

April 4, 2022

Canadian Council of Insurance Regulators
Canadian Insurance Services Regulatory Organizations
25 Sheppard Avenue West, Suite 100
Toronto, ON M2N 6S6

SENT VIA EMAIL: ccir-ccrra@fsrao.ca

Dear Sirs/Mesdames,

**Re: Canadian Council of Insurance Regulators (CCIR)
Canadian Insurance Services Regulatory Organizations (CISRO)
Incentive Management Guidance Consultation**

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide the following comments to the Incentive Management Guidance (the Guidance). Advocis shares the CCIR/CISRO's goal that incentives in the insurance sector should align with the Fair Treatment of Customers (FTC). We believe that our comments can help strengthen the Guidance to the benefit of consumers and industry participants.

1. ABOUT ADVOCIS

Advocis is the association of choice for financial advisors and planners. With over 17,000 member-clients across the country, we are the definitive voice of the profession. Advocis champions professionalism, consumer protection, and the value of financial advice. We advocate for an environment where all Canadians have access to the professional advice they need.

Advocis members advise consumers on wealth management; risk management; estate, retirement and tax planning; employee benefits; and life, accident and sickness, critical illness and disability insurance. In doing so, Advocis members help consumers make sound financial decisions, ultimately leading to greater financial stability and independence. In all that they do, our members are driven by Advocis' motto: *non solis nobis* – not for ourselves alone.



2. OUR COMMENTS

Advocis believes that the CCIR/CISRO can strengthen the Guidance by further recognizing the diverse entities that serve customers in the insurance sector. We believe the Guidance should recognize that advisors have little or no influence in the design and implementation of incentive arrangements. We also ask that the CCIR/CISRO provide concrete examples of inappropriate incentive arrangements. We suggest that ongoing service should be assessed through effective post-sales controls. Finally, we request greater clarity from the CCIR/CISRO regarding the operationalization of the Guidance.

Beyond our specific comments below, we also wish to address the issue of professionalism in the insurance sector and its impact on FTC outcomes. Unfair consumer outcomes often result from a professional failure—whether on the part of insurers or intermediaries—rather than from any particular incentive arrangement. Acting as professionals, insurance advisors are critical to furthering FTC outcomes in their dealings with their clients. Thus, the CCIR/CISRO should focus on raising professional standards in the insurance industry as the foundation for all of its FTC efforts.

a. **Diversity in Insurance**

The insurance industry is diverse. A variety of actors and business models exist to meet the needs of an equally diverse array of consumers. We urge the CCIR/CISRO to be mindful of this diversity when developing principles about compensation and incentive arrangements.

Both captive and independent agents sell insurance products. Managing General Agents (MGAs)—which range in size and scope of services offered—have flourished in the independent channel. Some insurers offer heaped commissions, while others provide a more leveled structure. The products offered are equally diverse: term, whole or universal life; par policies or non-par policies; segregated funds and other wealth products.

Due to this diversity, a “one-size-fits-all” approach to incentives is unworkable. An incentive arrangement which supports FTC principles in one context may be problematic in another. For example, volume-based incentives in the career channel could reinforce FTC if those incentives bolster knowledge of proprietary product, but those same incentives could harm FTC in the independent channel.

Some incentive structures that support FTC at the point of sale may create problematic incentives at the servicing stage. For instance, level commissions may address incentives created by the upfront nature of heaped commissions. However, this same structure could incentivize advisors to conserve policies that no longer meet their clients’ needs.



We recognize the efforts of CCIR/CISRO to create a principles-based framework to provide “insurers and intermediaries with the discretion necessary to devise strategies, policies and controls in support of fair customer outcomes based on the nature, size and complexity of their business activities.”

We urge the CCIR/CISRO to continue to be mindful of this diversity in developing and implementing the Guidance. Certain practices may help or hinder FTC outcomes depending on the context within which they are used. A nuanced understanding of the impact on customers is required to determine whether an incentive is problematic in a particular context.

b. The Role of Advisors

We believe that the Guidance should assign responsibilities to those positioned to fulfill them. Advisors should not be held responsible for incentive arrangements that they do not design, implement, or oversee.

We welcome the recognition that “The Insurer is responsible for FTC throughout the life-cycle of the insurance product, as it is the Insurer that is the ultimate risk carrier. The Insurer’s ultimate responsibility does not absolve Intermediaries of their own responsibilities for which they are accountable. Treating Customers fairly is a shared responsibility when Insurers and Intermediaries are both involved.”

However, we believe that the Guidance should also recognize the limited role of advisors.

As drafted, the Guidance defines “intermediaries” broadly—capturing advisors—and assigns responsibility for the design, implementation and oversight of incentives to these intermediaries. However, many intermediaries—particularly advisors—do not design, implement, or oversee incentive arrangements. Insurers are largely responsible for the design and oversight of incentive arrangements. While MGAs may have a role, it is typically limited and ancillary.

Consider a captive insurance agent. As an intermediary per the Guidance, this captive agent is expected to ensure that persons conducting post-sales monitoring “have the required competence and experience” and “are sufficiently independent from the sales functions they are required to monitor to avoid being unduly influenced.” However, short of resigning their job, the captive agent lacks the power to fulfill these expectations.

We ask that the limited role of advisors be recognized by carving them out of the definition of intermediaries for the purposes of the Guidance. Instead, advisors should be specifically defined as a separate class of intermediaries within the Guidance.



Responsibilities could then be assigned where advisors do have the power to act. For instance, advisors can and should understand the incentive arrangements to which they are subject. In particular, advisors could be responsible for good faith efforts to recognize conflicts of interest that may arise as a result of a particular incentive arrangements. Advisors could then determine whether those conflicts could be sufficiently managed in accordance with FTC principles or whether the advisor must decline to participate in the incentive arrangement. This would empower advisors to advance the implementation of FTC principles within the industry.

Alternately, individual sections of the Guidance could make clear that the expectations only apply to intermediaries who have the power to fulfill them. This approach is taken regarding the responsibility of the board of directors and senior management regarding governance.

c. Concrete Examples of Unacceptable Incentives

We believe the Guidance would benefit from more concrete and granular examples. This would provide the insurance industry with greater clarity and certainty regarding inappropriate incentives.

Although we recognize that the components listed in the Appendix may become problematic “without proper design, management and post-sale controls”, the breadth of examples chosen give rise to concern. Several examples are broad enough to potentially capture nearly all incentive arrangements—including some of the most well-established business practices. Such examples do not provide useful direction to industry participants.

For instance, the Guidance indicates that “Commissions linked to the premium level or the investment amount” may be problematic. Beyond flat-rate commissions, essentially all commissions are tied to either the premium or the investment amount.

Similarly, the Guidance suggests that “Incentive[s] paid in advance of the service expected” may also be problematic. Again, it is common industry practice to heap commissions before the years of servicing expected of advisors. The Guidance appears broad enough to capture these widespread industry norms.

Notwithstanding the language in the preamble about “without proper design”, the Guidance casts a shadow over these longstanding practices. It almost creates a presumption that the practices are problematic. Unless the intention of the Guidance is to initiate a fundamental redesign of incentive structures in the insurance sector, the broad examples in the Guidance are not particularly helpful.

Instead, we ask that the CCIR/CISRO provide more specific examples around the incentive arrangements which contravene FTC principles. By providing this clarity, the CCIR/CISRO will



provide better direction to the industry, higher adoption of the principles in the Guidance, and improved outcomes for customers.

d. Ongoing Service

We believe that the ongoing servicing of in-force policies is crucial to ensuring that FTC principles are achieved. Customers rightly expect that service does not end with the initial product transaction. However, this key FTC element is only briefly addressed in the Appendix. We believe that the role of ongoing servicing should be discussed in the Guidance itself.

We suggest adding a new section 4.3.5 to the Guidance to add an expectation that post-sales ongoing service is monitored. Such an addition could improve outcomes for customers.

e. Unfair Outcomes

The Guidance relies heavily upon the concept of “unfair outcomes”. However, this concept is not defined within the Guidance. We ask that the CCIR/CISRO address this conceptual uncertainty.

We note that the underlying FTC guidance provides outcomes which are indicia of the fair treatment of customers in section 2:

- developing, marketing and selling products in a way that puts Customers’ interests ahead of their own;
- providing Customers with accurate, clear, not misleading and sufficient information before, during and after the point of sale, which will allow them to make informed decisions;
- minimizing the risk of sales which are not appropriate to the Customers’ needs;
- ensuring that any advice given is relevant;
- dealing with Customer claims, complaints and disputes in a fair and timely manner;
- protecting the privacy of Customer information.

We ask the CCIR/CISRO to confirm in the guidance that “unfair outcomes” in the Guidance are the inverse of these fair treatment outcomes, namely:

- developing, marketing and selling products in a way that puts Customers’ interests behind of their own;
- providing Customers with inaccurate, unclear, misleading or insufficient information before, during and after the point of sale, which will prevent them from making informed decisions;
- failing to minimize the risk of sales which are not appropriate to the Customers’ needs;
- failing to ensure that any advice given is relevant;
- dealing with Customer claims, complaints and disputes in an unfair or untimely manner;
- failing to protect the privacy of Customer information.



We believe the Guidance will be strengthened if this conceptual gap is addressed.

f. Implementation of the Guidance

While we appreciate the CCIR/CISRO's work to place FTC principles at the core of incentive arrangement design and management, we would like further clarification concerning the implementation of this Guidance.

How will the Guidance be operationalized in respect of insurers, who are the stakeholders best positioned to see that the principles behind the Guidance are adopted, and intermediaries?

What steps will the CCIR/CISRO take to ensure that the expectations in the Guidance apply equally to increasingly complex online insurance transactions? The risk of unfair outcomes is particularly acute in these transactions because important client safeguards—like the needs analysis—are often handled by algorithms rather than receiving the due care they deserve by professional insurance advisors. This concern relates back to our introductory comments that the CCIR/CISRO can best further FTC outcomes by focusing on industry professionalism above all else.

We would also appreciate if the CCIR/CISRO would clarify its expectations on the incorporation of non-quantitative metrics as indicia of FTC outcomes.

3. CONCLUSION

We welcome the work the CCIR/CISRO have undertaken towards principled regulation of incentive arrangements. We will continue to work with you to ensure the fair treatment of customers.

We believe that the Guidance can be strengthened through greater recognition of the diverse organizations that provide services in the insurance space, a clearer reflection of the limited role of advisors in incentive design, greater emphasis on the importance of ongoing service, more concrete examples of unacceptable incentive arrangements, and clarification of certain implementation issues.



We continue to support the CCIR/CISRO's work to obtain better outcomes for insurance customers, including through efforts to reform incentives. We would welcome the opportunity to further discuss the proposed Guidance with you.

Should you have any questions, please do not hesitate to contact the undersigned, or James Ryu, Vice-President, Advocacy and General Counsel at jryu@advocis.ca.

Sincerely,

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

Rob Eby, CFP, RRC
Chair, National Board of Directors