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July 26, 2013

VIA COURIER AND EMAIL: ccir-ccra@fscs.gov.on.ca

CCIR Secretariat
5160 Yonge Street, Box 85
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Toronto, ON M2N 6L9

Dear Sirs/Mesdames:

**Re: Canadian Council of Insurance Regulators
May 2013 Position Paper regarding Electronic Commerce in Insurance Products**

We are pleased to provide our comments to the Canadian Council of Insurance Regulators (the "CCIR") regarding the May 2013 position paper published by its Electronic Commerce Committee (the "ECC") entitled *Electronic Commerce in Insurance Products* (the "Position Paper").

A. About Advocis

Advocis, The Financial Advisors Association of Canada, is the country's largest and oldest professional membership association of financial advisors and planners. Through its predecessor associations, Advocis proudly continues over a century of uninterrupted history of serving Canadian financial advisors and their clients. Our over 11,000 members 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.

As a voluntary organization, Advocis is committed to professionalism among financial advisors. Advocis members adhere to our published Code of Professional 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 with individual Canadians on financial matters than do ours. Advocis advisors are committed to educating clients about financial issues that are directly relevant to them, their families and their future.

B. Introductory Remarks

Overall, Advocis supports the recommendations in the Position Paper. As a participant in the ECC's January 2012 consultation regarding the growing prevalence of online insurance sales, we expressed our concerns about the challenges consumers in this channel could face if they do not receive contemporaneous financial advice that explains the benefits and limitations of the products being considered.

We are pleased to see that the ECC broadly recognizes the key role of financial advice in protecting consumers. Most online retail purchases tend to be done alone, without interacting

with a knowledgeable professional. This "any time, any place" nature is tremendously convenient for making purchases, but it may not be suitable when that purchase demands an in-depth analysis of whether the product or service is right for that specific consumer. This is the case with insurance: while certain *products* may seem to be simple, the *needs of consumers* never are, and a careful assessment of the consumer's individual situation is required to determine his or her insurance needs. Simply put, in serving the best interests of consumers, convenience should not trump a more deliberative process through which consumers receive the expert advice they need to make the right decision.

To that end, we urge the ECC, in its final recommendations, to be even more emphatic in its recognition that insurance, both as a product and in its application to an individual's specific needs, can be very complex – such that it may not be suitable for purchasing through an electronic channel in the absence of financial advice.

C. Specific Comments

We would like to provide comments on the following specific recommendations put forth by the ECC. The numbering used below reflects that used in the Position Paper.

2.1 *Consumers Have Access to Additional Information/Advice*

As we stated in our April 2012 submission, in our view, the most serious consumer protection issue with online insurance sales is that consumers may believe that they or their beneficiaries have purchased, and are protected by, a contract of insurance when in fact that is not the case. Too often, the first time consumers realize this problem is when they or their beneficiaries make a claim on the policy, only to have it rejected by the insurer.

This outcome can be devastating, because by the very nature of insurance, consumers make claims when a significant event has occurred for which they are relying on the proceeds of insurance for assistance. These claims may be denied on the basis that the coverage was never in force from the outset, due to a misunderstanding over the terms and conditions of coverage, or if the insurer determines that the consumer failed to disclose certain facts that it considers to be material due to a flawed application process.

This risk is particularly prevalent in the online channel. As mentioned above, purchases of most goods or services over the internet tend to be of a "do it yourself" nature – while consumers may read product descriptions and reviews online, they are ultimately making the purchase alone, without the guidance of a product expert. With the abundance of information available online, disclosure is not lacking in this channel, but that does not necessarily translate into comprehension and absorption of the material. In fact, consumers are often presented with such copious amounts of information, in lengthy and convoluted legal text, and they frequently click on boxes to confirm their understanding when this is not truly the case – one only needs to consider the typical software end-user license agreement as an example of this behaviour. This type of disclosure only serves to protect vendors, rather than informing consumers.

In regards to insurance, the ECC correctly notes that there already is a substantial information imbalance between the consumer and the insurer, even before we consider electronic distribution channels. This imbalance could be exacerbated in the online channel if consumers do not have the benefit of contemporaneous, interactive financial advice. We disagree with the comments reproduced in the Position Paper that state that disclosure and self-assessment tools can provide consumers with an understanding of the products that is comparable to receiving

advice – especially as, in our experience, consumers tend to downplay risks and be overly optimistic about the chances of adverse events happening to them.

Instead, we believe that for consumers to receive an objective and dispassionate review of their individual needs, it is critical that they work with a knowledgeable financial advisor. As the ECC states, "to protect the consumer's interests... regardless of the means of communication chosen, the product chosen by the consumer should suit its needs." Suitability is best assessed when an expert advisor is able to ask the client probing and specific questions to elicit material information, so that the advisor can recommend the right product for the consumer's needs. The advisor can also explain the benefits and limitations of a particular product in terms, related to their needs, that the consumer can understand.

Having the advisor as an intermediary also provides the consumer with an additional layer of protection: if an insurance claim is subsequently denied (for example, due to the failure of the client to disclose material information in the application), the client could have recourse against the advisor for negligence. Simply put, involving the advisor in the process puts a degree of responsibility on the advisor to use his or her experience and judgment to ensure that the application is comprehensive before it is submitted to the insurer.

In the Position Paper, the ECC states that:

[S]ome consumers may need advice, others may not. Moreover, the level of advice needed may vary depending on the consumer. It is ECC's view that consumers should receive proper advice when needed, again regardless of how they contract the insurance product.

We agree that the level of advice needed may vary depending on the consumer, but we firmly believe that due to the complexity of certain insurance products, the challenge of matching the right product to the consumer's specific needs, and the critical role insurance plays at the time when clients are most vulnerable, "proper advice" is almost always needed. The protection afforded by life, accident and sickness, health, critical illness and long term care insurance is too important to consumers and their families to forego advice for the sake of convenience.

In our April 2012 submission, we recommended a "two stage" process for online insurance purchases, whereby consumers could begin the application online and later review their application with a licensed financial advisor before submitting it for consideration. We continue to believe that most online insurance sales should require these two stages, because rather than being focused on specific *products*, we should be focused on the consumer's *needs* – so it is truly in consumers' best interests to discuss their situation with an advisor in advance of any particular purchase.

Further, as we suggested in our 2012 submission, if consumers are allowed to purchase insurance products without the involvement of a licensed insurance advisor, one way to safeguard consumers from the possibility of coverage being denied *ex post* on the basis that the client withheld material information would be for the insurer to guarantee that the coverage is valid, absent intentionally fraudulent statements from the client, once the online application is approved.

This would give consumers peace of mind in knowing that they actually have coverage that cannot be revoked later due to a misunderstanding of what constitutes "material" information. It would also incentivize insurance companies to ensure their self assessment tools are truly

effective and comprehensive, as insurers would have to stand behind them. Finally, it would increase the likelihood that insurers would involve financial advisors in the transaction, as the guarantee would naturally compel the insurer to acquire a more thorough and expert analysis of the client's situation before issuing the coverage.

2.2 Consumers Know they are Dealing with a Regulated Entity

We agree with the recommendation that insurers who distribute products online should prominently and unambiguously display their registration details, including their registration number and type, on their websites.

Further, these details should be accompanied by an external link that sends the consumer directly to the regulator's own website, where consumers can immediately verify that the registration information is valid. On the internet, it is too easy for fraudsters to "spoof" official information by copying government or regulatory logos and text and hosting them locally on their own private site. By linking to the information that is directly on the regulator's website, hosted on the regulator's secure servers, the risk of this deception is diminished.

2.3 Consumers Have and Understand the Necessary Information about the Products

We support the ECC's objective of providing online consumers with certain specific product information in a simple, clear and timely manner. We suggest that insurance regulators work with industry to develop a standard template for this data.

A uniform template will make it easier for consumers to navigate amongst different product options and pinpoint specific product characteristics, such as premiums or cancellation rights, which they wish to compare. We strongly recommend including a prominent disclaimer at the top of the template stressing the importance of seeking financial advice, and recommending that consumers contact a licensed agent before transacting in the product.

2.5 Consumers are Aware of the Terms and Conditions

We agree that consumers should receive a copy of the application and contract in a form that enables reproduction and storing – consumers should be responsible for retaining their own records of material agreements, whether insurance contracts or otherwise. But as with the disclosure of product information, having copies of legal contracts is not the same as understanding them.

Contracts can be dense and difficult for the layperson to understand, but they create significant legal obligations for the parties involved. We cannot overemphasize the importance of a consumer working with a qualified financial advisor to review and understand the contract's terms and conditions *before* the contract is executed and the consumer binds himself or herself to those terms. Insurers and courts are not inclined to be lenient in releasing consumers from their obligations simply on the basis that the consumers did not adequately inform themselves of the underlying contractual terms.

Working with a financial advisor from the outset also establishes a relationship that consumers can call upon over years. As life events occur and circumstances change, such as having a child or the loss of a loved one, consumers can contact their advisor to determine whether their existing insurance coverage still meets their needs or requires an update. Without financial

advice, the "do it yourself" nature of online insurance sales could result in consumers holding policies whose terms and conditions are no longer a fit with the consumer's needs.

2.8 Designation of Beneficiary

Regarding the designation of beneficiaries through electronic means, we maintain our position from our April 2012 submission: as long as online mechanisms for recording designations are reliable, create a clear evidentiary record, and provide safeguards to protect consumers against fraudulent activity, Advocis supports the ability for consumers to designate beneficiaries electronically.

However, before the practice is widely adopted, we believe that regulators and industry must develop clear best practices that address the evidentiary concerns that could arise through electronic designations, including best practices regarding written follow-up with the policyholder as a critical measure to protect against fraud.

2.9 Termination of Insurance Contract by Insurer

Due to the critical importance of insurance to consumers' peace of mind and financial plans, we believe that any notification that coverage has been terminated by the insurer must be unambiguous, and insurers must take proactive steps to ensure that the message is received by the consumer, so that the consumer can react accordingly.

Comparison Shopping Sites

Our view in regards to comparison shopping sites is that they must be unambiguous as to what they are and what they are not: they should state prominently and in clear language (rather than in small footnotes) whether they are licensed to transact in insurance, or whether they are acting as a third-party data aggregator. They should also clearly disclose any potential conflict of interest, including the commercial relationship they have with the insurers on behalf of whom they quote, so that consumers are made aware of the biases that may be inherent in the comparison or the order in which results are displayed.

A risk with comparison sites is that the "comparison" tends to be boiled down to price (premiums) alone as this is the objective metric that is easiest for consumers to review at a glance. More complex details such as policy exclusions and features are challenging to summarize in a list or grid, so consumers may be receiving an incomplete picture in the comparison. Therefore, comparing anything more than the simplest of products could render these sites so misleading as to cause more harm than good to consumers. We agree with the ECC's recommendation that regulators should continue to monitor the information and types of comparisons offered by these sites to ensure that they are of net benefit to consumers.

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Advocis appreciates this opportunity to comment on the recommendations contained in the Position Paper and we look forward to working with the CCIR as it works towards their implementation. Should you have any questions or concerns, 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.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by a long horizontal line that tapers to the right.

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

A handwritten signature in black ink, appearing as a series of connected, fluid strokes that form the name 'Harley Lockhart'.

Harley Lockhart, CLU, CH.F.C.
Chair, National Board of Directors