



PUBLIC INTEREST ADVOCACY CENTRE

LE CENTRE POUR LA DEFENSE DE L'INTERET PUBLIC

ONE Nicholas Street, Suite 1204, Ottawa, Ontario, Canada K1N 7B7

Tel: (613) 562-4002. Fax: (613) 562-0007. e-mail: piac@piac.ca <http://www.piac.ca>

March 24, 2006

Carol Shevlin
Policy Manager (A)
CCIR Secretariat
5160 Yonge Street, Box 85
17th floor
Toronto, Ontario
M2N 6L9

BY EMAIL

Dear Ms. Shevlin:

Re: Managing Conflicts of Interest: A Consultation Paper on Enhancing and Harmonizing Best Practices (February 2006) – Comments by the Public Interest Advocacy Centre (PIAC)

Thank you for this opportunity for provide comments on the third paper released by the Industry Practices Review Committee (IPRC), which involves recommendations intended to harmonize best practices in the management of actual or potential conflicts of interest in the insurance industry.

The issue of managing conflicts of interest in the insurance industry originates in revelations in the United States about allegations of improper financial ties between insurance brokers and insurance companies in late 2004. Following these revelations,

Canadian regulators initiated their own probe of links between insurance companies and insurance brokers, in the form of payments made to brokers beyond their normal commissions. The Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO) established an Industry Practices Review Committee (IPRC) to examine the financial relationships between insurance companies and sales intermediaries to “determine if issues similar to those in the U.S. could arise in Canada, and to identify opportunities to enhance public confidence in the Canadian Insurance marketplace.”¹

The result of the adoption of this committee was a consultation paper outlining possible policy development options in June 2005. The IPRC indicated that its general policy objective “is to reduce the opportunity for actual and potential conflicts of interest in the marketplace while working to promote consumer confidence.”²

It outlined a range of possible policy options which were: 1) codify the priority of the client’s interest; 2) restrict performance-linked benefits offered to intermediaries such as contingent commissions, bonuses and non-monetary sales incentives; 3) enhance transparency of compensation, ownership and other financial interests.

PIAC’s submission on this consultation paper was that each of the three policy options should be implemented. We based that recommendation on the fact that only by implementing all three approaches would the issue be effectively addressed with respect to all the players in an insurance contract involving an intermediary: the consumer, the insurance intermediary or broker and the insurance industry.

We also based our position on the results of the market conduct questionnaire, which revealed a number of findings about current business practice that inferred the potential for conflicts of interest:

- More than 2/3 of P&C insurers offer contingent commissions to their agents or brokers.
- More than ½ of P&C insurers report having loans, ownerships and other kinds of financial relationships with sales intermediaries.
- The use of sales incentives, including non-monetary sales incentives “appears to be universal” among L&H insurers.
- Companies representing more than half of the market share among L&H insurers report having loans, ownerships and other similar financial relationships with sales intermediaries.

Somewhere between the initial consultation paper and the recommendations outlined in the IPRC’s third consultation paper, “Managing Conflicts of Interest: A consultation

¹ The Canadian Council of Insurance Regulators and the Canadian Insurance Services Regulatory Organizations, “Relationships between Insurers and Sales Intermediaries – Consultation Paper” (3 June 2005) at i.

² *Ibid.* at iii.

Paper on Enhancing and Harmonizing Best Practices,” the policy objective of reducing the opportunity for actual *and potential* conflicts of interest seems to have disappeared.

The IPRC’s recommendations in the third consultation paper only adopt the first policy recommendation, which is essentially to harmonize language already contained in existing codes of conduct, insurance council by-laws and industry association codes.

Certainly one cannot disagree with a statement that the interest of the client must be placed ahead of an intermediary’s interest, but the important question is whether this effectively addresses the issue before the committee.

The other two recommendations: disclosure of conflict or potential conflict of interest associated with a specific transaction or recommendation and the product that is recommended must be suitable for the needs of the consumer also raise the same question: how do these recommendations address the issue that the IPRC was tasked with, which was not to ‘harmonize best practices’, but to “reduce the opportunity for actual and potential conflicts of interest in the marketplace”?

It is our submission that these recommendations do not meet the originally stated goal of this consultation.

It is our submission that market and consumer confidence requires full disclosure of the relationships between intermediaries and insurance companies. It is not enough to state that demonstrating the “suitability” of a recommended product is a means of managing actual or potential conflict of interest. There is no logical connection between these two notions. The onus for establishing what is ultimately “suitable” for a consumer is on the consumer. But the decision about “suitability” requires the consumer having all relevant information from the intermediary and from the insurance company. This means all information about compensation arrangements or contractual arrangements between brokers and insurance companies must be proactively disclosed to consumers, so that consumers can make decisions based on all relevant information.

Examination of the events that have unfolded in the United States concerning conflict of interest issues in the insurance industry and the settlements reached in some of the cases initiated by the New York State Attorney General and Insurance Superintendent suggest that the IPRC’s recommendations are not sufficient to ensure transparency in the insurance relationship and competitiveness in the insurance marketplace.

The agreements described in many of the settlements that have recently been reached, involve much bolder and more decisive measures than what is being recommended here. They include: adopting new business models, such as limiting brokerage compensation to a single fee or commission at the time of placement, a ban on contingent commissions and a requirement that all forms of compensation will be disclosed to clients.

We are very disappointed that the IPRC backed away from such a promising beginning in this consultation. We propose that it adopt recommendations that will respond to the very simple and clear customer expectation about what industry practices would ensure that actual or potential conflicts of interest between intermediaries and insurance companies be avoided. These practices would involve full disclosure and the elimination of contingent commissions and other performance-linked benefits.

Sincerely,

Sue Lott
Counsel
Public Interest Advocacy Centre (PIAC)
Suite 1204, 1 Nicholas St.
Ottawa ON K1N 7B7
tel: 613-562-4002 x23
fax: 613-562-0007
www.piac.ca