for the purposes of referring customers, forming legal entities or other arrangements to jointly sell financial services or jointly marketing financial services.

The financial services which can be sold are restricted to those which can be provided by a financial institution or the companies in which they are permitted to have substantial investments. Section 495 sets out the entities in which an insurance company is permitted to have a substantial investment, section 495(2) has some additional entities in which a life insurance company only may have investments. Essentially the services in which networking arrangements can be set up are restricted to those in the financial services sector. Networking permits an insurance company, without the formality of cross-ownership or conglomerate arrangements, to have the advantages of working on a relatively formalized basis with other financial institutions to broaden the services available to its customers or to provide its services to customers of other institutions.

2. What Change from the Prior Regulatory Regime?

Legislation of networking is a new concept of the 1992 Federal legislative reform. Prior to that there was no specific permission to the undertaking of networking arrangements at the federal level. In general, provincial legislation does not deal with matters equivalent to networking. Networking is generally not restricted in provincial legislation but is not specifically contemplated or permitted.

3. What are the Legal Advantages and Pitfalls?

Companies can enter into networking arrangements which otherwise might be considered anti-competitive or might be considered as engaging in businesses other than permitted insurance business. Insurance companies are relatively restricted in the businesses which they can undertake, particularly with regard to the classes and categories of insurance which they are permitted to sell. These restrictions might have prevented the entering into of grouping arrangements or of the cross-selling of products of other entities. The specific permitting of networking provides the legal advantage of sanctioning activities which can reasonably expand market participation.

The pitfalls are the hidden restrictions. Networking on its face appears to allow a very broad range of activities. There are however a number of restrictions, which will be subsequently discussed, which can limit, or even prevent, networking in many circumstances. Networking arrangements are not as broad or as liberal as would appear from the initial reading of section 442. It is necessary to ensure that prior to entering into networking arrangements the restrictions or prohibitions are clearly understood.

4. The Provincial Competition Problem

There are some participants in the financial services sector, governed only by provincial legislation, which operate on an essentially unregulated basis. For example, the providers of credit card services (other than banks), often operate pursuant to

provincial jurisdiction. The activities of these provincially regulated bodies, in areas such as the sale of insurance, is essentially unregulated. This permits entities with access to customer information essentially equivalent to that obtained by banks to utilize that customer information for purposes of the sale of insurance products. The result is unequal competitive opportunities for provincial entities which are essentially unregulated.

Networking: What Can You and What Can't You Do?

1. The Federal Limitations

The provisions of section 442 do not eliminate other limitation on activities undertaken by insurance companies. In particular, the Federal legislation cannot override areas of provincial authority, such as those requiring licensing for the undertaking of the sale of insurance products. As a consequence, any of the arrangements to be undertaken pursuant to section 442 will be subject to those prohibitions.

2. Customer Information Confidentiality

An area of concern, and limitation, in networking is the requirement to preserve customer confidentiality. The requirement to maintain confidentiality of customer information is a specific legislative requirement for banks and is a statutory or common law restriction for all financial institutions. The requirement to preserve customer confidentiality essentially means that the financial institution cannot provide client information to another entity or financial institution, notwithstanding the networking arrangement entered into. The requirement for customer confidentiality can only be waived (particularly in the Province of Quebec) by the consent of the customer. This restriction can significantly reduce the value of a networking arrangement. The asset of most value to be brought to a networking arrangement is generally the customer list of the financial institution. In insurance, where a contact and information is vital to a sale, the customer information of, for

example, a bank, would greatly enhance the competitiveness of the offering of an insurance product. The necessity of maintaining customer confidentiality must be considered in evaluating any potential networking arrangement.

3. Core Business

Core business separation must also be maintained. The networking arrangement cannot indirectly result in the financial institution undertaking business other than permitted business. That is the separation of trust or fiduciary, insurance and banking is required to be maintained notwithstanding the entering into of a networking arrangement. Core business separation can be more easily dealt with and overcome than the customer confidentiality issue. The networking arrangements and referrals merely need to continue the separate offering of financial services by the appropriate company.

4. Sale of Insurance

Specific restrictions on the sale of insurance also must be considered in networking arrangements. This can cause difficulties in a contemplated networking arrangement with a bank. Banks are prohibited from undertaking direct selling of insurance other than for specified narrow types of insurance, and are essentially prohibited from selling through their branches. The restriction on the use of customer information and branch selling results in restricted participation with banks in a networking arrangement. There are some ways in which banks can effectively participate in networking. Physical arrangements could be established in a branch environment or through automated teller machines which may permit insurance company participation. Specifically networking permits the leasing of areas, in a branch or otherwise, to another financial services entity. Provided that there is clear differentiation of the insurance entity from the bank, and a clear separation of the physical areas of business operation, then it appears insurance sales within the branch may be undertaken.

The use of the ATM's to provide insurance information, as has been adopted by The Toronto-Dominion Bank, also appears to be permitted. The direct referral of customers using information provided through the ATM to an insurance entity is permitted, other than in circumstances where the ATM forms part of a branch. The use of some customer information is permitted, such as mailing to the holders of credit or charge cards or with bank statements, or the use of group insurance contacts, can also provide areas in which networking between banks and insurance companies can viable.

Networking between insurance entities will have fewer issues of sector-specific regulation which will need to be considered.

5. Provincial Restrictions.

Provincial restrictions on licensing of insurance business and marketing of insurance products continue to be applicable. Networking arrangements must not violate provincial regulation, and in particular must not violate licensing specific to the entities undertaking the networking arrangement. Issues such as the licensing of agents and brokers, and the participation of agents and brokers in the networking arrangements must be considered.

Joint Ventures and Similar Arrangements, What Can You Do?

The undertaking of joint ventures or marketing joint products may be an attractive means of accessing the benefits of networking. It would appear that it is possible to organize a joint venture arrangement, whereby an entity, or merely the joint provision of product, could be effectively structured. This would particularly be effective in circumstances where the liability profile, asset mix, or product mix of the institutions differ but are complementary and permit the provision of a more effective combined product. In some instances the financial institution, as an individual institution, may not have the appetite for a product unless the risk could be shared, and possibly differently allocated

to another entity. This can be done either through the marketing of a joint product, or through a joint venture with the formation of a suitable entity.

Another permitted method is the offering of private label product. That is where the insurance company offers product which is essentially marketed by way of the referral or agency systems permitted by section 442(a) and (c) under the name of that referring institution. The use of private label marketing may increase, as banks and other institutions attempt to provide more
416 all-encompassing financial services, without violating the restriction on direct sale of insurance.

Reinsurance products are suitable for networking arrangements. The use of a network relationship may simplify the entering into of reinsurance arrangements by avoiding self-dealing concerns.

The Importance of Networking

It is likely that the entering into of permitted networking arrangements, and in fact the changes in the ownership regime permitting financial groupings or conglomerates, is only a first step to consolidated financial services. The eventual dissolution of the financial pillars has proceeded a long way with the Federal reforms, reform in British Columbia, and the contemplated reforms in Ontario, Quebec and other jurisdictions. By permitting, or recognizing the continuation of, financial conglomerates it is clear that the regulatory authorities intend to proceed towards more all-encompassing financial services participation.

At present a primary restriction on entirely dissolving the "pillars" is the nature of the organization of the regulatory authorities. A fundamentally different method of regulation is required where financial institutions participate in more than one area in the financial services industry. In circumstances where a core business arrangement is continued, then the regulators can proceed on an institution by institution regulatory review. If more than one core business is undertaken by the institution it is

necessary to regulate on a function-specific as opposed to an institution-specific basis. At present the regulatory authorities are organized so as to review by institution and not by function. It is my understanding that fundamental changes are being contemplated which will permit function-based review. Recently, annual review teams have included of persons with expertise in more than one industry. That is the teams have included persons with expertise in both banking and insurance. This appears to indicate a desire on the part of the regulators to cross train as among core functions, and to begin the process of amalgamating the core functions. This requires a fairly fundamental change in the nature both of the existing regulation and the nature of the regulatory authority. It is more difficult to do a comprehensive financial review in circumstances where specialists are reviewing function-specific concerns. It is however suggested that this will be the next step in regulatory reform.

Given that it is likely that the regulatory environment will move towards eliminating the last of the core business restrictions, then the insurance industry must be prepared for these moves. It is likely that the "vanilla pudding" types of products for the insurance industry will be largely absorbed by the banking and trust industry when this happens. If banks are permitted to undertake the direct selling of insurance it is likely they will look to these products. The value of their customer base will dictate that they will be effective participants in selling the very basic insurance policies.

In order to survive the insurance industry will need to make appropriate arrangements to either reorient their business away from the vanilla pudding type of products, or find ways of participating with the banking industry. The undertaking of networking arrangements, which may survive a bank's direct selling efforts, could be one manner of achieving this. Effective networking arrangements to the mutual benefit of the participants, may eliminate the desire of the banks to directly participate in insurance. In the event that the requirement to keep customer information confidential is eased, then it is possible

that networking could be more effective, and more desirable to the banks rather than moving out of their core area of expertise and business.

For the niche players the networking arrangements can enhance distribution, and the chance of selection of their product. Ease of acquisition is becoming important to customers, and chance of selection will be increased if it is easier for the customer to access the product. Networking can achieve this.

418 Networking, particularly if it involves the use of technological tie-in, can provide cheaper, faster, more effective distribution. With cost becoming a primary concern of consumers, and the necessity of decreasing margins accordingly imperative in the industry, this can be a tremendous competitive advantage.