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March 9, 2007

Carol Shevlin  
Policy Manager  
CCIR Secretariat  
5160 Yonge Street  
Box 85, 17<sup>th</sup> Floor  
Toronto, Ontario, M2N 6L9

Dear Mrs. Shevlin:

Re: Discussion Paper on Privilege and Whistle-Blower Protection – Follow Up Consultation

Advocis appreciates the opportunity to provide further comments to the Canadian Council of Insurance Regulators (CCIR) Working Group on Privilege on its Discussion Paper on Privilege and Whistle-Blower Protection and the revisions to the draft privilege model. We have reviewed in detail your January 31, 2007 communication to Advocis and we are pleased to build on our earlier comments to you of February 2006 in response to your original consultation document. Our views and recommendations follow.

Advocis, the Financial Advisors Association of Canada, 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, education, 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. Advocis is Canada's oldest and largest voluntary professional membership association of financial advisors.

Privilege Model

Advocis' original submission to the CCIR on the Privilege and Whistle-Blower Protection Discussion Paper primarily addressed recommendations made respecting whistle-blower protection. Since the publication of the Paper we have been increasingly focused on the role the industry can and should play, through voluntary initiatives, in promoting professionalism through best practices in many areas, for example, compliance with recommended principles designed to address conflict of interest disclosure. Advocis, working with other industry associations, developed a disclosure template document, and this Association took the added measure of launching an easy-to-use, web-based disclosure tool. We are actively promoting its usage to our members, and we are looking at ways of ensuring the greatest degree of uptake and consistent application. In fact a number of compliance responsibilities in dealing directly with clients have been downloaded to licensees given the current distribution network for life and health insurance. More and more, individual licensees are responsible for establishing compliance regimes in their practices as a matter of regulation or as voluntary practice standards. Through this lens certain omissions in the draft privilege model have become particularly evident.

The draft privilege model would extend to an insurance company privilege protection for information collected in the course of a self-evaluative audit. While we certainly support making available the type of protection contemplated in the Discussion Paper, we would submit that, to be able to fully implement the array of voluntary practices and guidelines recommended by members of the CCIR, industry participants directly impacted by regulatory policy must be able to undertake and actively engage in voluntary audits without fear of exposure or self-incrimination at a future date. In other words, it is our view that the scope of the privilege protection outlined in the draft privilege model must be extended to capture other industry participants who may engage in self-evaluative audits, such as individual insurance licensees and managing general agencies.

By way of example, federal rules and regulations regarding anti-money laundering have been recently expanded with the intent making compliance requirements for large financial institutions similar in nature to those applicable to individual financial advisors, who are dealing with clients face-to-face on an ongoing basis. Whether compliance is a matter of regulatory requirement or as a principle through best practices, self-assessment of compliance systems are becoming commonplace throughout all aspects of the life and health insurance distribution channel. Moreover, servicing clients has been downloaded significantly by insurers to agents, making more important for individual licensees to have well established practice standards in place.

If the objective behind granting privilege protection collected by insurance companies in the course of a self-evaluative audit is to promote the effective and economical use of self-assessments as part of a risk-based system of regulation, surely Canadian insurance regulators would wish to promote that same scope of protection to the distribution segment of the industry so as to further mitigate any potential risk that could exist, or be perceived to exist, at that level. Advocis would be pleased to work with the Working Group on Privilege to develop an approach that more adequately achieves the desired overall objective identified in the December 2005 Discussion Paper.

#### Whistle-blower Protection

Our February 2006 comments provided general support for the proposal for whistle-blower protection. While we do not have any further specific comments at this time, we do wish to offer a caution to you as you proceed to consider further whether steps should be taken in this area. In particular, in considering whether to extend statutory protection for whistle-blowers, we would urge you to ensure that mechanisms exist whereby any purported whistle-blowers who themselves act fraudulently or with malfeasance cannot take advantage of the system for personal gain. In particular, any individual who improperly invokes whistle-blower protection must him or herself be subject to legal review and remedies where the conduct of the whistle-blower may be called into question. There have been many documented cases where alleged whistle-blowers have not acted in good faith.

We wish to thank you for the opportunity to offer further comments to you on the Privilege and Whistle-Blower Protection Discussion Paper. Please do not hesitate to contact us if you have any questions.

Sincerely,



Steve Howard  
President & CEO, Advocis