



Canadian Life & Health
Insurance Association
Association canadienne des
compagnies d'assurances
de personnes

August 25, 2023

Andrea Foy
Senior Manager, Licensing and Title Protection
Financial Services Regulatory Authority
25 Sheppard Ave W Suite 100
North York, ON, M2N 6S6
Submitted by email to: andrea.foy@fsrao.ca

Re: FSRA Consultation on Proposed Guidance—Public Warning Notices

Dear Ms. Foy,

The Canadian Life and Health Insurance Association (CLHIA) appreciates the opportunity to provide feedback to the Financial Services Regulator Authority of Ontario (FSRA) on its proposed Guidance on Public Warning Notices (“the Guidance”).

About the CLHIA

The CLHIA is a voluntary association whose member companies account for 99 per cent of the life and health insurance business in Canada. These insurers are significant contributors to Ontario and its economy. They provide financial security to about 11 million Ontarians and made over \$50 billion in benefit payments in 2021 (of which 90 per cent went to living policyholders as annuity, disability, supplementary health, or other benefits with the remaining 10 per cent to life insurance beneficiaries). In addition, life and health insurers have more than \$382 billion invested in Ontario's economy.

General Comments

The life and health insurance industry supports FSRA's efforts to inform the public of unlicensed or improper activity in regulated financial services industries. Further, we believe FSRA has the opportunity through this consultation to increase disclosure and collaboration in the industry.

We would encourage FSRA to provide first-step notice to insurers and other regulated entities that a public warning may be issued at the same time FSRA notifies the insurance agent. First-step notice should be provided regardless of whether the unlicensed or improper activity is associated with an insurer's products. The industry can provide valuable information and context that FSRA may not already be aware of. As part of the public warning process, insurers want to support FSRA through information sharing and increased monitoring to ensure individuals and entities engaging in unlicensed activities or misconduct can be appropriately reprimanded.

However, we strongly believe that FSRA should publish the procedures they use when deciding to impose a public warning notice. We would support the publication of procedures for imposing a public warning notice similar to the [procedures FSRA has published for imposing administrative monetary penalties](#).

The procedures should address the following:

- Details on how FSRA will exercise its discretion to impose public warning notices for improper dealing and unlicensed activity;
- Ensuring procedural fairness for individuals and entities under investigation (e.g. right to respond, right to appeal, etc.); and
- Ensuring that the information and identification included in public warning notices is accurate prior to publication.

Specific Comments

Purpose and Scope

FSRA states that the purpose of the public warning notice is to “notify consumers/the general public about unlicensed activity, or other improper dealings with FSRA regulated products and services, and the basis for such warning.” However, the Guidance focuses primarily on unlicensed activity and not on other improper activity. FSRA needs to elaborate on what constitutes “improper dealings” and what the threshold is for issuing a notice in relation to this type of activity.

It would also be helpful if FSRA could clarify if they are intending to capture only blatant engagement in unlicensed activities vs. an inadvertent temporary lapse of license where a qualified individual/entity may have erred in license renewal, for example. The industry would only anticipate a notice for the second group in instances where there was no corrective action taken by the party involved.

Processes and Practices

As noted in the General Comments section, the industry believes that the Guidance needs to be clearer about the processes for issuing a public warning notice. Also as noted, further detail is needed about how FSRA will exercise its discretion and will ensure procedural fairness for individuals and entities subject to public warning notices.

Process

As mentioned, insurers would value the opportunity to be notified that there is an investigation underway, regardless of whether they are named in the notice, well before a public warning notice is issued. If a notice will include mention of an insurer’s name, it is critical for FSRA to make the insurer aware and engage with the insurer in advance of a publication. It is possible that an insurer is contracted with an advisor subject to a public warning notice, but the unlicensed or improper activity is not associated with that insurer’s products.

A fundamental component of the process should be that FSRA also engages with the individuals or entities to be named and that they are offered the opportunity to respond to any allegations of unlicensed or improper activity.

Given how damaging a public statement can be to an individual or company's reputation and that the damage cannot be reversed even if the appeal is successful, any public warning notice should only be issued after all means of recourse (e.g., appeals) are exhausted.

FSRA's warning process needs to include a way of clearly identifying the offending person from other persons with the same name, perhaps by way of their business address(es). The potential damage to the reputation of a compliant and licensed agent who shares the same name with an individual engaged in unlicensed activity or misconduct cannot be discounted. If the advisor who is the subject of the public warning notice is licensed by FSRA, their registration number should be included in the notice.

Thresholds

One of the factors for issuing a public warning notice is that there is a clear indication of improper dealings or unlicensed activities. Will FSRA have a formal process for establishing non-compliance/breaches before issuing the public warning notice? If so, this process should be referenced in the Guidance—for example as an appendix.

Timing

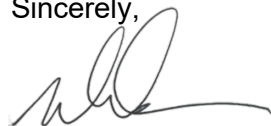
The industry has a number of questions for clarification regarding the fact that public warning notices will be available on FSRA's website in perpetuity:

- Will public warning notices be available on the FSRA website in perpetuity if the issue has been corrected?
- Will there be a process for requesting the removal of the public warning notices in certain instances/after certain timelines?
- Will FSRA update the warnings if an individual or entity corrects the behaviour that led to the warning (for example, a warning is issued because an individual or entity is unlicensed, and the party subsequently obtains the required license(s)) or in instances where there has been a misunderstanding? If so, would any updates to warnings be released in the same manner as the original warning so that the public is easily aware of the updates?

Conclusion

Thank you for the opportunity to provide the industry's feedback on the proposed guidance on Public Warning Notices. We would be pleased to discuss any questions you may have or to provide additional information if it would be helpful.

Sincerely,



Luke O'Connor, Assistant Vice-President, Market Conduct Policy and Regulation