

MEETING FSRA'S ONGOING LICENSING SUITABILITY REQUIREMENTS: WHAT LIFE INSURANCE AGENTS, MGAS AND INSURERS NEED TO KNOW

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On November 21, 2023, the Financial Services Regulatory Authority of Ontario (“**FSRA**”) published proposed guidance on life insurance agent and managing general agency (“**MGA**”) licensing suitability (the “**Guidance**”).^[1] Comments will be accepted by FSRA until February 9, 2024.

This proposed Guidance outlines how FSRA interprets licensing suitability requirements under the Ontario *Insurance Act* (the “**Act**”) and its regulations. It expands on the Act by noting how certain conduct may affect a licensee’s suitability, and provides insight to insurers and MGAs on how to maintain an adequate oversight system.

What is “Suitability”?

Under the Act and its regulations, an insurance agent (including MGAs) must be “suitable” to hold a licence.^[2] Being “suitable” is important not only to be granted a licence, but also to ensure that licensee’s obligations are met throughout the duration of holding a licence. It is assessed during the initial licensing application, applications for renewal, as well as in any decision to suspend or revoke an agent’s licence.

The proposed Guidance purports to clarify what factors and conduct FSRA considers when determining suitability. Of note, FSRA maintains its discretionary power to assess one’s suitability to hold a licence – consequently, while the proposed Guidance includes examples of conduct affecting suitability, it is important to note that the proposed Guidance is non-exhaustive.

General Licensing Suitability Considerations

Both past and present conduct may result in a finding of unsuitability. Notable conduct includes criminal

charges, breaches of laws and regulations administered by regulatory bodies, bankruptcy proceedings, issuing false statements to FSRA and failing to perform one's duties as an agent. Some of these actions are not new concerns – several are detailed in FSRA's Unfair or Deceptive Acts or Practices Rule (the "**UDAP Rule**") – however, it is imperative that agents are aware of their possible implications on suitability.

The impact of any conduct on the ultimate determination of suitability depends on various factors, including (but not limited to):

- the extent to which the conduct calls into question the integrity of the agent;
- the likelihood of the conduct repeating; and
- whether there are mitigating circumstances.

In addition to licence revocation, suspension or refusal, the consequences of exhibiting these actions or inactions may also result in administrative monetary penalties, provincial offence charges, and other sanctions.

Beyond Individuals

Additional Requirements for Corporations, Partnerships and MGAs

In the proposed Guidance, FSRA also outlines additional suitability considerations for corporate and partnership agencies and MGAs.

The suitability of the corporate or partnership entity depends on the entity's past and present conduct, including its general business practices. For example, FSRA will look at the business' recruitment and training practices, marketing tactics, office administration and how they interact with consumers. Also applicable is the conduct of the individuals directing the corporation or partnership (including directors, officers, partners, employees, and owners). The suitability of these individuals and their conduct impacts the suitability assessment of the corporate or partnership entity.

As well, MGAs are warned against disseminating deceptive or misleading information, maintaining insufficient controls against unlicensed sales of insurance, facilitating or acquiescing in unethical activities, and offering sales incentives that breach regulatory requirements. Given the greater social responsibility that comes with being an MGA, FSRA reiterates the expectation that MGAs play an active role in overseeing and enforcing the suitability requirements, failing which the MGA may be found unsuitable for licensing itself.

Insurers

FSRA emphasizes that insurers have independent legal obligations to screen and monitor agents. These obligations include, but are not limited to, the following:

- screening applicants to ensure they are suitable to act as agents;
- having a system that is designed to monitor the suitability and compliance with the Act, regulations, FSRA rules and the licensing requirements of agents (including MGAs) who act on their behalf; and
- reporting to FSRA any agent the insurer believes is unsuitable.

While an insurer may delegate these oversight functions to an MGA, the insurer remains liable. However, it will be a mitigating factor if an insurer takes steps to ensure that the MGA is legally responsible and capable of performing their delegated functions. Insurers should refer to the proposed Guidance to confirm how to appropriately screen each agent (including MGAs) for suitability.

Delegation & Extended Responsibility

FSRA reminds MGAs and insurers to be prudent when authorizing agents to conduct activities on their behalf, as they may be held to be in a principal-agent relationship. In other words, in certain situations, the MGA or insurer's liability is extended – they could be held responsible as principals for the conduct of an agent who acts within the agent's implied or apparent authority. With respect to suitability, FSRA may be entitled to rely on this law of agency when determining an MGA or insurer's suitability.

As well, insurers and MGAs may be held responsible for the actions of an agent under FSRA's UDAP Rule. Accordingly, to minimize their own risks, insurers and MGAs must report to FSRA any agents who they believe are unsuitable to carry on business as an agent. FSRA emphasizes that where an insurer reasonably knows, or should know, that an agent (including an MGA) is not suitable, and fails to take action, the insurer is responsible for the agent's non-compliance – especially if that non-compliance causes, or is likely to cause, consumer harm.

Takeaway

In FSRA's May 2023 Life and Health Insurance Agent Supervision Report, FSRA notes life agent suitability "a priority area for supervision".^[3] The newly proposed Guidance serves to provide some "teeth" to this priority area and to FSRA's mandate to protect consumers and promote high standards of business conduct.

While the proposed Guidance is not yet effective, life insurance agents should begin considering how to meet the ongoing compliance with suitability requirements, while insurers and MGAs should review their screening, training and oversight programs to ensure that such programs are sufficient in light of FSRA's focus on ongoing suitability. Life insurance agents, agencies, MGAs and insurers might also be wise to consider using a structured regulatory compliance tool such as [Ethidex](#) to ensure that they are kept up-to-date with respect to new and ongoing compliance requirements.

[1] [Proposed Guidance: Life Insurance Agent & MGA Licensing Suitability](#).

[2] *Insurance Act*, RSO 1990, c I 8, s. 392.4(1); O. Reg. 347/04, s. 4(1)(i).

[3] [Life and Health Insurance Agent Supervision Report](#).

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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