



February 23, 2024

Financial Services Regulatory Authority (FSRA)
25 Sheppard Avenue West
Suite 100
Toronto, ON
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Attention: Tim Miflin, Senior Manager, Policy - Market Conduct

Re: Consultation on proposed Guidance: Life Insurance Agent and MGA Licensing Suitability (the “Proposed Guidance”)

Dear Sirs/Mesdames,

On behalf of PPI Management Inc. (“PPI”), please find below our feedback in response to the FSRA Consultation on the Proposed Guidance.

Founded in 1978 and headquartered in Toronto, Ontario, PPI is one of the oldest and largest managing general agencies in Canada, with over 7,200 advisors, 13 branch offices (3 in Ontario), and nearly 350 employees. We facilitate the distribution of the insurance products of every major life insurance carrier in Canada and our advisors serve a broad range of consumers across the country. Through our longstanding and ongoing participation in the work of all relevant industry organizations, PPI is a leader in industry improvement, innovation, and collaboration.

PPI is aligned with the spirit and intentions of the Proposed Guidance.

We support FSRA’s overall mission and applaud the stated goals of the Proposed Guidance in support of that mission, including promoting the Fair Treatment of Customers by providing clarity of the MGA role. We specifically support holding MGAs to a higher standard given our increasingly significant role in the distribution of insurance products in the current marketplace.

Amendments to the Insurance Act and Regulations to complement and underpin the Guidance are required.

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Insurance distribution networks in Canada have evolved greatly over the last few decades and so have the roles of the various stakeholders within those networks. It is important for the legislation that governs that distribution in Ontario to catch up and evolve as well.

For this reason, PPI takes the position that the Proposed Guidance is premature and there is a need to first establish a clear legislative framework regarding MGA obligations, for both entity suitability and oversight of agent suitability. Indeed, the legislative framework should be updated to clearly set out the regulatory expectations and specific standards that apply to all intermediaries as well as carriers.

An updated legislative framework is a necessary first step in order to provide the clarity of expectations and authority needed to achieve consistent and improved consumer outcomes. While principle-based guidance can be helpful in some contexts to understand how a law or regulation may be applied, a guidance is not an enforceable law. The effectiveness of any such guidance must therefore be grounded in clear laws and regulation. In this regard, we believe that there are certain minimum standards for both MGAs and agents that should be incorporated as part of an updated legislative framework:

- a) Requiring all MGAs, regardless of size, to have an appropriate compliance system in place and minimum relevant academic and ongoing education requirements for the compliance professionals charged with developing, administering, and monitoring that system.
- b) Requiring all MGAs, regardless of size, to have minimum required levels of E&O Insurance and cyber security insurance.
- c) Requiring all agents to complete a financial needs analysis and a “reason why” letter at the point of sale.
- d) Clarifying the difference between corporate or partnership agent firms and MGAs and the obligations of each.

In our view, each of these standards foster better consumer outcomes and should form part of updated statutory obligations of agents and MGAs.

Carrier/MGA contracts are not an appropriate nor effective way to ensure consistency in protecting the public from negative consumer outcomes.

Relying upon contracts that MGAs (or agents) have with insurers in order to clarify and enforce regulatory obligations does not work. Nor is it appropriate for FSRA to use such contracts (i.e., if terms are being complied with) to assess suitability. Not only do carriers have different requirements and obligations but they can often apply and enforce those expectations differently. For MGAs this means challenges in administering consistent standards and processes. For consumers this means delays in the delivery of services and, overall, an inconsistent consumer experience.

The principal-agent relationship falls within the jurisdiction of the judiciary and not FSRA as a regulator.

The principal-agent relationship commentary in the draft Guidance is both out of scope for guidance and out of jurisdiction for FSRA. This is an issue that should be left to the courts to address.

License suspension and revocation should be addressed in the Regulations, not Guidance.

Revoking or suspending a license is a very serious matter with sweeping catastrophic ramifications for MGAs, their employees, and the advisors they serve, including the clients of those advisors. We recognize that FSRA has broad discretion to interpret suitability. However, we remain concerned that the Proposed Guidance has introduced elements that are not properly factors related to suitability but more in the nature of conditions of a license. Moreover, the power to revoke a license should be based on prescribed and specific, factors not ones that are broad and principle based. The courts have repeatedly said that the evidence to revoke or suspend a license must be “clear, convincing, and cogent.” The courts have also recognized that the public interest is not the only factor at issue for a regulator when it is considering the potential revocation or suspension of a license because there are severe financial consequences if an agent or an MGA loses their license. Given this importance, the factors related to suitability - particularly when they are referenced to revoke or suspend a license - should be prescribed as they always have been in the Agents Regulation. Suitability should not be a moving target that is subject to regular change in a guidance. Issues of this magnitude should again be addressed through the vigorous legislative debate process to ensure some measure of predictability for all stakeholders in the industry going forward.

Conclusion

Clear and direct regulation of intermediaries is necessary in order to adequately address the current state of insurance distribution in Ontario. An updated legislative framework will provide consistent understanding and enforceability of the accountabilities of all industry stakeholders which will help to better achieve the goal of Fair Treatment of Customers.

Warm regards,



Cathy Hiscott, CPF, CHS
President & CEO
PPI

via email: tim.miflin@fsrao.ca