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March 26, 2009

Erin Pearson  
Executive Director  
Insurance Council of Manitoba  
466 – 167 Lombard Avenue  
Winnipeg, Manitoba  
R3B 0T6

Dear Ms. Pearson:

**Re: Regulation of the Incidental Sale of Insurance (“ISI”)**

We appreciate the opportunity to provide our comments to the Insurance Council of Manitoba on its review regarding its role and the appropriate level of regulation in the offering of insurance products that are sold incidental to the sale of other products.

Advocis is a national professional association that is committed to preparing, promoting and protecting financial advisors and planners in the public interest. We do this by providing a professional platform including career support, designations, best practices direction, timely information and professional liability insurance. This strengthens the relationship of trust and respect between financial advisors and their clients, the public and government. Advocis is Canada’s largest voluntary association of financial advisors and planners, representing life and health insurance licensees, and mutual fund and securities registrants across the country for over a century.

Advocis is very interested in the issue of incidental selling of insurance (ISI) particularly where it relates to the promotion of greater consumer protection and a level playing field for all in the insurance industry. Currently, provinces have different levels of regulation of ISI with Alberta having restricted institutional licensing and Quebec having enhanced disclosure requirements while other provinces have no regulation of ISI at present. Saskatchewan has put forth a proposed Insurance Council by-law which would require an ISI agency license, minimum proficiency requirements for ISI sellers, and certain consumer disclosure requirements. This proposed by-law has not yet been finalized.

In Manitoba, a gap has arisen in the legislation which has developed over time as the creditor group insurance business has grown and developed. Currently in Manitoba ISI is not regulated and the activities undertaken by a financial institution or other entity selling ISI are not treated as falling within the ambit of insurance agent activities. Therefore, sellers of ISI do not have to be licensed or comply with other regulatory requirements. This regulatory gap was due to uncertainty as to whether provincial law governed federally regulated entities when it comes to the licensing and market conduct in the distribution of insurance products and services. The Supreme Court of Canada’s 2007 decision in *Canadian Western Bank et al. v. Alberta* has clarified that the provinces have such jurisdiction. We are pleased that the Insurance Council of Manitoba is interested in addressing this gap in consumer protection in light of the Supreme Court of Canada decision.

The Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Regulatory Organizations (CISRO) ISI Working Group has concluded its consultative process with the issuance of its Incidental Selling of Insurance Report last November 2008. Advocis participated in these consultations and made a series of specific recommendations. As noted in the Report, it is up to each regulator to assess the issues and adopt the most appropriate course of action.

The ISI Working Group made four main recommendations in the Report: (1) insurers are to use plain language to improve the application forms and documents and explain the consequences of improperly filing forms; (2) insurers are to improve the training and supervision of sellers; (3) consumers are to be provided with the opportunity to reassess the purchase of the ISI product through extending the “cooling off” period and ensure that the consumer is 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; and (4) CCIR is to work on obtaining statistical information on ISI products and related complaints.

We believe that the Report is a step in the right direction but that the recommendations do not go far enough. In order to enhance consumer protection and establish a level playing field, Advocis support the promotion of mandatory restricted licensing for individuals who sell insurance regardless of their distribution channel in order to advance these key principles in the regulatory framework.

Our recommendations continue to be as follows:

- In order to engage in the sale of ISI products, individual sales representatives should be required to hold a restricted or limited license and pass certain limited educational courses specific to creditor group insurance to demonstrate proficiency.
- Individual licensees should participate in continuing education specific to creditor group insurance to ensure that the licensee is up-to-date on regulatory developments.
- Individual licensees should carry errors and omissions insurance as a means of further protecting consumers and providing restitution under certain circumstances.
- Individual licensees should be subject to a number of consumer disclosure requirements including insurance regulatory principles for managing conflicts of interest.
- Individual licensees should be subject to certain product suitability requirements.
- 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.

We also provide the following comments:

- Consumers currently receive little meaningful disclosure regarding ISI products.

- Conflicts of interest are appropriately managed by adhering to the principles of: priority of the client's interest; meaningful disclosure; and product suitability.
- Sellers of ISI products should be trained to a level that they could adequately explain the application and enrollment 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.
- Proper disclosure and plain language on the application form are critical to help consumers make an informed decision in the purchase of insurance. Any application or enrollment signed by a consumer for an ISI product which has post-claim underwriting should include a large, bolded statement to be signed by the consumer, stating that the consumer is aware that any claim will be underwritten post-facto and that coverage is not assured until such time that underwriting has been completed. The statement should indicate that the consumer is stating that they have never had any medical condition, treatment, assessment, test or questions that have not been specifically disclosed on the application/enrollment form.
- Consumers have a right to expect that they will be receiving accurate information and unbiased advice that is in the consumer's best interest and validating that the product recommendation is suitable must rest with the seller, implying some kind of personal and financial situation analysis that is not currently the norm in the ISI sales process.
- If individuals are required to hold a restricted license, they can be personally subject to regulatory discipline. This enhances consumer protection because the threat of being personally subject to regulatory discipline will encourage compliance with the rules and best practices in the sale of insurance. It will also enhance regulatory accountability and promote enhanced individual professionalism.

We continue to stand by the recommendations that we made to the CCIR-CISRO ISI Working Group that we believe will help to ensure that consumer are adequately protected and that a level playing field exists for all who distribute life and health insurance products irrespective of where consumers purchase them.

We are pleased that the Insurance Council of Manitoba is reviewing the level of regulation that is appropriate in the sale of incidental insurance products. We urge the Insurance Council to adopt our recommendations which we believe will lead to adequate protection of consumers. We look forward to commenting on a specific regulatory proposal that is put forth by Council.

Yours truly,

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

Greg Pollock  
President and CEO