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October 2, 2009

The Honourable Colin Hansen
British Columbia Ministry of Finance
PO Box 9417 Stn Prov Govt
Victoria, BC V8W 9V1

Dear Minister:

Re: *Bill 6 – Insurance Amendment Act, 2009*

Advocis, The Financial Advisors Association of Canada, would like to provide its comments on the proposed amendments to British Columbia's *Insurance Act*.

Advocis 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 represent 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 insurance licensed individuals and 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 BC'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.

Advocis supports the review and updating of B.C.'s *Insurance Act* and the harmonization of the legislation, to the greatest extent possible, with that of Alberta.

We would urge the government to take this opportunity to improve the legislation further by putting in the necessary amendments so that the sale of incidental insurance products such as creditor mortgage insurance, creditor disability insurance or creditor life insurance, is also regulated in a manner that provides adequate consumer protection.

The *Insurance Amendment Act, 2009* provides for regulation-making authority respecting incidental sale of insurance (see Section 106 of the *Insurance Amendment Act, 2009* which amends section 289 of the *Financial Institutions Act*), and some consumer disclosure such as requiring the provision of a certificate of insurance to the debtor which contains certain information. However, Bill 6 does not provide for any regulatory oversight of the sellers of incidental insurance products or provide adequate consumer disclosure provisions regarding incidental insurance. In particular, Bill 6 does not repeal subsection 2(1) of the *Insurance*

Licensing Exemptions Regulation (328/90) which currently exempts the following persons from the requirement to hold an insurance agent license:

1. financial institutions (and their employees) in the incidental sale of credit insurance
2. motor vehicle dealers (and their employees) in the incidental sale of vehicle warranty insurance; and
3. mortgage brokers in the incidental sale of credit insurance.

As you are aware, Alberta currently has a restricted licensing regime for the sale of incidental insurance (ISI). Alberta's *Insurance Act* and its associated regulations were amended in 2001 to, among other things, implement its regulatory regime for ISI. Alberta requires 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. It also contains some consumer disclosure requirements.

There have been a number of developments in the years since this regime was implemented. The insurance industry has evolved considerably, many more incidental insurance products are available in the marketplace and the distribution channel for the incidental sale of insurance has grown considerably. There has been much comment on issues and concerns arising from the sale of ISI, including the recommendations of the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO) ISI Working Group in its *Incidental Selling of Insurance Report* released November 2008.

In light of these developments some provinces have recently indicated that they will be putting in place a regulatory regime for the sale of incidental insurance. The Saskatchewan Insurance Council and the Saskatchewan Financial Services Commission have proposed regulations and the Insurance Council of Manitoba has also indicated its intent to do so.

We would urge the British Columbia government to address this consumer regulatory gap and enact legislation now in order to adequately protect consumers. British Columbia should carefully consider the proposed regulatory regime for ISI and ensure that it is appropriate and reflects today's marketplace.

Regulatory Harmonization Under TILMA

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.

Advocis' Proposed Regulatory Regime for ISI

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 of business 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 pre-existing 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.

Disclosure Required When ISI Product is Post-Underwritten

There has been considerable discussion regarding the difficulty that consumers experience in understanding the application, coverage and underwriting processes for incidental insurance products. One of the CICR-CISRO ISI Working Group Report's key recommendations is that insurers should use plain language in application forms and documents and should clearly explain the consequences of filling out forms improperly.

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
- 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.

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. We urge you to adopt this recommendation.

Bill 6 provides that consumers will have a 10-day cooling-off period to rescind a life or health insurance contract. Consumers who purchase an ISI product should also have a 10-day cooling-off period.

We are pleased that the government is making amendments and updating its current *Insurance Act*. We would urge the government to implement provisions regulating ISI at the same time as Bill 6 in order to adequately protect consumers.

We would be pleased to meet with you to discuss our recommendations in more detail should you wish to do so.

Yours sincerely,

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

Greg Pollock
President and CEO