



March 8, 2024

Mr. Stuart Wilkinson
Chief Consumer Officer
Financial Services Regulatory Authority of Ontario
25 Sheppard Ave West, Suite 100
Toronto, ON M2M 6Z6

Re: Consultation on FSRA's Proposed Approach to Strengthening Protection of Vulnerable Consumers

Dear Mr. Wilkinson,

The Canadian Life and Health Insurance Association (CLHIA) appreciates the opportunity to provide feedback on FSRA's Consultation Paper on its Proposed Approach to Strengthening Protection of Vulnerable Consumers (Consultation Paper).

The life and health insurance industry commends FSRA's commitment to enhancing protections for vulnerable consumers. Fair treatment of customers (FTC) is a continuous journey, to which life and health insurers are firmly committed. The protection of vulnerable consumers is an important aspect of the FTC journey.

The Canadian Council of Insurance Regulators' (CCIR) Guidance: *Conduct of Insurance Business and Fair Treatment of Customers* (CCIR's FTC Guidance) already requires that a customers' needs, priorities, circumstances, financial knowledge, and experience be considered when assessing the suitability of insurance products, irrespective of any vulnerability.

FSRA's Consultation Paper, along with any subsequent guidance, will help insurers as they continue working to achieve their FTC objectives. It is important that any guidance FSRA issues concerning vulnerable consumers incorporates and builds upon the principles already established in CCIR's FTC Guidance.

Below, we provide detailed responses to the questions outlined in the Consultation Paper.

- 1. Do you agree with the definition FSRA has proposed to define vulnerable consumers in FSRA's regulated sectors:
"A vulnerable consumer is someone who is at higher risk of experiencing financial mistreatment, hardship, or harm due to various factors and personal circumstances."**

The life and health insurance industry generally agrees with the definition FSRA has proposed to define vulnerable consumers. However, it is critical for insurers and their customers that FSRA aligns any guidance they issue on vulnerable consumers with existing frameworks for safeguarding vulnerable consumers in other provinces and industries. The industry believes that Canadians are best served and protected when insurers can adopt a single harmonized cross-country approach.

One instance of guidance that we hope FSRA will align with is the 2023 guidance from the Autorité des marchés financiers (AMF) concerning Protecting Vulnerable Clients which provides factors that may be considered indicators of vulnerability. By providing examples that demonstrate the multifaceted nature of vulnerabilities that a consumer can face throughout their life, FSRA can help consumers more effectively.

FSRA's definition and guidance could consider the following:

- That different levels of vulnerability require different and flexible approaches;
- The situations (socioeconomic, physical, emotional, mental, etc.) that can lead to vulnerabilities;
- That consumers might face more than one vulnerability at once; and
- That vulnerabilities are dynamic and subject to change. They can even resolve during lucid moments or when situations change or improve.

Canadian securities regulators have also undertaken extensive work and have extensive materials available in this area. In addition to harmonizing with provincial insurance regulators across Canada, we would also encourage FSRA to develop principles that align generally with the requirements and practices in the securities industry about vulnerable consumers.

In addition to a definition for vulnerable consumers, it would also be helpful for FSRA to include a definition for both consumer and customer that aligns with the definition provided by the CCIR's FTC Guidance.

2. To what extent does this topic require more attention from FSRA?

The life and health insurance industry believes that protecting vulnerable consumers is a critical component of achieving the fair treatment of customers. To this end, it is important and helpful for all stakeholders and participants in the product lifecycle to have clarity on regulatory expectations regarding roles and responsibilities when dealing or potentially dealing with vulnerable consumers.

This way, we can help to ensure that all consumers are treated fairly, have consistent experiences no matter the distribution channel in which they are dealing and are better protected from and informed about financial risks.

Vulnerable customers greatly benefit from the financial products and advice offered by insurance companies and advisors. It is critically important that any safeguards introduced are balanced and considered to ensure vulnerable customers continue to access the products and advice they need without too much inconvenience.

Protections should be flexible enough so they can be voluntarily accessed at the discretion of consumers and their financial services provider. Avoiding any perception that vulnerable consumers are unduly more difficult to deal with should be a key priority for FSRA.

3. In addition to the activities proposed in the chart under Section A, are there any additional activities, such as outlining a set of expectations or defining specific requirements for entities across all of its regulated sectors, that FSRA should consider for its approach to strengthening protection of vulnerable customers?

The industry would support FSRA providing a set of expectations as well as providing a framework that helps guide insurers, MGAs and advisors in navigating vulnerable consumer situations.

As part of this framework, FSRA could make resources available such as training for advisors to provide them with tools for interacting and working with vulnerable consumers. In developing materials, FSRA should take account of and generally align with the extensive resources that are already available across the financial services industry (e.g. materials are available from the [Investment Funds Institute of Canada \(IFIC\)](#), [the Ontario Securities Commission \(OSC\)](#) and as mentioned, [the AMF](#)).

The industry also suggests that FSRA utilize its research on vulnerable consumers to develop guidance around new retirement solutions/ products, like the variable payment life annuity and the advanced life deferred annuity, that may work well for vulnerable consumers depending on their circumstances. Guidance such as this could also help consumers plan for future vulnerabilities.

4. Do you have any comments on FSRA's proposed approach to defining vulnerable consumers in Section B? Do you think it is useful to have a definition of vulnerable consumers? Are there any other factors that FSRA should consider in better understanding vulnerability in its sectors?

Being vulnerable can vary in impact and longevity, which can make it difficult for financial service providers to always identify vulnerable consumers. Solutions should be focused upon enhancing financial literacy for vulnerable individuals, educating financial services providers on their interactions with these individuals, and decreasing any barriers to access the product, services and advice insurers and advisors provide.

We recommend that FSRA looks to work done in other Canadian and international jurisdictions and in the securities industry to ensure definitions are consistent across the financial services industry and general approaches are aligned.

Ultimately, national harmonization of financial services regulation is a key priority for insurers, any new protections delivered in a future framework should be aligned with other Canadian jurisdictions.

5. If you are from one of FSRA's regulated sectors, what should FSRA know about how you, your firm, or your industry serves marginalized, underserved, and/or vulnerable consumers? For example, do you have any targeted programs or controls in place to reduce risk of unfair outcomes for these groups?

To ensure that customers are informed about the products they buy and receive ongoing service, companies already have in place processes to assist in identifying vulnerable

consumers as well as manage concerns specifically related to vulnerable consumers. This is just one aspect of programs insurers administer which support the fair treatment of customers including “vulnerable” customers for as long as they are with the company.

Examples of these processes include CLHIA Guideline G8 *Advisor Suitability: Screening Monitoring and Reporting* and aligned market conduct oversight programs that specifically target vulnerable consumer concerns through both complaint handling and advisor reviews. Additionally, focused training and awareness in advisor training materials and professional practices guides help ensure that advisors are well prepared to service and interact with vulnerable consumers.

As FSRA continues this work we would like to reiterate the need to ensure that both industry and its customers are adequately educated about situations of vulnerability as well as have adequate tools and resources to ensure good outcomes in these scenarios.

6. *What additional information (such as leading practices, tools, opportunities or risks) should FSRA be considering to inform its approach?*

We recommend any additional protections be principle and risk based.

For example, the concept of proportionality should be included in any guidance adopted by FSRA and recognize that there are many different types of insurance available with some being less complex than others.

If it hasn't already, FSRA should also collaborate with existing agencies with established vulnerable consumers protection practices and tools, such as those mentioned – the AMF and the Ontario Securities Commission (OSC). As well, the Financial and Consumer Agency of Canada (FCAC), Financial Literacy Canada, FAIR Canada and CPA Canada etc., will likely have learnings from the programs they have implemented.

7. *Do you have any suggestions for particular vulnerable communities or public interest groups representing vulnerable consumers that FSRA should directly engage with??*

While there are likely other important groups representing vulnerable consumers that we are not aware of, we would recommend the following: the Ontario Office of the Public Guardian and Trustee, FAIR Canada, Canadian Center for Elder Law, Society of Trusts and Estates Professionals (STEP), Canadian Association of Retired Persons (CARP), Gilbrea Center for Studies in Aging and the National Institute for Aging (NIA).

FSRA should also have direct engagement with groups representing all communities who fall under FSRA's definition of vulnerable consumers (e.g. care homes, mental health facilities, indigenous communities, Alzheimer's and dementia societies etc.).

8. Please provide any feedback you wish to on any other part of FSRA's proposed guidance.

Trusted Contact Persons

An integral part of the securities rules regarding vulnerable consumers is the Trusted Contact Person (TCP) who can be contacted for difficult conversations about a customer's personal situation. There will be unique considerations for the life and health insurance industry (e.g. beneficiaries are also considered to be customers under CCIR's FTC Guidance which creates another layer of TCP's or potential conflict of interest scenarios). Nevertheless, FSRA may want to consider a similar concept for the life and health insurance industry.

Power of Attorneys

FSRA may also wish to establish guidance to assist the industry when dealing with a vulnerable persons' Power of Attorney (POA) and Enduring Power of Attorney (EPOA) documents.

A particular challenge for the industry is dealing with POAs when the document and dealings are in a language other than English or French.

Another area where the industry would welcome guidance is in dealing with vulnerable persons who have moved away and live outside Canada and execute a POA in their new jurisdiction.

Safe Harbour Rules

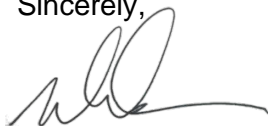
FSRA may also wish to consider a "safe harbour rule" such as those that exist outside of Canada. Financial services providers are often placed in a difficult position trying to protect the rights of consumers who may lack capacity. Additional liability protections would shield the industry from any repercussions from reasonable attempts to protect vulnerable individuals. An example of this would be to ensure that insurance agents' Errors & Omissions (E&O) insurance is sufficient to cover issues related to vulnerable consumers.

Conclusion

Thank you for the opportunity to provide the industry's input during the initial stages of FSRA's proposed multi-year Approach to Strengthening Protection of Vulnerable Consumers.

Strengthening the protection of vulnerable consumers is an important area of work and we want to again commend FSRA for recognizing the importance of guidance in this area. We would be pleased to discuss any questions you may have or to provide additional information if it would be helpful.

Sincerely,



Luke O'Connor
Assistant Vice President, Market Conduct Policy and Regulation

About the CLHIA

The Canadian Life and Health Insurance Association (CLHIA) is a voluntary association whose member companies account for 99 per cent the life and health insurance business in Canada. These insurers are significant contributors to Ontario and its economy. In 2022 they provided financial security to 11 million Ontarians and make nearly \$50 billion in benefit payments (of which 90 per cent goes to living policyholders as annuity, disability, supplementary health or other benefits). In addition, life and health insurers have more than \$350 billion invested in Ontario's economy. A large majority of life and health insurance providers are licensed to operate in Ontario, with sixty-two headquartered in the province.

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