Advocis The Financial Advisors Association of Canada

calu CONFERENCE FOR ADVANCED LIFE UNDERWRITING

September 16, 2019

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

SENT VIA EMAIL: fiareview@gov.bc.ca

Dear Sirs/Mesdames:

Re: Consultation on Insurance Rebating

On behalf of Advocis, The Financial Advisors Association of Canada, and CALU, the Conference for Advanced Life Underwriting, we are pleased to provide our comments in regards to the consultation on insurance rebating in the province of British Columbia.

1. About Advocis

Advocis is the association of choice for financial advisors and planners. With more than 13,000 members across the country, Advocis is the definitive voice of the profession, advocating for professionalism and consumer protection. 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 advisors and planners, 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.

2. About CALU

CALU is the only national professional organization dedicated to advanced planning issues related to life underwriting, tax planning and wealth management. CALU's 665 industry leading members include insurance and financial advisors as well as accounting, tax, legal and actuarial experts. Through a strategic partnership with Advocis, we advocate on behalf of more than

13,000 advisors in support of fair and competitive public policies to grow and preserve the financial well-being of Canadian family businesses.

3. Our Comments

We are concerned that the questions posed in the consultation by the Ministry of Finance presuppose that insurance rebating should continue in the province, perhaps after undergoing some slight adjustments, rather than stepping back and considering whether rebating should even be allowed in the first instance. We believe that this is the wrong direction to take.

In our view, rebating (and the offering of inducements, generally) should be banned in regard to individual life and health insurance. The reasons for having such a ban were summarized by the Canadian Council of Insurance Regulators (CCIR) in a 2004 consultation paper entitled "Issues Related to Inducement, Rebating and Tied Selling". This paper outlined the following consumer and industry protection reasons for provincial anti-rebating and anti-inducement regulations:

- To protect consumers from making inappropriate purchasing decisions on the basis of the offered inducement or rebate.
- To ensure parity between different-sized insurers and intermediaries who compete for the same business (i.e., to foster competition based on risk pricing).
- Concerns that the cost of the incentives would be borne by all consumers in pricing of the product.
- Such rebates are not offered equally to all similar risks but arbitrarily to certain consumers.
- Need to ensure that premium rates that are charged result in adequate policy reserves (solvency concerns).

While the legislation governing rebating activities varies from province to province, there appears to be an overarching objective to protect consumers from "unfair" sales practices by both the insurance company and agent. For example, provinces such as Ontario prohibit "unfair or deceptive practices". *The Unfair or Deceptive Acts or Practices Regulation* under the Ontario *Insurance Act* describes an unfair or deceptive act by an insurer or agent of an insurer to include, directly or indirectly, the rebating of an insurance premium or any "payment, allowance or gift or any offer to pay, allow or give, directly or indirectly, any money or thing of value as an inducement to any prospective insured to insure."

We believe the policy reasons for not permitting rebating, as noted in the CCIR consultation paper, are as valid today as they were fifteen years ago. Allowing rebating for individual life and health insurance can distort the relationship between insurers and agents, on the one hand, and consumers on the other. It creates a situation where consumers could purchase insurance products for reasons other than the inherent value of the product to the consumer. Examples of these issues and concerns are discussed in more detail below.

a) Market Distortion

From the consumer's perspective, a rebate reduces the effective price for a policy – but this rebate may be one-off in nature and not sustained. Therefore, rebating may create an artificial appearance of affordability in the first year of a policy term that may not be available in future years, which could put consumers in a difficult position where they are forced to let the policy lapse. This same illusion of affordability also incents advisors to over-sell, and consumers to over-purchase, the amount of insurance in the first year which could result in clients being over-insured, and puts policies with larger rebates in a preferential position even if that policy is not the most suitable for the client.

We fail to see how allowing inducements that mask true price signals is desirable industry behaviour or conduct that treats consumers fairly. We also believe that permitting rebating without a strong policy objective for doing so is contrary to the CCIR's Fair Treatment of Customers Guidance.[1]

The ability to benefit from rebates on newly-issued policies also creates an incentive for consumers to lapse existing, suitable policies in order to switch to new policies for no reason other than to obtain a larger rebate based on the higher front-end commission arising from the sale of a new insurance policy. We are sure the Ministry would agree that this type of behaviour is unproductive, adds costs to the insurance companies which is passed along to other insurance purchasers, and does not further the policy objective behind obtaining insurance coverage in the first place.

b) Unfairness and Unlevel Playing Field

The presence of rebates creates an unlevel playing field amongst consumers, advisors and insurers alike.

In regards to consumers, we believe that rebates are disproportionately enjoyed by more sophisticated and wealthy clients, as the types of policies they typically purchase are sufficiently large and profitable to make rebating an attractive marketing strategy for an advisor. At the same time, rebating encourages policy lapsation (either because the type/amount of insurance was not appropriate, or a desire to requalify for a rebate) which ultimately leads to higher insurance costs in the future. The cost of rebating is therefore ultimately borne by all insurance consumers. It is inherently unfair that less sophisticated insurance purchasers are effectively subsidizing the rebates paid to more financially-astute and often wealthier clients.

[1] Canadian Council of Insurance Regulators, *Conduct of Insurance Business and Fair Treatment to Customers* (September 2018). Available at: https://www.ccir-ccrra.org/Documents/View/3450.

Rebating also harms consumers because it encourages advisors to compete on (fleeting) price discounts, not financial planning and after-sales service. We have seen how the ability to rebate can result in very unfair outcomes: B.C.-based members report to us that they have been engaged by clients to perform extensive needs analyses and prepare recommendations, only to see those clients purchase the recommended policies through advisors that offer a rebate. This of course results in the advisor who performed the analysis receiving no compensation for his or her efforts. In the long run, this type of outcome is not healthy for the residents of British Columbia, as fewer advisors will be willing to provide the detailed insurance analysis that is required by many consumers.

Rebating also favours insurance products that pay larger commissions. Thus, there is at least a short-term incentive for both the advisor and consumer to purchase the product which offers the highest agent compensation (typically a permanent insurance product), rather than the one that may be more appropriate and affordable over the longer term (for example, a term insurance policy).

c) Creating Complexity and Uncertainty

Given the often-complicated nature of life insurance products, calculating the quantum of a rebate is not a straightforward task. Life insurance policies are sophisticated products with many characteristics that make them unlike other financial products: compensation is normally front-ended, products can have investment components, premiums may not be fixed, products can be convertible and they may have term riders and ancillary benefits.

Given these characteristics, commissions or premiums can be both difficult to calculate at the time of sale and may be open to manipulation. Some products (such as Universal Life) do not have fixed premiums and permit pre-funding of insurance costs, and in most permanent products some of the excess premium or deposit may be accessible to the policyholder through a policy loan, cash withdrawal or collateral loan. It is unclear whether the Ministry’s proposal includes all forms of cash payments received by the agent on a sale, and how premiums will be determined for non-fixed premium products.

The uncertainty in assessing the value of premiums and commissions at the time of sale would create uncertainty and confusion for consumers and advisors, and we do not believe that a formula can adequately compensate for these unknown variables without introducing further complexity and risk for consumers.

d) Contrary to National Trend

While British Columbia should and will do what is most appropriate for its residents, we would note that rebating is banned in all other provinces across Canada, other than Alberta, for many of the consumer protection concerns noted above. Some provinces have gone further to ban any form of inducement being provided to a prospective policyholder.

We believe that British Columbia's life and health insurance consumers deserve protections that are at least as strong as those enjoyed by consumers in other provinces.

4. CONCLUSIONS AND NEXT STEPS

Advocis and CALU remain strongly opposed to the practice of insurance rebating for individual life and health insurance policies. It follows that the current proposed modification to the rebating rules would not materially address the consumer protection concerns inherent in the practice of commission rebating, and in our view would not enhance accessibility to insurance coverage for British Columbians.

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We look forward to working with the Ministry of Finance as it considers the comments received regarding insurance rebating. Should you have any questions, please do not hesitate to contact the undersigned, or Ed Skwarek, Vice President, Legal and Regulatory Affairs at Advocis at 416-342-9837 or eskwarek@advocis.ca.

Sincerely,

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

Abe Toews, CFP, CLU, CH.F.C., CHS
Chair, National Board of Directors
Advocis

Guy Legault, MBA, FCPA, FCGA, CAE
President and CEO
CALU

Roger Sinclair, CFP
Chair
CALU