



Advocis
390 Queens Quay West, Suite 209
Toronto, ON M5V 3A2
T 416.444.5251
1.800.563.5822
F 416.444.8031
www.advocis.ca

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Erin Pearson
Executive Director
Insurance Council of Manitoba
466 – 167 Lombard Avenue
Winnipeg, Manitoba
R3B 0T6

Dear Mr. Pearson:

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

We appreciate the opportunity to provide our comments to the Insurance Council of Manitoba on the November 2010 proposed regulatory approach 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 among financial advisors and their clients, the public and government.

Advocis is Canada’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 (in a letter dated March 26, 2009) to the Insurance Council of Manitoba (the “ICM”) in response to their review regarding their role and the appropriate level of regulation in the offering of insurance products that are sold incidental to the sale of other products (otherwise known as “incidental sale of insurance” or “ISI”). Advocis welcomes the opportunity to provide its comments on Manitoba’s proposed regulatory regime.

General Comments

In the November 19, 2010 Notice to Stakeholders letter, you state that the Government of Manitoba identified the regulation of ISI products as an issue of significance, and you requested recommendations from the ICM with respect to regulation of intermediaries involved in the sale of ISI products. As a result, “...a new joint committee of the Life and General Insurance Councils of Manitoba has therefore been assembled to make recommendations and develop the regulatory

framework for the regulation of intermediaries involved in ISI. Preliminary recommendations favour a framework which closely models existing regimes in Alberta and Saskatchewan.”

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 Canadian Council of Insurance Regulators (CCIR) and Canadian Insurance Services Regulatory Organizations (CISRO) Incidental Selling of Insurance Report, and media coverage of problems with credit insurance and mortgage insurance.

Saskatchewan has more recently implemented its regulatory regime and Advocis participated in these consultations and made a series of specific recommendations. The regulations which have been implemented by Saskatchewan are very similar to those of Alberta.

Both Alberta and Saskatchewan’s regulatory regimes do not directly regulate the intermediaries involved in the sale of ISI. Rather they impose obligations on the entity and the insurer to establish procedures to ensure that the employees of the entity that are selling ISI products are knowledgeable about the insurance being solicited, negotiated or effected and ensure that the procedures are being followed. We strongly recommend that regulation through licensing of the intermediaries who are directly selling ISI products is the best way to ensure consumers are adequately protected.

The ICM is the regulatory body responsible for the licensing and discipline of insurance agents, brokers and adjusters in the Province of Manitoba. Its mission is to serve and protect the public by regulating insurance licensees under the *Insurance Act* and by ensuring that licensees act within a professional framework which promotes fair and ethical conduct, integrity and competence. The regulatory mandate is to protect consumer and public interests and support economic well-being through responsive financial marketplace regulation.

The preliminary recommendation to implement a framework which closely models the regulatory regimes of Alberta and Saskatchewan, while laudable in the abstract in an effort to ensure harmonization, should not be pursued at the expense of lessening consumer protection. Manitoba 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 of the risks associated with ISI, and that it protects consumers and the public interest.

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 Saskatchewan Regulations, the ICM 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 of, 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 an improvement on the Alberta and Saskatchewan models.

Both Alberta's *Insurance Act* at Section 486, and Saskatchewan's Regulations at section 15.3, 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 ICM's proposed regime adopts a higher standard as it requires that the person applying for a Restricted ISI Agent Licence must (ie 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".

To ensure that the seller of the ISI product is knowledgeable, *competent and suitable*, the ICM's proposed regime requires that ISI Sellers "not be able to participate in the transaction of an isi product unless the isi seller is recorded on the roster and has been sufficiently trained to ensure knowledgeable advice is provided to the consumer".

We think this is a step in the right direction and strongly recommend that all ISI sellers should be required to take a training course and pass an examination, both of which have been approved by the ICM. The proposed regime has no specific educational qualification requirements. We believe a minimum proficiency requirement to sell ISI products is necessary and would help ensure consumer protection and make the roster of individuals more meaningful.

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.

Requirements Relating to Supervision and Management of Those Selling Incidental Insurance

The proposed regime requires that the ISI agency must "designate a person who is employed by the business to be responsible for the overall management and supervision of the agency and its office locations". In addition the entity is required "...to have reasonable written policies and procedures to

ensure that isi sellers are knowledgeable, competent and suitable with respect to the isi product being offered". However, under the proposed regime, no person is required to be designated responsible for the management and supervision of those selling incidental insurance products, nor is it required that there be a person who is responsible for supervision at each of the restricted licensee's premises.

Advocis 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 regime. 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 the section "Obligations of a Restricted ISI Agent to Disclose information" in subsection (a) of the proposed regime 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. We agree that 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. Quebec's regulations include these requirements. We support this recommendation and urge you to adopt it.

Alberta's Regulations provide at section 14(2) and 18, a 10 day period after receiving the written documentation evidencing the insurance (the policy or certificate of insurance) in which the consumer can rescind the life insurance policy. Saskatchewan at Section 15.4(2) of its Regulations, requires, with respect to creditor's disability insurance, creditor's life insurance, creditor's loss of employment insurance or mortgage insurance, that the applicant must receive a statement that sets out the right to rescind the insurance contract and to obtain a full refund of the premium. Section 15.4(6) of the Saskatchewan Regulations further gives the person buying life insurance through the restricted licensee the ability to rescind the insurance contract on or before the expiry of 7 business days after the date on which the person received the policy or certificate and obtain a full refund of the whole premium that has been paid.

Advocis recommends that Manitoba should adopt at least a 10 day cooling off period which should apply to all types of incidental insurance products.

Separate Application for the Insurance Coverage

Alberta's Regulations require, in section 14, 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. 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.

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 Manitoba's regime 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 regime should improve its 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.

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 Alberta's Regulations)

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. Manitoba 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 regulatory provisions which require 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 the extent to which coverage 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.

Classes/Types of Insurance for which a Restricted ISI Agent License May be Issued

Advocis urges the ICM to limit the types of insurance to those that are incidental to the purchase of another product or service. As such, Advocis does not believe that subsection (k), namely personal life insurance (restricted basis), should be listed as a type of insurance for which a restricted ISI agent license may be issued.

We urge the ICM and the joint committee of the Life and General Insurance Councils of Manitoba to adopt our recommendations and implement a regulatory regime which has as its primary goal the protection of Manitoba 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,



Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO



Robert McCullagh CFP, CLU, CH.F.C., RHU
Chair, National Board of Directors