

July 5, 2016

By Email

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Ms. Abram:

Re: Critical Illness Insurance Benefits sold as Creditors' Group Insurance under an RIA Licence

This is a follow up to my letter dated the 10th of February 2016 and our conversation on the 12th of July.

We seek to address Council's concerns with respect to the distribution of creditors' group insurance which includes a critical illness insurance benefit and which is distributed in Alberta under a restricted insurance agent's certificate of authority. Our hope is to address Council's concerns while at the same time ensuring that our members continue to be comfortable that they can offer creditors' group insurance products to residents of Alberta which may, among other benefits, include a critical illness insurance benefit.

Can a critical illness benefit be offered under Alberta Law?

The following provisions are found in the *Insurance Act* (Alberta) (the "Act") and the *Insurance Agents and Adjusters Regulation*, Alta Reg 122/2001 (the "Regulation"):

There is the definition¹ of credit related insurance:

1(5) "credit-related insurance" means

- (a) **creditor's group insurance**, or
- (b) insurance effected by a creditor against the risk of default by a debtor due to involuntary loss of employment.

The following is the definition of "creditor's group insurance"²:

¹ Section 1(5) of the *Regulation*

1(2) In subsections (3) and (5),

- (a) “**creditor’s group insurance**” means insurance effected by a creditor whereby the lives or **well-being** or the lives and **well-being** of a number of its debtors are insured severally under a single contract;

A group insurance policy issued to a bank which will pay all or part of the amount of a debt to the bank, in the event of an illness, insures the “well-being” of the group person insured. Such a group policy is therefore creditor’s group insurance within the definition set out in the *Alberta Regulation*. Such a group policy does insure the well-being of a number of debtors severally under a single contract, as anticipated by the definition of creditor’s group insurance under Alberta law.

The following are prescribed contracts of group insurance for the purposes of the definition of “insurance agent” under section 1(bb)(v) of the Act:

- (a) *creditor’s group insurance*;

There is also the Order of The Life Insurance Council and the General Insurance Council made in October of 2012 (the “Order”) which specifies the classes or types of insurance for the purposes of Section 454³ of the Act. Under the Order as currently drafted, a deposit taking institution may offer “credit related insurance”. As “credit related insurance” is not further defined within the Order, it must be taken to mean what is set out in the *Regulation*. The definition set out in the *Regulation* includes creditors’ group insurance which refers to “well-being”. (There is no reference to disability.)

Can Banks offer a critical illness benefit under The Bank Act and Regulations?

As you are aware, there are provisions of the *Bank Act* and the *Insurance Business (Banks and Banks Holding Company) Regulations* (the “*IBBR*”) which are relevant to the powers of banks to promote and administer insurance. In our view, the provisions of Alberta law summarized above align with these provisions of the *Bank Act* and the *IBBR*.

In particular, the *IBBR* grants to banks broad powers to promote authorized types of insurance.

² Section 1(2) of the *Regulation*

³ This is the section that states that a restricted insurance agency certificate may be issued to a deposit taking institution and such certificate of authority authorizes the holder and the holder’s employees to act or offer to act, subject to prescribed conditions and restrictions, as an insurance agent in respect of classes or types of insurance specified by the Minister (or in this case by the Minister’s delegate which is Council).

Creditors' disability insurance is one such authorized type of insurance. It is specifically defined in the *IBBR* as follows:

Creditors' disability insurance, in respect of a bank, means a group insurance policy that will pay all or part of the amount of a debt of a debtor to the bank, or to a loan company that is an affiliate of the bank, in the event of bodily injury to, or an illness or disability of,

(a) where the debtor is a natural person, the debtor or the spouse or common-law partner of the debtor,

(b) a natural person who is a guarantor of all or part of the debt,

(c) where the debtor is a body corporate, any director or officer of the body corporate, or

(d) where the debtor is an entity, any natural person who is essential to the ability of the debtor to meet the debtor's financial obligations to the bank or to the loan company; (assurance-invalidité de crédit)

This definition is such that banks are specifically empowered under the *IBBR* to offer, as an authorized type of insurance, creditors' group insurance that covers illness (including a critical one) regardless of whether the effect of such illness is to render the insured disabled from his or her employment.

As such, there is no apparent inconsistency as between the *IBBR* and the *Act* and the *Regulation* and all of those allow a deposit taking institution to offer creditors' group insurance that includes illness benefits, including critical illness benefits.

Policy reasons to support the offering of Creditors' Group Insurance with a Critical Illness Benefit

Even if Council does not accept what seems to us clear on the face of the *Alberta Act* and the *Regulation*, the matter can be resolved if Council accepts that a bank should be able to offer creditors' group insurance which covers loss of life, disability and critical illness.

While Disability Insurance provides a benefit for those Albertans who are working and become disabled, Critical Illness provides benefits regardless of the individual's employment status. This could be a person on voluntary unpaid leave, a stay-at-home mom or dad, or a person who is retired. The inclusion of the critical illness benefit was motivated by the reality that a debtor or the debtor's spouse may be in one circumstance at the time of enrolment and another over time and in the period preceding the time of claim. In short, creditors' coverage which includes a critical illness benefit is broader and better for the consumer than a product that does not include critical illness benefits.

In addition, the typical critical illness benefit within creditors' group insurance will cover a limited number of illnesses, e.g. life threatening cancer, heart attack, stroke, coronary artery bypass surgery, major organ failure requiring transplant, and paralysis. This is very different from individual critical illness insurance which typically covers upward of 30 different and complex

conditions. As a result, what is covered, and hence what is not covered, can be easily understood by the consumer at the time of enrolment. It is worth noting that should this situation change, i.e., Creditors' Group Insurance Critical Illness benefits become more complex, Section 507 of the Act would allow the Minister (and Council as his or her delegate) to prohibit the use of such a policy form.

Training of sales staff and consumer protection

CAFII member client representatives are required to undergo comprehensive and recurring product training and instruction on the enrolment, claims and complaints process to ensure that they provide consumers with accurate and reliable information. They are trained to point out features and limitations of the insurance and answer consumer questions. Their training ensures that representatives offering insurance have the knowledge and skills to do their jobs and serve clients well. The activities of our CAFII member client representatives – the majority of whom are salaried staff – are also well-supervised whether they work in branch or in client contact centres.

In the case of most CAFII members, the selling of creditor insurance products is federally regulated and consumers are well-protected through the financial institutions' compliance with the CBA Code of Conduct for Authorized Insurance Activities. This Code – part of the CBA's suite of Voluntary Commitments and Codes of Conduct – applies to all authorized insurance products promoted in Canada. The CBA's Voluntary Commitments and Codes of Conduct are non-legislated commitments that banks have made to their consumers in a number of areas. The banks' federal consumer regulator, the Financial Consumer Agency of Canada, oversees the banks' compliance with them and has enforcement powers through a variety of redress mechanisms.

All CAFII members also follow relevant CLHIA Guidelines, including Guideline G7 Creditor's Group Insurance, G9 Direct Marketing, and G5 Travel Insurance. These guidelines are in the public domain and CLHIA members are accountable to the public and regulators. In addition, CAFII members have been focused on consumer financial literacy for many years through the use of plain language and clear communication in their insurance products. Our members adhere to the FCAC's *Commissioner's Guidance on Clear Language (CG-3)* and the CLHIA's reference document *A Model Demonstrating Clear Communication Principles and Techniques Using Examples From Insurance Policies*. CAFII members provide marketing materials and insurance policies and certificates, detailing coverages and exclusions in a manner that is easy to understand; and they are always working to improve clarity. Consumers can take their time to do a full review of all materials during the "free look" period - typically 30 days - during which time they can cancel and receive a full premium refund.

As requested in our conversation of July 12, 2016, a sample of an application and certificate is included with this letter. For this purpose, I have included the TD Application for Mortgage Critical Illness and Life Insurance along with the Product Guide and Certificate of Insurance and could provide the same for our other member companies if you would find that helpful.

If Council feels that further clarity is required it could consider a revision to the Order. We have provided as Appendix “A” a mark-up of how Council could achieve additional clarity within an amended Order.

We hope you will find this information in this submission informative. Our hope is that after having reviewed our interpretation of the *Act* and *Regulation* you will conclude, as we have, that further clarity is not required based on the provisions of the *Act* and *Regulation*. If, however, you are of the view that further clarity is required, we hope you will be amenable to achieving that clarity through the simple amendments to the Order we have proposed in Appendix “A”.

We look forward to having a chance to discuss this this in further detail when this comes forward to Council. In the meantime, should you have any questions on anything contained in this letter, or have any additional questions, please do not hesitate to get in touch with me through our Executive Director, Brendan Wycks at ...

Sincerely,

Greg Grant
Board Secretary and Chair, Executive Operations Committee
Canadian Association of Financial Institutions in Insurance

Appendix “A”

[date]

**GENERAL INSURANCE COUNCIL
LIFE INSURANCE COUNCIL**

Acting under delegation from the Minister the General Insurance Council and Life Insurance Council herein specify the following classes or types of insurance for purposes of section 454 of the Insurance Act.

Equipment Warranty Insurance
Cargo Type
(Insurance covering goods in transit excluding carrier liability insurance)
Travel Insurance
Group Travel Insurance
Credit Related Insurance
(Covering loss of life, disability, injury or illness, or involuntary loss of employment)
Personal Accident Type
(Group Insurance covering injury due to accident and hospitalization)
Funeral Services Insurance Type

The following businesses or prescribed enterprises may apply for certificates to act as restricted insurance agents with respect to the classes/type identified.

Automobile Dealership: Equipment Warranty Insurance and Credit Related Insurance

Equipment Dealer: Equipment Warranty Insurance and Credit Related Insurance

Travel Agency: Travel Insurance

Transportation Company: Travel Insurance and Cargo Type

Deposit Taking Institution: Credit Related Insurance, Group Travel Insurance and Personal Accident Type

Sales Finance Company: Credit Related Insurance

Customs Broker: Cargo Type

Freight Forwarders: Cargo Type

Funeral Services Business: Funeral Services Insurance Type

This specification was made at properly conducted meetings of the General Insurance Council and Life Insurance Council and takes effect on []