



Advocis

390 Queens Quay West, Suite 209
Toronto, ON M5V 3A2
T 416.444.5251
1.800.563.5822
F 416.444.8031
www.advocis.ca

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Financial and Corporate Sector Policy Branch
Minister of Finance
PO Box 9418 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

Re: Consultation on Proposed Regulations pursuant to the Insurance Amendment Act, 2009

Advocis appreciates the opportunity to provide comments on the policy direction for proposed regulations under the *Insurance Act*.

Advocis, The Financial Advisors Association of Canada, is a national professional association that is committed to preparing, promoting and protecting financial advisors in the public interest. We do this by providing a professional platform including career support, designations, best practices direction, education, timely information and professional liability insurance. This strengthens the relationship of trust and respect between financial advisors and their clients.

Our members are life and health insurance licensees, and mutual fund and securities registrants who provide a wide range of financial services, including estate and retirement planning, wealth management, risk management and tax planning. Most Advocis members are primarily owners and operators of small businesses and create thousands of jobs across the province. Our nearly 2,000 members in the province of British Columbia provide financial advice and services to hundreds of thousands of British Columbians. They operate in accordance with the requirements of British Columbia's *Insurance Act* and its associated regulations, and those that are licensed for securities purposes are also operate in accordance with the requirements of the *Securities Act* and its regulations.

As you are aware, Advocis made a submission in response to Alberta's consultation on its Insurance Act regulation in October, 2009. We note that British Columbia and Alberta wish to maximize harmonization of their respective insurance legislation and regulations. Advocis is supportive of proposals where regulatory harmonization can be achieved consistent with the highest level of consumer protection.

Our comments are directed at those proposals that are aimed at preserving and enhancing consumer protection and enhancing clarity, certainty and fairness.

Proposal 1B: Telephonic communications

It is proposed that an insurer that accepts an application for insurance, or other information that may be material to a contract, by telephone (or other means of communication that does not produce a concurrent written record) must provide to the insured, as soon as practicable after the communication, a written record of the information obtained to enable the insured to verify its accuracy.

Further input is specifically sought on whether an exemption from this requirement should be provided for licensed agents.

Advocis strongly believes that only licensed agents should be marketing and selling life & health insurance regardless of the channel of distribution or medium used to do so (electronically, by telephone, in person or in an office).

Advocis supports the requirement that the insurer who accepts an application for insurance, or other information that may be material to a contract, by telephone, must provide a written record of that information. Advocis is of the view that this would be a best practice of a licensed agent, and, therefore, a regulatory requirement for licensed agents is not necessary.

Proposal 1C: Disclosure of Limitation Periods

Advocis agrees with the proposal in principle. We recommend that there should be a period of at least 90 days before the expiry of the limitation period. In addition, the regulation should clearly provide that an insured or claimant under a group plan or creditor group insurance plan be provided with the same notice provisions as an individual insured or individual claimant.

Advocis does not agree with the proposal that the second notification would not be required where a previous notice had already been provided upon denial of a “minor” claim. Consumers should be treated equally under the legislation regardless of whether their claim is “minor”. While the claim may be “minor” to the insurer, the amount may be significant to the insured. This would also obviate the need to define what constitutes a “minor” claim.

Similarly, written confirmation of settlement from the insured should be required for “minor” claims.

Proposal ID: Require Insurance Companies to Participate in Industry Ombudservice Organizations

Advocis supports the requirement for insurance companies to participate in industry consumer-complaint OmbudService programs. We look forward to reviewing the detailed set of proposals and we trust that it will require insurance companies to notify consumers of their right to take a dispute to the dispute resolution service and notify consumers of any suspension or the non-suspension of any applicable limitation period.

We also recommend that the Ombudservice should track complaint statistics in a meaningful way for the different kinds of insurance products such as creditor group insurance, group insurance and individual insurance and, further, by type of insurance such as creditor group mortgage insurance, creditor group life insurance, individual life insurance etc. This information should be made publically available.

Proposal 3A: Right to Rescind Insurance Coverage

We are in agreement with the proposed regulation which will provide a 10 day cooling off period for the purchaser of an individual life or accident and sickness contract, or a person whose life and/or health are insured under a contract of creditor’s group insurance.

Proposal 3B: Access to Group Insurance Contracts

We support a proposed regulation which will provide the individual insured under a contract of group insurance, creditor's group insurance or a claimant under the contract to examine and obtain a copy of the policy, while insurers will be permitted to withhold personal information in accordance with privacy legislation or if it is not relevant to the claimant's claim.

There may be proprietary commercial information which should not be accessible to the person requesting the information but information sufficient to determine contractual rights or determine their legal position or any actual or potential conflicts of interest should be disclosed (for example, the fact that the group policyholder is compensated by the insurer) in accordance with the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO) Industry Practices Review Committee (IPRC) principles-based approach to dealing with conflicts of interest.

Proposal 3D: Disclosure of Compensation and Potential Conflicts of Interest Related to Group Insurance Products

Disclosure of Compensation:

One of the proposals is in respect of disclosure of compensation:

- 1. insurers offering group insurance or creditor's group insurance be required to give written disclosure to the group insured of the amount of any compensation paid to a group policyholder. If the amount of compensation is unknown, the insurer must disclose the likely amount of compensation or the method by which the compensation will be determined."**

This is inconsistent with the IPRC's three key principles-based recommendations that regulators have endorsed, including the Insurance Council of British Columbia.

In addition, going beyond current comprehensive intermediary disclosure requirements will not improve the consumer's ultimate purchase decision. Disclosing the dollar amount of compensation will be confusing to consumers and will not provide the consumer with more meaningful disclosure.

Current Regulatory Requirements Regarding Disclosure of Conflicts of Interest

The IPRC of the Canadian Council of Insurance Regulators and the Canadian Insurance Services Regulatory Organizations in 2006 established the three key principles that they wished to see the industry address through harmonization of best practices:

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

Advocis favours meaningful disclosure to consumers that is easily understood, relevant to the transaction, mitigates real or potential conflicts of interest and is easily comparable in a vast marketplace of life and health insurance products. In order to develop voluntary and consistent

measures regarding intermediary disclosure, Advocis participated in the Intermediary Disclosure Working Group (along with the Canadian Life and Health Insurance Association (CLHIA) and other industry associations). The Working Group produced the “Advisor Disclosure Reference Document” in March 2005.

Advocis also developed its own Best Practices Guideline on Product Suitability along with an interactive web-based tool entitled “The Advocis Interactive Disclosure and Product Suitability Web Tool”. This helps advisors to generate transaction and recommendation disclosure letters based on the Advisor Disclosure Reference Document, allowing them to customize letters for clients in all provincial jurisdictions, including Newfoundland’s additional Consumer Protection Document – Principles for the Sale of Insurance. In the disclosure letter, agents disclose the companies they represent, any financial relationships they may have with those companies and whether an actual or potential conflict of interest exists. Newfoundland also requires insurance companies to include a document outlining the consumer’s right to additional information and how to access it, with all newly issued policies.

Advocis also has worked with other industry participants to standardize the needs-based sales practices that are integral to the product suitability principles, through the production of the reference document: “The Approach: Serving the Client Through Needs-Based Sales Practices”.

Compensation Disclosure

Currently regulatory requirements for the sale of life and health insurance require that intermediaries provide relevant information when a consumer is considering the purchase of a life or health insurance product. It is intended to provide meaningful information about the product, how it meets the consumer’s needs, the company offering the product, and the advisor and the advisor’s business relationships. It also obliges intermediaries to disclose any actual or potential conflicts of interest. Reinforcing this is the practice of placing the client’s interest first in situations where a bias or potential bias exists.

Advocis believes that the IPRC’s principles-based approach to dealing with conflicts of interest, product suitability and client’s needs, along with industry practices, are helping to ensure that the regulatory outcomes derived from the Joint Forum’s “Principles and Practices for the Sale of Products and Services in the Financial Sector” are being met.

Consistency in the implementation of these principles has served to reinforce harmonization of practice standards across the industry and across Canada. It is equally important for provinces to attempt to harmonize across jurisdictions key Insurance Act provisions where appropriate to achieve a similar objective.

Accordingly, Advocis recommends a proposed regulation which will require that, where an insurer of a group insurance policy or a creditor’s group insurance policy, pays compensation, including commission, to the insured (the group policyholder or administrator, or the creditor), the insurer must notify the group life insured or the group person insured or the debtor insured of the fact that compensation has been paid and the form of that compensation (commission, bonus etc) so that there is disclosure of a potential or actual conflict of interest.

Advocis does not believe that consumers will be well served by any requirement to disclose the dollar amount of compensation between the insurer to the group policyholder or administrator or creditor, as this will be confusing, not meaningful (especially in light of the varying business models through which such insurance is provided) and will not improve the consumer’s ultimate purchase decision.

Questions to Determine Insurability at the Time of Application for Creditor Group Insurance

Another proposal relates to the point of sale disclosure and certainty of coverage in creditor group insurance products.

- 2. questions used to elicit evidence of insurability at the time of application for creditor's group insurance be required to take the form of questions about specific medical conditions and diseases, with a caution to applicants about the need for full disclosure, if insurers intend to rely on the answers to those questions as evidence of misrepresentation in order to deny a claim.**

The CCIR-CISRO Incidental Selling of Insurance ("ISI") Working Group Report dated November 2008 noted the problems associated with the questions asked on the application forms for creditor group insurance and that many consumers did not fully understand or failed to appreciate the extent of the eligibility questions asked by the insurer:

"The ability of consumers to understand their eligibility, to understand ERL as well as the different elements of disclosure contained in ISI documents inevitably goes through an adjustment in the level of language used, structure of the qualification questions and the way the information is presented to consumers. Even though the bundling of medical questions¹ can seem to be beneficial as it shortens the application forms, the ISI WG believes that it contributes to confusion of the consumer.

Over the years, the insurance industry has familiarized itself with techniques of plain language. The ISI WG believes that these techniques could be applied to the documents used in ISI. The application of these techniques would need to ensure that:

- Plain language is used so that confusion for the consumers is significantly reduced;
- Consumers will be made clearly aware of consequences associated with improper filing of forms.

The ISI WG encourages the industry to adopt plain language techniques but notes that it ultimately belongs to each regulator to determine if adoption of these techniques should be addressed solely through industry initiatives or by way of regulation."

Advocis recommends that, prior to the completion of an application for incidental insurance, the consumer should be given an explanation of the underwriting process and when the underwriting will occur. This information should be provided before the application is completed, so that it can form part of the decision-making process of the consumer.

The consumer should be provided with a separate written explanation of the post claim underwriting process, including the importance of the health questions that are set out in the application and the implications if the health questions are not fully and accurately answered. The explanation should include:

- Any exclusions, restrictions and limitations applicable

¹ (A bundling of medical questions arises when application forms present a limited number of eligibility questions (4-5) which encompass a much larger set of potential medical issues.)

- The extent to which any pre-existing conditions limit a policy's coverage
- When and under what circumstances the contract will be void *ab initio* or voidable including any time period expressed by law or by the contract which limits the time period which an insurer has to avoid the contract (the contestability period).

The consumer must be made aware when they apply for an incidental insurance product that the claim will be underwritten after a claim is made and that coverage is not assured until such time that underwriting has been completed. This disclosure should be in writing, and should be signed by the consumer. The statement should indicate that the consumer is stating that they have never had any medical condition, treatment, assessment, test or question that have not been specifically disclosed on the application/enrolment form to the extent required.

Advocis agrees with the use of plain language and the attempt to improve the application forms for creditor group insurance products. However, Advocis strongly believes that the use of plain language (including changing the manner in which the questions are asked to target specific conditions or diseases rather than being open-ended general questions) and a caution to the consumer about the need for full disclosure will not adequately address all of the problems associated with creditor group insurance.

The problem will not be adequately addressed because the consumer must be assisted in filling out the application form by an individual seller who is knowledgeable, competent and suitable.

At present, sellers of incidental insurance products are not subject to any regulatory oversight nor are consumers provided with adequate consumer disclosure. Advocis strongly urges the British Columbia government to address this regulatory gap and enact legislation now in this set of proposed regulations in order to adequately protect consumers.

One of the main objectives of *the Insurance Act* amendments and updates was to harmonize *Insurance Act* provisions under the Alberta-British Columbia Trade, Investment, and Labour Mobility Agreement (TILMA). TILMA's General Rules and Special Provisions apply to all government measures such as legislation, regulation, standards, policies, procedures and guidelines that affect trade, investment, and labour mobility. The objectives of TILMA are to enhance competitiveness, economic growth and stability in Alberta and British Columbia. TILMA is meant to introduce efficiency and effectiveness into the regulations that govern people and businesses pursuing opportunities in both provinces.

Advocis urges British Columbia to harmonize with Alberta by introducing a restricted licensing regime for sellers of incidental insurance. We urge you to go further and enact enhancements to Alberta's restricted licensing regime in order to adequately protect consumers. TILMA provides in Article 6, *Legitimate Objectives*, that a province may adopt or maintain measures which are different for the purposes of consumer protection, and public security and safety. Accordingly, set out below is what Advocis believes is an appropriate regime for incidental insurance, one that provides adequate consumer protection:

1. Mandatory Restricted Licensing For Individuals

Alberta has a restricted licensing regime whereby certain prescribed entities may obtain a restricted insurance agent licence which enables these entities and their employees to sell certain types of insurance.

Advocis believes that restricted licensing of the *individuals* selling ISI, rather than entities, would ensure optimal consumer protection. If individual sellers of ISI are licensed, they can be personally

subject to regulatory discipline which encourages compliance with the rules and best practices in the sale of insurance. This also would enhance regulatory accountability and promote professionalism.

In our view, it is practically much more difficult to revoke the license or discipline a restricted licensee that is a business entity (for example, a financial institution or financing corporation) than to discipline or sanction an individual. Accordingly, Advocis recommends restricted licensing of individuals who sell ISI.

2. Prerequisite Educational Requirements and Continuing Education Requirements

Alberta's *Insurance Act* requires that every restricted licensee must establish reasonable procedures to ensure that their employees who are transacting insurance for the restricted licensee are knowledgeable about the insurance being transacted and follow those procedures.

To ensure that the seller of the ISI product is knowledgeable, *competent and suitable*, Advocis recommends that individual sellers of ISI should be required to take a training course and pass certain limited educational courses specific to creditor group insurance to demonstrate proficiency. We believe a minimum proficiency requirement to sell ISI products is necessary and would help ensure consumer protection.

Sellers of ISI products should be trained to a level that they could adequately explain the application and enrolment process (including exclusions, restrictions and limitations and preexisting conditions), the manner in which claims are to be submitted and handled, and how policy refunds are calculated in the event of policy-cancellation or rescission.

Continuing Education Requirements

Advocis recommends that in order to ensure that those selling ISI are knowledgeable, competent and suitable, they be required to complete periodic continuing education courses to ensure that their knowledge is current and up-to-date.

Individuals who sell insurance in most provinces in Canada are required to receive continuing education in order to ensure that they are up-to-date on regulatory developments. We do not see why there should be an exception for ISI sellers.

3. Supervision of Those Selling ISI

Individual sales representatives holding a restricted or limited license should be supervised by a fully (LLQP) licensed individual. Advocis believes that adequate supervision and thereby, adherence to standards, can only occur when ISI sellers are supervised by a fully licensed individual. The fully licensed individual can provide guidance and advice and be held accountable to Council in the event of a consumer complaint.

4. Errors and Omissions Insurance

Individual licensees should carry errors and omissions insurance as a means of further protecting consumers and providing restitution under certain circumstances.

5. Consumer Disclosure Requirements

Consumers currently receive little meaningful disclosure regarding ISI products. To address this, individual licensees should be subject to a number of consumer disclosure requirements which build upon the consumer disclosure requirements of the Alberta regulatory regime. In addition to the

comments noted above regarding required disclosure at the time of the application, Advocis recommends the following disclosure requirements:

Tied Selling Provisions Are Necessary

In order to protect consumers, Advocis recommends that the proposed regulation should include a tied selling provision. Restricted licensees should not be permitted to require, impose undue pressure or coerce a consumer, as a condition of receiving a product or service, to purchase an ISI product from the restricted licensee or from a particular insurance company. The consumer should also be informed, prior to completing an application for an incidental insurance product, that the consumer is not obligated to purchase the ISI product.

Such a provision would build upon the tied selling provision contained in Alberta's regulatory regime (see section 509(1)(b) of Alberta's *Insurance Act* and section 16 of Alta. Reg. 122/2001).

Right of Rescission

One of the four main recommendations of the CICR-CISRO ISI Working Group in their November 2008 Incidental Selling of Insurance Report was that consumers should be given the opportunity to reassess the purchase of the ISI product, with a reasonable "cooling off" period, and also should be advised that they can consult with an insurance professional for advice after the sale and that there are potentially "similar" products offered through different channels. British Columbia has proposed the right to cancel coverage within 10 days after receiving the insurance policy or certificate.

We urge you to provide a 10 day cooling off period for creditor's group insurance and require that consumers be advised that they can consult with a licensed insurance professional for advice after the sale and that there are potentially "similar" products offered through different channels.

We look forward to working with the Superintendent of Insurance throughout all stages of its review of insurance and insurance-related legislation as it develops details to these proposals and future regulations.

Sincerely,



Greg Pollock
President and CEO



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