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Ms. Jane Pearse
Director
Financial Institutions Division
Department of Finance Canada
140 O'Connor Street
Ottawa, ON
K1A 0G5

Delivered by email to: finlegis@fin.gc.ca

Dear Ms. Pearse:

Advocis, The Financial Advisors Association of Canada, appreciates the opportunity to provide comments further to implementing the revised *Insurance Business (Bank & Bank Holding Companies) Regulations*.

The Minister of Finance announced on October 7th that the Government of Canada will adopt specific policy measures under the *Bank Act* to ensure that websites of banks are subject to the same insurance business regime that currently applies to branches. This is to ensure that the regulations "...reflect the government's policy intent that banks should separate insurance business from banking business." The Department of Finance is seeking comments regarding implementation of such revised regulations.

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. Our members provide a wide range of financial services, including estate and retirement planning, wealth management, risk management and tax planning and provide financial advice and services to millions of Canadians.

Our comments are designed to preserve and enhance consumer protection, enhance clarity, transparency and thereby lead to a more informed and adequately protected consumer.

General Comments

Advocis supports the government's policy intent that banks should separate insurance business from banking business given that such a policy enhances the interests of consumers by making consumer protection in the financial services sector a priority while maintaining a level playing field for all financial services market participants.

Banks are currently permitted to engage in the life and health insurance business through subsidiaries on much the same basis as the rest of the industry - through licensed advisors. They also can sell authorized types of insurance in-branch, such as creditor mortgage insurance. The current restrictions exist to adequately protect consumers. Without them, consumers are subjected to the subtle pressures that arise in the context of tied selling and potential violation of their privacy rights.

Tied Selling

The existing restriction on tied selling which is contained in the *Bank Act* which prevents coercive tied selling is not adequate to protect consumers. The current *Insurance Business (Bank and Banking Holding Companies) Regulations* are in place to ensure that consumers are protected from the subtle pressures that arise in the context of tied selling.

The restrictions are in place to ensure that a bank cannot *recommend* that an applicant for a loan should also purchase life and health insurance. In such a situation it would be very difficult for a borrower to decline the suggestion that they should apply for the recommended life and health insurance. Borrowers will tend to comply with the insurance product recommendation either (a) because they fear offending the lender; (b) they want to please the lender; or (c) they are not focused on the insurance aspect of the transaction.

Bringing together the usual business of a bank and the business of life and health insurance would facilitate subtle forms of coercion that are difficult to detect or monitor. A consumer's ability to choose an insurance product freely and in a considered way is lessened with tied selling pressures.

Commingling of a Consumer's Personal Information and Privacy Concerns

The restrictions are also in place to protect consumers from commingling of information and potential privacy violations. The consumer's financial information must remain completely separate from their personal health information collected for insurance purposes which cannot be shared. Otherwise, there is a risk that the personal health information collected will be shared or commingled or accessed improperly by loan personnel. This would be harmful to a consumer's privacy with the potential for detrimental effects which can result from the commingling of information. For example, it may affect the consumer's ability to obtain credit as the loan may be denied as a result of the health information obtained.

Safeguarding individual consumers and small businesses from the potential risks of tied selling pressures and potential privacy violations must continue to be the main principles underlying the policy that banks should separate insurance business from banking business.

Adequately Protect Consumers Regardless of the Access Point

The current *Insurance Business (Bank and Bank Holding Companies) Regulations* were drafted in the early 1990's when on-line commerce was in its relative infancy. Since that time, there has been a vast increase in the use of on-line technology to conduct business and a huge increase in the use of the internet by consumers. The regulations need to be updated to reflect these developments. In our view, it is not simply a matter of how consumers access insurance products through the banks, but how adequately protected they are once they begin interacting with the banking entity and the person who is providing the insurance advice. The focus of the rules should be to protect consumers from tied selling and potential privacy violations and

ensure that consumers are dealing with a qualified, provincially licensed insurance agent. It is not clear to a consumer that this is occurring when they access the bank's insurance products and services through the bank's web-site.

The policy intent of the *Bank Act* and its regulations – that banks should separate their insurance business from their banking business – should apply regardless of the access point used to interact and conduct business – whether by use of a physical traditional branch, an office within one of the bank non-insurance subsidiaries or on-line through a web-site. The bank's website, physical branch, or an office located elsewhere but that is nonetheless part of the bank entity, should be subject to the same policy and the same regulatory provisions to protect consumers.

The insurance subsidiary of the bank is currently able to market and sell life and health insurance so long as the agents are appropriately licensed through the applicable provincial licensing body (either through the provincial Insurance Council, or other provincial government entity such as the Financial Services Commission of Ontario (FSCO) in Ontario). Therefore, there is no reason why the web-site of the bank's insurance subsidiary cannot also be used as an access point through which the insurance subsidiary of the bank is able to market, promote and sell insurance.

The Concept of the Bank Branch and Web-Site

On the question of how the concept of the bank branch should be translated into bank web-sites, the physical branch of the bank and the web-site of the bank should be treated in the same manner. What the bank branch is allowed to do with respect to the marketing, promotion or selling of insurance should apply equally to the bank's web-site or office location of one of the bank's non-insurance subsidiaries.

It should be made clear to the consumer when they are visiting the web-site of the insurance subsidiary or insurance agent (who has a contractual relationship with the insurance subsidiary) and when they are visiting the web-site of the retail banking entity or other part of the banking group (i.e., the bank's operations), otherwise the consumer is not adequately informed and not adequately protected.

The web-site of the insurance providers, agents and brokers of the bank's insurance subsidiary can be made "separate and distinct" from a bank's web-site. It can have its own separate web-address and it should be clear to the consumer from the web-address and from the web-site itself that they are accessing the insurance subsidiary rather than the bank's web-site.

It should be clear and transparent to the consumer what entity is being accessed through visiting the web-site, what entity is gathering information that is being provided by the consumer on the web-site, where that information is going and which entity is subsequently contacting them (regardless of the means chosen to do so). Consumers cannot be adequately protected from the risks of tied selling and potential privacy violations if there is not a clear identification of which entity's web-site the consumer has accessed and who the consumer subsequently is interacting with and where the consumer's personal information is going.

Promotion, Advice and Selling of Insurance Products and Services

The current policy that restricts banks from promoting, advising or selling other than authorized insurance products at the branch should be applied in situations where the consumer's access

point is the web-site of the bank other than its insurance subsidiary. The consumers are being provided with information about insurance products and services, they are being provided with insurance quotes and are discussing various types or risks or policies. In such situations, the consumer needs to be dealing with a licensed advisor in accordance with provincial market distribution of insurance laws and regulations.

It is the insurance subsidiary that is permitted to promote, advise and sell insurance products and services. Any disclosure made by the consumer on the insurance-subsiary's web-site should remain within that entity when the information is transmitted through the internet and stored electronically, and any subsequent interactions must be between the consumer and the insurance subsidiary in order to comply with the regulations. Similarly, any referral that is made as a result of visiting the insurance subsidiary's web-site, or any subsequent advice provided, must be from the insurance subsidiary of the bank.

Any interactions between the consumer and the insurance subsidiary that constitute activities of an "agent" under the applicable provincial *Insurance Act* must come from a fully licensed agent of the insurance subsidiary.

We are pleased that the government is seeking comments from stakeholders on the implementation of the revised regulations. Please do not hesitate to contact us should you wish to ask us for further information. We would be pleased to meet with you, should you wish to do so.

Yours sincerely,



Greg Pollock
President & CEO



Kristan K. Birchard
Chair, National Board of Directors

Cc: Hon. J. Flaherty, Minister of Finance