



The Travel Health Insurance Association of Canada

March 4, 2011

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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Dear Sirs and Mesdames:

RE: Consultation on Distribution of Insurance Other than through a Representative

The Travel Health Insurance Association of Canada (“THIA”) represents over 80 Canadian travel insurance industry participants, including both life and health and property and casualty insurance companies and intermediaries operating in a variety of distribution channels, as well as administrators, medical providers and professionals.

THIA is pleased to provide commentary in response to the consultation paper prepared by Autorité des marchés financiers (the “l’Autorité”) regarding the distribution of insurance other than through a Representative (the “Consultation”). We would be pleased to further participate in the consultation process by meeting with officials of l’Autorité in person to discuss our commentary in more detail.

A summary of our comments, in response to the six main issues identified in the Consultation, is set out below.

I. Disclosure of information to consumers

Recommendation 1. Reduce the length and complexity of the guide

THIA membership agrees with the general observation set out in the Consultation that the guides are often too voluminous and complex. However, we do not agree entirely with all of the reasons that are purported to be the cause of this situation, as they are described in the Consultation. For example, it is suggested that the situation has arisen because of one or more of the following reasons:

the use of a “policy-guide” or “certificate-guide”;

the use of one guide to describe several products; and

the proliferation of exclusion, restriction and limitation clauses, including those pertaining to pre-existing conditions.

While these are important concerns, we do not think that they are solely responsible for the increasingly lengthy guides.

THIA is of the view that part of any complexity and confusion has arisen because consumers receive both a guide and a policy document, when both documents describe the nature of the guarantee, the exclusions, restrictions, limitation and other conditions of coverage. Receiving two such documents is too much information for most people.

Additionally, there is the fact that the guide is not supposed to indicate that the policy provisions override the information set out in the guide. As the courts will often look beyond the policy document to other material in interpreting insurance contracts of this kind, particularly in a case of any ambiguity, insurers understandably want to include everything that is in the policy document in the guide so as to avoid any inconsistency or adverse interpretative inferences. In our view, this understandable reaction has contributed to the size and complexity of the guides.

In our view there should be one document which is the policy document. If the product is sold without a representative, such a policy document should be written in plain language and in accordance with the drafting guidance which the Authority has already prepared in respect of the guides. Specifically we propose one plain language document that describes the elements of coverage in simple terms. This document would indicate up front and clearly that it is not a policy/certificate of insurance until and unless a policy number/certificate number and confirmation of coverage is issued to the consumer. A separate confirmation including the policy/certificate number would be provided to the consumer to confirm that coverage is effective.

Recommendation 2. Limit the number of insurance products that may be offered in the same guide

Our proposal, as set out above, will reduce the length and complexity of the pre-sale disclosure document, limit the number of insurance products that may be offered in the same pre-sale disclosure document to one and result in a confirmation of coverage that is separate and apart from the pre-sale disclosure document.

However, if our recommendation is not accepted, we do not believe it makes sense in the field of travel insurance to limit the number of insurance products that may be summarized in one guide, but rather to simplify the guide. Consumer's will need to compare the options that are available to them and if a separate pre-sale disclosure document is to be used, it makes sense that such a document would include the information that allows for the comparison.

Recommendation 3. Give greater prominence to the exclusion, restriction, limitation and pre-existing conditions clauses

THIA does not object to a requirement that insurers give greater prominence to the exclusions, restrictions, limitations and pre-existing conditions exclusions, which is a common practice among THIA members presently and in any event. This could be incorporated into the plain language policy document we have suggested above.

Recommendation 4. Require that confirmation of insurance be separate from the guide

THIA requests flexible requirements around the form of confirmation that is required and around the timing for delivery of these items. Travel insurance is often a last minute purchase and one often conducted entirely over the telephone. Accordingly, we require some flexibility depending on the circumstances.

Recommendation 5. Facilitate access to the guide

THIA is particularly concerned about the suggestion that there should be a central registry of the guides. It will be administratively inconvenient for the Authority to keep the registry up to date and confusion and problems could definitely ensue with consumers should this not be done with real time accuracy. Such a registry would also create a central repository of competitive information which can be used by persons who do not have a consumer protection motive. We think our earlier suggestion set out above addresses the consumer protection issues and makes the implementation of such a registry unnecessary.

II. Rescission of the contract

Recommendation 6,

THIA is not supportive of a blanket extension of the 10 day rescission period to 30 days for travel insurance. This for the obvious reason that some travel policies cover the cancellation of the trip before departure and coverage takes effect immediately. In addition, if the rescission period is beyond 10 days, there is greater opportunity for the insured to travel, come home and return the policy for a refund if there have been no claims. Therefore, there must be special provision for travel insurance in connection with coverage that attaches immediately.

III. Supervision of distributors

Recommendations 7, 8, 9 and 10

In our view insurers presently are and do take responsibility for their distributors. Accordingly, THIA does not oppose a regime that codifies the obligation of the insurer for its distributors and stipulates the obligation for insurers to supervise and train its distributors. We do not perceive the need for further regulation nor for inspection of distributors by the Authority unless a significant number of complaints are received by the Authority about a distributor which have not been addressed by the insurer. We think that a public registry of distributors can result in an administrative cost burden to insurers and the Authority and we do not perceive that consumers will find such a registry useful.

IV. Disclosure of distributors' remuneration

Recommendation 11

THIA is of the view that the current regime for disclosure of distributors' remuneration is not in need of further clarification or amendment. The case law appears to have resolved any ambiguity about what must be disclosed pursuant to the legislation. In our view, what

is important from a market supervision standpoint is not the fact that there is compensation, but whether the relative compensation structures put the distributor in a conflict of interest. If a distributor only offers one type of travel insurance, the fact that the distributor is compensated is not particularly germane. Most consumers would expect that if a distributor offers a product, there is some form of compensation in it for the distributor. However, if the distributor offers a number of such products and only recommends one such product, being the one that pays the most compensation and which is not necessarily the best product for the consumer, then that is a different issue. From a practical viewpoint, due to the structure of most compensation arrangements it is generally not possible to determine a single compensation percentage for a specific distributor in advance, and if it were possible, this recommendation would require the customization and filing of separate guides for each distributor.

If the consumer receives all the other disclosure that is required under the current legislation, for example like the availability of other insurance products and concludes that the premium proposed for the product to be acceptable, we do not see the consumer protection issue.

Once again, because of the nature of travel insurance and the methods by which it is distributed, any disclosure requirements must be flexible as to timing and format. There is not always a written document in physical form that can be delivered before the purchasing consumer embarks on their trip.

We note the proposal to stipulate the form of disclosure and to require disclosure of the net cost of insurance separate and apart from any compensation to the distributor. We think this will be impractical and difficult if not impossible to implement. There are so many different forms of compensation, including variable compensation. We think the suggestion will be unworkable and lead to less transparency rather than more.

V. Financing of single premiums

Recommendation 12

This recommendation is not applicable in the field of travel insurance.

VI. Telemarketing

Recommendations 13 and 14

We note the various comments regarding telemarketing. THIA membership does not object to the adaptation of disclosure requirements to the telemarketing channel provided the requirements are manageable within the telecommunications channel and relevant to the consumer. We do not perceive that it would be practical or necessary to file telemarketing scripts which change constantly to adapt to feedback from consumers. Further, because there is interaction with the consumer in the telecommunications channel, there should be flexibility to focus on those parts of the disclosure requirements that are evidently of most relevance to the consumer. Typically, for travel insurance, sales in the telemarketing channel are conducted on an in-bound basis with personnel who are

employees of the insurance company or an affiliate thereof. In our view, implementation of an approach described in this letter along with some manageable disclosure obligations, suffices to ensure consumer protection.

Conclusion

Representatives of THIA would be pleased to speak in person with you further about the content of this letter. We look forward to that opportunity.

Yours truly,

A handwritten signature in black ink, appearing to read "David Hartman". The signature is written in a cursive style with a horizontal line crossing through the middle of the name.

David Hartman
President