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

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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 Rule 2025-001 – Life and Health Insurance Managing General Agents (the "Proposed Rule").

Enhancing oversight in the Managing General Agent (MGA) distribution channel is a top priority for life and health insurers. In February 2024, we responded to FSRA's consultation on its Life Insurance Agent and MGA Licensing Suitability Guidance. In September 2024 we provided feedback to the Ministry of Finance during the consultation phase on proposed legislative amendments to the *Insurance Act* ("Act") which aimed to introduce a dedicated licensing class for Life and Health Insurance (L&H) MGAs.

The Proposed Rule should incorporate two fundamental principles:

The industry's feedback has focused on two concepts which are fundamental to the successful development and effective implementation of regulatory oversight in the MGA distribution channel:

1. **MGAs are independent intermediaries:** MGAs work with multiple insurers to offer a wide range of insurance products to Ontarians. MGAs build a sales force of agents and receive compensation based on sales made by these agents. While they contract with insurers to access and distribute their insurance products, MGAs operate independently and maintain separate and distinct responsibilities from insurers. As MGAs are in the business of screening, recruiting and supporting agents to distribute insurance products, they are uniquely positioned to monitor their agents' needs-based sales practices. MGAs

in Ontario are independent and would be considered brokers under *Insurance Core Principle (ICP) 18: Intermediaries*.[1]

2. **MGAs should be directly accountable for their responsibilities with a direct independent oversight approach:** As independent intermediaries who work with multiple insurers, no single insurer has full visibility into all of an MGA's business. Independent oversight is therefore essential to prevent potential consumer harm and create a level playing field. The current system of indirect oversight by FSRA through contractual agreements is not an effective way to enforce regulatory requirements.[2] Direct independent oversight by a regulator or by a self-regulatory organization (SRO) would be more aligned with the standards issued by the International Association of Insurance Supervisors (IAIS) with respect to the broker model.[3]

Proposed Rule needs amendments:

Unfortunately, we do not believe the Proposed Rule adequately incorporates the two fundamental concepts outlined above. It does not recognize MGAs' unique and independent role in the distribution chain, nor does it set out an independent oversight model where MGAs are directly supervised as separately licensed entities. The Proposed Rule entrenches existing inefficiencies and creates new ones which will ultimately increase costs and create an inconsistent experience for consumers.

Throughout the Proposed Rule, we see a lack of clearly and separately defined roles and responsibilities for insurers, MGAs and agents. This will lead to confusion and overlapping

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[1] ICP 18: Intermediaries, 18.0.13 Intermediaries fall into two categories:
i) acting primarily on behalf of the insurer; or
ii) acting primarily on behalf of the customer:
• Where the intermediary acts primarily on behalf of the insurer and sells products for, and on behalf of, one or more insurers, they are often referred to as "agent" or "producer". Intermediaries may act for a single insurer (sometimes referred to as "tied") or several. The products they can offer may be restricted by agency agreements with the insurer(s) concerned.
• Where the intermediary acts primarily on behalf of the customer, the intermediary is independent of the insurer(s) whose products he sells. Often referred to as "broker", or "independent financial adviser", they are able to select products from those available across the market.

[2] See Appendix A of the CLHIA's submission to the Ontario Ministry of Finance dated September 9, 2024.

[3] ICP 18: Intermediaries, 18.2.12 In some jurisdictions intermediaries are supervised indirectly through the supervision of the insurers. The supervisor will need to take into account the extent to which such an approach achieves effective supervision. Regardless of the approach, it is ultimately the supervisor's responsibility that intermediaries are effectively supervised.
18.2.13 An indirect approach may be more appropriate for agency intermediation rather than the broker model.
18.2.16 A self-regulatory organisation (SRO) can be described as a nongovernment organisation that has the power to create and enforce industry or professional regulations and standards. The self-regulatory functions of an SRO can contribute to the supervision of intermediaries through the requirements for, and enforcement of, professional standards for its members.

compliance obligations which will make it challenging for insurers and intermediaries to implement policies and processes that achieve fair treatment of customers (FTC) outcomes.[4]

As a result, we do not believe that the Proposed Rule will achieve FSRA's stated outcomes of fairness to consumers, enhanced compliance and consistent treatment of similar participants.

Summary of suggested amendments:

FSRA can effectively build on the new legislative framework to achieve the intended outcomes by:

1. Revising the Proposed Rule to establish clearly separate roles and responsibilities for MGAs, insurers, and agents including defining the core activities and associated regulatory responsibilities of an MGA as an independent market participant.
    - This includes taking into consideration and defining other insurance intermediaries such as corporate / partnership agencies, who perform some of the activities captured by the amended *Insurance Act*.
2. Incorporating an independent, direct oversight approach to supervise the licensing requirements of MGAs. A system where the regulator or potentially an SRO has direct oversight and enforcement of independent insurance intermediaries' compliance with regulatory requirements is aligned with international standards.
3. Amending Section 12 of Ontario Regulation 347/04 (Agents Regulation) or using the Proposed Rule to clarify that when an agent is contracted with an MGA there is a different application of these obligations. Where an insurer has an exclusive sales force, they would continue to have primary responsibility for the obligations in Section 12.
4. Amending the Proposed Rule to address agent sponsorship. MGAs should be able to sponsor the agents they recruit and screen.

Need for a second consultation

In our submission, we propose material changes to the Proposed Rule so that it can achieve FSRA's goals. As such we think that a second round of public consultation on the Proposed Rule will be required. We look forward to continuing the productive discussions and engagement we have enjoyed with FSRA to date.

In **Appendix A** we expand further on our four recommendations to achieve FSRA's desired outcomes.

In **Appendix B** we respond to the consultation questions in the Notice of Rule.

[4] ICP 19: Conduct of Business, 19.2.1 Supervisors should require insurers and intermediaries to have policies and processes in place to achieve the fair treatment of customers and should monitor whether such policies and processes are adhered to.

In **Appendix C** we outline the desired roles and responsibilities for Insurers, MGAs, Agents and FSRA.

Signed,

Lyne Duhaime, President Quebec Affairs and Senior Vice-President, Market Conduct Policy and Regulation, CLHIA

Appendix A

This Appendix outlines the industry's four key recommendations for FSRA to effectively build on the new legislative framework and achieve its intended outcomes within the context of our two key concepts—MGAs are independent intermediaries and they should be directly supervised by the regulator or potentially an SRO.

1. Revise the Proposed Rule to establish clearly separate roles and responsibilities for MGAs, insurers, and agents including defining the core activities and associated regulatory responsibilities of an MGA as a key market participant

We recommend that the Proposed Rule specify the responsibilities of the insurer, MGA, agent and regulator in a way that is separate and distinct rather than overlapping. Please refer to **Appendix C** for an outline of insurer, MGA, agent and regulator roles and responsibilities. As drafted, life and health insurers believe that many entities will unintentionally be captured in the MGA licensing regime because they perform one or more of the activities listed in the definition in the Act.

In our initial feedback to the Ministry of Finance we recommended that the Act be amended to state that a person or entity acts as an MGA when the person or entity "acts as an intermediary between agents and life and/or accident and sickness insurers by arranging for the sale of life insurance and/or accident and sickness insurance products of more than one life and/or accident and sickness insurer."

Currently, the Proposed Rule does not distinguish between an MGA and an Agency creating risk of duplicative licensing. We recommend that the Proposed Rule define each entity under the new and existing definitions in the Act.

The Proposed Rule should also carve out the entities which are not intended to be captured, for example:

- Insurers who contract with agents exclusively: insurers will retain their responsibility for monitoring the suitability and activities of their exclusive agents. Insurers should not be required to obtain an MGA licence because of their contracts with exclusive agents.
- Corporate / Partnership Agencies: these entities, often a small group of agents, work collectively and have a consumer-facing function. They do not act as an intermediary between insurers and agents. Usually, they contract with an MGA and therefore would be subject to the MGA's compliance system in the same way as an individual or corporate agent. Many independent agents are also licensed as a corporate / partnership agency for tax purposes. If these entities are captured by MGA licensing, potentially thousands of MGA licences would be required in Ontario.

- Distribution without an agent (travel and creditor insurance): as there is no licensed life and health insurance agent involved there should be no MGA licensing.
- Third Party Administrators: in cases where they are not contracted with agents selling products, they should be excluded from MGA licensing.

2. Incorporate an independent, direct oversight approach to supervise the licensing requirements of MGAs

ICP 18: Intermediaries outlines three approaches for the supervisor to ensure that insurance intermediaries licensed in its jurisdiction are subject to ongoing supervisory review—indirect supervision, direct supervision and an SRO.

Currently in Ontario, intermediaries are supervised indirectly through the supervision of insurers. However, this model of supervision is not optimal for consumers because insurers do not have a full line of sight into the business of independent MGAs and agents.

An important feature of the MGA distribution channel in Ontario is the independence of agents and MGAs. Both are free to work with as many insurers as they choose. In most cases an MGA has visibility into all of the agent's business since most agents are contracted with a single MGA, whereas insurers only ever have visibility into the portion of the agent's business with that insurer.

On the other hand, there is no single entity, other than the regulator, that has visibility into all of an MGA's business. Each insurer only has visibility into an MGA's business with that insurer, which may represent only a small portion of the MGA's overall business.

We do not believe indirect supervision achieves effective supervision and we advocated for direct supervision of MGAs by FSRA in our submission to the Ministry of Finance last year. Our view is also supported by ICP 18.2.13.

FSRA already exercises regulatory authority over other financial services market participants. For example, FSRA's oversight program and regulatory authority of Mortgage Brokers could serve as a model for the oversight of MGAs.

Each year licensed mortgage brokerages and administrators are required to complete and submit an Annual Information Return to FSRA, which collects information about business practices, internal controls, and market conditions, which provides FSRA with information to conduct risk assessment and oversight of the sector.[5] We would encourage a similar approach for MGA oversight by FSRA.

[5] Annual Information Returns | Financial Services Regulatory Authority of Ontario

While insurers do see an enhanced role for FSRA or potentially an SRO under the new MGA licensing system, this does not mean insurers won't still have an important responsibility. Insurers will retain primary responsibility for product design, promotion, underwriting, claims payment, and maintaining policyholder obligations as well as providing product training information to agents. The chart presented in **Appendix C** provides further clarity on how our industry views the separation of roles and responsibilities between industry participants.

Insurers who are federally regulated will also still have important risk-management obligations for their third-party arrangements under *OSFI Guideline B-10: Third Party Risk Management*. As well, the Autorité des marches financiers (AMF) has set clear expectations in their Guidelines, including the Sound Commercial Practices Guideline. Additionally, insurers in Ontario will continue to have obligations based on FSRA's Common Approach to Treating Customers Fairly, which harmonizes regulatory expectations with the Canadian Council of Insurance Regulators (CCIR) 2018 FTC Guidance.

It's our industry's position that the changes we are proposing remain aligned with the respective responsibilities of insurers and intermediaries outlined in *ICP 19: Conduct of Business*.[6] Insurers remain responsible for fulfilling the obligations to the policy holder. However, where there is a distribution intermediary, the insurer should be able to assess the MGA's compliance system and if the insurer, acting reasonably, is satisfied, they should be able to rely on the MGA's assessment of an agent's suitability. Furthermore, the regulator should also bear the responsibility to monitor not only the insurers' systems but also the MGAs' systems.[7]

3. Amend Section 12 of the Agents Regulation or use the Proposed Rule to clarify that the application of these obligations is different where an MGA is involved

The lack of clear and separate obligations within the Proposed Rule may in part be a result of section 12 of the Agents, O Reg 347/04 (Agents Regulation), which reads:

> 12. (1) Every insurer that authorizes one or more agents to act on behalf of the insurer shall establish and 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.
> (2) The system referred to in subsection (1) must screen each agent for suitability to carry on business as an agent.

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[6] 19.0.8 The insurer has a responsibility for good conduct throughout the insurance life-cycle, as it is the insurer that is the ultimate risk carrier. However, where more than one party is involved in the design, marketing, distribution and policy servicing of insurance products, the good conduct in respect of the relevant service(s) is a shared responsibility of those involved.

[7] 19.2.1 Supervisors should require insurers and intermediaries to have policies and processes in place to achieve the fair treatment of customers and should monitor whether such policies and procesfses are adhered to.

(3) An insurer shall report to the Chief Executive Officer if it has reasonable grounds to believe that an agent who acts on behalf of the insurer is not suitable to carry on business as an agent

Where an independent agent is under contract with an MGA, insurers should not bear the primary responsibility for the obligations outlined in section 12(1) and 12(2) of the Agents Regulation. Instead, the MGA should have primary responsibility for establishing and maintaining a system that is reasonably designed to ensure each agent they are contracted with complies with the Act, regulations, Authority rules and the agent's licence.

Insurers would still have secondary responsibility for monitoring trends, complaints and conduct issues based only on the data that insurer has access to, such as compensation and underwriting trends related to their own products. As stated above, the insurer should be able to assess the MGA's compliance system and if the insurer, acting reasonably, is satisfied, they should be able to rely on the MGA's system.

For this reason, we recommend that the Agents Regulation be amended to recognize the MGA licence class. FSRA could ask the Ministry of Finance to open the Agents Regulation at the same time as the Ontario Regulation 408/12 (Administrative Penalties).

Alternately, FSRA could draft Section 9(1) of the Proposed Rule to include language that recognizes that where an MGA is involved, they have primary responsibility for the obligations outlined in section 12 of the Agent's Regulation.

The Proposed Rule should specify that where an MGA recruits one or more agents they shall:

- Establish and 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
- That the system must screen for agent suitability when the MGA is recruiting the agent and must continue monitoring suitability while the agent is contracted with the MGA; and
- That the MGA shall report to all insurers whose products the agent is authorized to sell if they have reasonable grounds to believe that agent is not suitable to carry on business as an agent.

4. Amending the Proposed Rule to address agent sponsorship. MGAs should be able to sponsor the agents they recruit and screen

Currently the Proposed Rule does not address agent sponsorship. FSRA should add language to Section 13(1) of the Proposed Rule to permit MGAs to sponsor agents and recommend them to FSRA for licensing. It does not make sense for an independent life agent who is contracted with an MGA and sells the products of multiple insurers to be sponsored by one insurer. Ultimately, that independent agent may place only a very small amount of business with the

insurer who is their sponsor. We believe that having MGAs be responsible for sponsoring the agents they have recruited and screened will achieve better consumer protection outcomes. Allowing MGAs to sponsor agents would also align with Saskatchewan's MGA licensing regime.

The FSRA requirement for an insurer sponsor appears inconsistent with the application requirements in section 392.3 of the *Insurance Act* which includes a requirement to evidence contracting with at least one insurer, versus any requirement for sponsorship. Specifically, it reads:

> 392.3 (1) an insurance agent in Ontario shall submit an application to the Chief Executive Officer in the manner required by the Chief Executive Officer and shall give the Chief Executive Officer such information, evidence and material as he or she may require and pay the applicable fee. 2014, c. 9, Sched. 3, s. 15; 2018, c. 8, Sched. 13, s. 22; 2024, c. 20, Sched. 10, s. 26.
>
> **Same**
> (2) The applicant is also required to pay any outstanding administrative penalty imposed under Part XVIII.1. 2014, c. 9, Sched. 3, s. 15.
>
> **Notice of appointment of applicant**
> (3) Unless the regulations specify otherwise, the application must include a notice from an insurer, on a form approved by the Chief Executive Officer, certifying that the insurer has appointed the applicant to act as the insurer's agent in Ontario. 2014, c. 9, Sched. 3, s. 15; 2018, c. 8, Sched. 13, s. 22.
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> **Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 392.3 (3) of the Act is amended by striking out "the regulations" and substituting "the Authority rules". (See: 2021, c. 8, Sched. 5, s. 3)**

It is also inconsistent with Section 3 of the Agents Regulation:

> 3. (1) An application for an agent's licence shall be accompanied by,
> (a) the certificate of a sponsoring insurer certifying that the applicant is appointed to act as the insurer's agent; and
> (b) 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. O. Reg. 347/04, s. 3 (1).
>
> (2) Subsection (1) does not apply to an application by a corporation or partnership for a life insurance licence. O. Reg. 347/04, s. 3 (2).
>
> (3) An application for an agent's licence shall be in a form obtained from the Chief Executive Officer. O. Reg. 347/04, s. 3 (3); O. Reg. 145/19, s. 3.

The industry understands these provisions as requiring a recommendation of the agent for licensing to FSRA and evidence of contracting with at least one insurer. However, Section 12 of

the Proposed Rule describes a screening process that assumes the agent is already licensed.. If sponsorship and screening are different, this could be clarified in the Proposed Rule.

Further, If these proposed amendments to the Proposed Rule are made, it would be appropriate for the government to repeal Section 3 of the Agents Regulation or amend Section 3 to indicate that the new licensee must be sponsored b an MGA or an insurer. This would be supported by the 2021 amendments to section 392.3 (3) of the Act. It does not appear that these amendments to the Act have been proclaimed into force.

We recommend that FSRA urgently request that the government to proclaim these amendments into force. If the Agents Regulation can be opened to address the proposed amendments to Section 12, we request Section 3 of the Agents Regulation be repealed.

Appendix B: Consultation Questions

1. ***Balancing Proportional but Common Requirements:*** *Distribution through MGAs should improve access for consumers and flexibility, while still ensuring customers benefit from protection from harm, regardless of whether distribution includes MGAs.*
    a. *Does the Proposed Rule appropriately balance flexibility for insurers, L&H MGAs and sub-MGAs to negotiate their role in the distribution of individual and group life and health insurance while establishing common regulatory outcomes for insurers, L&H MGAs and sub-MGAs when performing a regulated activity?*
    b. *Given that MGAs vary in size, operations, and complexity, are there specific issues that FSRA should consider in the Proposed Rule to address unique needs or challenges (e.g., smaller MGAs, Associate General Agents, National Accounts and Third-Party Administrators)?*

The Proposed Rule does not establish clear regulatory standards for MGAs; it maintains the status quo, where MGAs are held accountable by individual insurers rather than centralized oversight by the regulator. Currently, this results in inconsistent levels of oversight and compliance, further limited by the partial view that each insurer has, creating an uneven playing field for industry players and potential negative consumer outcomes. This is a fundamental issue that needs to be addressed to achieve FSRA's intended outcomes of fairness to consumers, enhanced compliance, and consistent treatment for similar participants.

The industry is concerned with the reference to an "appropriate balance [of] flexibility for insurers, MGAs and sub-MGAs to negotiate their role in the distribution". The industry needs a clear determination by the regulator of the separate roles and responsibilities of insurers, MGAs and agents. This can be achieved by a principles-based approach while subjecting everyone to a defined standard.

We recommend that each party (insurer, MGA, and agent) have sub-sections within the Proposed Rule that clearly address what is and is not their obligation related to their unique role and responsibilities, such as, sponsorship, monitoring, making reports of non-compliance (including when and to whom), screening, and ongoing suitability, etc.

In addition, we are concerned that the Proposed Rule holds the insurer ultimately responsible for not only MGAs, sub-MGAs, Associate General Agencies (AGAs), National Accounts (NAs), and third-party administrators (TPAs), but also "unlicensed people who perform MGA licensed activities" and those "who have no direct contract with the insurer." This is too broad of a scope and includes independent entities that should be directly held accountable by the regulator.

Furthermore, holding insurers accountable for entities or individuals with whom they do not have a contract does not appear to be realistic or reasonable.[8] If such individuals or entities perform MGA regulated activities without having a contract with an insurer and without being licensed, it should be FSRA's responsibility to take action in order to fulfill its public protection mandate.

A model that holds insurers ultimately responsible for all entities involved in the distribution of its products will lead to significant compliance duplication, increasing operational costs—this will be expensive for consumers and does not address the concerns which were the rationale for MGA licensing. It will also lead to inconsistent consumer experiences due to varying contract terms between insurers and MGAs. Having clearly defined roles and responsibilities for distribution participants, allows resources to be focused and targeted, which will be more efficient and less costly for consumers.

2. ***Clarity of Rule:*** *Which part of the Proposed Rule would benefit from additional clarity within the Rule? What parts of the Proposed Rule would benefit from additional guidance?*

We are concerned with the complexity of the Proposed Rule. Requirements that are too intricate, prescriptive and burdensome will cause compliance challenges, especially for smaller or individual intermediaries. This may lead to intermediaries not being able to navigate and comply with the requirements. There is a need to simplify the drafting and the structure of the Proposed Rule so that resources are optimally allocated to promote favourable outcomes for customers.

As previously mentioned, the Proposed Rule would be improved by making the roles and responsibilities of insurers, MGAs, and agents clearer and more separate, which includes removing duplication. As it currently reads, both the MGA and the insurer are responsible for the agent's compliance with laws, whether an agent is suitable to carry on business, reporting non-compliance to FSRA etc. This overlap creates redundant reporting and accountability structures and could lead to gaps and inefficiencies. Additionally, the Proposed Rule relies heavily on insurers for the supervision of the licensing regime, which makes it difficult to understand what roles and responsibilities MGAs retain. Having insurers responsible for supervision does not address the current gaps in the framework that were the drivers of the MGA licensing amendments in the Act.

The Proposed Rule distinguishes between associating, authorizing, and contracting. To achieve the appropriate scope, these terms need to be clarified and defined if they refer to differing relationships. Under the Proposed Rule, associating can confer certain responsibilities on an insurer or MGA but the term itself is not clear.

[8] Section 1 provides that everyone under an insurer is "associated" with the insurer and everyone under a L&H MGA is "associated" with the L&H MGA, even if there is no direct contract between the top entity and the other entities or individuals.

Under the Proposed Rule, direct authorization is not necessarily required for there to be association. This creates a consumer risk as there should be a clear chain of accountability throughout the chain of distribution. It would be clearer for the Proposed Rule to focus on authorization. Anyone not directly authorized to sell an insurer's products should refrain from so doing.

Below we provide specific examples of sections of the Rule that require more clarity.

Section 1: Interpretation

We suggest that the level of specificity in 1(3) and 1(4) be enhanced—the use of “associated” may be ambiguous. Section 1(3)(ii) implies an insurer is associated with a sub-MGA that has agreed to perform MGA licensed activities for an MGA that has agreed to perform such activities for an insurer. Section 1(3)(iii) extends responsibility to "subs" of sub-MGAs that are indirectly authorized. This is potentially problematic—only an insurer should authorize distribution.

Permitting indirect authorization and association blurs the chain of accountability and makes oversight an impossibility. Anyone not directly authorized to sell an insurer’s products should refrain from so doing. The aforementioned provisions should align with the requirement to report details about MGA agreements in s. 407.12 of the Act.

An insurer has no line of sight into the activities of prospective agents and therefore cannot be responsible for their oversight. If a prospective agent is unlicensed, they are not contracted with any insurer and they cannot engage in selling or advising on the distribution of life and health insurance. Therefore, there should be no oversight requirement, as prospective agents should not be selling insurance until they are a fully licensed agent. The same applies to an agent who is not authorized by an insurer to distribute and service its products. The Proposed Rule defines prospective agents as those working to become licensed as an agent. That contravenes current practices where licensing happens before engaging in distribution. This term is found in the new legislation but is undefined. The definition should be narrowed through the Rule to discourage unlicensed activities and Section 1(5)(iv) should be deleted.

Section 1(7) introduces a requirement that a person or entity is acting as an MGA when "pursuant to an agreement" they engage in the MGA activities listed in s. 407.2 of the Act. This contradicts the concept of "association" throughout the Rule.[9] However, this is consistent with current practices to have distribution agreements in place.

[9] 1(3) (i) of the Proposed Rule states: an insurer is associated with a managing general agent if the insurer and the managing general agent agree the managing general agent will perform any MGA licensed activity with respect to agents who will be authorized to sell or solicit insurance to be issued by the insurer, or with respect to prospective agents, whether or not the insurer and managing general agent document this arrangement in a written agreement.

Section 1(9)(i) should be amended to: “evidence that would cause the regulator and/or an MGA acting reasonably to believe the person…”

“Sufficient information” (Section 1(9)) to assess whether a person is suitable to be licensed as an agent should include:

- FSRA to require MGAs to provide proof of a recent credit check, information on a history of insolvencies, in addition to a criminal record check for the agents they recruit on an ad hoc/as needed basis to support agent suitability; and
- FSRA to impose specific continuing education standards, ethics, and business conduct requirements (like Quebec) for each reference period.

Section 4: MGA Licensing: Suitability

It is unclear if FSRA will be assessing an MGA’s suitability including their compliance system before issuing an MGA licence. We feel that the regulator assessing MGA suitability before issuing a licence would align with FSRA’s consumer protection mandate.

Section 4(1) and Section 4(2) both appear to list variables FSRA considers when adjudicating licensing suitability and could be merged to add clarity.

Section 5 – MGA Licence Expiry and Renewal

Having multiple expiry dates for MGA licences is confusing and increases regulatory burden—there should be a clear expiry date attached to each MGA licence. As written, the licence needs to be renewed every three years if there is an expiration date or:

- If there is no date, and the licensee does not have an agent's licence, it expires two years from the effective date.
- If the MGA has no date on their licence, and an agent licence, the MGA licence will expire in the second year on the same date as the agent’s licence.

We note that other jurisdictions have implemented universal expiry dates for licences. This would be a more manageable system.

Section 6: MGA Designated Compliance Representative (DCR)

We suggest that 6(1) make it clear that the MGA is ultimately responsible and accountable as the licensee employing the DCR.

Insurers will need to easily determine who the DCR is for oversight purposes. Under Section3(1)(ii) information about the DCR will be provided with the application. We recommend that this information appear on the MGA licence as well.

Section 7: MGA Standards of Practice – Insurance and Surety

We would like to understand the purpose of the surety bond requirement and why it is an alternative to E&O insurance in 7(1)(i) and 7(1)(ii). It is not standard practice for MGAs to handle money on behalf of insurers and it is unclear why insurers need protection through an MGA's surety bond. This requirement should be removed.

It is unclear what amount of E&O insurance is required ("not less than what is reasonable"). In our submission to the Ministry of Finance on the proposed legislative amendments, we recommended that MGAs be required to obtain cyber insurance as they can possess a significant volume of personal information, including financial information. We recommend that a cyber insurance requirement be included in the Proposed Rule.

Sections 8 and 9: Maintaining Compliance Systems

See our response to question three for more details.

Section 10: Maintaining Shared Responsibilities

Reasonability (10(1)(i)) should be limited to the terms of the business arrangement between the insurer and the MGA.

Section 12: Screening – Insurers

A core activity of an MGA is to recruit agents for the distribution of insurance products. MGAs should have the responsibility to recruit agents that are suitable in the first instance to sell those products. When an MGA recommends an agent to an insurer, they should have the obligation to only recommend suitable agents who are properly licensed.

One way to ensure the MGA has determined the suitability of an agent they have recruited and screened, is for the MGA to sponsor the agent. For better consumer protection outcomes, the sponsorship requirement should fall to the MGA to ensure appropriate supervision during the two-year sponsorship requirement for life licensed agents and the ongoing sponsorship requirement for A&S licensed agents.

Given the dominance of MGAs in the distribution of life insurance in Ontario, this obligation is critical for the protection of Ontario consumers. If an insurer accepts a recommendation for a suitable agent from an MGA and authorizes that agent to sell the insurer's products, the insurer should have reasonable controls in place to ensure MGAs are meeting their obligations to recruit and recommend suitable agents. When an insurer directly recruits an agent without the use of an MGA, it is the insurer who should perform the screening and ensure licensing. We recommend that section 12(2)(ii) be removed.

Approaching the division of obligations based on the core activities between an MGA (a distributor) and an insurer (a manufacturer) from this perspective would help manage important operational concerns.

To “ensure the information (from the MGA) is accurate and sufficiently complete for the purpose” of implementing a system to screen agents (12(2)(i)) insurers would have to duplicate the reviews/checks. Further, we noted that Section 12 states that insurers’ screening processes must be reasonably designed to “ensure” that they achieve specific outcomes, however, in Section 13 (1), MGAs must simply “maintain(ing) a (screening) process reasonably designed to achieve the following outcomes:” As further explained under Section 13 below, the responsibility for screening agents should be with MGAs.

Section 13 Screening Agents – MGA Standards of Practice

Screening is mischaracterized as an activity that MGAs do for insurers. The Proposed Rule should reflect that MGAs are building their own sales force and recruiting and screening of agents is a licensed activity that MGAs are responsible for. MGAs should act as the sponsor for the licensed agents they recruit and as the sponsor, they should be responsible for screening. This would require amendments to the Agents Regulation or for the Proposed Rule to be drafted to clarify that where an MGA is involved Section 3 and Section 12 of the Agents Regulation have a different application.

Section 11 should be merged with Section 13 Screening – MGAs. Section 11(1)(ii) identifies that prospective agents will not act as Agents until they are licensed. The concept of a prospective agent should be removed as it creates a scenario where unlicensed activity is more probable.

Section 14: Training Agents – Insurers

These clauses indicate that insurers bear the responsibility for several aspects of agent training, extending beyond product knowledge. This broad training responsibility poses significant challenges for insurers including maintaining consistent training standards across potentially large numbers of agents and ensuring uniformity in training quality especially where agents work with multiple insurers. While the intent is to ensure well-trained agents, the practical implementation of these training requirements presents significant logistical and quality control challenges for insurers. Insurers should only be held responsible for training on product knowledge. The only exception would be where there is no MGA involved, such as when an insurer has an exclusive sales force, in which case they would retain primary responsibility for training.

Under the Proposed Rule, an agent might have to complete similar training six times from six different insurers on: what activities require an agent’s licence; the insurance market; how to make product recommendations that meet client needs; how to be clear, accurate and not

misleading with respect to solicitation, negotiation and provision of advice regarding insurance; and all applicable insurance law. This training and these concepts are not insurer-specific and should be done once in the LLQP and could be kept up to date through continuing education, which is required under Section 14 of the Agents Regulation or training provided by the MGA.

Insurers should provide the appropriate marketing and/or informational material to an agent for that agent to represent and offer its product(s) to consumers. MGAs should be able to rely on insurer compliance support for specific questions related to the products or the business of the insurer. If the insurer has the capacity and the resources (and the MGA wishes to have the support), the insurer may choose to provide overarching "additional" training; however, insurers should not be obligated to provide this type of training under the Proposed Rule. As independent agents are contracted to represent the products of multiple insurers, in most cases, having certain training needs addressed at the MGA level would be the most efficient and effective means of providing this training.

Further, the outcome for a training system to ensure compliance with all applicable insurance law in (14(3)(v)) is not realistic, particularly given that insurers should not be responsible for training agents on applicable law. This training should be provided by the MGA.

Section 17: Reporting Obligations

The industry has significant concerns with 17(2): Each insurer must, on the request of a managing general agent associated with that insurer, promptly provide the managing general agent with evidence that agents who are associated with the insurer through the managing general agent have complied with all applicable insurance law with respect to the insurer's insurance that is sold or solicited through the managing general agent.

This section narrowly addresses reporting obligations that are triggered by 'on demand requests.' While we appreciate provisions that compel all parties to share relevant MGA and agent suitability information, additional clarity is required that speaks to proactive, contemporaneous reporting obligations to insurers when the MGA identifies an incident of non-compliance or breach of rules, regulatory or otherwise, by an agent. We would suggest the responsibility for the ongoing monitoring and reporting of non-compliance fall to the newly created DCR of each MGA (further to 9(1)(i)).

A reciprocal reporting obligation could be used punitively towards an insurer. Intermediaries should not have audit powers over insurers as insurers have the discretion to determine who can distribute their products. We do not understand the consumer protection rationale for this clause and we have concerns that this would allow the request of sensitive commercial information.

The clauses around reporting could result in neither party making a report. MGAs should have an obligation to report to FSRA, with the insurer providing supplementary information if required. An insurer should not be held responsible for the accuracy and completeness of an MGA's report as this is a requirement of the MGA's licence. Life insurers recommend that MGAs be required to use the Life Agent Misconduct Report (LAMR) to report agent misconduct to FSRA and that MGAs should also be required to report the misconduct to the affected insurers. Additionally, it would be impossible in practice for an insurer or an MGA to provide the other entity with evidence that "an agent has complied with all applicable insurance law."

Furthermore, regarding the ongoing suitability of the agent, we are concerned with FSRA's lack of mandatory reporting requirements of critical events at the time they occur. Some other provincial insurance councils have instituted a requirement to report significant events (e.g. financial issues, discipline by another regulator, criminal charges, etc.) within a prescribed time frame—usually a matter of days of the event occurring. However, FSRA only requires these events to be reported at licence renewal or the reinstatement application.

The lack of timely agent reporting requirements means that serious conduct (e.g., regulatory sanctions, criminal charges, including theft or other serious or egregious issues) could remain unknown to FSRA until the time of the licensee's renewal. Waiting until renewal for the disclosure and possible re-assessment of the agent's suitability, does not serve to protect the public, as FSRA may be dealing with a serious event up to two years after it occurred.

While insurers require reporting within a prescribed time frame in most cases, regulatory support by mandating its own reporting deadlines would serve a greater purpose.

The Proposed Rule states that FSRA can address suitability earlier than renewal ("… at any time FSRA deems appropriate."), however, it does not indicate anything regarding FSRA's potential implementation of reporting deadlines to address serious events which may impact of the suitability of a licensee as soon as possible.

3. ***Insurer and MGA compliance systems:*** *FSRA has included additional requirements for MGA compliance systems as it is believed MGAs would benefit from additional details and clarity about how and when to monitor sub-MGAs. Although such actions are not explicitly listed in the Proposed Rule for insurers, FSRA anticipates insurers may undertake similar actions to achieve other required outcomes, such as reporting to FSRA an MGA who may not be suitable to hold its licence. Does the Proposed Rule appropriately balance insurer and MGA compliance system requirements? If not, which part of the Proposed Rule would benefit from changes?*

Life insurers are concerned that the compliance systems, as set out in the Proposed Rule, will not achieve FSRA's desired outcomes of enhanced consumer protection as they perpetuate the inefficiency of the current regulatory system in Ontario. Under the current system, multiple

insurers are all expected to exercise oversight over each MGA and each agent even if each insurer only has visibility into a portion of the MGA's business or the agent's business.

The Proposed Rule makes every insurer responsible for monitoring the compliance of each MGA and agent. This means that a typical MGA that works with many insurers will receive compliance monitoring requests from every one of those insurers, all aimed at accomplishing the same outcome. The same is true of agents. This will significantly increase compliance burden in a way that is both costly and inefficient.

Examples of concerning or problematic expected outcomes:

- 8(1)(i): it is not reasonable for an insurer's compliance system to ensure the MGAs and agents associated with the insurer will comply with all applicable insurance law. A reasonable outcome of the insurer's compliance system is that it captures occurrences of non-compliance so that they can be addressed.
- 8(1)(ii): is clearly an obligation of the MGA to report to the insurer. An insurer should not be responsible for the MGA's compliance with this provision.
- 8(1)(iii) & (iv): places the onus on insurers to identify whether MGAs and agents are committing acts of non-compliance despite MGA requirements under 9(1)(i)). This will result in the duplication of efforts and resources especially considering that MGAs are in the best position to have a 'global view' of the actions of agents contracted with multiple insurers (as noted in our response to question two, we propose this be made a responsibility of the newly created DCR of each MGA).
- 8(2)(i) & (ii): this is a concerning expectation of insurers; if the incident in question is identified and investigated by the MGA, the insurer will only be able to attest to the report's 'completeness and accuracy' based on the information made available to the insurer by the MGA. No insurer will ever rely on an MGA report if they are responsible for the accuracy and completeness of that report.
- 9(3): it is unclear if a standardized Compliance Review Survey is enough or if the MGA must conduct in-field assessments of sub-MGAs.

A more efficient and effective framework aligned with international standards, would be to delineate between the responsibilities of MGAs and insurers and for FSRA to act as a regulator with respect to those specific responsibilities.

The Proposed Rule creates duplication between the compliance systems of insurers and MGAs. Based on the amendments to the Act:

- An Insurer must have its own compliance system to comply with s. 407.10 of the Act
- An MGA must also have its own compliance system to comply with s. 407.4(7) of the Act.

Meanwhile, the requirements of the insurer's compliance system under s. 8 of the Proposed Rule are basically the same as the requirements of an MGA's compliance system under s. 9,

except that the requirements on the insurer are set out in broader terms. The insurer is ultimately responsible for making sure that both its own compliance system and the MGA's compliance system are reasonably designed to identify and report non-compliance with all applicable insurance law by any MGAs, sub-MGAs, and agents associated with the insurer.

If the intent was to have a meaningful and practical differentiation between the requirements and resulting accountabilities the Proposed Rule places on insurers versus MGAs, then this is unclear in the Proposed Rule as currently drafted.

4. ***Standards of Practice:*** *Should FSRA create standards of practice for MGAs or regulated activities under s. 407.2 beyond what is included in the Proposed Rule, and, if so, what does the stakeholder believe the standard should be, to whom should it apply, and what are the benefits to consumers?*

MGAs should have sufficient controls in place to monitor that their agents are engaging in needs based selling practices (e.g., financial needs analysis (FNA) and Reason Why Letter, etc.) and respecting all requirements.

5. ***Transparency About MGAs****: Given the predominant role that L&H MGAs play in distributing insurance, should there be additional measures to increase transparency to consumers about*
    a. *whether a L&H MGA is involved with the distribution of a product the consumer may purchase or has purchased, and*
    b. *if so, what role(s)the L&H MGA has in relation to that product?*

It is important that each consumer understands that an MGA will have access to all of the personal information in the consumer's insurance application and insurance policies. We would support a requirement in connection with the sales process for agents to disclose the name of the MGA, its role, and its access to the consumer's personal information.

We would recommend that the Advisor Disclosure Document to consumers be amended to state that the agent recommends the product based on the financial needs analysis and confirm that the MGA and insurer role does not include participating in the FNA process or the product recommendation.

Consumers should be able to readily access a searchable FSRA registry to validate the licence status for both the agent and the MGA.

6. ***Compliance Challenges:*** *Given insurers and MGAs are distinct legal entities and that life agents and MGAs can contract with multiple insurers and MGAs,*
    a. *What practical challenges, if any, could limit an insurer's and/or MGA's ability to fulfill their compliance system requirements in the Proposed Rule?*

b. *Do insurers and MGAs adequately understand their respective requirements under the Proposed Rule in monitoring MGAs, sub-MGAs, agents and/or prospective agents in a multi-contract scenario and know what requirements are applicable to MGAs, sub-MGAs, agents and prospective agents?*
c. *What changes, if any, are required in the Proposed Rule to address these challenges?*

The Proposed Rule as drafted presents many practical challenges for insurers. While the Proposed Rule imposes ultimate responsibility on insurers for agent oversight, the insurers will never have a "global view" of the conduct, monitoring and activities of agents. There are practical limitations on an insurer's ability to monitor agent compliance—insurer oversight is limited to the products that they manufacture, whereas an MGA, in the majority of cases, has a holistic line of sight to see the agent's activities across all insurers (eg. twisting).

Notably, section 8(2)(ii) of the Proposed Rule contemplates the insurer may rely on the MGA's reports to FSRA, but the insurer is ultimately responsible for complete reporting to FSRA on associated MGAs and associated agents identified as not suitable to be licensed. In the context of current contracting practices, introducing this type of overlap in reporting accountability will likely lead to duplication in reporting, or worse yet, inconsistencies in reporting.

We further address points b and c of this questions in **Appendix A** and **Appendix C.**

7. ***Insurer Screening:*** *Considering existing screening requirements on insurers under regulation 347/04: Agents, are changes needed to the Rule to reduce the potential for duplicate screening of agents who are authorized to sell or solicit insurance from many different insurers?*

Yes, changes are needed to address the duplication of screening of agents who are authorized to sell multiple insurers' products. We recommend that MGAs take the lead on screening agents for suitability at the time of recruitment and that MGAs be given the ability to sponsor agents they are recruiting. This could address the issue and redundancy of multiple screenings when an agent is associated with more than one insurer.

In Section 13 language suggesting that the agent screening function performed by an MGA is made for the insurer should be removed. Language suggesting that insurers are to receive and assess screening information on prospective agents should be removed. Instead, this section should state that MGAs shall be responsible for screening agents for suitability and only recommend suitable agents to insurers.

8. ***Transition Matters****: FSRA has included a transition framework in the Proposed Rule which would allow stakeholders to apply for a licence immediately after the Amendments are proclaimed in force and require applicants to meet specific requirements but otherwise delay industry's need to comply with the framework to a set time in the future.*

Assuming FSRA requires all persons who wish to operate as a L&H MGA at the end of the transition period to apply at least 6 months before the end of the transition period, what do stakeholders believe is a reasonable transition period?

We would support a generous transition period allowable in support of FSRA's goal of achieving proportionality and to accommodate MGAs that vary in size, operations, and complexity. We believe a transition period of a minimum of 24 months would provide MGAs with sufficient lead time to update their systems and processes.

Appendix C: Roles and Responsibilities

	Compliance System: MGA Oversight	Compliance System: Agent Oversight	Recruiting	Screening	Training
Insurer (manufacturer)	**Primary responsibility to have a reasonable compliance system in place to ensure:** • MGA is suitable before contracting (due diligence in line with OSFI B-10 obligations) • MGA is licensed before paying compensation • MGA has a reasonable compliance system to recruit, screen and monitor agents with respect to the distribution of the insurer's products • Non-compliant MGAs are reported to FSRA	***MGA involved:*** *For agents recruited and contracted by an MGA:* • Insurer does not have primary responsibility and should only be responsible for monitoring trends, complaints, conduct issues based only on the data that the insurer has access to (compensation trends, underwriting trends) and then investigating and reporting when required to FSRA and MGA. ***No MGA:*** *For agents that the insurer recruits and contracts directly, without an MGA:* **Primary responsibility for agent oversight** Have reasonable compliance system in place to ensure: • Agent is suitable before contracting • Agent is licensed before paying compensation • Agent aware/adhering to compliance responsibilities, expectations, Code of Conduct • Agent is completing needs analysis and reason why letters, Life Insurance Replacement Declaration (LIRD)., Know your customer (KYC), know your product (KYP) • Only duly licensed agents perform activities that require an agent's licence. • Non-compliant agents are reported to FSRA • Reassignment of clients when an advisor is terminated	***MGA involved:*** *For agents recruited and contracted by an MGA:* • Conduct periodic checks to ensure the MGA's compliance system remains satisfactory ***No MGA:*** *For agents that the insurer recruits and contracts directly, without an MGA:* **Primary responsibility for recruiting** • Sponsorship oversight	***MGA involved:*** *For agents recruited and contracted by an MGA:* • Conduct periodic checks to ensure the MGA's compliance system remains satisfactory ***No MGA:*** *For agents that the insurer recruits and contracts directly, without an MGA:* **Primary responsibility for screening and to ensure such agents are properly licensed**	***MGA involved:*** *For agents recruited and contracted by an MGA:* **Primary responsibility for:** • Developing and providing access to training on its own products. ***No MGA:*** *For agents that the insurer recruits and contracts directly, without an MGA:* **Primary responsibility for training** • Have a process in place to ensure agents are trained on the products of insurers that the agent sells. • Provide training to agents relevant to distribution and compliance with the laws (privacy, AML etc.).
MGA (distributor)	• Provide timely and ongoing disclosure/information to the Insurer that is necessary for the insurer's compliance system	**Primary responsibility for agent and oversight** Have reasonable compliance system in place to ensure:	**Primary responsibility for recruiting** • Have a process in place to recruit agents who are	**Primary responsibility for screening and to ensure such agents are properly licensed**	**Primary responsibility for training** • Have a process in place to ensure agents are trained

		• Agent is suitable before contracting and recommending to insurers • Agent is licensed before paying compensation • Agent aware/adhering to compliance responsibilities, expectations, Code of Conduct • Agent is completing needs analysis and reason why letters, Life Insurance Replacement Declaration (LIRD), Know your customer (KYC), know your product (KYP) • Only licensed agents perform activities that require an agent's licence. • Non-compliant agents are reported to FSRA and the insurer(s) involved after investigation • Relevant information is provided to the insurer • Reassignment of clients when an advisor is terminated or retires	suitable based on reliable standards set out in the Rule. • Sponsorship oversight	• Have a process in place to screen agents based on reliable standards set out in the Rule and to ensure agents are properly licensed • Only recommend an agent to an insurer that the MGA has determined to be suitable and licensed.	on the products of insurers that the agent sells. • Provide training to agents relevant to distribution and compliance with the laws (privacy, AML etc.).
Agents (client facing)	--	• Provide timely and ongoing disclosure/information to the MGA or Insurer that is necessary for the MGA or insurer's compliance system • Completes needs-based sales including analysis/recommendation and reason why letters, provide advice etc.	• Provide disclosure/information to the MGA or Insurer that is necessary for the MGA or insurer's compliance system	• Provide timely and ongoing disclosure/information to the MGA or Insurer that is necessary for the MGA or insurer's compliance system (e.g bankruptcy, CIO changes)	• Complete training on products the agents sell before selling them. • Complete regulatory CE requirements.
FSRA (regulator)	• Manage/enforce licensing regime • Set and enforce compliance system requirements through Rule • Review compliance systems prior to licensing • Conduct periodic reviews of MGAs to ensure compliance with their obligations under the Act and Rule and enforce accordingly • Review and approve designated compliance representatives	• Manage/enforce licensing regime • Conduct reviews of agents to ensure compliance with their obligations under the Act and expected best practices and enforce accordingly • Review agents for breaches of the Act and expected best practices when they are reported using the Life Agent Misconduct Report (LAMR) and enforce accordingly • Substantive testing of licensed agents and agencies	• Set and enforce recruiting standards for agents • Set and enforce standards for sponsorship	• Set and enforce screening standards for agents	• Set and enforce training standards for agents • Set and enforce continuing education requirements.