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Insurance Council of Manitoba
Suite 466
167 Lombard Avenue
Winnipeg, Manitoba
R3B 0T6

Re: *Insurance Council of Manitoba's Draft Guideline to Licensees – Sale of Segregated Funds*

Thank you for the opportunity to comment on the Insurance Council of Manitoba's Proposed Guideline to Licensees – Sale of Segregated Funds (the "Proposed Guideline").

Advocis is the largest and oldest voluntary professional membership association of financial advisors and planners in Canada. Our 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. Advocis members are professional financial advisors who provide comprehensive financial planning and investment advice, retirement and estate planning, risk management, employee benefit plans, disability coverage, long-term care and critical illness insurance to millions of Canadian households and businesses.

Advocis strongly supports regulation that protects consumers. Advocis supports and promotes the professionalism of financial advisors and initiatives that benefit investors by helping them make more informed decisions and that allow financial advisors to continue to conduct their businesses in a professional and efficient manner without undue regulatory burdens.

The Regulatory Landscape

The marketing and sale of segregated funds is currently subject to the legislative and regulatory requirements for life insurance products. We believe these requirements have proved effective to protect consumers. While the Proposed Guideline is technically correct, that the current regulatory structure "...does not currently include requirements specific to segregated funds or identify segregated funds as being distinct and containing elements which extend beyond those of traditional insurance products", we believe the existing regulatory framework for life insurance products ensures that consumers receive appropriate disclosure and are protected.

Segregated funds, like other life insurance products are subject to the provisions in Manitoba's *Insurance Act* and associated regulations. They are also governed by the principles and practices set out by the Joint Forum in their 2005 document *Principles and Practices for the Sale of Products and Services in the Financial Sector* which was endorsed by all provincial insurance and securities regulators across Canada. Like all other life insurance products, the marketing and sale of segregated funds is subject to the three key principles-based

recommendations established by the Industry Practices Review Committee (IPRC) of the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organization (CISRO) in 2006:

1. priority of client's interest – an insurance intermediary (broker or agent) must place the interests of insurance policyholders and prospective purchasers ahead of his or her own interests;
2. disclosure of conflicts or potential conflicts of interest – consumers must receive disclosure of any actual or potential conflicts of interest associated with a transaction or recommendation; and
3. product suitability – the recommended product must be suitable to the needs of the consumer.

All life insurance agents have to adhere to the above-noted three principles for each recommendation made to a client.

In addition, agents are required to follow the steps set out in the CLHIA Guidelines on IVICs which has been endorsed by the CCIR. "These steps include delivery of the Information Folder and will include compliance with revised point of sale requirements as set out by the Joint Forum in *Proposed Framework 81-406: Point of sale disclosure for mutual funds and segregated funds* (the "Framework"). The CCIR is in the process of implementing the Framework by establishing revised point of sale disclosure standards for segregated funds, which include the delivery of the Key Facts and Fund Facts point of sale documents to clients.

Initial Proficiency and Continuing Education Requirements

Regulatory requirements also include licensing requirements for insurance agents in order to be an "agent" in the Province of Manitoba, including initial proficiency and continuing education requirements. An applicant must complete the Life License Qualification Program (LLQP) and examination in order to be eligible to be licensed to sell life insurance products (including segregated funds) and is also required to complete 15 continuing education credit hours (CEC's) in each licence year.

We agree that disclosure to the consumer should include the important details of investments that they may be purchasing from a financial advisor as you discuss in the Proposed Guideline. We also agree that a consumer should expect an agent to be educated and qualified to provide them with advice and recommendations on investments and investing. Advocis believes that a high level of proficiency regarding the principles of investing can best be achieved through a professional platform in the delivery of financial advice, which encompasses professional designations, professional codes of conduct through best practice standards, meaningful continuing education and professional liability insurance.

The Guideline notes that Council does not "currently mandate specific education related to segregated funds beyond that included in the Life Licensing Qualification Program, or have a separate licence distinctly allowing the sale of segregated funds. The Guideline "strongly recommends education relating to investments and in particular those courses available which are specific to segregated funds."

Advocis supports educational requirements that allow regulators and consumers to have confidence that agents have the knowledge necessary to market and sell segregated funds. With respect to initial proficiency, the LLQP curriculum is currently being reviewed by the

Canadian Insurance Services Regulatory Organizations (CISRO) to ensure it continues to meet the needs of both industry professionals and the public.

Advocis supports Council's recommendation that agents take continuing education relating to investments, including education specific to segregated funds. This approach encourages agents to take continuing education courses in order to keep their knowledge up-to-date regarding investment products, including segregated funds. We believe that recommending that advisors take such courses rather than mandating that they do so as a requirement of their licence is a preferable approach as it allows individual advisors to assess whether such a course would be of benefit to them given their business activities and existing knowledge and level of expertise. As you may be aware, Advocis offers its own segregated fund course which is called the Advocis Segregated Fund Course which is open to agents.

Information Requirements

Through the Proposed Guideline, Council has developed a broad outline of the basic information it states "must be known by the agent and the consumer prior to proceeding with investment in segregated funds, and the minimum documentation that should be contained in a client file...". The Guideline describes this information as "What the Agent Needs to Know, What the Agent and the Client Need to Know, Documentation/ Retention, and Code of Conduct."

We would agree that the agent has to be knowledgeable and has a duty to disclose and explain certain basic information to the consumer so that the consumer can make an informed decision. However, it should not be the responsibility of the agent to ensure that the client "knows" all of the information that is required to be disclosed. A requirement for an agent to ensure that the client "knows" is not practicable as it is a non-enforceable standard. How is the agent supposed to assess whether the client "knows" the information that has been disclosed and communicated to him or her? We believe that it would be preferable to place on the agent the obligation to disclose and explain basic information.

What the Agent Needs to Know

Council states that "The agent is in a fiduciary position...". Advocis believes that it is more appropriate to state that the agent must comply with the principle of priority of the client's interest (as set out by the IPRC of the CCIR and CISRO in their discussion paper on conflicts of interest in 2006). An insurance intermediary must place the interests of insurance policyholders and prospective purchasers ahead of his or her own interests. The Council has put this as its first and overarching principle in its Life Insurance and Accident and Sickness Insurance Agent's Code of Conduct: "The client's interests take priority over the agent's interests and must not be sacrificed to the interests of others." The issue of whether the agent is or is not a fiduciary as a matter of law will depend on the application of the common law test for fiduciary to the specific circumstances of a given relationship. We do not believe that the use of the term is helpful within the context of the Proposed Guideline.

The items listed under "About Investing" are in the current LLQP curriculum. Council states that "You cannot make investment recommendations without certain information about the client." Advocis supports the proposition that the agent must understand the client's financial affairs (or know your client) to be able to make a product recommendation. There is a section in the Advocis Best Practices Manual which addresses this. The items listed under "About Your

Client” would be covered in the needs analysis and in the application of the product suitability principle recommended by the IPRC.

The product suitability principle is that “*the recommended product must be suitable for the needs of the consumer*”. The IPRC stated that it expects brokers and agents will explain to their clients and document the reasons for recommending a particular product. The recommendation should be based on the following:

- Fact finding appropriate to the circumstances, and assessment of the client’s specific needs;
- A flexible needs assessment. The assessment should reflect factors including the underlying risk, the client’s objective, and the complexity of the product being sold; and
- An agent or broker’s product recommendation that meets the client’s identified needs.

In order to develop best practices for intermediary disclosure, Advocis participated in the Intermediary Disclosure Working Group (along with the Canadian Life and Health Insurance Association (CLHIA) and other industry associations). The Working Group produced the “Advisor Disclosure Reference Document” in March 2005.

Advocis worked with other industry participants, including the CLHIA, to standardize the needs-based sales practices that are integral to the product suitability principles, through the production of the reference document: *The Approach: Serving the Client Through Needs-Based Sales Practices*.

Advocis also developed its own Best Practices Guideline on Product Suitability along with an interactive web-based tool entitled “The Advocis Interactive Disclosure and Product Suitability Web Tool”. This helps advisors to generate transaction and recommendation disclosure letters based on the Advisor Disclosure Reference Document. The letters can be customized for clients in all provincial jurisdictions. In the disclosure letter, agents disclose the companies they represent, any financial relationships they may have with those companies and whether an actual or potential conflict of interest exists. Moreover, the tool has a product suitability component which outlines the process that the advisor has gone through in making the recommendation, which can be reviewed and signed off by the client.

The three key principles of the IPRC, including product suitability, are all applicable in the context of segregated funds and the agent must apply the principles for each product recommendation he or she makes.

Advocis believes that the IPRC’s principles-based approach to dealing with conflicts of interest, product suitability and client’s needs, along with industry practices, are helping to ensure that the regulatory outcomes derived from the Joint Forum’s “Principles and Practices for the Sale of Products and Services in the Financial Sector” are being met. If Council believes specific areas need to be addressed, we would be pleased to explore whether modifications in the implementation of the IPRC suitability principle as they apply to insurance intermediaries might be helpful.

Advocis encourages the Council to coordinate with the other regulatory processes underway with respect to segregated funds and take them into account prior to issuing its final Guideline. As you are aware, a review by the Joint Forum Intermediary Regulation Committee, led by Jim

Hall, the Superintendent of Insurance in Saskatchewan, recently concluded its review of industry practices in the sale of mutual funds and segregated funds. It looked into the application by financial services intermediaries of the eight principles and practices. They also focused on whether there are any conflicts or undue burdens on financial service intermediaries who sell mutual funds and IVICs and whether they could be minimized while promoting equivalent consumer protection. The Joint Forum concluded that there were no conflicts between regulatory requirements and undue burden did not appear to be a significant issue. In addition, the CCIR Intermediary Regulation (IVICs) Project is undertaking a review of the quality of compliance monitoring by insurance companies of their intermediaries, including their compliance oversight of suitability and needs analysis for IVICs. Finally, point of sale product disclosure is also in the process of being implemented by the CCIR for segregated funds.

What the Agent and the Client Need to Know

Council states in the Proposed Guideline that “You cannot make investment recommendations without significant product knowledge.” The use of the term “significant” is ambiguous and Advocis prefers the term “appropriate”. The product knowledge required to ensure that the product recommended is suitable to the needs of the client will depend on the particular situation. For example, if a client is considering a segregated fund policy that is, in turn, invested in a money market fund, a significant amount of product knowledge is not necessary. Moreover, the advisor’s product knowledge is dependent on the information provided by the insurer.

Council states that “The client cannot make investment decisions unless you educate them on the product.” It then goes on to list what some of that information may include. Advocis believes that existing regulatory requirements and industry best practices ensure that consumers today make informed decisions. The advice provided by the professional financial advisor, in accordance with existing regulatory disclosure requirements (including the contents of the Information Folder which will be updated to include the revised Point of Sale disclosure requirements), provide consumers with the information they need to make an informed decision.

Documentation/Retention

Advocis supports, in general, the Documentation and Retention portion of the Proposed Guideline. The advisor should keep appropriate documentation to ensure compliance with all regulatory requirements and should, as a best practice, retain in the client file a written account of the steps taken to ensure priority of the client’s interest and product suitability. Accordingly, the client file should contain: information gathered from the client; the needs assessment analysis; copies of the engagement letter; product comparison information presented to the client; intermediary disclosure documents addressing conflicts of interest and any formal suitability statements or letters presented to the client. These requirements form part of Advocis’ best practices advice to its members on how best to adhere to the principles for the sale of insurance introduced by the IPRC.

Leveraging

The Proposed Guideline sets out the requirement to retain in the agent’s file a “Signed consumer acknowledgement of risks involved in leveraging as applicable”.

There are no current provincial insurance requirements to obtain a signed consumer acknowledgement of leveraging risks. The assessment by the professional financial advisor of

the appropriateness of leveraged loan strategies is part of the suitability process. Advocis' Best Practices Manual includes a comprehensive section on leveraging, including the risks and rewards of such a strategy and the appropriateness of applying such a strategy. Advocis's Best Practices Manual provides that advisors should have appropriate documentation to substantiate recommendations made to clients. Advocis agrees that documentation to support a leveraging strategy should be retained in the client file. Advocis suggests that the Guideline state that if an advisor recommends that the client pursue a leveraging strategy, he or she should maintain sufficient documentation of the recommendation, which may include:

- signed client acknowledgement of the risks of borrowing or
- copies of documents that were provided to the client outlining the risks involved in leveraging, along with detailed notes of client meetings and discussions that indicate that such documents were provided to the client.

Code of Conduct

The Council's Code of Conduct's general principles are consistent with the 2005 Joint Forum's document Principles and Practices for the Sale of Products and Services in the Financial Sector. The Code of Conduct and the Proposed Guideline are principles-based and Council needs to ensure that there is flexibility in the application of the Code of Conduct and the Proposed Guideline (the principles) to a particular set of circumstances. The Proposed Guideline should not necessarily be used as a 'one size fits all' check-list by regulators, but rather as a recommended approach which may assist the advisor in reaching the desired regulatory outcome.

Advocis has its own professional code of conduct that must be adhered to by its members, which encompasses the same principles and standard of ethical conduct.

We thank you for the opportunity to comment on the Proposed Guideline. We would be pleased to meet with you to discuss any of the issues or suggestions contained in our submission.

Yours sincerely,



Greg Pollock
President and CEO



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