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September 30, 2008

Life Insurance Council of Saskatchewan
310-2631 – 28th Avenue
Regina, Saskatchewan
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Dear Life Insurance Council Members:

Re: Proposed Regulation of Incidental Sale of Insurance “ISI”

We appreciate the opportunity to provide our comments to the Life Insurance Council of Saskatchewan on the proposed regulation of the incidental sale of insurance. 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 Canada’s largest association of financial advisors, 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. In order to enhance consumer protection and establish a level playing field, Advocis members support the promotion of mandatory licensing for individuals who sell insurance regardless of their distribution channel in order to advance these key principles in the regulatory framework.

We support the direction that the Life Insurance Council of Saskatchewan is taking in the proposed regulation. We recognize that the proposed regulation goes further than other provincial regulations in many respects in regulating market conduct and protecting consumers of ISI. Given the May 31, 2007 Supreme Court of Canada decision in *Canadian Western Bank et al. v. Alberta*, we believe provincial regulation of the incidental selling of insurance which is undertaken by banks and other entities will enhance consumer protection and foster a more level playing field for all players in the insurance industry.

The CCIR-CISRO Incidental Selling of Insurance Working Group

The Life Insurance Council has chosen to proceed with a proposed draft regulation in advance of the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO) ISI Working Group consultative process. Advocis made a number of recommendations to the CCIR-CISRO ISI Working Group in response to their Consultation Document released on February 27, 2008. Our recommendations were 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
- 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 license should be supervised by a fully (LLQP) licensed individual.

We also provided the following comments:

- Consumers receive little meaningful disclosure regarding ISI products
- Proper disclosure and plain language are critical to assisting consumers in making an informed decision regarding their insurance coverage if they have a pre-existing condition
- 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 process, the claims process and various other important aspects of the policy
- 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.

We continue to support the recommendations that we made to the CCIR-CISRO ISI Working Group 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. Individual licensing is the only real way to ensure individual accountability in the sale of insurance products, including ISI.

We agree with the definition of ISI product which captures the many situations in which ISI products are sold.

Recommended Enhancements to the Saskatchewan Proposed By-Law

The following comments on the proposed Saskatchewan by-law are consistent with our recommendations and comments to the CCIR-CISRO ISI Working Group. We have reviewed the proposed By-Law and recommend the following enhancements to the By-Law:

Individual Licensing Recommended:

In addition to the requirement of an ISI agency license, Advocis recommends that ISI sellers should be required to hold a restricted or limited license prior to being able to participate in the sale of an ISI product.

Content of Training Course:

We agree with Council's proposal to have minimum proficiency requirements in order to sell ISI products. In order to ensure that ISI sellers are "knowledgeable, competent and suitable with respect to the isi product being offered", Advocis believes that ISI sellers should 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.

Continuing Education Requirement Recommended:

Continuing Education is a fundamental component in the insurance regulatory landscape in most provinces in Canada and is required in order to ensure that the licensee is up-to-date on regulatory developments. We do not see why there should be an exception for ISI sellers. Accordingly, in addition to the proposed requirement that an ISI seller successfully complete a training course and examination prior to the participating in the transaction of ISI products, an ISI seller should be required to complete periodic continuing education courses to ensure that the ISI seller's knowledge is current and up-to-date.

Supervision of ISI Sellers by a Fully (LLQP) Licensed Individual Recommended:

In our view, the proposed By-law, as currently drafted, does not provide for adequate supervision of ISI sellers. Section 1(1)(b) sets out that "A person applying for an isi agency must...(b) designate a person who is employed by the agency to be responsible for the overall management and supervision of the agency and its office locations". In addition, Section 1(1)(c) requires that an ISI agency must "have reasonable written policies and procedures to ensure an isi seller is knowledgeable, competent and suitable with respect to the isi product being offered." The by-law does not require ISI sellers to be supervised on a day to day basis regarding the selling of ISI products to consumers. There is no on-site supervision. This can be contrasted to the supervision requirement with respect to a Life and Accident and Sickness Agent License which requires that a licensee having less than two years experience as a *licensed agent/salesperson* shall not act in the transaction of insurance unless supervised by a licensee having at least three years experience as a licensed agent/salesperson (See Section 4 of Schedule A, Part II of the Life Insurance Council of Saskatchewan Schedules). Advocis believes that adequate supervision and thereby, adherence to standards, can only occur when ISI sellers at a given ISI agency location are supervised by a fully licensed (LLPQ)

individual. Advocis believes there should be a requirement to have an individual who is fully licensed who can provide guidance and advice and be held accountable to Council in the event of a consumer complaint.

The Potential for Regulatory Discipline Against the ISI Seller Should Exist:

Isi agencies are subject to regulatory discipline as are all licensees under By-law 8. However, since ISI sellers are not “licensees” they are not personally subject to regulatory discipline. We recommend that this regulatory gap be addressed by requiring the individual licensing of ISI sellers. This will further enhance 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 enhance regulatory accountability and promote enhanced individual professionalism. In addition, it will promote the goal of providing a level playing field for all who distribute life and health insurance products irrespective of where the consumer purchases them. In our view, it is much more difficult to revoke the license or discipline an ISI agency such as a financial institution, and much easier to discipline or sanction an individual.

Managing Potential Conflicts of Interest:

Given that the ISI agency is a licensee, the ISI agency will be required to adhere to the three principles identified by the Industry Practices Review Committee (“IPRC”) and supported by all jurisdictions, namely:

1. Priority of the client’s interest
2. Meaningful disclosure of real or perceived conflicts of interest
3. Product suitability

Advocis believes that the ISI sellers should also be required to adhere to the three principles. If ISI sellers are individually licensed, then they would automatically be required to adhere to these principles.

In adhering to the second principle, there should be disclosure of the fact of any compensation, inducement or benefit, whether by commission, revenue sharing, profit or otherwise, from an insurer (directly or indirectly) to an ISI agency or ISI seller for selling insurance to the consumer. To be meaningful, this disclosure should occur before the ISI seller is permitted to complete an application for an ISI product.

In adhering to the third principle, the consumer should receive full, accurate and unbiased advice from the seller that is in the consumer’s best interest when the consumer is considering the sale of an ISI product. Accordingly, ISI sellers should be subject to certain product suitability requirements. The duty to verify that the product is suitable must rest with the seller. There should be a requirement that ensures that the specific need of the consumer is established and recommendations are made which are appropriate to the consumer’s individual circumstances. This would imply some kind of personal and financial situation analysis.

Tied Selling Provision:

We support the Council’s proposed tied selling provision. Section 2(2)(c) of the proposed by-law states that “an isi agency must not permit any isi seller to advise the consumer that an isi product must be purchased from the agency or through an insurer specified by the agency.” We would suggest including a broader clause that would

prevent an ISI agency or ISI seller from being able to require, impose undue pressure on, or coerce a consumer, as a condition of receiving a product or service, to purchase an ISI product from the ISI agency or from a particular insurance company.

Post-Claim Underwriting:

We agree with the Insurance Council's approach of improving consumer's awareness and understanding of the application, coverage and underwriting processes for ISI products. However, it is not clear, as currently drafted, *when* this information has to be disclosed to the consumer. In order to help form part of the decision-making process, the written explanation of post-underwriting that is to be provided to the consumer should be provided prior to the completion of the application. Also, in addition to explaining the importance of the health questions and the implications if not fully and accurately answered, the explanation should include:

- An explanation of any exclusions, restrictions and limitations applicable
- An explanation of pre-existing conditions which limit a policy's coverage
- An explanation of 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)

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.

Further Disclosure Requirements Which Would Enhance Consumer Protection:

Advocis supports the consumer disclosure requirements which have been included in the proposed By-law, at Section 3. In addition, we would recommend the following:

- When an ISI product is being negotiated or sold at the same time as a credit arrangement is being negotiated or entered into with the consumer, a separate application for the insurance coverage must be provided (as in Alberta, see section 14(1) of the *Insurance Agents and Adjusters Regulation*, Alta Reg. 122/2001). This will clearly articulate that the application for ISI is not part of the loan application but is the sale of a separate product.
- On request, a person making an application for insurance must be provided with a copy of the completed insurance application (as in Alberta, see section 14(2) of the *Insurance Agents and Adjusters Regulation*, Alta Reg. 122/2001) so that they have a record of the questions and answers that formed part of that application.
- At the time that an ISI product is being sold, the seller must give the consumer written notice, in the manner prescribed by regulation stating that the client may cancel the insurance contract within 10 days of signing it (as in Section 440 of

Quebec's *An Act respecting the distribution of financial products and services*, R.S.Q. c.D-9.2). This will give the consumer additional time in which to consider if the insurance product is best suited to his or her needs.

- At the time that an ISI product is being sold, the seller must tell the consumer the name of the insurer that is providing the insurance, that the consumer may contact the insurer for further information or clarification, and advise the consumer how the insurer may be contacted (as in Alberta, see Section 15(2)(b) of the *Insurance Agents and Adjusters Regulation*, Alta Reg. 122/2001.)
- At the time that an ISI product is being sold, the seller must provide to the consumer a statement that the duration of the insurance is less than the term of the amortization period of any related loan, or that the amount of the insurance is less than the indebtedness, if that is the case (as in Alberta, see Section 15(2)(a)(ii) of the *Insurance Agents and Adjusters Regulation*, Alta Reg. 122/2001) and that the amount of the insurance decreases as the amount of indebtedness decreases, if that is the case.
- The disclosure required in Section 3(2)(a) of the proposed By-law (which allows the consumer to compare the costs of borrowing with and without the insurance premiums) should be provided to the consumer prior to entering into the loan transaction or completing the application for the ISI product.

We support the direction that the Life Insurance Council has taken in the regulation of the sale and distribution of insurance. The proposals which we have outlined above are intended to address some gaps in the proposed by-law and further enhance consumer protection. We would ask that you take our submissions into account when considering the final form of the bylaw. 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,



Steve Howard, CA
President and CEO
Advocis



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