

February 9, 2024

Financial Services Regulatory Authority of Ontario (FSRA)
Submitted Online via FSRA's Website

Re: 2023-015 – Consultation for Proposed Guidance on Life Insurance Agent & MGA Licensing Suitability

FAIR Canada is pleased to provide comments in response to the above-referenced Consultation.

FAIR Canada is a national, independent, non-profit organization dedicated to being a catalyst for the advancement of the rights of investors and financial consumers in Canada. We advance our mission through outreach and education, public policy submissions to governments and regulators, and proactive identification of emerging issues. As part of our commitment to be a trusted, independent voice on issues that affect retail investors, we conduct research to hear directly from investors about their experiences and concerns. FAIR Canada has a reputation for independence, thoughtful public policy commentary, and repeatedly advancing the interests of retail investors and financial consumers.¹

A. The Importance of FSRA's Guidance

We support FSRA's proposed Guidance on licensing suitability for individuals and MGAs who hold licenses to sell life insurance in Ontario. In addition, we applaud FSRA's 6-point action plan to correct troubling business practices in the life insurance sector.² Both are critically needed and should be implemented as proposed.

From a consumer protection perspective, FSRA's recent investigations of the distribution and sale of certain life insurance products by agents associated with certain MGAs uncovered alarming issues. It is extremely concerning to learn about the significant risks of consumer harm. For example, because of concerns that inappropriate universal life insurance policies may be sold to consumers, or as a result of serious issues with the training and supervision of the life agents selling them.

We are, and Ontarians should be, disturbed that 50% of the 130 life agents contracted with MGAs using a tiered-recruitment business model that FSRA examined failed to comply with the *Insurance Act* (Ontario).³

Moreover, FSRA found:

- Insufficient disclosure regarding the management of conflicts of interest.
- Many failures to complete required continuing education.

¹ Visit www.faircanada.ca for more information.

² "Strengthening oversight and accountability of the life insurance sector" (Investment Executive: November 14, 2023).

³ [Life Agent Thematic Examinations: Tiered-Recruitment Model MGAs](#) (FSRA: October 2023), at 3 and 6.

- Potential weaknesses in the training and oversight of agents.
- Numerous failures to follow insurance industry best practices, including with respect to complex insurance products such as universal life policies.⁴

Moreover, there were similarly shocking results from a separate examination by FSRA of 24 client files of life agents contracted with tiered-recruitment business model MGAs. A staggering 80% of the files examined involved the sale of a universal life insurance policy that was not demonstrably suitable for the customer.⁵

FSRA also identified the following real risks of consumer harm:

- The loss of opportunity for consumers to put their money to better use, such as paying down debt or contributing to a TFSA, and
- The potential for consumers to lose all their overfunded premiums if a universal life insurance policy (a complex combined insurance and investment product) is not managed properly and the policy lapses.⁶

Determining who is suitable, or unsuitable, to hold a life insurance license is a critical part of FSRA's consumer protection mandate. Given the alarming findings of FSRA's examinations, clarifying expectations about how past and current conduct may impact an agent's suitability to hold such a license is not only appropriate, but also necessary to protect Ontarians. These findings call out for the strongest possible regulatory response by FSRA.

The balance of our comments will focus on the application of the proposed Guidance to MGAs (given the development of the MGA business model, which the *Insurance Act* (Ontario) does not explicitly contemplate).

B. FSRA's Oversight Powers need to be Enhanced

Because the *Insurance Act* (Ontario) predates the development of the current MGA business model, it does not specifically define or contemplate MGAs, or the role they play in the insurance business in Ontario today. The proposed Guidance should help clarify and fill in any gaps when it comes to expectations around suitability of those who want to engage in this sector.⁷

While the proposed Guidance is necessary, one cannot discount the possibility that some insurers or MGAs may challenge FSRA's interpretation of current legislation through the courts. If any such challenge succeeded, it would seriously impede FSRA's oversight of MGAs and its ability to protect the public. This would be a poor outcome for consumers because:

⁴ [Life Agent Thematic Examinations: Tiered-Recruitment Model MGAs](#) (FSRA: October 2023), at 3.

⁵ [Observed Practices in the Distribution and Sale of Universal Life Insurance](#) (FSRA: October 2023), at 3.

⁶ [Observed Practices in the Distribution and Sale of Universal Life Insurance](#) (FSRA: October 2023), at 11-13.

⁷ [Proposed Guidance: Life Insurance Agent & MGA Licensing Suitability](#) (FSRA: November 21, 2023).

- The placement of insurance by independent agents through MGAs is the prevalent insurance distribution channel in Ontario, and
- FSRA has identified many problems regarding the way insurers delegate many functions, such as agent screening, training, and monitoring, to MGAs.⁸

While the proposed Guidance is laudable and appropriate, we strongly recommend that the government of Ontario consider whether targeted amendments to the *Insurance Act* (Ontario) and its regulations are also necessary to ensure consumers are fully protected.

Specifically, we recommend the government consider amending the *Insurance Act* (Ontario) to:

- Define what an MGA is and provide FSRA with specific rule-making authority to oversee MGAs,
- Grant FSRA the power to create new categories or sub-categories of insurance licenses under the *Insurance Act* (Ontario) and to prescribe requirements in respect of such new categories or sub-categories of licenses, and/ or
- Grant FSRA the power to prescribe criteria for determining whether new types of businesses or business models involve activities that are subject to the *Insurance Act* (Ontario) and its regulations.

This will enable FSRA and the regulatory regime to keep pace with emerging new business models for distributing life insurance products and ensure consumer protection keeps up with innovative new business models and services.

Thank you for considering our comments on this important issue. We welcome any further opportunities to advance efforts that improve outcomes for financial consumers. We intend to post our submission on the FAIR Canada website and have no concerns with FSRA publishing it on its website. We would be pleased to discuss our submission with you. Please contact Jean-Paul Bureaud, Executive Director, at jp.bureaud@faircanada.ca or Bruce McPherson, Policy Counsel, at bruce.mcpherson@faircanada.ca.

Sincerely,



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President, CEO and Executive Director
FAIR Canada | Canadian Foundation for Advancement of Investor Rights

⁸ [Insurer-MGA Relationship Review Report](#) (FSRA: July 28, 2021), at 2-5, 7.