

File #11.01

June 24, 2008

TO: ALL LICENSED INSURANCE COMPANIES

**Re: Market Conduct Survey**

On April 22, 2008, we sent out a Market Conduct Survey in relation to insurance companies obligations under certain sections of the *Insurance Act*.

The Survey generated a number of questions from the industry. As a result, we have agreed to issue the attached Backgrounder to assist industry in their understanding of the legislation and the questions in the Survey.

In addition, the deadline for completion of the Survey has been extended to July 31, 2008.

Yours sincerely,

[ORIGINAL SIGNED]

Arthur Hagan, FCIP, CRM  
Deputy Superintendent of Insurance

AH/pc

Attachments

## BACKGROUNDER ALBERTA RISK BASKED MARKET CONDUCT SURVEY

As a result of discussions with the Insurance Bureau of Canada, we have agreed to provide Alberta licensed insurance companies with a Backgrounder on the requirements under the legislation that forms part of the market conduct survey which was recently sent out. The survey relates to sections 452, 460, 485, 486 and 499 of the *Insurance Act* (Act). These sections are attached for information.

Under Subsections 452(4) and (5) of the Act, no insurer may employ an individual to act as an insurance agent or allow a business (agency) to act as an insurance agent on their behalf unless the individual or business holds a valid and subsisting insurance agent's certificate of authority. Subsection 452(4) applies to those companies that use company agents or in-house call centre employees in the sale of insurance. Subsection 452(5) applies to companies using independent agents, outsourced call centres and restricted insurance agents.

Question 2a in the questionnaire relates to subsections 452(4) and (5). Insurance companies, whose employees sell insurance, must ensure these employees have a valid and subsisting insurance agent certificate of authority for the class of insurance the employee is selling. Companies who use independent agents (brokers) to sell their insurance must ensure the agency has a valid and subsisting insurance agent certificate of authority for the class of insurance being sold. It is the agency's responsibility to ensure their employees, who sell insurance, have a valid and subsisting insurance agent certificate of authority.

Under subsection 460(4) of the Act, no insurer may enter into a contract with an independent contractor or business to act as an adjuster unless the independent contractor or business holds a valid and subsisting adjuster's certificate of authority.

Question 2b in the questionnaire relates to subsection 460(4). Insurance companies using independent adjusting firms to adjust policyholders' claims must ensure the firm holds a valid and subsisting insurance adjuster's certificate of authority. It is the firm's responsibility to ensure that any of their employees who adjust claims have a valid and subsisting insurance adjuster's certificate of authority.

A business (includes sole proprietor) acting as an insurance agent must have their application for insurance agent certificate of authority recommended by an insurer that is licensed to undertake a class of business that the business wishes to sell and the insurer must have entered into an agency contract with the business. Every business that holds an insurance agent certificate of authority must have a designated representative whose application for insurance agent certificate of authority must also be recommended by the insurer who recommended the business's certificate of authority. The designated representative of a sole proprietorship is its sole proprietor, unless the proprietor designates someone else to be the designated representative.

The designated representative of a business is then responsible for the recommendation required on their employee's application for insurance agent certificate of authority. Where

an insurer recommends a designated representative's insurance agent certificate of authority, section 485(1) of the Act requires the insurer to establish reasonable screening procedures to determine whether the person is suitable to act as an insurance agent and use those procedures to screen an individual or sole proprietor before making a recommendation. Question 2c in the questionnaire relates to insurers' requirements under subsection 485(1) of the Act.

Organizations selling insurance incidental to their core business activity may be issued a restricted insurance agent certificate of authority authorizing the organization's employees to sell certain classes of insurance. Restricted insurance agent certificates of authority have been issued to deposit taking institutions, automotive dealers, travel agencies, custom brokers, freight forwarders and construction, marine and farm equipment dealers.

Under section 486 of the Act, every insurer on behalf of which the restricted insurance agent is marketing insurance must establish reasonable procedures to ensure that personnel marketing insurance for the holder of the restricted insurance agent's certificate of authority are knowledgeable about the insurance being marketed, and use those procedures. Question 2d in the questionnaire relates to insurers' requirements under section 486.

Under section 499 of the Act, insurers are prohibited from paying any commission or compensation to any person acting or offering to act as an insurance agent in Alberta unless that person is authorized to act as an insurance agent under the Act. In most cases insurers pay commission to a corporation that holds an insurance agent certificate of authority. Question 2e relates to an insurer paying commission to the corporation agency.

Please note the time period for completion of the survey has been extended to July 31, 2008. If as a result of the information provided in this Backgrounder companies wish to revise their submitted survey, they should complete a new survey and attach a notice to it indicating that the new document replaces the previously submitted document.

As a result of comments made about some of the questions in the survey the following information is provided.

1. Any comment a company wishes to make with respect to a particular answer to a question can be made within the open space under each question.
2. If the response to questions contains information that the company considers being confidential trade or commercial information, they may specify that the information is being provided in confidence. Please also note the provisions of section 816 of the *Insurance Act* relating to confidentiality of insurer information may be applicable to the information being provided by a company.
3. Questions 2, 6, and 7 in the survey require companies to provide documentation relating to their answers to these questions. Documentation can be a description of particulars of a computer compliance system or pages from a compliance system policy and procedure manual etc.
4. The information requested in question 7 is not specific to just the legislative sections mentioned in question 2.

**452(1)** No business may act or offer to act as an insurance agent in respect of a class of insurance unless the business holds a valid and subsisting insurance agent's certificate of authority for that class of insurance.

**(2)** No individual may act or offer to act as an insurance agent in respect of a class of insurance unless the individual

- (a) is an employee or independent contractor of a business that holds a valid and subsisting insurance agent's certificate of authority for that class of insurance and the employee or independent contractor holds a valid and subsisting insurance agent's certificate of authority for that class of insurance,
- (b) is an employee of a business that holds a valid and subsisting restricted insurance agent's certificate of authority for that class of insurance, or
- (c) is an employee of an insurer that issues insurance of that class and the employee holds a valid and subsisting insurance agent's certificate of authority for that class of insurance.

**(3)** No business that holds an insurance agent's certificate of authority, other than a restricted insurance agent's certificate of authority, may employ an individual or enter into a contract with an individual as an independent contractor to act as an insurance agent unless the individual holds a valid and subsisting insurance agent's certificate of authority.

**(4)** No insurer may employ an individual to act as an insurance agent unless the individual holds a valid and subsisting insurance agent's certificate of authority.

**(5)** No insurer may allow a business to act as an insurance agent on its behalf unless the business holds a valid and subsisting insurance agent's certificate of authority.

#### **Adjuster's certificate**

**460(1)** No business may act or offer to act as an adjuster in respect of a contract of insurance unless

- (a) the business holds a valid and subsisting adjuster's certificate of authority, or
- (b) the business holds a valid and subsisting insurance agent's certificate of authority for the class of insurance under which the contract of insurance falls, the certificate is not a restricted insurance agent's certificate of authority, the amount of the loss under the contract is less than the prescribed amount and the business is the business that sold the contract of insurance.

**(2)** No individual may act or offer to act as an adjuster in respect of a contract of insurance unless

- (a) the individual is an employee or independent contractor of a business that holds a valid and subsisting adjuster's certificate of authority and the employee or independent contractor holds a valid and subsisting adjuster's certificate of authority,
- (b) the individual is an employee or independent contractor of a business that holds a valid and subsisting insurance agent's certificate of authority and the individual holds a valid and subsisting insurance agent's certificate of authority for the class of insurance under which the contract of insurance falls, the amount of the loss under the contract is less than the prescribed amount and the business is the business that sold the contract of insurance,
- (c) the individual is an employee of an insurer and the contract was issued by that insurer or by an insurer that is an affiliate of that insurer, or
- (d) the contract is a reciprocal contract of indemnity or inter-insurance of a licensed reciprocal insurance exchange and the individual is the principal attorney of the exchange.

(3) No business that holds an adjuster's certificate of authority may employ an individual or enter into a contract with an individual as an independent contractor to act as an adjuster unless the individual holds a valid and subsisting adjuster's certificate of authority.

(4) No insurer may enter into a contract with

- (a) an individual as an independent contractor, or
- (b) a business

to act as an adjuster unless the individual or business holds a valid and subsisting adjuster's certificate of authority or meets the requirements of subsection (1)(b) or (2)(b).

#### **Screening procedures**

**485(1)** Every insurer that recommends an individual or sole proprietor to be issued an insurance agent's certificate of authority must

- (a) establish reasonable screening procedures to determine whether the individual is suitable to act as an insurance agent, and
- (b) use those procedures to screen an individual or sole proprietor before making a recommendation.

(2) Repealed 2001 c9 s10.

(3) Every business that acts as an adjuster that designates an individual to be its designated representative must

- (a) establish reasonable screening procedures to determine whether the individual is suitable to act as an adjuster, and
- (b) use those procedures to screen an individual before making a designation.

(4) Every designated representative who recommends that an individual be issued an insurance agent's certificate of authority must

- (a) establish reasonable screening procedures to determine whether the individual is suitable to act as an insurance agent, and
- (b) use those procedures to screen an individual before making a recommendation.

(5) Every designated representative who recommends that an individual be issued an adjuster's certificate of authority must

- (a) establish reasonable screening procedures to determine whether the individual is suitable to act as an adjuster, and
- (b) use those procedures to screen an individual before making a recommendation.

RSA 2000 c1-3 s485;2001 c9 s10

#### **Knowledgeable personnel**

**486** Every holder of a restricted insurance agent's certificate of authority and every insurer on behalf of which the holder is marketing insurance must

- (a) establish reasonable procedures to ensure that personnel marketing insurance for the holder are knowledgeable about the insurance being marketed, and

- (b) use those procedures.

**Dealing with unauthorized insurance agents**

**499(1)** No insurer, no officer, employee or agent of an insurer and no insurance agent may, directly or indirectly, pay or allow, or offer or agree to pay or allow, any commission or other compensation or anything of value to any person acting or offering to act as an insurance agent in Alberta, unless that person is authorized to act as an insurance agent under this Act.

**(2)** Subsection (1) does not apply to the payment

- (a) by an insurance agent of part of the agent's commission to insurance agents outside Alberta,  
or
- (b) of renewal commissions under the terms of an agency contract.