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April 26, 2019

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Re: Guideline G19 – Compensation Disclosure in Group Benefits and Group Retirement Services

Thank you for your letter of April 8, 2019. We appreciate the opportunity to continue our discussion on CLHIA Guideline G19 with the group advisor community and remain committed to working closely with advisors to ensure a successful implementation for all stakeholders.

From the outset, we want to note that the CLHIA member companies fully recognize the importance and value that advisors bring to group customers. The intent of G19 is not, in any way, to undermine the independent advisor business model. We also value the feedback that advisors have provided on G19 and would very much like to continue to work with you, your members and others to implement appropriate compensation disclosure practices for group products.

As you are aware, the CLHIA is a not-for-profit association whose members represent 99% of the Canadian life and health insurance industry. Membership in CLHIA is voluntary. The activities of the Association are directed by a Council, to which each member company names a representative and which meets at least once a year. Between meetings of Council, a Board of Directors, elected annually, is responsible for overseeing the Association's affairs.

CONTEXT FOR CLHIA GUIDELINES AND G19 IN PARTICULAR:

One of the CLHIA's strategic objectives is to foster sound and equitable principles in the conduct of the business of member life and health insurers that carry on business in Canada. CLHIA Guidelines are designed to promote consistent practices and standards for the life and health insurance industry and to reinforce the interests of consumers and the industry. Guidelines are voluntary, although it is expected that member companies will follow the Guidelines. They do not flow from delegated legislative or regulatory authority, as you suggest, but are based on standards of conduct that are deemed appropriate to provide guidance to member companies. The Guidelines are frequently brought forward after discussions with regulators or policymakers to address areas of concern or introduce changes to meet regulatory expectations.

For over a decade, the CCIR, CISRO, CLHIA and other industry stakeholders, including some copied on this letter, have been engaged in discussions about market conduct issues, including conflict of interest and compensation disclosure practices. From our perspective, these discussions are productive and have resulted in standards and practices that serve customers well. Some milestones include CLHIA Guideline G14 (2007), *Confirming Advisor Disclosure*, which deals with insurer practices to confirm that advisors are making appropriate disclosure about themselves and potential conflicts of interest when selling individual insurance products; the update to Guideline G2 (2009), *Individual Variable Insurance Contracts Relating To Segregated Funds*, to ensure that segregated fund owners began receiving Fund Fact documents that provided information about compensation structures and certain charges at time of sale and on an annual basis; and the CCIR's 2017 position paper on individual segregated funds that recommended insurers change disclosure on individual segregated funds and the resulting work that is underway by the industry. At some points in these discussions, members of the CCIR and CISRO have asked about group products. The market structures for the distribution of group products and the nature of the products themselves are such that it would be inappropriate to try to extend CLHIA Guideline G2 or G14 to these products.

As you are aware, a potential conflict of interest exists in cases where advisors are providing independent advice to plans sponsors, yet are paid by the insurer to distribute their product. As the CCIR has noted, one way to mitigate conflicts of interest is through appropriate disclosure. Disclosing to the group customer (i.e., the plan sponsor) what the intermediary is being paid will help to educate the group customer on the cost of the advice they are receiving and the range of services available to them from intermediaries. We believe that the insurer level compensation disclosure established under the Guideline will help to ensure that potential conflicts of interest are managed through equitable principles and consistent practices for compensation disclosure across the industry.

COMMENTS ON POINTS RAISED IN YOUR RECENT LETTER:

We appreciate the opportunity to respond to the issues raised in your letter. In the paragraphs below we focus on a few misunderstandings and provide a general response to the issues raised.

We have already noted that our guidelines are not based on delegated authority but on standards of conduct that are deemed appropriate to provide guidance to member companies. There also appears to be a misunderstanding regarding the application of G19 to certain types of group advisors. Insurers will disclose compensation in accordance with G19 for all group advisors, including career/captive advisors. The only exception to this requirement is for employees of member companies. From a conflict of interest management perspective, we are of the view that it is apparent to a plan sponsor that an insurer's employee represents the insurer and is paid by the insurer. The insurer's employee does not hold themselves out as providing independent advice to the plan sponsor and thus the potential for conflict of interest that exists with an intermediary representing the plan sponsor but who is being paid by the insurer does not arise.

You have made reference to the Insurance Core Principles (ICPs) in your letter but we understand the part you have summarized from ICP 18.0.1 as commenting on the supervisor's responsibility to hold the insurer accountable for the actions of its direct sales staff. This is picked up again at 18.4.5 which states the "governance of an insurer's direct sales staff is the responsibility of the insurer". We do not understand this ICP to be commenting on compensation disclosure standards.

In our view the more relevant part of the ICPs which directly speaks to the matters at hand is found in ICP 19 and in particular 19.3, which we have set out in full as *Appendix "A"* to this letter. We would, in particular, draw your attention to ICPs 19.3.1, 19.3.2, 19.3.7 and 19.3.8. These sections of the ICPs speak directly to what G19 is trying to address. In particular, the need to "take all reasonable steps to identify and avoid or manage conflicts of interest" (19.3.7) and through appropriate disclosure "enabling the customer to determine whether the sale may be influenced by financial or non-financial incentives" (19.3.8).

We believe that G19 encourages competition and will benefit consumers. It does not limit the amount of compensation which may be paid by insurers to intermediaries, nor does it prevent intermediaries from being compensated by their clients. We would note that many intermediaries run successful businesses today based on a client pay model. Transparency allows consumers to make informed purchasing decisions regarding products and services. This is central to the core purpose of the *Competition Act* as espoused in section 1.1 of the *Act*, to "provide consumers with competitive prices and product choices". With respect to the Competition Bureau's Trade Associations brochure, for the reasons indicated above, we do not believe we are in any way infringing the principles outlined in that brochure, or in the *Competition Act* itself.

Finally, you mistakenly suggest that in some manner G19 will permit insurers to "monitor the compensation practices of competitors". The compensation paid to an independent group advisor is already known by the insurer and the advisor. G19 will ensure that the group customer is also informed either by the advisor directly or, failing that, by the insurer. No other insurer will be made privy to that information through this process.

As noted above CLHIA member companies are very cognizant of the tremendous value that the advisor community brings to their group customers and the industry as a whole and G19 is not, in any way, intended to undermine the independent advisor business model. The CLHIA and its member companies remain strongly committed to providing compensation disclosure for group benefits and group retirement services customers. We have been meeting and working with you, your members and others to facilitate the implementation of G19 and look forward to that work continuing.

I would, of course, be pleased to meet with you again to discuss this matter further if it would be of assistance.

Yours sincerely,

Stephen Frank

Encl:

APPENDIX A - INSURANCE CORE PRINCIPALS EXCERPTS (NOV 2018)

ICP 19 Conduct of Business.

The supervisor requires that insurers and intermediaries, in their conduct of insurance business, treat customers fairly, both before a contract is entered into and through to the point at which all obligations under a contract have been satisfied.

…

19.3 The supervisor requires insurers and intermediaries to avoid or properly manage any potential conflicts of interest.

19.3.1 In their dealings either with each other or with customers, insurers and intermediaries may encounter conflicts of interest.

19.3.2 Where conflicting interests compete with duties of care owed to customers, they can create risks that insurers and intermediaries will not act in customers' best interests. Conflicts of interest can arise from compensation structures as well as other financial and non-financial incentives.

19.3.3 Where compensation structures do not align the interests of the insurer and intermediary, including those of the individuals carrying out intermediation activity, with the interests of the customer, they can encourage behaviour that results in unsuitable sales or other breach of the insurer's or intermediary's duty of care towards the customer.

19.3.4 Other incentives that may create a conflict of interest include performance targets or performance management criteria that are insufficiently linked to customer outcomes. They also include the soliciting or accepting of inducements where this would conflict with the insurer's or intermediary's duty of care towards its customers.

19.3.5 An inducement can be defined as a benefit offered to an insurer or intermediary, or any person acting on its behalf, incentivising that firm/person to adopt a particular course of action. This can include, but is not limited to, cash, cash equivalents, commission, goods and hospitality. Where intermediaries who represent the interests of customers receive inducements from insurers, this could result in a conflict of interest that could affect the independence of advice given by them.

19.3.6 As an insurance intermediary interacts with both the customer and the insurer, an intermediary is more likely than an insurer to encounter conflicts of interest. For an insurance intermediary, examples of where a conflict of interest may occur include:

- where the intermediary owes a duty to two or more customers in respect of the same or related matters – the intermediary may be unable to act in the best interests of one without adversely affecting the interests of the other;

- where the relationship with a party other than the customer influences the advice given to the customer;

- where the intermediary is likely to make a financial gain, or avoid a financial loss, at the expense of the customer;

- where the intermediary has an interest in the outcome of a service provided to, or a transaction carried out on behalf of, a customer which is distinct from the customer's interest;

- where the intermediary has significant influence over the customer's decision (such as in an employment relationship) and the intermediary's interest is distinct from that of the customer;

- where the intermediary receives an inducement to provide a service to a customer other than the standard or "flat" fee or commission for that service; and

- where the intermediary has an indirect interest in the outcome of a service provided to, or a transaction carried out on behalf of, a customer due to an association with the party that directly benefits (such as soliciting insurance products which are sold together with other financial services in a bancassurance relationship) and where such indirect interest is distinct from the customer's interest (such as the cross-selling or self-placement of business).

19.3.7 The supervisor should require that insurers and intermediaries take all reasonable steps to identify and avoid or manage conflicts of interest, and communicate these through appropriate policies and procedures.

19.3.8 Appropriate disclosure can provide an indication of potential conflicts of interests, enabling the customer to determine whether the sale may be influenced by financial or non-financial incentives. It can thus help in managing conflicts of interest where it empowers consumers to identify and challenge or avoid potentially poor advice or selling that may arise through the conflict of interest. However, managing conflicts of interest through disclosure or obtaining informed consent from customers, has limitations, including where the customer does not fully appreciate the conflict or its implications, and could be seen to place an unreasonable onus on the customer.

19.3.9 Where conflicts of interest cannot be managed satisfactorily, this should result in the insurer or intermediary declining to act. In cases where the supervisor may have concerns about the ability of insurers and intermediaries to manage conflicts of interest adequately, the supervisor may consider requiring other measures.