

October 3, 2022

Policy & Legislation Division
Ministry of Finance
PO Box 9470 Stn Prov Govt
Victoria, BC V8W 9V8

VIA EMAIL: fiareview@gov.bc.ca

Dear Sirs/Mesdames,

**Re: Implementation of the Financial Institutions Amendment Act, 2019 (Bill 37):
Consultation Regarding Restricting Insurance Licences**

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments to British Columbia Ministry of Finance's consultation regarding restricting insurance licences.

1. ABOUT ADVOCIS

Advocis is the association of choice for financial advisors and planners. With over 17,000 member-clients across the country, we are the definitive voice of the profession. Advocis champions professionalism, consumer protection, and the value of financial advice. We advocate for an environment where all Canadians have access to the professional advice they need.

Advocis members advise consumers on wealth management; risk management; estate, retirement and tax planning; employee benefits; and life, accident and sickness, critical illness and disability insurance. In doing so, Advocis members help consumers make sound financial decisions, ultimately leading to greater financial stability and independence. In all that they do, our members are driven by Advocis' motto: *non solis nobis* – not for ourselves alone.

2. COMMENTS

Advocis appreciates the opportunity to provide comments to British Columbia's consultation regarding restricting insurance licences. Currently, provincial regulatory regimes differ when it comes to the regulation of incidental sale of insurance ("ISI"). Alberta, Manitoba, and Saskatchewan have been issuing institutional restricted insurance licenses for some years now. In recent years, New Brunswick has turned its attention to regulating ISI by publishing a

proposal to implement a restricted insurance licensing regime, which Advocis commented on.¹ On the other hand, provinces such as Ontario, Nova Scotia, PEI, and Newfoundland and Labrador have no specific regulatory framework for the regulation of ISI.

We believe that having licensing requirements for those involved with sales of incidental insurance products increases consumer protection. We echo the findings of the Canadian Council of Insurance Regulators (“CCIR”) and Canadian Insurance Services Regulatory Organizations (“CISRO”) ISI Working Group, which stated that “a form of monitoring using licensing, restricted licensing or a distribution guide process brings additional accountability in the distribution process and provides for an additional enforcement mechanism which could prove necessary in properly addressing ISI issues.”²

CCIR/CISRO have more recently developed the Fair Treatment of Customers (“FTC”) guidance, which is intended to promote the fair treatment of insurance customers regardless of the nature or size of the insurance product and throughout the whole lifecycle of the consumer’s experience with the insurance sector.³ Our comments below are intended to ensure the consumer’s experience with ISI aligns with these newer, enhanced FTC principles.

Not all “Incidental” Products are Created Equal: The Focus on the Potential Consumer Impact

We believe that, when it comes to insurance products (including those which could fall under a restricted licensing regime for incidental products), British Columbia must differentiate between “simpler” products/use cases and more complex ones. Plainly said, not all incidental insurance transactions are created equal; some are almost afterthoughts to a primary transaction and are limited in their impact on consumers, whereas others (such as travel medical insurance or creditor life insurance) could have life-altering impacts on consumers’ financial well-being should something go awry with the primary transaction and the policyholder calls upon the incidental policy as a recourse.

We would argue that any transactions involving life, health or accident and sickness insurance (referred to collectively hereafter as “Life and Health Products”) as an incidental product are *de facto* complex. Matters related to Life and Health Products can quickly become very complicated. These products require significant consumer disclosure as they could entail coverage limits and exclusions and involve uncertainty about the underwriting process. Should consumers misunderstand the features of the Life and Health Product and the protections it offers, the impact on consumers could be devastating.

¹ Advocis, “Incidental Selling of insurance” (January 31, 2020). At:

link.advocis.ca/upload/chapter/200131_FCNB_Incidental_Selling_of_Insurance_Restricted_Insurance_Licensi.pdf.

² CCIR/CISRO, “Incidental Selling of Insurance Report” (November 2008) at pg. 3. At: www.ccir-ccra.org/Documents/View/2777.

³ CCIR/CISRO, “Guidance conduct of Insurance Business and Fair Treatment of Customers” (September 2018). At: www.ccir-ccra.org/Documents/View/3450.

For these reasons, in any transaction involving Life and Health Products, we firmly believe that financial and insurance advice should be delivered by fully-licensed professionals who possess the adequate levels of knowledge and expertise and are attuned to completing a proper needs analysis of their clients. That is, we do not believe that Life and Health Products are suitable for a restricted ISI licensing regime.

An ISI Regime for Life, Health and Accident and Sickness Products

While we believe that Life and Health Products are not suited for a restricted licensing regime, we understand that British Columbia may nonetheless proceed with creating a framework where they can be transacted as incidental products. If so, we have several suggestions to enhance the ISI regime to better protect consumers and further FTC outcomes.

First, restricted licensing for Life and Health Products should be required at the individual level, rather than at a corporate or entity level. Existing provincial ISI regulatory regimes, including British Columbia's proposed framework, are focused on issuing restricted insurance licenses at the corporate level. Corporate-level licenses result in a two-tier system where the corporate entity that holds the restricted insurance license can be subject to regulatory discipline but not the individual who is directly involved with selling of incidental insurance products.

When those responsible for selling products are individually licensed, they will be personally subject to regulations. As a result, in the event of non-compliance, it would be easier to discipline or revoke the licenses of those specific individuals than to do so for business entities such as large financial institutions. It is also important that individual licensees carry errors and omissions insurance as a means of further protecting consumers.

Proficiency and Continuing Education Requirements

In developing rules related to the initial and ongoing education requirements for restricted licenses, we recommend that salespersons of Life and Health Products under an ISI regime be mandated to complete training courses and pass examinations that specifically demonstrate their knowledge and expertise in the subject matter.

Existing frameworks do not mandate that ISI salespersons complete specific training courses. Manitoba's regulatory framework, which went into effect a few years after those of Alberta and Saskatchewan, imposes a higher expectation than other jurisdictions with respect to training and education. Nevertheless, Manitoba's regulations stop short of requiring completion of specific courses by ISI salespersons: they require restricted license holders to have reasonable policies and procedures in place to ensure that anyone who sells insurance on their behalf is knowledgeable, competent, and suitable. It also mandates that those who solicit, negotiate, or transact insurance on behalf of the restricted license holder comply with such procedures and policies.

For the reasons stated above, we do not believe that such general language is sufficient when it comes to Life and Health Products: the products themselves are too complex and, if misunderstood or misapplied, the risk to consumers is too great. The proficiency requirements related to Life and Health Products, even in the context of an ISI transaction, must specifically address the nuances of these products with the FTC lifecycle lens.

While rigorous standards for initial proficiency are necessary for professionalism and promoting FTC outcomes, they are not sufficient to protect consumers. It is also important that ISI salespersons be mandated to complete continuing education courses on a regular basis to stay up to date with changes to complex Life and Health Products. We appreciate that the proposed framework aims to develop a continuing educational program that is required of restricted insurance licensees. Since British Columbia mandates fully-licensed life insurance agents to complete continuing education courses, we encourage British Columbia to impose similar continuing education requirements for salespersons of Life and Health Products under an ISI regime.

Supervision Requirements

The proposed framework does not require a designated person to be responsible for the management and supervision of individuals engaging in the sale of ISI products. We recommend that the framework impose a requirement for supervision of ISI salespersons. That supervisor should be a fully licensed (LLQP) individual that is dedicated to overseeing the activities of the restricted licensee's salespersons.

Disclosure Requirements

Meaningful Disclosure

Advocis strongly supports enhancing disclosure requirements to consumers. Meaningful disclosure must be in plain language to enable consumers to make an informed decision with respect to purchasing an insurance product, regardless of whether the transaction occurs under a restricted license.

In this regard, we recommend that individual salespersons who directly interact with clients be subject to licensing and disclosure requirements to improve accountability and compliance. ISI salespersons should be required to inform their clients of the scope of their practice, restrictions, and the limitations within which they operate. They must also ensure that consumers understand what the incidental insurance covers, what goals will be accomplished and when they can rely on the advice of a professional insurance advisor.

It is important that restricted insurance licensees disclose any real or perceived conflicts of interest, including the receipt of compensation or other inducements for selling ISI products prior to clients completing an application. Licensees must ensure that conflicts of interest are adequately dealt with by prioritizing the client's interest over their own interest or those of the insurer, with a view to satisfying FTC principles and CISRO's Principles of Conduct for Insurance Intermediaries.⁴

Summary of Contract Terms

In disclosure documents, consumers need to be provided with a summary of contract terms covering limitations, restrictions and exclusions. This information must be explained and provided to clients in writing prior to making a purchase, so as to enable them to make an informed decision. It is important that insurers use plain language in application forms and documents and clearly explain the consequences of filling them out incorrectly.

Tied Selling Provisions

To better protect consumers, Advocis recommends that the regulatory regime include tied selling provisions prohibiting restricted licensees from imposing undue pressure or coercing a client, as a condition of receiving another product or service, to purchase an ISI product from the restricted licensee or from a particular insurance company. Prior to completing an application for an ISI product, consumers must be informed that they are not obligated to purchase the ISI product.

We recommend that the ISI regulatory framework require a separate application for most types of insurance coverage. This would ensure that consumers are protected against tied selling pressures by creating a clearer separation between primary and incidental transactions. In addition, consumers should be informed that when an ISI product is being sold while a credit arrangement is being negotiated, that the credit arrangement is separate from the credit insurance and that the two items can be purchased separately.

Copy of the Application for the Incidental Insurance Product

We recommend that the ISI regime include a provision that requires the restricted insurance license holder to provide the consumer applicant with a copy of the completed application form. In the event of a claim dispute or other unforeseen issues, the consumer will have the document in hand and the issue can be resolved in a more efficient manner.

⁴ CISRO, "Principles of Conduct for Insurance Intermediaries" (April 2022). At: www.cisro-ocra.com/Documents/View/2471.

Additional Disclosure for Post-Claim Underwriting

Advocis recommends that prior to the completion of an application for a Life and Health Product under a restricted license, the consumer be provided with an explanation of the underwriting process and when the underwriting will occur. It is important that consumers are informed of the extent to which coverage will be underwritten after a claim is made and that coverage is not assured until the underwriting has been completed. Providing this information prior to completing an application allows consumers to make an informed decision having considered all factors.

The eligibility of a consumer to receive insurance benefits can only be investigated once a claim has commenced. As such, consumers must be provided with a separate written explanation of the post-claim underwriting process. This disclosure must be provided in writing and must be signed by the consumer. The explanation must also include the importance of health questions on the application and the implications of not fully or accurately answering them.

The explanation should cover any exclusions, restrictions and applicable limitations; the extent to which any pre-existing conditions limit a policy's coverage; when and under what circumstances the contract will be void including any time period expressed by law or by the contract which limits the time period in which an insurer can void the contract.

Right of Rescission

We strongly believe that consumers should be provided with the opportunity to re-evaluate the purchase of an ISI product within a reasonable "cooling off" period. A cooling off period is consistent with the CCIR-CISRO ISI Working Group Recommendations.⁵ We suggest adopting at least a 10-day cooling off period for all types of ISI products. The client must be given a statement indicating their rights to rescind the insurance contract and to obtain a full refund of the premium within the cooling off period and be informed that there may be similar products offered through different channels. Lastly, clients should be advised on their rights to consult with licensed insurance advisors after their ISI purchase.

3. CONCLUSION

We thank British Columbia for its efforts in developing a framework for restricted insurance licenses. The proposal narrows the regulatory gap in this space and levels the playing field for all industry participants. We believe that the framework can be strengthened by addressing outstanding concerns related to licensing at the individual level, training and education, as well as supervision by fully licensed designated officials.

⁵ *Supra* note 2.

We look forward to further productive discussions with British Columbia on the issues highlighted in this submission. Should you have any questions, please do not hesitate to contact the undersigned, or James Ryu, Vice-President, Advocacy and General Counsel at jryu@advocis.ca.

Sincerely,

"original signed by"

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