

September 24, 2014

Delivered via email to:

Mr. Philip Howell
Chief Executive Officer and
Superintendent, Financial Services
Financial Services Commission of Ontario
5160 Yonge Street, Box 85
Toronto, ON M2N 6L9

Dear Mr. Howell,

Re: Product Suitability Reviews of Life Insurance Agents

FAIR Canada understands that FSCO recently conducted its product suitability review of life insurance agents and found, among other things, compliance with conflicts of interest disclosure to be a serious concern.

FAIR Canada provided comments to FSCO by letter dated October 10, 2013 regarding the conduct of the compliance review and how to ensure that it was robust (a copy of our letter is enclosed for ease of reference). According to a recent Investment Executive article "Insurance: Lapse in compliance", many life insurance agents are not complying with existing rules for disclosure of conflicts of interest. It also reveals that only about 50% of those surveyed have undergone a compliance review. The article states that the review was conducted by FSCO issuing a questionnaire to a random sample of insurance agents.

FAIR Canada supports more on-site compliance reviews with agents and insurers, as planned by FSCO (according to the article). In addition, FAIR Canada believes that more needs to be done in order to ensure that product recommendations are suitable and are not being influenced by conflicts of interest arising from referral arrangements, incentive based compensation or embedded third party compensation. We believe that a substantive assessment of the adequacy of the product suitability process and recommendations to improve it are long overdue. We strongly urge FSCO to consider setting out regulatory requirements that insurance agents must meet so that suitability is properly determined before recommendations are made to a client.

In particular, FAIR Canada urges FSCO, as part of the market conduct review, to consider whether the Industry Practices Review Committee ("IPRC") of the CCIR and the Canadian Insurance Regulatory Organizations ("CISRO") product suitability principle, that "the recommended product must be suitable for the needs of the consumer" is adequate to protect consumers (or not).

The IPRC states that the recommendation of a suitable product should be based on the following:

- Fact finding appropriate to the circumstances, and assessment of the client's specific needs;

- A flexible needs assessment. The assessment should reflect factors including the underlying risk, the client’s objectives, and the complexity of the product being sold; and
- An agent or broker’s product recommendation that meets the client’s identified needs.

FAIR Canada urges FSCO to assess whether consumers are, in fact, being provided with suitable product recommendations and whether this process has been adequately documented. FAIR Canada notes that the CCIR in its Position Paper observes that agents do not know their specific obligations with respect to providing product recommendations that are suitable.¹ This poses real risks for consumers and needs to be examined as part of the product suitability review.

FAIR Canada notes that the document, “The Approach: Serving the Client Through Needs-Based Sales Practices” was used as a benchmark for the reviews. However, we question whether the process contained in this document is adequate for all types of life insurance products and in particular, segregated funds. It does not specify the type of information that needs to be gathered by the intermediary from the client, such as risk tolerance, capacity to incur losses, investment needs and objectives including investment time horizon and specific financial and personal circumstances.

FAIR Canada assumes that, in light of the initial findings revealed by the questionnaire, FSCO will now conduct on-site compliance reviews which will include reviewing the intermediaries’ processes and files to assess whether adequate information has been gathered from the client in order to make an assessment of whether the segregated fund or other life insurance product was suitable for the consumer. The sale of segregated funds should be subject to no less stringent requirements than the sale of a mutual fund. We provided comments on this in our letter to FSCO in regard to its proposed Statement of Priorities in 2011 and 2012.²

We would be pleased to discuss this letter and our recommendations with you at your convenience. Please contact Neil Gross at 416-214-3408 (neil.gross@faircanada.ca) or Marian Passmore at 416-214-3441 (marian.passmore@faircanada.ca).

Sincerely,



Canadian Foundation for Advancement of Investor Rights

Cc: John M. Solorsh, Chair of FSCO

¹ Canadian Council of Insurance Regulators Position Paper, “The Managing General Agencies (MGAs) Distribution Channel in the Life Insurance Industry”, May 2012 at 8. Available online at http://ccir-ccrra.org/en/init/Agencies_Reg/MGA%20position%20paper%20final%20EN2.pdf at 9-10.

² A copy of our comments on the FSCO draft Statement of Priorities are available on our website: <http://faircanada.ca/wp-content/uploads/2011/01/110427-FAIR-Canada-submission-OSC-Statement-of-Priorities.pdf> and at <http://faircanada.ca/wp-content/uploads/2011/01/120518-CL-re-OSC-FY2013-Statement-of-Priorities-final-clean.pdf>.