

CCIR

Canadian
Council of
Insurance
Regulators

Conseil
canadien
des responsables
de la
réglementation
d'assurance

ISSUES RELATED TO INDUCEMENTS, REBATING AND TIED SELLING

A consultation paper prepared by the
Canadian Council of Insurance Regulators (CCIR)
Streamlining and Harmonization Committee
Working Group on Market Conduct and Other Issues

March 2004

This consultation outlines two issues reviewed by the Working Group of the Canadian Council of Insurance Regulators (CCIR). CCIR welcomes the comments, suggestions and ideas from interested stakeholders regarding the issues described in this paper. This document can be found on the CCIR's website at www.ccir-ccrra.org.

The working group intends to make recommendations to CCIR at an upcoming meeting. Any proposed legislative change would require approval of the government in each jurisdiction. As with all CCIR work, the implementation of changes, if any, would be the responsibility of each jurisdiction.

Written submissions and questions should be forwarded to:

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Technical questions pertaining to the paper can also be addressed to the Working Group on Market Conduct and Other Issues by contacting the chairperson of this working group, Jim Scalena, the Manitoba Superintendent of Insurance at jscalena@gov.mb.ca.

We look forward to receiving your submissions by **May 21, 2004**. Electronic copies of submissions would be preferred. As it is the intention of CCIR to publicly release the submissions received in this consultation process, please indicate if you do not want your submission to be made public. Freedom of Information legislation may require responses be made available to those requesting such access.

Please note that the proposed directions in this paper should not be construed as the official position of any provincial, territorial or federal government or agency.

BACKGROUND

In May 2002, the CCIR formed the Streamlining and Harmonization Committee to solicit specific proposals from the insurance industry to help streamline and harmonize the regulatory environment. Industry associations were asked to specifically identify issues that met the following three criteria:

- fit within the existing constitutional and insurance regulatory framework and be within the control of CCIR members;
- affect the regulatory regime in more than three jurisdictions; and
- promote efficiencies and cost savings while retaining prudent protections.

A total of 66 proposals were received of which 22 were determined to be outside the committee mandate. Of the remaining 44 proposals, there were 6 that were classified as “market conduct issues”. These submissions suggested changes to the legislation governing:

- inducements/rebating;
- tied selling and the bundling of financial products; and
- disclosure requirements when replacing life insurance.

Proponents for market conduct changes contend that the marketplace has evolved significantly since the existing laws were enacted and that there should be a review to determine if changes are required to enhance competition and provide benefits to the consumer.

At the October 2002 meeting of CCIR, a working group was convened to review the market conduct proposals. This working group includes representatives from British Columbia, Manitoba, Quebec and Newfoundland and Labrador.

At the April 2003 meeting of CCIR, the working group provided a preliminary report. CCIR directed the working group to prepare a consultation paper to outline various options related to the issues of inducements/rebates and tied selling. On the issue of replacement disclosure for life insurance products CCIR decided to avoid duplication of effort. The Canadian Insurance Services Regulatory Organizations (CISRO) had already established a committee to review point of sale disclosure documents when replacing life insurance. CCIR works closely with CISRO and will rely on the work of the CISRO committee.

Inducements / Rebates

BACKGROUND

In the context of insurance sales, an inducement is the offer of a thing of value as an incentive to purchase an insurance product. A rebate of premiums (rebating)¹ is a specific type of inducement, which allows certain consumers to receive reduced premiums, that the insurer or agent or broker has not offered to other consumers. Such practices have been characterized as having the potential to be unfair and deceptive and as a result, most Canadian jurisdictions have legislative provisions to restrict or prevent an insurer or the distributor of an insurance policy from offering an inducement or rebate.

The prohibitions were implemented:

- To protect consumers from making inappropriate purchasing decisions on the basis of the offer of the inducement or rebate.
- To ensure parity between different-sized insurers and intermediaries who compete for the same business: competition is based on risk pricing.
- On the basis that the cost of the incentive would be borne by consumers in the pricing of the product.
- On the basis that rebates should be offered equally to all similar risks and not arbitrarily to certain consumers.
- To require a premium rate which would assure adequate reserves (solvency concerns).

A canvass of Canadian provincial regulators confirmed that all jurisdictions have inducement and rebating provisions in their insurance legislation. However, it is apparent that there are differences in the wording, interpretation and application of the provisions between jurisdictions.

For example, some Canadian jurisdictions will allow inducements:

- unless the person offering the inducement is acting as an insurance agent;
- unless it is considered a rebate;
- to obtain an insurance quote as long as it is not tied directly to the purchase of an insurance product;
- on a pre approved exception basis; or,
- if it is of limited value.

¹ The CCIR-CISRO License Considerations Committee is consulting with interested parties on the issue of referral arrangements where an insurance agent or an insurer pays an amount (or the equivalent in goods and services) to another person for the referral of a potential client to the agent or insurer

Some Canadian jurisdictions are quite strict in the interpretation and enforcement of laws prohibiting inducements.

Most Canadian jurisdictions prohibit rebating of insurance premiums.

OPTIONS

Industry Proposal

Some industry stakeholders have suggested that legislative prohibitions on rebating and inducements should be removed so that the market forces are allowed to operate more freely.

In support of this proposal are the arguments that it is common practice for retailers generally to compete on both price and offer additional benefits such as giveaways or loyalty programs without any disadvantage to the consumer. For insurers and agents, there may be greater flexibility in marketing programs and a reduction in the costs of compliance monitoring.

Other Possible Options

While the industry proposal suggests the elimination of the prohibitions in their entirety, there are other alternatives that might protect consumers:

Do not prohibit incentives that are meant to encourage consumers to request a quote or learn more about a product.

Continue to prohibit rebating but relax prohibition related to inducements.

Relax prohibition for rebating and inducements by establishing the maximum value of the incentive.

Eliminate the prohibition against inducements but establish a requirement for disclosure of the net value of the incentive and its impact on premium.

Permit incentives that are considered risk management tools, such as smoke alarms, anti-theft devices etc.

CONSIDERATIONS

Any proposed legislative change would require approval of the government in each jurisdiction. As with all CCIR work, the implementation of changes, if any, would be the responsibility of each jurisdiction.

In order to make a recommendation to the CCIR members on this matter, the CCIR working group requests comments on the industry proposal and the above options and in particular on the following questions / considerations:

- Should rebating of premium provisions and inducement provisions be considered together or separately?
- If rebates or inducements are allowed, should there be any restriction on their use or value?
- What is the impact of the suggested changes on existing methods of distribution of insurance?
- Should all insurance products be treated the same? Life? P&C? A&S? Other?
- Should an inducement be restricted to a quote or request for information but prohibited when “tied” to a purchase?
- Should there be any differentiation between an insurer and an agent/broker offering a rebate or inducement?
- Are there any regional or local issues that need to be addressed?
- Are there any options or implications concerning the elimination of the prohibition on rebates and inducements that are not discussed above?

Tied Selling and Bundling of Financial Products

BACKGROUND

Bundling of financial service products is the practice where two or more financial products are sold as a package to consumers. In many cases, the bundling of the products is more cost effective for financial service providers including affiliated insurers.

Most Canadian jurisdictions have prohibitions against tied selling. In the context of insurance, tied selling occurs where an insurance product is made available only when another product is also purchased. Some market participants have suggested that certain jurisdictions use a very strict interpretation of tied selling prohibitions to prohibit the bundling of financial service products.

The tied selling prohibitions were implemented to protect consumers with respect to:

- ensuring product availability;
- ensuring consumers have the ability to choose only the products they wish to purchase and/or need; and
- preventing consumers from being coerced into purchasing unwanted products.

The legislation pertaining to tied selling is not uniform across Canadian provinces and territories. For instance, the restriction on tied selling may be applied to all product lines or limited to a specific product line, such as automobile insurance. In some cases, bundling of products is considered acceptable provided consumers have the ability to purchase the financial products separately.

OPTION

Industry Proposal

The recommendation of an industry stakeholder group is that bundling of financial service products should not be considered tied selling, provided it does not require the consumer to purchase unwanted products.

The ability to package products allows companies an opportunity to look for administrative savings that could be passed on to consumers. It allows companies to explore various marketing opportunities.

CONSIDERATIONS

In general, most jurisdictions would not prevent a process of bundling financial product as long as it is available to all consumers and there is a choice and benefit to the consumer. Such bundling of financial products would be prohibited in circumstances where the bundling is not at the option of the consumer and therefore is considered coercive tied selling.

A change in the interpretation and perhaps, some clearer legislative wording may help to differentiate and prohibit coercive tied selling in contrast to legitimate bundling of products.

We would be pleased to receive comments on this industry proposal from interested parties and particularly if there are some risks or inequities not considered in our review of bundling of financial products.

NEXT STEPS**Next Steps**

Once the Working Group has an opportunity to review the comments from interested parties, we expect to be in a position to provide a recommendation to CCIR for a harmonized position on each issue with proposed wording for change, if appropriate.

As with any CCIR initiative, individual provincial and territorial insurance regulators will review the results and take any recommendations back to their home jurisdiction for further review and consideration by their governments.