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Financial Services Regulatory Authority of Ontario
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RE: Consultation on Proposed Guidance – Administrative Monetary Penalties

Primerica Financial Services (Canada) Ltd. (“Primerica” or “we”) appreciates the opportunity to respond to the Financial Services Regulator Authority of Ontario (FSRA) on the proposed Guidance on Administrative Monetary Penalties (“AMP” or “AMPs”) (“the Guidance”).

About Primerica

Primerica Financial Services (Canada) Ltd. is a leading distributor of simple financial savings and protection products to middle-income households throughout Canada. Our Canadian corporate group includes our life insurance company Primerica Life Insurance Company of Canada (PLICC). Primerica has been serving the Canadian public since 1986. PLICC is represented by over 10,000 licensed life insurance agents across the country. About 60% of our life insurance agents are dually licensed as mutual fund representatives through PFSL Investments Canada Ltd. (PFSL). We insure almost 550,000 lives and operate in every province and territory in Canada.

Our products and personal advice help middle-income Canadians establish long-term financial goals. Our representatives guide their clients at life's critical points, helping them avoid common pitfalls to gaining financial independence: higher cost and lower face value insurance that does not protect adequately, starting to save too late, not saving enough and neglecting tax-advantaged savings opportunities, to name a few. Our representatives take a holistic approach with their clients and offer our digital FNA (Financial Needs Assessment), which provides them with a snapshot of their financial situation and a road map to achieve their goals.

We have an exclusive sales force of representatives, which allows us to put supervision, monitoring, controls, and restrictions in place based on trends and risks we identify.

Addition of Safe Harbour Provisions

Similar to other regulatory organizations that use AMPs as a last resort to achieve compliance with their rules, we ask that FSRA include a safe harbour provision in the proposed guidance on AMPs. A safe harbour provision grants protection from liability or penalty when certain conditions are met, and the representative (or the company) has proven due diligence to prevent the commission of the offence. A safe harbour provision protects stakeholders acting in good faith in the event that they inadvertently violate the rules on a technicality beyond their control. As an example, in Canada’s Anti-Spam Legislation¹ the Canadian Radio-television Telecommunications Commission (CRTC) provides a safe harbour provision from AMPs.

¹ An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-

We refer to Section 46(2) of Canada’s Anti-Spam Legislation as follows:

46(2) A person must not be convicted of an offence under section 42 if they establish that they exercised due diligence to prevent the commission of the offence.

With the inclusion of a safe harbour provision, FSRA would ensure that licensees who exercise due diligence receive protection against unwarranted AMPs. It will help ensure the AMPs are only applied in circumstances of egregious conduct and neglect of duties.

Compliance Agreements

We also encourage FSRA to implement Compliance Agreements as an additional or alternative to the AMP enforcement tool. Compliance agreements permit the representative or firm subjected to an AMP to also enter into an agreement with the Regulator which sets out a detailed plan of corrective and/or preventative measures that must be adhered to.² Compliance Agreements also allow the Regulator to reduce, or cancel the AMP so long as the representative or firm adheres to the agreement.³ Similar to a safe harbour provision, compliance agreements protect stakeholders who act in good faith, yet may have violated the law based on a technicality that is outside of their control.

Support and Alignment with the CLHIA

Primerica had the opportunity to review the response letter submitted by the Canadian Life & Health Insurance Association (CLHIA) regarding this consultation and we would like to add our support and endorsement, with emphasis on the following sections from the CLHIA’s response:

- **The Importance of Proportionality, Reasonableness, and Fairness**
- **AMPs as a Last Resort in Supervision**
- **Purpose and Scope**

Section A.2

Section A.2 indicates FSRA will impose AMPs on a case-by-case basis consistent with the discretion granted to the regulator. The Section also contains seven factors the regulator will consider when assessing AMPs against a stakeholder. Primerica requests that FSRA add the “degree to which the contravention or failure was intentional” and “the extent to which the person tried to mitigate,” found in Section B.1, to the consideration in Section A.2.

Section A.3

Section A.3 states that the regulator may impose a General AMP for all instances of contravention. Primerica finds Section A.3 too broad and there is a need to clarify whether every

television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act (S.C. 2010, c. 23)

²Administrative Monetary Penalties: A Framework for Earlier and More Effective Regulatory Compliance, Administrative Justice Office, Ministry of Attorney General, Province of British Columbia (2008)

³ Ibid

breach of the rules will attract a maximum fine of \$100,000 to \$200,000. We request clarity on how the regulator will distinguish between a single General AMP and numerous Summary AMPs, and how the distinction will be made when patterns of misconduct only attract a single General AMP.

Section B.1

Primerica requests further clarity regarding how FSRA will ensure consistent application when determining the AMP amount. In Section B.1, there is a range for some of the penalty amounts, which could result in inconsistencies. It also needs to be determined whether certain factors are considered more significantly when determining the final AMP amount, and how those factors will be considered and applied.

Section B.1.2

Primerica regards the provision involving “potential harm” is broadly stated, and the determination of potential harm is subjective. We recommend that the Guidance applies only to actual harm. If the regulator maintains “potential harm” in the Guidance, we request that more specific language be used to enhance the clarity of the provision.

Conclusion

Primerica appreciates the opportunity to provide our comments to FSRA regarding the proposed guidance on AMPs. We believe that with the following improvements, the AMP framework can be a successful tool in protecting consumers and the industry from members who choose to disregard the rules:

- A detailed but principles-based guideline that provides the industry with clarity on how FSRA will consistently determine provisions surrounding harm,
- a safe harbour provision that enshrines the right from prosecution when inadvertent mistakes happen despite appropriate controls,
- and an affirmation that AMPs would be the last resort in FSRA’s supervision tool kit.

Best regards,



David Grad
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Chief Compliance Officer
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