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Mr. John Waugh
Insurance Councils of Saskatchewan
310-2631 – 28th Avenue
Regina, SK
S4S 6X3

Elaine Thompson
Superintendent of Insurance
Saskatchewan Financial Services Commission
Suite 601-1919 Saskatchewan Drive
Regina, SK
S4P 4H2

Dear Mr. Waugh and Ms. Thompson:

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

We appreciate the opportunity to provide our comments to both the Superintendent of Insurance and the Insurance Councils of Saskatchewan on the July 2009 proposed regulatory regime for the sale of incidental insurance products. Advocis is very interested in this issue as implementing a regulatory regime will enhance consumer protection.

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, 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 the country’s largest and oldest voluntary professional membership association of financial advisors and planners in Canada. Our association was founded in 1906 as the Life Underwriters Association of Canada. Our over 10,000 members are provincially 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. Many of our members are dually licensed to sell both life and health insurance and mutual funds and other securities.

Advocis provided its comments to the Life Insurance Council of Saskatchewan (the “LIC”) on their proposed By-law last fall. Since that time, the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO) ISI Working Group have concluded its consultative process with the issuance of its Incidental Selling of Insurance Report last November 2008. Advocis also 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.

General Comments

In the July 20, 2009 consultation letter, you state that “An undertaking has been made to align the new Saskatchewan regulatory model as closely as possible with the regulatory model that already exists in Alberta.”

Alberta’s *Insurance Act* and its associated regulations were amended in 2001 to, among other things, implement its regulatory regime for ISI. Alberta was the first province to implement a licensing regime for ISI. However, there have been a number of developments in the years since then. The insurance industry has evolved considerably, many more ISI products are available in the marketplace and the distribution channel for ISI has grown considerably. There has also been much comment on issues and concerns arising from the sale of ISI, including the recommendations in the *Incidental Selling of Insurance Report*, and media coverage of problems with credit insurance and mortgage insurance.

The Saskatchewan Financial Services Commission’s regulatory mandate is to protect consumer and public interests and support economic well-being through responsive financial marketplace regulation. The goal of harmonization with Alberta, while laudable in the abstract, should not be pursued at the expense of lessening consumer protection. Saskatchewan should carefully consider the proposed regulatory regime for ISI and ensure that it is appropriate and reflects the marketplace today and our current level of understanding, and that it protects consumers and the public interest.

Importing Alberta’s Regulatory Regime for ISI through TILMA

We understand that Saskatchewan is considering joining the BC-Alberta Trade, Investment and Labour Mobility Agreement (“TILMA”).

TILMA is a trade agreement consisting, in part, of a set of General Rules and Special Provisions that 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.

If Saskatchewan joins TILMA, it will not require the government to have the same laws and regulations as Alberta and British Columbia and this certainly applies to the regulation of the incidental sale of insurance. TILMA commits the parties to eliminating unnecessary differences that cause barriers to trade, investment and labour mobility. Article 6 of TILMA, *Legitimate Objectives*, explicitly states that a province may adopt or maintain measures which are inconsistent with the General Rules of TILMA for the purposes of consumer protection, and public security and safety. Both Alberta and British Columbia entered into TILMA expecting that differences will continue to exist, recognizing that both Provinces are distinct and sovereign jurisdictions with distinct and unique policy concerns.

We submit that TILMA should not be used as a reason for not implementing the most appropriate regulatory regime for the incidental sale of insurance. To use TILMA to not implement provisions which were contained in the LIC’s 2008 proposed By-law would be to

ignore the purpose for the inclusion of Article 6 in TILMA, to the detriment of Saskatchewan consumers.

Saskatchewan should not adopt lower regulatory standards than it originally proposed in 2008 simply because Alberta, many years ago, implemented a regulatory regime for ISI which, today, is generally acknowledged to have regulatory gaps and which requires amendment in order to adequately protect consumers.

Specific Comments on the Proposed Regulatory Regime including Recommended Enhancements

Licensing of the Legal Entity Not Individual Sellers

Similar to Alberta's *Insurance Act* and regulations and the LIC's 2008 Proposed By-law, The Saskatchewan Insurance Amendment Regulations, 2009 would institute a "restricted licensee" category whereby a restricted insurance agent's license may be issued to different types of business entities, such as a deposit-taking institution, mortgage broker or travel agency. The restricted insurance agent's license would authorize the restricted licensee and its employees to act as an insurance agent in respect of certain types or classes of insurance or categories of business activities as specified in the restricted insurance agent's license.

Advocis continues to believe 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.

The proposed regime results in a two-tier system where the legal or corporate entity that holds the restricted insurance agent's license can be subject to regulatory discipline but not the individuals who actually sell the incidental insurance products.

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.

Prerequisite Educational Requirements and Continuing Education Requirements

The proposed regulation is a step back from the By-law proposed by the LIC in 2008.

Both Alberta's *Insurance Act* and the proposed regulation at section 15.16 require 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. The LIC's Proposed By-law in 2008 had a higher standard as it required that the ISI Agency "have reasonable written policies and procedures to ensure an isi seller is knowledgeable, *competent and suitable* with respect to the isi product being offered" (Schedule A, Part III, Section 1(c)) (emphasis added).

To ensure that the seller of the ISI product is knowledgeable, *competent and suitable*, the LIC's Proposed By-law required that ISI Sellers take a training course and pass an examination approved by the Council. The proposed current regulation has no educational qualification

requirements. We believe a minimum proficiency requirement to sell ISI products is necessary and would help ensure consumer protection.

Advocis recommends that Saskatchewan adopt the LIC's 2008 approach and require that those who sell ISI products should not only be knowledgeable, but also competent and suitable by requiring them to meet a minimum proficiency standard by taking a training course and successfully passing an examination.

Continuing Education Requirement

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.

No Requirements Relating to Supervision and Management of Those Selling Incidental Insurance

The abandonment of management and supervision requirements in the proposed Regulation is a step backwards from the LIC's 2008 Proposed By-law. The Proposed By-law required that the ISI Agency must designate a person to be responsible for the management and supervision (defined in Schedule A, Part 1, Section 1(1)(a) as "reasonable and prudent oversight of insurance transactions") of the ISI Agency (Section 1(1)(c)). In addition, the ISI Agency was required to have written policies and procedures to ensure that ISI sellers were knowledgeable, competent and suitable with respect to the ISI product being offered (Section 1(1)(c)). Under the proposed Regulation, however, no person is required to be designated responsible for the management and supervision of those selling incidental insurance products, and there are no requirements for sellers to be competent or suitable.

Advocis recommends that Saskatchewan adopt the LIC's Proposed By-law's provision which required a person to be responsible for management and supervision of the insurance transactions that occur within the restricted licensee's premises.

Advocis also recommends that there be a requirement for on-site supervision of the sellers. Adequate supervision and adherence to standards are more likely to be maintained when ISI sellers at a particular restricted licensee's place of business are supervised by a fully licensed (LLQP) individual. This person would provide guidance and advice and would be accountable to Council in the event of a consumer complaint. This would promote consumer protection and institutional accountability.

Consumer Disclosure Requirements Could be Enhanced

Advocis supports the consumer disclosure requirements which have been included in the Proposed 2009 Regulations at section 15.18. In addition, we would recommend the following:

Summary of Terms of the Insurance Offered and Circumstances Under Which Insurance Commences or Terminates

The information required to be provided in section 15.18(1) of the proposed regulation should include in the summary of terms, not only the limitations and restrictions, but also the *exclusions*. This information should be provided in written form, as well as explained by the person selling the incidental insurance product. This information should be provided to the consumer before they complete the application form so that it helps form part of the decision-making process of the consumer.

Right of Rescission

One of the four main recommendations of the CCIR-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 support this recommendation and urge you to adopt it.

Alberta’s Insurance Agents and Adjusters Regulation (Alta. Reg. 122/2001) provides a 10 day period after receiving the written documentation evidencing the insurance (the policy or certificate of insurance) at section 14(2) and 18, in which the consumer can rescind the life insurance policy. Advocis recommends that Saskatchewan should adopt at least a 10 day cooling off period which should apply to all types of incidental insurance, and not just life insurance.

Separate Application for the Insurance Coverage

Alberta’s regulations require that the restricted certificate holder must provide the consumer with a separate application for the insurance coverage if the consumer is entering into or negotiating a credit arrangement with the certificate holder at the same time as the credit-related insurance (see Section 14 of Alta. Reg. 122/2001). This is meant to make it clear to the consumer that there are two separate transactions and there is no obligation to purchase the incidental insurance product. Advocis supports a requirement for separate applications as it will provide some protection for the consumer against tied selling pressures and help the consumer understand that the credit arrangement (such as a personal loan) is separate from the credit insurance and that the two items can be purchased separately.

Advocis also is of the view that the LIC’s Proposed By-law’s requirement to provide the consumer with a comparison of the costs of borrowing with and without the insurance premiums was a desirable consumer protection measure that should not be omitted from the current Proposed Regulations (see Part III, Section 3(2)(a) of LIC’s Proposed By-law).

Copy of the Application for the Incidental Insurance Product to be Provided

Alberta’s regulations provide that a holder of a restricted certificate must, on request, provide a person making an application for insurance with a copy of the completed application form. We support including in Saskatchewan’s regulations a provision which would require the restricted licensee to provide a copy of the completed application form to each consumer. This will help make it clear to the consumer that this is a separate product that is not required to be purchased. Also, given the issue of post-claim underwriting (or the fact that the investigation of whether the consumer is eligible to receive the insurance will only occur once a claim is

initiated), in the event of a claim dispute or in the event another consumer-related problem should occur, the consumer will have the document in hand.

Tied Selling Provisions Are Necessary

In order to protect consumers, Advocis recommends that the proposed regulation should include, as did the LIC's Proposed By-law, 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 (see Part III, Section 3(1)(b) of the LIC's 2008 Proposed By-law).

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).

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 CCIR-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. Saskatchewan should not miss this opportunity to address this important issue through 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.

We support the provision in the LIC's Proposed By-law which required that the consumer 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.

We urge the Superintendent of Insurance and the Insurance Council of Saskatchewan to adopt our recommendations and implement a regulatory regime which has as its primary goal the

protection of Saskatchewan consumers. Please do not hesitate to contact us should you wish to ask us for further information. We would be happy to meet with you, should you wish to do so.

Sincerely,

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

A handwritten signature in black ink, appearing to be 'Kristan K. Birchard', written in a cursive style.

Kristan K. Birchard
Chair, National Board of Directors