



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

April 12, 2011

Jane Pearse, Director
Ministry of Industry
Financial Institutions Division
Department of Finance
L'Esplanade Laurier, 15th floor, East Tower
140 O'Connor Street,
Ottawa, Ontario K1A 0G5
finlegis@fin.gc.ca

Dear Ms. Pearse:

**Re: Canada Gazette, Part I, Vol. 145, No. 11 — March 12, 2011
Negative Option Billing Regulations**

Advocis, The Financial Advisors Association of Canada, would like to provide you with our comments regarding the *Negative Option Billing Regulations*, which will require federally-regulated financial institutions to obtain express consent from consumers before providing a new optional product or service.

Advocis is a national professional association that is committed to preparing, promoting and protecting financial advisors in the public interest. We are 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.

We welcome this initiative to address "negative option selling". We believe strongly that consumers should be fully informed about their choices and about the specific products or services, before they decide to buy an optional product or service, in the course of buying a primary financial product or service. The proposed Regulations will require sellers to provide consumers with meaningful disclosure about the product or service, including a description and information about all charges and about cancellation, and to obtain express consent from the consumer before they purchase an optional product or service.

Subsection 5(1) of the Regulations provides that before a person can provide express consent to receive an optional product or service from an institution, they must be given an initial disclosure statement that contains the information referred to in paragraphs 6(a) to (d) or a summary of that information. Subsection 6 of the Regulations provides that the consumer must be provided within 30 days after entering into the agreement, a subsequent disclosure statement containing all relevant information about the product or service, including "a description of the product or service."

We believe the requirement to provide the subsequent disclosure statement is not adequate to ensure that the consumer actually will receive sufficient information about an optional product prior to purchase, and will have adequate time to consider a purchase of optional credit insurance.

When a consumer who is in the process of purchasing a primary financial product, is asked to consider the purchase of an additional, optional product, they should be given time to consider that optional product. After they are presented with additional disclosure about that optional product, they should be given a reasonable opportunity to review the disclosure and consider whether to buy the optional product.

The disclosure that historically has been provided to consumers in the course of the selling of insurance products such as credit insurance, incidental to primary financial products, has often failed to provide consumers with critical information about the insurance products they are considering, and time to consider that information before they make their decision.

We note that in the Province of Alberta, sellers of optional credit insurance are required to provide the consumer with a separate application for the insurance coverage. (Subsection 14(1) of the Insurance Agents and Adjusters Regulation, Alta. Reg. 122/2001 specifically requires a holder of a restricted certificate as an insurance agent, when selling credit insurance at the same time as a credit arrangement is being negotiated or entered into with a consumer, to provide the consumer with a separate application for the insurance coverage.)

We submit that the content of the disclosure requirements in the Regulations should be expanded, so that consumers, who are considering a purchase of an optional product, ancillary to the purchase of a primary financial product, will receive both meaningful disclosure and appropriate time to make an informed decision. In the case of the sale of incidental insurance products (ISI), this should include disclosure about important features and risks, including risks of post-claim underwriting, as well as disclosure concerning the availability of incidental insurance products from other sources.

We note that in November 2008, the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organization (CISRO) issued a report on the incidental selling of insurance. [Available online at http://www.ccir-ccrra.org/en/init/ISI/ISI_Nov2008EngFinalReport.pdf] The recommendations by the ISI Working Group in the Report included greater clarity and simplicity in application forms and related documents, improved training and supervision of sellers, and, significantly, recommendations that consumers should be provided an opportunity to reassess the purchase of the incidental insurance product.

We believe the following comments by the CCIR / CISRO ISI Working Group regarding the importance of providing consumers with adequate time and information to assess incidental insurance products is particularly relevant in the context of the Regulations:

The ISI WG feels that the sales environment where the incidental sale occurs and the cooling off period may not provide the consumers with enough time and resources to adequately assess suitability of the product according to their global

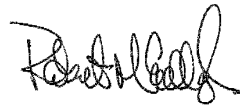
financial situation rather than solely in respect of the risk created by the acquisition of a specific good or service. The ISI WG believes that information should be provided to consumers in order to advise them of the potential relevance to consult with an insurance professional if they feel necessary and to inform them of the existence of potentially “similar” products offered through different channels.

Advocis appreciates this opportunity to provide comments on the *Negative Option Billing Regulations*.

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