

Presentation to the Canadian Council of Insurance  
Regulators  
And  
The Canadian Insurance Service Regulatory  
Organizations

Industry Practices Review Committee

Presented by

Third Party Administrators' Association of Canada (TPAAC)

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# Introduction

Thank you for the opportunity of presenting our comments on the *Relationships Between Insurers and Sales Intermediaries Consultation Paper*. As an association representing Canada's Third Party Administration (TPA) industry, and with our members' strong support for disclosure, we wish to offer our position on the Industry Practices Review Committee's (IPRC) proposed options for intermediaries' disclosure requirements.

We have discussed the options presented in the paper with the CLHIA to determine if there was consensus on how to approach disclosure relative to how it impacts the whole insurance industry. There is universal consensus by the primary organizations that include intermediaries (advisors) on the need for disclosure and how this can be accomplished. Our comments as it impacts our members are outlined below.

The TPA community is made up of companies that act as:

TPAs only or Consultants (Advisors) and TPAs

## **TPA Only**

The TPA only side would be made up of:

Premium Administrators Only  
Premium and Claims Administrators  
Pension Administrators

The TPA is chosen by an advisor or a client directly, who feels the products and services offered by the TPA will best meet their client's needs. As the TPA is not an advisor to the consumer in the selection process of an insurer, in our opinion, the disclosure options will not impact the business provided by the TPA that does not offer consulting services. The onus for disclosure would rest with the advisor.

## **TPA and Consultant**

Typically, if a TPA is offering Consulting services, the TPA would also offer administration services to their clients. In practice, the client or consumer will choose the consultant on the basis of consulting services offered as well as the TPA component. Choosing the consultant/TPA is most often independent of where the insurance business will be placed. It can also involve a specific product or products offered by the TPA and written by one or a number of insurers. The consultant in this case would be under the same obligations, as any other advisor, to reveal the relationships they may have with the insurer(s) they are recommending or approaching.

## **Application of Disclosure**

The application of disclosure rules can be adhered to in the same manner as any other advisor where the TPA acts as a consultant. In consideration of these facts we concur with the accompanying submission primarily prepared by the CLHIA, with consultation with the primary stakeholders in the insurance industry

(Advocis, Independent Financial Brokers of Canada (IFBC), the Canadian Association of Independent Life Brokerage Agencies (CAILBA) and TPAAC). We have made two modifications to the CLHIA proposal for clarity purposes.

## **Bonus Arrangements**

One area we wish to comment on in the Consultation Paper concerns the bonus amounts paid by insurers. The paper indicated for group producers, that bonus compensation arrangements were available from .05% to 30% of premium. In our collective industry experience, we have not seen any bonus arrangements that approached the 30% of premium level. Bonuses are most frequently related to the commission received and usually increase the commission amount by a percentage, if there is a bonus offered. The increase in commission is usually a low level. A bonus of 30% of premium, or even less, would render the products offered by that insurer uncompetitive and too costly to offer to a client. Group benefits are essentially monthly renewable term coverage and there is not sufficient margin in the expenses of the plans (unlike P&C or Individual Life) to offer any rich bonus schemes. A bonus arrangement for group would not produce enough revenue, in our opinion, to encourage a group insurance advisor to place business with one underwriter over another. Saying that, if there is any perception of bias because of a bonus arrangement, that will need to be addressed in a disclosure statement.

Should you have any questions about our submission, please contact me.

John R. Moore  
President,  
Third Party Administrators' Association of Canada (TPAAC)

# Appendix

## ADVISOR DISCLOSURE

(for application to Group Benefits and Group Retirement business)

When a plan sponsor is considering the purchase of a group life and health insurance or group retirement plan, it is important that they have good information about the product, how it meets their needs, the company offering the product, and the advisor and the advisor's business relationships. This chart focuses on disclosure about the advisor which should be given in writing to the plan sponsor prior to the sales transaction. For the purposes of this document, "advisor" refers to anyone receiving commission compensation for placing business with an insurer, other than an insurance company employee.

The chart provides commentary and suggested wording for the six key disclosure items that should be included. It also provides notes **(in bold)** about regulatory disclosure requirements as well as suggestions from the Joint Forum of Financial Market Regulators' recently released "Principles and Practices for the Sale of Products and Services in the Financial Sector". The objective, in all cases, is to provide plan sponsors with good and meaningful disclosure.

The suggested wording for each disclosure requirement is intended for illustration purposes and to provide a good starting point. Each advisor can, of course, tailor it to suit their own situation while still meeting the minimum disclosure requirements.

These disclosure items apply to situations where the insurer pays any form of compensation. They would not apply to fee-only situations.

Disclosure Item	Considerations	Sample Wording
<p><b>1. Company(ies) with which the advisor places or recommends business</b></p>	<ul style="list-style-type: none"> <li>• In group situations, the advisor is representing the plan sponsor, rather than the insurer. This is an important distinction.</li> <li>• The advisor will, of course, provide information about the insurer with which the business is being placed. Beyond that, however, information should also be provided about those underwriters with which the advisor places business. This is particularly important for licensed life agents in order to be compliant with regulatory requirements.</li> <li>• Disclosure should reflect the advisor’s profile of business placement (for instance, a listing of 25 insurance companies that the advisor has access to may not be meaningful if most business is placed with only 3 companies; disclosure that focuses on those companies used regularly, while making the full listing available, may be more useful).</li> <li>• Should not be excessively complex.</li> <li>• If choosing to disclose companies with which the advisor has placed business over a period of time (e.g., the past 12 months), should not show any companies with which a contract has been terminated. It is important that the plan sponsor not have unrealistic expectations about which insurers will or will not be approached.</li> </ul>	<p><i>I represent you, the customer, and have access to &lt;x #&gt; of insurers, but I place the majority of my business with A, B, and C for group life and health products, and C and D for group retirement products. I am associated with &lt;abc&gt; agency.</i></p> <p><b><i>In Quebec, include:</i></b>  <i>With respect to this product, I am placing the business through &lt;firm&gt;.</i></p>

Disclosure Item	Considerations	Sample Wording
	<p style="text-align: center;">* * * * *</p> <ul style="list-style-type: none"> <li>• Ontario requires that advisors disclose in writing the name of all insurers and providers of financial products or services that the advisor represents [O.Reg 347, s.15(1), 15(2)].</li> <li>• BC requires that advisors disclose the name of the financial institution providing the financial products or service that the consumer has chosen [BC Reg 573/2004, s.3(1)(a)].</li> <li>• Quebec requires agents to disclose names of insurers whose products they are authorized to offer [R.S.Q.c.D-9.2, s.31] and, when making an offer of a particular product, to disclose the firm being represented [s.14].</li> <li>• The Joint Forum suggests that advisors provide the names of organizations directly providing remuneration to the advisor.</li> </ul>	

Disclosure Item	Considerations	Sample Wording
<p><b>2. Nature of relationship with insurer(s) providing product</b></p>	<ul style="list-style-type: none"> <li>• What does the plan sponsor need to know about the advisor’s relationship to understand if there are factors that may influence the advice given?</li> <li>• Does an insurance company have any ownership interests in the Advisor’s agency? If so, disclose. Alternatively, does the Advisor have any ownership interests in an insurance company? If so, disclose the ownership interests above a threshold of 10%.</li> <li>• Are there financing arrangements between the Advisor and the insurer that are germane to the plan sponsor’s understanding of any biases that could affect advice? Examples would include (but are not restricted to) commission advances (unearned commission advances not attached to any specific case and within an 18-month horizon) and loans (defined as a contractual arrangement which includes interest rates and a repayment schedule).</li> </ul> <p style="text-align: center;">* * * * *</p> <ul style="list-style-type: none"> <li>• <b>Quebec requires that agents disclose any business relationships (if an insurer holds any indirect or direct interest in the ownership of the firm) [R.S.Q.c.D-9.2, s.26].</b></li> <li>• <b>Quebec requires that if an agent is bound by exclusive contract with a single insurer, that must be disclosed [R.S.Q.c.D-9.2, s.32].</b></li> <li>• <b>B.C. requires that agents disclose the relationship between the financial institution and the agent offering to provide the service or product [BC Reg 573/2004, s.3(1)(b)].</b></li> <li>• <b>The Joint Forum of Financial Market Regulators suggests that the advisor disclose the relationship between him/herself and the firm whose product is being considered and any relationships among firms directly involved in a transaction.</b></li> </ul>	<p><i><b>If there is an ownership situation:</b></i></p> <p><i>&lt;Insurer(s)&gt; has a &lt;xx%&gt; ownership interest in my business</i>  <i>or</i>  <i>I have a &lt;xx%&gt; ownership interest in &lt;insurer&gt;</i></p> <p><i><b>If no ownership situation exists:</b></i></p> <p><i>(a) stay silent;</i>  <i>or</i>  <i>(b) No insurer holds an ownership interest in my business, nor do I hold a material interest in any insurance company.</i></p> <p><i><b>If there are financing arrangements:</b></i>  <i>I have a loan with &lt;Insurer(s)&gt; and, in addition, have an arrangement that allows for commission advances from &lt;Insurer(s)&gt;. (Note: if other financing arrangements exist, disclose.)</i></p>

Disclosure Item	Considerations	Sample Wording
<p><b>3. How the advisor is compensated</b></p>	<ul style="list-style-type: none"> <li>• What information is needed for the plan sponsor to understand the basic business relationship between advisor and insurer with respect to compensation?</li> <li>• The level of disclosure should provide plan sponsor/consumer with basic understanding of how advisor is paid and from what sources.</li> <li>• Specific dollar amounts and commission schedules not required unless specifically requested in writing by plan sponsor.</li> <li>• This disclosure is also necessary for ASO/self-funded sales.</li> <li>• The plan sponsor should be advised that any future increases in compensation or commissions will require their written approval.</li> <li>• If commission is negotiable, that fact should be disclosed. * * * * *</li> <li>• <b>BC requires disclosure of whether commission or compensation is to be paid by the financial institution to the agent offering to provide the service or product [BC Reg 573/2004, s.3(1)(c)].</b></li> <li>• <b>Quebec requires that if an advisor will receive compensation from the insured, they must disclose the fact that they will also receive remuneration for the products sold [R.S.Q.c.D-9.2, s.17].</b></li> <li>• <b>The Joint Forum suggests disclosure of the method of remuneration, any fees payable by client, and names of organizations directly providing remuneration.</b></li> <li>• <b>The Joint Forum’s Guidelines for Capital Accumulation Plans require that the plan sponsor provide CAP members with the description and amount of all fees and expenses related to the plan.</b></li> </ul>	<p><i>In group insurance, some compensation schedules are set by the insurance company and some are variable to reflect the various services provided to clients by the advisor. I may choose different models according to the service schedule you have chosen.</i></p> <p><i>(if insurance company specifies a scale) My compensation is specified by the insurer with the insurer and is included in the price charged to you. Any future increases in compensation will require your written approval.</i></p> <p><i>(if no specified scale) My compensation is a negotiable element of your rate calculation and is paid to me by the insurer. Any future increases in compensation will require your written approval.</i></p> <p><i>(If additional compensation from other sources, disclose.)</i></p>

Disclosure Item	Considerations	Sample Wording
<p><b>4. If the advisor may be eligible for additional compensation (cash or non-monetary, such as qualifier conferences) based on other factors (e.g., volume of business placed in specific period of time)</b></p>	<ul style="list-style-type: none"> <li>• This builds on #3 to provide disclosure about the fact of possible additional compensation and other incentives.</li> <li>• Specific dollar amounts and commission schedules not required unless specifically requested in writing by plan sponsor.</li> <li>• Although not a disclosure requirement, an Advisor should note that Quebec restricts conference incentives to those with a training focus.</li> </ul> <p style="text-align: center;">* * * * *</p> <ul style="list-style-type: none"> <li>• <b>Quebec prevents advisors from participating in contests or promotions as an incentive to sell a product unless the product meets the specific needs of the client [R.Q.c.D-9.2, r.l.3, Div III 5].</b></li> <li>• <b>Further to the above, Quebec allows an advisor to be reimbursed for the costs of attending a conference or convention provided its main purpose is training [R.Q.c.D-9.2, r.l.3, Div III 5].</b></li> <li>• <b>The Joint Forum suggests disclosure of any other benefits from sales incentive programs related to the transaction.</b></li> </ul>	<p><i>Company ABC has an additional compensation arrangement, including a bonus, travel incentive, etc... In placing business with Company ABC, I may become eligible for additional compensation.</i></p>

Disclosure Item	Considerations	Sample Wording
<p><b>5. Conflicts of interest</b></p>	<ul style="list-style-type: none"> <li>• What information does the plan sponsor need to assess whether or not a conflict of interest may be influencing the advice being given?</li> <li>• Note that the need to disclose conflicts of interest applies on an ongoing basis, with respect to each recommendation or transaction (and not just on an account-opening basis).</li> <li>• In determining whether or not a perceived conflict might exist which would require disclosure, the advisor should consider: <ul style="list-style-type: none"> <li>• Would the advice or product offered have been different if the situation or incentive giving rise to the potential conflict of interest did not exist?</li> <li>• Would it appear to a reasonable, informed third party looking at all the facts that the advisor acted in the best interest of his/her client?</li> </ul> </li> <li>• Some perceived conflicts could be company relationships (ownership or financing arrangements, see #2) or the very fact of compensation, (see #3 and #4).</li> <li>• Also included would be perceived conflict associated with prohibited occupations or other situational circumstances (for example, power of attorney, loans to and from clients, executor of client's will, etc.).</li> </ul> <p style="text-align: center;">* * * * *</p> <ul style="list-style-type: none"> <li>• <b>Ontario -- must provide written disclosure of any conflicts of interest [O.Reg 347, s.16].</b></li> <li>• <b>Manitoba - if advisors are in a conflict of interest situation then they must avoid the conflict or</b></li> </ul>	<p><i><b>If there is no conflict:</b></i></p> <p>a) <i>stay silent</i></p> <p><i><b>or</b></i></p> <p>b) <i>In my duty to disclose any conflict of interest with you as my client, I confirm that there is no conflict of interest in regards to the proposed sales transaction that you are considering, and that my overall recommendation takes into consideration and is based on my analysis and assessment of your financial and security needs.</i></p> <p><i><b>If there is a conflict:</b></i></p> <p><i>The following situation may be perceived to be a potential conflict of interest with respect to my recommendations to you. However, I confirm that my overall recommendation takes into consideration and is based on my analyses and assessment of your financial and security needs.</i></p> <p>-----  -----  -----</p> <p><i><b>If there is a conflict related to another occupation:</b></i></p> <p><i>My position/profession as _____ may be perceived to be a potential conflict of interest with respect to my recommendations to you. However, I confirm that my overall recommendation takes into consideration and is based on my analyses and assessment of your financial and security needs.</i></p>

Disclosure Item	Considerations	Sample Wording
	<p>remove themselves from the transaction, regardless of disclosure. [Manitoba Insurance Council Conflict of Interest Guidelines].</p> <ul style="list-style-type: none"> <li>• Alberta – conflict is based only on prohibited occupations and the conflict situation must be avoided, regardless of disclosure [AR 122/2001, s. 5(1)(g) and 5(2)(f)].</li> <li>• BC -- it is unethical for agents to place themselves in a conflict of interest with a client unless the client has approved of the conflict after full disclosure of the conflict, preferably in writing [Insurance Council of BC Code of Conduct for Insurance Agents, Salespersons and Adjusters, 1999, p.15].</li> </ul>	<p><i>For BC:</i>  <i>I, &lt;client name&gt;, have been informed of, and understand the implications of, the conflict of interest, or potential conflict of interest associated with my advisor &lt;name of advisor&gt; in relation to the transactions recommended. I agree to continue with my dealings with my advisor.</i></p> <p><i>Client Signature _____ date_____</i></p>
<p><b>6. Plan sponsor has right to ask for more information</b></p>		<p><i>Should you require additional information about my qualifications or the nature of my business relationships, I would be pleased to assist you.</i></p>
<p>Other information that you might wish to include:</p> <ul style="list-style-type: none"> <li>• license(s) held</li> <li>• signature of agent</li> <li>• signature of client</li> </ul>		<p><i>I am licensed as a life and health insurance agent in the province of _____.</i></p> <p><i>I am also licensed/registered in the following fields:</i></p>

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