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Carol Shevlin
Policy Manager
CCIR Secretariat
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Dear Ms. Shevlin:

Re: Electronic Commerce in Insurance Products

Advocis appreciates the opportunity to provide comments on the Canadian Council of Insurance Regulators (CCIR) issues paper regarding electronic commerce in insurance products.

Advocis is the association of choice for financial advisors and planners. With more than 11,000 members across the country, Advocis is the definitive voice of the profession, advocating for professionalism and consumer protection. Our members are provincially licensed to sell life and accident and sickness insurance and may also be registrants for the sale of mutual funds and other securities. Members of Advocis are primarily owners and operators of their own small businesses and create thousands of jobs across Canada.

Professional financial advisors and planners are critical to the ongoing success of the economy, helping consumers to make sound financial decisions that ultimately lead to greater financial stability and independence both for the consumer and the country. No one spends more time with consumers than financial advisors, educating them about financial matters and helping them to reach their financial goals. Advocis works with decision-makers and the public, stressing the value of financial advice and striving for an environment in which all Canadians have access to the advice they need.

Our comments

While our comments in this letter are intended to address the issues raised in the CCIR issues paper, we also propose to address some issues that were raised in the consultation document that the Autorite Des Marches Financiers (AMF) has issued concurrently with the CCIR's issues paper. The AMF consultation paper on "Internet Insurance Offerings in Quebec" (the AMF Consultation Paper) closely parallels the CCIR issues paper, but goes further by articulating thirteen proposals.

We note that the CCIR Electronic Commerce Committee has stated that the purpose of the issues paper is to stimulate debate and to elicit stakeholder views on how to achieve important consumer protection goals in the electronic commerce context, with a view to determining the direction of further work.

The Protection of the Consumer in Online Insurance Purchases

The most significant risk to a consumer who seeks to purchase insurance in online environment is that they may come to believe that they and their beneficiaries are protected by a contract of insurance, when that may not be the case. All too often the consumer (or their beneficiaries for life insurance) will only find out that the insurance coverage that they thought that they had purchased through an online transaction is not considered to be valid and thus to provide protection and a benefit payment in the event that a claim is made. Often such insurance benefits are denied on the basis that the coverage was never in force and effect as the consumer had failed to disclose every fact within their knowledge that may have been material to the insurance when they applied for coverage, as required under Provincial Insurance Acts (i.e. - R.S.O. 1990, CHAPTER I.8 sections 183 (Life Insurance) and 308 (Accident and Sickness Insurance)).

The key difference between an application for insurance in an online environment and an application made in the traditional context where the consumer deals with a licensed agent, is that the consumer who deals with a licensed agent to complete an application for insurance has access to appropriate, specific and suitable information from an individual who has a duty to act in the consumer's interests. Thus the consumer may have recourse against the agent for negligence if coverage or a claim is subsequently denied due to a failure to disclose material information in the application. This is more particularly the case when that information was not elicited by the licensee.

We believe this is potentially the single most important consumer protection issue that can arise in the context of online sale of insurance.

Many consumers, when online, click on boxes to confirm that they have read and understood disclosure when they have not actually read or understood it. In so clicking they are confirming that they understand and accept enumerated risks even though they may not have actually read any of the disclosures made. It is worth noting that most such disclosure made in the online context requires the consumer to click on a box that takes them to often lengthy and convoluted legal language offered by way of disclosure of significant matters.

As such the risk that consumers who apply for insurance online will mistakenly believe that they have secured the valid insurance protection they applied for cannot be resolved through more online disclosure.

The protection afforded by life, accident and sickness, health, critical illness and long term care insurance is too important to consumers and their families to be left to chance and to consumers' optimistic assumptions.

We believe a solution to the foregoing problem may be to prohibit post claim underwriting for online insurance transactions and for the issuer to guarantee the issuance of valid insurance coverage, absent intentional fraudulent statements, when insurance coverage is applied for and approved in an online environment. We suggest that this should be the case in every instance when no licensed agent is involved in the application process and when the consumer receives no individual and applicant specific advice from a licensed insurance agent with reference to the suitability of the product, determination of their needs and to the application process and answers to questions on an application for insurance. We would be prepared to discuss other ways of dealing with the issue of invalid coverage being paid for by consumers.

Consumer protection goals

We agree that the consumer protection goals that the CCIR issues paper has identified, which are set out below, are vital in the electronic commerce context:

- 1) Consumers have access to additional information/advice from a licensed intermediary;
- 2) Consumers know they are dealing with a regulated entity;
- 3) Consumers have and understand the necessary information about the products;
- 4) Consumers have the opportunity to review the accuracy of the information they provide;
- 5) Consumers are aware of the terms and conditions;
- 6) Consumers can rely on the transaction; and,
- 7) The consumer's personal information is secure.

We believe the first of the goals listed above – access to advice from a licensed intermediary – is the most important. The issues paper provides, at section 5.1, a helpful list of the risks of mis-selling that may result in an online environment in the absence of direct, personalized advice from a licensed individual. These risks which are heightened in the online environment, and which we believe should be addressed by regulation, include:

- The risk of an invalid contract;
- Insurance that is inappropriate, excessive or insufficient;
- Insurance that is too expensive;
- Over insurance, where the consumer already has insurance coverage for the risk;
- Omission to buy needed insurance;
- Biased selection of insurer;
- Failure to properly identify beneficiaries; and
- Failure of communicating material changes to the insurer.

Consumer protection goals, revised

While we do not take issue with the consumer protection goals that are articulated in the CCIR issues paper, we would suggest that certain substantive consumer protection goals should be added to the list.

We would add the following to the list as the second and subsequent consumer protection goals:

- Consumers understand that they are applying for insurance coverage, which may be denied, and accordingly that by applying they are not in fact entering into a valid insurance contract;
- Consumers understand that if their online application for coverage is denied, they may be required to disclose this in all future applications for insurance, and they may in some cases be precluded from obtaining coverage by reason of such denial;
- Consumers understand that any information, whether medical, personal, financial or of any other nature that they submit to an insurer in the online context will be retained and could have an impact on the consumer's future insurability whether such application is made on line, by mail or in through a licensed agent;
- Consumers understand that if a valid insurance contract is entered into, the insurer may subsequently be entitled to treat coverage as void *ab initio* in the absence of full, accurate and timely disclosure by a consumer under the terms of the contract. The contract may require that the consumer inform the insurer regarding specified changes, and failure to inform the insurer regarding changes may result in the insurer exercising their right to treat the insurance contract as void;
- That the consumer be clearly informed at the time of applying for coverage in all instances where the insurer maintains a practice of "post-claim underwriting", whereby the insurer subsequently, after receiving a claim, may declare the coverage void *ab initio* and refund premiums;

A revised and re-numbered list of proposed consumer protection goals is appended to this letter.

The AMF Proposals

We would encourage the CCIR to consider, in the course of its ongoing work regarding the regulation on online commerce in insurance products, whether to adopt the thirteen proposals that are set out in the AMF Consultation Paper (the “AMF Proposals.”) The AMF Proposals are summarized as follows:

1. Providers must have specified information on their website
2. In general, consumers should have access to insurance representatives when insurance products are distributed, to ensure suitability. Accordingly, stakeholders should have input in determining the role of certified representatives in insurance offerings.
3. Certain product information must be brought to the consumer’s attention.
4. Providers must ensure that consumers have read each individual item of essential information.
5. Information must be in clear, simple language.
6. The consumer must receive a summary of information used to prepare the quote and the essential information concerning the product.
7. For applications completed online, the provider must send the contract documents to the consumer on a durable medium, via internet or mail, and the consumer may request a paper copy.
8. The distributor’s website must contain the disclosures and information required under Title VIII of An Act respecting the distribution of financial products and services.
9. The distributor must make the distribution guide available on its website.
10. The distributor must ensure that consumers have read the distribution guide before they purchase.
11. Stakeholder views regarding regulation and comparison shopping websites.
12. Providers may not advertise on pages where the consumer completes an online insurance application.
13. Insurers and firms should adopt social media policies and procedures.

The AMF Proposals appear to be entirely reasonable. The responses to the AMF Consultation Paper that relate specifically to the AMF Proposals are likely to be helpful to the CCIR as well.

The limitations of online disclosure

The online sales channel is here to stay. It offers consumers unprecedented access to information about a wide array products and services. Consumers are increasingly able to compare product features and prices, and to seek out information about customer satisfaction.

However, online disclosure of material information about regulated products and services will never be an adequate replacement for direct, personalized advice from a licensed individual.

Offering consumers online disclosure and access to information via links to online sites”, is no substitute for contemporaneous two-way communication with a knowledgeable licensed insurance advisor.

Likewise, a click on a computer screen, confirming that the consumer has “read and understood” detailed disclosure, offers no real assurance that the disclosure has in fact been read and understood. Additional safeguards may be needed, in respect of some products and services, to ensure that the consumer is suitably informed and protected.

As the CCIR issues paper points out, there are heightened risks of mis-selling in the online environment that will need to be addressed as regulation evolves.

Our preliminary view, which we believe is consistent with the consumer protection goals articulated in the CCIR issues paper, is that sales of some types of insurance products should involve a two-stage process that culminates in direct, personalized advice from a licensed individual. However, the application of a requirement for direct, personalized advice from a licensed individual should be risk based, and exceptions may be appropriate for simple, generic and low-cost insurance products that do not involve significant risk of mis-selling.

Designation of Beneficiaries

The issues paper invites stakeholder comments concerning whether consumers are likely to be better protected if the designation of beneficiaries and the termination of an insurance policy continue to be paper transactions.

We understand that the province of Quebec has changed its legislation to permit beneficiary designations to be made online, and that similar legislation in both Alberta and British Columbia is expected to come into effect as of July 1, 2012. We understand as well that Alberta may be considering regulations to provide principles-based safeguards for the online designation of beneficiaries. As long as the online mechanisms for recording designations are reliable and provide safeguards to protect consumers against the type of fraudulent activities that the online environment appears to be susceptible to, Advocis would encourage FSCO to consider this as a possible area for Regulatory improvement.

With regard to the termination of insurance policy contracts, we believe that requirements for actual delivery of notices of termination should remain in place.

Advocis is pleased to have had this opportunity to comment on the issues paper. We would welcome the opportunity to discuss any of the issues that we have raised and look forward to working with you.

Yours sincerely,



Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO



Dean Owen, CLU, CH.F.C.
Chair, National Board of Directors

Appendix

Revised list of consumer protection goals:

- 1) Consumers have access to additional information/advice from a licensed intermediary;
- 2) Consumers understand that they are applying for insurance coverage, which may be denied, and accordingly that by applying they are not in fact entering into a valid insurance contract;
- 3) Consumers understand that if their online application for coverage is denied, they may be required to disclose this in all future applications for insurance, and they may in some cases will be precluded from obtaining coverage by reason of such denial;
- 4) Consumers understand that any medical information that they submit to an insurer in the online context will be retained by the insurer and could have an impact on the consumer's future insurability;
- 5) Consumers understand that if a valid insurance contract is entered into, the insurer may subsequently be entitled to treat coverage as void *ab initio* in the absence of full, accurate and timely disclosure by a consumer under the terms of the contract. The contract may require that the consumer inform the insurer regarding specified changes, and failure to inform the insurer regarding changes may result in the insurer exercising their right to treat the insurance contract as void;
- 6) That the consumer be clearly informed at the time of applying for coverage in all instances where the insurer maintains a practice of "post-claim underwriting", whereby the insurer subsequently, after receiving a claim, may declare the coverage void *ab initio* and refund premiums;
- 7) Consumers know they are dealing with a regulated entity;
- 8) Consumers have and understand the necessary information about the products;
- 9) Consumers have the opportunity to review the accuracy of the information they provide;
- 10) Consumers are aware of the terms and conditions;
- 11) Consumers can rely on the transaction; and,
- 12) The consumer's personal information is secure.