



April 28, 2008

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Dear Sirs/Mesdames:

Independent Financial Brokers of Canada (IFB) welcomes the opportunity to comment on the CCIR-CISRO consultation document entitled “Incidental Selling of Insurance” released in January 2008. We are pleased that Canadian regulators are giving recognition to the importance of finding appropriate solutions to address the many issues related to the delivery and distribution of such insurance products and their negative consequences for the general public.

Introduction

To provide context to our remarks, IFB is a voluntary, not for profit association comprised of approximately 4,000 licensed financial professionals. The majority are life/health insurance brokers and/or mutual fund registrants. A smaller number distribute other types of insurance, mortgages or securities.

A unique feature of this Association is that our members must be independent contractors. IFB is the only association exclusively dedicated to representing the views of such independent brokers and has been doing so for over 20 years. We believe, as do our members, that the ability to offer a variety of products from a range of providers is fundamental to ensuring consumers have access to the product(s) most suitable to meet their financial needs. Because of their attention to client service and suitability, our members are generally opposed to the current distribution of incidental insurance and are even more strongly opposed to creditor insurance.

In advance of this response, we conducted a standardized survey to gather input from our members as to their opinions, personal experiences, clients’ experiences, and suggestions for improvements on all types of incidental insurance. It quickly became clear to us from both the huge number of respondents and the answers we received that there is a great deal of concern about who is selling these products to the public and how these products

are being marketed. In fact, it is a strong indication of the level of interest and concern related to these products amongst life agents and brokers in general, that we received requests from non-members, who had heard about our survey, asking to make it available to them so they could participate – which we did. We will refer to the survey results throughout this submission. IFB would be pleased to provide you with relevant information pertinent to the survey process and results if you would find it useful.

At the outset, we wish to commend the Incidental Selling of Insurance (ISI) Working Group on the publication of this paper. No doubt this consultation will provoke robust discussion from stakeholders representing various viewpoints. IFB stands ready to assist the CCIR/CISRO and ISI Working Group in finding appropriate solutions to the questions asked, so that consumers who purchase insurance – regardless of how it is procured - can have confidence that the product will meet their needs and they will have coverage in the event of a claim.

The following are our observations and comments specific to the questions asked in the consultation document.

Suitability and Documentation

As noted in the paper, the basis on which to consider all the issues related to the sale of incidental insurance is whether a consumer is in a position to make an informed decision about the suitability of the purchase at the time of the sale. In our view, and one vigorously supported by our members, the content of policy information available, the level of knowledge of the individual selling the insurance, the amount and type of disclosure given to consumers about the policy, the potential for tied-selling and post-claim underwriting techniques all contribute to a serious lack of transparency, leaving the consumer at a huge disadvantage.

In contrast, Canadian life insurance industry stakeholders and regulators have invested a great deal of time and effort to create a greater awareness of issues related to consumer protection amongst licensed agents and brokers. These discussions culminated in the CCIR endorsing three principles to help manage any conflicts of interest that may arise in the marketplace, namely:

- the client's needs are paramount,
- actual and potential conflicts of interest must be disclosed to the client and
- the product recommended must be suitable to meet the client's needs

More recently, we have seen a trend toward a more prescriptive approach put forth by mutual fund and insurance regulators, aimed at standardizing the amount and type of information that is disclosed to potential purchasers of segregated and mutual funds at, or before, the point of sale. Securities regulators, under the Registration Reform proposals, along with the Investment Dealers Association have issued draft guidelines for comment which are intended to identify procedures for establishing suitability criteria.

Each of these efforts is based on the fundamental premise that the consumer is entitled to information which will permit him or her to understand the financial product being considered, any options available and to seek further clarification, when required.

Incidental insurance products, and particularly creditor insurance, by existing outside of the purview of the provincial insurance regulators, are not bound by these standards. This anomaly is not apparent to the average consumer and greatly increases their risk of purchasing insurance which does not meet their needs. IFB believes the fundamental solution is to require that any person engaged in the selling of insurance, or the provision of insurance advice, to the public must be licensed to do so.

Those who sell insurance must be licensed.

Some stakeholders may argue that provincial regulators lack jurisdictional powers to require those who sell creditor type insurance to be licensed. Others may argue that the insurance is provided, albeit behind the scenes, by a life insurance company, whose agents are duly licensed. In the end, such arguments are counter-productive to the public good and undermine the reputation of legitimately licensed insurance brokers and the life insurance industry as a whole.

The licensing process ensures that consumers receive advice, regardless of where they live, from advisors who have achieved a standardized level of education specifically related to life insurance and who have statutory obligations to maintain certain minimum requirements on an ongoing basis. It is not reasonable to expect consumers, who often have little or no knowledge of insurance matters, to understand that the insurance they purchase in certain situations will be from a licensed agent or broker while insurance purchased under different circumstances will be from an unlicensed agent or broker. Such a situation can not stand up to public scrutiny and exists only because of gaps in the current regulatory system. A solution to this gap lies in the case heard before the Supreme Court of Canada in 2006, in which the Court decided that Alberta had jurisdiction over the licensing of bank employees selling insurance. This decision opened the door for every province to amend its Insurance Act and compel such a licensing requirement, and it is our hope that they will do so.

The Supreme Court of Canada in *Canadian Western Banks v Alberta* wrote in its decision:

The aim of the amendments to the Bank Act and the associated regulations was to permit the banks to engage in the promotion of authorized insurance products and to spell out the types of products which could be validly promoted, not to set out the precise manner in which the promotion of insurance would be governed and regulated. Conversely, the aim of the provincial legislation was to provide a regulatory scheme for the promotion of insurance, but not to exercise any control over the kinds of insurance that banks may promote, or the extent to which they may do so, thereby maintaining the integrity of Parliament's legislative purpose. [124] [128]

The ISI Working Group has asked whether insurers should be more accountable for how these products are sold to the public. IFB believes this should be the case. If consumers

are going to be offered an insurance product, their access to qualified advice and a full range of options should be the same whether purchasing from an individual agent/broker or from an incidental provider. Approximately 90 percent of respondents favoured:

- i. limiting the period of time an insurer has to deny coverage after receiving an application
- ii. making the insurance company more responsible for misrepresentations in policy coverage
- iii. making the insurance company more responsible for the supervision and compliance of sellers
- iv. requiring more extensive information from the policy holder in the initial application

Restricted License category

As an alternative to full licensing, this paper sets out the question whether alternative licensing models should be available for incidental products. One suggestion is to offer a restricted license category, similar to the approach Alberta has adopted or British Columbia uses for travel agents.

While there may be some merit where the seller offers insurance to meet a temporary, short-term or very specific need, such as out-of-country travel health insurance or pre-paid funeral expenses, we do not believe that this approach is appropriate when applied to creditor life and disability insurance. These types of insurance are generally purchased to meet a longer-term financial need – witness the growth in mortgage amortization periods to 40 years – and for an amount of indebtedness which, if not honoured in the event of a claim, will have dire financial consequences for the claimant or beneficiary.

Those who purchase insurance should have reasonable assurance that any future claim will not be denied. In addition, the difficulties faced by consumers or beneficiaries when a death or disability claim is denied are often further complicated by the passage of time, whereby locating the original information, documentation or salesperson may be much more difficult.

Ultimately, those who sell life/health insurance products and/or provide advice – however indirectly – must be fully licensed, accountable and subject to regulatory enforcement. To permit differing standards amongst advisors is a disservice to the public and other licensed insurance brokers.

Insurance is based on trust

Few businesses rely on trust and building ongoing relationships with their clients more than insurance. Our members know that sound advice and customer service are essential to being successful in this highly competitive market. Their livelihood depends on their reputation, ongoing commitment to clients and referrals. This is less true when applied to creditor insurance. For example, bank employees are often responsible for a variety of financial products and, without the proper training specific to insurance, do not have the depth of knowledge needed to deal with the complexities of life/disability insurance and properly advise their customers.

The following survey response supports this view:

“These sellers are only interested in selling their product (like mortgage insurance) to cover the specific risk. Experienced insurance brokers learn about a client's entire financial/personal situation in order to provide solutions for the short & long term needs of the client.”

In addition, the provision of creditor life and health insurance is fraught with conflicts of interest, which must be addressed to ensure consumers are dealt with fairly. The two greatest areas of potential conflicts stem from the practice of post-claim underwriting and the tie between the financial transaction (approval for a mortgage, credit card or loan, for example) and the insurance which is dependent on that transaction. This creates a perception for consumers that the two transactions are not only inter-dependent but must be made at the same time. This perception greatly increases the seller's ability to close the sale, but this is not appropriate for the consumer.

The Bank Act contains a provision to protect consumers from coercive tied selling of all products and services. Section 459.1(1) of the Act reads: “A bank shall not impose undue pressure on, or coerce, a person to obtain a product or service from a particular person, including the bank and any of its affiliates, as a condition for obtaining another product or service from the bank.” This provision should be expanded on and form part of the disclosure provided to every customer considering creditor insurance.

We suggest that a requirement to separate the financial transaction from the insurance transaction would help consumers differentiate the two more clearly.

Post-Claim Underwriting

IFB believes that post-claim underwriting is an unfair practice for consumers and should be banned. While increased disclosure as to the risks of ineligibility is an alternative, it is a much inferior one. There will still be consumers who either do not understand, or do not receive full and complete enough disclosure to prevent confusion at the time of the sale or a claim. As long as consumers are paying premiums, they are going to believe they have coverage. When post claim underwriting is used, this can lead to a false sense of security. Non-payment of claims undermines the reputation of the insurance industry as a whole and is inconsistent with the obligation of good faith and fair dealing implicit in insurance contracts.

As one survey respondent noted, when that obligation is breached:

“That negative opinion then extends to cover all insurance products, making it that much more difficult for all insurance agents/brokers to put proper protection in place for their clients.”

Some insurance regulators in the United States, for example in Connecticut and Florida, have taken action to out-rightly ban post-claim underwriting. In 2007, Connecticut passed legislation which prohibits post claim underwriting and rescission if the grounds are based on “the insurer's failure to complete medical underwriting” and its failure to “resolve all reasonable medical questions arising from written information submitted on

(or omitted from) an application”, unless the insurer proves to the Insurance Commissioner that the information was fraudulently provided. In addition, the insurer must prove the information or omission materially affected the risk it assumed and must obtain the Insurance Commissioner’s approval prior to rescinding a policy. IFB suggests this may provide a reasonable approach for Canadian insurance regulators to explore.

Proponents of insurance products using post claim underwriting will cite speed of approval and premium affordability as justifications. We do not think these reasons are adequate to offset the risk to those who will be adversely affected, potentially years later, by a denied claim.

Interestingly, our members do not unilaterally oppose the availability of incidental insurance products. In fact, many see these products as filling a beneficial niche in the marketplace for consumers. As insurance professionals, they believe in the value of insuring future risk. Below are some quotes from our survey, where respondents were asked why they thought incidental insurance products may be beneficial for consumers:

“These products can offer inexpensive temporary coverage that can be quite adequate if properly explained. Sellers must do their job properly to ensure the client will be paid out in the event of a claim.”

“Some form of insurance coverage is better than no coverage. It provides protection in situations where consumers, if they were not informed of this option, would not consider purchasing such products and simply risk the consequences.”

What they do object to, and wholeheartedly, is the use of post-claim underwriting and the risk of tied selling.

“Finding out there is no coverage at the time of a claim is a tragedy for those involved. If they knew they were uninsurable in the beginning they could have made other arrangements. After is too late.”

“If the client is willing to provide medical evidence then the insurer must guarantee payment in the event of a claim. This option should be available to all borrowers. Then these products will compete with traditional insurance products, sold by licensed brokers, and the client can compare the costs and benefits before purchasing either.”

“Consumers are buying without understanding the entire process of post claims underwriting. Consumers equate this product to the group life coverage that they have through their employment where limited or no underwriting is required. They believe that this incidental coverage will pay in all cases of claim, which is simply not true and not disclosed. Given the opportunity to have underwriting at time of purchase and knowing that they have coverage, I believe the vast majority of consumers would be willing to pay a little higher premium.”

“Sellers of creditor insurance should be forced to explain the differences between this and an individually owned insurance plan and have clients sign a waiver, indicating that they are aware of the product differences and that they will accept the potential risks and possibly unfavourable outcomes that may arise”.

“Creditor insurance is designed to protect the creditor, not the insured. The fact is that for most consumers, the seller is not distinguishable from the creditor, leading to tied selling”.

Recommendations

IFB recommends the following actions:

1. Require that only properly licensed insurance agents/brokers can advise or sell insurance to clients – regardless of where the transaction physically takes place. This would require sellers to address suitability and to place the client’s interest ahead of their own.
2. Require that sellers disclose actual and potential conflicts of interest to clients in writing, using the same criteria licensed life brokers are subject to.
3. Require that consumers be informed that this type of insurance is optional and may not be the most suitable choice to meet their needs. This should include the possibility of overlapping coverage and that alternative, individually underwritten insurance is available. For example, sellers should inform consumers that these are group plans and there are instances where individual insurance may be more suitable.

It should be made clear that the financial institution is the beneficiary; premiums are paid and coverage provided on a declining balance over time and the conditions under which the coverage will terminate, including the risk that the person may not qualify for insurance in the future.

4. Ban post-claim underwriting. A much inferior solution is to require sellers to make it very clear, in writing that the client may not qualify for insurance at the time of their claim. The incontestability clauses in life insurance contracts limit the time insurers have to question or verify the information they have received. Similar restrictions should be placed on insurers which offer incidental insurance.
5. Mandate more effective disclosure of the terms and conditions of the insurance. Consumers have a right to meaningful information in a plain language format so they can decide if it is the right insurance for them. For example, there should be written acknowledgement for consumers and the seller to sign certifying that lack of disclosure related to deliberate and non-deliberate misrepresentations and fraud can affect their coverage. Consumers should also be informed of where they can find further information and how to access complaint resolution procedures.

6. Enact stronger penalties for unfair or coercive sales practices. For example, require that sellers separate the loan or mortgage transaction from the insurance application so the consumer has a clear understanding that one is not dependent on the other and ensure they have adequate time to consider, or re-consider, purchasing the insurance.
7. Require the use of standardized terminology to describe such insurance so consumers are not confused by terms like 'mortgage protection', and that make a clear distinction between the CMHC type of 'mortgage insurance' and creditor-type insurance.
8. Require insurers and sellers to make statistical information easily available to regulators and the public. This should include all the information identified by the Working Group as well as any reinsurance or other arrangements between the seller and insurer. This will greatly help to identify weaknesses in the existing system.

In conclusion, IFB thanks the CCIR and CISRO for the opportunity to provide our comments on incidental insurance. We hope that we have conveyed the depth of concern expressed by our members and other life insurance advisors, related to these products.

We would be very pleased to discuss any of the above in greater detail and to participate in efforts to improve how these products are marketed to, and understood by, the public.

Yours truly,



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