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Financial Services Regulatory Authority of Ontario November 8, 2019
5160 Yonge St, 16th Floor,
Toronto, Ontario M2N 6L9

Attention: Mark White – Chief Executive Officer

Re: Draft F2020-21 FSRA Priorities and Budget - Consultation Document October 18, 2019

This is our submission for the above Consultation Document for the 2020-2021 Priorities and Budget.

To begin with, we find it very troubling that FSRA has not included any consumers in their Stakeholder Advisory Committees (SAC) as they said they were going to do. We are aware that consumers applied but none were included in the SAC Committees. We would like to know why consumers were left out?

Our focus is on insurance companies using third party distributors such as banks to sell insurance products without a Provincial Insurance License and FSCO / FSRA not enforcing compliance with the Insurance Act. **Not licensing third party distributors is a lack of consumer protection and oversight.**

We are, once again, wondering why FSRA is ignoring a topic that continues to cause many problems for consumers. The fact is that FSRA has failed to place any priority on a public interest issue that is very detrimental to consumers and the general public. We are referring to Incidental Sales of Insurance (ISI) – especially Creditors Group Insurance (CGI) – that is sold by third party distributors such as banks.

The current status in Ontario is that the provincial government is allowing banks (who are a third party distributor) to sell insurance products without an Ontario Provincial Insurance License. Other provinces across Canada have taken steps to at least issue a **"Restricted License"** but Ontario has not done so!

The question is: why not? This is negligence on the part of the Ontario government. According to the Insurance Act, banks need to be licensed by the provincial governments, otherwise they are acting as "unlicensed" agents. It does not matter whether it is "enrolling" or "selling" – it is still dealing in the business of insurance because the bank solicits insurance application forms, collects premiums and receives a fee for their services. That has been confirmed in the 2009 Royal Bank Decision and since that Decision was **NOT appealed by the Royal Bank then it still stands as the current law in Ontario!**

The problem continues to be that FSCO / FSRA have not been enforcing the Insurance Act when it comes to banks selling insurance products without a license. Banks need to be licensed if they are going to engage in the business of selling insurance. **This is a public interest issue that needs to be corrected. It is a systemic problem that continues to be ignored by the provincial government at a cost to consumers.** The BC government issued their FICOM Bulletin 15-002 about this very problem!

We are aware that the provinces have the authority to regulate how banks sell insurance based on the very significant Supreme Court of Canada - Canadian Western Bank vs. Alberta decision from 2007.

The other court decision from 2009 - Royal Bank of Canada vs. Mijagic - confirms what this is all about and clarifies that banks are acting as "unlicensed agents" **which is a breach of the Insurance Act.**

The following quote (which appears on the FSCO website) is directly connected to this very issue:
"If consumers purchase items or insurance through individuals or companies that are not licensed in the province, they are not protected under the Insurance Act and the regulations that govern Ontario's licensed insurance companies and agents".

We are also aware that the FCAC Report from March 20, 2018 confirmed that “**Credit Insurance**” products is what the FCAC received the most complaints about. Based on that alone, the provincial government should have stepped up and taken some action to correct this for the people of Ontario!

Of course nothing was done – so it is business as usual in Ontario for the big banks! It is very troubling to see the new agency, FSRA, continue what FSCO was doing – being accommodating to CLHIA & CAFII.

Insurance products sold under the L&H sector are being taken over by the banks without any oversight. At the very least - the provincial government should require that banks obtain a “**restricted license**”!

Furthermore, relying on Managing General Agents (MGA,s) will just make things worse. We all know the main loyalty of the MGA's is to the insurance company that they represent – **not to consumers**. The relaxing of underwriting standards in order to increase commissions may be a big problem with MGA's!

The “*Fair Treatment of Consumers*” guideline issued by FSCO/FSRA is primarily geared towards licensed entities. However, since a majority of consumers are now obtaining their insurance products directly from banks, how are those consumers being protected? What is the provincial regulator regulating?

As the Provincial Regulator, FSRA has a responsibility to protect consumers and enforce the following:

- 1. Insurance companies and banks are in breach of the Ontario Provincial Insurance Act.**
- 2. FSCO / FSRA are not enforcing compliance with the Ontario Provincial Insurance Act.**
- 3. FSCO / FSRA are not fulfilling the mandate outlined in their Acts to protect consumers.**

The “**administrative practice**” of allowing industry self-regulation being used by FSCO / FSRA **by not** licensing third party distributors such as banks to sell insurance products in Ontario is a clear breach of the Ontario Provincial Insurance Act. **Self-regulation is like having the fox guarding the hen house!**

We are – once again - asking for some clarification about this topic since there is no regulation of these products! What is FSRA going to do about this important public interest issue that still needs to be addressed as soon as possible? This is a lack of consumer protection which places consumers at risk.

It is disappointing to see that FSRA – again – has made no mention of reviewing regulating ISI products!

The solution is very clear - enforce licensing of third party distributors! Why is FSCO / FSRA allowing insurance companies to use third party distributors such as banks to sell insurance products without a Provincial Insurance License? It seems like changing the name from FSCO to FSRA was just a sham!

Managing General Agents (MGA's) will not solve this problem! It's just a way to make more money and will not improve consumer protection for the general public - the regulator should be regulating!



Ernie Dellostritto