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January 9, 2009

The Honourable Ron Stevens
Deputy Premier and Minister of International and Intergovernmental Relations
#408 Legislature Building
10800 - 97 Avenue
Edmonton, AB
Canada T5K 2B6

Dear Minister:

RE: Alberta's *Credit Union Act* & *TILMA*

We are writing on behalf of Advocis, The Financial Advisors Association of Canada.

We understand that the credit unions in Alberta are seeking expanded powers to sell and market insurance products and services directly from their branches. We also understand that pursuant to the *BC-Alberta Trade Investment and Labour Mobility Act ("TILMA")*, Alberta may be contemplating certain changes to its Credit Union Act to align more closely with that of British Columbia. We would like to provide you with our views on these developments and any proposed legislative amendments.

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, 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 of our members are insurance licensed individuals who carry on business as either sole proprietors or independent, small incorporated businesses. Our 1,500 members in the province of Alberta provide financial advice and services to hundreds of thousands of Albertans. They operate in accordance with the requirements of Alberta's *Insurance Act* and its associated regulations, and those that are dually-licensed also operate in accordance with the requirements of the *Securities Act* and its regulations.

Advocis is committed to providing a fair and balanced regulatory framework that preserves the health and strength of the sector, provides a level playing field for all who operate in the industry, and protects consumers.

Advocis has been engaged for a number of years on the issue of insurance sales through banks and credit unions. We have participated in policy consultations at both the federal and the provincial level, as governments have considered requests from the bank and credit union sectors to permit in-branch sales of insurance. We have undertaken considerable research concerning consumer and small business attitudes on these issues that supports the decisions of federal and provincial regulators not to expand in-branch sales of insurance.

Most recently, in 2005, Advocis participated in consultations in Ontario, concerning the expansion of credit union powers to permit in-branch sale of insurance. In 2006, Advocis made submissions on this issue in the 2006 federal review of financial institutions legislation. Ontario subsequently concluded that the consumer protection provisions that restrict in-branch sales of insurance in credit unions should remain in place. The federal government also concluded that banks should not be permitted to sell insurance in-branch and should not be permitted to share customer information with their insurance subsidiaries.

Advocis has been informed that Alberta's credit unions want to be able to sell insurance directly in their branches. Credit unions are already in the business of selling insurance through licensed advisors, in the same manner and pursuant to the same regulatory framework as other participants in the industry. We are concerned that expanding insurance retailing powers of credit unions will leave consumers without adequate protection from the subtle pressures that arise in the context of tied selling and without adequate protection of their privacy rights. We wrote to Alberta's Minister of Finance on November 12, 2008 to highlight a number of consumer protection concerns which are outlined below. In addition we wish to address issues related to the TILMA in relation to the issue of a credit union's ability to sell and market insurance through their lending branches.

Credit unions already sell insurance, on a level playing field

Currently, credit unions in Alberta are permitted to engage in the life insurance business through subsidiaries and sell authorized types of insurance in-branch, on much the same basis as federally-regulated banks and trust companies. Subject to the approval of the Corporation, a credit union may establish an insurance company or insurance brokerage through a subsidiary or affiliated company. Credit unions also may hold a restricted insurance agent's certificate of authority under the *Insurance Act*, and thereby act as an insurance agent to administer certain classes or types of insurance as specified by the Minister, and to provide advice about certain classes or types of insurance. This allows credit unions to sell credit-related insurance and other incidental insurance products.

The credit unions are asking the government of Alberta to accord them preferential treatment, and to give them a carve-out from the laws that place appropriate restrictions on selling of insurance in-branch. Holding a restricted certificate of authority or, even having licensed employees in-branch, will not address the tied selling concerns that gave rise to the existing restrictions that are in place to protect consumers.

Importing British Columbia's Legislative Framework through 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.

However, *TILMA* does not call on the governments of Alberta or British Columbia to have the same laws and regulations, and this certainly applies to the regulation of credit unions. The Agreement commits both parties to eliminating unnecessary differences that cause barriers to trade, investment and labour mobility. Article 6 of the Agreement, *Legitimate Objectives*, explicitly states that either Alberta or British Columbia 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 the Agreement expecting that differences will continue to exist, recognizing that both Provinces are distinct and sovereign jurisdictions with distinct and unique policy concerns.

British Columbia, in our view, does not adequately protect consumers of credit unions given that it allows some credit unions to directly sell insurance in-branch, if they were doing so as of September 15, 1990

(pursuant to a grandfathering provision (section 82) in the *Credit Union Incorporation Act*, R.S.B.C. 1979, c.79). In addition, British Columbia's *Financial Institutions Act* specifically exempts the sale of incidental insurance products by credit unions or banks from any insurance licensing requirements (see Section 2(1)(b.1) and (c) of the *Insurance Licensing Exemption Regulation*, B.C. Reg. 149/2007). In contrast, as noted above, Alberta has enacted legislation that requires a financial institution to obtain a restricted certificate of authority and comply with certain consumer disclosure requirements in order to market and sell incidental insurance products. The business practices for these types of incidental insurance products have been thoroughly examined by the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO) Incidental Sale of Insurance Working Group in its final report entitled "Incidental Selling of Insurance Report" which attempts to address the gaps in consumer protection regulation.

Given that B.C.'s legislation does not adequately protect consumers in regards to the sale of insurance through banks and credit unions, *TILMA* should not be used to remove the existing consumer protection measures which exist in Alberta and which protect individuals and small business consumers of credit unions to a greater degree than that of B.C. Further, to use *TILMA* to remove existing consumer protection measures would be to ignore the purpose for the inclusion of Article 6 in the Agreement, to the detriment of Albertan consumers.

Alberta, if it so chooses, could modify its credit union legislation so as to allow B.C. credit unions to carry on business in Alberta in the same manner as Alberta's credit unions currently do. We have no issue with this. Alberta should not be required to modify its legislation to allow the in-branch sale of insurance simply due to a grandfathering provision granted in B.C.'s legislative framework, thereby potentially putting consumers at risk.

Consequences of Expanding Ability of Institutions to Sell Insurance In-branch

Tied Selling Practices

Restrictions on distributing insurance "in-branch" exist with the goal of establishing a high level of consumer protection. If credit unions or other deposit-taking institutions are permitted to sell insurance directly, in-branch, they will direct customers to their insurance employees in the ordinary course of business transactions. A credit union, for example, may routinely require insurance on the life of the borrower before it will issue a small business loan or mortgage. Section 4(b) of the *Fair Practices Regulation* and section 16 of the *Insurance Agents and Adjusters Regulation* (pursuant to the *Insurance Act*) currently prohibits certain tied selling practices between consumer loans and the purchase of insurance. Section 16 of Alberta's *Financial Consumers Act* also prohibits certain business practices including (a) putting undue pressure on consumers to invest in named financial products and (b) taking unfair advantage of consumers. Despite these legislative safeguards, it will be difficult for the customer to decline the suggestion that they should, as a borrower, apply in-branch for recommended insurance. A borrower will tend to comply with the insurance product recommendation either: (a) because the borrower will fear offending the lender; (b) the borrower will want to please the lender or (c) the borrower will not be focused on the insurance aspect of the transaction. The consumer's ability to choose an insurance product freely and in a considered way will be lessened as a result of tied selling practices.

Credit unions will be tempted, when selling one type of product such as a loan or even at the time of opening a chequing account for a consumer, to sell the consumer life insurance at the same time. In the branch, tied selling may involve subtle pressure on the consumer. A business model and a regulatory framework that increases the risk of this should be avoided as a matter of consumer protection. Combining the usual business of a credit union and the business of insurance in shared premises, in-branch, will facilitate subtle forms of coercion that are difficult to detect or monitor.

Expanding the insurance powers of credit unions will expose consumers to tied selling pressure. In times when credit availability is tighter, this pressure may in fact intensify. Advocis, accordingly, opposes

the removal of the restriction prohibiting the distribution of insurance products in credit union branches, since allowing credit unions to distribute insurance from or through their branches is not in the best interest of consumers. The leverage of credit granting is simply too easy and tempting for branch staff to apply and too difficult to detect or monitor.

Commingling of a Consumer's Personal Information and Privacy

At present, when a credit union collects personal financial information concerning a client, and the credit union's insurance subsidiary collects sensitive personal health information for the purposes of underwriting insurance coverage, the information is not shared. The customer's personal privacy is respected. The application for the mortgage or other type of loan is kept separate from the application for life insurance and the credit union does not know any of the detailed health information relating to the individual. In addition, for the selling of certain classes of insurance under a restricted certificate of authority, section 12 of the *Insurance Agents and Adjusters Regulation* requires that personal information provided to a credit union for the purpose of buying insurance can only be used for that purpose and the person must sign a consent in accordance with the regulations.

However, if credit unions are permitted to sell a wide range of insurance products in-branch, the line between the credit union and the insurance subsidiary will vanish. The information will reside in one corporate entity, the credit union, and the personnel of the credit union may have access to all of the information that is collected. Even if limits are placed on the disclosure and use of a customer's personal health information within the credit union, there will be a significant risk that such information may be shared or commingled, or accessed by personnel. Existing provisions (see sections 12 and 13 of the *Insurance Agents and Adjusters Regulation*) which deal with this risk in the incidental sale of insurance context, in our view, are not sufficient and do not prevent the risk of harm to consumers. They certainly would not provide adequate safeguards should all forms of insurance be sold in-branch. As a result, a consumer's privacy may be compromised and their contractual rights regarding the loan or mortgage may be detrimentally affected.

Credit unions, if allowed to sell life and health insurance in the branch, will be free to pass on relevant client information to the life insurance agent placed in the branch. Some information about perceived risks that is not supposed to be shared between the insurance part and other parts of the credit union, may be communicated informally and recorded obliquely, to the detriment of the client. As part of the client agreement forms, the credit union will ask the consumer for its consent to market other products and services when the consumer becomes a customer of the credit union. Canadian consumers have voiced concerns about having financial institutions use their banking information to sell them other products such as life and health insurance. Consumers do not necessarily read the client forms carefully, and seldom decline the consent to share information or use information for other marketing purposes. The risk is that the privacy of the consumer will be lessened with the potential for detrimental effects which can result from the commingling of the information.

We believe it is simply too risky to expose consumers to the potential harmful impacts of privacy of information violations by allowing this information to be shared in-branch by both insurance employees and loan and mortgage employees. Safeguarding individual consumers and small businesses from the potential risks of implicit pressure and potential privacy violations must continue to be the main principles underlying any policies relating to the sale of insurance.

Level Playing Field

The credit unions have made the argument in other jurisdictions where they have sought expanded powers that permitting them to sell such a wide range of life and health insurance products in-branch will serve to place credit unions on the same footing as other financial institutions. However, we have pointed out that this claim is incorrect. Credit unions are already on an equal footing with all others that operate in the life and health insurance industry. There is no evidence that the current level playing field needs to

be tilted in favour of the credit unions, which enjoy the same right to sell insurance, through subsidiaries and not in-branch, as do federally-regulated financial institutions. As well, credit unions and other financial institutions currently have the ability to sell various insurance products in-branch such as creditor-mortgage insurance.

Under the current rules, credit unions can establish premises that are separate from their branches, for the sale of insurance by insurance-licensed employees. The current rules do not require the establishment of branch networks. Most insurance is sold at present by agents who are mobile in the community, rather than through branches. Credit unions are free to sell insurance through subsidiaries, outside of their branches, in whatever manner they consider to be most cost-effective, as is currently done in the rest of the industry.

The credit unions wish to capitalize on the advantages of selling, in-branch, to a captive customer-base. They wish, understandably, to reap the benefits and synergies of having simultaneous access to the corporate resources of the customer-information base of a credit union and an insurance marketing operation. Customers who wish to purchase authorized insurance products will be referred to insurance-licensed employees in-branch. If credit unions were given this preferential treatment, then existing consumer protection measures would be removed to the severe detriment of the consumer.

Alberta's Consumer Protection Measures Strengthened in 2006

To give the credit unions the ability to sell insurance in-branch, would be contrary to the strengthening of consumer protection measures which was accomplished in amendments made in April 12, 2006 to *Alberta's Insurance Agents and Adjusters Regulation*, Alta. Reg. 122/2001 (a regulation pursuant to *Alberta's Insurance Act*). At that time, the regulations were modified to include "independent contractors" so that deposit-taking institutions such as banks and credit unions, could not use independent contractors to escape the deeming provision which provides in section 1(4) that "...an individual is deemed to be in a position to use coercion or undue influence in order to control, direct or secure insurance business if the individual is an officer, employee or independent contractor of a deposit-taking institution."

Therefore, the Legislature has clearly acknowledged in *Alberta's Insurance Agents and Adjusters Regulation* (see sections 1(4), section 5(1)(f) and section 5(2)(d)) that officers, employees and independent contractors of banks and credit unions are in a position to use coercion or undue influence given their credit-granting role and, as a result, should not be allowed to obtain an insurance agent's certificate of authority and thereby sell insurance directly in-branch. This should not be reversed.

Consumers have ample access to insurance

The advocates for expanding in-branch insurance sales may suggest that this will increase consumer choice and access to insurance products, particularly in rural areas.

We submit that there is no evidence that consumers in any part of the province lack ample choice in the life and health insurance market. The people of Alberta are well served by the expertise of licensed insurance agents. There is no evidence that customers in any part of the province lack ample access to licensed life and health insurance professionals and a full range of insurance products.

Conclusion

Credit unions are free to sell and market life and health insurance through subsidiaries, outside of their branches, in whatever manner they consider to be most cost-effective, as is currently done by other market participants. We have no issue with credit unions being able to sell all kinds of insurance in this manner whether they are Alberta or B.C.-based credit unions.

We simply ask that credit unions not be given the preferential treatment of being able to sell and market life and health insurance directly through their branches because of the risks to consumer protection. Alberta has traditionally taken the view that consumer protection and appropriate levels of market conduct regulation is of paramount importance in the financial services sector. This has been demonstrated in its implementation of a licensing regime for federally regulated financial institutions selling incidental insurance and through the recent strengthening of consumer protection issues under the *Insurance Act* Regulations to prevent coercion in credit granting situations. Maintaining credit union in-branch sales and marketing restrictions would be in line with this tradition.

We would welcome the opportunity to meet with you to discuss our views on this matter, at your convenience.

Yours 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, CFP, CLU, CH.F.C., TEP
Chair, National Board of Directors

cc: The Honourable Iris Evans, Minister of Finance and Enterprise