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Attention: Glen Padassery

Harold Geller and MBC Law Corporation are pleased to offer comments in response to FSRA publication of a proposed framework for regulating Ontario's life insurance sales. The specific consultation is on Life Agent Reporting and Insurer Oversight Obligations. We have reviewed this proposed guidance from a consumer protection perspective, we will address the following issues:

Introduction

Prior to providing our view and recommendations, we review the applicable legislation, rules, framework, and key principles. We also comment on the present gaps and failings in FSRA's oversight with our perspective gained from advocating for consumers who were harmed by negligent and often incompetent oversight. We submit that had the agents

who sold and serviced our clients' life insurance conducted these activities within a robust compliance process then most of the harm would have been avoided. Our strongest message in response to this consultation is that most harm is foreseeable and avoidable. To avoid the foreseeable harm a robust compliance or oversight regime is need. This regime must be designed, at a minimum, to catch up to both those protections in some other provinces and are in place across Canada for securities.

Four key themes are self-evident to anyone familiar with Ontario's oversight failures:

1. Education requirements are insufficient and commonly the spirit of these requirements is circumvented;
2. Insurers deny their obligations for oversight and have failed to institute a fit for purpose oversight with apparent impunity. This is long-standing and each day this continues, harm is knowingly visited upon Ontarians;
3. Sales goals trump consumer protections throughout the so-called oversight chain from insurers through intermediaries and agents to Ontario's consumers; and
4. Insurance is sold, not bought, based upon alleged investment advantages unique to insurance and alleged tax advantages.

The bottom line is that the fox is in charge of the hen house. A cultural change is required. This cultural change is the sole responsibility of FSRA. The present guidance consultation is an opportunity to begin the overdue and much needed cultural change.

The proposed Approach (not to be confused with the insurance lobbyist CHLIA's "The Approach") is a step forward. It appears to be an attempt to avoid governmental policy makers (as distinguished from regulatory policy-makers) who are advised by industry. It appears to be an attempt to make chicken soup out of an old chicken carcass that is well beyond its best before date. The result is, at best, an improvement and, more realistically, flawed.

The Approach will very modestly contribute to public confidence, will not promote high standards of business conduct nor effectively protect consumers. The Approach will appear to speak at public confidence, promote somewhat higher standards from a very low starting point, and might provide some consumer protection. The consumer protections in Ontario pre-and post the Approach provide Ontarians with much less

protection than is offered in the sister jurisdictions of Quebec and British Columbia. To Ontario's life insurance consumers, the Approach is a small but welcome step forward and, if enforced, would provide at the margins some protections. The Approach as is, is a missed opportunity to protect Ontarians on a par with comparable Canadian standards.

The Approach considers the life agent's sale of death benefit related life insurance and not disability, critical illness, or group insurance.
This submission will address the most common forms of life insurance distribution being through MGAs/AGAs and through captive agents.

Present Compliance Regulatory Action in Ontario

Despite the vast amount of money Ontarians committed to life insurance, the low standards for entry into life insurance sales and servicing and the compliance requirements in place, there is next to no history of actions against insurers for their failure to run a consumer protection compliance system for Ontario. Assuming a fit for purpose regulatory regime in Ontario, the low entry standards and provisions of existing regulations and guidance should have resulted in similar number of enforcement actions, adjusting for numbers of consumers, with MFDA, IIROC and AMF enforcement actions.

As insurers routinely contractually download their compliance roles to MGAs and AGAs a reasonable observer would expect enforcement action against insurers, MGAs and AGAs. Again, there is almost no record of enforcement actions against insurers, MGAs and AGAs in Ontario.

There is a paucity of enforcement actions against insurance agents in Ontario related to compliance, though there is much ado and enforcement about insurer's financial interests related to CE requirements and E & O insurance. This is not consumer focused enforcement action, it is enforcement action in the interest of industry. An interesting and telling distinction.

It must be noted that unlike in securities, most Ontario life insurance CE is sales promotion related and not either compliance or objective products comparison. In Ontario there is no comparable duty to KYC, KYP, and Suitability in the securities sector. Thus, insurers are motivated to have their sales force attend their sales promotion as a substitute for valid CE credits. The rot starts with the CE accredited in Ontario including by leading industry participants and Advocis but in no means limited to this. The Canadian Sales Congress is another example of CE gone wrong.

With respect to E & O, as life insurance agents are authorized by insurers, inevitably in the absence of E & O insurance the insurer is financially on the hook for misdeeds of their agents. Thus, insurers are strong proponents of proactive E & O certificate sweeps and punishment of their agents who fail to protect their authorizing insurer with these 3rd party products.

Background – The Act and The Proposed Framework

The Ontario government passed legislation intended to regulate the sale and service of life insurance products in Ontario. The proposed restatement and refreshing of the obligations of Ontario's life insurers must be considered within the complete system. To focus only on the Consultation would be to abstract a part of a consumer protection system. A system cannot work in abstract parts, it must work holistically or will fail to protect Ontarians from egregious intended as well as unintentional negligent sales practices.

The Nearest Regulatory Compliance Comparison – Sale and Servicing of Security Products in Ontario.

We submit three observations:

1. Life insurance sales routinely present the recommendation as both an investment and a way to legally avoid or defer tax. With knowledge of this sales approach, life insurance compliance must take account of both elements of this sales approaches.
2. Life insurance is the poor relative with respect to consumer protection in investments in Ontario. Ontarians' protections for life insurance investments are at least 2 decades behind the closely comparable ecosystems for other investments as regulated by the

Ontario Securities Commission and, by delegated authority, the IIROC and the MFDA. This observation is based on the state of protections prior to the 2021 Client Focused Reforms with respect to securities compliance which provides much enhanced consumer/investor protections. Since the rollout of CFR, the state of Ontario protections for life insurance consumers is a further step behind its closest comparables. The AMF protections integrate wealth management as a whole and, as a result, are yet another step forward towards a holistic consumer protection system.

3. The present state of life insurance consumer protection in Ontario is reliant on the good faith and good actions of those selling and servicing life insurance. The present protections are based upon a sales and servicing model which all but disappeared in the 1980s and early 1990s. That is, present compliance protections assume a captive agency sales force which only exists in Ontario at the margins of the life insurance business. This a flaw that is widely known within the sector. An updated and effective compliance regime is resisted by industry, and its sales force industry and its sales forces rightly see consumer protection as a barrier to unbridled sales and profits.

Part of the reason for the legislature's and the regulator's resistance to robust compliance requirements is that industry and salespeople have significant funds to lobby politicians and regulators and incomparable access to the ears and personal interest of decision makers. On the other hand, there is no representation of the consumer of life insurance except for the limited input of FSRA's Consumer Advisory Panel (with only one member who would claim life insurance compliance experience or insights) and a few do-gooders who, when solicited by FSRA, will provide extemporaneous comments. The balancing of interests is left to: 1) politicians who are lobbied by their constituent fundraisers and by the well-financed professional lobbyist of industry; and 2) the regulators who, for the most part, either come from industry (and share their views) or lack experience in the marketplace of consumer interests. This lopsided input is contrary to the interests of Ontario. Consumers are left in the hands of well intended, but influenced, decision makers.

The Business

Insurance is based on sales. The remuneration of insurers, MGAs, AGAs and agents are primarily based on new sales. The financial incentives for servicing and preserving life insurance pales in comparison to the incentives for replacement and other sales activities which are not in alignment with the interests of the insured. While there is nothing wrong

with compensation for sales, if compliance is to become effective, then the guiding hand of the legislature must intervene to provide a strict public interest compliance ecosystem or moral suasion to promote the financial benefit of professional advice as opposed to the present ecosystem of sales promotion. Given the legitimate concern by most Canadian political parties to mandate remuneration of private industry, a balance for Ontarians can only be struck if a strict public interest compliance system is mandated.

At this time, the legislature has provided limited direction and tools for its life insurance regulator to promote effective compliance by industry.

The Context – Ontario's Insurance Act and Consumer Protection Regulations

In keeping with the analysis in the Consultation proposal, we too start with the legislative Framework.

In essence there are two concepts that underlie the consumer protection regime for life insurance in Ontario. The first is a highly problematic and rarely followed or enforced compliance regime. The second is a concept unique to life insurance (in comparison to other investment products sold in Ontario) of suitability of agents. Again, the suitability of agents' elements of the consumer protection regime is mostly observed in the breach by life insurers and their delegates in the sales chain, namely by the insurers MGAs and AGAs.

Except for a few provisions in the Ontario Insurance Act, canvassed below, the compliance regimes appear in two regulations and are otherwise left to industry's own devices. The two regulations are Replacement of Life Insurance Contracts (RRO 1990, Reg 674) and Agents (RRO 2004, Reg 374 – a close successor to Regulation 668). Both of these regulations may have worked in the captive agency model prior to the insurance business changes in the 1980s but are unworkable in the modern sale and servicing of life insurance in Ontario.

The Ontario Insurance Act

A relatively small number of provisions within the Insurance Act are related to the sale and/or servicing of life insurance in Ontario. As the provisions within the Act are primarily responsive to protecting the interests of life insurance companies, those provisions are not connected with life insurer obligations vis-à-vis the consumer of life insurance products in Ontario.

The Insurance Act has a few consumer protections. Some of these protections are often not fit for their purpose.

Sequentially, here are a few examples of where consumer protections are not fit for the purpose:

- Section 110(4) Information Folders – insurers are required to provide disclosure about their Individual Variable Life Insurance Contracts (commonly known as "segregated funds") not at the time of sale, but at the time of delivery of the contract. Delivery of life insurance contracts, in practice, is perfunctory. Although the act requires that "the information folder shall provide brief and plain disclosure" anyone who has tried to read Ontario's life insurance information folders cannot avoid the obvious reliance on complex industry terms, industry concepts and legal wording. Without considering the technical adequacy of these information folders, which is debatable, the unavoidable conclusion is that the average Ontarian cannot read and comprehend these information folders. As delivery of an information folder absolves the insurer of further disclosure obligations, insurers benefit from the present practice and oversight. To the degree that this requirement was to inform the investor/insured, these folders and FSRA's present approach is not fit for its purpose. Guidance and regulatory sweeps by FSRA are needed to require and enforce "full and plain language" disclosure in keeping with the average literacy level of Ontarians.
- S.115 bars effective repurposing of life insurance policies which were sold as long-term protection and investment when the needs of the owner have changed. This is a complex public policy issue. Ontario's government has prioritized protection of life insurers' interests and profits over the needs of its citizens. While Ontario's government has permitted reverse mortgages, it has refused to allow a similar concept in life insurance. This provision fails to consider the substantial proportion of life insurance which results

from overselling and where the owner no longer has need of the policy. The result is that policies are surrendered for a small portion of their objective value or lapsed resulting in financial harm to Ontarians. A competitive market for surrenders or assignments would increase the value of these policies for Ontarians. Admittedly, insurers whose profits are directly increased by the present monopoly profits would be reduced due to market competition. The present provision is not fit for its purpose. Further public policy discussion of this benefit to life insurers at the direct expense of Ontarian's life insureds is required.

- S.117 insurers are left to their own devices in drafting the wording of life insurance policies. In the absence of consumer protections, insurers have again defaulted to communications with Ontarians relying on complex insurance industry terms, complex insurance industry concepts and legalese. There is no reasonable prospect of the vast majority of Ontarians reading and understanding the resulting contracts of adhesion. To go further, it is common for insurance industries' own experts to be uncertain as to the meaning and operation of their own contracts. This commonly results in interpretations solely in the interest of insurers at the expense of their policy owners. Again, to the extent that a life insurance contract is owned by Ontarians, the Insurance Act protection is not fit for the purpose of disclosing to Ontarians how their policies operate.
- S.171(2) with respect to segregated funds, the Insurance Act in conjunction with the Ontario Securities Act deems segregated funds to be exempt from the more consumer-oriented protections for Canadian purchasers and owners of securities. Segregated funds are almost identical to mutual funds and the less expensive alternatives known as Exchange Traded Funds. Setting aside two specific protections (namely a death guarantee and an insolvency protection), a segregated funds operation from the perspective of the consumer are more expensive but otherwise, from Ontarian's consumers' perspective, identical. The death guarantee is of questionable statistical value (exceedingly rarely benefiting owners of segregated funds). The insolvency protection is relevant to a small and identifiable group of Ontarians. There is no practice, guidance or regulation that requires the identification of the group of Ontarians who are reasonably likely to potentially benefit from the bankruptcy protection. More concerning is the lack of practice, guidance or regulation requiring suitability of the investments within the segregated funds and ongoing service of these funds once sold to Ontarians. The result is that, with no exception that we have seen in 20 years representing Ontarians, once the product is sold the agent with the insurers implicit consent does not provide

ongoing servicing of the segregated funds beyond encouraging further compensation by generating purchases of funds. While this product has a place in financial plans for a very small group of Ontarians, the practice, guidance, regulation, and oversight of the sale of segregated funds are not fit for any purpose.

- 174(4) This provision of the Insurance Act entitles the insured to a copy of its contract. In practice, a copy is usually delivered at the time of completing the sale of the insurance. Commonly, insureds misplace or destroy these contracts overtime. This is no different than how a 20-year-old TV's warranty is treated by the average person. This provision appears to be consumer centric. Unfortunately, this provision does not align with insurer's practices. Insurers and their sales chains are not required to and do not maintain copies of the actual contracts sold to Ontarians. In a legacy computer system, the insurer records the various specimen pages that could be assembled to recreate an alleged copy of the contract as sold. Commonly, a consumer's request for a copy of his/her/their contract results in an insurer inaccurately assembling pages. With few exceptions, even many years into litigation, which has engaged strict document productions requirements, insurers are unable to accurately produce what was sold. If the most sophisticated of insurance lawyers and, without exception, Ontario's life insurance providers are unable to avoid inaccurate production of policies within litigation, then how is the average Ontarian who requests a copy of a policy able to rely on the alleged copy produced by the insurer? Furthermore, to state the obvious, if agents and the rest of the sale chain do not have a copy of the accurate and actual policy, how can accurate and meaningful recommendations be made by these insurance participants to Ontarians? This problem is easily avoidable. The best agents, though few, keep a copy of the actual policy sold to their clients. This should be a mandatory requirement. The present protection is not fit for its purpose.
- S.178(1) requires that all life insurance sold in Ontario must be based on an identifiable insurable interest in favour of the insured. The concept of an "insurable interest" is not defined. There is no requirement for nor oversight of the identification of an insurable interest in favour of the insured within Ontario's life insurance sales processes. In preferring sales over oversight, the ability to sell and underwrite an amount of insurance is the inappropriate proxy for an insurable interest in favour of the insured. While this negatively impacts a smaller group of Ontario's insurance sales, the effective disregard for consumer protection and the related absence of guidance and oversight has resulted in this provision being not for fit for its purpose.

- S.183 (1, 2) is a one-sided obligation on the insured at the time of application through to completion of the insurance contract to disclose, “every fact within the person’s knowledge that is material to the insurance.” From a high level, there is nothing objectionable about requiring an applicant to disclose information. There are three fundamental practices that undermine this requirement and create well-known unfairness for Ontarians. 1) only very few Ontarians (that is those who are sophisticated industry participants) would reasonably know what is “material to the insurance.” A simple example is that a headache, slight dizziness on quickly standing, etc. are all potentially “material.” Every Ontarian has had a headache. Almost every Ontarian over a certain relatively young adult age has experiences slight dizziness on quickly standing. Not once in an insurance application have we seen these potentially “material” facts disclosed. The absence of this type of disclosure has led to denial of death benefit and other life insurance benefits. In essence, this is a lopsided provision which in practice is unfair in its implementation. 2) This led to an obvious conclusion that the agents are not educating their clients on what the experts define as “material” and not helping Ontarians to fully disclose all potential “material” facts as defined by insurers. 3) This also leads to the conclusion that insurers are knowingly insuring Ontarians while permitting the insurers a “get out jail free” card to refuse claims. Profit at time of sales, and a way to avoid claims resulting in further insurer profits is unfair and unreasonable. 4) FSRA has no oversight and proposes no oversight of this section of the insurance act. The present practice is not fit for its purpose.
- S.184(2) these provisions allow the insurer to avoid contracts for almost any failure to disclose within the first two years that the insurance is in force. In practice, this is used as an anti-selection advantage by insurers to avoid early claims. After the policy has been in force for 2 years the standard for an insurer avoiding a claim changes to civil fraud. The definition of civil fraud is not within the contract of insurance. To find potential fraud the insurers commonly conduct a second level underwriting at the time of the claim. Insurers will request records which might not have been known to the insured. They look for any item not disclosed that, in the harshest light, might be “material”. So, if an insured’s doctor sent them for a test which might have several uses including one which is material, regardless of the actual communication of the nature of the test and the various purposes of the test and without evidence of the test uncovering something that is reasonably material, insurers commonly deny the claim. So too with common issues like headaches, etc. This is manifestly unfair. This occurs without regard to the evidence of the insured’s

doctors as to whether the ulterior purposes of the tests were actually made known to the insured. This occurs without any evidence of the insured knowingly failing to disclose this potential material investigation. With respect to death benefit claims, this is done when the only one who could meaningfully testify, by definition, is dead. This provision has some purpose, but the regulation and oversight of this provision is not fit for its purpose.

Regulations Related to Life Insurance Compliance

To the extent that the legislature has seen fit to pass regulations, there are serious gaps in FSRA's guidance and oversight of these regulations. Two are particularly pertinent. Only one is directly addressed in the Approach.

These two compliance regulations are:

1) Replacement of Life Insurance Contracts (RRO 1990, Reg. 674); and 2)
2) Agents RO 2004 Reg. 374)

Again, further guidance and oversight by FSRA are required with respect to both regulations. FSRA's Approach focuses on two sections from 347/04 sections 13 and 14. The second is the focus of the proposed guidance and will be addressed in more detail, below.

Life Insurance Replacement Declarations are required documents to be completed by the sales agent when either replacing one policy with a new one or when a policy's benefits are materially changed as per the specific wording of the regulation. These requirements appear to be routinely and egregiously breached. In the classic new sale situation, the credible agents adhere to the requirement and those agents who appear to be motivated by the disproportionate compensation for a new sale rarely meet these requirements. In almost every case we work on in Ontario, the breach of this rule is evident upon a cursory review. Unfortunately, only active review of agent records will uncover this common practice which harms Ontarians. I note that the last time our firm reported this to FSCO, FSCO refused to investigate and did not even request either our client's records or our client's knowledge of what occurred.

The use of this form could reduce churning and related insurance wrongdoings. Rarely, if ever, is this requirement complied with. Insurers and their compliance partners, MGAs

and AGAs on the selling side are incented to avoid requiring their sales forces to comply with this practice.

As a result, while this regulation has a clear purpose and value to Ontarians the guidance and oversight, in practice it is not fit for the purpose and allows for unchecked and intentional harm to Ontarians through the unbridled and foreseeable pursuit of profits by the insurance sales chain. It is notable that other provinces have a similar requirement and likewise have ignored this key element in the legislated protection of their citizens.

We turn to the regulatory source of the broadest sweeping protection of Ontario's life insurance sales and services, such as it is. Incongruously placed in the Ontario regulation 347/04 simply named "Agents" are a few key oversight provisions. The first makes sense. Section 10 requires that all Ontario life insurance agents must be authorized by one or more life insurers. Thus, all oversight of the sales and servicing processes flows from the fact that all life agents are authorized.

The key provision is the s.12, aptly titled "Insurer's Compliance System." This provision addresses each authorizing insurer's obligations under the broad heading of compliance. The provision is an anachronistic reflection of the long passed captive agent model for insurance sales. The underlying assumption is an agent is only authorized by one insurer at a time and thus that the one insurer can provide a full compliance process for all sales by their agent. No sales intermediaries (MGAs and AGAs) were in place when this provision was enacted. The captive agency model was replaced in the 1980s by a free-for-all where most life agents in Ontario are authorized by multiple insurers and, in many cases, by multiple MGAs and AGAs. Insurers have become distanced from their agents and do not see all the transactions requiring compliance. Thus, a meaningful compliance system would require that all insurers, MGAs and AGAs share compliance information between themselves and any potential new contracting insurance intermediaries. In the absence of this sharing requirement and practice, meaningful oversight does not occur.

At this point, agents who are identified as compliance risks can avoid oversight by simply changing their authority and/or MGAs and AGAs. This is prevalent among those bad actors (both intentional and unwitting) who are the worst examples of resisting compliant practices. In the absence of regulation that will fill this gap, insurers must be held accountable for their authorized agents and FSRA must take steps to actively search out these bad actors. While this is the default, it is not optimal nor is it fit for the purpose.

Given the porous complaint regime in place and the lack of Ontarian knowledge of both the protections in place and the FSRA complaint process, FSRA must undertake rigorous and frequent sweeps coordinating the full agent sales chains (that is from the agents up to their multiple authorizing insurers) on a thorough and frequent basis if FSRA is to have any credibility in this key element of protecting Ontario's consumers.

The better route is to change both the regulatory and the guidance requirements of the sales and servicing processes, but that is not proposed by either the legislature or FSRA at this time and would require a prolonged process while Ontarians are left at foreseeable, avoidable and substantial risk.

The Insurer's Compliance System provision of 347/04 must also address the gap in the way compliance is presently undertaken. The model is based on the leading life insurance industry's lobby group's (CHLIA) own guidance. There is no reasonable expectation that a life insurance lobbyist primary goal would be protection of insureds. There is absolutely no consumer input into the creation and adoption of CHLIA's guidance. In our liberal economic models, lobby groups are recognized as promoting the interests of their members with the least possible interference with their member's free market profit objective. Compliance is seen by business lobby groups, including the CHLIA, as a cost not an opportunity. Thus, as is reasonable of CHLIA, its guidance is not holistic, rigorous nor designed to protect Ontarians and other Canadians.

For example, the idea of an "insurable interest" as required under the Insurance Act is reduced to a recommended, but not required, process known as "The Approach." While

this equates to a “needs analysis” and some insurers claim that a needs analysis is required for all sales of life insurance, so far our firm has noted that not one insurer, MGA or AGA are adhering to their own stated requirement for a needs analysis to support a proposed insurance sale. In fact, not one case that we have been involved in, involving many hundreds of life insurance policies, in total, have been supported with a needs analysis. A lobby group’s guidance is clearly not an effective means of protection Ontarians.

Another example is the Life Agent Reform’s Form for reporting Unsuitable Activities of Agents. This form was part of the now, terminated, LH1/98 Guidance from FSCO and FSRA. This form identifies more than 18 specific unsuitable activities of life agents that should trigger a report to the Ontario insurance regulator. While a good idea, no insurer, MGA or AGA that we have dealt with has a compliance system to watch for, let alone root out, these known wrongdoings. This form is promoted as a tool by CHLIA, but the promotion appears to be solely for the purpose of proactively avoiding FSRA guidance, at a minimum, or more effective regulatory requirements. Again, if the purpose of this form is compliance, this form and the reliance on industry support and its lobby group is not fit for the purpose.

Response to the Proposed Guidance

This section focuses only on the issues considered in the Approach.

1. Errors and Omissions Insurance
2. Continuing Education
3. Agent’s Contracted Insurers

FSRA comments:

A) Insurance Company Responsibilities:

To the extent that there is a compliance system, it is set forth in the sparse words of 347/04 section 12. As stated in the approach, this regulation establishes that “insurers have an

obligation to maintain a system to ensure that agents acting on their behalf comply with the Act, the regulations and the agent's licence."

Contractually, Ontario's life insurance agents funnel their sales through the sales aggregator businesses of MGAs and AGAs. So too, though ultimately responsible for the compliance systems, insurers contractually download most compliance obligations to these sales aggregators. The conflict is obvious and profound. There is no financial incentive to these sales aggregators to perform the downloaded compliance system and there is financial incentive to overlook compliance in favour of sales. This is true whether or not the sale is in the interest of the client and whether or not the sales aggregators have reason to know of unsuitable advice and/or unsuitable activities by their sales agents. As mentioned above, FSCO had almost no meaningful compliance enforcement record with the exception of CE credits and E & O certificates. FSRA is too new to have an assessable record.

While FSRA has the authority to collect information, it does not collect information which would assist it to be both efficient and effective. Its focus is so limited and reflects the interest of insurers and not Ontarians.

To further develop the failing of the E & O requirement, it has three fundamental flaws. These flaws come up in many consumer claims and are found to be wanting. First, there is no requirement that manages the pyrrhic requirement that the termination of an E & O insurance be reported to the authorizing insurer. As this requirement is in the interest of insurers, insurers have encouraged regulatory focus on this requirement. The second is related, there is no requirement that E & O insurance cover claims made after the termination of a policy or series of policies. Thus, it is common that insurance lawsuits are commenced after the agent terminates his/her/their E & O policy. This is then used as a bargaining chip by insurers to pay claims in a highly discounted amount. While insurers remain liable for the acts of their agents, only lawyers deeply emersed in this area of law are aware of this liability. Thus, insurers can bluff with seeming impunity to the detriment of Ontarians. The third is that the mandatory requirements for E & O have a Fraud Endorsement which almost never covers fraud. At the time it was put in place, industry lobbied against an effective Fraud Endorsement. For the last 30 years, this flaw has been known without legislative or regulatory action to close this gap.

A further observation is that the amount of mandatory E & O coverage was set 3 decades ago and has been adjusted for inflation or the growing use of life insurance as an investment product. The quantum of coverage should be at least $5 million.

B) CE

The CE requirement is deeply flawed in practice. I have attended dozens of CE events hosted for insurance agents. Most are pure sales promotion of an insurer's product without objective comparison and without technical information. In effect, it is often a sales pitch from insurers (who is often the sponsor of a CE portion of an MGA, AGA or industry event) to its sales force. This is not credible and would not be permitted in the securities regulatory regime in Ontario. The comparison of insurance and insurance investment CE to securities CE is equal when comparing the pre-1980's reform to securities CE requirements to present-day life insurance CE. The Canadian Sales Congress is just one of many examples of how deeply flawed accreditation has become.

FSRA's statement that "eligible topics for CE must be related to the technical aspects of life insurance" if implemented would be a significant change. Every CE must be reviewed in advance and in retrospect in order to fix this broken part of Ontario's life insurance compliance regime. Unfortunately, FSRA is promoting a passive approach reliant on the good faith of industry and its acolytes which fails to recognize both the present problems and the need to change the CE culture in Ontario.

C) Insurance Company Responsibilities

FSRA states that "insurers are required to have a system in place to ensure that all agents acting on their behalf comply with regulatory and licensing requirements that are intended to protect consumers." This would be laudable if it weren't ironic given the absence of Ontario's insurers having such a system in place. To the extent that insurers have paid heed to this requirement, it is by contractually downloading these responsibilities to their MGAs and AGAs. Having examined insurers, MGAs and AGAs from most major companies selling in Ontario, the contractual requirement is the only step taken by any of these entities to comply with these regulatory and licensing requirements. Any sweep of insurers, MGAs and AGAs would show the extent of this wanton breach of this key consumer protection.

FSRA and its predecessor, unlike its securities sister organization, have only asked insurers whether they comply with this requirement, they have not demanded the evidence of compliance. The MFDA, IIROC and OSC have all conducted extensive and repeated sweeps with enforcement action for those in default. These sweeps and enforcement actions have changed the behaviour at the top and through the sales chain for securities. The lack of sweeps and enforcement has resulted in broad based breaches by insurers and their senior executive. This must change. No such change is proposed by FSRA and, as such, the Approach fails in promoting compliance with life insurance sales and servicing in Ontario.

An example that is common, is the screening function. While this is the most significant present compliance undertaking by most insurers, it relies on the truthfulness of the agent. Simple steps like character references are routinely ignored. Furthermore, it is common for life insurers to write blanket comfort letters for the high quantum sales agents who do not share known histories of unsuitable activities by their agents.

With respect to monitoring, based upon 25 years of case work, not one insurer has a monitoring system in place. Furthermore, when insurers, MGAs and AGAs have knowledge of suspicious activities of their agents or knowledge of unsuitable activities of their agents, they neither share this knowledge within their sales/compliance chains nor report it to their regulators. In practice, and in the face of their obvious contracts, insurers, MGAs and AGAs choose that sales trump compliance.

For further clarity, to my knowledge:

- Not one Ontario insurer maintains a compliance system which satisfies the requirement of section 12. FSRA has not tabled a proposal to change this practice and fact.
- Not one insurer has policies in place to ensure adequate oversight.
- Not one insurer has record keeping to ensure compliance such as a Needs Analysis or mandatory Relationship Disclosure. If they are not ensuring these simple processes, then they are not ensuring the more challenging compliance elements.
- Not one insurer can reasonably show it is exercising due diligence.

Coming Into Force

A last observation. The Approach is allegedly a statement of what is, not what would or could be. Yet FSRA has seen fit to put off the effective date of this document for no apparent reason. In our view FSRA's repetition of the existing requirement is necessary given the absence of these requirements in practice. This is a positive step. There is no reason for delay other than to pander to the interest of industry. Most clearly, the delay of the in-force date for the repetition of the existing regime is directly contrary to the interest of Ontarians.

Recommendation:

Our recommendation can be summed up in two overdue regulatory steps which are within FSRA's existing powers and one plea for change. The two existing regulatory steps are: sweeps and enforcement. The one plea for change is for updating the regulatory regime to reflect the modern method of sales within the insurance to a standard comparable to securities distribution in Ontario.

With respect to the update, all that is recommended is the adoption of the successful model already in place for Ontarians in a closely comparable area of consumer activity. There is almost nothing to differentiate the two areas except: 1) the lack of a compliance culture in insurance industry, 2) the lack of education for entry into the sales area and the continuing education of sales agents, and 3) the lack of proactive action by FSCO, historically, and FSRA, more recently, to use its powers to protect Ontarians.

Respectfully submitted by

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