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April 2, 2009

The Honourable Don Morgan, Q.C.  
Minister of Justice and Attorney General  
Room 355, Legislative Building  
2405 Legislative Drive,  
Regina, SK S4S 0B3

Dear Minister:

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

We understand that the Saskatchewan government is reviewing the proposed changes to Saskatchewan’s Life Insurance Council by-laws which would put into place a regulatory regime for the incidental sale of insurance. Advocis is very interested in the issue of incidental selling of insurance (ISI) particularly as it relates to the promotion of enhanced consumer protection and maintaining a level playing field in the insurance industry.

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. Our almost 500 members in the province of Saskatchewan provide financial advice and services to thousands of Saskatchewan consumers.

Advocis provided its comments to the Life Insurance Council of Saskatchewan on their proposed by-law last fall. Advocis supports the direction of the by-law and believes that there should be mandatory restricted licensing for individuals who sell insurance regardless of their distribution channel and enhanced consumer disclosure requirements in order to promote consumer protection, individual accountability and a level playing field for all in the insurance industry.

In Saskatchewan, as in other provinces, a regulatory gap has arisen as the creditor group insurance business has grown. Currently in Saskatchewan 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 arose due to uncertainty as to whether federally regulated entities are subject to provincial laws that impose licensing and market conduct requirements 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 over insurance related activities of banks.

Advocis was an intervener in this landmark court case promoting greater consumer protection and maintenance of a level playing field for all in the insurance industry. We were pleased that Saskatchewan's Life Insurance Council decided to address this gap in consumer protection, in the wake of the Supreme Court of Canada decision.

Provinces impose different levels of regulation of ISI. Alberta provides restricted institutional licensing where a restricted certificate of authority can be issued to an entity that sells ISI products. Section 486 of Alberta's *Insurance Act* requires that every holder of a restricted insurance agent's certificate of authority and every insurer on behalf of which the holder is marketing insurance must "establish reasonable procedures to ensure that personnel marketing insurance for the holder are knowledgeable about the insurance being marketed". There is no requirement for the training or supervision of those marketing the insurance. There are no educational qualifications, on-going continuing education requirements or suitability requirements. In addition, there is no requirement for a deposit-taking institution that holds a restricted certificate of authority to carry errors and omissions insurance. Alberta does have certain consumer disclosure requirements in sections 12 to 18 of the *Insurance Agents and Adjusters Regulation*, Alta Reg. 122/2001. However, we believe that these disclosure requirements are not sufficient for consumers to make informed decisions about their insurance needs.

In Quebec, *An Act respecting the distribution of financial products and services*, R.S.Q. c.D-9.2 permits the selling of ISI without a license but subject to certain disclosure requirements. The insurer is required to prepare a distribution guide which is given to the client. The distribution guide informs the client that other insurance products are available on the market, and includes other required detailed consumer disclosures. A copy of the guide and related blank insurance policy forms must be filed with the Autorité des marchés financiers.

The proposed Saskatchewan Life Insurance Council by-law would require businesses to obtain an ISI agency license, meet minimum proficiency requirements for ISI sellers, and comply with certain consumer disclosure requirements. These measures, in our view, represent a step beyond the regulatory regimes found in Alberta and Quebec as there is greater individual accountability and supervision of ISI sellers, which provides for enhanced consumer protection.

The Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Regulatory Organizations (CISRO) formed an ISI Working Group in order to address the differing levels of regulation and the lack of regulation of ISI across Canada. The ISI Working Group 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 number of specific recommendations. As noted in the Report, it is up to each provincial regulator to assess the issues and adopt the most appropriate course of action.

The ISI Working Group made the following four main recommendations in its 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 very positive step. Many aspects of these recommendations formed part of proposed Saskatchewan Insurance Council by-law changes. However, in our view the recommendations do not go far enough. In order to enhance consumer protection and establish a level playing field, Advocis supports 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 offer 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. These principles have been adopted by all provincial insurance regulators and have been implemented by licensed agents across Canada.
- Sellers of ISI products should be trained sufficiently to be able to 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 with an acknowledgment 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 also 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 and the Saskatchewan Insurance Council that we believe will help to ensure that consumers 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 Saskatchewan government is reviewing the level of regulation that is appropriate in the sale of incidental insurance products. We urge you to adopt our recommendations which we believe will lead to adequate protection of consumers.

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