

Submission to the
Inter-Governmental Affairs and Justice Committee
of the Legislative Assembly of Saskatchewan
Regarding its Review of the
Amendments to the Credit Union Act, 1998

May 12, 2009





John Dean, Member of Advocis:

Introduction:

Good afternoon. My name is John Dean. I am a member of Advocis, The Financial Advisors Association of Canada. I am a member of Advocis' Saskatchewan Provincial Advocacy Committee. When not volunteering my time as a member of Advocis, I am serving clients in private practice as a financial advisor here in Regina.

With me today is Marian Passmore, Senior Policy Advisor of the Regulatory Affairs Group of Advocis.

We would like to thank the Inter-Governmental Affairs and Justice Standing Committee for this opportunity to appear and address the Committee as it considers the regulatory framework for financial services and on its specific reviews of the financial services sector including proposed changes to the *Credit Union Act, 1998*.

I would like to begin by briefly describing Advocis and its members.

Our association was founded in 1906, as the Life Underwriters Association of Canada. We are the largest and oldest voluntary professional membership association of financial advisors and planners in Canada.

We have more than ten thousand members across Canada, almost 500 in Saskatchewan. Our members provide comprehensive financial planning and investment advice, retirement and estate planning, risk management, employee benefit plans and disability coverage to thousands of Saskatchewan households and businesses.

Our members are provincially licensed to sell life and health insurance, mutual funds and other securities. They are mostly owners and operators of their own small businesses. They create thousands of jobs across the province. Many of our members are dual licensed to sell both life and health insurance and mutual funds and other securities.

Ordinary Saskatchewan citizens, in all walks of life, need financial advice to help them to save and invest and plan for the future. Advocis financial advisors build lasting relationships with their clients based on trust. They take a long-term planning perspective and guide clients, young and old, individuals, families and businesses, especially during these times of economic uncertainty and financial market uncertainty.

Why Advocis members are different - Professionalism

A crucial characteristic of Advocis members is professionalism based on education, best practices, high standards of proficiency and professional conduct. Advocis promotes the professionalism of financial advisors. We do this through:

- Our Code of Professional Conduct;
- Guidance on best practices;
- Errors and omissions insurance coverage;
- Professional designations - the Certified Life Underwriter (CLU) and the Registered Health Underwriter (RHU), that are supported by rigorous standards and a comprehensive and up-to-date curriculum; and
- Mandatory competency-based continuing education.

How Advocis Advisors are Regulated

Many of our advisors are dual-licensed to sell life and health insurance as well as mutual funds and other securities. Our members provide comprehensive financial services advice to clients and are regulated by two very different regulatory regimes – the prescriptive, rules-based securities regime and the more principles-based insurance regime. We will discuss this in greater detail in a moment.

On the securities and mutual fund side, the majority of Advocis members are regulated by provincial securities commissions. Those who sell mutual funds are regulated by the Mutual Fund Dealers Association of Canada (MFDA). Those who sell securities (not limited to mutual funds) are regulated by the Investment Industry Regulatory Organization of Canada (IIROC). Both IIROC and the MFDA have been formally recognized as Self-Regulatory Organizations (SRO's) by the Saskatchewan Financial Services Commission. The SRO's are subject to regulatory oversight by the provincial securities commissions, including the Saskatchewan Financial Services Commission.

The Financial Services Division of The Saskatchewan Financial Services Commission is responsible for the regulation of insurers and for administering Saskatchewan's *Insurance Act* and regulations. On the insurance side, financial advisors who sell life and health insurance products are subject to market conduct regulation by Saskatchewan's Life Insurance Council. Members of Council are made up from an equal number of representatives of consumers, industry and advisors, which in our view provides a fair and balanced approach to regulating the industry and protecting consumers.

Why are we here today?

We would like to discuss three important areas:

1. The need for reform of financial services regulation – and in particular the need for consideration of principles-based regulation and a collaborative approach to the development of regulation.
2. Credit unions seek to amend the *Credit Union Act* to allow in-branch sale of life and health insurance. Such amendments would not be in the consumer's interest.
3. The need for the regulation of the incidental sale of insurance.

1. The Need for Reform of Financial Services Regulation

We would like to outline for your consideration three propositions concerning regulation and the impact of that regulation on consumer access to financial advice:

- Firstly, all Canadians should have ample access to professional financial advice, products and services and financial planning, and should be able to choose among a diverse range of financial services providers.
- Secondly, small business, professional financial advisors provide valuable services to Canadians by delivering financial advice, products and services.
- Finally, the current regulatory framework is limiting access to professional financial advisors and limiting the choices that are available to consumers.

Securities regulation at present is very prescriptive and rules-based. Increasing compliance burdens and prescriptive rules that suit the business model of market-dominant dealers make it difficult for smaller firms and smaller scale professional financial advisors to serve the public.

Regulation has been an important factor in the increasing domination of the financial services sector by large, vertically integrated financial institutions that have an employee-employer business model. In our view, the current regulatory structure favours these organizations by placing a disproportionately large regulatory burden on small, professional financial advisors and small financial services firms.

The increasing regulatory burden puts smaller businesses at risk due to high compliance costs that are much easier for the large players to absorb. This makes professional financial advice less affordable and less accessible. The increasing cost is putting professional financial advice out of reach for many consumers.

A consequence of the increasing compliance burden is that the break-even point, the point where small business financial advisors are able to cover their costs of servicing a client, continues to rise.

We believe that many of the regulatory requirements that increase the regulatory burden are not adequately justified. Often when regulators and SROs propose new regulatory requirements they are not actually responding to a clearly identified problem or risk to consumers, and the new regulatory requirements offer no clear benefit or protection for consumers. A result is that compliant financial advisors are saddled with additional compliance costs, most of which are passed on to consumers but there is little or no real benefit. Small firms and advisors leave the business, while larger, market dominant firms become more dominant. The result is less diversity in the marketplace and less choice for consumers.

What is Needed – Smart, Principles-Based Regulation – Insurance Regulatory Model

We submit that there are viable alternatives to the current regulatory approach. We believe a more principles-based approach to regulation, similar to the approach that is taken by insurance regulators, should be adopted. Principles-based regulation focuses on outcomes and offers more flexibility to deal with new circumstances and new products.

The Saskatchewan Life Insurance Council and financial services regulators in such places as the United Kingdom have had considerable success with principles-based approaches.

Canadian insurance regulators have successfully implemented a principles-based approach to financial services regulation.

Our experience suggests that this approach has not been adopted by all regulators and most certainly not by the securities SRO's, namely the MFDA and IIROC.

If you compare the prescriptive rules-based approach to dealing with conflicts of interest that securities commissions and their SROs, have taken with the more principles-based approach taken by provincial insurance regulators, you will see that the principles-based approach is more flexible, less burdensome and is effective.

CCIR Principles for Managing Conflicts of Interest

For example, insurance regulators across Canada, including the Saskatchewan Insurance Council, recently adopted principles to effectively manage conflicts of interest. The CCIR Principles aim to accomplishing their regulatory objective without imposing prescriptive rules and costly compliance burdens. These principles are:

1. Priority of the 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 or conflicts or potential conflicts of interest – consumers must receive disclosure of any actual or potential conflict of interest associated with a transaction or a recommendation; and
3. Product suitability – the recommended product must be suitable to the needs of the consumer.

The insurance industry has been working with regulators to implement these principles at the company, agency and individual advisor levels. Recent surveys of insurance companies and insurance agents conducted by regulators have revealed that the implementation of these principles in practice has been met with a high degree of satisfaction by the regulators.

The Saskatchewan Insurance Council's By-laws for the market conduct of insurance agents is largely principles-based and, in our view is working well to ensure consumers are protected and advisors have the flexibility to operate their businesses effectively.

On the securities side, conflicts of interest are dealt with as part of the regulatory requirements referred to as the "Client Relationship Model" ("CRM"). The SROs are implementing the CRM through extensive detailed rules and compliance burdens on registrants, and ultimately on many financial advisors, even in areas where the Canadian Securities Administrators (CSA) has indicated that a more principles-based approach may be appropriate. The result is additional compliance burdens on financial advisors without any apparent added benefit to consumers. This is in addition to the already significant amount of rules and regulations regarding product suitability.

Therefore, we believe regulators and governments should employ a principles-based regulatory response unless there is clear evidence that a more prescriptive approach is required. Any decision to employ a more costly rules-based approach should be based on a robust cost-benefit analysis that takes the cumulative impact of increasing compliance burdens into account.

Flawed Policy Development Process

A large part of the problem with securities regulation is in the policy development process itself. Regulation that will prescribe how advisors deal with their clients should be developed with input from advisors. Independent financial advisors should be at the table at an early stage in the regulatory process, when securities regulators and self-regulatory organizations are developing initiatives and policies that will have a direct impact on financial advisors and their ability to serve their clients.

We commend Saskatchewan's Insurance Council and the CCIR for continuing their tradition of consulting with stakeholders at the early stages of policy development. We believe that this is extremely important since it is in the early stages of developing new policy directions where stakeholder input is the most valuable. It is our hope that other Canadian regulators will follow the example set by insurance regulators as a model for undertaking meaningful public consultations with consumers, financial advisors and other market participants.

Unfortunately, on the securities side, the early development of regulatory policies often takes place in a relatively closed environment, with input from large dealers but without the benefit of broad industry input at the outset. Moreover, regulators who initiate policy without input from all relevant market participants at an early stage in the policy development process risk incorrectly defining problems, and failing to anticipate the impact on all relevant stakeholders.

This has resulted in many misguided regulatory initiatives such as IIROC's proposed financial planning rule, the Client Relationship Model, and a host of recent SRO rule changes.

Conclusion on Securities Regulatory Framework

The insurance model of using a principles-based approach to the regulation of financial intermediaries has worked well. The insurance regulators' requirements for licensing, meeting certain professional standards by obtaining an approved designation along with continuing education and errors and omissions requirements combined with a principles-based approach to regulation have provided consumers with a high degree of protection.

The heavily rules-based approach of the securities commissions has not curtailed bad behaviour, and limits consumer choice and access to professional financial advice as it makes it difficult for small firms and smaller scale professional financial advisors to serve the public.

Regulation should be developed following detailed consultation with all relevant industry and individual participants at the early stages of the policy development process. This is when stakeholder input is the most valuable.

I would now like to turn it over to my colleague, Marian Passmore to the issue of in-branch sale of insurance in credit unions which has the potential to threaten the level playing field that now exists between industry participants and harm consumers and the issue of the regulatory gap that currently exists in the sale of incidental insurance.

2. Credit Unions seek to amend The Credit Union Act to Allow In-Branch Sale of Insurance

Thank you John.

Credit unions want to be given preferential treatment, so that they can sell life and health insurance products in their branches.

Advocis has been involved in the issue of in-branch retailing of insurance at both the federal and provincial levels. In 2006, the Ontario government reviewed its credit union legislation and decided to maintain restrictions that prevent credit unions from selling insurance in-branch. In 2007, the federal government under its review of the Bank Act decided to keep in place similar restrictions that prohibit banks from selling insurance in-branch.

The Ontario and federal governments both decided to maintain the restrictions because of consumer protection concerns and in order to maintain a level playing field for the sale of insurance. On this level playing field banks and credit unions are currently able to sell insurance on the same basis as the rest of the industry, through subsidiaries and separate agencies and by using licensed agents.

Credit unions already sell insurance on a level playing field

In Saskatchewan credit unions are currently permitted to engage in the life and health insurance business through subsidiaries on much the same basis as the rest of the industry through licensed advisors¹. They also can sell authorized types of insurance in-branch, such as creditor mortgage insurance².

If credit unions are allowed to sell life and health insurance in-branch, credit union customers will be without adequate protection from the subtle pressures that arise in the context of tied selling and without adequate protection of their privacy rights. Such pressures may increase in times when credit is tight. The restrictions exist as the best form of consumer protection. Nothing, in our view, has changed to justify removing these restrictions at this point.

Saskatchewan has a coercive tied selling provision in *The Credit Union Act, 1998* that provides: “No credit union shall *require, impose undue pressure on, or coerce* a member of a credit union or a customer, as a condition of receiving any service, to purchase another service from the credit union” (see sections 44(2) and (3) of the Act (*italics – my emphasis*)).

We submit that this legislative prohibition on coercive tied selling would not be adequate to protect credit union customers if credit unions were permitted to sell life and health insurance products in their branches. A credit union could routinely *recommend* that an applicant for a loan should also purchase life insurance. It could be very difficult for a borrower to decline the suggestion that they should apply for recommended life and health insurance, in-branch. Why? Borrowers will tend to comply with the insurance product recommendation either: (a) because they fear offending the lender; (b) they want to please the lender; or (c) they are not focused on the insurance aspect of the transaction.

Bringing together in-branch the usual business of a credit union and the business of life and health insurance, will lead to subtle forms of coercion that are difficult to detect or monitor. If credit unions are allowed to sell life insurance in-branch, consumers will be

¹ s.440(1) *Credit Union Act, 1998*

...the Lieutenant Governor in Council may make regulations...(j) for the purposes of section 37:

(i) prescribing the extent to which and the terms and conditions under which credit unions may engage in the business of insurance and respecting the relations between credit unions and entities that undertake the business of insurance or insurance agents or brokers...

s.23 *Credit Union Regulations, 1999*, R.R.S. c. C-45.2 Reg. 1

For the purposes of subsection 50(1) of the Act, a credit union may acquire or increase a substantial investment only in any of the following: [...] (d.1) an insurance agency or insurance brokerage.

² s.3 *Credit Union Insurance Business Regulations*, R.R.S. c. C-45.2 Reg. 2

(1) A credit union may carry on any aspect of the business of insurance, other than the underwriting of insurance, outside Canada and in respect of risks outside Canada.

(2) A credit union may administer an authorized type of insurance and personal accident insurance.

(3) A credit union may administer a group insurance policy for its employees or the employees of any entities in which it has a substantial investment.

left without adequate protection from the subtle pressures that arise in the context of tied selling. A consumer's ability to choose an insurance product freely and in a considered way will be lessened as a result of tied selling practices. A business model and a regulatory framework that increases the risk of this should be avoided.

Privacy concerns

Permitting credit unions to sell life and health insurance products in their branches will also expose credit union customers to potential privacy violations.

If credit unions are permitted to sell a wide range of insurance products in-branch, they will have access to the consumer's financial information and their personal health information collected for insurance purposes. There is a risk that the personal health information collected will be shared or commingled or accessed improperly by loan personnel. This will be harmful to the consumer's privacy, and may affect the customer's access to credit as the loan may be denied as a result of the health information obtained.

For example, the credit union could recommend life insurance for the person applying to take out a loan (personal line of credit or mortgage). During the underwriting process, health issues could be discovered which could lead the credit union to refuse to make the loan.

If Credit Unions Get the Ability to Sell in-branch, so will Banks

If the Saskatchewan Government permits credit unions to sell life and health insurance in-branch, banks will seek similar powers through changes to the Bank Act when it comes up for review in 2012. Once the banks are also selling life and health insurance in-branch, the advantages that the credit unions in Saskatchewan are seeking will likely disappear.

The previous Saskatchewan government took the position that it would maintain the current restrictions on credit unions so long as the federal government maintains similar restrictions on banks selling insurance in-branch under the federal Bank Act. We support this position.

To tilt the playing field in favour of credit unions, which will open the doors to banks selling insurance in-branch, will further threaten the viability of the independent small business financial advisors and the people they employ, and it is a further example of how regulation favours larger players in the marketplace.

In Conclusion

We urge the Committee to recommend to the Government to maintain the current restrictions so that consumers are adequately protected and a level playing field is maintained. Keeping the current restrictions in place will help small business

professional financial advisors to remain a vital part of the financial services sector. Consumers will benefit as they will remain protected from the harms which result from potential tied selling and privacy violations.

3. The Need for Regulation of the Incidental Sale of Insurance

We would also like to speak to you about the regulation of the sale of insurance that is sold incidental to the sale of another product such as a loan or mortgage. Banks, credit unions and other institutions are permitted to sell certain types of life and health insurance at the time of a loan or mortgage application (creditor's life insurance or creditor's disability insurance, for example)³.

Currently in Saskatchewan the incidental sale of insurance or ISI is not regulated. Therefore, sellers of ISI do not have to be licensed or comply with other regulatory requirements. This regulatory gap arose due to uncertainty as to whether federally regulated entities are subject to provincial laws that impose licensing and market conduct requirements in the distribution of insurance products and services.

The Supreme Court of Canada's 2007 decision in *Canadian Western Bank et al. v. Alberta* has clarified that the provinces have such jurisdiction over the insurance related activities of banks. Advocis was an intervenor in this landmark court case promoting greater consumer protection and maintenance of a level playing field for all in the insurance industry. We were pleased that Saskatchewan's Life Insurance Council has decided to address this gap in consumer protection, in the wake of the Supreme Court of Canada decision.

The Saskatchewan Government is reviewing the proposed changes to Saskatchewan's Life Insurance Council By-laws that would put into place a regulatory regime for the incidental sale of insurance.

The proposed Saskatchewan Life Insurance Council By-law is a welcome move to address the regulatory gap. It will require businesses to obtain an ISI agency license, have a roster of ISI sellers, meet minimum proficiency requirements for ISI sellers and comply with certain consumer disclosure requirements. We support the direction of the By-law.

³ For example, Section 2(a) of the *Credit Union Insurance Business Regulations*, R.R.S. c. C-45.2 Reg. 2:

"authorized type of insurance" means:

- (i) credit or charge card-related insurance;
- (ii) creditors' disability insurance;
- (iii) creditors' life insurance;
- (iv) creditors' loss of employment insurance;
- (v) creditors' vehicle inventory insurance;
- (vi) export credit insurance;
- (vii) group life insurance;
- (viii) mortgage insurance; or
- (ix) travel insurance

Advocis believes that ISI should be subject to regulatory requirements that protect consumers, and so as to maintain a level playing field in the insurance industry.

Advocis provided comments to the CCIR-Canadian Insurance Services Regulatory Organizations ISI Working Group⁴ and to the Life Insurance Council of Saskatchewan on their proposed By-law last fall. In order to address a lack of meaningful disclosure, understanding of the products being sold and lack of knowledge and proficiency of sellers, we recommend the following:

- In order to sell 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 receive continuing education specific to creditor group insurance, to ensure that they are up-to-date on regulatory developments.
- Individual licensees should be covered by errors and omissions insurance as a means of further protecting consumers.
- 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 required to comply with certain product suitability requirements.
- Individual sales representatives holding a restricted or limited license should be supervised by a fully (LLQP) licensed individual. Advocis believes that adequate supervision and thereby, adherence to standards, can only occur when ISI sellers are supervised by a fully licensed individual. The fully licensed individual can provide guidance and advice and be held accountable to Council in the event of a consumer complaint.

⁴ Many aspects of the proposed Saskatchewan Insurance Council By-Law changes are consistent with the Incidental Selling of Insurance Report released in November 2008 by the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Regulatory Organizations (CISRO) ISI Working Group.

The ISI Working Group made the following four main recommendations in its Report:

- (1) insurers should use plain language to improve the application forms and documents and explain the consequences of improperly filing forms;
- (2) insurers should improve the training and supervision of sellers;
- (3) consumers should be provided with the opportunity to reassess the purchase of the ISI product through an extended "cooling off" period and consumers 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; and
- (4) CCIR should obtain statistical information on ISI products and related complaints.

We believe that the Report is a very positive step.

We understand that the Government is looking to other jurisdictions such as Alberta as a possible model for regulation to address these gaps in the regulation of ISI. We believe that the proposal developed by the Saskatchewan Insurance Council provides for greater consumer protection and individual accountability.

Alberta provides for restricted institutional licensing whereby a restricted certificate of authority can be issued to an entity that sells ISI products, but individuals who market the insurance to consumers are not required to be licensed. Section 486 of Alberta's *Insurance Act* requires that every holder of a restricted insurance agent's certificate of authority and every insurer on behalf of which the holder is marketing insurance must "establish reasonable procedures to ensure that personnel marketing insurance for the holder are knowledgeable about the insurance being marketed".

Under the Alberta regime, there is:

- no requirement for the training or supervision of those marketing the insurance
- no educational qualifications
- no on-going continuing education requirements
- no requirement to ensure that the insurance product is suitable for the particular circumstances of the consumer
- no requirement for a deposit-taking institution that holds a restricted certificate of authority to carry errors and omissions insurance.

Alberta does provide certain consumer disclosure requirements in sections 12 to 18 of the *Insurance Agents and Adjusters Regulation*, Alta Reg. 122/2001. However, we believe that these disclosure requirements are not sufficient for consumers to make informed decisions about their insurance needs.

We continue to stand by the recommendations that we made to the CCIR-CISRO ISI Working Group and the Saskatchewan Insurance Council 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.

Conclusion

We are pleased that the Saskatchewan government is reviewing the level of regulation that is appropriate in the sale of incidental insurance products. We urge you to adopt the Saskatchewan proposed By-law and consider our recommendations that we believe will lead to adequate protection of consumers.

That concludes our formal remarks. We would be pleased to answer any questions from the Committee members.