

Life Insurance Council of Saskatchewan

Winter 2008 Newsletter

ANTI-MONEY LAUNDERING AND ANTI-TERRORIST FINANCING

Comments by J-P Bernier, CLHIA

Life insurance agents and insurers have joined forces with the RCMP and other law enforcement bodies in the fight against terrorist financing and money laundering. By life agents detecting and reporting suspicious transactions to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), FINTRAC can examine and coordinate all data received and disclose designated information to the appropriate police force for investigation.

Although it is difficult to determine how widespread money laundering and terrorist financing is, the RCMP is of the view that this unlawful activity is very active in Canada and must be deterred. As a result, the role played by life insurance agents in the war on financial crime is paramount. Without life insurance agents filing suspicious transaction reports, criminals who launder money and finance terrorism could remain undetected. The life insurance industry does not want to be exploited by professional money launderers or terrorist financiers or become the point of least resistance in the financial services industry. Life insurance agents have their personal reputation to protect and the integrity of the life insurance business must be maintained.

Therefore, it is essential that life agents, as "reporting entities", under Canada's Proceeds of Crime (Money Laundering) and Terrorist Financing Act comply with their obligations. One of these obligations is to have written policies and procedures. This obligation may be fulfilled by using the Guidance Manual, developed jointly by the Canadian Life and Health Insurance Association (CLHIA), FINTRAC and the Life Insurance and Market Research Association (LIMRA) as a set of written policies and procedures. The Guidance Manual provides, among other things, general and industry specific indicators or "red flags" that might lead a life agent to suspect that a transaction is related to money laundering or terrorist financing. At the request of life agents, descriptive scenarios of suspicious life insurance transactions have been added for illustrative purposes. The Guidance Manual is written in plain language and clearly shows how to make reports to FINTRAC. Moreover, the Guidance Manual is available through the website of the Life Insurance Council of Saskatchewan and it can be downloaded for personal use and customization, if necessary. CLHIA, FINTRAC and LIMRA will keep it up-to-date since certain business operations may change due to new and revised regulations.

Failure to report carries a maximum \$2 million fine and five years imprisonment. Immunity has been granted to life insurance agents for reporting in good faith. Ongoing training is mandated to help ensure awareness of the applicable regulatory requirements and responsibilities.

A link to FINTRAC is provided on the Council website.

INDIVIDUAL VARIABLE INSURANCE CONTRACTS (IVIC's)

Commonly referred to as segregated funds

Council, after consulting with licensees and industry associations, made changes to the guidance notes. Council believes the changes address most, if not all, of the suggestions and concerns that were expressed to council both in written submissions and in person at the open forums in Saskatoon and Regina.

The reference to Individual Variable Insurance Contracts or IVICS is new and has not previously been used in the guidance notes. IVICS is being used as it more accurately describes the variable insurance product that most licensees know as segregated funds.

Guidance Notes

Purpose of Guidance Notes

Council's Bylaws (the bylaws) set out principles of practice that licensees must adhere to. The bylaws are very broad and may be applied in ways that licensees may not fully appreciate. For this reason council publishes guidance notes to assist licensees in applying the broad principles identified in the bylaws and also to recommend to licensees industry best practices.

Guidance notes are not bylaws and are intended only to assist licensees in identifying best practices.

The guidance notes that follow illustrate what council considers to be examples of best industry practices but are not necessarily the only acceptable practice that may apply in a specific situation.

Guidance Note #1

Individual Variable Insurance Contracts (IVICS) (commonly referred to as segregated funds)

Objectives of the Guidance Note

The following notes illustrate what council considers to be examples of best industry practices in the application of each of the bylaws. The guidance illustrated may not be appropriate for every client in every situation. There may be more or less diligence required by a licensee to ensure the bylaws are met.

The application of each of the principles and the actual practices used are the responsibility of the licensee and are dependent upon the circumstances and needs of each client.

The Bylaw sections are reproduced for reference when considering the guidance notes that follow each section.

1. Bylaw 8, Section 1, (a) says “misconduct is a question of fact but includes any matter, conduct or thing, whether or not disgraceful or dishonorable that is contrary to the best interests of the consumer or licensees or insurance companies”.

Courts have consistently held a licensee to be a professional that has a fiduciary duty when dealing with a consumer. This is a high standard that obligates a licensee to act for the benefit of the consumer and to avoid conflicts of interest. If a potential conflict of interest exists the duty of a licensee is to disclose to the consumer the conflict of interest that may affect their recommendation to the consumer.

A licensee marketing IVICS should understand the maturity benefits and tax advantages that may apply to IVICS and the concept of diversification of investments.

The consumer is relying on the expertise of the licensee to provide knowledgeable advice on the product being offered by the licensee.

2. Bylaw 8, Section 2, (i) says that a licensee who “fails to reasonably ascertain through prudent fact gathering a consumer’s insurance needs” may be guilty of misconduct.

A licensee recommending an IVIC should assess all relevant factors respecting the consumer’s needs, which would include but is not limited to the consumer’s:

- i. Investment time horizon;
- i. Risk tolerance;
- ii. Investment knowledge;
- iii. Investment objective; and
- iv. Current circumstances.

Good ongoing service requires a process that attempts to keep fund choices in line with the above factors as those factors change over time.

3. Bylaw 8, Section (2), (j) says that a licensee who “fails to ensure that a consumer or insurer is fully informed of all relevant information that will allow the consumer or the insurer to make an informed decision” may be guilty of misconduct.

A licensee recommending an IVIC has an obligation to disclose clearly in terms easily understood by the consumer the nature of the recommended investment options available through the IVIC.

When a limited transaction authorization in favour of the licensee has been obtained it must not permit discretionary trading by the licensee. This means no additions, switches or deletions should be done without the consumer’s approval.

If surrender charges apply or are triggered by a transaction, whether at the time of the original application for the IVIC or any time thereafter these must be disclosed. The disclosure should be in a format that can be easily understood by the consumer and includes the actual amount of the surrender charges that may apply. It is strongly recommended the disclosure be in writing and acknowledged by the consumer.

An IVIC is an investment that carries investment risks. As with any investment a licensee must ensure that the risks of investing are clearly explained to the consumer.

A licensee that recommends and/or puts in place a leveraged loan strategy, must ensure through appropriate disclosure that the risks of borrowing have been fully disclosed and acknowledged by the client. A licensee should be able to demonstrate that proper fact finding was undertaken to confirm that the consumer has sufficient financial resources to make the interest payments and/or meet a potential margin call.

4. Bylaw 8, Section (2), (p) says that a licensee who “fails to maintain proper records” may be guilty of misconduct.

What constitutes proper records is dependent on the circumstances of each individual consumer and may include but is not limited to:

- i. A record of consumer contact.
- ii. Documentation that determines the consumer’s risk tolerance, time horizon, investment knowledge and investment objectives.
- iii. A needs assessment.
- iv. A signed acknowledgment from the consumer of having received the leveraged loan risk disclosure document if applicable.
- v. A signed copy of a limited transaction authorization.
- vi. Proper documentation evidencing transaction instructions and confirmation of transaction. Where verbal instructions are given, additional written confirmation is recommended, unless calls are recorded and retained for future reference.

BYLAW AND SCHEDULE UPDATE

Effective January 1, 2007, new Life Insurance Council of Saskatchewan Bylaws and Schedules were implemented.

A current version of the bylaws and schedules can be obtained from the Council office or by visiting the Council website.

Misconduct

The misconduct section of the bylaw has been completely rewritten and licensees are urged to familiarize themselves with Bylaw 8 to ensure compliance.

Requirement for designated person

Effective January 1, 2007, a Life including Accident & Sickness agency or Accident & Sickness agency are required to designate a person who is employed predominately by the agency to be responsible for the overall management and supervision of the agency and its office locations.

The designated person must be identified to Council by the agency in an application or report to Council.

Failure to designate a person to be responsible for the overall management and supervision of the agency or its office locations may result in the suspension of the agency's licence.

Licence Restrictions

The schedules consist of a number of licence restrictions which licensees should be aware of. They are:

1. A licensee having less than two years experience as a licensed agent/salesperson shall not act in the transaction of insurance unless he or she is supervised by a licensee having at least three years experience as a licensed agent/salesperson.
2. A licensee having less than two years experience as a licensed agent/salesperson shall:
 - a. within ten days of completing a life insurance replacement disclosure document have the document signed by a licensee who is qualified to act in a supervisory capacity; and
 - b. within ten days of taking an application for insurance have a supervision certificate completed and signed by a licensee who is qualified to act in a supervisory capacity.
3. A licensee shall not:
 - a. act as a supervisor unless he or she has at least three years experience as a licensed agent/salesperson; or
 - b. act in the transaction of or supervision of segregated funds transactions unless he or she has passed an investment funds course approved by Council.

4. A licensee shall:

- a. prior to replacing an existing life insurance policy, present and review with the consumer a fully completed life insurance replacement disclosure document that has been approved by Council; and
- b. provide a copy of the life insurance replacement disclosure document to the consumer and retain a copy in the consumer's file; and
- c. only with the consumer's informed consent, provide a copy to either the existing insurance company or the new insurance company.

COMMUNICATION BY EMAIL

The Life Insurance Council of Saskatchewan will begin sending newsletters and other licence notices by email rather than Canada Post. Licensees will be provided notice and directed to a link on the Council website.

Council will develop an information bulletin related to each class of licence as required but not less than once each year.

Notice regarding all disciplinary decisions will be provided as rendered or on a quarterly basis.

All licensees will be notified by email and directed to the Council website for access to the required bulletin material. Those licensees who do not have email addresses will continue to receive service by mail.

If you have not identified an email address or not provided Council with your current email address, please do so by emailing your updated email address to skcouncil@hotmail.com.

OTHER BULLETINS

Licensees may access the Life, Adjuster, Travel and Hail Bulletins from the main page of the Council website.

Past bulletins may also be obtained from the website.

Publications are produced in Adobe.

DISCIPLINARY SECTION – ALL LICENSEES

June 1, 2006 – August 31, 2007

A licensee who uses information in this bulletin to discredit another licensee or any other person will be guilty of misconduct.

Douglas K. Clarke Insurance Broker Limited of Markham ON representing Aviva Insurance Company of Canada and **Douglas Damon Clarke**, received a letter of warning for their failure to notify Council within thirty days of the commencement of the Registered Insurance Brokers of Ontario proceedings against them.

Ted Dolinski of Regina SK representing Knight-Archer Insurance Ltd., entered into a Consensual Agreement and Undertaking with the General Insurance Council, whereby he accepted a letter of warning for his failure to report within thirty days the commencement of a civil action against him. The nature of the allegations set out in the civil law suit were such that he was obligated to notify Council of the commencement of the civil action.

Special Risk Insurance Brokers Ltd. of White Rock, BC representing Lloyds Underwriters, entered into a Consensual Agreement and Undertaking with the General Insurance Council, whereby the following conditions were placed on their licence:

1. For a minimum period of five years from June 24, 2006, they must appoint an arm's length designated licensee approved by the General Insurance Council.
2. For a minimum period of five years from June 24, 2006, neither Special Risk Insurance Brokers Ltd. nor any of its employees may take an application for or place any insurance with an insurer that is not authorized to engage in the insurance business in Canada.
3. They must notify Council immediately if the approved designate Level 3 licensee ceases to represent them and they must immediately submit for Council's approval an acceptable arm's length replacement designate licensee.

Darwin Alexander Brown and Heartland Agencies Ltd. of Yorkton SK representing the Co-operators General Insurance Company, pleaded guilty to failing to act with integrity in their dealings with two clients when they accepted premium payments in the amount of \$14,645 from the clients over a two year period. The insurance for which the premiums were paid was never placed with an insurance company. The All Classes insurance licenses of Darwin Alexander Brown and Heartland Agencies Ltd., that were suspended at the time of the guilty plea, were cancelled for a minimum period of ten years.

Darwin Alexander Brown of Yorkton SK representing the Co-operators Life Insurance Company, was refused an application for a Life and Accident & Sickness licence. The refusal of licence by the Licensing Committee of the Life Insurance Council of Saskatchewan was a result of his demonstrated unsuitability to hold a licence as evidenced by his guilty plea before the General Insurance Council of Saskatchewan.

Failure to maintain Errors & Omissions Insurance (Life Council)

The following licensees were found to have failed to maintain valid Errors & Omissions Insurance and failed to notify the Life Insurance Council of Saskatchewan of the non-renewal of their Errors & Omissions Insurance.

Licensees, as a condition of licence, are required to maintain Errors & Omissions Insurance and where a licensee has not renewed their Errors & Omissions Insurance, they must immediately notify Council of that fact.

1. **Jake Dyck**, of Saskatoon SK representing the Industrial-Alliance Pacific Life Insurance Company received a thirty day suspension and, in addition, was required to attend a loss prevention course or seminar related to Errors & Omissions Insurance.
2. **Stanley Harvey Neuman**, of St. Albert AB representing The Equitable Life Insurance Company of Canada received a thirty day suspension.

CONTACT SECTION

Council Staff

Ernie Gaschler, Administrator

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Contact Information

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Insurance Councils of Saskatchewan
310 - 2631 – 28th Avenue
Regina SK S4S 6X3

Council Members

The names of the Council members may be obtained from the web site at the following addresses:

Life Council

www.skcouncil.sk.ca/life_council.htm

EXAM AND STUDY MATERIAL SECTION

Council licence examinations are administered through the Insurance Brokers Association of Saskatchewan.

Ingrid Stroeder, Examination Coordinator

Exam scheduling (306) 525-5900

www.ibas.sk.ca

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