



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

February 23, 2024

Mr. Huston Loke  
Executive Vice President, Market Conduct  
Financial Service Regulatory Authority of Ontario  
25 Sheppard Ave West, Suite 100  
Toronto, ON M2N 6S9

Submitted by email to: [huston.loke@fsrao.ca](mailto:huston.loke@fsrao.ca)

**Re: Consultation on proposed Guidance: Life Insurance Agent and MGA  
Licensing Suitability**

Dear Huston,

The Canadian Life and Health Insurance Association (“CLHIA”) appreciates the opportunity to provide feedback to the Financial Services Regulatory Authority of Ontario (“FSRA”) on its proposed *Guidance on Life Insurance Agent and Managing General Agent (“MGA”) Licensing Suitability* (“the Guidance”).

We also appreciate the collaborative approach FSRA is taking to enhance regulatory oversight of the distribution of insurance.

Addressing oversight gaps in the life insurance sector is a top priority for life and health insurers. We appreciate FSRA’s intent to better protect consumers by incorporating clearer expectations on MGAs and insurers through new FSRA Guidance and a new FSRA Rule. However, while we agree with the intent of the proposals, we have significant concerns with the proposed use of FSRA Guidance and Rules to make this change.

For the reasons noted below, we believe that the better approach to enhance consumer protection is to provide clarity on accountabilities between life insurers, MGAs and agents and to incorporate these expectations in legislation rather than relying on Guidance and Rules.

### **Recognizing MGAs in legislation, not guidance, would better protect consumers**

Life insurers, agents and MGAs<sup>1</sup> all play a key role in today’s insurance marketplace to promote the fair treatment of customers (“FTC”). However, the *Insurance Act* has fallen

---

<sup>1</sup> The term MGA includes National Accounts and Associate General Agencies.

behind the evolution of the industry and does not reflect any roles and responsibilities for MGAs.

Recognizing MGAs in the *Insurance Act* and its regulations will ensure there are well understood, common and consistent standards for accountability and oversight in distribution networks across the industry. This leads to more consistent experiences for customers. Clarity and consistency will also give FSRA the ability to conduct swifter investigations and take more timely action to protect the consumer.

In turn, this will increase customer confidence in the marketplace and help to ensure that they will be treated fairly by all participants in the life insurance sector.

Regulatory guidance is most effective when it interprets the law. In this case, the legal framework is lacking – the *Insurance Act* must be modernized to better reflect how insurance is distributed in Ontario.

We therefore recommend that the *Insurance Act* and its regulations be amended to reflect the role of MGAs in the distribution network and provide clarity that life insurers, MGAs and agents have separate and distinct roles and responsibilities.

### **Insurers' overall line of sight is limited and ineffective**

The proposed Guidance establishes how FSRA will assess the suitability of an MGA for the purpose of obtaining a corporate life agent license. However, it doesn't clarify what the MGA's responsibilities are in the distribution chain given the unique influence and the view they have of their agents' business conduct and the overall life insurer and customer relationships. The role that MGAs play in facilitating and overseeing the sale and ongoing service of insurance has a direct impact on their advisors and their customers.

In this context, no Guidance can address the structural limitations that currently prevent the appropriate monitoring of behaviours to enhance consumer protection. Life insurers only have oversight and influence over an MGA's activities as it relates to the life insurer's own products. Life insurers cannot, in practice, supervise and oversee the entirety of the MGAs distribution activities.

Consumers often have products purchased through an advisor across various insurers. The MGA has the best view of the advisor's overall business practices and is able to spot potential concerns sooner. As presented, the guidance only ensures an analysis from each individual insurer's perspective, not from the consumer perspective.

The proposed Guidance's shortcomings highlight the need for FSRA to have the right powers, aligned with the reality of today's insurance distribution market, to better protect consumers.

## **Relying on MGA - insurer contracts leads to inconsistent customer experiences**

Currently, life insurers establish a “quasi-regulatory” oversight framework underpinned by their contracts with MGAs. However, relying solely on life insurers’ contracts with MGAs to enforce regulatory requirements does not result in the best outcomes for consumers.

For example, life insurers, agents, and MGAs can adopt different contractual standards, expectations, enforcement standards and penalties depending on how the contract between them was negotiated. As well, contract clauses are always open to interpretation and re-negotiation, meaning they are understood differently or changed over time. As mentioned, these differences lead to inconsistent consumer experiences and add cost and complexity to the system. Customers should have a similar experience purchasing insurance products regardless of the insurers and MGAs they choose to work with.

## **Transparent and easily accessible expectations and requirements ensure the fair treatment of customers and promote confidence**

For the customer to be treated fairly throughout the product life cycle, they should be aware of each participant in the process and their respective roles and responsibilities. For example, customers should be aware that MGAs provide services to agents such as training and sales strategies and are compensated for their role. This transparency empowers customers to make more informed decisions, like whether to report intermediary misconduct.

Overlapping accountabilities among agents, MGAs and life insurers, creates a complex and confusing environment for all stakeholders. Unclear roles and responsibilities can undermine consumer confidence in the market ecosystem. For example, consumers should not need to consult multiple sources of information to understand the respective expectations and requirements for each role in the distribution chain. This issue is amplified when the various regulatory instruments are not aligned—for example, when there are variances in how particular requirements are expressed, emphasis on different requirements in different instruments, or unique expectations expressed in some but not all instruments. A streamlined and harmonious regulatory regime is in the best interest of customers.

## **Next steps**

Life insurers want to collaborate with FSRA and market participants to develop a simple, enforceable, statutory framework that directly regulates all parties (life insurers, MGAs and agents) to promote FTC. We believe that FSRA should pause its work on the Guidance to take steps towards a modernized legislative framework.

While the industry strongly prefers the alternative approach outlined above, we elaborate on the challenges we see with the Guidance in the Appendix.

We look forward to an ongoing dialogue throughout the development of a modernized regulatory framework.

Sincerely,



Lyne Duhaime  
Senior Vice President, Market Conduct Policy and Regulation

CC: Erica Hiemstra, Head, Insurance Conduct, Market Conduct, FSRA  
Tim Mifflin, Senior Manager, Policy – Market Conduct, FSRA

---

## About the CLHIA

The Canadian Life and Health Insurance Association (CLHIA) is a voluntary association whose member companies account for 99 per cent the life and health insurance business in Canada. These insurers are significant contributors to Ontario and its economy. In 2022 they provided financial security to 11 million Ontarians and make nearly \$50 billion in benefit payments (of which 90 per cent goes to living policyholders as annuity, disability, supplementary health or other benefits). In addition, life and health insurers have more than \$350 billion invested in Ontario's economy. A large majority of life and health insurance providers are licensed to operate in Ontario, with sixty-two headquartered in the province.

## Appendix

### Overview of key feedback on the Guidance

#### Legislation vs. Guidance and Rules: Industry's preference is for specific accountabilities

We do not believe that FSRA's approach for assessing an applicant or agent's suitability through the Guidance clarifies what controls life insurers need to put in place to ensure the suitability of MGAs and agents, nor does it clearly define the controls MGAs should implement for their life agents. In the context of life insurers operationalizing the Guidance, expectations should be as specific as possible to ensure a fair and efficient attribution of responsibilities that is most likely to result in FTC outcomes.

#### Reliance on Agency Law falls short

In practical terms, the vast majority of MGAs operate independently and support the distribution of insurance products of a variety of insurers. Very few insurance distribution participants have a model that approximates one in which apparent authority could possibly be found. FSRA's reliance on agency law to deem a principal-agent relationship to exist "in certain circumstances" is a response suited to the distribution model contemplated by the *Insurance Act* of the 1990s, when insurers almost exclusively sold products through a career salesforce. If FSRA is looking for greater authority to regulate MGAs, which life insurers support, the proper forum to acquire that authority is in legislation.

### Specific Concerns

The industry has concerns with the broad discretion and subjectivity that FSRA will need to exercise according to the Guidance, which will lead to uncertainty.

#### ***Purpose and Scope***

##### Definition of MGA

The Guidance states that the term MGA applies to entities which perform "any functions historically performed by life insurers when they had their own direct agent team as a dedicated/exclusive sales force". It would be helpful for FSRA to give examples of what is meant by any historical functions.

The definition is also problematic because it defines an MGA as an agency that "deals with the public . . ." and this is not always the case. Both from a consumer protection perspective and to ensure a levelled playing field in the market, it is important to capture all MGAs in the adopted definition.

## ***Interpretation***

### **Misconduct impacts life agent and applicant suitability**

Combining suitability factors for agents and MGAs does not address the significant difference in the roles they play and how suitability may be determined for each.

We are supportive of the objective examples included in this section of the Guidance such as bankruptcy and criminal charges. However, the industry does not support the inclusion of subjective examples such as “failing to diligently perform any duty or activity that an agent, including an MGA, undertakes or agrees to perform on behalf of an insurer or another agent.”

### **Key factors in FSRA’s framework for assessing the impact of conduct and activities on suitability**

The industry is supportive of this clarity around factors FSRA considers when reviewing conduct concerns and suitability. However, many of the factors are also very subjective.

### **False statements and material omissions**

Life insurers are supportive of this interpretation section. Accurate and complete disclosure on applications as part of the agent licensing regime is crucial to protecting customers.

### **Suitability—additional considerations for corporate and partnership agents**

Regulating MGAs by the same criteria and level of materiality as life agents and corporate or partnership agents may unjustifiably put the livelihood of individual agents at risk, including individual agents who have not engaged in any wrongdoing. The suspension or non-renewal of an MGA’s license should not be done lightly, and there should be established procedures documented for any disciplinary measures.

For example, in the case of life agent misconduct, any disciplinary action against MGAs should be commensurate with the degree of culpability attributable to the MGA, considering not only the conduct of the MGA, but also the potential consequences for the MGA’s customers, whose access to insurance may be affected. There should also be a mechanism for any sanctions against an MGA to be reviewed and/or appealed before coming into effect.

FSRA having the right legal and regulatory tools to distinguish between market participants is crucial to appropriately protect consumers and maintain market confidence. We believe this can only be done through clear and distinct roles and responsibilities in legislation rather than relying on guidance.

### Suitability—additional considerations for MGAs

#### *Adequacy of the MGA's control and compliance function*

To limit confusion with respect to each entity's compliance responsibilities, we believe the MGA and life insurer's responsibilities should be clearly defined to ensure appropriate and effective accountability.

When responsibilities are not clearly defined, standards of what is expected of MGAs differ from one life insurer to another. Customers would benefit from consistency and harmonization of MGA compliance obligations. Life insurers would also benefit from a level playing field, rather than a negotiated standard of compliance obligations.

#### *Insurer supervision of MGA's: Systems reasonably designed for compliance*

We fundamentally agree that life insurers and MGAs must each take reasonable steps to ensure the agents they contract with are performing as expected. Those reasonable steps should take into account the role of each party, including the extent to which each party has a line of sight of the agents' business so that the oversight role is reasonably achievable.

However, the draft Guidance says "In particular, insurers have an obligation to maintain a system to ensure that agents acting on their behalf are compliant and, regardless of whether oversight functions of an insurer (e.g. agent training, supervision and monitoring) have been delegated by an insurer to an MGA, an insurer retains its responsibility."

Based on our understanding of the Agents Regulation, this is not an accurate description of an insurer's current oversight obligation. The current obligation is to "maintain a system that is reasonably designed to ensure that each agent complies with the Act, the regulations, the authority rules and the agent's licence". This is an important distinction. While the system must be reasonably designed for compliance—it is unrealistic to expect a compliance system to ensure 100 per cent compliance of all agents, at all times.

The fact that an agent breaches a regulatory requirement does not mean that each insurer contracted with that agent was in breach of the Agents Regulation; rather, the question with respect to each life insurer is whether they had a system that was reasonably designed to ensure compliance. It is not the regulatory expectation that any life insurer's system ensures 100 per cent compliance by all agents.

### Insurers—agent suitability responsibilities

As mentioned above, to ensure clarity and thereby the likelihood that compliance responsibilities can be achieved, responsibilities for MGA's and life insurers should be clearly defined.

This section of the Guidance refers to taking steps to screen agents but is not clear what those steps must or ought to be. The industry is seeking clarity with respect to the expectations surrounding agents (sponsored or unsponsored) as well as life insurers' supervisory responsibilities towards these agents.

For example, are life insurers expected to have heightened screening measures for sponsored vs. non-sponsored agents? This is something FSRA should consult on separately.

### Life agents may be held to be in a principal-agent relationship

Determining whether an agency relationship exists is a question of fact and law requiring analysis on a case-by-case basis. The interpretation of agency law is a matter for the courts as it requires a thorough analysis of several complicated factors. Only a court can provide a definitive ruling on whether agency is established in a particular set of facts.

Even if an agency relationship exists, it does not mean that life insurers are responsible for all the activities of the agent, or that it covers all of the aspects of the agent's work.

We recommend deleting this section.

### *An Insurer or MGA may be held responsible for the actions of an agent by virtue of FSRA's UDAP Rule*

The Guidance states that an insurer or MGA may be held responsible for customer harm by an agent pursuant to s. 2(1) of the *Unfair and Deceptive Acts and Practices (UDAP) Rule*, stating that it "provides that an insurer or MGA can be held responsible for conduct



by an agent, including inaction or omission, that could be reasonably expected to result in outcomes, events or circumstances set out in the UDAP Rule."

There is no mention in s. 2(1) that a person can be held responsible for the unfair or deceptive acts or practices of another person. It is our view that FSRA is incorrect in stating that s. 2(1) of the UDAP Rule says an insurer or MGA can be held responsible for an agent's conduct that violates the UDAP provisions.

We also do not believe that s. 2(2) is effective in establishing accountability between agents, insurers and MGAs.

### ***Approach***

The industry supports FSRA taking a consumer-centric and risk-based approach to modernizing its regulatory framework, with the inclusion of MGAs as a key stakeholder. While Guidance is an important tool for providing standards, expectations and recommended approaches, without thoughtful legislative and regulatory changes, guidance alone cannot adequately solve these issues and ensure adequate consumer protection.

### ***Sponsorship***

As mentioned, it is not clear if FSRA expects life insurers to adopt heightened screening measures for sponsored agents and if so, what those measures would be.

Additionally, the draft Guidance states: "An initial application for an agent's, including an MGA's, licence must be accompanied by a statement by the sponsoring insurer certifying that it has taken steps to screen the applicant including the degree of delegation, and is satisfied that the applicant is suitable to carry on business as an agent." [Emphasis added.]

Section 3(1)(b) of the Agents Regulation says: "An application for an agent's licence shall be accompanied by, ... a statement by the sponsoring insurer indicating that it has taken steps to screen the applicant and is satisfied that the applicant is suitable to carry on business as an agent."

We would appreciate clarification of the basis on which FSRA is inserting "including the degree of delegation" in the Guidance?

### ***Appendix B***

The Guidance states: "In addition to these factors and considerations, where an agent will act as an MGA or perform other duties or activities on behalf of an insurer, additional

factors and considerations will apply when determining suitability for the performance of such other duties or activities."

The industry would benefit from clarity on what those other factors and considerations are. Given that there is currently no licensing category for MGAs there is no licensing process through which to ask questions about the duties and responsibilities an MGA will carry out on behalf of a life insurer. We are seeking clarity on how FSRA will know what other duties and activities will be carried out on behalf of the life insurer.

Further, under our proposal for legislative change, MGA's responsibilities would be undertaken as a part of their legally recognized role in the distribution of insurance, which encompasses their accountability to agents, customers and insurers, and not on behalf of the insurer.

Life insurers are limited in their oversight ability and can only review an MGAs information relating to their own products. If the 'such other duties or activities' FSRA anticipates here relate to another life insurer's information, the life insurers will not be able to meet this requirement.

### ***Effective date***

As mentioned, while we share the intended outcome of the draft Guidance to address oversight gaps in the life insurance, we are instead recommending an approach that amends the *Insurance Act* to reflect the role of MGAs in the distribution network. Regulations under the *Insurance Act* will also need to be updated.

There are numerous moving parts relating to this proposal and we believe that FSRA should pause its work on the Guidance to allow the industry to collaborate with FSRA and the Ontario Government to develop a simple, enforceable, statutory framework.

An implementation timeline should be developed as part of the Ontario Government's commitment to open up the *Insurance Act* to make these important changes. An adequate transition timeline to ensure the new expectations are successfully implemented for the benefit of consumers will be important.