

INSURANCE COUNCIL OF BRITISH COLUMBIA

SALE OF EXEMPT MARKET SECURITIES BY LIFE INSURANCE AGENTS

On July 4, 2011, the Insurance Council of British Columbia (“Council”) published Notice ICN #11-003, *Duties and Responsibilities of Life Insurance Agents Involved in the Sale of Exempt Market Securities*, which set out the responsibilities of life insurance agents (“life agents”) who engage in the sale of exempt market securities to their clients. Council stated a life agent has an obligation to ensure any discussions with clients about exempt market securities must include a proper assessment of the client’s needs, an understanding of the risks and that any recommendation is consistent with the client’s objectives.

There are two issues arising from Notice ICN #11-003 (“Notice”) that Council wants to clarify. First, while the focus of the Notice was the sale of exempt market securities, life agents are advised that the same expectations apply to all financial products or advice, whether regulated or unregulated. In particular, when a life agent facilitates the sale of a non-insurance financial product to a client, the life agent must take into consideration information already gathered about that client prior to completing the sale. Council’s position is that a life agent has the same duty of care to a client, regardless of whether the financial product or advice relates to insurance.

Second, Council’s Notice reminds life agents of their obligations under the *Securities Act* to comply with all registration requirements when involved in the sale of exempt market securities. Specifically, the most common registration exemption relating to the sale of exempt market securities in British Columbia is BC Instrument #32-513 *Registration Exemption for Trades in Connection with Certain Prospectus-Exempt Distributions* (“BCI 32-513”). This exemption limits how an exempt market security can be sold and establishes specific conditions. Most importantly, if relying on BCI 32-513, a person cannot recommend, advise or otherwise represent to a client that an exempt market security is suitable for them.

As BCI 32-513 includes conditions that require the seller not recommend, advise or otherwise represent to a client that exempt market securities are appropriate for them. Life agents engaging in the sale of exempt market securities cannot meet both their obligation as a life agent and the conditions of BCI 32-513. Therefore, a life agent cannot rely on BCI 32-513 when discussing exempt market securities with a client.

Council recommends that life agents first determine, either by obtaining legal advice or by contacting the British Columbia Securities Commission, the appropriate securities registration before engaging in the sale of exempt market securities.

If you have any questions regarding this Notice, please contact Regulatory Services by calling Council’s main number and at the prompt press “2”.

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NOTICE