

# **LIFE INSURANCE COUNCIL OF SASKATCHEWAN**

## **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.

# LIFE INSURANCE COUNCIL OF SASKATCHEWAN

## Guidance Note #1

### **Subject Matter: 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:

1. Investment time horizon;
2. Risk tolerance;
3. Investment knowledge;
4. Investment objective; and
5. 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:

1. A record of consumer contact.
2. Documentation that determines the consumer’s risk tolerance, time horizon, investment knowledge and investment objectives.
3. A needs assessment.
4. A signed acknowledgment from the consumer of having received the leveraged loan risk disclosure document if applicable.
5. A signed copy of a limited transaction authorization.
6. 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.