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Ms. Jane Pearse
Director, Financial Institutions Division
Department of Finance Canada
L'Esplanade Laurier
15th Floor, East Tower
140 O'Connor Street
Ottawa, ON
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Delivered by email to: finlegis@fin.gc.ca

Dear Ms. Pearse:

Re: Review of Legislation Governing Federally Regulated Financial Institutions

Advocis, The Financial Advisors Association of Canada, appreciates the opportunity to provide comments further to the scheduled review of legislation governing federally regulated financial institutions announced by the Minister of Finance announced on September 20, 2010.

This is in addition to the Minister of Finance's earlier announcement on October 7th, 2009 that the Government of Canada will adopt specific policy measures under the *Bank Act* to ensure that websites of banks are subject to the same insurance business regime that currently applies to branches. This is to ensure that the regulations "...reflect the government's policy intent that banks should separate insurance business from banking business." We look forward to the publication of these regulations.

Advocis is the country's largest and oldest voluntary professional membership association of financial advisors and planners in Canada. Our association was founded in 1906 as the Life Underwriters Association of Canada. Our over 10,000 members are provincially licensed to sell life and health insurance, mutual funds and other securities, and are primarily owners and operators of their own small businesses who create thousands of jobs across Canada. Many of our members are dually licensed to sell both life and health insurance and mutual funds and other securities. Our members provide a wide range of financial services, including estate and retirement planning, wealth management, risk management and tax planning and provide financial advice and services to millions of Canadians.

Advocis members embody professionalism based on education, best practices, and high standards of proficiency and ethics. Advocis promotes the professionalism of financial advisors through:

- Advocis' Code of Professional Conduct;
- Guidance on best practices
- Errors and omissions insurance coverage that protects consumers;

- Professional designations supported by a comprehensive curriculum and rigorous standards – Advocis’ Chartered Life Underwriter (CLU) and Registered Health Underwriter (RHU), and educational support for the attainment of the Certified Financial Planner (CFP); and
- Mandatory competency-based continuing education.

Advocis favours measures in the financial services sector which are designed to preserve and enhance consumer protection, enhance clarity, and transparency and thereby lead to a more informed and adequately protected consumer.

Advocis supports the government’s policy intent that banks should separate insurance business from banking business given that such a policy enhances the interests of consumers by making consumer protection in the financial services sector a priority while maintaining a level playing field for all financial services market participants.

In our view, changes to these restrictions to allow banks to sell or market insurance from or through their branch networks without significant protective measures could potentially harm consumers and would constitute a significant shift in the financial services landscape.

Banks are currently permitted to engage in the life and health insurance business through subsidiaries on much the same basis as the rest of the industry - through licensed advisors. They also can sell authorized types of insurance in-branch, such as creditor mortgage insurance. The current restrictions on marketing and sale of insurance in-branch exist to adequately protect consumers. Without them, consumers are subjected to the subtle pressures that arise in the context of tied selling and potential violation of their privacy rights.

Tied Selling

The existing restriction on tied selling in section 459.1 of the *Bank Act*, which prevents only *coercive* tied selling, is not, on its own, adequate to protect consumers. The current *Insurance Business (Bank and Banking Holding Companies) Regulations* are in place to ensure that consumers are adequately protected from the subtle pressures that arise in the context of tied selling.

The restrictions are in place to ensure that a bank cannot *recommend* that an applicant for a loan should also purchase life and health insurance. In such a situation it would be very difficult for a borrower to decline the suggestion that they should apply for the recommended life and health insurance. Borrowers will tend to comply with the insurance product recommendation either (a) because they fear offending the lender; (b) they want to please the lender; or (c) they are not focused on the insurance aspect of the transaction.

Bringing together the usual business of a bank and the business of life and health insurance would facilitate subtle forms of coercion that are difficult to detect or monitor. A consumer’s ability to choose an insurance product freely and in a considered way is lessened with tied selling pressures.

Commingling of a Consumer’s Personal Information and Privacy Concerns

The restrictions are also in place to protect consumers from commingling of information and potential privacy violations. The consumer’s financial information must remain completely separate from their personal health information collected for insurance purposes which cannot

be shared. Otherwise, there is a risk that the personal health information collected will be shared or commingled or accessed improperly by loan personnel. This would be harmful to a consumer's privacy with the potential for detrimental effects which can result from the commingling of information. For example, it may affect the consumer's ability to obtain credit as the loan may be denied as a result of the health information obtained.

Safeguarding individual consumers and small businesses from the potential risks of tied selling pressures and potential privacy violations must continue to be the main principles underlying the government's policy when reviewing the *Insurance Business (Bank & Bank Holding Companies) Regulations* made under the *Bank Act*.

Adequately Protect Consumers Regardless of the Access Point

The current *Insurance Business (Bank and Bank Holding Companies) Regulations* were drafted in the early 1990's when on-line commerce was in its relative infancy. Since that time, there has been a vast increase in the use of on-line technology to conduct business and a huge increase in the use of the internet by consumers. The regulations need to be updated to reflect these developments. In our view, it is not simply a matter of how consumers access insurance products through the banks, but how adequately protected they are once they begin interacting with the banking entity and the person who is providing the insurance advice. The focus of the rules should be to protect consumers from tied selling and potential privacy violations and ensure that consumers are dealing with a qualified, provincially licensed insurance agent. It is not clear to a consumer that this is occurring when they access the bank's insurance products and services through the bank's web-site.

The policy intent of the *Bank Act* and its regulations – that banks should separate their insurance business from their banking business – should apply regardless of the access point used to interact and conduct business – whether by use of a physical traditional branch, an office within one of the bank non-insurance subsidiaries or on-line through a web-site. The bank's website, physical branch, or an office located elsewhere but that is nonetheless part of the bank entity, should be subject to the same policy and the same regulatory provisions to protect consumers.

The insurance subsidiary of the bank is currently able to market and sell life and health insurance so long as the agents are appropriately licensed through the applicable provincial licensing body (either through the provincial Insurance Council, or other provincial government entity such as the Financial Services Commission of Ontario (FSCO)). Therefore, there is no reason why the web-site of the bank's insurance subsidiary cannot also be used as an access point through which the insurance subsidiary of the bank is able to market, promote and sell insurance.

The Concept of the Bank Branch and Web-Site

The physical branch of the bank and the web-site of the bank should be treated in the same manner. What the bank branch is allowed to do with respect to the marketing, promotion or selling of insurance should apply equally to the bank's web-site or office location of one of the bank's non-insurance subsidiaries.

It should be made clear to the consumer when they are visiting the web-site of the insurance subsidiary or insurance agent (who has a contractual relationship with the insurance subsidiary) and when they are visiting the web-site of the retail banking entity or other part of the banking

group (i.e., the bank's operations), otherwise the consumer is not adequately informed and not adequately protected.

The web-site of the insurance providers, agents and brokers of the bank's insurance subsidiary can be made "separate and distinct" from a bank's web-site. It can have its own separate web-address and it should be clear to the consumer from the web-address and from the web-site itself that they are accessing the insurance subsidiary rather than the bank's web-site.

It should be clear and transparent to the consumer what entity is being accessed through visiting the web-site, what entity is gathering information that is being provided by the consumer on the web-site, where that information is going and which entity is subsequently contacting them (regardless of the means chosen to do so). Consumers cannot be adequately protected from the risks of tied selling and potential privacy violations if there is not a clear identification of which entity's web-site the consumer has accessed and who the consumer subsequently is interacting with and where the consumer's personal information is going.

Promotion, Advice and Selling of Insurance Products and Services

The current policy that restricts banks from promoting, advising or selling other than authorized insurance products at the branch should be applied in situations where the consumer's access point is the web-site of the bank other than its insurance subsidiary. The consumers are being provided with information about insurance products and services, they are being provided with insurance quotes and are discussing various types or risks or policies. In such situations, the consumer needs to be dealing with a licensed advisor in accordance with provincial market distribution of insurance laws and regulations.

It is the insurance subsidiary that is permitted to promote, advise and sell insurance products and services. Any disclosure made by the consumer on the insurance-subsiary's web-site should remain within that entity when the information is transmitted through the internet and stored electronically, and any subsequent interactions must be between the consumer and the insurance subsidiary in order to comply with the regulations. Similarly, any referral that is made as a result of visiting the insurance subsidiary's web-site, or any subsequent advice provided, must be from the insurance subsidiary of the bank.

Any interactions between the consumer and the insurance subsidiary that constitute activities of an "agent" under the applicable provincial *Insurance Act* must come from a fully licensed agent of the insurance subsidiary.

Enforce and Enhance Consumer Protection Provisions

Advocis, in the last financial services legislation review, urged the Government to consider stronger disclosure requirements with respect to coercive tied selling as well as considering means to increase Canadians' level of understanding and knowledge of the coercive tied selling prohibition. We are concerned that Canadians still lack knowledge that this protection is actually in place. In addition, the Government should enforce section 459.1(4.1) of the *Bank Act's* disclosure requirement that the coercive tied selling prohibition should be set out in a statement in plain language and displayed and available to customers and the public at all bank branches and on all of the bank's websites and at all prescribed points of service in Canada.

We would also like to re-iterate our call for the Government to invoke its regulation making authority to provide guidance under section 459.1(5) of the *Bank Act* regarding what constitutes

undue pressure or coercion for the purpose of the coercive tied selling provision in section 459.1(1).

Proposed *Canadian Securities Act* and Accompanying Regulations and the Current Provincial Insurance Regulation of the Distribution of Segregated Funds

The proposed *Canadian Securities Act* and regulations should be drafted so that it does not infringe on the current provincial insurance regulation of the distribution of segregated funds. The definition of “security” as presently drafted in the Act suggests that segregated funds can be deemed a security through regulation, and thereby regulated by the securities regulator.¹

Segregated funds are subject to three different regulatory regimes, administered by two different levels of government for different purposes: by federal legislation/regulation as it pertains to solvency and corporate governance of life insurance companies; by provincial securities legislation/regulation as it pertains to the underlying fund; and by provincial insurance legislation/regulation as it applies to market distribution, consumer protection and generally applicable elements of all life insurance contracts. We believe that care should be exercised to ensure that a system that is working well is not disturbed.

The marketing and distribution of segregated funds is currently subject to the legislative and regulatory requirements for life insurance products. We believe these requirements have proven effective to protect consumers. While the current regulatory structure does not currently include requirements specific to segregated funds or identify segregated funds as being distinct and containing elements which extend beyond those of traditional insurance products, we believe that the existing regulatory framework for life insurance products is capable of ensuring that consumers receive appropriate disclosure and are protected.

Segregated funds, like other life insurance products are subject to the provisions in provincial insurance acts and guiding principles set out by the Joint Forum in their 2005 document *Principles and Practices for the Sale of Products and Services in the Financial Sector* which was endorsed by all provincial insurance and securities regulators across Canada. Like all other life insurance products, the marketing and sale of segregated funds is subject to the three key principles-based recommendations established by the Industry Practices Review Committee (IPRC) of the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO) in 2006:

1. priority of client’s interest – an insurance intermediary (broker or agent) must place the interests of insurance policyholders and prospective purchasers ahead of his or her own interests;
2. disclosure of conflicts or potential conflicts of interest – consumers must receive

¹ The current Proposed Canadian Securities Act definition of “security” provides for an exemption from securities legislation for individual variable annuity contracts (IVICs) with at least a 75 per cent guarantee. However, it leaves open the ability to remove the exemption by regulation: “security” includes...(e) an agreement under which the interest or right of the purchaser is valued, for the purposes of conversion or surrender, by reference to the value of a proportionate interest in a specified portfolio of assets **except, unless otherwise provided by the regulations, a contract, issued by an insurance company governed by an Act of Parliament or a law of a province, that provides for payment at maturity of an amount not less than three quarters of the premiums paid by the purchaser for a benefit payable at maturity;...It does not include a security that is within a class of securities that are designated by the regulations not to be securities”**

- disclosure of any actual or potential conflicts of interest associated with a transaction or recommendation; and
3. product suitability – the recommended product must be suitable to the needs of the consumer.

All life insurance agents have to adhere to the above-noted three principles for each recommendation made to a client.

In addition, agents are required to follow the steps set out in the Canadian Life and Health Insurance Association (CLHIA) Guidelines on Individual Variable Insurance Contracts (IVICs) (“Guideline G2”)². These steps include delivery of the Information Folder and will include compliance with revised point of sale requirements as set out by the Joint Forum in *Proposed Framework 81-406: Point of sale disclosure for mutual funds and segregated funds* (the, Framework). The CCIR is in the process of implementing the Framework by establishing revised point of sale disclosure standards for segregated funds, which include the delivery of the Key Facts and Fund Facts point of sale documents to clients. The attention by insurance regulators to principles is what industry trusts the CSTO will be recommending on the securities side.

In our view, the existing regulatory framework for segregated funds sales is appropriate and can deal effectively with any emerging issues.

The government must ensure that in developing a new securities act and regulator that the current regulation of the distribution of segregated funds remains intact absent compelling evidence of a problem, and evidence that an identified problem could not be properly addressed by the insurance regulators and industry.

We appreciate the opportunity to provide you with our comments regarding the 2010 review of financial institutions legislation and look forward to providing the Government of Canada with additional input on these important matters throughout all stages of its legislative review process. Should you have any questions and wish to discuss our submission, please do not hesitate to contact us.

Yours sincerely,



Greg Pollock, M.Ed., L.L.M., C.Dir., CFP
President & CEO



Terry Zavitz, CFP, CLU, RHU, GBA, EPC
Chair, National Board of Directors

cc: Hon. J. Flaherty, Minister of Finance

² This Guideline has been endorsed by the CCIR and incorporated into Ontario’s Variable Insurance Contract Regulation, Ont. Reg. 132/97.