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February 17, 2015

Janette Seibel and Jim Hall
Financial and Consumer Affairs Authority of Saskatchewan
1919 Saskatchewan Drive, Suite 601
Regina, SK S4P 4H2

VIA EMAIL: Janette.Seibel@gov.sk.ca and Jim.Hall@gov.sk.ca

Dear Ms. Seibel and Mr. Hall:

Re: Bill 177, *The Insurance Act*

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments in regards to Saskatchewan's Bill 177, *An Act respecting Insurance and Insurers and making consequential amendments to other Acts and regulations* (the "Bill").

About Advocis

Advocis is the largest and oldest professional membership association of financial advisors and planners in Canada. Through its predecessor associations, Advocis proudly continues over a century of uninterrupted history serving Canadian financial advisors and their clients. Our 11,000 members, organized in 40 chapters across the country, are 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. Advocis members provide comprehensive financial planning and investment advice, retirement and estate planning, risk management, employee benefit plans, disability coverage, long-term care and critical illness insurance to millions of Canadian households and businesses.

As a voluntary organization, Advocis is committed to professionalism among financial advisors. Advocis members adhere to a professional Code of Conduct, uphold standards of best practice, participate in ongoing continuing education programs, maintain professional liability insurance, and put their clients' interests first. Across Canada, no organization's members spend more time working one-on-one on financial matters with individual Canadians than do ours. Advocis advisors are committed to educating clients about financial issues that are directly relevant to them, their families and their future.

Our Comments

We applaud the Saskatchewan government for taking steps towards the first major modernization of insurance regulation in the province in five decades. The Bill makes tangible improvements to consumer protection, which we support fully: new market conduct standards will help curb unfair practices, such as the making of false or misleading statements and tied selling practices. New disclosure requirements,

including in regards to limitation periods and rescission rights, and new procedures for dealing with claims and complaints will put consumers on a stronger footing when dealing with complex insurance matters.

However, there is one particular aspect of the Bill that gives us great concern: in section 5-6, the Bill creates a new licensing category specifically for managing general agencies (“MGAs”). For the life and health insurance sector, this represents a major shift from the established practice under which MGAs have operated with a life insurance license, on the basis that in virtually all cases, the principals of MGAs write business themselves or because the MGA entity receives commission payments from insurance companies.

The need for an MGA-specific license category has not been explained

We do not understand the motivation behind the creation of this new licensing category. There was no public consultation on this matter before the Bill was introduced in the legislature. We are not aware of any evidence or analysis that suggests the use of the life license category by MGAs causes harm to consumers, regulators or industry, or how a separate MGA license class would resolve any purported problems. Simply, the Bill’s creation of a new licensing regime for MGAs comes as a surprise to us and other industry and regulatory stakeholders we have consulted.

The role and licensing of MGAs was the subject of a recent review by the Agencies Regulation Committee (“ARC”) of the Canadian Council of Insurance Regulators (“CCIR”). In its 2012 report (the “CCIR Report”)¹ the ARC noted with approval the fact that MGAs were operating on the basis of a life license:

Some respondents suggested that regulators should develop a specific licensing regime to encompass the role that MGAs currently have in the marketplace. Licensing is not an end in itself, but a means to an end. Accordingly for a licensing regime to contribute value there need to be specific consumer protection outcomes that are required. The analysis in the paper indicates that there are no specific consumer protection goals that would be advanced through an MGA specific licensing regime.²

The CCIR Report did state that there is a need for regulators to develop a method to be able to identify the business model of those licensed as a life agent within their licensing regimes, such as whether an agent is licensed as an individual, a partnership or a corporation, operating as a career agent or an independent agent, or associated with one or more MGAs – but this desire for greater detail is not specific to MGAs and would not be resolved by the proposed language of the Bill.

The CCIR Report also investigated the concern from certain stakeholders that the errors and omissions insurance currently mandated for life agents may not be adequate for the activities of an MGA; however, ARC found no rationale supporting this, stating that “most stakeholders agree that very rarely there are MGA errors that may give rise to complaints.”³

¹ Canadian Council of Insurance Regulators, Agencies Regulation Committee, “Position Paper - Strengthening the Life MGA Distribution Channel” (November 6, 2012) available at http://ccir-ccra.org/en/init/Agencies_Reg/Strengthening%20the%20Life%20MGA%20Distribution%20Channel%20EN.pdf.

² Report at p.11.

³ *Ibid.*

Therefore, before proceeding with the Bill in its current form, we urge Saskatchewan to hold a fulsome consultation, explaining what specific consumer protection or other regulatory goals it seeks to achieve by mandating a separate licensing regime for MGAs. Stakeholders should have an opportunity to understand and respond to Saskatchewan's concerns, perhaps paving the way for government and industry to work together to mutually resolve issues. A collaborative approach should be attempted before prescriptive, top-down changes in legislation are foisted upon stakeholders.

Issues with the proposed MGA licensing regime

Introducing an MGA-specific licensing regime creates a variety of issues. It would represent a marked change in the way that MGAs have operated, creating environmental uncertainty that is harmful to small businesses, which characterizes the vast majority of MGAs. It would create new burdensome compliance obligations – some of these new obligations are disclosed in the Bill, such as in sections 2-40(1) regarding granting access to the MGA's books and records, 5-11 regarding the registration of contracts between MGAs and insurance carriers with the Superintendent, and 5-20 through 5-21 regarding the nomination and maintenance of designated representatives.

Beyond these, the Bill envisions other new obligations that are not disclosed in any detail: section 5-7 states prescribed persons and classes of persons who are not eligible to be issued an MGA license and section 5-89 states that cabinet may make regulations in that regard. Clearly, the Bill envisions that there will be additional requirements and obligations of would-be MGA licensees, but without any further information on what these may be, it is impossible to analyze or provide comment on their merits. Here again, it would be helpful for stakeholders to be informed of the Bill's policy objectives first.

The Bill also makes a significant change in the manner in which new agents are introduced to the industry. Section 5-18(1) requires that every person that applies for, or holds, an insurance agent's licence for life insurance must be recommended by an insurance company or the MGA of that insurance company. This 'sponsorship' concept is not new to Canadian insurance regulators; for example, the Financial Services Commission of Ontario requires its new life licensees to be sponsored by an insurance company for their first two years of practice.

However, the Bill is unique in granting sponsorship duties to MGAs. Sponsorship of a life agent is not an activity that Saskatchewan or the MGA should take lightly – it is, in effect, the MGA giving its endorsement of that agent. And according to section 5-27 of the Bill, the MGA would have the responsibility to monitor its endorsed licensees on an ongoing basis, and, under section 5-23, it would have a duty to pull its recommendation of the licensee under certain circumstances, resulting in an automatic suspension of the agent's license.

Putting the direct onus of screening and monitoring life agents on MGAs is contrary to established industry practice. Currently, under the Canadian Life and Health Insurance Association's ("CLHIA") Guideline G8, *Screening Agents for Suitability and Reporting Unsuitable Agents*,⁴ insurance companies may delegate certain of their duties, such as the screening of agents, to MGAs – so, while MGAs undoubtedly have an important role to play in agent screening and supervision, Guideline G8 states explicitly that the insurer retains ultimate responsibility, from the regulator's perspective.

⁴ Available at [http://www.clhia.ca/domino/html/clhia/CLHIA_LP4W_LND_Webstation.nsf/resources/Guidelines/\\$file/Guideline_G8.pdf](http://www.clhia.ca/domino/html/clhia/CLHIA_LP4W_LND_Webstation.nsf/resources/Guidelines/$file/Guideline_G8.pdf).

Guideline G8 creates an accountability chain that provides certainty to market participants, and this structure was viewed favourably in the CCIR Report. Guideline G18, *Insurer-MGA Relationships*⁵ recently came into effect in January 2015 and provides greater clarity on the roles, responsibilities and accountabilities within the insurer-MGA relationship, stating that “where an insurer relies on an MGA to perform specific functions, the insurer retains ultimate responsibility and, accordingly, should take reasonable steps to ensure that the MGA is performing those functions.”

The CCIR Report noted the robustness of these industry-led initiatives, but the Bill threatens to muddle this accountability chain by introducing the concept of MGA-centred agent sponsorship. In the case of MGA-sponsored licensees, it would be unclear whether the insurance company or MGA would have primary supervision duties. This uncertainty is harmful and unnecessary given the CCIR’s recent approval of industry best practices – and it is particularly worrisome when the outcome is the potential suspension of an agent’s livelihood.

Indeed, the entire concept of insurer- or MGA-based sponsorship creates the spectre of the life agent being unduly influenced to promote that insurer’s or MGA affiliate’s products, respectively, to meet explicit or implicit sales quotas – with the implication that sponsorship could be at risk if such sales quotas are not met. So while sponsorship can be beneficial, the role may be better suited to experienced peer agents or professional membership associations, as they could provide agents with professional support without subjecting them to sales pressures.

Conclusion

Many of the changes in the Bill, in particular regarding consumer protection, are welcome updates to Saskatchewan’s insurance legislation. But we do not understand the proposal to create a distinct licensing regime for MGAs: we are not aware of the consumer or other regulatory harm that the licensing regime proposes to address, and the CCIR Report that studied this very matter found the existing structure was serving all stakeholders well.

We wish to understand Saskatchewan’s policy objectives behind this proposal, lest licensing becomes “an end in itself” as cautioned by the CCIR. So we urge the province to hold a fulsome consultation on the matter before proceeding with the Bill in its current form. We believe that the financial services sector functions best when all stakeholders work together to develop pragmatic, workable and principles-based solutions to the underlying concerns identified by regulators.

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We look forward to working with the Government of Saskatchewan as it modernizes its insurance legislation. Should you have any questions, please do not hesitate to contact the undersigned, or Ed Skwarek, Vice President, Regulatory and Public Affairs at 416-342-9837 or eskwarek@advocis.ca.

⁵ Available at [http://www.clhia.ca/domino/html/clhia/CLHIA_LP4W_LND_Webstation.nsf/resources/Guidelines/\\$file/Guideline_G18.pdf](http://www.clhia.ca/domino/html/clhia/CLHIA_LP4W_LND_Webstation.nsf/resources/Guidelines/$file/Guideline_G18.pdf).

Sincerely,

A handwritten signature in black ink, appearing to be 'G. Pollock', with a long horizontal flourish extending to the right.

Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO

A handwritten signature in black ink, appearing to be 'David Juvet', written in a cursive style.

David Juvet, CFP, CLU, CH.F.C., CHS, FLMI, AMTC
Chair, National Board of Directors