



April 29, 2022

Jordan Solway
Executive Vice President
Legal and Enforcement
Financial Services Regulatory Authority of Ontario (FSRA)
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RE: Approach to “Proposed Principles-Based Regulation”

Dear Mr. Solway,

The Canadian Life and Health Insurance Industry has actively supported a principles-based approach to regulation for many years. This approach is more effective than a one-size-fits all approach. Life and health insurers have different organizational structures, systems, and internal processes that reflect their product offerings. Principles-based regulation recognizes that there are many different paths to effectively achieving a public policy objective set by a regulator while also reducing regulatory burden.

In our submission, we provide feedback about where principles-based regulation would best apply. As well, we examine several specific sections of the proposed Guidance.

Benefits of a Principles-Based Approach to Public Policy

The benefits

Taking a principle-based approach to regulation is well suited to industries, such as life and health insurance, that are responsive to the needs of their customers. It allows a company to determine how to best achieve a public policy objective in a way that makes sense based on its particular circumstances. This gives it the flexibility to use its people, structures, and systems in the most effective way. More prescriptive approaches tend to focus on what technically meets compliance obligations but does not necessarily best achieve the desired policy objectives.

Measurement

This guidance requires boards-of-directors and management to demonstrate how the processes, policies, and practices they put in place achieve the desired outcome. We note that a board of directors and senior management have different roles and responsibilities. A board’s duty is to ensure that proper policy frameworks exist, and that senior management implements mechanisms to ensure their effectiveness.

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This approach subsequently requires a holistic approach to regulatory oversight. Each insurer will likely have policies and procedures that are described differently but still achieve the same policy objective.

Further, how outcomes are measured may also be different. For example, where indicators are produced by pre-existing information systems, specific measures may vary between companies. These measures, though different, may still be accurate indicators of implementation. When possible, regulators should consider what the available information shows and not prescribe specific measures. This is essential to avoiding costly changes to information systems.

Notably, it can be incredibly costly to make modifications, or change current measures where they are produced by an information system. We would suggest that a principle about holistic oversight be added to inform future enforcement activity.

Where principles-based regulation works

The consultation notes that FSRA will not be a purely principles-based regulator in its regulatory and supervisory approach. In some circumstances, there will be a need to rely on detailed Rules and prescriptive requirements.

We agree that in most cases a principles-based approach is most effective. However, there are certain circumstances when a more prescriptive approach is warranted. For example, in highly competitive markets, the evolution of certain practices has led to a broad alignment. It is difficult for any single party to make a unilateral change in response to a general principle as they could become an outlier. In these cases, more detailed expectations from the regulator could be beneficial. In addition, when it comes to distribution, products can be sold through intermediaries that are independent of insurers. The approach to regulation must recognize the different parties involved in an activity for which they are responsible.

Clarifying, Simplifying, and Harmonizing Regulatory Requirements

As FSRA plans its approach to future regulation it should consider simplifying expectations by harmonizing key principles with other jurisdictions through the CCIR and CISRO. Clear, consistent, and simple communications are helpful to intermediaries, insurers, and consumers alike. Such an approach may support FSRA's ongoing project to integrate and update materials transitioning from FSCO.

Section-By-Section Analysis

Overall, we agree with how principle-based regulation has been described throughout the consultation document. Below we offer feedback on specific sections.

Risk-Based

We agree with taking a risk-based approach to regulation. FSRA, like insurers, needs to focus resources where it will have the highest impact.

This principle should be underpinned by a separate principle of transparency about selection methodology when FSRA is carrying out reviews to determine areas of risk and subsequent enforcement activity.

If FSRA focuses its enforcement and oversight role where there is the highest risk, it is also important to recognize that the findings would not be representative of all advisors or insurers. This would result in a mischaracterization of the effectiveness of their compliance with regulatory requirements.

- For example, FSRA recently released its “Market Conduct: Life and Health Supervision Framework”. A risk-based approach was used to select advisors based on a history of non-compliance. FSRA took varying degrees of enforcement actions in most of these cases. Our concern is that this was positioned as being representative of the life and health insurance industry generally.

Either within this principle, or as a separate principle, there is an opportunity to expand on the concept of “evidence-based” regulation. Regulators should focus on where there are market conduct risks to consumers.

Proportionality

The risk-based principle includes concepts associated with proportionality. The concept of proportionality should be a separate principle as it applies generally.

Proportionality can be conceptually different from risk management. For example, proportionality may relate the implementation of policies and procedures. Here the level of risk may remain the same, while the approach to implementation may differ depending on what is proportional to a company’s size or structure.

Closing

Thank you for accepting our feedback through this public consultation. If you require additional information or would like to discuss any of these matters further, we would be pleased to set up a follow-up meeting.

Sincerely,



Brent Mizzen
Assistant Vice President, Market Conduct Policy and Regulation