May 3, 2022

Thera Medcof
Senior Manager
Financial Services Regulatory Authority of Ontario (FSRA)
25 Sheppard Avenue West, Suite 100
Toronto, ON, M2N 6S6

RE: Proposed Principles of Conduct for Insurance Intermediaries

Dear Thera,

Thank you for consulting on FSRA's adoption of the Canadian Insurance Services Regulatory Organizations (CISRO) "Principles of Conduct for Insurance Intermediaries". Having reviewed your "interpretation" and "approach" we have some insights to share about the roles of intermediaries in relation to this guidance.

Importance of Harmonization

We support the approach that FSRA has taken in adopting the CISRO Guidance by reference. The use of the same language and principles promotes a consistent understanding of these expectations. It also greatly reduces regulatory burden that would otherwise be associated with differing interpretations across the country.

Partnerships

This guidance distinguishes between partnership insurance agents and other ways of organizing a business. The law of partnerships is distinct, and we would caution against introducing this term. It has implications for liability to those who are partners. Further, we are unclear about why this guidance is distinguishing between corporate and partnership agents. Intermediaries have requirements regardless of their organizational structure.

Where FSRA intends to refer to a business such as an MGA, National Account, or other type of business they should be specific.

Intermediary Responsibility

Intermediaries, such as MGAs, run businesses that are distinct from insurers. They are best placed to design their own compliance programs. Therefore, it is important that MGAs have their own obligations. Their sightlines into product distribution are also different from that of an insurer.

Currently, insurers are required to ensure that MGAs adopt policies and procedures that support a compliance program. MGA compliance obligations only exist through their contracts with insurers. However, the authority to build and maintain a compliance program lies with the MGA's management. As a result, the authority and responsibility are held by separate entities which makes implementation and enforcement challenging.

Moreover, MGAs have their own separate contractual relationships with advisors. Insurers are not party to these contracts and therefore are limited to the extent to which influence can be exerted. For example, on page 8 it is noted that an insurer's compliance system must screen each agent for suitability. An MGA should also have their own independent requirements to conduct screening since they have a separate contractual relationship with an advisor.

Contractual and regulatory obligations are not equivalent

A contractual obligation should not be equated to a regulatory obligation. Contractual obligations do not carry the same weight as set out in rules, regulation, or legislation. The only way for a private company to enforce a contractual obligation is through contractual remedies. Only a regulator, like FSRA, can revoke a licence and stop someone from selling insurance. Also, FSRA has capacity to impose penalties and other sanction that go beyond contract remedies. FSRA should also consider the number of different contractual relationships that support the market for insurance and the challenges that poses to consistent implementation.

Sharing and Explaining the Principles of Conduct

We agree that consumers should be aware of their rights, potential conflicts of interest, what certifies an advisor to give advice, and how to lodge complaints, etc. However, we are unsure that it is necessary to explain each of these principles to a consumer in this form. Rather, these topics should be included in an advisor's written conflict-of-interest disclosure. Conflict-of-interest disclosure is a standard practice as outlined in the CLHIA's Guideline 14 (G14).

Enforcement action

We would like to better understand what type of enforcement mechanisms FSRA intends to use against intermediaries who are noncompliant.

Compliance and suitability of screening systems

Insurers do not have outsourcing relationships with intermediaries. Outsourcing is a term that is defined by OSFI under its Guideline B10, Outsourcing of Business Activities, Functions and Processes. Instead, FSRA should refer to an insurer's relationship with intermediaries in terms of contracting. For example, "MGAs with which an insurer has contracted". For the same reason we suggest avoiding the term "delegation".

Appendix B

The following are examples about which we have questions and concerns:

- "An insurance agent misrepresenting a life insurance contract for a retirement savings vehicle" – There are life insurance contracts that are retirement savings vehicles. For example, segregated funds are designed as a savings tool and are life insurance contracts. The guidance might be referring to permanent life insurance products that have an investment component or that can be borrowed against. We ask that this example be made more product specific or removed.

- "An MGA omitting to report the unsuitable activities of an intermediate (contracted agent) to the insurer" – We agree than MGAs should report such conduct to an insurer when it is detected. However, FSRA should also encourage an MGA to report misconduct to FSRA.

Conclusion

The life and health insurance industry supports the implementation and adoption of CISRO's "Principles of Conduct for Intermediaries" and appreciates the opportunity to provide feedback on this consultation. If you have any questions, we would be pleased to provide additional information, or to discuss these matters further.

Sincerely,

Justin Glinski
Director, Market Conduct Policy and Regulation