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Via email: tim.miflin@fsrao.ca

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Financial Services Regulatory Authority (FSRA)
25 Sheppard Avenue West, Suite 100
Toronto, ON M2N 6S6

Attention: Tim Miflin, Senior Manager, Policy - Market Conduct

Dear Sirs/Mesdames,

Re: Proposed Guidance: Life Insurance Agent & MGA Licensing Suitability

Thank you for the opportunity to comment on FSRA's 'Proposed Guidance: Life Insurance Agent & MGA Licensing Suitability' released on November 21, 2023 (the "**Guidance**").

Financial Horizons is one of Canada's largest, longest-running and most productive MGAs, with over 7,000 independent advisors, 20 branch offices (8 in Ontario), and over 300 employees. Financial Horizons is at the forefront of the industry, with representatives on the Board of Canadian Association of Independent Life Brokerage Agencies (CAILBA), APEXA Strategic Governance, CLIEDIS Data Exchange Standards and FSRA's MGA Technical Advisory Committee.

We think the Guidance is a very positive and important first step. Currently, there is no official recognition of Managing General Agents ("**MGAs**") by FSRA in the life insurance industry, despite the fact that MGAs play a key role in the modern insurance distribution landscape. The Guidance changes that, and proposes that MGAs in Ontario be required to be licensed with FSRA. While this may not have previously been a FSRA requirement, we believe that most, if not all, MGAs operating in Ontario would already have an Agent license from FSRA.

In this letter, we will indicate our support for, or disagreement with, various components of the Guideline. However, we will focus most of our attention on recommending **specific minimum criteria** for some of the MGA suitability requirements proposed in the Guideline.

Financial Horizons Agrees

We agree that MGAs should have additional suitability requirements including (quotes from the Guidance) (i) "*the expertise and resources to operate as an MGA in a trustworthy and competent manner,*" and (ii) "*an adequate compliance function to ensure it meets its regulatory obligations under*

the Act, its regulations, FSRA rules, and FSRA and multi-jurisdictional Guidance, as well as any obligations that they undertake on behalf of insurers or agree to perform on behalf of or in support of insurers.” We also agree that “the number of employees connected to the MGA does not determine the scope, sophistication, or depth expected of the control and compliance functions. Rather, this is determined by the overall nature of the operations, and risks associated with the MGA’s business and operations.”

While we agree with the suitability requirements listed above, we note the requirements, as currently worded, are vague and ambiguous, and would likely be interpreted differently by different parties. We strongly believe that, in order for such requirements to have the intended effect, the requirements must come with specific minimum criteria. More on this below.

Financial Horizons Disagrees

While we appreciate FSRA’s position that MGAs must be licensed, and that MGA-specific suitability criteria may apply to MGAs seeking one of FSRA’s existing categories of Agent license, we believe that a separate MGA license would be more clear and appropriate, given the very different roles that Agents and MGAs play in the distribution of insurance products. That said, we recognize that FSRA may not have the authority to create the new class of license at this time, and we believe the proposed solution could be effective until a new class of license may be created.

The definition of MGA, which appears at page 4 of the Guidance, is deficient because (i) MGA’s don’t always, or typically, deal with the public, and (ii) some of the listed activities on their own could apply to a corporate advisor firm as opposed to an MGA. We attach, at Schedule “A” to this letter, our suggested revisions to FSRA’s definition of MGA.

Regarding the portion of the Guidance titled ‘Life agents may be held to be in a principal - Agent relationship,” we believe this portion, which is essentially a commentary on certain common law issues, falls outside the scope of the Guidance and should be deleted.

Specific Minimum Criteria for MGA Suitability Requirements

In order to add much needed clarity to requirements such as (i) ***“the expertise and resources to operate as an MGA in a trustworthy and competent manner,”*** and (ii) ***“an adequate compliance function to ensure it meets its regulatory obligations under the Act, its regulations, FSRA rules, and FSRA and multi-jurisdictional Guidance, as well as any obligations that they undertake on behalf of insurers or agree to perform on behalf of or in support of insurers,”*** we propose including specific minimum requirements.

Financial Horizons proposes that MGAs have the following minimum requirements (the **“Specific Minimum Criteria”**) in order to be licensed to operate as an MGA in Ontario:

- A Compliance Officer with (i) a university or college degree, or equivalent experience, (ii) a minimum five (5) years experience working in a compliance-related function in Canada, (iii) proven proficiency via an exam or periodic exams, and (iv) a detailed continuing education requirement.
- Errors & Omissions insurance, with coverage for prior acts, with minimum limit of \$1M per occurrence and \$2M in aggregate.

- Cyber insurance, with minimum limit of \$1M per occurrence and \$2M in aggregate.

We believe that most of the risks faced by consumers and agents in the marketplace would be significantly reduced if all MGAs had adequate compliance departments. There are currently no formal guidelines for the minimum qualifications or proficiency required of an MGA's Compliance Officer. This is unlike other industries which provide detailed minimum requirements for Compliance Officers.

The current wording – which references sufficient “*expertise and resources*” and “*an adequate compliance function*” – is so ambiguous and vague that it may not cause any change in the way MGAs operate and behave. We believe most, if not all, of the larger and well-established MGAs have been, for themselves, insisting on criteria well above the proposed Specific Minimum Criteria for years. We believe that smaller, less organized, MGAs pose a much greater risk to consumers and to the reputation of the industry as a whole, and the Specific Minimum Criteria may be effective in helping to mitigate that risk.

Regarding the suggested insurance requirements, we note (i) the Errors & Omissions insurance requirement is already included in most, if not all, of the standard ‘MGA Contracts’ that insurers have with their MGAs, and (ii) while Cyber insurance is not usually a contractual requirement, the nature of current business risks makes Cyber insurance as important to the protection of consumers as Errors & Omissions insurance, and the popularization of Cyber insurance in recent years has resulted in such coverage being more affordable.

While we believe the above Specific Minimum Criteria are appropriate, we offer the recommendation to spur conversation and debate. Our main concern is that specific minimum criteria, whatever they may be, be included in the final version of the requirements. Otherwise, if the requirements are merely principled instead of prescriptive, we are concerned the requirements will be interpreted very differently by different parties, and the consumer protection goals of the Guidance will not be achieved.

Thank you for the opportunity to provide feedback on the Guidance. We look forward to being part of the ongoing dialogue and working with FSRA on these important issues.

Yours truly,

FINANCIAL HORIZONS



Nick Pszeniczny
President & CEO

Schedule “A” – Definition of “MGA”

In this Guidance, the term MGA refers to a corporate or partnership life insurance agency that ~~deals directly contracted with the public and engages in, one~~ or ~~is required by contract~~ more Insurers to perform, any some or all of the following activities (the “MGA Services”) on behalf of or in support of ~~an insurer: such Insurers, to support the Agents that are contracted with the MGA to receive the benefit of such MGA Services. In return for the MGA Services, the Insurers pay compensation to the MGA, to compensate the MGA for arranging for the sale of insurance products on behalf of the Insurers, which compensation is, ordinarily, based on the commissions earned by the Agents from the Insurers and on the combined books of business of the Agents that are contracted with the MGA to receive the MGA Services.~~

- Recruiting agents or proposed agents to solicit insurance or to submit applications for insurance.
- Screening agents or proposed agents to confirm they are suitable to act as agents of the insurer with respect to insurance.
- Soliciting or submitting applications for insurance on behalf of agents who are associated with or under contract to the MGA, or affiliated with or under contract with the insurer on whose behalf the MGA is soliciting or submitting applications from life agents for insurance.
- Entering into written agreements with agents to sell or solicit L&H insurance offered by the insurer(s).
- Training agents who are affiliated with or under contract to the MGA or the insurer on whose behalf the MGA is providing training, or ensuring such agents are trained, with respect to insurance.
- Supervising or monitoring the activities of agents who sell or solicit an insurer’s L&H insurance.
- Reviewing applications for insurance and/or having delegated underwriting authority.
- Administering insurance contracts or customer relationships, either directly or indirectly through sub-agents, on behalf of an insurer.
- Any functions historically performed by insurers when they had their own direct agent team as a dedicated/exclusive sales force.
- Other conduct, obligations, duties or activities which results in or could reasonably be expected to result in the activities listed immediately above.