

February 15, 2021

Ms. Kandace Hopkins
Director, Practice and Quality Assurance
Insurance Council of British Columbia
1040 West Georgia Street, Suite 300
P.O. Box 7
Vancouver, BC V6E 4H1

Sent via email: consultation@insurancecouncilofbc.com

Dear Ms. Hopkins,

Re: Consultation on Guidelines for Life Insurance MGAs

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments in regards to the Insurance Council of British Columbia's ("Council") Consultation on its Guidelines for Life Insurance MGAs (the "Proposed Guidelines").

1. ABOUT ADVOCIS

Advocis is the association of choice for financial advisors and planners. With more than 13,000 members across the country, Advocis is the definitive voice of the profession, advocating for professionalism and consumer protection. Our members are provincially licensed to sell life, health and accident and sickness insurance, as well as by provincial securities commissions as registrants for the sale of mutual funds or other securities. Members of Advocis are primarily owners and operators of their own small businesses, creating thousands of jobs across Canada. Advocis members provide advice in several key areas, including estate and retirement planning, wealth management, risk management, tax planning, employee benefits, and life, critical illness and disability insurance.

Professional financial advisors and planners are critical to the ongoing success of the economy, helping consumers to make sound financial decisions that ultimately lead to greater financial stability and independence both for the consumer and the country. No one spends more time with consumers than advisors and planners, educating them about financial matters and helping them to reach their financial goals. Advocis works with decision-makers and the public, stressing the value of financial advice and striving for an environment in which all Canadians have access to the advice they need.



2. INTRODUCTION

Advocis supports Council’s provision of additional guidance to MGAs regarding their roles and responsibilities in the distribution of life insurance. The proposed Guidelines provide much clearer direction for MGAs in exercising their regulatory obligations and in fulfilling their duties with insurers. However, we are concerned that certain elements of the Guidelines move away from the long-held understanding that the supervision of advisors in the distribution of life insurance is a joint responsibility of MGAs and insurers. Instead, the Guidelines seem to recast MGAs as being primarily responsible for this critical function, which is not necessarily appropriate.

3. OUR COMMENTS

Our specific comments on the Guideline are as follows:

3.1 **Screening and Monitoring is a Shared Responsibility**

The screening and monitoring of advisors are shared responsibilities of MGAs and insurers. The Canadian Council of Insurance Regulators’ *Fair Treatment of Customers* guidance states that “insurers are accountable for distribution strategies and ultimately responsible for oversight aspects pertaining to the distribution of their products. However, the insurer’s ultimate responsibility does not absolve intermediaries of their own responsibilities for which they are accountable.”¹

Comparing the existing guidance on the roles and responsibilities of MGAs in the distribution of life insurance² to the Proposed Guidelines, we note that there has been a noticeable shift in the characterization of duties that can be delegated to MGAs. In the 2012 Guidelines, there is a clear emphasis on duties related to the provision of sales and distribution support. In the Proposed Guidelines,³ the named duties take on an explicit supervisory and compliance tone, with little emphasis on traditional sales support duties.

The following table summarizes the duties that can be delegated to MGAs, as named in the 2012 Guidelines and the Proposed Guidelines:

¹ Canadian Council of Insurance Regulators, *Conduct of Insurance Business and Fair Treatment of Customers*, s. 6.5 at <https://www.ccir-ccrra.org/Documents/View/3450>.

² ICN 12-001 *Role and Responsibilities of Managing General Agents in the Distribution of Life Insurance in British Columbia* (the “2012 Guidelines”).

³ Proposed Guidelines, “What duties can be delegated to MGAs?” at p. 6.



Delegable Duties	
2012 Guidelines	Proposed Guidelines
<ul style="list-style-type: none"> • Granting a life agent, on behalf of an insurer, the authority to represent that insurer • Facilitating the submission of contracting requirements between life agents and insurers • Processing and tracking business submitted by life agents • Providing life agents with sales support • Facilitating the flow of information between insurers and life agents • Pooling of commission payments for life agents from various insurers • Providing compliance support to insurers in the event of a client complaint • Assisting in the adjusting of claims on behalf of an insurer (not common, but in certain situations involving group life insurance) 	<ul style="list-style-type: none"> • Compliance support • Screening and monitoring agents • Training and education of agents on insurance products and best practices • Development and implementation of best practices • Development and implementation of policies and procedures • Audits of agents' files • Anti-money laundering compliance

MGAs are an important part of life insurance distribution, and given their position between insurers and advisors, they have a key perspective to bring to the screening and monitoring function. MGAs also assume certain risks, such as the financial risk of chargebacks on an advisor's business, so they have built-in incentives to ensure appropriate screening and monitoring is done. Nonetheless, we are concerned that the wording in the Proposed Guideline reflects a shift in Council's expectations that detracts from the fact that this is a shared responsibility and it is the insurer that remains ultimately accountable.

As part of this accountability, insurers must confirm before delegating responsibilities to MGAs that the MGA not only has appropriate policies and procedures in place to conduct those duties, but that they have the resources to do so. There are many smaller MGAs that simply do not have the capacity to thoroughly conduct screening and monitoring roles, but they may face tremendous pressure to nonetheless agree to assuming those duties by contract, lest they risk losing the relationship with the insurer. For some MGAs, losing a contract could be fatal to their viability.

Screening and monitoring advisors are critical functions for consumer protection. In finalizing the Proposed Guidelines, we urge Council to be mindful that i) this is ultimately a shared responsibility amongst MGAs and insurers; ii) notwithstanding contractual delegation, insurers remain ultimately accountable for the function; and iii) market dynamics may put pressure on MGAs to accept screening and monitoring duties when they are not *bona fide* able to fulfill them, for the sake of preserving a relationship with an insurer.



3.2 Responsibility for Product Training and Marketing Material

In the Proposed Guidelines, we note that Council includes the “training and education of agents on insurance products and best practices” as a duty that can be delegated to MGAs. MGAs can play a role in facilitating the training and education of advisors – largely by assisting the connection between advisor and insurer by providing a forum such as a seminar – but it is the insurer that is the expert in its own products and therefore it is the insurer that should provide the actual product training.

Likewise, we are concerned that Council is proposing that MGAs can take on the responsibility of ensuring that the marketing materials they distribute on behalf of insurers clearly and accurately represent the product. MGAs are not involved in the development of these materials, and – unless clearly evident on its face – are generally not in a position to assess the accuracy thereof. MGAs rightly and fairly rely on insurers to provide accurate information about their products and we do not believe this is a duty that can reasonably be delegated to MGAs.

3.3 Documents Incorporated by Reference

In the Proposed Guidelines, Council states that it expects MGAs to have risk-based screening and monitoring procedures in place to determine the suitability of an advisor prior to offering them a contract. To do this, Council recommends that MGAs utilize reference documents created by the Canadian Health and Life Insurance Association (“CLHIA”), including [MGA Compliance: A Risk-based Approach for Compliance Programs](#), the [Advisor Screening Questionnaire](#) and [Guideline 8 Advisor Suitability: Screening, Monitoring and Reporting](#).

We are concerned about the ownership of these documents as they evolve. The CLHIA documents are controlled and written by an industry stakeholder that is accountable to its membership, not by a regulator that is accountable to the public. If the documents are to be incorporated by reference into the Proposed Guidelines and have the force of regulation, it is important that stakeholders, including MGAs and advisors, have the right to be consulted as these documents are revised from time to time, in the same manner as any regulatory initiative. That is, if these documents will carry regulatory weight, it is important that they be subject to the same transparency and accountability as regulator-led proposals.

3.4 MGA Duty to Insurers

The Proposed Guidelines incorporate a new provision that will require MGAs to follow Section 8.2 of Council’s Code of Conduct. This section specifies the duties to insurers that intermediaries should follow when transacting business with them. Advocis agrees that MGAs owe a duty of good faith to insurers.

The Proposed Guidelines also incorporate new direction for MGAs that indicate they “have the responsibility to avoid conflicts of interest with an insurer”, as per Sections 7.3 and 8.3 of



Council's Code of Conduct. We agree with Council that conflicts should be avoided. However, we would like to highlight certain developments that have taken place in recent years that could complicate the landscape in addressing conflicts of interest that we believe Council should consider when finalizing the Proposed Guidelines:

- 1) Certain large MGAs are owned by insurance companies. Hence, there is a risk that a subsidiary MGA may show preferential treatment to a parent insurer and vice versa, at the expense of arms-length entities.
- 2) As noted earlier, small, independent MGAs may be particularly dependent on one insurer for the viability of its business. Not only could this impact the MGA's willingness to assume delegated duties beyond its competencies, it may also impact an MGA's decision to drive business towards that insurer at the expense of other insurers.

These conflicts could result in decisions or recommendations that are not optimal for consumers and we recommend that Council consider how these situations could impact the fair treatment of customers.

4. CONCLUSION

We thank Council for the opportunity to provide comments on its Proposed Guidelines. Proper advisor screening and monitoring is a critical consumer protection function, and it is best achieved when treated as a shared responsibility between MGAs and insurers. Nonetheless, and contractual delegation notwithstanding, insurers must remain ultimately accountable for this function and it is important that the Proposed Guidelines reflect that. Council must also be wary of market dynamics that could place certain MGAs under pressure to accept delegated duties when they are not truly in a position to fulfill those duties, to the detriment of the consumer.

Should you have any questions, please do not hesitate to contact the undersigned, or James Ryu, Senior Director, Legal and Regulatory Affairs at jryu@advocis.ca.

Sincerely,

Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO

Abe Toews, CFP, CLU, CH.F.C., CHS, ICD.D
Chair, National Board of Directors