Saveria Villanti

From: geraldburgess@sympatico.ca on behalf of Gerald K. Burgess [gerald@blfgi.com]
Sent: Friday, February 11, 2011 12:34 PM
To: CCIR-CCRRA
Cc: 'Lawrence Ian Geller'; 'J. Todd Gellatly'; 'Donna Anderson'
Subject: MGA discussion/Commission

Further to my original comments I continue to compare the Retail/store business with ours.
Most consumers are aware of the usual "mark up"-commission on goods purchased at retailers-No Frills Wal-Mart etc.
This "commission" helps to cover Management salaries, staff salaries Rent/Mortgage/lease and general marketing expenses and administration costs together with perhaps a little profit.
We in the Financial Consulting business have the same sort of outgoings PLUS keeping the various and continuing "compliance" formalities which do not give any cash benefit to us—but keep Regulators employed sometimes to the detriment of our clients who should ALWAYS come first.
I hope this is Transparent enough Our MGAs help us to work economically in the best interests of our clients. We not only provide a reliable place to "buy life insurance and investments"—like a store—we GIVE ADVICE based on our experience and qualifications
Gerald

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Saveria Villanti

From: La Rochelle Denis [lfci@telus.net]
Sent: Tuesday, February 15, 2011 3:07 PM
To: CCIR-CCRRA
Subject: The Real Story About MGA's

While everyone in regulatory and MGA offices are so busy playing management and requiring so much compliance red tape for agents...they have forgotten that the agents job is to provide the proper insurance and investment needs of the client. It appears that agents are looked upon as information providers to the consumer who must make a decision without the education and knowledge of what they are reading.

First and foremost all regulations and compliance should involved the ability for the agent to do more of his work and less red tape. It is by sheer volume of the proper life insurance or investments that protects the client, not whether I have the right check mark and whether the client has read all 75 pages of the change or application form. First and foremost the client is concerned about when the rubber hits the road...WILL HIS FAMILY OR HIS RETIREMENT GOALS BE REACHED....

Let's all get out of management and get back to doing what we are supposed to be doing. When my Grandfather was selling insurance door to door in the 1920's, the concern was to provide cash for those families in the event of the bread winners demise.

Sadly this Financial industry has forgotten what the business is all about and the people at the top are more focused on red tape than to do the right job. Granted the people at the top get paid for creating road blocks for the agents rather than helping the agent produce a higher income and in turn make the wheels of economy go round again. Why do I say that, it is because I have always been a solo operator for most of my Life Insurance business career and my income is now half of what it used to be because I am busy filling out paper rather than talking belly to belly with a client. So if regulators believe that 50% of my usual income helps the economy then you should go back and study the Basics of Economics.

MGA income, Association Fee's, REgulators income are all another form of tax, that takes away from the economy because agents are creating all that income to pay these fee's, but agents production is now half, so in the end the total return that turns the wheels of economy are turning at a much slower pace.

That's my bit on all this management to manage, rather than management to help increase production.

Denis

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Saveria Villanti

From: Mark Schneider [schneiderinsuranceinc@gmail.com]
Sent: Tuesday, February 15, 2011 8:37 PM
To: CCIR-CCRRA
Subject: Questions to Stakeholders

The one
1. Are there other aspects of AGAs that
differentiate them from MGAs?

In my view an AGA is simply a way for salesperson's to bulk up sales to maximize the potential income paid on sold business. It is important to note that insurance companies and banks allocate dollars to be paid out in commissions. This number is actuarial in nature and very closely would parallel employee costs in a typical Bank. If the money is not claimed (left on the table) then it is gone into the Insurance companies coffers as profit.

2. Which functions of MGAs do not apply
to AGAs? Are the activities of AGAs
closer to representatives rather than
MGAs?

AGA's are usually if not always - producers. The top of the production heap may focus on only very high net worth clients - maybe as little as one - if the assets are large enough to require a professional advisor's 100% attention.

It is critical to note that all producers must meet provincial guidelines for "education" and "holding out to the public". If that is insufficient then that is where the focus should be. The rest of the "regulatory environment" is simply empire building, job creation and power building. In other words it is redundant.

Canadian statistics show that Medical Practitioners have a higher complaint percentage from consumers than financial advisors. But both are under .1%. That is 99.9% of advisors are doing the right thing.

MGA's and AGA's should fall under exactly the same regulatory guidelines as sales people in the field. It really is as simple as that.

3. What are the factors considered by an
insurer before deciding whether or not
to outsource an activity to an MGA?

Ability to meet the Insurers Compliance and Productivity model to ensure a profitable enterprise. To lose money at any level is obviously unacceptable.

4. How do insurers satisfy themselves that
MGAs have the expertise to carry on
the delegated functions (e.g. product
training, product development, etc.)?

Each MGA has representatives from all Insurers constantly reviewing and building an ethical and profitable business model. It is not hit and miss. There is a business plan at all levels. The assumption that the case is

otherwise is ignorant in the extreme. Having people running the regulatory environment who have never had a above average "successful" career as a salesperson - is staggering.

The consumer is "sold" these products and all studies show that if not for the salesperson on the ground the general public would be worse off.

5. Are there functions that should not be outsourced to an MGA (e.g. core functions such as underwriting and claims handling)? Would delegating to MGAs a function such as product development affect the insurer's role as manufacturer?

You are talking actuaries. To assume a negative result without properly investigating the practical result of such changes is the work of an amateur. A simple rule that qualified and licensed actuaries be used - even shared jointly with existing manufacturers is all that is required.

6. Do insurers view functions outsourced to an MGA/AGA as material to their risk management process?

Of course any time control is given to someone or something other than oneself it affects the risk level involved. This is obvious. Risk must be managed. At the end of the day it will determine profit or loss. No Federally licensed Life company or Bank would knowingly undermine their due diligence.

7. How should insurers be held accountable for the activities outsourced to MGAs? Is having appropriate safeguards and conducting regular assessment of whether the MGA is achieving the right standards for each delegated function sufficient? Or would insurers also take responsibility for the mistakes of the MGA?

The #1 reason our society is in so much fiscal trouble - call it imbalance - is the belief that it is always someone else's fault. Each level of the distribution process must have internal checks and balances. If you want to be profitable any entity watches what is happening above and below itself in the chain. You sleep in your bed - you make it.

8. What can be done to enhance compliance monitoring of functions outsourced to MGAs? Would standardize compliance monitoring guidelines assist smaller insurers?

Your question is construed as tricky. Do not mis-interpret this answer. Any business model that is based on strong ethical and accounting principals will succeed. Regardless of any other rule. More is not better. Common

Sense is better. No matter what regulatory environment you create - if someone wants to break the rules - they will break the rules. The Regulatory entities cannot prevent this no matter how draconian you make it.

You want compliance? Make the penalty harsher. Leave the rest to us.

9. What specific activities do insurers carry on today in supervising representatives and reporting misconduct?

This is likely a surprise to those outside the loop. No insurer wants a bad apple to wreck their day. It would be idiotic. As in #8 you will always find rule breakers no matter what. Insurers actively manage this. It is more practically regional management that is the problem - if they are more concerned about their jobs via production versus ethical monitoring of the representatives under their watch.

Note:
Every question focuses on the wrong starting point.

10. Under today's MGA structure, has detection and reporting of "unsuitable representatives" become more difficult as a representative is, at any given moment, dealing with various MGAs and insurers? Please elaborate.

The opposite. A bad apple is more likely to be caught by a more aggressive MGA in regards to compliance.

Note:
Again - focus on the wrong end of the question

11. Is it necessary that some party be in a position to monitor the overall business practices of a representative? If no, why not? If yes, which party, MGA or insurer, is in the best position to do that monitoring?

The "some party" should be the provincial licensing body. As noted all other levels are redundant. If a problem exists it is because of 'bad apples' that will exist no matter what compliance regime you create.

The association of choice should set guidelines that enhance the spirit of the provincial licensing body. Middle management of the AGA, Insurer or MGA should be held equally responsible as per the licensing body and to ensure association standards are carried out in the spirit in which they are intended. After all what is middle management for?

12. Given their proximity and close relationship to representatives, should MGAs be responsible for reporting questionable acts by

representatives:

a. To insurers with whom they have an agreement?
b. To insurance regulators?

A standard form with copies to all. Simple.

The rest of the compliance regime is redundant.

13. How is misconduct reporting handled when the representative is dually licensed? Should misconduct in one sector be reported in the other sectors where the representative is licensed?

Of course. See #12 - a copy to all.

14. To what extent can or does an MGA influence the decisions of its representatives to place insurance with one insurer over another? How is this controlled?

The better the product the more likely the representative will use it.

The skill in presenting the product is also critical in representatives ability to grasp the benefits of one product over another.

Why not focus on the people presenting this material? Should they not be equally qualified?

15. Given that MGAs receive commission from insurers for volume of business generated through the representative, what kind of disclosure to consumers (regarding this specific commission) is provided today by the representative? By the insurer?

Each provincial licensing body has rules regarding the disclosure that commissions are paid. The bigger the volume - the higher the commission.

If a rule comes into effect disclosing the exact dollar earned - then this requirement must also be made by Medical Practitioners, Lawyers, Accountants. Otherwise you are unfairly cutting out of the herd financial advisors. Remember the consumer is not forced to buy anything from anyone. Try this with a Doctor.

In fact next time you see your Doctor - demand to know exactly what he is being paid from all sources and have him/her sign off on it. Good luck with this.

To make such a demand on financial advisors - especially since consumers are not forced to buy the product or service - is the height of hypocrisy.

16. What are the expectations of insurers when supervision of sales practices is delegated to MGAs? Is oversight limited to completeness (form) as opposed to the nature of the advice (substance)?

Each insurer will have different levels of of each. Sales practices should be based on rules set out by the provincial licensing body with ethical guidelines set by the association. Anyone moving outside of this - no matter the source - should be able to report to either or both the results of any suspicious activities. If they fail in this duty then they should be equally liable.

17. What problems have arisen to date regarding transaction errors involving MGAs and how have they been resolved? How do consumers know who to go to in these situations?

All errors have been dealt with fairly and within guidelines. In fact our experience has been that the suppliers insist on accuracy and will do everything possible to make things right.

Example: A double premium draw? Immediate reversal to client account.

18. Who would be accountable for errors in consumer transactions processed through MGAs? Are representatives and/or insurers assuming responsibility for the mistakes of an MGA when a consumer is adversely affected?

The one who makes the error is the one to pay the price to fix it. Too much money? That is what E & O insurance is for.

Note:
Once again the view of this report seems to make people and entities responsible to for others mistakes. Keep it simple.
By continuing to make thinks out to be more than what they are simply is - redundant. Perhaps this is all going to where the money can be got from rather than those responsible. That person is the hard working honest representative who is simply the cash cow.

19. Is there an obligation in the agreement between the MGA and the representative for the representative to report to the MGA any complaints received and their status?

Yes. This is obvious. It is all part of the ethical process required by all.

20. Is there a need for all complaints against representatives or MGAs to have access to

the OLHI process and, if so, how might this be accomplished?

Complaints are best handled using ethical standards that are universally acceptable to all parties including the consumer.
Each case stands on its own merits. If a consumer does not like the results of their purchase - see a layer. The initial disclosures signed
by the consumer at point of sale should spell out everything in advance.

Everyone else is redundant.

21. If a consumer is unaware of the existence of an MGA between him/her and the insurer, how is consent being given to MGAs to collect personal information? Are insurers or representatives obtaining consent to disclose to MGAs a consumer's personal data?

At point of sale all parties are spelled out in a written document and signed off by the representative and the consumer.
Consumer ignorance after the fact is not the industries problem. Why?

Because everyone is responsible for their own mistakes. Stop passing the buck.

22. Do MGAs retain personal information and, if so, for what purpose? On whose behalf is this information retained?

All information that is legally kept for the 7 year rule and 14 year rule on insurance should be adhered to.
It is on the onus of the MGA to secure that information in a suitable manner.

Note: A bad apple will get any info they want, when they want, no matter what the regulatory regime.

23. Other than through privacy laws, how are MGAs being held accountable for the privacy of this information today?

How they are held accountable should in no way differ from the representative. Regardless of how they currently held.

24. Do you think that the existing licensing regime and the level of required E&O insurance is adequate for the functions of an MGA in today's marketplace?

If they follow the same basic licencing and holding out as well as ethical principles as representatives currently are - yes.

25. Is the lack of specific rules on the duties and responsibilities of an MGA generating inconsistencies in how MGAs operate and the level of service they provide?

No. They all have there unique flavor. But after that - that is why we deal with more than one. Association ethics if applied levelly to all is all that is required.

26. Other than terminating an ongoing agreement, how do insurers deal with MGA misconduct today? Do insurers report MGA misconduct to regulators?

Our view is that insurers report all illegal and inappropriate behavior to provincial licensing bodies. This is common sense.

SUMMARY:
The answers we provided may from time to time appear to skirt the question. They do not.

In fact the answers focus on the problem and provide a common sense solution to that the question. Often your questions
are in fact misleading - in that the fundamental problem they allude to is off base to begin with.

Here are our key points:
1/ Each level of the distribution process to consumers must not pass blame. They take equal responsibility if they have not
done their due diligence, along with the representative or MGA or AGA.

2/ Provincial licensing body sets the standard and holding out rules

3/ Association of choice sets the bar above that standard - for all players ie: ethical standards and education

4/ All players and all levels of distribution carry E. & O. insurance

5/ Consumers are culpable. Once properly disclosed they are responsible. With the exception of incompetence (Association & Provincial jurisdiction) or fraud (RCMP Fraud Squad)

6/ Put a stop to power building and that includes downloading the cost of bureaucracy to the representative. Most of the cost goes to salaries of regulatory personal who are redundant. Lets clean house and make it simpler for all - especially the consumer.

7/ For those of us that have been successful management and successful representatives in the field over many decades - we see all the compliance and regulatory issues as a subtle way to control advisors - for profit motives - the rest is a smoke screen. Common sense proves this.

We also see it as a way to force independents and MGA's out of business - and by default give control of this lucrative market - to the Banks.

--
E. & O. E.

MA Schneider Insurance Agencies
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Chartered Financial Consultant

Saveria Villanti

From: ffcg <ffcg@rogers.com>
Sent: February-25-11 11:42 AM
To: CCIR-CCRRA
Subject: Issues Paper - Managing General Agencies -Life Insurance Distribution Model - Agencies Regulation Committee -February 2011

Att'n: CCIR Secretariat

I have read the Issues Paper and I would like to share some professional views.

The comments which follow are designed to provide one stakeholder's professional practice context to the committee's interest in the complexity of the issue of supervision as it applies to sales representatives, MGA's and 'independent' financial advisors.

The Issues Paper refers to the work of agents, representatives and advisors as a 'profession'.

Is it a 'profession' or is it an 'industry' which 'manufactures', 'wholesales' and 'retails' financial products?

It is both.

As such it is currently in a hybrid state.

As a profession it provides fee for services based upon complex knowledge, information, education (including continuing education), training and experience. Those who participate in it are 'professional practitioners'.

In our key professions - medicine, public accounting and law the practitioner has a fiduciary responsibility (implied or legal) to do everything within the practitioner's professional ability to put the client's interests first - ahead of his or her own.

The life insurance 'industry' including the insurers and the MGA/agent/advisor distribution channel operates on a product promotion platform.

People, companies, employees and shareholders get paid only when products are sold.

Professional practitioners do not simply sell products - they sell services based upon their professional competence which may or may not include the sale of a product.

Our industry has highly dedicated client centric professionals in both transaction based sales and fee for service professional practitioners.

The best in our industry whether in independent or 'captive' sales or in a fee for service practice develop trust relationships with their clients which last a lifetime – as they should.

The situation is neither good nor bad. It is simply what we have to work with at this point in time.

There is a fundamental disconnect in the consumer's mind when they consider the metaphoric

language the life insurance sector of the financial services ‘industry’ uses to describe its method of producing and distributing financial services and life products in Canada. We supply products that are ‘manufactured’ (life insurance institutions), ‘wholesaled’ (MGA’s) and ‘retailed’ (agents, representatives, independent advisors).

The public needs the integrity of purpose implied by Professional Practice. It has no idea how or where to access this service. When consumers do it is generally a word of mouth fortuitous occurrence. They simply do not have the financial awareness necessary to solve their need for access to highly skilled professionals on their own. The Federal Government’s current focus on financial literacy is both timely and critical.

However, the public must be made aware of the advisor choices available.

They can and will choose whatever suits their personal needs.

As I reviewed the paper the current complications surrounding the responsibility for the supervision of representatives who are in the business of selling exists in part because discriminating consumers have gone through a 10 - 15 year period of increased financial awareness (in particular since the meltdown in 2008) and is genuinely confused as to how they can acquire the professional guidance they now understand they require and want to be able to trust. The supervision issue has been further exacerbated by the systematic withdrawal of the life insurance institutions from its direct responsibility for the supervision of those agents and representatives who are contractually licensed to sell their products. In encouraging the outsourcing of direct supervision to MGA’s it has placed a financial and professional practice burden on the MGA for which it is simply ill equipped. In reviewing the Issues paper the subject of Professional Practice does not appear in the list of responsibilities of the MGA. If neither the life insurance institutions nor the MGA’s are responsible for Professional Practice, then who is? Hence the dilemma. The Carreer 'system' did not allow for competitive product choice. Only the products of one's licensing company could be sold. The MGA 'system' solves the issue of competitive product choice.Professional Practice is now essential in reintegrating the key participants in the life insurance industry. It must become a regulatory and collective obligation of the life insurance companies, the MGA's and both 'captive' and independent advisors. In such an instance the regulatory and consumer's need for advisor supervision will find the congruency necessary to eliminate the current 'disconnect' in the consumer's quest fir financial advice.

Those who are fee for service professional practitioners are substantially regulated in the current regulatory regime and largely supervise themselves conscientiously as professionals. Those who are exclusively in sales face the complex supervision which once was the responsibility of the life companies and which has now been outsourced to the MGA community. The few 'capitive' agent life insurance companies which remain continue to provide the regulatory supervision required.

Professional Practice can operate and does operate within *both* fee for service and product sales platforms. Every advisor no matter where he or she practices their profession must have the opportunity and professional obligation to make the entire range of product and service choices and their costs transparently clear and professionally available so that the consumer can make a fully informed decision. Each advisor must have an opportunity to make their case to the consumer on an unbiased basis.

Our best and our brightest have always followed this practice.

We have moved from sales to client engagement – a process which reflects values based leadership one on one.

What I would ask the committee to consider is where does Professional Practice which includes an unambiguous implication of an unbiased client centric fiduciary responsibility fit in to the model?

The financial industry as a whole including the life sector has a systemic conflict of interest built into the transactional/product platform.
Compensation is incentivized for the purpose of encouraging superior performance.

This is not an issue in the marketing of most transactional commodities.

It is a central issue in the marketing of any form of life or health product.

Life and health insurance underwrite time - the time we may not have to live or the time we may not be medically able to work productively.

For each of us time is a finite non negotiable personal resource - second in importance only to our health. In satisfying our lifetime need for capital and income within this context the financial distribution process cannot allow for any conflicts of interest to prevail - be they personal or systemic.

Transparency, professional practice and an unwavering client centric focus are necessary as we move through the very challenging period ahead.

Moving forward our regulatory system must fashion the matter of supervision around a professional practice framework which is not an either or choice of platforms but rather one which Raises the Bar in professional Practice by integrating the best of both of our current fee for service and Career/MGA product/compensation options which are available. The consumer wants and needs a genuine trust relationship with their financial services professional – no different than that which they have with their Chartered Accountant. The dilemma faced by the public is found in their lack of awareness of how to identify and gain access to the Best and The Brightest financial professionals in our field. Advocis and FPSC are essential resources which are making that challenge easier. Their work in this area must be highly publicized and the committee should do everything in its power to support and facilitate their professional practice initiatives.

We have 14,000,000 boomers in Canada who are currently at an early to imminent stage of retirement. The number of financial services professionals in Canada who are specifically educated, trained, experienced, independent and professionally licensed and designated to service the assured lifetime capital and income needs of almost 1 out of 2 Canadians is minimal. By this I mean those who are Chartered Life Underwriters. (CLU). These individuals are professionally designated and trained to deal with the need for the financial guarantees necessary in transforming the accumulation of capital during our 1st 30 – 40 years of employment into an assured lifetime income during what I refer to as our 2nd 30 – 40 years of retirement. We are living to age 90 – 95. This was not anticipated 20 – 30 years ago. The financial impact of long term care is being felt today by every family who have to provide it for a close family member. It was seldom a factor in the financial planning process for the generation who now need the income for an extended period of their lifetime.

The consumer has now moved ahead of the financial services curve in terms of the professional quality of their lifetime financial services needs. FSCO and CCIR have a unique opportunity to lead in assisting the life insurance sector transition itself from its current transactional/hybrid product promotion platform to include a Professional Practice regimen by Raising The Bar and guiding the life ‘industry’ through the regulatory steps necessary for it to offer a fully integrated platform, i.e., one wherein financial life institutions, MGA’s, agents and advisors are individually, severally and collectively responsible to the consumer for the quality of professional service offered by every member in the ‘industry’. This initiative, in my opinion, is the most effective solution to the complex

issue of long term supervision currently being faced by our regulatory body

Respectfully submitted,

Dan Zwicker.

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Specialists in Advanced Life Insurance Applications and Estate Planning Solutions

Canadian Association of Financial Institutions in Insurance

March 24, 2011

Canadian Council of Insurance Regulators
CCIR Secretariat
5160 Yonge Street, Box 85
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Re: Managing General Agencies Life Insurance Distribution Model

Dear Mme Boulet and Council,

The Canadian Association of Financial Institutions in Insurance (CAFII) has reviewed the consultation paper on Managing General Agencies Life Insurance Distribution Model. We think the paper is very well written and focused on important aspects of the MGA model for distribution of insurance. We are writing to advise that CAFII is monitoring the topic but at this stage we do not have a unique perspective from the Canadian Life and Health Insurance Association. We will therefore not be making a separate submission.

Thank you for including CAFII in this consultation. We look forward to reviewing any further papers the CCIR may produce on this topic. We will become engaged in the matter should it evolve to a stage that includes issues with a specific impact on our members' business models.

Yours truly,



John Lewsen
Chair, Executive Operations Committee
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MICA
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Québec, le 25 mars 2011

Conseil canadien des responsables de
la réglementation d'assurance
Secrétariat du CCRRA
5160, rue Yonge, C.P. 85,
17ème étage,
Toronto, Ontario, M2N 6L9

Objet : document de discussion sur le modèle de distribution des produits d'assurance vie fondé sur les agences générales

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Madame, Monsieur,

MICA services financiers Inc. est un cabinet de services financiers inscrit à ce titre auprès de l'Autorité des marchés financiers au Québec ainsi qu'auprès de FSCO pour l'Ontario. Par surcroît, nous agissons à titre d'agent général (AG) pour une vingtaine de compagnies d'assurance de personnes. Environ 150 représentants traitent leurs affaires en assurance de personnes par notre entremise, principalement sur le territoire québécois. Ces représentants sont des travailleurs autonomes et ne sont pas rattachés à MICA services financiers Inc., ils ne sont donc pas nos employés mais plutôt des partenaires. Cette entreprise est une entreprise privée et n'est donc pas la propriété d'une compagnie d'assurances ni d'une institution financière. Elle existe depuis maintenant 25 ans.

Nos services administratifs, regroupés à notre siège social, réunissent 42 employés dédiés au service de nos représentants. Vu ce nombre d'employés et de représentants qui traitent leurs affaires par notre entremise, nous sommes fiers d'offrir un ratio de 1 employé pour 4 représentants, ce qui a des conséquences avantageuses indéniables quant aux services offerts à nos représentants.

MICA services financiers est aussi la société mère d'une autre société connue sous l'appellation de MICA Capital Inc, laquelle est un courtier en épargne collective. Cette société permet de distribuer, par l'entremise de ses 150 représentants, les fonds mutuels de plus de 60 compagnies de fonds mutuels différentes.

Notre organisation s'est dotée d'un service de conformité qui est dirigé et coordonné par un chef de conformité, lequel est avocat. Une conseillère à la conformité l'appui dans ses responsabilités et veille à la préparation, au suivi et à la mise en application de nos différentes procédures et politiques de conformité. De plus, des agents de conformité s'assurent du respect des règles dans les activités courantes de nos représentants. Notre service de conformité a aussi le mandat de former notre réseau de représentants sur les différentes règles de conformité à appliquer. Ce service de conformité s'assure de veiller à la supervision des pratiques d'affaires de nos représentants et ce, tant en ce qui concerne l'assurance de personnes que l'épargne collective.

Nous sommes particulièrement interpellés par le sujet soulevé par votre document de discussion, portant sur le modèle de distribution des produits d'assurance vie fondé sur les agences générales.

Nous avons lu avec grand intérêt le contenu du document de discussion publié en février 2011et avons constaté que celui-ci fait un constat assez juste et approprié sur la situation existante actuellement quant aux statuts, rôles et responsabilités des agents généraux.

Nous tenons d'abord à vous remercier de nous donner l'opportunité de faire valoir notre position, nos arguments ainsi que nos pistes de solutions envisageables. La volonté manifestée d'obtenir les commentaires des intervenants de l'industrie démontre un souci d'être à l'écoute des principaux intéressés et nous l'apprécions.

Vous retrouverez, dans les prochaines pages, nos réponses et commentaires à l'égard des questions qui sont soulevées dans le document de discussion. La présente reprendra donc chacune des questions soulevées et ce, dans le même ordre d'apparition que celui du document de discussion.

Q1 : Y a-t-il d'autres aspects des AGA qui les différencient des AG?

Selon ce que nous savons, il existe quelques différences entre les responsabilités des AGA et celles des AG.

Les AG, en vertu des contrats signés avec les compagnies d'assurances, ont une responsabilité contractuelle envers les compagnies d'assurances comme, par exemple, de rembourser à la compagnie d'assurances le boni qui lui a été versé préalablement lors de l'annulation d'une police par un consommateur (chargeback ou rétrocession). Dans ce cas, c'est l'AG qui doit rembourser cette somme à la compagnie d'assurances.

Nous apportons ici une nuance qui nous semble importante. Il existe des AGA qui traitent leurs dossiers via une AG et il y a celles qui traitent directement avec les compagnies d'assurances. Dans le cas des AGA qui traitent leurs dossiers via une AG, c'est cette AG qui demeure ultimement responsable envers la compagnie d'assurances. Dans les cas où les AGA traitent directement avec les compagnies d'assurances, nous présumons que ce sont les AGA qui sont responsables envers les compagnies d'assurances.

Dans les cas particuliers où une AGA traitent ses dossiers via une AG, c'est cette dernière qui demeurera responsable des dossiers de l'AGA vis-à-vis la compagnie d'assurances alors que l'AG n'a aucun droit de regard, ou très peu, sur les affaires de l'AGA. Ceci représente donc un risque accru en comparaison avec une AG qui connaît bien la qualité du travail effectué par son propre réseau de représentants. Nous savons que certaines AG préparent des contrats à être signés par les AGA afin de les responsabiliser dans le processus mais ces ententes demeurent marginales et non standardisées.

Par ailleurs, de façon générale, les AG entretiennent des relations d'affaires avec plus d'une compagnie d'assurances et ce, dans le but d'offrir un plus large éventail de produits et services aux représentants qui sont ses partenaires. Nous avons constaté qu'il existe des AG qui ne détiennent qu'une seul entente de distribution avec une seule compagnie d'assurances, leur permettant de distribuer seulement que ses produits et services en échange d'un taux de rémunération bonifié. Ce type d'AG est souvent constitué d'un groupe restreint de représentants qui souhaitent, en réunissant leurs volumes d'affaires, obtenir un meilleur taux de rémunération auprès d'une compagnie d'assurances spécifique. Nous devons avouer que ce mode d'opérations nous laisse, à tout le moins, dubitatif. Nous croyons que ce type de situation pourrait engendrer de possibles conflits d'intérêts.

Finalement, nous avons constaté que les fonctions des AG et celles des AGA, dans la pratique, ne sont pas similaires telles que nous le détaillerons à la prochaine question.

Q2 : Quelles fonctions des AG ne s'appliquent pas aux AGA? Les activités des AGA sont-elles plus proches de celles des représentants que de celles des AG?

Selon ce que nous en savons, nous croyons que les activités des AGA, sauf exception, se limitent à apporter un support aux ventes, au marketing et à la formation des représentants (dans certains cas).

En ce qui concerne les AG, en plus d'exercer les activités des AGA précédemment décrites, elles sont le prolongement de la compagnie d'assurances en ce qui concerne le traitement administratif des documents soumis par les représentants. De plus, en vertu de certaines ententes conclues avec les compagnies d'assurances, les AG doivent mettre en place des politiques et procédures afin d'encadrer la gestion courante des documents, en plus de voir aux bonnes pratiques commerciales des représentants. Aussi, les AG doivent faire diligence quant au recrutement des nouveaux représentants et dénoncer aux compagnies d'assurances tout fait relatif à un représentant qui justifierait que la compagnie d'assurances en soit informée.

Compte tenu de ce qui précède, nous sommes d'opinions que les activités des AGA se rapprochent plus de celles des représentants que de celles des AG.

Finalement, nous constatons que la pratique actuelle fait en sorte que les compagnies d'assurances ont tendance à exiger plus des AG en ce qui a trait aux activités imparties.

Q3 : Quels sont les facteurs pris en compte par un assureur pour décider s'il va ou non impartir une activité à une AG?

Force est de constater que le principal critère pris en compte par certaines compagnies d'assurances avant de signer une entente avec un AG est la production (volume d'affaires) que l'AG prétend pouvoir maintenir auprès de la compagnie d'assurances. Nous irons même plus loin en précisant que pour certaines autres compagnies d'assurances, la production est le seul critère, ce qui est, à notre avis, tout à fait déplorable.

Depuis environ 3 ans, nous avons constaté, de la part de certaines compagnies, une volonté de tenir aussi en compte la structure interne des AG avec lesquelles elles souhaitent traiter ou souhaitent maintenir leur relation, et ceci est tout à leur honneur. Nous ressentons de la part de ces quelques compagnies un souci de s'assurer de l'efficacité de la structure de l'AG ainsi que de sa bonne réputation. Ces quelques compagnies d'assurances nous rendent visite sur une base annuelle afin de vérifier nos processus et s'assurer de la qualité du travail de l'AG. Mais pour le moment, cette volonté manifestée par ces quelques compagnies d'assurances demeure marginale.

De plus, nous constatons que certaines compagnies d'assurances n'hésitent pas à signer une entente avec des AG qui n'ont pas de structure organisationnelle équivalente à la nôtre. Dans ces cas, nous présumons que l'un des seuls critères évalués est probablement la production de cette AG.

Q4 : Comment les assureurs s'assurent-ils que les AG ont l'expertise nécessaire pour exécuter les fonctions déléguées (par exemple, formation sur les produits, conception de produits, etc.)?

Selon notre expérience, cette considération de la part des compagnies d'assurances ne semble pas être une préoccupation prioritaire, du moins, pour la majorité d'entre elles. À notre connaissance, les compagnies d'assurances semblent accorder une importance relative quant à l'expertise des AG.

Actuellement, nous croyons que la plupart des compagnies d'assurances sont plus portées à évaluer la production et le volume d'affaires de AG que de s'assurer d'une expertise quelconque des AG.

Idéalement, nous suggérons que les compagnies d'assurances auraient tout intérêt à s'assurer de traiter avec des AG qui jouissent d'une bonne réputation, qui ont une expertise solide dans le domaine, qui ont une structure organisationnelle appropriée et qui ont des ressources qualifiées qui peuvent s'assurer du respect des règles de conformité.

Q5 : Y a-t-il des fonctions qui ne devraient pas être imparties aux AG (par exemple, des fonctions centrales comme la souscription et le traitement des demandes d'indemnité)? La délégation à une AG d'une fonction telle que la conception de produits influerait-elle sur le rôle de fabricant de l'assureur?

Comme c'est le cas actuellement en ce qui nous concerne, nous sommes d'avis que la souscription et le traitement des demandes d'indemnité ne devraient pas être imparties aux AG, pas plus que la conception de produits.

Actuellement, à titre d'AG, nous ne sommes pas responsables de la souscription ni de la tarification. Cette responsabilité revient à la compagnie d'assurances. Par ailleurs, nous n'avons pas non plus la tâche d'étudier les demandes d'indemnité, ceci relevant aussi de la compagnie d'assurances. Notre rôle se limite à nous assurer que les documents qui nous sont transmis par un représentant soient dûment complétés, que les dossiers soumis soient complets et qu'ils soient acheminés dans les meilleurs délais aux compagnies d'assurances pour fins d'étude.

Q6 : Les assureurs considèrent-ils importantes les fonctions imparties à une AG ou une AGA, dans le cadre de leur processus de gestion du risque?

Depuis quelques années, nous percevons une certaine volonté de quelques compagnies d'assurances de contrôler, jusqu'à un certain point, le risque lié aux fonctions imparties aux AG. Mais ceci, selon nous, demeure marginal puisque ce ne sont pas toutes les compagnies d'assurances qui démontrent un tel intérêt.

À notre connaissance, de la vingtaine de compagnie d'assurances que nous représentons, deux de celles-ci procèdent à une visite annuelle de supervision et revoient notre structure et nos politiques et procédures.

Q7 :
a) Comment les assureurs devraient-ils être tenus responsables des activités imparties aux AG?
La relation qui existe entre la compagnie d'assurances et l'AG est une relation mandant - mandataire. Donc, nous sommes d'avis que, ultimement, vis-à-vis le consommateur, la compagnie d'assurances devrait toujours être redevable et elle devrait être responsables des activités imparties aux AG.

En effet, l'AG assume des responsabilités qui lui sont déléguées par la compagnie d'assurances. D'un point de vue juridique, dans la mesure où le mandataire exerce son rôle et assume ses responsabilités à l'intérieur du mandat qui lui est confié, le mandant demeure responsable des actes de son mandataire. Au Québec, les obligations régissant ce type de relation « mandant / mandataire » sont prévues aux articles 2130 à 2165 du Code civil du Québec.

b) La mise en place de garde-fous appropriés et la tenue d'évaluations régulières pour déterminer si l'AG répond adéquatement aux exigences de chaque fonction déléguée suffisent-elles?
Nous croyons que oui dans la mesure où ce processus d'évaluation est uniforme pour tous et qu'il devient systématique pour toutes les compagnies d'assurances et leurs AG, ce qui n'est pas le cas actuellement.

c) Les assureurs devraient-ils aussi assumer la responsabilité des erreurs commises par l'AG?
Nous croyons qu'à l'égard des tiers (ex : consommateur), l'assureur devrait assumer la responsabilité des erreurs commises par une AG.

Par contre, la compagnie d'assurances pourrait très bien prévoir ces cas dans les ententes qu'elle conclue avec une AG, en précisant des moyens afin de rendre l'AG responsable de ses propres erreurs, et ainsi prévoir des sanctions ou l'assumation par l'AG de sa part de responsabilité dans certains cas.

Comme c'est le cas actuellement, l'AG devrait demeurer responsable vis-à-vis la compagnie d'assurances des erreurs qu'elle commet.

Q8 : Que peut-on faire pour renforcer la surveillance de la conformité des fonctions imparties aux AG? La standardisation de lignes directrices touchant la surveillance de la conformité aiderait-elle les petits assureurs?

Nous sommes d'avis que l'élaboration d'un processus clair et uniforme de surveillance de la part des compagnies d'assurances contribuerait à renforcer la surveillance des fonctions imparties aux AG. Il faudrait donc une standardisation de normes à respecter. Nous croyons aussi que des lignes directrices étoffées et applicables à tous aideraient tout le monde, y compris les petits assureurs.

Cette surveillance pourrait s'exercer de différentes façons. Des visites effectuées par les compagnies d'assurances chez l'AG afin de vérifier leurs processus, ou encore des questionnaires transmis à l'AG permettant d'obtenir de l'information quant à la structure et aux opérations de l'AG. Nous sommes d'avis que de tels moyens de surveillance assureraient une certaine homogénéité. Ces interventions n'auraient pas nécessairement à être tenues à chaque année mais plutôt, par exemple, aux 3 ans.

Nous prétendons que les moyens de surveillance par les assureurs devraient être standardisés afin de faciliter la vie des AG. Par exemple, un questionnaire type permettant de vérifier la conformité de l'AG pourrait être préparé par l'entremise de l'ACCAP, lequel questionnaire pourrait être complété une fois aux 3 ans par l'AG et être transmis, au besoin, aux compagnies d'assurances qui souhaiteraient l'obtenir. Le fait de standardiser un seul questionnaire éviterait que l'AG ait à compléter de nombreux questionnaires tous différents les uns des autres et ceci aurait l'avantage que toutes les compagnies obtiendront de l'information équivalente de chacune des AG.

Q9 : Quelles activités précises les assureurs accomplissent-ils aujourd'hui pour superviser les représentants et signaler les inconduites?

D'une part, actuellement, les compagnies d'assurances font signer aux représentants un contrat de représentation dans lequel des obligations leurs sont imposées à l'égard de leur comportement et leurs pratiques commerciales. Par contre, ces contrats diffèrent d'une compagnie d'assurances à l'autre. Encore là, il n'y a pas d'uniformité dans les obligations imposées aux représentants.

Certaines compagnies d'assurances se sont dotées d'un code de conduite et de déontologie auquel doivent adhérer les représentants mais ce n'est pas le cas pour toutes les compagnies d'assurances.

Certaines compagnies d'assurances exercent, jusqu'à un certain point, une surveillance à l'embauche mais ceci n'est pas vrai pour toutes les compagnies d'assurances. Souvent cette responsabilité est impartie aux AG.

Certaines compagnies d'assurances exercent, jusqu'à un certain point, une surveillance et procède à une visite d'inspection annuelle des AG mais ceci n'est pas vrai pour toutes les compagnies d'assurances. De plus, selon nous, aucune compagnie d'assurances ne procède à l'inspection des représentants eux-mêmes.

Certaines compagnies d'assurances exigent des représentants et/ou des AG que leur soit dévoilé toute inconduite de la part d'un représentant mais ceci n'est pas vrai pour toutes les compagnies d'assurances.

Certaines compagnies d'assurances avisent l'AG concerné par une plainte déposée à l'encontre de l'un de ses représentants mais ceci n'est pas vrai pour toutes les compagnies d'assurances.

Q10 : Dans la structure actuelle des AG, la détection et le signalement des « représentants inaptes à exercer » sont-ils devenus plus difficiles du fait qu'un représentant peut, en même temps, faire affaire avec plusieurs AG et plusieurs assureurs? Veuillez donner des détails S.V.P.

Oui, certainement. Il est beaucoup plus facile pour un AG de détecter des cas de non-conformité concernant un représentant donné et de le signaler si cet AG est le seul auprès duquel un représentant soumet des dossiers. Il est ainsi beaucoup plus facile de dégager des tendances inappropriées. Par exemple, il pourrait être plus facile pour un représentant de procéder à des remplacements systématiques de police si celui-ci peut le faire via plusieurs AG. Si tous ces remplacements systématiques devaient être traités par la même AG, celle-ci serait dans une meilleure position pour faire le suivi de ce type de dossier, intervenir et signaler ainsi l'irrégularité.

De plus, il est presque impossible pour l'AG de bien connaître son représentant et ses pratiques commerciales générales et globales si ledit représentant traite ces dossiers d'assurances avec plusieurs AG. Dans ces cas, il est pratiquement impossible pour l'AG d'exercer une supervision convenable et adéquate.

Par contre, dans l'hypothèse où un représentant était obligé de traiter avec un seul AG, ceci pourrait causer des problèmes d'accessibilité aux produits de plusieurs assureurs. En effet, ce ne sont pas tous les AG qui détiennent des ententes avec un nombre important d'assureurs. Donc, si un AG détenait des ententes de distributions avec seulement 3 compagnies d'assurances, par exemple, ceci limiterait le choix du représentant quant aux compagnies à distribuer et ce, peut-être au détriment des consommateurs. D'un autre point de vue, cette situation ne serait pas plus problématique que celle d'un agent de carrière qui, lui, ne peut distribuer que les produits de la compagnie d'assurances pour laquelle il travaille.

Dans l'hypothèse où un représentant devait traiter avec un seul AG, nous croyons qu'il serait important de veiller au maintien de son statut autonome afin de s'assurer de maintenir son indépendance et d'éviter de lui soustraire ainsi la propriété de sa clientèle. Nous considérons que le statut de représentant autonome, dans une telle hypothèse, devrait être préservé.

Q11 : Faut-il que l'une ou l'autre des parties soit en mesure de surveiller les pratiques commerciales générales d'un représentant? Dans la négative, pourquoi pas? Dans l'affirmative, quelle partie (l'AG ou l'assureur) est la mieux placée pour exercer cette surveillance?

Bien que la compagnie d'assurances devrait surveiller les pratiques commerciales des représentants, nous croyons que l'AG est la mieux placer pour exercer cette surveillance à la condition qu'elle soit en mesure de connaître TOUTES les activités du représentant. Si ce n'est pas le cas, la supervision ne pourra qu'être partielle et donc, ne pourra atteindre le but visé.

Q12 : Compte tenu de leur proximité et de leurs liens étroits avec les représentants, les AG devraient-elles être responsables du signalement des actes contestables commis par des représentants :

a. aux assureurs avec lesquels ils ont une entente? OUI
b. aux organismes de réglementation des assurances? OUI

Q13 : Comment est traité le signalement d'une inconduite lorsque le représentant est titulaire de deux permis? Une inconduite dans un secteur devrait-elle être signalée dans les autres secteurs pour lesquels le représentant possède un permis?

Nous croyons qu'une inconduite commise par un représentant dans un secteur devrait être signalée dans les autres secteurs pour lesquels le représentant possède un permis. En effet, nous sommes d'avis qu'un représentant qui fait preuve d'inconduite dans une discipline donnée est susceptible de reproduire cette inconduite dans toute autre discipline, à tout le moins, il devient plus à risque.

Q14 : Dans quelle mesure une AG peut-elle influencer ou influence-t-elle les décisions de ses représentants de faire souscrire une police auprès d'un assureur plutôt qu'un autre? Comment cela est-il contrôlé?

Dans la situation actuelle des choses, il est évident qu'un AG qui le souhaite pourrait influencer les choix des représentants quant aux compagnies d'assurances à recommander à un client.

En ce qui nous concerne, nous refusons de favoriser une compagnie d'assurances par rapport à une autre et nous continuerons d'agir ainsi. D'ailleurs, dans nos discussions avec nos représentants, nous ne leur suggérons jamais de placer leurs affaires avec telle ou telle compagnie au motif que ceci pourrait leur permettre une meilleure rémunération ou leur permettrait de se qualifier à un concours. Notre sens éthique nous interdit tout simplement de le faire. Nous ne souhaitons pas nous mettre dans une position de conflit d'intérêts ou d'apparence de conflit d'intérêts.

Par contre, un représentant pourrait décider, lui-même, de le faire, afin de se qualifier par exemple à un concours et actuellement, l'AG n'a pas de pouvoir d'intervenir dans de tels cas. Bien que nous soyons alertes aux situations de conflit d'intérêts potentiels, ce type de situation est difficile à identifier sauf dans des situations flagrantes.

Q15 : Étant donné que les AG touchent des commissions des assureurs en fonction du chiffre d'affaires généré par les représentants, quelle sorte de divulgation aux consommateurs (concernant cette commission en particulier) est effectuée aujourd'hui par les représentants? Par l'assureur?

Selon nous, actuellement, aucune divulgation de cette nature n'est faite au consommateur en lien avec la rémunération versée à l'AG. Ceci s'explique par le fait qu'aucune obligation contractuelle n'existe entre le consommateur et l'AG. L'AG n'est que le sous-traitant (mandataire) à qui la compagnie d'assurances a impartie certaines de ses responsabilités. Dans ces situations, c'est la compagnie d'assurances qui décide de fractionner la rémunération qui lui serait autrement dévolue et d'en verser une partie à l'AG en contrepartie des tâches accomplies par l'AG. Dans ces circonstances, nous croyons que la non divulgation de la rémunération versée aux AG ne cause aucun préjudice aux consommateurs et n'est pas à son détriment.

Par contre, une divulgation écrite est faite au consommateur (et doit être faite) par le représentant en ce qui concerne sa propre rémunération.

Q16 : Quelles sont les attentes des assureurs lorsque la supervision des pratiques de vente est déléguée aux AG? Le contrôle exercé consiste-t-il seulement à s'assurer que tous les éléments nécessaires à la présentation d'une proposition sont présents (la forme) ou s'étend-il à la nature du conseil prodigué (la teneur)?

Les attentes des assureurs à ce chapitre varient d'une compagnie d'assurances à une autre.

Actuellement, l'AG n'a pas la responsabilité de voir à la convenance des produits proposés par les représentants partenaires autonomes. En vertu de la réglementation en vigueur au Québec, cette

responsabilité est dévolue au représentant lui-même (représentant autonome) ou encore au cabinet auquel le représentant est rattaché au sens de la loi. Donc, essentiellement, les compagnies d'assurances semblent exercer des contrôles quant à la forme des dossiers qui leurs sont présentés. Certains assureurs seront plus méticuleux et analyseront plus en profondeur les dossiers soumis et feront une intervention auprès du représentant, par notre entremise, dans certains cas spécifiques (ex : un montant de couverture demandé disproportionné quant à la situation personnelle et financière d'un consommateur).

Ici encore, la supervision des pratiques de vente par les compagnies d'assurances n'est pas uniforme d'un assureur à l'autre.

Q17 : Quels problèmes ont surgi à ce jour à l'égard d'erreurs commises dans des transactions impliquant les AG et comment ont-ils été réglés? Comment les consommateurs savent-ils à qui s'adresser dans ces cas?

Mis à part quelques problèmes mineurs dans la gestion de la documentation qui auraient pu survenir depuis les dernières années, nous n'avons jamais été confrontés à de problèmes majeurs en regard de nos obligations à titre d'AG. Lorsque nous avons commis une erreur, nous l'avons assumé à la satisfaction de tous, y compris du consommateur concerné.

Il est effectivement difficile pour un consommateur d'identifier l'AG via lequel son dossier est transmis et traité. Dans le but d'être le plus transparent possible, nous recommandons à nos représentants d'inscrire sur les cartes d'affaires de ceux-ci la mention « partenaire de MICA services financiers Inc. ». Donc, au besoin, si un consommateur perdait la trace de son représentant, il pourrait nous retrouver, ou encore, simplement contacter la compagnie d'assurances concernée qui nous demanderait d'attribuer un nouveau représentant au client concerné.

Q18 : Qui serait responsable des erreurs commises dans des transactions impliquant des consommateurs et traitées par l'entremise d'AG? Les représentants et les assureurs assument-ils la responsabilité des erreurs commises par une AG quand elles ont une incidence négative sur un consommateur?

En ce qui nous concerne, la responsabilité d'une erreur revient à celui ou celle qui l'a commise. Donc, si nous commettons une erreur à titre d'AG, nous l'assumerons. Si c'est le représentant qui a commis une erreur, celui-ci devra l'assumer. Si c'est la compagnie d'assurances qui a commis une erreur, elle devra l'assumer. Jusqu'à maintenant, de ce que nous en connaissons, ce modèle fonctionne.

Q19 : Existe-t-il, dans l'entente conclue entre l'AG et le représentant, une obligation pour ce dernier de déclarer à l'AG toutes les plaintes déposées contre lui et l'état de celles-ci?

Au moment où un représentant désire traiter avec nous à titre d'AG, il doit signer un contrat dans lequel se retrouve l'exigence pour lui de nous déclarer toute plainte ou cas d'inconduite passé. De plus, il y est prévu qu'il a aussi cette même obligation pour les plaintes ou un cas d'inconduite qui surviendrait en cours de contrat. Non seulement doit-il nous informer des cas qui concernent la discipline de l'assurance de personnes mais aussi les autres disciplines (ex : courtage en épargne collective).

Si le représentant ne le faisait pas et que nous le découvrions par la suite, nous avons prévus à notre contrat des sanctions pouvant aller jusqu'à la terminaison du contrat signé avec le représentant.

Q20 : Est-il nécessaire que toutes les plaintes reçues contre les représentants ou les AG puissent être soumises à l'Ombudsman des assurances de personnes, et dans l'affirmative, comment cela peut-il être accompli?

Nous ne le croyons pas.

D'une part, une plainte reçue peut constituer, dans certains cas, qu'une simple insatisfaction de la part d'un consommateur ne remettant pas en question la conduite du représentant. Assez souvent, ce type de plainte peut se régler assez facilement avec le représentant lui-même ou encore, avec la compagnie d'assurances. Nous ne croyons pas qu'il soit dans l'intérêt du consommateur que ce type de plainte soit transmis à l'Ombudsman.

D'autre part, selon ce que nous en connaissons, le processus de traitement des plaintes que les compagnies d'assurances administrent actuellement semble être efficace et relativement simple pour le consommateur. À ce moment-ci, rien ne nous laisse croire que ce processus devrait être aboli ni modifié.

Nous croyons que les seuls dossiers de plaintes qui devraient être soumis à l'Ombudsman sont les dossiers qui ne seraient pas réglés à la satisfaction du consommateur après que la plainte ait suivi un processus standard de traitement de plainte par la compagnie d'assurances.

Q21 : Si un consommateur ignore l'existence d'une AG entre lui et l'assureur, comment le consentement à recueillir des renseignements personnels est-il donné à l'AG? Les assureurs ou les représentants obtiennent-ils le consentement à divulguer aux AG les données personnelles d'un consommateur?

D'une part, nous rappelons que l'AG est le mandataire de la compagnie d'assurances, donc son prolongement. L'AG ne peut donc avoir plus ni moins de responsabilité à l'égard de la protection des renseignements personnels.

Certaines compagnies d'assurances ont prévu à leur entente écrite des clauses portant sur cette obligation pour l'AG de mettre en place des politiques et procédures écrites à cet égards et exige le respect de la protection de ces renseignements. Il revient à l'AG de démontrer à la compagnie d'assurances qu'elle a mis en place des moyens sécuritaires pour protéger cette information.

Par ailleurs, à notre connaissance, certains documents de propositions d'assurance préparés par les compagnies d'assurances prévoient maintenant certaines déclarations à cet effet et inclus le fait que les informations recueillies peuvent être divulguées à des tiers afin de permettre le traitement de leur dossier. Nous croyons par contre que ce type de clause ne se retrouve pas dans tous les documents de propositions des assureurs.

Il nous semble que de telles clauses devraient être standardisées dans les contrats des assureurs afin d'uniformiser cette façon de faire.

Q22 : Les AG conservent-elles des renseignements personnels et, si tel est le cas, à quelles fins? Au nom de qui ces renseignements sont-ils conservés?

En ce qui nous concerne, nous conservons sous forme électronique les propositions d'assurance et autres documents en lien avec la gestion des dossiers. De plus, une copie de la police est conservée. Ces documents sont conservés dans le seul but de constituer un dossier complet, de le rendre disponible au représentant concerné et afin d'assurer un meilleur suivi et un meilleur service au consommateur. De plus, ces documents peuvent être utiles en cas de réclamations ou de problèmes quelconques qui pourraient survenir dans un dossier.

Le CANAFE / FINTRAC exige que nous conservions tous les documents ayant transité par nous pour fins de références ultérieures au besoin.

Q23 : En plus des lois sur la protection de la vie privée, comment tient-on les AG responsables de la protection des renseignements personnels aujourd'hui?

Certaines compagnies d'assurances ont prévu à leur entente écrite des clauses portant sur cette obligation de mettre en place des politiques et procédures écrites à cet égards, et exige le respect de la protection de ces renseignements. Par contre, ce ne sont pas toutes les compagnies d'assurances qui ont cette exigence.

Q24 : Pensez-vous que le régime de délivrance de permis existant et que le niveau d'assurance de responsabilité exigé sont suffisants, compte tenu des fonctions exécutées par une AG dans le marché actuel?

Oui, nous les croyons suffisants. Les AG sont les mandataires des compagnies d'assurances. Les AG exécutent donc des obligations qui leur sont imparties par les compagnies d'assurances. Ainsi, ultimement, la compagnie d'assurances demeure responsable vis-à-vis le consommateur. Donc, dans ces circonstances, nous considérons que la protection d'assurance responsabilité exigée actuellement est suffisante.

Q25 : L'absence de règles précises sur les fonctions et responsabilités d'une AG crée-t-elle un manque d'uniformité quant au fonctionnement des AG et quant au niveau des services qu'elles offrent?

Oui, définitivement.

Q26 : Outre la résiliation d'une entente en vigueur, comment les assureurs traitent-ils l'inconduite d'une AG aujourd'hui? Les assureurs signalent-ils l'inconduite d'une AG aux organismes de réglementation?

Les cas d'inconduite d'une AG peuvent effectivement se conclure par la résiliation de l'entente, mais peuvent aussi amener les compagnies d'assurances à exiger de l'AG le paiement de pénalités ou de remboursement de sommes en lien avec une inconduite ou autre forme de dédommagement.

Par ailleurs, nous prétendons que les assureurs, ou la vaste majorité d'entre eux, ne divulguent pas aux autorités la résiliation d'un contrat avec un AG.

Nous croyons que dans les cas d'inconduite grave de la part d'une AG, les assureurs devraient divulguer cette information auprès des autorités réglementaires, auprès du public en général, auprès des autres compagnies d'assurances ainsi qu'auprès des autres AG.

Nous sommes d'opinion que ces façons de faire permettraient une meilleure protection du consommateur ainsi qu'une meilleure protection de l'industrie en général.

<u>Piste de solution à envisager</u>

Comme nous le soulignions précédemment, nous constatons un manque d'uniformité flagrant dans les relations entre les compagnies d'assurances de personnes et les AG et ce, tant en ce qui concerne les ententes écrites signées entre celles-ci qu'en ce qui concerne les exigences parfois différentes imposées aux AG par les diverses compagnies d'assurances de personnes.

Nous sommes d'opinion que cette problématique provient essentiellement du fait que les AG n'ont pas de statut juridique clairement définis dans la réglementation actuelle. Ainsi, les rôles et responsabilités des AG peuvent différer d'une compagnie d'assurances de personnes à une autre.

Nous considérons qu'il serait approprié de voir à attribuer un statut clairement défini pour les AG, ce qui aurait comme conséquence de permettre une uniformisation et une standardisation des rôles et responsabilités des AG vis-à-vis les compagnies d'assurances de personnes, vis à vis les consommateurs, ainsi qu'envers l'industrie au sens large. Nous croyons donc que la solution réside dans la reconnaissance d'un statut clairement défini pour les AG.

Afin d'atteindre ce but d'uniformisation, nous prétendons qu'il serait approprié que l'ACCAP soit appelée à jouer un rôle supplémentaire accru pour le bénéfice de l'industrie. Nous croyons qu'il serait nécessaire que tous les AG œuvrant au Canada soient membre de l'ACCAP. En devenant membre de l'ACCAP, les AG devraient se soumettre aux lignes directrices émises par celles-ci. Actuellement, les lignes directrices émises par l'ACCAP s'appliquent à ses membres actuels qui sont, pour l'essentiel, des compagnies d'assurances de personnes œuvrant au Canada. De ce que nous constatons, ce sont ces compagnies d'assurances qui décident d'appliquer, parfois avec différentes variantes, les lignes directrices de l'ACCAP, ce qui crée à l'occasion des disparités d'application.

En rendant obligatoire l'adhésion des AG à l'ACCAP, nous croyons que ceci aurait comme conséquence de contraindre directement les AG au respect des lignes directrices émises par l'ACCAP et ce, de façon uniforme et standard.

Afin d'atteindre le but visé, nous proposons que l'ACCAP discute avec les compagnies d'assurances afin d'établir des règles ou lignes directrices uniformes qui s'appliqueraient à l'ensemble des AG.

De façon plus spécifique, les discussions à être tenues devraient tenir en compte les éléments suivants, afin d'en venir à l'établissement de lignes directrices qui devraient s'appliquer aux AG et compagnies d'assurances :

- Favoriser la standardisation des ententes écrites conclues entre les compagnies d'assurances et les AG;
- Favoriser la standardisation des ententes écrites conclues entre les compagnies d'assurances et les représentants;
- Favoriser la standardisation des obligations des AG à l'égard des compagnies d'assurances, à l'égard des représentants ainsi qu'à l'égard des consommateurs;
- Établir que les règles applicables aux AG soient aussi applicables aux AGA;
- Détermination des rôles respectifs de supervision des AG et des compagnies d'assurances quant aux activités des représentants;
- Établir des mécanismes de traitement de plainte uniformes pour tous;
- Prévoir que les AG devraient avoir des politiques et procédures écrites en application des lignes directrices à être émises;
- Définir les responsabilités des AGA traitant directement avec les compagnies d'assurances (qui devraient être équivalentes à celles des AG);
- Définir les responsabilités des AGA qui traite leurs affaires via des AG;
- Établir des critères uniformes permettant aux compagnies d'assurances d'évaluer l'expertise et les structures organisationnelles des AG;

- Délimiter clairement les responsabilités pouvant être imparties aux AG et celles qui ne le peuvent pas;

- Clarifier la responsabilité de l'assureur versus celle de l'AG vis-à-vis les tiers (consommateurs);

- Favoriser la standardisation des mécanismes de surveillance exercée par les assureurs (ex. : visite sur place, questionnaire de conformité à compléter, fréquence, etc.);

- Favoriser le signalement des inconduites commis par un des intervenants aux autres intervenants;

- Évaluer la possibilité de faire inclure dans tous les documents de propositions des assureurs des clauses standards quant à la gestion et la protection des renseignements confidentiels, afin que ces clauses puissent aussi s'appliquer aux AG et ainsi, leur permettre de faire usage et de conserver de telles informations;

- Évaluer la possibilité, dans les cas d'inconduite grave de la part d'une AG, que les assureurs devraient divulguer cette information auprès des autorités réglementaires, auprès du public en général, auprès des autres compagnies d'assurances ainsi qu'auprès des autres AG.

- S'assurer d'une représentativité adéquate des AG sur le conseil d'administration de l'ACCAP afin de leur permettre de se faire entendre et de collaborer à l'élaboration des lignes directrices.

Nous croyons que cette façon de faire pourrait être la façon qui permettrait d'éviter certains irritants rencontrés actuellement.

Nous avons aussi envisagé la solution qui consistait à demander au législateur d'intervenir et de prévoir par réglementation l'établissement d'un statut bien défini pour les AG ainsi que l'élaboration de règles uniformes. Après avoir évalué cette possibilité, nous en sommes venus à la conclusion que cette solution ne serait pas la meilleure ni la plus efficace. D'une part, nous sommes conscients que des changements réglementaires peuvent être ardus et s'étirer sur une longue période de temps. Ceci est d'autant plus vrai que les législateurs des différentes provinces canadiennes devraient se coordonner et s'harmoniser. D'autre part, nous croyons qu'il n'est pas nécessaire de requérir des changements réglementaires puisque le modèle fondé sur la distribution par des AG est un modèle qui fonctionne bien, malgré ses lacunes actuelles.

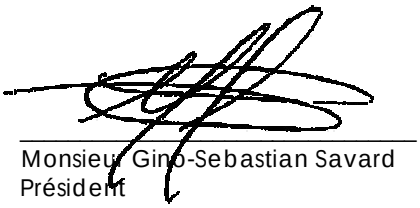
Ainsi, vu que l'ensemble de l'industrie semble sensibilisé au besoin d'uniformisation, nous préconisons la solution qui favorise la mise en place d'un rôle accru de l'ACCAP dans la préparation et la mise en application de lignes directrices qui pourraient, selon nous, suffire à résorber les quelques lacunes actuelles existants dans ce modèle de distribution par l'entremise d'AG.

Nous considérons donc que cette solution serait la plus simple et la plus efficace!

Conclusion

Nous demeurerons disponibles pour répondre à toute question que pourrait susciter le contenu de notre mémoire. Nous souhaitons être partie prenante de ce processus de discussions et sommes disposés à participer à d'éventuelles rencontres à ce sujet.

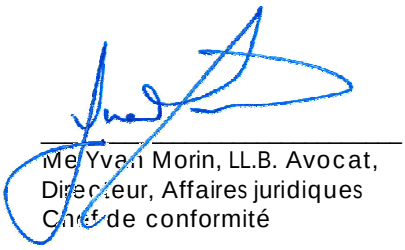
Espérant le tout conforme, veuillez accepter, Madame, Monsieur, l'expression de nos salutations distinguées.



Monsieur Gino-Sebastian Savard
Président



Monsieur Martin Savard
Vice-président exécutif



Me Yvan Morin, LL.B. Avocat,
Directeur, Affaires juridiques
Chef de conformité

RICIFQ | Le Regroupement Indépendant des Conseillers de l'Industrie Financière du Québec

917, rue Mgr Grandin, bureau 200
Québec (Québec) G1V 3X8

LE REGROUPEMENT INDÉPENDANT DES

CONSEILLERS DE L'INDUSTRIE FINANCIÈRE

DU QUÉBEC (RICIFQ)

DISCUSSION DU CCRRA INTITULÉE

MODÈLE DE DISTRIBUTION DES PRODUITS D'ASSURANCE VIE FONDÉ SUR LES AGENCES GÉNÉRALES

Mémoire présenté à l'AMF et au CCRRA
ccir-ccrra@fsco.gov.on.ca – 31 mars 2011

Le masculin est utilisé de façon générique dans le seul but d'alléger le texte.

RICIFQ Le Regroupement Indépendant des Conseillers de l'Industrie Financière du Québec

PAR COURRIEL

Le 28 mars 2011

Madame Danielle Boulet
Présidente du CCRRA
5160, rue Yonge, C.P. 85
Toronto (Ontario) M2N 6L9

Objet : Document de consultation – Le 9 février 2010
Consultation du CCRRA – Modèle de distribution des produits d'assurance vie fondée sur les agences générales

Madame Danielle Boulet,

C'est avec plaisir que nous vous transmettons le mémoire préparé par le Regroupement Indépendant des Conseillers de l'Industrie Financière du Québec (RICIFQ) à la consultation citée en objet.

Nous considérons qu'il est opportun qu'une réflexion soit mise de l'avant par le Conseil canadien des responsables de la réglementation d'assurance (CCRRA). Ayant pris connaissance du document du Comité de réglementation des agences (CRA), ainsi que de la participation de l'Organisme d'encadrement des services d'assurance du Canada (OESAC), nous croyons que le Regroupement n'a pas à s'immiscer dans ce dossier qui relève des Agences générales et des Agences générales associées. Nous allons simplement vous donner notre compréhension de la structure actuelle et notre opinion afin de supporter les intéressés(es).

Vous trouverez ci-joint notre mémoire déposé en copie conforme à l'Autorité des marchés financiers du Québec (AMF).

Nous espérons le tout à votre entière satisfaction et nous sommes à votre entière disposition pour tout renseignement supplémentaire.

Veuillez agréer, Madame Boulet, l'expression de nos sentiments distingués.

p. p. Gaston Boily, B.A.A.
Président du Conseil d'administration

Jean-Paul Jalbert, A.V.C., Pl. Fin.,
PDG Conseil de direction

c. c. Isabelle Trottier, avocate - AMF

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MISSION

« La mission du Regroupement Indépendant des Conseillers de l'Industrie Financière du Québec (RICIFQ) est de donner une voix aux conseillers du Québec, promouvoir et préserver la pérennité du conseil financier indépendant »

Les membres du RICIFQ croient fermement que leur actif le plus précieux est leur clientèle respective, le consommateur, et que l'un des meilleurs outils pour protéger les intérêts de ce dernier et préserver son patrimoine est le **« *conseil financier indépendant*»**

Introduction

Ayant pris connaissance du document de consultation du Comité de réglementation des agences (CRA) du Conseil canadien des responsables de la réglementation d'assurance (CCRRA), nous constatons qu'il est souhaitable de bien définir les niveaux de responsabilités de chacun dans l'intérêt de l'industrie et du consommateur.

Le débat doit se faire avec les principaux intervenants qui sont les Agences générales (AG) et les Agences générales associées (AGA). Les contrôles doivent relever des Organismes d'autoréglementation.

Développement

Les thèmes que vous avez recensés tels que :

a. Les fonctions imparties aux AG ;
b. La supervision des représentants ;
c. La gestion des conflits d'intérêts : principes du Comité de révision des pratiques de l'industrie (CRPI) ;
d. Le rôle des AG dans les opérations de vente et le traitement des plaintes des consommateurs ;
e. La conformité avec les lois sur la protection de la vie privée ;
f. Qui surveille les AG ?

sont opportuns et demandent une réflexion sur un modèle de distribution afin de protéger les différents intervenants dans un cadre réglementaire bien défini.

Nous croyons que, dans l'intérêt du consommateur et afin de s'assurer de ne pas reculer en arrière de plusieurs décennies, le modèle d'Agence générale et d'Agence générale associée est le premier moyen afin de s'assurer de l'impartialité lors de la vente des produits et services financiers.

Il est sans équivoque que personne ne devrait négocier directement avec les fournisseurs, sans d'abord passer par un AG ou un AGA.

Nous vous invitons à consulter à l'annexe A, un exemple d'un modèle de distribution tel que nous le connaissons aujourd'hui et qui n'est pas souhaitable.

Conclusion

Le Regroupement désire que les conseillers indépendants et autonomes demeurent maître d'offrir leurs services avec l'Agence générale ou l'Agence générale associée de leur choix pour des motifs d'affaires et de convivialité.

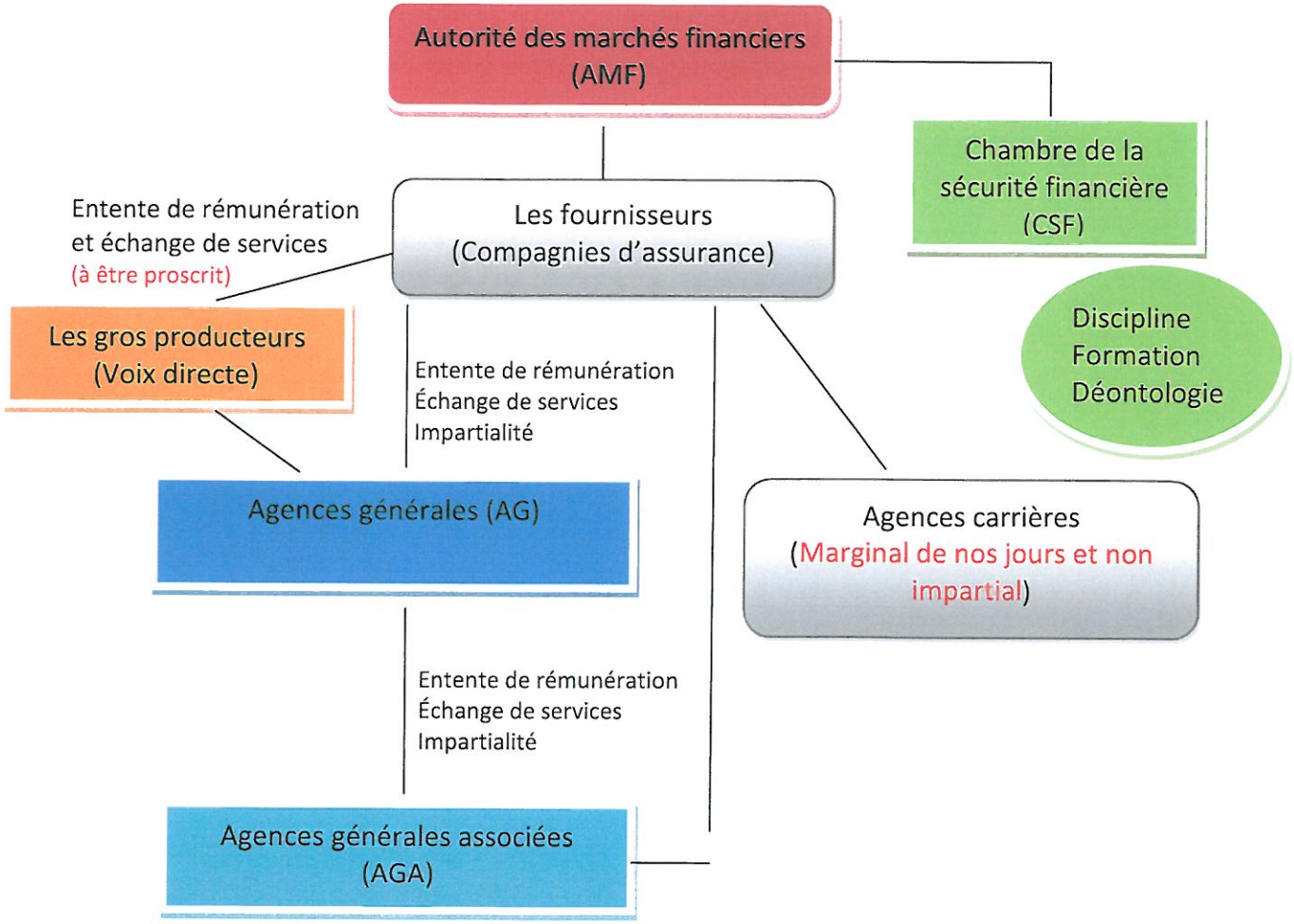
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c. c. Isabelle Trottier, avocate - AMF

Annexe A

ORGANIGRAMME SELON LA STRUCTURE ACTUELLE



- Il est impératif qu'il y ait un filtre de surveillance à tous les niveaux (les fournisseurs, les AG, et les AGA).
- Bien définir le niveau de responsabilité à chacun des niveaux.
- La responsabilité des OAR est d'établir des règles, de les superviser et de les faire appliquer.
- Tous les conseillers devraient signer des ententes directement avec une AG ou un e AGA, sans exception.
- Quotas de production doivent être prohibés.
- *Les AG et les AGA assurent l'impartialité des services offerts envers les consommateurs.*

Empire Life

March 31, 2011

CCIR Secretariat
5160 Yonge Street, Box 85
17th Floor
Toronto, Ontario M2N 6L9

Dear Ms. Boulet,

Empire Life welcomes this opportunity to provide input to the Canadian Council of Insurance Regulators (CCIR) on its Managing General Agencies Life Insurance Distribution Model issues paper.

In business since 1923, Empire Life helps Canadians build wealth and protect their financial security with competitive individual and group life and health insurance, investment and retirement products. The company's vision is to be the leading, independently-owned, Canadian financial services company committed to simplicity, being easy to do business with and having a personal touch.

You will have also received a submission from the Canadian Life and Health Insurance Association (CLHIA), of which Empire Life is an active member. Empire Life agrees with and supports the thoughtful input that the CLHIA has presented to the CCIR. Given the importance of this issue, we felt compelled to share our insights as well.

For ease of reference we have provided answers to the issue paper's specific questions in our attached response.

Empire Life appreciates the opportunity to provide the CCIR with our comments and looks forward to continued consultation between the CCIR and its stakeholders. Should you have any questions or require additional information, please do not hesitate to contact me at 604 232-5557 ext 229 or via email at rick.forchuk@empire.ca.

Yours sincerely,



Rick Forchuk
Vice-President, Retail Distribution
The Empire Life Insurance Company
259 King St. East
Kingston, Ontario K7L 3A8



Definitions

Definition of an "MGA" –

Empire Life believes that the definition of an MGA should be more specific than that included in the CCIR document. The current CCIR definition refers to an MGA as, "an individual" holding a brokerage agreement. There are companies that will offer an MGA contract, with MGA compensation, to one high-producing individual. We believe that these situations should not be considered MGAs. Instead, our definition of an MGA is: "A business entity that earns the majority of its revenue from the recruiting, development, and supervision of advisors. It has a sophisticated back office and a management and staffing structure designed to provide support services necessary to advisors and their clients." We feel the current definition in the CCIR paper is far too broad.

Definition of an "agent" –

From page six of the issues paper, "life insurance representatives are considered "agents" of the insurer, *whereby the insurer is obligated to uphold the agreements made by the agent with a third party", (emphasis* added). We especially object to the part of the comment that is *italicized*. Even when an agent works for a single insurer, he/she does not have the authority to bind the insurer. The agent does not have the authority (contractually or under the law of agency) to do anything more (in respect of a prospective policyholder's application for life insurance and the making of the contract) than to solicit it (in the prescribed manner) and then deliver that application and any premium to the insurer. It is only the insurer who can decide whether to accept the policyholder's application and issue a policy. In Quebec, the contract between the insurer and the insured is made when the insurer accepts the application. In the common law provinces, the contract is made when the policy is delivered to the policyholder.

The law of agency only applies in a very limited fashion. Both under the representative's contract with the insurer and statutorily, the relationship is only one of "limited" agency, sometimes on behalf of the insurer and sometimes on the policyholder's behalf. For instance, when remitting the premium to the insurer, the agent acts as agent for the prospective policyholder. When he/she is soliciting the business or delivering the policy, the agent acts as agent for the insurer.

In addition, while it is technically correct to say that "generally speaking" a life insurance agent is a licensed individual, it should be noted that there is case law where a third party administrator has been held to be an "agent" even though it was not licensed.

Questions to Stakeholders:

1. *Are there other aspects of AGAs that differentiate them from MGAs?*

The CCIR paper is lumping AGAs in with MGAs, by definition. Some companies, including Empire Life, define an AGA as a business organization that has contracts with more than one supplier, earns the bulk of its revenue from the recruiting, training, and supervising of advisors, but may lack some back-office support or access to such things as an electronic trading platform (such as FundServ) for some of its business. It is also important to note that an MGA with one supplier, or group of suppliers, may be an AGA with another, as the AGA may not do sufficient volume to have an MGA contract. For example, an entity with MGA contracts with Empire Life, Manulife, and Canada Life, may have some advisors who want access to specific products from Standard Life, for example, but will not do enough volume to be considered an MGA with Standard Life. In this case, the entity is both an MGA and an AGA.

2. *Which functions of MGAs do not apply to AGAs? Are the activities of AGAs closer to representatives rather than MGAs?*

The activities of AGAs are, not generally, closer to representatives rather than MGAs. As stated above, many AGAs are just an AGA in name only, with a given supplier, and can be full-fledged MGAs with another. Contractually, at Empire Life, AGAs more closely resemble an MGA.

3. *What are the factors considered by an insurer before deciding whether or not to outsource an activity to an MGA?*

Under an agency agreement between the insurer and the MGA, an insurer will delegate certain functions that it wishes the MGA to perform. Insurers do not view these arrangements as outsourcing.

Apart from obvious business decisions about what functions an insurer wishes to carry out on its own and where not prohibited by law, the key consideration in deciding what functions to delegate is the capability of the MGA to carry out the delegated function. Insurers will typically look at an MGA's financial and staff resources and relevant written policies and procedures as evidence of capability.

4. *How do insurers satisfy themselves that MGAs have the expertise to carry on the delegated functions (e.g. product training, product development, etc.)?*

Prior to issuing a contract, insurers complete detailed due diligence on an MGA, involving having the MGA complete a pre-screening survey and provide supporting documentation, including written policies and procedures. Insurers will use a variety of means, including site visits, to verify the information. In addition to production requirements, insurers look at the capabilities of the MGA's back-office, and routinely monitor MGAs through surveys and site visits. The MGA and insurer are in a partnership arrangement, which means that there, typically, is ongoing communication on everything from the day-to-day processing of cases, to dealing with problems at the advisor or firm level. Through this regular activity, insurers are able to determine how an MGA functions and how its people perform.

5. *Are there functions that should not be outsourced to an MGA (e.g. core functions such as underwriting and claims handling)? Would delegating to MGAs a function such as product development affect the insurer's role as manufacturer?*

This question is troublesome, as it seems to be an indicator that the CCIR misunderstands the role of the MGA significantly, perhaps by confusing an MGA's role with that of third party administrators or travel insurance companies. Underwriting is the sole province of the insurer. While the insurer's underwriting department will communicate regularly with advisors and MGA staff on the progress of cases, the MGA does not participate in the underwriting process, nor are we aware of any situation in which they may. Any role for MGAs in product development would be restricted to rare situations in which a highly sophisticated MGA, in a niche market, may liaise with an insurer to advise on the creation of a niche product, but this is a collaboration, not a delegation. Claims handling is something that is, again, the province of the insurer. We are not aware of any situation where the insurer would ever delegate claims handling to an MGA.

6. *Do insurers view functions outsourced to an MGA/AGA as material to their risk management process?*

As noted above, in our response to question three, insurers do not view the contractual delegation of functions to an MGA as outsourcing.

Here, we feel that it is not clear if OSFI Guideline B-10 applies to the delegation of screening and monitoring functions to MGAs. In addition, if B-10 does apply, the relationship between an insurer and a specific MGA would generally be non-material, as insurers seldom operate exclusively within the MGA channel and within the channel, have the option of using several MGA firms. In any event and as noted above in question four, insurers complete surveys and site visits as part of their risk management process.

7. *How should insurers be held accountable for the activities outsourced to MGAs? Is having appropriate safeguards and conducting regular assessment of whether the MGA is achieving the right standards for each delegated function sufficient? Or would insurers also take responsibility for the mistakes of the MGA?*

Regulatory legislation seems clear in most jurisdictions, functions related to screening and monitoring are the responsibility of the insurer. Regular assessments by the insurer are sufficient and in the insurer's best interests.

As for mistakes of the MGA, that is a very broad issue. Who maintains responsibility depends on the type of mistake. For example, if the mistake is, "an employee of the MGA produces an illustration for one of the MGA's advisors, and offers incorrect or inaccurate information," the ultimate responsibility for suitability of the products and advice rests with the advisors. If the mistake is, "an MGA screens its advisors, but errs in allowing one of improper suitability into the business," the ultimate responsibility for screening for advisor suitability rests with the insurer.

8. *What can be done to enhance compliance monitoring of functions outsourced to MGAs? Would standardized compliance monitoring guidelines assist smaller insurers?*

It is clear that standardized compliance monitoring would assist all, not just smaller MGAs, by eliminating duplication of efforts and enhancing clarity and consistency. The Canadian Life and Health Insurance Association (CLHIA) has developed an MGA Compliance Review Survey to assist insurers in monitoring functions delegated to MGAs. One survey would be completed by the MGA and shared with the various insurers, to avoid duplication. Each insurer would then do its own review for those issues unique to it, based on the contents of the MGAs responses.

9. *What specific activities do insurers carry on today in supervising representatives and reporting misconduct?*

Empire Life follows the practices outlined in CLHIA Guideline G8. In addition to describing practices for screening, Guideline G8 describes practices for monitoring agents. A number of checks and balances exist; an insurer's underwriting department will often notice improprieties or oddly structured product, and will bring this to the attention of the agent and the MGA. As well, many (but not all) MGAs have some kind of quality control process that looks at business as it is submitted, often catching issues that may be suspect. Finally, there is the consumer complaint process. Insurers react quickly and decisively when made aware of improper or suspicious activity by an agent. A complaint typically results in a review of the agent's business. This process could include interviews with the agent, with the client, a review of other client policies having similar product recommendations, discussions with the MGA, discussions with other insurers to determine if similar problems have surfaced with this agent, and discussions with regulators to determine if any similar patterns exists.

In terms of reporting misconduct, when a complaint comes to the attention of an insurer, the MGA is contacted as a courtesy, but the insurer will deal directly with the advisor, investigating the situation, and taking appropriate action where necessary. This may include cancellation of a contract, vesting of a contract (our contract allows for vesting of advisor code for 30 days without cause), reporting to a regulator, or all three. Insurers take these kinds of issues very seriously and typically would not leave it to the MGA to take specific action, but would be very proactive themselves.

10. *Under today's MGA structure, has detection and reporting of "unsuitable representatives" become more difficult as a representative is, at any given moment, dealing with various MGAs and insurers? Please elaborate.*

Detection and reporting of "unsuitable representatives" is not more difficult in today's environment than it was in the "career agency model." The same basic checks and balances exist, as outlined above under question nine.

11. Is it necessary that some party be in a position to monitor the overall business practices of a representative? If no, why not? If yes, which party, MGA or insurer, is in the best position to do that monitoring?

Here we would use as an analogy to the Anti Money Laundering Legislation, where the federal government has identified that there are different entities engaged in the business and that placing regulatory responsibilities at each level *in respect of their role in the process* results in a more rigorous system. This is particularly important when the regulator is trying to govern the conduct of independent brokers whose actual point of sale activities are not *directly* supervised by anyone. (Neither the MGA nor the insurer are actually present at the customer meeting that results in the transaction). All the MGA and insurer can do is *investigate* (make sure they are licensed, that they are financially sound, that they do not have adverse findings against them), *train* (so they know the products, know best practices) and review *paper* and *patterns* (are their applications in good order, do they make sense on their face, are they churning, when you look at their book, are their any flags). From *patterns,* MGAs and insurers may become aware of conduct that should be investigated – in which case they should refer to the regulator for investigation. If we are all doing this, then the regulator may have more than one company raising red flags and conduct requiring investigation could be addressed earlier.

The regulator has responsibility for setting the basic standards of conduct; for establishing competency standards that require meaningful background investigations and substantive knowledge to obtain and maintain a license; establishing a supervisory regime that does more than passively await consumer complaints and insurer reporting, but is proactive and engages in practices designed to test the compliance regimes of not only insurers but also licensed brokers and MGAs; has meaningful investigatory and discipline powers; and has a consumer complaints regime that spans the full scope of the distribution model (as outlined below in our response to question 20).

Insurers have responsibility for product design (not creating products that are aimed at or easily used to taking advantage of clients); for due diligence of their distributors; for supervising distributors to the extent that can reasonably be done (i.e. should reflect the distinction between housed and independent distribution; when distribution is through housed distribution, the insurer maintains full control over the distributor and accepts full responsibility for the point of sale activities; when distribution is independent, the insurer does not have direct control over the point of sale activities but can supervise through *proactive training* and *defensive detective* activities (including searching for patterns, audits etc) that, when combined with the activities of others, should facilitate the detection of wrongful conduct. Insurers should be required to report activities to regulators – we query whether we should have a "suspicious transaction" type threshold for market conduct, to enable a safe harbour to report suspect activity that we have not been able to establish as surely wrong – so that the regulator can be made aware of suspicion and (if there are multiple sources of concern) commence an investigation. Right now, insurers are potentially exposed to defamation claims if we report too early.

Our view is that MGAs, as an intermediary between the insurer and the broker, have similar supervisory responsibilities to the insurer. Unlike the insurer, the MGA will have a view of the broker's business with a number of companies and therefore would have the capacity to view patterns at a different level. Not requiring that supervisory duty at their level leaves a gap in the detection model. MGAs would be the first to spot patterns, in all likelihood – whether they are signs of, simply, more training required or something more. Under some contracts with an insurer (including Empire Life's), the MGA is responsible for and must "manage" the representatives. The MGA also agrees to

indemnify the insurer for any negligence or illegal act of the representatives. Effectively, this requires the MGA to monitor the activities of the representatives. In addition, from a legal perspective, as the intermediary between the insurer and the broker, MGAs are bound in the liability chain – courts recognize their responsibility, it is the price they pay for earning a portion of the business that is sold.

Above, we have described what is being (and should be) accomplished by a multi-level approach to "monitoring the overall business practices" of a representative. Below, we expand upon what is already in place.

There are a number of already existing checks and balances that provide oversight. First, existing regulation around the licensing of advisors provides a level of expected behaviour in the areas of product suitability and in conduct consistent with the best interests of the consumer. In most jurisdictions, Errors & Omissions insurance is a mandatory condition of licensing. Included in the basic conditions to maintain a license is the Continuing Education (CE) credit requirement that forces the advisor to update his/her knowledge as trends and requirements change. This includes, for example, full understanding of Anti-Money Laundering (AML) legislation and Anti-Terrorism legislation.

There is an expectation by the insurer that the MGA will provide a forum in which to educate and support ongoing programs to reinforce, not only the previously mentioned educational items, but also those involving product, product changes, and best practices in sales and marketing.

Another layer of market conduct oversight exists at the professional association level, with organizations such as ADVOCIS, CAILBA, CALU and the IFB offering codes of ethics to which adherents are expected to subscribe and support. These include such things as holding out to the public, best practices, continuing education, and an obligation to act in the best interests of the policyholder.

The due diligence done by insurers and MGAs when contracting a new advisor is another level that speaks to the suitability and qualifications of the advisor. Background checks, referencing, and confirmation of such things as appropriate licensing and E & O insurance are included here.

There is another layer of oversight at the "National Accounts" level, primarily the bank-owned firms, which have sophisticated compliance departments and scrutinize advisor suitability and ongoing advisor behaviour with highly structured checks and balances.

Certainly there is room to "modernize" the levels of oversight that currently exist, and we are supportive of such a practice, while at the same time recognize that there are significant numbers of checks and balances in existence at various levels. There is no evidence that fraud, theft, or other forms of illegal or unscrupulous actions against policyholders is any more prevalent in the MGA channel than in any other. In every field of endeavor, there are those with tendencies to transcend the boundaries of the law and of ethical practice that no amount of legislation will stop.

12. *Given their proximity and close relationship to representatives, should MGAs be responsible for reporting questionable acts by representatives:*
    a. *To insurers with whom they have an agreement?*
    b. *To insurance regulators?*

The short answer to both is, "yes." MGAs should be responsible for reporting to both insurers and to regulators. In fact, contractually, we require our MGAs to advise us if, in relation to sales practices affecting Empire Life policyholders, they have evidence of improper conduct.

13. How is misconduct reporting handled when the representative is dually licensed? Should misconduct in one sector be reported in the other sectors where the representative is licensed?

It is our approach that if misconduct is determined to have occurred, by a dually-licensed advisor, that we would conduct an immediate investigation, and take steps, depending on the type of misconduct and its severity, to suspend or vest the advisor (our contract allows for vesting of advisor code for 30 days without cause) on the life side. We cannot say whether this is the standard for the industry, but it is our approach. We also regularly monitor industry websites in both sectors to determine whether an advisor licensed in the insurance domain is in difficulty in the securities world.

Many instances of improper conduct do translate across sectors. The sectors, therefore, should report to each other, facilitated by the applicable regulators.

14. To what extent can or does an MGA influence the decisions of its representatives to place insurance with one insurer over another? How is this controlled?

Most MGAs would explain that they have very little influence over where an agent places his/her business. Advisors are independent, and most had relationships with insurers prior to the rise of the MGA model. Those relationships typically transcend any desire (if expressed) by the MGA to have business go to one place or another. For newer advisors, or those without specific ties to an insurer, the insurer's sales team works to build relationships with the agents, in the hope of garnering business.

15. Given that MGAs receive commission from insurers for volume of business generated through the representative, what kind of disclosure to consumers (regarding this specific commission) is provided today by the representative? By the insurer?

Agents are required to disclose, in writing, such things as incentive conferences provided by insurers, conflicts of interest, and loans outstanding from an insurer or MGA. There is no requirement for the agent to disclose the nature of his/her compensation arrangement with the MGA. Insurers do not disclose this information to the consumer either. Beyond the fact that it is disclosed that a commission is paid to the agent as a result of product sales, there is no requirement to disclose further details of compensation arrangements.

16. What are the expectations of insurers when supervision of sales practices is delegated to MGAs? Is oversight limited to completeness (form) as opposed to the nature of the advice (substance)?

This insurer would expect that any involvement by the MGA in the oversight of sales practices of agents would be in accordance with industry-accepted practices as condoned by such organizations as ADVOCIS, CALU, IFBC, and would be in accord with CLHIA guidelines and our contract and distributor code of conduct. It is the responsibility of the advisor to behave in an appropriate fashion, and that (we believe) of the MGA to offer only such oversight as that previously mentioned. In certain instances, when an MGA is reviewing documentation for completeness, certain things do become known in regards to the sale. If there are questions about what is being presented for submission, they are discussed with the insurer. In these cases, our expectation would

be that the MGA work with the advisor to ensure that the questionable activity is not repeated.

Concerning the nature of the advice (substance), neither MGAs, nor insurers, are in a position to be responsible for oversight of the practices followed by advisors.

17. What problems have arisen to date regarding transaction errors involving MGAs and how have they been resolved? How do consumers know who to go to in these situations?

Very few of such errors are on record. Occasionally, an MGA may, by way of internal error, fail to get documentation to an insurer in a timely fashion around a hard deadline, such as the end of the RRSP season. The agent would likely be the first contact, advising the insurer, and offering appropriate documentation to have the insurer look to the Canada Revenue Agency for exceptional treatment. MGAs play a very small role in the processing of transactions (see the example above). Most transaction errors involve the initial handling by the agent and the insurer does the majority of the processing.

As for consumers knowing whom to approach, it is the agent first, with the agent acting on their behalf with the MGA or insurer. Our experience over the past decade yields so few such issues as to see this as a moot point.

18. Who would be accountable for errors in consumer transactions processed through MGAs? Are representatives and/or insurers assuming responsibility for the mistakes of an MGA when a consumer is adversely affected?

As recorded above, errors by MGAs that negatively impact consumers are, in our experience, very rare. Should such an event occur, insurer/MGA contracts require that the MGA has appropriate E&O insurance to cover such events, and in fact, this insurer will not entertain a relationship with an MGA that is not appropriately insured.

19. Is there an obligation in the agreement between the MGA and the representative for the representative to report to the MGA any complaints received and their status?

To our knowledge, there is no such written obligation. However, we do not see these agreements.

20. Is there a need for all complaints against representatives or MGAs to have access to the OLHI process and, if so, how might this be accomplished?

There is a regulatory gap because the federal and provincial regulators require the insurance companies, but not their distribution, to be members of a dispute resolution organization. This means that complaints that are solely about the conduct of an independent advisor do not fall within the jurisdiction of our complaint resolution body. The CCIR has recognized this as a gap and has promoted the concept of including advisor complaints within OLHI's scope; however, without legislative compulsion, we cannot force advisors to participate in this process. By comparison, distribution on the securities side is compelled to participate with the Ombudsman for Banking Services and Investments (OBSI). This means that the consumer has access to a free non-binding comprehensive dispute resolution service in the securities and banking world, and a limited one in the insurance world. Regulatory change is required to fix this gap.

21. If a consumer is unaware of the existence of an MGA between him/her and the insurer, how is consent being given to MGAs to collect personal information? Are insurers or representatives obtaining consent to disclose to MGAs a consumer's personal data?

In Empire Life's case, the client consents to the collection of information by MGAs. Consent comes from our MGA agreement, which appoints the MGA as our agent, to distribute our policies and service our clients. The MGA, in collecting information, is doing so on our behalf, which the client has implicitly (in agreeing to deal with an agent and/or MGA to obtain an Empire Life policy) and explicitly (in our application) consented to; and (ii) we obtain the client's consent to disclose his/her personal data to an MGA in our application.

We have a decision from the Office of the Privacy Commissioner (OPC) that confirms that there is implied consent for Empire Life to share information with an MGA contracted with us to distribute and service Empire Life policies.

However, it is especially important to keep in mind the contractual relationship/obligation an MGA has with an insurer, in that not all insurers may have the same relationship with their MGAs, as Empire Life.

22. Do MGAs retain personal information and, if so, for what purpose? On whose behalf is this information retained?

Yes, some MGAs retain personal information. Often, this is for the purposes of ongoing servicing of business, as MGAs often retain service on an individual's policy even after the agent may have departed to another MGA or otherwise left the business. Other personal information is retained, as necessary, during the underwriting process while the staff of the MGA assist the agent in completing the case. As well, MGAs obtain personal information on advisors who are contracted with them.

23. Other than through privacy laws, how are MGAs being held accountable for the privacy of this information today?

Our information suggests that privacy laws are the only guiding principle here.

24. Do you think that the existing licensing regime and the level of required E&O insurance is adequate for the functions of an MGA in today's marketplace?

Yes, with one caveat. Not every provincial jurisdiction requires appropriate E&O coverage at the MGA level. It is our belief, that such coverage should be mandatory in all jurisdictions and that it include blanket coverage for errors or omissions made by non-licensed staff. The E&O of the advisor covers most issues, other than those that could result at the MGA level. Licensed individuals within the MGA have E&O coverage, it is only unlicensed staff, along with advisors no longer with the MGA and no longer licensed, that carry any risk for the consumer.

25. Is the lack of specific rules on the duties and responsibilities of an MGA generating inconsistencies in how MGAs operate and the level of service they provide?

Yes. Some MGAs are little more than a conduit through which business is submitted to the insurer, while others do extensive agent training, have sophisticated compliance departments, and offer office space and administrative services. While we can outline our expectations contractually, there is a lack of specific rules about what an MGA does/is.

26. Other than terminating an ongoing agreement, how do insurers deal with MGA misconduct today? Do insurers report MGA misconduct to regulators?

Aside from terminating the contract (which is the common practice), if the misconduct is one that violates the law, CLHIA guidelines, or appropriate business practice, the insurer would, generally, report the MGA to the appropriate regulatory body.

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April 1, 2011

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Dear Ladies / Sirs:

The distribution of insurance products has changed considerably over the past 3 decades. It is therefore not surprising that we pause and make sure the industry evolution is heading in the right direction. HUB welcomes the opportunity to participate in industry response to the issues and questions posed in CCIR Issues Paper pertaining to the Life Insurance Distribution Model. In addition, we seek to clarify the functions performed by the MGA on behalf of an Insurer or broker.

HUB Financial Inc. is one of the largest MGAs in Canada, with offices across the country and is licensed in most provinces. HUB represents some 2,300 independent brokers and 200 Associate General Agencies (AGAs) and Agencies across Canada. Our brokers are independent business men and women which operate a small practice in their local communities. Many others are smaller producing Agencies along with a few larger AGAs. All of which must be free to offer products from more than one Insurer. Regardless of size, each has a place in the distribution of insurance products. As such, HUB's response is representative of a large constituency of the insurance industry.

MGAs add value by providing access to a variety of Insurer product, training, product comparison and support, administrative efficiencies, new business and inforce support, compliance advice, along with a compensation structure that supports their production volume instead of meeting individual Insurer minimums. The flexibility of our product shelf is welcomed by the brokers and agencies we have under contract. This flexibility also allows them to offer the best product solution to the consumer.

Today's MGA channel has a huge impact on the industry. The MGA must work collaboratively with regulators, Insurers and industry bodies to solidify the MGA, broker and Insurer responsibilities and develop "best practices" to be adopted by all. HUB Financial Inc. is committed to improve upon the insurance distribution network and welcomes the opportunity to join this evolution. HUB is committed to our continued participation in this process.

The following documents are attached to support HUB opinions on this matter:

- CCIR Questions to Stakeholders
- HUB Response to ARC and CCIR concerns
- HUB Response to ICBC

Yours truly,
HUB Financial Inc.







Terri Di Florio	John Lutrin	Eileen di Cenzo
President	Chief Marketing Officer	Chief Compliance Officer

HUB Financial Inc. answers Questions to Stakeholders as part of our overall response to CCIR Issues Paper pertaining to the MGA Life Insurance Distribution Model. For consideration, following are additional comments and clarifications identified and requested throughout the document.

Within the various Issues Papers and industry responses, there is considerable discussion about and comparison to the old career agency model. There is much reflection surrounding the lack of training and oversight that was previously provided in the career distribution model. It is important to remember that, while the MGA channel was in its infancy, there was also a lack of compliance oversight within career agencies. Agents were supervised by branch managers which received direct financial benefit from the sales of the agents they were responsible for. This is not the same environment that exists today.

The MGA distribution model has also evolved. MGAs provide access to a variety of Insurer products and value added services including; product training, product comparison and support, administrative efficiencies pertaining to broker contracting, compensation, new business and inforce policies, compliance advice and mentoring of good business practices, along with a compensation structure that supports their overall production volumes. This flexibility also allows the Broker to offer the best product solution to the consumer at a comparable compensation rate without having to meet individual Insurer minimums.

One of the key components when selling insurance to a client is recommendation of the best product to suit client needs. Career shop agents generally discussed a single Insurer product's only. Client choice was not an option in the old career model. Ultimately, choice in the marketplace benefits consumers where they are more likely to obtain the best product to meet their needs.

Most Insurers have also changed their focus in preference of circulating their product lines through the MGA channel. Products have become more diversified and complex. The consumer has increased access to information through the internet. Although it is slow moving, the industry has and will continue to evolve to ensure it maintains effective and appropriate practices to meet the current environment.

Key Points:

Increased clarity as it relates to the roles, responsibilities and accountabilities of the Broker, Agencies, AGA, MGA and Insurer

- As CCIR and the regulators work to define the role and responsibilities of the MGA and Insurer and their respective obligations and accountability to the consumer, the responsibilities and requirements of the representative should not be forgotten. Although Insurer, MGA and industry Codes of Conduct and Best Practices documents detail the responsibilities and obligations of the representatives, it is prudent to include and affirm these responsibilities within this document. Representatives must be aware of their own obligations to understand the products recommended, record keeping & meeting notes, needs analysis, disclosure documents, FINTRAC, etc. The representative is responsible for product suitability and the advice given to the consumer. There are expectations and fiduciary responsibilities of professional business men/women which offer their expertise to a consumer.
- Agencies and AGAs must appreciate that there is a responsibility to have procedures and guidelines in place to oversee insurance activities being conducted through their agency. They are required to ensure that prudent procedures are put in place by the agency to govern: sales activities, handling of client funds, compliance requirements, documentation management and oversight of all activities conducted on its behalf. They must also ensure adherence to their procedures and oversight

measures. In essence, the life agency will be responsible for the training and supervision of the individual insurance activities for all brokers working through the agency.

- The MGA performs many administrative services and facilitates business processing. The MGA also acts as a conduit and manages the flow of information between broker and Insurer.
- The MGA has a responsibility to provide training and to keep brokers informed of industry best practices and changes which may affect compliance of their business activities.
- The MGA provides first level broker screening and has a responsibility to notify the Insurer when they become aware of any information that may affect broker suitability
- Comparison of product is important. The MGA often details both the advantages and disadvantages of products in the same genre or category. This is a useful tool that is shared with contracted brokers. It assists them with product selection and product review to ensure client needs are met.
- Occasionally an MGA representative will become directly involved with the product selection and client sale to assist contracted brokers or agencies.
- The MGA is compensated by the Insurer to perform the administrative services detailed within the MGA contract and has a responsibility to the Insurer to meet their obligations. Insurer obligations issued to the MGA should be reasonable and consistent.
- MGA has a responsibility to the client to make best efforts to ensure the brokers are qualified, competent and reliable. In addition, MGAs have a responsibility to ensure all transactions which flow through their office are handled in a timely and professional manner
- The Insurer is accountable to the consumer. The Insurer develops and promotes the products, trains the MGAs, Agencies and representatives, underwrites and issues the policy contract and process claims received.

Who is responsible for appropriate oversight?

- As indicated in the CCIR document, some regulators still have a requirement of sponsorship by Insurer. This does not, however, demonstrate the traditional one-to-one relationship between representative and Insurer. As not all Insurers participate in licence sponsorship, representatives are not always sponsored by the Insurer whose products best fits their target markets. The representative is free to contract with other Insurers which makes overall supervision by the Insurer impossible. Licence sponsorship should exist only in a career shop environment where outside insurance sales are prohibited.
- Insurer should be responsible for the product sold to the client. The Insurer has a contract with the client, accepts premiums and requests for policy changes directly from the client without participation by the representative or MGA. The Insurer enters into contracts with representatives who wish to offer their products to potential clients. The exception to this is for those distributors called “National Accounts”, where the Insurer has a contract only with the distributor.
- The MGA can put increased checks and balances in place to provide oversight of broker business but the responsibility of product suitability remains with the representative and the Insurer.
- Oversight of broker activities is a shared effort by the Agencies, AGAs, MGAs and Insurers who enter into a contract with the representative.

Protecting the consumer by reducing potential risks and closing gaps in oversight

- Consumer awareness is considerably higher due to information available on the internet and increased media coverage.
- Do Internet sales also represent a gap and increased risk to the consumer? Is there a product comparison provided to the consumer where Internet sales and call centre direct sales are made? Is a

needs analysis completed for each client? Is the consumer given all pertinent information pertaining to the product sold or must the consumer ask the right questions?

ARC (Agencies Regulation Committee) seeks input on the following 6 areas:

Functions Outsourced to MGAs

- Recruiting and contracting brokers
- Initial suitability screening of brokers recommended
- Back office administrative support, including facilitating issue of new policies and on-going client service requests
- Compensation and debt collection
- On-going training of brokers (Insurers are generally part of MGA training efforts to brokers and provides material and content)
- Two way communication supporting Insurer and broker
- Support to Insurer of complaint handling
- Some contracts delegate the responsibility of oversight of broker conduct and may require the MGA to conduct broker practice reviews and to participate with compensation to clients as resolution of inappropriate sales.

The functions downloaded by Insurers to MGAs need to be consistent in order for MGAs to implement appropriate procedures and expectations of monitoring by Insurers and regulators.

Supervision of Brokers

- The minimum required number of CE credits is necessary for the regulator to renew representatives' licenses. The requirement to ensure CE requirements have been met lies with the regulator and not with the Insurer as indicated in the CCIR paper. (Insurers can provide training sessions to the representatives to allow them to meet the regulator requirement.)
- All parties (Agencies, AGA, MGA & Insurer) have a responsibility to report possible areas of misconduct. MGAs are required to report all issues or concerns that may affect broker suitability to Insurers (where broker contracts exist). Insurers are generally responsible to report misconduct to the regulators. Without recognition of MGA with the regulator, the Insurer reports inappropriate activities discovered by the MGA. Agencies and MGAs have a responsibility to report directly to the regulator where no Insurer is involved.
- As there is some consistency of product between sectors, unsuitable conduct by a representative should be communicated between regulators and to Insurers.
- Disclosure of misconduct or unsuitable activities by a representative should be available to the consumer and industry participants.
- MGAs and Insurers will need to pay closer attention to broker business trends and selling behaviors when monitoring the business received.

Managing conflict of interest & IPRC (Industry Practice Review Committee) principles

- The three principles, including priority of client's interest, disclosure of conflicts of interest and product suitability, form part of industry codes of conducts and are the responsibility of the representative
- Representatives should be completing a needs analysis for each client and providing a disclosure document. Representatives are generally asked if these documents were provided to client, however there is no verification process and nor is a copy provided with each client application.

- Representatives may need to accept increased supervision and auditing of their business practices. An increase in oversight should not be viewed as an imposition of standards on representatives but rather an increased effort to protect the consumer and themselves against future client complaints or litigation.

Role of MGAs in sales transactions and handling consumer complaints

- Generally, the MGA is not present during the sales process between the representative and client.
- The MGA may recommend product to the broker that fits the client needs but are not generally part of the assessment of client insurance requirements.
- Presentation of product is the responsibility of the broker. The broker is required to demonstrate both the benefits and risks associated with the product.
- Some MGA contracts share the obligation of consumer complaint handling with the MGA. The MGA will obtain information from the broker but is not required to respond directly to the consumer unless the complaint is received by them directly.
- The Insurer will not always share the client complaint letter and details (due to privacy) with the MGA. Many who involve the MGA during their fact finding process, do not also share their response to the consumer.
- It should not be the responsibility of the client to determine where the error occurred and to whom they should direct their complaint. The contract is between client and Insurer. The Insurer is responsible for addressing consumer complaints and helps them to identify the source of the error reported.

Compliance with privacy legislation

- Insurer applications identify the existence of a third party administrator and their client consent document extends to the third party.
- MGA contracts with their brokers should also include the requirement for them to disclose the sharing of information with their third party administrator.
- MGA contracts with the Insurers outline MGA requirement to abide by PIPEDA rules and practices.

Who is watching the MGAs?

The Insurer should be responsible for oversight of the MGA.

- The Insurer has a contract with the MGA and has delegated some of their previous responsibilities, from the career model, to the MGA
- The Insurer requires MGA participation in issues pertaining to broker conduct or client complaints
- The Insurer requests details on and confirmation of best practice measures in place through the MGA office
- HUB has received and completed a few Insurer Best Practice and Compliance Questionnaires from Insurers. Some of the Insurers have an annual follow up of continuance of MGA processes. To date, there have been no on-site audits performed by an Insurer to ensure HUB has appropriate policies and procedures in place. Many of the Insurers have not made efforts to review HUB MGA practices.
- The Regulators should ensure the appropriate minimum licence and E&O requirements are in place.
- Regulator issues the licence to MGA which allows the Insurer to pay compensation although, in the current environment, it is not a licence that is specific to MGA activities.
- HUB is supportive of imposing criteria for qualification of an MGA licence
- Regulator should monitor the MGA licence qualifications

Input is also requested on:

Are the issues factually correct?

- Although there is room for improvement, it should be noted that insurance compliance is evolving without a standardized approach. Representatives are more aware of their responsibilities to the consumer and best practices to protect their business activities. MGAs are providing a higher level of oversight for those brokers under contract. In addition, MGAs are making increased efforts to ensure the brokers are aware of their responsibilities. Insurers and MGAs are working together to respond to areas of concern with broker business practices and misconduct. It does not appear that the consumers have been put at greater risk due to the absence of industry regulations of the MGA.

Are the issues identified significant and pose negative affects to consumers?

- There is agreement to increase the qualifications of representatives providing recommendations to the consumer and that the industry would benefit from increased oversight by Agencies, AGAs, MGAs and Insurers to protect the best interests of consumers. We should be mindful of the costs (in time and money) spent in compliance of the mutual fund industry. This sector is heavily weighted by regulation and oversight measures which may not necessarily provide significant benefits to the consumers. The industry needs to impose balance and a positive measure of resources spent in compliance oversight to focus on benefits to the consumer.

Have all significant issues been identified?

Representative Training and Education: In the past, many of the brokers contracted through an MGA were "products of the career agency model". As new blood enters the industry, the hands-on grooming and training received by new recruits has diminished. The lack of mentoring to new representatives has an affect on the knowledge level and expertise seen in broker activities. A new representative may find themselves involved in a more complicated sales transaction without the appropriate product training. This lack of knowledge and experience may negatively affect the quality of services provided to consumer.

Under law, insurance representatives must meet certain criteria before they are issued a licence:

- Successful completion of an education program. The LLQP training program is the only educational requirement to obtain a licence to sell insurance products covered under life, A&S, living benefits, group, segregated fund and annuity products.
- The applicants' background demonstrates they are suitable. What criteria are used by a regulator to determine this? A police check does not appear to be a sufficient screening measure to determine suitability. Is there something more that can be done?
- E&O

Enforcement of Representative Misconduct: Representatives are required to comply with industry standards of conduct. This is enforced by the provincial regulators.

- Some regulators are slow in acting on reports of broker misconduct
- Representatives can continue to conduct business while investigations are being conducted and, unless licence is revoked, they are free to continue with business as usual without any alerts to the Insurers and MGAs with whom they are contracted.
- Some regulators do not allow information pertaining to misconduct to filter down to the Insurer, MGA or consumer
- Regulators do not recognize the MGA as an industry participant which benefits from access to enforcement information.

- Industry participants and consumers would benefit from a central enforcement database which provides information pertaining to representative misconduct. This would allow consumers, Insurers and MGAs to assess and make their own judgment of broker suitability.

Minimum E&O Requirements and Retention: Representatives are required to have current E&O in place to ensure continued renewal of licence and to maintain active status of Insurer contracts.

- Unfortunately, there is no way to ensure that the coverage is in place at all times. It is possible to obtain the annual E&O certificate but monthly coverage payments may not be made. As a result, there will be a gap in insurance coverage which is unknown to the consumer, MGA or Insurer.
- Brokers who retire from or leave the industry and do not have sufficient tail coverage, or allow their E&O insurance coverage to lapse immediately may be unprotected in the event of future client complaint.
- Insufficient E&O programs in place for the MGA, AGA and Agencies.

Questions to Stakeholders:

3.3 Definition of AGA

1) Are there other aspects of the AGAs that differentiate them from MGAs?

HUB Response: The definition of an AGA is not the same as MGA. Due to size, volumes of business or Insurer limitations, AGAs are not always contracted at the Insurer level and are therefore not responsible to the Insurer for the representatives they recommend. In those cases where an AGA contract is acknowledged at the Insurer level, the AGA shares some of the MGA responsibilities such as marketing, recruiting and broker debt collection but the MGA holds full responsibility for all representatives, agencies and AGAs affiliated with it. Some of the larger AGAs will also provide some back office support to their brokers but in most cases the administration of new business, inforce services, broker contracting and compensation is handled by the MGA office.

2) Which functions of MGAs do not apply to AGAs? Are the activities of AGAs closer to representatives rather than MGAs?

HUB Response: This is generally dependent upon the size of the AGA operation. The Insurer will deal with the MGA office in most cases. It would be the MGA who would likely involve the AGA in issues pertaining to their brokers.
For larger AGA offices which have administrative support staff, the AGA activities are closer to those of the MGA. For smaller AGA offices which are likely pooling production to maximize compensation, their activities would be in line with those of the representative.

5.1 Functions Outsourced to MGAS

3) What are the factors considered by an Insurer before deciding whether or not to outsource an activity to an MGA?

HUB Response: The Insurers will be in a better position to detail the factors considered when deciding which activities are outsourced to MGAs. This paper indicates that the outsourcing varies from MGA to MGA. Although it is likely that the MGA contract differs from the National Account contract, there should be consistency with all MGA contracts in place with the Insurer.

4) How do Insurers satisfy themselves that MGAs have the expertise to carry on the delegated functions (e.g. product training, product development, etc.)?

HUB Response: The Insurer Sales & Marketing Teams make regular visits to MGA offices and interact on a regular basis with MGA principals and Marketing Teams. MGA offices share the responsibility of product training with the Insurer. Training sessions are generally organized and hosted by the MGA but the Insurer often provides the product materials and presentation.
The MGA is not generally involved with product development and participation would be limited to opinion gathering.

5) Are there functions that should not be outsourced to an MGA (e.g. core functions such as underwriting and claims handling)? Would delegating to MGAs a function such as product development affect the Insurer's role as manufacturer?

HUB Response: With the right parameters, contractual obligations and expectations along with appropriate auditing processes, there are many additional functions (including underwriting and claims handling) which could be outsourced by the Insurer.
Currently, the MGA does not participate in the medical or financial underwriting review of the applicant and does not have access to the criteria used by the Insurer to render their decision and issue client policies. Final decisions as to the suitability of the risk are made by the Insurer, using company approved standards. This decision cannot be changed by the MGA or the broker. As such, the Insurer cannot download the responsibility for suitability of sale to the MGA. In addition, Insurer back office systems are more easily programmed to detect situations where client and product may not be a suitable match.
The Insurer may seek opinions from experienced industry participants or introduce a product suggested by an MGA. This does not affect the Insurer role in the manufacturing of their various innovative product lines. Insurers will continue to be responsible for underwriting/claims/actuarial analysis, capital testing, and reinsurance, etc.

6) Do Insurers view functions outsourced to an MGA/AGA as material to their risk management process?

HUB Response: The Insurers would be remiss if they did not consider outsourced activities as material to their risk management. The Insurer cannot simply decide they are not responsible by offloading functions through contracts with MGAs and other distributors.

7) How should insurers be held accountable for the activities outsourced to MGAs? Is having appropriate safeguards and conducting regular assessment of whether the MGA is achieving the right standards for each delegated function sufficient? Or, would insurers also take responsibility for the mistakes of the MGA?

HUB Response: The Insurer must be comfortable in the MGA ability to help them reduce risk in the activities they perform on the Insurer behalf. Having appropriate safeguards and regular assessment measures in place should be acceptable in most instances. Product suitability and the mechanics of illustrations and product performance must be the responsibility of the Insurer.
Each party (Insurer, MGA, and Representative) should be held accountable for any errors made. Without clear guidelines of MGA responsibility, the assessment of “mistake” is open to interpretation. Insurers cannot expect MGAs to accept full responsibility of mistakes made by their brokers without accepting some of the responsibility themselves.

8) What can be done to enhance compliance monitoring of functions outsourced to MGAs? Would standardize compliance monitoring guidelines assist smaller Insurers?

HUB Response: Standardized compliance monitoring questionnaires and processes are a must. MGAs can not accommodate a different process from every Insurer. In addition, Insurer audits of MGA procedures and adherence to their recommendations and guidelines would increase Insurer confidence and improve overall monitoring and oversight by the MGAs.
Standardized compliance guidelines would benefit everyone involved. The recently developed CLHIA questionnaire is a positive step in consistent compliance monitoring for Insurers and MGAs. A clear and consistent approach for all Insurers and MGAs will only serve to benefit industry participants and the consumer.

5.2 Supervision of Representatives

9) What specific activities do insurers carry on today in supervising representatives and reporting misconduct?

HUB Response: The Insurer will complete an initial review of suitability for all new contracted representatives but provide little on-going supervision of brokers contracted through the MGA channel. The extent of the suitability review will vary from one Insurer to the next. Based on HUB involvement with the various Insurer Compliance Departments, reporting of misconduct processes vary considerably from one Insurer to the next.

10) Under today's MGA structure, has detection and reporting of "unsuitable representatives" become more difficult as a representative is at any given moment, dealing with various MGAs and Insurers? Please elaborate.

HUB Response: Due to a broker's ability to do business through multiple MGA offices and Insurers, it is somewhat difficult, but not impossible, to detect unsuitable activities and trends within a broker's business activities. Insurer and MGA contracts allow for the exchange of some information which is valuable in the identification and detection of unsuitable behavior. Co-operation among Insurers and MGAs makes this task much easier and has evolved significantly. The addition of a centralized, national database of consumer complaints, Insurer or MGA issues or disciplinary action would be very helpful. A very 'savvy' broker might make it impossible to detect unsuitable behavior. It is important to note, however, that the "undetectable" behavior is generally orchestrated to harm the Insurer or MGA and not the consumer.

11) Is it necessary that some party be in a position to monitor the overall business practices of a representative? If no, why not? If yes, which party, MGA or Insurer is in the best position to do that monitoring?

HUB Response: Without returning to the career distribution model, it is impossible for an Insurer to monitor overall business practices of the representative. Mandating that a broker does all business through a single MGA will increase MGA ability to monitor their overall activities but is not the optimal solution.
There are a couple of options...change the basic MGA distribution system as it exists today or develop a central facility to report and track issues pertaining to unsuitable behavior and acts of misconduct. Monitoring should be a shared effort by all industry participants (Regulators, Insurers, MGAs, AGAs and Agencies). A collaborative effort by all parties will reduce risk and increase consumer confidence and satisfaction with insurance sales. A national, centralized database of complaint and disciplinary activity would assist monitoring of business practices significantly.

12) Given their proximity and close relationship to representatives, should MGAs be responsible for reporting questionable acts by representatives:
    a. To Insurers with whom they have an agreement? Yes -- Absolutely
    b. To insurance regulators? Yes -- Where there is no Insurer involved

13) How is misconduct reporting handled when the representative is dually licensed? Should misconduct in one sector be reported in the other sectors where the representative is licensed?

HUB Response: As a result of product properties overlap between the insurance and mutual fund industries, sharing information pertaining to misconduct between sectors can only benefit the consumer. HUB and the Insurers frequently identify representatives reported to MFDA and share those details with each other.
There can be no harm derived by the sharing of reports of misconduct as long as the information is handled professionally and appropriate actions taken. A central facility, developed for this purpose, can be used to facilitate sharing of information.

5.3 Managing Conflict of Interest Principals

14) To what extent can or does an MGA influence the decisions of its representatives to place insurance with one Insurer over another? How is this controlled?

HUB Response: This will vary based on the experience and knowledge level of each broker. Some brokers are reliant on the MGA to make product recommendations when outside of their comfort level. Other brokers work independently and are well versed in all products recommended to clients. Smaller or niche MGA operations base their recommendations to representatives on their specific product availability. The products recommended by MGA to broker must always be in the best interests of the client, based on the client background information provided by the broker.
This activity should be controlled by the Insurer through regular oversight of the MGA and through review of each application during the underwriting process.

15) Given the MGAs receive commission from Insurers for volume of business generated through the representative, what kind of disclosure to consumers (regarding this specific commission) is provided today by the representative? By the Insurer?

HUB Response: To the best of our knowledge, MGA compensation is not discussed with the consumer. The representative is required to disclose any potential compensation received as a result of the insurance sale to consumer. There is no current requirement to disclose the amounts of compensation paid. In addition, the representative would disclose their own compensation received only. They would have no requirement to disclose compensation earned by others. How would an additional disclosure document from the MGA, handed out in the initial stages of the sales process, benefit the consumer? Or, would such a disclosure only confuse the consumer?

16) What are the expectations of Insurers when supervision of sales practices is delegated to MGAs? Is oversight limited to completeness (form) as opposed to the nature of the advice (substance)?

HUB Response: HUB cannot comment on Insurer expectations pertaining to MGA supervision of sales practices. The MGA review is limited to completeness of the client application and cannot touch on the advice to consumer or product suitability.

5.4 Role of MGAs in Sales Transactions and Handling of Consumer Complaints

17) What problems have arisen to date regarding transaction errors involving MGAs and how have they been resolved? How do consumers know who to go to in these situations?

HUB Response: To the best of our knowledge, there have been very few transaction errors made by the MGA. Most of the errors made by the MGA would not be egregious in nature. They are generally (if not always) resolved to the consumers satisfaction with Insurer and MGA working together.
The consumer would likely deal directly with the representative who sold the insurance or the Insurer that issued the policy. If necessary, the MGA would be identified at that time for the consumer to seek further satisfaction and resolution.

18) Who would be accountable for errors in consumer transactions processed through MGAs? Are representatives and/or Insurers assuming responsibility for the mistakes of an MGA when a consumer is adversely affected?

HUB Response: The MGA would be accountable for any errors made by their office and/or staff. HUB accepts responsibility for errors made by our office as the MGA. It is hard to think of an error, made by an MGA, which would adversely affect the consumer.

19) Is there an obligation in the agreement between the MGA and the representative for the representative to report to the MGA any complaints received and their status?

HUB Response: Yes -- The HUB Agreement and Code of Conduct includes this responsibility. In addition, most Insurer Codes of Conduct indicate the representatives' responsibility to advise them of potential unrealized and realized complaints received.

20) Is there a need for all complaints against representatives or MGAs to have access to the OLHI process and, if so, how might this be accomplished?

HUB Response: HUB does not see the value of including OLHI in every client complaint and is unclear about what it would accomplish. Any client who, after working with their representative and Insurer, is unsatisfied with how their complaint has been handled should be directed to OLHI.

5.5 Compliance with Privacy Legislation

21) If a consumer is unaware of the existence of an MGA between him/her and the Insurer, how is consent being given to MGAs to collect personal information? Are Insurers or representatives obtaining consent to disclose to MGAs a consumer's personal data?

HUB Response: The HUB Broker Agreement requires the broker to discuss and disclose the collection and distribution of personal information to their client. Insurer applications also identify the existence of third party administrators and the client's signed consent extends to the third party.

22) Do MGAs retain personal information and, if so, for what purpose? On whose behalf is this information retained?

HUB Response: The MGA will retain copies of the application and other material correspondence required to facilitate issue of a client policy. The information collected is used only for the purpose intended. Information is retained in order to effectively administer all aspects of policy service for the broker and MGA.

23) Other than through privacy laws, how are the MGAs being held accountable for the privacy of this information today?

HUB Response: Only through PIPEDA privacy rules and obligations. Insurer contracts include MGA responsibilities pertaining to privacy of client information.

5.6 Who is Watching over MGAs?

24) Do you think that the existing licensing regime and the level of required E&O insurance is adequate for the functions of an MGA in today's marketplace?

HUB Response: No -- HUB would be responsive to changes in industry regulation as it pertains to the licence requirements for MGAs. It seems reasonable to set measures and parameters (ie. number of contracts, employees, volume of business, capital requirements) to "qualify" for MGA licence level. E&O requirements for the MGA licence should also be greater. Coverage must be sufficient to cover the responsibilities defined under the new regime.

25) Is the lack of specific rules on the duties and responsibilities of an MGA generating inconsistencies in how MGAs operate and the level of service they provide?

HUB Response: Yes -- The contracts between the MGA and the various Insurers differ considerably. As a result, it is difficult to determine the specific requirements and responsibilities of the MGA. As such, the MGA offices will generally define their own levels of responsibility and service to their brokers and apply this practice to all Insurers.

26) Other than terminating an ongoing agreement, how do Insurers deal with MGA misconduct today? Do Insurers report MGA misconduct to regulators?

HUB Response: Termination of the MGA/Insurer agreement is the only available action. As there are no defined regulations or licence specific to the MGA, the Insurer would be able to file a complaint of misconduct against the MGA principal or corporation.
Insurers would have an obligation to report MGA misconduct to the regulators.

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December 16, 2010

Gerald Matier, Executive Director
Insurance Council of British Columbia
1040 West Georgia Street, Suite 300
P.O. Box 7
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V6E 4H1

Dear Mr. Matier:

Re: Regulatory Model Governing Distribution of Life Insurance Products – Discussion Paper Response

HUB Financial Inc. (HUB) is appreciative to the Insurance Council of British Columbia for accepting feedback from industry participants in your efforts to improve upon the distribution network for individual insurance sales. We applaud first steps taken by ICBC to create an operating frame that will work effectively to protect the consumer and increase their confidence of the insurance sales process.

HUB Financial Inc. is one of the largest MGAs in Canada, licensed in 10 provinces, with offices in 8 major cities. HUB is a full service MGA with approximately 2,500 active brokers and 16 MGA contracts currently in affect with Canadian Insurers. Our 150 staff members provide product and administrative support to our contracted brokers. In addition, HUB is an industry leader in technology, providing our brokers with access to an extensive range of support tools and resources. As such, HUB response is representative of a large constituency of the insurance industry. HUB welcomes the opportunity and is committed to our continued participation in this process.

HUB agrees in principal with the ICBC discussion paper pertaining to the future regulatory model of insurance sales. It behooves broker and MGA offices to work collaboratively with the industry regulators and Insurers in order to create standards, re-align procedures and define responsibilities to suit the needs of all parties. It is important to the Executive and Management Teams of HUB Financial Inc. to participate in all discussions pertaining to regulatory changes that affect our industry. For this reason, HUB team members are involved with, and are members of, various industry organizations such as CAILBA, CLEIDIS, CITS, Advocis, etc. which motivate and participate in industry change.

HUB welcomes the opportunity and end goal to increase the educational requirements and knowledge level of insurance brokers; however it is important to be careful not to impede the addition of new blood to the

industry. Making all parties aware of and accountable for their responsibilities will improve overall broker competencies to the customer, client confidence in the sales process and clarity to Agency and MGA of their obligations.

ICBC discussion paper indicates a tendency to return to the career style distribution environment where there is a responsibility to ensure appropriate training and supervision of broker sales practices. This model provides greater assurances that the broker is qualified to recommend and sell the various insurance products. ICBC seeks to improve the regulatory model for distribution of individual insurance products and requests industry feed back on three areas:

- Recommendations pertaining to the supervision and mentoring of new life brokers
- Recommendations pertaining to the guidelines addressing the responsibility of the life agency / nominee for business conducted on behalf of the agency
- Recommendations pertaining to clarification of the role of the MGA by development of expectations of and guidelines for the MGA, including:
    - Contractual obligations between MGA and Insurer
    - Contractual obligations between MGA and brokers
    - MGA responsibility to the client
    - Possible implementation of a different licensing model for the MGA
    - Possible restrictions on MGA activities (ie. claim handling)

Supervision / Mentoring of New Life Brokers:
HUB sees the value of multiple levels of licence registration for new brokers, trainers/supervisors and MGAs. New life brokers will benefit considerably from the additional guidance and expertise provided by a mentor. ICBC indicates that a qualified supervisor will be identified for new life brokers. Once the qualifications have been defined, how will this be monitored, enforced and verified to ensure compliance with the requirement? How will ICBC determine and validate the qualifications of the supervising broker? It would appear that the optimal solution to ensuring that each new life broker is adequately supervised, would be to include identification of and confirmation by the supervising broker within the licence application process.

Although it would make sense for experienced brokers to assume the industry oversight and supervision responsibility of another broker as part of a succession plan or employment opportunity, it is unlikely there will be many who will be willing to do so outside of their own business interests where possible penalties are involved. The qualified supervisor may need to demonstrate that their oversight has been adequate and consistent with the types of products sold by the broker. If not adequate, there may be penalties involved. ICBC needs to define the possible penalties to experienced broker. Although this needs to be adequately policed in order for it to be effective, the possibility of penalties may inhibit supervision candidates.

MGAs which have the infrastructure in place to assist with the requirement of supervision of new life brokers may be able to provide this additional support. Should the MGA choose to provide industry oversight and supervision of new recruits to the industry, would the expectation be that a specific individual is identified in this role or can the oversight be provided by a team of individuals (the corporation)? HUB currently has a program in place which matches new life brokers with experienced brokers but is not currently directly involved with the mentoring of new recruits. It would be a natural progression of our services to directly mentor and provide industry oversight to our contracted brokers.

There is already a minimum CE requirement in place to qualify for licence renewal but perhaps the number of credits should be increased for brokers within their first 5 years in the industry along with mandatory disclosure to obtain licence renewal.

Role of Insurance Agencies:
ICBC already states that the nominee is responsible for the activities conducted by the life agency. The nominee will be required to ensure that prudent procedures are put in place by the agency to govern: sales activities

conducted, compliance requirements, documentation management and oversight of all activities conducted on its behalf. They must also ensure adherence to their procedures and oversight measures. In essence, the life agency will be responsible for the training and supervision of the individual insurance activities for all brokers working through the agency. Will this application of compliance be prescribed or principle based?

ICBC should clarify who is responsible for supervision in an agency environment (nominee or other). Larger agencies may have multiple individuals who are capable of assuming these responsibilities. A nominee may not be able to adequately supervise all individuals who work through the agency and can delegate the responsibility to others with the knowledge that they are ultimately responsible for all activities conducted on the agency behalf.

Life agencies are generally a smaller group where the ability to know the product capabilities and sales practices of their affiliated brokers is greater and more easily accomplished. ICBC should clarify the possible penalties should it be discovered that procedures and guidelines have not been developed and implemented to ensure oversight measures are taken.

ICBC proposes that life agency supervision also include non insurance related activities not already regulated. It is imperative to not expect the life agency to assume accountability for those activities that are not part of their own business umbrella.

Role of the MGA:
Currently the ability to be an MGA is decided by the insurer based on production received and the business relationship between the Insurer and principle of the MGA office. Some MGAs hold one or two Insurer contracts only. Although this allows the MGA office to offer the best product available to them, it may not be the best product offering for the client (strictly due to availability). There are many MGA offices which hold a single insurer contract or whose annual production does not meet insurer minimum MGA requirements. It makes sense to set parameters for the MGA to qualify for MGA licence level (# of contracts, employees, volume of business).

The MGA is a conduit between broker and insurer which performs many administrative services and facilitates business processing. The MGA has a responsibility to provide training and to keep contracted brokers informed of industry best practices and changes which may affect compliance of their business activities. In addition, the MGA provides first level broker screening, and manages the flow of information between Insurer and broker. The MGA has a responsibility to notify the Insurer when they become aware of any information that may affect broker suitability.

The MGA is compensated by the Insurer to perform the administrative services detailed within the MGA contract and has a responsibility to the Insurer to meet their obligations. Insurer obligations issued to the MGA should be reasonable and consistent. Some Insurer contracts have unreasonable expectations and download, amongst other contractual obligations, product suitability responsibility to the MGA office.

Some MGA contracts include a requirement to supervise the activities of all brokers and life agencies doing business through their contracts. Brokers and life agencies are independent sales persons and business owners which choose to place business through one or more MGA offices. Generally speaking, there is no employer / employee relationship between the MGA and broker. Although the MGA can influence and motivate contracted brokers to ensure industry best practices are incorporated into their business routines, the MGA is not responsible for their business activities.

Most brokers and life agencies have a contractual obligation to the MGA and it is their responsibility to conduct themselves in a suitable manner as detailed within their MGA and Insurer contracts and Codes of Conduct. The MGA can choose not to continue with a business relationship with a broker who does not meet industry and /or

MGA standards. The current ability of a broker to do business via multiple sources makes sales practice monitoring and enforcement impossible.

While the MGA may offer product selection assistance to the broker pertaining to some client sales, the MGA is not generally directly involved in the client transaction and plays no role in the suitability of sale. Although client applications are given a high level review by the MGA office, they have no ability to validate the details provided. The Insurer will perform their own application review which includes medical and financial underwriting. The Insurer is responsible for its products and has an obligation to ensure the product sold is in the client's best interests. The MGA, therefore, cannot be responsible or accountable for product suitability.

HUB believes that the MGA has a responsibility to the client to make best efforts to ensure the brokers are qualified, competent and reliable. In addition, MGAs have a responsibility to ensure all transactions which flow through their office are handled in a timely and professional manner.

As previously mentioned, the return to the career style format may increase the quality of new brokers to the industry but how will this be accomplished? Currently, the Insurers and MGAs are unable to restrict the number of Insurers and MGAs a broker will contract with. As a result, it is not currently possible for either Insurer or MGA to provide industry oversight of and be accountable for all insurance activities unless all business is placed through them.

Restrictions to a single Insurer would not make sense in today's environment of product selection opportunities. Restrictions to the brokers based on education and oversight by life agencies and MGA offices would go a long way in improving the quality and abilities of the brokers. A higher level of scrutiny will help to ensure customer confidence and broker reliability during the sales process. Is it appropriate, however, to align a broker to a single MGA?

HUB Financial Inc. is committed to improve upon the insurance distribution network and welcomes the opportunity to work collaboratively with the industry. Thank you for the opportunity to provide feedback.

Yours truly,
HUB Financial Inc.



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March 31, 2011

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RESPONSE TO ISSUES PAPER: MANAGING GENERAL AGENCIES LIFE INSURANCE DISTRIBUTION MODEL

Executive Summary

Business Career College (Edmonton) Corp is an education provider to the financial services industry. Our core business is the Life License Qualification Program (LLQP), but we also offer instruction in support of the Certified Financial Planner™[1] (CFP), continuing education (CE) courses, and a number of other programs. We deal with approximately 5000 potential new entrants to the insurance industry each year, as well as approximately 2500 existing industry participants in any given year. We deal with the career agency, managing general agent (MGA), and other models.

We believe that enhanced regulation is not the appropriate response. Rather, we would like to see improved adherence to existing processes and models. We believe that the CLHIA, CCIR, CISRO, and the provincial insurance regulators have developed models that are largely capable of handling the MGA distribution channel. Adherence to and adoption of these tools would address the issues at hand.

[1] The Certified Financial Planner designation is a trademark licensed in Canada by the Financial Planning Standards Council.

Responses to Specific Questions

Question 2: Which functions of MGAs do not apply to AGAs? Are the activities of AGAs closer to representatives than MGAs?

In years past there might have existed what was referred to as Personal Producing Managing General Agents thus allowing a top-producing advisor to maximize their income and actually to enhance it through leveraging the production of other advisors. Those arrangements have all but disappeared as the MGA world has become so competitive that it is impossible to provide the support needed by advisors when one is selling to their own clients and trying to support their advisor sales force.

An AGA is more likely to exist in this manner as it boils down to numbers of producers.

Question 5: Are there functions that should not be outsourced to an MGA (e.g. core functions such as underwriting and claims handling)? Would delegating to MGAs a function such as product development affect the insurer's role as manufacturer?

Our opinion is that there are certain functions that should not be outsourced in this manner. Especially with respect to underwriting and claims handling, this represents a substantial opportunity for a conflict of interest to arise. Outsourcing functions of this nature would require a substantial change to compensation models, both for MGAs and for individual producers.

Question 8: What can be done to enhance compliance monitoring of functions outsourced to MGAs? Would standardize[d] compliance monitoring guidelines assist smaller insurers?

Our opinion is that many useful tools for accomplishing this goal already exist, and are simply not being used. Both the Advocis and CLHIA attachments to the Issues Paper outline several tools which could enhance compliance with very little additional effort. Examples include better adherence to CLHIA's Guideline G8, and Advocis "*The Advocis Interactive Disclosure Statement and Product Suitability Web Tool.*" With these tools in place, an MGA or AGA could simply follow the existing procedures and/or have their agents do so.

Question 10: Under today's MGA structure, has detection and reporting of "unsuitable representatives" become more difficult as a representative is, at any given moment, dealing with various MGAs and insurers? Please elaborate.

Absolutely, yes. Agents can not only have multiple contracts with multiple MGAs, but they move around freely between MGAs. We have seen ourselves that agents sometimes do a large amount of unscrupulous business with one MGA. Upon discovery of this business, the MGA terminates their relationship with the agent. The agent simply picks up and moves to another MGA. Upon settling in at the new MGA, they simply resume their activities. This continues until they either do something criminal and are convicted, or until a consumer-initiated complaint results in a revocation or suspension of a license. In our experience, the insurance councils very rarely revoke or suspend a license. Effectively, the only deterrent for this type of activity is the potential for a chargeback against the agent. Depending on how the business was originally done, the chargeback may or may not be enforceable.

Many MGAs continue to perpetuate this type of activity simply by ignoring warning signs, which should have been addresses by proper adherence to CLHIA guidelines.

Question 11: Is it necessary that some party be in a position to monitor the overall business practices of a representative? If no, why not? If yes, which party, MGA, or insurer, is in the best position to do that monitoring?

While this might seem ideal, it is not practical. The insurance industry is, by nature of its model, highly entrepreneurial. Without a wholesale change to compensation and business models, no such monitoring can be effective. The experience of the Mutual Funds Dealers Association, where attempts to monitor every activity of a representative have led to backlash and the outright departure of many members, should bear this out. Whoever is ultimately deemed responsible for monitoring should be responsible for monitoring the business that agents conduct with that entity. Better information sharing and awareness of agent wrongdoing and complaints between the monitoring parties is necessary, though.

Question 13: How is misconduct reporting handled when the representative is dually licensed? Should misconduct in one sector be reported in the other sectors where the representative is licensed?

Yes. Oft-cited privacy concerns should not be an impediment to this reporting.

Question 24: Do you think that the existing licensing regime and the level of required E&O insurance is adequate for the functions of an MGA in today's marketplace?

No. The existing licensing regime, based on the LLQP, is in danger of becoming irrelevant. This stems from the fact that the supporting documents for the LLQP have not been updated since they were created early in the previous decade. In that time, the industry has changed considerably. The introduction of new products such as Guaranteed

Minimum Withdrawal Benefit products, the increasing use of self-funded plans of various sorts in group insurance, and the introduction of the Tax Free Savings Account, all remain unaddressed in the LLQP. (In fairness, there is a document posted on the CCIR website[2] that indicates that some of these changes have been made with respect to the LLQP, but there is no indication that any of these changes have actually been implemented.) We feel that the LLQP should be subject to a fair and open review process on at least a biennial basis. During this process, MGAs, regulators, and other stakeholders would be provided the opportunity to comment. We recognize that, in order to accomplish this, additional support is required for those responsible for the LLQP portfolio. However, certain jurisdictions (notably British Columbia and Saskatchewan) have implemented procedures on their own which set them apart from other users of the LLQP. This clearly points to some dissatisfaction with the current LLQP process. Regular review and opportunities for feedback would reduce this duplication of effort.

Robert J. Watt
President and CEO
Business Career College (Corp)

[2] http://www.ccir-ccrra.org/en/init/LLQP/LLQP_Des_Doc_changed_Jan_12_2009.pdf

Saveria Villanti

From: Len Davis <ldav@nbnet.nb.ca>
Sent: April-07-11 1:23 PM
To: CCIR-CCRRA
Subject: Role of MGA

Dear Sir/Manager,

Please consider my comments as a guideline for defining the role and purpose of the MGA channel in the distribution of life insurance products in Canada.

I started in the financial planning industry with Metropolitan Life in 1994. As a new recruit, MetLife provided excellent training in the delivery of insurance products in a professional and client focused manor.

Within a short time I discovered that MetLife could not offer all the products that my clients needed to fulfill their financial planning goals. Being a captured agent with MetLife I was not allowed to sell any products outside of their platform. This put my clients in a disadvantage as I sometimes had to recommend solutions which I knew they could obtain more competitively from my competition or I could not cover their need at all as MetLife did not offer a product to meet their need.

In 1998 I decided to leave MetLife and started to look at the options available in the independent advisor channels. The options that I uncovered were to contract direct with one or more life insurers as an independent advisor or to join an MGA.

I choose the MGA for the following reasons:

If I had chosen the direct channel, in order to receive the proper compensation for the products sold, I had to meet certain production levels as set with each life insurer. This put me in a conflict with the needs of my clients. For example, if 2 Life insurance companies offered similar products, Company A could pay me more than Company B simply because I had placed more business with Company A during the year. With the MGA system I am paid the same from each Insurer regardless with the amount of business I place with any insurance company.

Having a vested interest in the volume and quality of business that its agent places, each MGA utilizes a considerable amount of its resources in the delivery of continuing education sessions and product awareness for its advisors. This helps to keep the advisor's skills current which in turn protects the consumer.

MGAs also ensure that each advisor performs his/her duties in a professional manor in order to better serve the consumer. In fact many MGAs promote the benefit of its advisors to join organizations such as Advocis, which helps to govern the activities of its members in order to protect the consumer.

As a closing comment, although not directly related to the MGA topic, I would like to see that the Life Licensing Bodies of each Province adopt mandatory continuing education as part of the licensing/renewal process. Without mandatory continuing education as a license/renewal requirement the consumer, the agent. and the industry suffers.

This is why CE is mandatory in most professions such as Lawyers, Doctors, Accountants, etc.

Thank you and please feel free to contact me if you would like to speak to me in person on this or any related topic.

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April 8, 2011

CCIR Secretariat
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M2N 6L9

Dear CCIR Secretariat:

Re: CCIR Issues Paper: Managing General Agencies Life Insurance Distribution Model, February 2011

Advocis welcomes the opportunity to provide its comments to the CCIR in response to the questions and issues raised in the CCIR's Issues Paper dated February 2011. Advocis provides its comments on behalf of its members and in order to assist the CCIR in their determination if there are any regulatory gaps which could lead to risks to consumers. Advocis would like to continue to be an active participant in the process of determining how to improve the regulatory regime for the distribution of life insurance products across Canada.

Advocis, The Financial Advisors Association of Canada, is the largest and oldest professional membership association of financial advisors and planners in Canada. Our association was founded in 1906, as the Life Underwriters Association of Canada.

Our almost eleven thousand members across Canada provide comprehensive financial planning and investment advice, retirement and estate planning, risk management, employee benefit plans and disability coverage, to millions of Canadian households and businesses. Our members are provincially licensed to sell life and health insurance and mutual funds and other securities. Advocis members are for the most part independent owners and operators of small businesses, entrepreneurs who create thousands of jobs in every community across Canada. Advocis members maintain lasting relationships with their clients based on trust. They help clients, young and old, individuals, families and businesses, to set financial goals, manage risks, save consistently and invest prudently.

Advocis members embody professionalism based on education, best practices, and high standards of proficiency and ethics. Advocis promotes the professionalism of financial advisors through:

- Advocis' Code of Professional Conduct;
- Guidance on best practices;
- Errors and omissions insurance coverage that protects consumers;
- Professional designations supported by a comprehensive curriculum and rigorous standards – Advocis' Chartered Life Underwriter (CLU) and the Registered Health Underwriter (RHU); and educational support for the attainment of the Certified Financial Planner (CFP); and
- Mandatory competency-based continuing education.

It is our understanding that the Issue Paper has been published in response to the shift in the Canadian life insurance industry from the traditional career agency model toward the MGA

distribution model and to stimulate discussion regarding the issues that have been identified in light of the development of this channel over the last 40 years, and in particular, its development into the dominant distribution channel in the last 10 years.

A major goal of the CCIR is to obtain clarity as it relates to the roles, responsibilities, accountabilities and appropriate oversight of the agent, the Managing General Agency (MGA), and the insurer.

Advocis will provide some comments in response to the Issues Paper and will answer the following questions posed in the Issues Paper: Questions 1, 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, and 25.

Background Information: Definitions and History of Growth and Changes in Regulation

The Definition of MGA and AGA

The CCIR defines an MGA as: "an individual, partnership or corporation that holds at least one direct brokerage contract with a life insurance company registered to do business in Canada." Advocis agrees that in order to be an MGA, it must enter into at least one direct brokerage contract with a life insurance company and at least one principal must hold a life agent license.

Question 1: Are there other aspects of AGAs that differentiate them from MGAs?

Advocis' understanding is that the Associated General Agency ("AGA") is a life agency where a single life insurance agent or more than one life insurance agent incorporates and operates under a business name, such as X Life Agency Limited. An AGA does not have a direct brokerage contract with a life insurance company registered to do business in Canada. Therefore, we would not classify them as MGAs and they should not fall within this definition. As such, they can be treated in a similar manner as life insurance agents. If they do have a direct brokerage agreement, then they would fall within the definition of MGA.

The CCIR refers to life insurance agents and other intermediaries as "representatives". For the purpose of this submission, the terms "life insurance agent", "financial advisor" and "representative" all refer to the financial advisor who is provincially licensed to sell individual life and health insurance.

Question 2: The Functions of MGAs versus the Functions of AGAs

"Which functions of MGAs do not apply to AGAs? Are the activities of AGAs closer to representatives rather than MGAs?

Advocis believes that the functions of MGAs and AGAs can vary considerably. An AGA will likely have a contract with one or more MGAs and with representatives whereas the MGA has contractual relations with the insurer(s) and representatives.

An AGA may perform some functions of the MGA and its representatives, who likely include the principals of the corporation, will also likely deal directly with consumers.

Today's Financial Advisors or Representatives

Advocis agrees with the CCIR that most representatives are no longer part of the Career Agency model and often deal with more than one MGA in order to obtain the coverage that is most appropriate for the consumer. The representative can choose from a wider range of products as the advisor has access to more than one MGA. This is the case because any particular MGA will not

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necessarily have all the products that are available in the market at its disposal. Certain MGAs have a limited product shelf (for example, the products from two insurers) while other MGAs will have quite an extensive product shelf (all the major life insurers' products will be available).

MGAs do not require the advisor to deal exclusively through only one MGA although an MGA could impose such exclusivity through its contract with the advisor. Exclusivity is not, at present, a common business practice.

Insurers often contractually require an advisor to place all business with that insurer through one MGA. For example, Insurer A requires that all business from Representative A be placed through MGA X while Insurer B requires that Representative A uses MGA Y for Insurer B's business. Advisors may operate through separate legal entities so Representative A's Company A may place its insurance business through MGA X while Representative A's Company B may place its insurance business through MGA Y.

Therefore, financial advisors may deal with any number of insurers through MGAs. In addition, some financial advisors have direct contractual relations with insurers without using the MGA as an intermediary. MGAs, however, provide financial advisors with an efficient method of contracting with an indeterminate number of insurers. Most advisors deal with a limited number of MGAs given economic conditions, the bonus structure (the bonus on a block of business leads an advisor to place its business through fewer rather than a greater number of MGAs) and administrative and compliance considerations.

Financial advisors may move from one MGA to another MGA for a variety of business reasons including compensation, and service support provided by the MGA such as underwriting, marketing and training.

Representatives in the MGA distribution channel will therefore have contractual arrangements with more than one MGA and with more than one insurer.

Classifications of MGAs – National, Regional and Small Local MGAs

Advocis agrees that there are many MGAs in existence in Canada, some of which operate nationally, some regionally (for example, Western Canada) and some locally. We do not necessarily agree with the description that suggests that the smaller or more local MGA would likely be unaware of compliance issues whereas the larger, regional or national MGA would be aware. Advocis' understanding is that the MGA's awareness of compliance issues does vary from MGA to MGA but this variation is not correlated with the size or geographical reach of the MGA. The awareness of compliance issues may be a function of the degree of delegation of supervision by the insurer to the MGA. Some companies delegate many functions to the MGA whereas others delegate very few.

We understand that CAILBA (the Canadian Association of Insurance Life Brokerage Agencies) is developing a Compliance Toolkit for its members which will give them a generic set of documents, forms, policies and procedures they can use to deal with compliance matters. This is the first phase in a process of developing a CAILBA Accredited Compliance Standard for its members. Greater standardization of compliance will likely result from CAILBA's efforts, at least amongst its members.

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5. CCIR's Concerns Regarding the MGA Distribution Model

Supervision of Representatives

In the career agent model, the role of supervision is exercised by insurers that directly employ individual representatives and they have a legal responsibility to supervise and report misconduct. The CCIR is concerned that in the MGA distribution model, it may be more difficult for insurers to monitor representatives who may be associated with multiple insurers and MGAs: *"There is a potential for a representative to spread questionable business among his/her various MGAs and insurers to avoid notice."* The CCIR also points out that there are varying levels of delegation by the insurer to the MGA with respect to screening representatives and, as a result, is seeking feedback on who should have responsibility to investigate and report misconduct.

In Ontario, insurers have a legal responsibility to screen representatives for suitability to carry on business as an agent and to monitor their behaviour[1]. The supervision of the representative includes assessing an agent's suitability prior to entering into a contract (ie screening) and supervising the agent's ongoing conduct with consumers (ie monitoring). In other provinces, such a British Columbia, this is not stipulated in legislation or regulations, but is adhered to as a matter of sound business practice. The Canadian Life and Health Insurance Association (CLHIA), has issued CLHIA Guideline G8: Screening Agents for Suitability and Reporting Unsuitable Agents and insurers who are members of CLHIA incorporate this Guideline into their policies and procedures.

Initial Screening

Very often, the MGA will undertake an assessment of the financial advisor before entering into a contractual arrangement with him or her. The assessment could include:

- reviewing the advisor's previous work experience
- reviewing the advisor's current book of business (ie potential sales productivity)
- assessing fit within the MGA's corporate culture
- interviewing the advisor, and
- ensuring that the advisor is a licensee "in good standing" – verifying that the license has been renewed and not suspended or revoked, verifying that the advisor has the required error & omissions insurance, criminal record check and performing a credit check on the advisor, and a review of bankruptcy history.

The interaction between the MGA and the insurer with respect to the initial screening of representatives for suitability is described in Section 2 of CLHIA Guideline G8.

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[1] 12. (1) Every insurer that authorizes one or more agents to act on behalf of the insurer shall establish and maintain a system that is reasonably designed to ensure that each agent complies with the Act, the regulations and the agent's license. O. Reg. 347/04, s. 12 (1).

(2) The system referred to in subsection (1) must screen each agent for suitability to carry on business as an agent. O. Reg. 347/04, s. 12 (2).

(3) An insurer shall report to the Superintendent if it has reasonable grounds to believe that an agent who acts on behalf of the insurer is not suitable to carry on business as an agent. O. Reg. 347/04, s. 12 (3).

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The insurer then enters into a direct contractual relationship with the advisor. The MGA usually provides the insurer's contractual documentation to the advisor and coordinates the process of the advisor contracting with the insurer. In addition, the advisor and the MGA enter into a written contractual agreement outlining the terms of their relationship including compensation. In provinces, such as Ontario, where there is a sponsorship requirement placed upon the insurer, the MGA may assist the advisor in finding an insurer to be his or her sponsor.

This initial screening of the representative ensures that the agent is suitable to conduct business as an insurance agent.

Question 9: What specific activities do insurers carry on today in supervising representatives and reporting misconduct?

Supervising the representative's dealings with the consumer and ensuring that the representative provides the appropriate duty of care to the consumer is part of the on-going monitoring of the representative[2].

Insurance companies ensure that financial advisors follow acceptable sales practices in such areas as replacement disclosure, conflict of interest disclosure and selling products that are suited to the consumer's needs through spot audits using a risk-based approach.

Monitoring the representative's on-going suitability is performed by the insurer and/or MGA by:

- assessing patterns in the transactions of the representative;
- reviewing documentation to assess the representative's sales practices (managing conflicts of interest, following needs-based sales practices, suitability of product for client's needs, protection of personal information);and
- insurers may look at unusual activities such as changes in the volumes of business or size or premiums

CLHIA's Guideline G8 describes what information the insurer will review in order to determine whether the MGA has a reasonable system to ensure representatives comply with regulations, industry guidelines and the insurance company's policies.

Reporting Misconduct

If, as a result of on-going monitoring, an insurer determines that a representative's activities support a finding that the representative is not suitable to carry on business as an agent, then in Ontario the insurer has a legal obligation to report that to the Superintendent of Insurance. In other provinces, this reporting will occur as a result of adherence to the standards set out in Guideline G8.

As per section 12(3) of Ont. Reg. 347/04, in Ontario the insurer must report to the Superintendent if it has reasonable grounds that a representative is not suitable to carry on business as an agent. This is the insurer's responsibility regardless of whether it delegates specific functions of monitoring the conduct of representatives.

According to Guideline G8, the insurance company does not delegate regulatory reporting of unsuitable representatives. The insurance company is to be notified by the MGA of:

- client complaints about a representative's conduct in relation to the sale of the insurer's products;

[2] The role and responsibility of the financial advisor regarding product suitability is explained under the section 5.3, "Managing Conflict of Interest Principles".

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- evidence of probable misconduct by the representative in relation to the sale of the insurer's products; or
- conclusions (by the MGA or a regulatory organization) that a representative has contravened regulations, rules or applicable codes of conduct in relation to the sale of any financial services product.

Question 10: Under today's MGA structure, has detection and reporting of "unsuitable representatives" become more difficult as a representative is, at any given moment, dealing with various MGAs and insurers? Please elaborate.

The detection and reporting of unsuitable representatives may not appear to be as simple as it once was when insurers only had captive agents and those agents only sold that insurer's products. Nonetheless, insurers have systems in place in order to monitor the ongoing suitability of agents (as described above). Insurers may delegate some of their monitoring functions to the MGA; however, they have a legal obligation (in Ontario) or for sound business practice reasons to ensure that the MGA performs these tasks adequately.

If the representative deals with more than one MGA and/or contracts with more than one insurer, then each insurer that the representative places business with has a legal obligation to ensure that the representative is "suitable". Similarly each MGA will have been delegated certain monitoring functions with respect to the representative. Advocis is aware that this legal requirement imposed on the insurer does not exist in all provinces. The harmonization of this requirement in all provinces and territories should be considered by the CCIR.

We would be interested to know whether the incidence of actual problems with agent suitability is greater when the representative deals with a greater number of MGAs and insurers. We are not aware that there is a correlation.

Question 11: Is it necessary that some party be in a position to monitor the overall business practices of a representative? If no, why not? If yes, which party, MGA or insurer, is in the best position to do that monitoring?

Advocis does not believe that it should be the responsibility of one party to monitor the total business dealings of a given representative. We do not think it is in the consumer's best interest to move to a single-MGA model, like is the case for mutual fund licensed advisors. The ability of the representative to access more than one MGA allows the advisor to obtain the coverage that is the most appropriate for the consumer since no one MGA offers all of the products available in today's marketplace. As described above in the section "Today's Financial Advisor or Representative", existing market conditions limit the number of MGAs that an advisor will deal with. The existing bonus structure for the representative, the current economic conditions in which MGAs operate and administrative and compliance considerations lead to a limited number of MGAs being used by a given representative. Requiring a representative to access only a single MGA would limit consumer choice and increase cost to the consumer.

The CCIR has indicated that there is the potential for representatives to spread questionable business among MGAs and insurers to avoid notice. Advocis would be interested to know whether there is any evidence that this has been occurring in practice and would welcome the opportunity to discuss how to mitigate this risk. Absence evidence of a real problem, imposing a requirement that one party be responsible for oversight of a representative could lead to unintended consequences that harm consumers.

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Question 12: Given their proximity and close relationship to representatives, should MGAs be responsible for reporting questionable acts by representatives:

Advocis supports the development of a standard approach in the industry to reporting questionable acts to insurers and regulators in order to ensure optimal consumer protection. Advocis would be pleased to work with the CCIR and other stakeholders in order to arrive at a standardized and efficient approach to this issue which will ensure consumers are protected.

a. To insurers with whom they have an agreement?

   Yes, MGAs should report questionable acts by representatives to insurers that the representative has a contractual relationship with or does business with. The MGA should have a process for investigating questionable acts by representatives and should have a process of keeping the insurer informed.

b. To insurance regulators?

   The MGA and/or the insurer should have clear reporting obligations similar to those persons who are securities licensed or mutual fund licensed[3].

Question 13: How is misconduct reporting handled when the representative is dually licensed? Should misconduct in one sector be reported in the other sectors where the representative is licensed?

Advocis supports the sharing of information between sectors regarding misconduct. Misconduct in one sector should be reported in the other sectors where the representative is licensed. In addition, a central database where information about a representative's qualifications, licensing and any disciplinary information would be beneficial for consumers. Advocis supports such an initiative.

<u>Managing Conflict of Interest Principles</u>

Insurers and insurance agents have successfully adopted and implemented the three principles for managing conflicts of interest. All life insurance agents are required to adhere to the following three principles in respect of each recommendation made to a client in order to properly manage conflicts of interest:

- *priority of client's interest* – an insurance intermediary (broker or agent) must place the interests of insurance policyholders and prospective purchasers ahead of his or her own interests;

- *disclosure of conflicts or potential conflicts of interest* – consumers must receive disclosure of any actual or potential conflicts of interest associated with a transaction or recommendation; and

- *product suitability* – the recommended product must be suitable to the needs of the consumer.

[3] See IIROC Dealer Member Rule 3100 and MFDA Policy No. 6.

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Product Suitability

The IPRC's product suitability principle is that "*the recommended product must be suitable for the needs of the consumer"*. The IPRC stated that it expects that brokers and agents will explain to their clients and document the reasons for recommending a particular product. The recommendation should be based on the following:

- Fact finding appropriate to the circumstances, and assessment of the client's specific needs;
- A flexible needs assessment. The assessment should reflect factors including the underlying risk, the client's objective, and the complexity of the product being sold; and
- An agent or broker's product recommendation that meets the client's identified needs.

In order to develop best practices for intermediary disclosure, Advocis participated in the Intermediary Disclosure Working Group (along with the Canadian Life and Health Insurance Association (CLHIA) and other industry associations). The Working Group produced the "*Advisor Disclosure Reference Document"* in March 2005.

Advocis worked with other industry participants, including the CLHIA and CAILBA to standardize the needs-based sales practices that are integral to the product suitability principle, through the production of the reference document: *The Approach: Serving the Client Through Needs-Based Sales Practices.*

Advocis also developed its own Best Practices Guideline on Product Suitability along with an interactive web-based tool entitled "*The Advocis Interactive Disclosure and Product Suitability Web Tool"*. This helps advisors to generate transaction and recommendation disclosure letters based on the *Advisor Disclosure Reference Document*. The letters can be customized for clients in all provincial jurisdictions. In the disclosure letter, agents disclose the companies they represent, the financial relationships they may have with those companies and whether an actual or potential conflict of interest exists. Moreover, the tool has a product suitability component that outlines the process that the advisor has gone through in making the recommendation, which can be reviewed and signed off by the client.

The three key principles of the Industry Practices Review Committee (IPRC) of the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO), including product suitability, apply to all life & health insurance products including segregated funds. In addition, agents when selling segregated funds are required to follow the steps set out in the CLHIA Guidelines on IVICs which has been endorsed by the CCIR and has been incorporated into Ont. Reg. 132/97.

The agent must apply the principles for each product recommendation he or she makes irrespective of whether they are a career advisor, new advisor, independent advisor or an advisor who operates through an MGA.

The Final Public Report: Review of Implementation of the Three Principles for Managing Conflicts of Interest of the IPRC of CCIR and CISRO dated December 2008 did not identify (and we are not aware) that agents are not able to implement or are not, in practice, implementing the three principles.

The survey conducted by the IPRC found that *"most companies have systems of corporate governance and internal controls to manage conflicts of interest as they relate to the principles…The content of the policies are adequate for managing conflicts of interest and properly monitored for*

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adherence." The survey found that there was a high level of implementation at the agent level – that the majority of agents were providing the necessary disclosure in order for the consumer to make an informed decision. The Report concluded that support of the three principles are high and are widely recognized in the marketplace. It also concluded that *"It appears that no further steps by regulators are necessary at this time to promote general acceptance, except to encourage associations and insurers to increase their efforts in support of the three principles"*.

CLHIA Guideline G14: Confirming Advisor Disclosure sets out a uniform approach for companies to confirm that advisors make disclosure that is consistent to the Advisor Disclosure Reference Document. The application is not processed by the insurer unless they are "in good order" which includes the client signature on the application form and the representative's signature on the representative's report. The representative's report confirms that the representative has made appropriate disclosures to the client.

Question 14: To what extent can or does an MGA influence the decisions of its representatives to place insurance with one insurer over another? How is this controlled?

The representative must comply with the three principles for managing conflicts of interest. If the MGA influences the recommendations of the representative, it would be disclosed to the consumer in accordance with the principles for managing conflicts of interest.

The MGA may reward the representative for the volume of business placed through its MGA but this is not specific to a given life insurer. Some MGAs require the representative to do a certain minimum percentage of business with them. If any of the compensation mechanisms create a potential or real conflict of interest, then the representative must disclose this to the consumer.

Question 15: Given that MGAs receive commission from insurers for volume of business generated through the representative, what kind of disclosure to consumers (regarding this specific commission) is provided today by the representative?

The Advisor Disclosure Reference Document suggests that the representative disclose the name of the MGA with which he or she is associated. If there is compensation received by the representative from the MGA, then this should be disclosed. If compensation to the MGA from insurers led to a conflict of interest in the representative's recommendation to the consumer, then it should be disclosed to the consumer by the representative.

If the CCIR identifies any potential gaps in the required disclosure of conflict of interest in accordance with the three principles, Advocis would be pleased to work with the CCIR to ensure it is addressed.

Question 16: What are the expectations of insurers when supervision of sales practices is delegated to MGAs? Is oversight limited to completeness (form) as opposed to the nature of the advice (substance)?

From the experience of our members, the MGA often will perform oversight of the insurance application and may check advisor attestations on client applications to ensure that the applications are complete and in good order prior to sending it to the insurer. The MGA will also monitor any outstanding underwriting requirements of the insurer and see that they are dealt with appropriately and expeditiously instead of the insurer having to communicate directly with the representative.

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Role of MGAs in Sales Transactions and Handling of Consumer Complaints

As noted in our submission to the CCIR dated March 22, 2010, if the advisor receives notice of a potential or actual claim (a verbal or written demand for compensation) arising from an alleged error, omission or negligent act of the agent, then the agent is obligated to report the potential or actual claim to the errors and omissions insurance carrier.

If the advisor receives a complaint from a client about the insurer, the advisor will advise the client to contact the insurance company as each company will have a procedure to deal with a consumer complaint. The advisor will assist the client in the process if the advisor determines that the client has a legitimate complaint. If the advisor determines that the complaint is not legitimate, the advisor will explain to the client what process the client must follow in order to proceed with his or her complaint.

The advisor will also notify the MGA and insurer of any complaint regarding the advisor, the MGA or the insurer that the advisor directly receives from the client. The advisor has a contractual obligation through its errors and omissions policy to notify its errors and omissions carrier. The advisor, therefore, notifies all relevant parties regarding any complaint that the advisor directly receives from the client.

Question 17: What problems have arisen to date regarding transaction errors involving MGAs and how have they been resolved? How do consumers know who to go to in these situations?

Advocis is not aware of transaction errors involving MGAs. If a mistake is made by the MGA and the consumer complains, the consumer most often will first approach the financial advisor in these situations as the consumer has a relationship with the advisor and that is the consumer's point of contact. The insurer would also be known to the consumer and the consumer may choose to contact the insurer directly.

Question 18: Who would be accountable for errors in consumer transactions processed through MGAs? Are representatives and/or insurers assuming responsibility for the mistakes of an MGA when a consumer is adversely affected?

Advocis is not aware of transaction errors involving MGAs.

Representatives will notify his or her errors and omissions carrier if there is an alleged error or negligent act on the part of the representative which results in a potential or actual claim by a consumer. The representative will also notify the MGA and insurer of any such complaint he or she directly receives in order to help resolve the issue. This would include transaction errors by MGAs that impact a consumer.

Question 19: Is there an obligation in the agreement between the MGA and the representative for the representative to report to the MGA any complaints received and their status?

CLHIA's Standardized MGA Compliance Review Survey sets out that insurers expect MGAs to require representatives to report client complaints or have a documented complaint handling policy.

Representatives will notify potentially affected parties – the insurer and MGA – and their errors and omissions carrier – about complaints received.

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Question 20: Is there a need for all complaints against representatives or MGAs to have access to the OLHI process and, if so, how might this be accomplished?

Currently, if consumers have a complaint about a Canadian life and health insurance product or service, the consumer must first try to resolve the issue directly with the insurance company. The representative will assist the client in the process if the representative determines that the client has a legitimate complaint. If the representative determines that the complaint is not legitimate, he or she will explain to the client what process the client must follow in order to proceed with the complaint. If the consumer does not resolve the issue directly with the insurance company, then he or she can go to the OmbudService for Life and Health Insurance (OLHI) and utilize its complaint resolution process.

If the consumer has a complaint regarding the representative, then the consumer can contact the insurance regulator (in Ontario, this is the Financial Services Commission of Ontario, in other provinces there are Insurance Councils).

Advocis would welcome discussions concerning improvements to the complaint resolution process including the appropriate scope and mandate of the OLHI.

Compliance with Privacy Legislation

Representatives are responsible for ensuring they comply with existing privacy legislation, as are MGAs and insurers.

Question 21: If a consumer is unaware of the existence of an MGA between him/her and the insurer, how is consent being given to MGAs to collect personal information? Are insurers or representatives obtaining consent to disclose to MGAs a consumer's personal data?

Insurance applications contain provisions to obtain permission to allow third-parties such as MGAs to handle personal information.

Representatives obtain consent from the client to provide information to the MGA either in the engagement letter or as part of the advisor disclosure process regarding third parties to whom the information will be disclosed in order to process an application for products and services. Advocis would be happy to work with the CCIR to ensure that this is occurring in practice and/or to standardize this disclosure, if needed.

The Oversight of MGAs

The CCIR in its Issues Paper suggests that MGAs may not be adequately supervised by insurers, and that currently there is no specific licensing category for MGAs that addresses the specific role that the MGA performs in the marketplace.

Question 24: Do you think that the existing licensing regime and the level of required E&O insurance is adequate for the functions of an MGA in today's marketplace?

Requirements for E&O insurance vary across Canada. British Columbia, Ontario and Quebec require licensed agencies or corporations to have entity E&O coverage.

In order for the insurance regulators to know who are the MGAs operating in their jurisdiction, it would be useful for the MGA to be required to be licensed or registered with the appropriate insurance regulator. The level of errors and omissions insurance required for an MGA should reflect

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its business operations and potential risks. Advocis, and in particular, the Advocis Protection Association, would be pleased to discuss this issue further with the CCIR in order to put into place the correct type and level of coverage.

Question 25: Is the lack of specific rules on the duties and responsibilities of an MGA generating inconsistencies in how MGAs operate and the level of service they provide?

There are many different business models of MGAs and therefore there are different levels of service which a given MGA may provide and differences in the way MGAs operate. In addition, insurers will delegate different duties and responsibilities depending on the MGA. The level of delegation also may vary depending on the insurer.

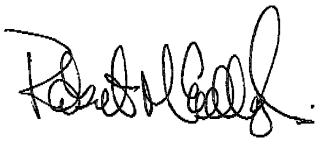
Advocis would be pleased to be part of any discussion as to what types of operations or levels of service the CCIR would expect all MGAs to provide and whether, in light of the principles-based approach to insurance regulation, rules are required to accomplish this or whether there are other alternatives, such as industry guidelines.

We are pleased to provide this information to you in response to the issues and questions raised in the Issues Paper. Advocis is committed to working with regulators and other stakeholders in order to ensure that an efficient and effective regulatory system is in place for the distribution of life insurance which protects consumers and enhances confidence in the Canadian insurance marketplace.

Sincerely,



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



Robert McCullagh CFP, CLU, CH.F.C., RHU
Chair, National Board of Directors

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Thank you for taking the time to stimulate debate about the issues noted in this paper. It is key to building a common understanding of the topics and issues raised for both stakeholders' and regulators.

As defined by the CCIR Issues Paper "Managing General Agencies; Life Insurance Distribution Model- Agencies Regulation committee –February 2011", BridgeForce Financial would likely be considered a Regional MGA. We have offices within Ontario including (the Greater Toronto Area, London, Cambridge, and Sudbury). Our offices focus on more than one company as we are able to validate contracts with several insurers and thus have multiple contracts.

Those companies include, but are not limited to; Manulife, Sun Life, Canada Life, RBC Insurance, BMO Insurance, Transamerica Life, Foresters Unity Life, to name a few. Each of these companies has their own compliance regime and is actively engaging BridgeForce Financial on compliance and regulatory issues.

BridgeForce Financial individual offices currently have one administrative system that we use for risk and investment business. The staff structure can slightly differ in each office but usually consists of the Principal(s), a Marketing Director, Office Manager and Staff. Some offices also house brokers in their own individual offices as well.

We are not only aware of compliance issues we are actively addressing them. We have a compliance committee which consists of partners and senior management.

The role of the committee is to address compliance within BridgeForce Financial. We develop direction and material for BridgeForce Financial. The material is developed based on input from Insurance company compliance officers as well as regulators.

We actively train our staff and advisors. We recently had a half day meeting, for our advisors with the compliance officers of four major insurers. The meeting covered information representing best practices for the advisors. It was very well attended which is a testament to its relevance and importance in today's environment.

One of the major themes of the CCIR paper is the concern with respect to the consumer. We believe that by managing the compliance process we are protecting the consumer. We believe that dialogue about standardized compliance and regulation will adequately cover this risk to the public.

As a member for CAILBA, we will work together to foster our own dialogue among stakeholders as such, below is a list of their responses which we also support.

- BridgeForce Financial supports a representative's ability to contract with multiple MGAs as it does not compromise the consumers' best interest or stakeholders' ability to handle complaints or detect 'unsuitable representative activity and it allows for greater consumer product choice
- Insurers should remain accountable for outsourced activities and must ensure that outsourced activities are being adequately performed; this via audits and by actively assisting MGAs in the development of appropriate systems
- BridgeForce Financial would welcome further dialogue and standardization regarding what activities may or may not be outsourced to MGAs
- BridgeForce Financial also believes MGAs have a role in complaint handling and detection of 'unsuitable representative activity' and would welcome further dialogue in defining the extent and degree of a MGA's involvement
- BridgeForce Financial also sees the potential merits and benefits of an MGA registration/license category and would welcome further dialogue in determining its nature and extent, particularly in regards to standardization nationally
- BridgeForce Financial also recognizes the extent of E&O protection for MGAs is different than those of representatives and would welcome further dialogue in this determination
- BridgeForce Financial also believes 'product suitability and advice' are responsibilities of the representative and insurer

This represents a summary of our current position. As the dialogue between stakeholders and regulators continues we will continue to evolve accordingly.

MGAs are small businesses which openly invest in their communities and create thousands of jobs across Canada. As an MGA we believe in protecting the public because <u>we</u> <u>are the public</u>.

Sincerely

Dwight Donald
BFG Financial Compliance Committee Chair

BRIDGE FORCE
FINANCIAL GROUP
Connecting. Delivering.

Issues Paper - Managing General Agencies Life Insurance Distribution Model
Extract of Questions to Stakeholders

1. Are there other aspects of AGAs that differentiate them from MGAs?

AGAs function on a smaller scale than MGAs and are typically located in smaller geographic regions. They may be a producer group or do not have the production volumes to support many MGA contracts directly.

2. Which functions of MGAs do not apply to AGAs? Are the activities of AGAs closer to representatives rather than MGAs?

AGAs are on a smaller scale than an MGA. They are typically producer groups who may do many of the functions of the MGA administratively or otherwise. Depending upon size and resources, or their deal with the MGA, they will do some of the administration, but perhaps none of the marketing support.

3. What are the factors considered by an insurer before deciding whether or not to outsource an activity to an MGA?

There is no clear consistent criteria that show what insurers use to outsource activities to MGAs.

4. How do insurers satisfy themselves that MGAs have the expertise to carry on the delegated functions (e.g. product training, product development, etc?)

Many Insurers have begun onsite compliance audits with regular reviews. There is also more communication between the compliance officers of the insurance companies and the MGA.

5. Are there functions that should not be outsourced to an MGA (e.g. core functions such as underwriting and claims handling)? Would delegating to MGAs a function such as product development affect the insurer's role as manufacturer?

Our MGA currently does not have any of these functions outsourced to us. We are in the role of distributor and part of the distribution channel of the insurer.

As assessment of the viability of outsourcing those roles would entail more than we as an MGA currently have the resources to determine.

6. Do insurers view functions outsourced to an MGA/AGA as material to their risk management process?

Yes, we believe that insurers see this as a way to reduce risk management.

7. How should insurers be held accountable for the activities outsourced to MGAs? Is having appropriate
Safeguards and conducting regular assessment of whether the MGA is achieving the right standards for each
Delegated function sufficient? Or would insurers also take responsibility for the mistakes of the MGA?

Insurers have typically delegated tasks to MGAs and still maintain some regular assessment of those tasks.

MGAs simply do not have the resources available to them that insurers do, thus regular assessment and proper implementation will safeguard MGA and insurer responsibility for mistakes of the MGA.

8. What can be done to enhance compliance monitoring of functions outsourced to MGAs? Would standardize
Compliance monitoring guidelines assist smaller insurers?

Yes, standardized compliance guidelines would assist all MGA's and all insurers.

9. What specific activities do insurers carry on today in supervising representatives and reporting misconduct?
As an MGA we are not privy to all of the inner workings of representative supervision within the insurer. To give only a part answer to this question may misrepresent the insurer's policies.

10. Under today's MGA structure, has detection and reporting of "unsuitable representatives" become more difficult
as a representative is, at any given moment, dealing with various MGAs and insurers? Please elaborate.

As per your paper “No amount of supervision can prevent incidents of inappropriate advice by a representative”.

Having said that we believe that the current MGA model does not preclude that detection and reporting of “unsuitable representatives” is any more or less difficult versus other possible distribution structures, nor is it an issue where a representative deals with multiple MGA’s.

As a member of CAILBA and its network of MGA’s, having access to the Canadian Securities Administrators, Disciplined Services report, and along with the ability to collect data via Inspection Reports, we believe we have the ability to recognize “unsuitable representatives.”

11. Is it necessary that some party be in a position to monitor the overall business practices of a representative? If no,
why not? If yes, which party, MGA or insurer, is in the best position to do that monitoring?

It is not currently necessary to have one party responsible to monitor the overall business practices of a representative. We believe that more than one party working together allows for an increased exchange of relevant information and provides proper supervision.

The MGA cannot alone with its limited resources, in comparison to an insurer, be responsible for monitoring a representative. The insurer, as a result of its resources is in a superior position to monitor representatives.

12. Given their proximity and close relationship to representatives, should MGAs be responsible for reporting
Questionable acts by representatives:
a. To insurers with whom they have an agreement?
Yes
b. To insurance regulators?
Yes.

13. How is misconduct reporting handled when the representative is dually licensed? Should misconduct in one
sector be reported in the other sectors where the representative is licensed?

Non-insurance misconduct is currently reported to a regulator while insurance misconduct is reported to the insurer- unless a specific violation may require reporting to an entity such as FINTRAC, or the filing of a complaint with the FSCO

Yes, misconduct of dually licensed representatives should be reported to both Life & Security regulators, as well as the respective insurer or dealers.

14. To what extent can or does an MGA influence the decisions of its representatives to place insurance with one
insurer over another? How is this controlled?

Representatives by virtue of their license are brokers. As an MGA we do not influence where an advisor will or will not place his/her business. We provide support and information on the products available and leave that decision up to the advisor and his/her client.

This is controlled by bringing value to an advisor relationship. Providing sound objective advice without influencing advisor- client relationships brings more value to the advisor than simply telling him or her what to do.

15. Given that MGAs receive commission from insurers for volume of business generated through the representative,
what kind of disclosure to consumers (regarding this specific commission) is provided today by the
representative? By the insurer?

There is no disclosure specific to this type of commission provided to the consumer by the representative or the insurer. There is a recommended representative disclosure from the CLHIA , which includes insurers represented, nature of the relationship, how the advisor is compensated, if there is additional compensation, conflicts of interest, & the right of the consumer to ask more questions.

16. What are the expectations of insurers when supervision of sales practices is delegated to MGAs? Is oversight
limited to completeness (form) as opposed to the nature of the advice (substance)?

It would be too difficult to wholly encompass insurer expectations. That should be provided by the insurer.

BridgeForce Financial believes that oversight should be limited to completeness (form) not the nature of the advice (substance)

17. What problems have arisen to date regarding transaction errors involving MGAs and how have they been

resolved? How do consumers know who to go to in these situations?

Transactions errors have typically involved all three parties, the representative, the MGA and the insurer.

Consumers typically start with the representative or the insurer. Consumers deal with these situations in other areas of their day to day life and typically understand to go to the manufacturer or the seller of the product. MGAs or any other distribution mechanism do not impede the consumer's ability to resolve the error.

18. Who would be accountable for errors in consumer transactions processed through MGAs? Are representatives
And/or insurers assuming responsibility for the mistakes of an MGA when a consumer is adversely affected?

The type of error would determine who is accountable for the error. All parties cooperate to determine the facts and come to the fairest solution.

Without a specific transactional error to discuss it is difficult to say. All parties have typically shared in the resolution and responsibility.

19. Is there an obligation in the agreement between the MGA and the representative for the representative to report?
To the MGA any complaints received and their status?

Yes. We have a representative agreement which requires the representative to report any complaints as well as their status.

20. Is there a need for all complaints against representatives or MGAs to have access to the OLHI process and, if so,
How might this be accomplished?

The OLHI process is already being used and is fine as it is.

21. If a consumer is unaware of the existence of an MGA between him/her and the insurer, how is consent being given?
To MGAs to collect personal information? Are insurers or representatives obtaining consent to disclose to MGAs
A consumer's personal data?

The MGAs, as are the representative, are agents of the insurer. This is part of the disclosure signed by the client on the application.
As part of PIPEDA we do not keep personal data on clients. Their applications are stored but any personal information such as copies of driver's licenses is destroyed.

22. Do MGAs retain personal information and, if so, for what purpose? On whose behalf is this information retained?

Any personal data on the application is kept for the purposes of future servicing. Theses applications are kept as .pdf copies on encrypted servers. The representative has access to only his/her clients on the data base.

Records are retained for ongoing business and service activity needs.

23. Other than through privacy laws, how are MGAs being held accountable for the privacy of this information
Today?

Privacy laws are woven in to all compliance requirements. That includes onsite insurer compliance visits, and regulator audits. This is paramount as a day to day business practice.

24. Do you think that the existing licensing regime and the level of required E&O insurance is adequate for the
functions of an MGA in today's marketplace?

This is too broad a question to answer as it encompasses requirements across the country. We believe that all MGA's should be required to carry an appropriate amount of "entity" E & O.

25. Is the lack of specific rules on the duties and responsibilities of an MGA generating inconsistencies in how MGAs
operate and the level of service they provide?

As per your description of national, regional and local MGAs this becomes the main determinant in the differences of how MGAs operate. We would be representative of a

regional MGA. As such it is possible that different levels of service exist. Within our MGA we do our best to standardize high levels of service throughout. What other MGAs do may differ. Insurance companies should work with the MGA s to best determine the MGAs responsibilities and those of the Insurance Company. The Insurer should have knowledge of what the MGA is providing

26. Other than terminating an ongoing agreement, how do insurers deal with MGA misconduct today? Do insurers
Report MGA misconduct to regulators?

Insurers determine their own individual approach to MGA misconduct. This may vary by insurer.
The insurers should disclose whether or not they report MGAs to regulators.

Canadian Life
and Health Insurance
Association Inc.

Association canadienne
des compagnies d'assurances
de personnes inc.

Frank Swedlove
President

April 6, 2011

Danielle Boulet
CCIR Chair
CCIR Secretariat
5160 Yonge Street, Box 85
17th Floor
Toronto, Ontario M2N 6L9

Dear Ms. Boulet:

I am pleased to provide you with our response to CCIR's February 2011 Issues Paper Managing General Agencies Life Insurance Distribution Model.

As is noted in the Issues Paper, Managing General Agencies have become important in the distribution of life and health insurance in Canada. For this reason, the industry views the CCIR initiative as a welcome opportunity to develop a better understanding of the channel and how it operates.

We note that the purpose of the Issues Paper is to stimulate debate and launch a process of consultation. I hope the general comments and answers to specific questions in our response are helpful in this regard.

We look forward to continued discussions and would be happy to discuss any of the matters in the Issues Paper and our response in more detail.

Sincerely,

Original signed by

Frank Swedlove

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and Health Insurance
Association Inc.

Association canadienne
des compagnies d'assurances
de personnes inc.

Managing General Agencies Life Insurance Distribution Model

A Response to the Canadian Council of Insurance Regulators on the February 2011 Issues Paper
Prepared by the Canadian Life and Health Insurance Association

April 2011

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Managing General Agencies Life Insurance Distribution Model

About CLHIA

Established in 1894, CLHIA is a voluntary trade association that represents the collective interests of its member life and health insurers. Our members account for 99 per cent of the life and health insurance in force in Canada and contribute to the financial well-being of millions of Canadians by providing a wide range of financial security products.

The industry protects more than 26 million Canadians, as well as over 40 million policyholders in other countries around the world, with products such as life, health and disability insurance as well as savings and lifetime income solutions, including segregated funds and annuities.

In 2009, Canada's life and health insurers paid out $58.6 billion in payments to policyholders and beneficiaries.

Overview

The CCIR Issues Paper, *Managing General Agencies Life Insurance Distribution Model* (Issues Paper), is intended to build a common understanding of the Managing General Agency (MGA) channel and stimulate discussion about a number of issues. The emergence and development of this channel over the last 40 years has been part of a trend towards diversification of distribution models within the life insurance industry. This diversification has enabled insurers to build on individual strengths and develop efficiencies while continuing to serve the needs of consumers. At the same time, it has produced a landscape that is arguably more complex and difficult to understand. For this reason, CLHIA agrees that the Issues Paper is a useful undertaking.

One of the central themes in the Issues Paper is that the channel, as it has developed, lacks standardization and is poorly understood. Another of the key themes is that the oversight of individual agents is shared leaving no single person with a complete view of the business dealings of most representatives working in the channel. Both of these descriptions are generally acknowledged as being factually accurate. Less clear, however, are the implications of these circumstances.

Part 1 of this response begins with some preliminary comments. This is followed by a high-level discussion of the central themes of standardization of responsibilities and sharing of oversight. This discussion is intended to provide some general context for responses to the specific questions in the Issues Paper. Since CCIR intends the Issues Paper to launch a process of consultation, Part 1 concludes with recommendations for examining the full range of implications related with each of these themes. In Part 2, direct answers are provided to the specific questions asked in the Issues Paper.

Part 1

Definition of MGA

In the Issues Paper, MGA is defined as "an individual, partnership or corporation that holds at least one direct brokerage contract with a life insurance company." The breadth of this definition is problematic because it would seem to apply to any life agent, including those working in the career channel.

In a sense, as the intent of the Issues Paper is to develop a better understanding of the channel, it is somewhat premature to propose a precise, formal definition. For the purposes of understanding the questions and deciding what to include in responses, we are assuming that an MGA is (1) a partnership or corporation, (2) having at least one principal who holds a life agents licence and (3) in contractual relations with both an insurer and a representative to facilitate insurance transactions between these two parties.

The Career Channel

One of the obvious effects of the diversification of distribution is that the market share or percentage of business sold in the career channel has gone down. It should not be concluded however, as the Issues Paper appears to do, that this channel is "clearly waning."

Extensive historical data is not available but recent information suggests that the channel remains strong. According to data compiled by Investors Economics, since 2007 market share of annualized new premiums has held steady at just under 30 percent in the channel. As well, data for annualized premium growth for 2010 reported by LIMRA shows growth of 20 percent in the career channel as compared with overall growth of 16 percent.

Standardization

In our June 2010 report to CCIR, we wrote: "… there is considerable variability within the industry in terms of what individual companies actually delegate in practice. Some companies operating within the MGA channel may delegate most or all of these functions while others delegate very few, if any."

The 2010 report went on to describe in some detail the various functions (i.e., back office operations, sales and marketing support, and compliance monitoring) that may be performed by MGAs. Rather than repeat that description here, we simply note that this variability has allowed insurers to customize relationships with MGAs in ways that best complement the resources of each insurer and help them maximize efficiencies. In addition, it has made it easier for new entrants to introduce fresh perspectives and approaches in the marketplace.

At the same time, because the services that MGAs provide to insurers and representatives or agents vary, it may not always be clear who is responsible for what. In discussions over the past couple of years, both within the industry and with regulators, there has been evidence that the channel is not well understood. But CLHIA respectfully submits there has been little evidence of mishaps, and certainly no evidence of systemic problems related to the variability of business models within the MGA channel.

There is another aspect of standardization that is not discussed in the Issues Paper. That has to do with the language used to describe roles and responsibilities. The MGA channel is essentially a tripartite relationship – involving an insurer, an MGA and an agent or representative – generally defined by three bilateral contracts: insurer-MGA, insurer-agent and MGA-agent. More than the variability described in the Issues Paper, vagueness and inconsistencies in the language used to describe these functions and explain how they are assigned may be a greater source of confusion.

Oversight

In the traditional career channel, agents generally place all or most of their business with a single insurer. This places the insurer in a position to have a broad view of all the agent's insurance transactions. As distribution models began to diversify, individual agents were "untied" or became independent. While this meant they could contract with any number of insurers and give their clients easy access to a wider range of products, it also meant that responsibility for oversight was shared among several insurers with each overseeing discrete portions of an agent's business.

It is important to note that this sharing of oversight does not diminish or otherwise alter the ultimate responsibility that an insurer has for the agents who represent it by selling its products. This responsibility is established statutorily in Ontario and described in detail in CLHIA Guideline G8 *Screening Agents for Suitability and Reporting Unsuitable Agents.*

Further, to accurately assess any possible effect of this sharing, it is necessary to understand the nature of oversight and the factors that are monitored. The primary focus of oversight in life insurance is on agent suitability or the ability of an agent to carry out his or her responsibilities to his or her clients. In this approach, the central question is whether or not the agent is capable of providing a required duty of care to the consumer. This concept of agent suitability contrasts with the concept of product suitability. Were oversight to focus on product suitability, the central question would be whether or not the agent gave sound advice that is appropriate to the needs of the consumer.

The choice of one focus or the other is not arbitrary, nor is it exclusive. With respect to the rationale, it is based on the nature of the activity being overseen. In life insurance, there is often no single correct answer to the question of what is suited to a customer's needs. If the focus of oversight was on product suitability, the fact that there is no single correct recommendation would make it necessary to fully reproduce the advice giving process in the oversight process. To avoid this duplication, and its attendant costs and delays, oversight focuses on the representative's training and ability.

Having said this, it is important to bear in mind that, in practice, oversight in life insurance is not a matter of selecting one approach to the exclusion of the other. To put this in another way, in assessing the suitability of an agent, oversight will consider factors related to product suitability such as the use of needs-based sales practices.

CLHIA Guideline G8 describes the factors that insurers look at during initial screening (prior to entering into a contract with the agent) and on-going monitoring. For many of these factors, whether oversight is shared or done by one person will have no effect whatsoever on the ability to gather evidence and determine that the agent is not suitable. One does not need to see all an agent's business to judge, for example, that he does not have adequate E&O coverage or has carried out a fraud. For other factors, sharing poses more of a challenge. For example, evidence of undue influence or churning may be more difficult to detect when the business is spread around. In addition, one of the "red flags" typically used to trigger closer scrutiny in risk-based compliance monitoring is deviations from customary patterns. Detecting evidence of deviations becomes progressively more difficult as the business and the related oversight gets spread over multiple parties.

It appears that sharing may make it somewhat more difficult to monitor some of the specific elements of agent suitability. It is, however, difficult to precisely quantify the extent to which, if any, this affects the overall effectiveness of monitoring. To this point, we are not aware of any evidence that the incidence of actual problems is greater when oversight of an agent is shared by several persons.

Opportunities for Further Consultation

In addition to asking specific questions related to several general issues, the Issues Paper asks more broadly whether the identified issues are significant and whether all significant issues have been identified.

While a number of the risks discussed in the paper seem to be more theoretical than actual, this does not mean that they should not be examined. CLHIA is satisfied that the paper represents a reasonable starting point for a comprehensive discussion and, ultimately, a clearer understanding of the role of MGAs in the distribution of insurance.

As noted earlier, there is no standardized language to describe functions that are carried out by one or another party in the MGA channel. The absence of a clear and consistent description of functions can give rise to confusion about who is responsible for what. It can also make it difficult to assess the actual degree of commonality or standardization within the channel. For this reason, CLHIA recommends that the primary focus in preliminary consultations should be on development of a consistent understanding of individual functions and the more common business models within the channel.

Under principles-based regulation, regulators focus on the desired outcomes and give the industry flexibility to find efficient means to achieve these ends. As has been noted, this flexibility has allowed for a number of distribution channels within the life insurance industry and variability within the MGA channel in particular. Once the various models comprising the channel are clearly described, the next step should be to evaluate how effectively the various models align with the level of consumer protection described in regulatory principles. Only after will it be possible to make fully informed decisions about various models within the channel and the need for regulatory change.

Apart from the key themes of standardization and sharing of oversight, the Issues Paper notes that the MGA channel was not contemplated by insurance regulation and this regulation has not been revised to address the new model. Under principles-based regulation, this is not, of course, a troubling or even unexpected outcome. Nevertheless, there may be areas in which the best efforts of the industry to comply with the spirit of the principles may require some regulatory involvement. Consultation should identify these gaps and propose ways to address them. One example may be the adequacy of E&O coverage. Another may be the absence, in some instances, of an independent, third-party process for resolving consumer complaints.

CLHIA welcomes the Issues Paper as an opportunity to step back and assess how the MGA channel has developed over the last four decades. For this reason, CLHIA is committed to working with regulators and other stakeholders to gain a better understanding of the channel so that it can continue to meet the needs of insurers and independent representatives while providing effective support for protecting the interests of consumers.

Part 2

Definition

1. Are there other aspects of AGAs that differentiate them from MGAs?

   The key element that differentiates an Associated General Agency (AGA) from an MGA is that the AGA has contractual relationships with an MGA and a representative that makes it an intermediary between these two parties.

2. Which functions of MGAs do not apply to AGAs? Are the activities of AGAs closer to representatives rather than MGAs?

   The functions of both MGAs and AGAs vary so it is difficult to differentiate the two in terms of functions. It is probably more helpful to think of the AGA as a subcontractor that carries out some or all of the functions of an MGA. In other words, the AGA is more like an MGA than an agent or representative, albeit one operating at a smaller scale than an MGA.

Delegation to MGAs

3. What are the factors considered by an insurer before deciding whether or not to outsource an activity to an MGA?

   Under an agency agreement between the insurer and the MGA, an insurer will delegate certain functions that it wishes the MGA to perform.

   Apart from obvious business decisions about what functions an insurer wishes to carry out on its own, the key consideration in deciding what functions to delegate is the capability of the MGA to carry out the delegated function. Insurers will typically look at an MGA's financial and staff resources and relevant written policies and procedures as evidence of capability.

4. How do insurers satisfy themselves that MGAs have the expertise to carry on the delegated functions (e.g. product training, product development, etc.)?

   An insurer's due diligence at the time of issuing a contract to an MGA will involve having the MGA complete a survey and provide supporting documentation, including written policies and procedures related to delegated functions. The CLHIA Standardized MGA Compliance Review Survey includes a checklist of policies and procedures and other documentation that is commonly requested. In addition, insurers will use a variety of means including site visits to verify the information.

Once a contract has been issued, insurers will typically review MGAs on an on-going basis using a variety of means including surveys and site visits and on-going monitoring of various indicia including business placed, commissions paid, quality of business and persistency.

5. Are there functions that should not be outsourced to an MGA (e.g. core functions such as underwriting and claims handling)? Would delegating to MGAs a function such as product development affect the insurer's role as manufacturer?

   As a matter of fact, life insurers do not delegate to MGAs any decision-making functions in the areas of underwriting and claims handling. With respect to product development, any role for MGAs is rare and would be generally restricted to providing advice. In any event, the involvement of an MGA does not lessen or otherwise affect the insurer's responsibilities for the product as its manufacturer.

6. Do insurers view functions outsourced to an MGA/AGA as material to their risk management process?

   MGAs emerged as a response to the shift away from the career channel. As noted in the Issues Paper, many of the early MGAs were former branch managers of insurers setting up back office operations to service former career, now independent, agents. Today, most insurers that accept business from representatives through MGAs also accept business directly from independent agents who perform their own back office operations. To the extent that the MGA simply provides back office support for representatives, the insurer is not outsourcing and certainly the functions are not material to the insurer.

   Over the years that the channel has developed, some insurers have decided to delegate various compliance monitoring functions to MGAs. Whether these functions are material and, if they are, the extent of the materiality would depend on the circumstances of the agency agreement between the insurer and the MGA. Generally, given the factors to assess materiality that are set out in OSFI Guideline B-10 *Outsourcing of Business Activities, Functions and Processes*, it is unlikely that the functions would be assessed as being material.

   Having said that, it is important to note that, where an insurer delegates compliance monitoring functions to a third-party such as an MGA, the insurer retains responsibility for ensuring that that entity is capable of, and is actually, carrying out the delegated functions.

7. How should insurers be held accountable for the activities outsourced to MGAs? Is having appropriate safeguards and conducting regular assessment of whether the MGA is achieving the right standards for each delegated function sufficient? Or would insurers also take responsibility for the mistakes of the MGA?

   CLHIA Guideline G8 *Screening Agents for Suitability and Reporting Unsuitable Agents* (G8) discusses delegation of duties. G8 states that "insurers in a contractual relationship with an agency that provides services to assist agents in the distribution of insurance may delegate some or all functions related to screening and monitoring to that agency." It further states that "in situations where an insurer delegates a screening or monitoring function, the insurer retains responsibility." The same principle would apply to other functions beyond the scope of G8 that an insurer delegates to an MGA.

8. What can be done to enhance compliance monitoring of functions outsourced to MGAs? Would standardize compliance monitoring guidelines assist smaller insurers?

   A standardized approach to compliance monitoring may be more efficient (by eliminating duplication of efforts) and more effective (by enhancing clarity and consistency). For these reasons, CLHIA has developed the Standardized MGA Compliance Review Survey to assist insurers in monitoring G8 functions delegated to MGAs. This survey was developed in 2010 in consultation with its member companies operating in the MGA channel, CAILBA and individual MGAs and released to insurers in February 2011.

Supervision of Representatives

9. What specific activities do insurers carry on today in supervising representatives and reporting misconduct?

   Consistent with most other licensed professions, the approach taken in the life insurance industry is to assess the suitability of the agent. CLHIA Guideline G8 describes practices for screening (the initial assessment prior to issuing a contract for the agent to represent the insurer) and for monitoring (on-going assessment). In addition to the practices described in G8, insurers will monitor an agent's transactions involving the company's products by looking at things like replacement activity, non-placed policies, quality of business and deviations from usual activity (e.g., volume of business, size of premiums, age of clients, etc.).

In addition, insurers use a number of means to assess consumer satisfaction with the agent and the sales process. Examples of such means include focus groups, surveys, audits of client files and reviews of complaints.

If an insurer receives a complaint or becomes aware of a potential concern, it will conduct an investigation. If that investigation concludes that the agent has engaged in reportable misconduct, the insurer will report this to insurance regulators. To assist companies, CLHIA has prepared a standardized reporting form that is consistent with CLHIA Guideline G8. This model form can be used in jurisdictions that do not prescribe a reporting form.

10. Under today's MGA structure, has detection and reporting of "unsuitable representatives" become more difficult as a representative is, at any given moment, dealing with various MGAs and insurers? Please elaborate.

Many of the factors identified in Guideline G8 as providing evidence of suitability can be monitored equally effectively by a single or several persons. But, as was discussed in Part 1, shared oversight may make detection of some factors more difficult. At the same time, it should be noted that involving several persons in oversight may, in some circumstances, actually increase the likelihood that misconduct is detected.

11. Is it necessary that some party be in a position to monitor the overall business practices of a representative? If no, why not? If yes, which party, MGA or insurer, is in the best position to do that monitoring?

As noted in response to Question 10, shared oversight can make it more difficult to detect some types of misconduct. Whether this theoretical effect actually reduces the effectiveness of oversight in practice, however, is unclear.

If there is a requirement that a single MGA monitor the overall business of a representative, this could have a substantial impact on both representatives and MGAs. As was noted in a 2010 survey conducted by the Independent Financial Brokers, most representatives have contracts with several MGAs and the most common reasons for selecting an MGA are access to insurance companies and level of service. If the consolidation of oversight restricts the ability of the representative to place business through multiple MGAs, this would limit the representative's ability to get desired access and service. From the MGAs perspective, many MGAs may not have the resources to carry out the required monitoring. As was noted in our June 2010 report, according to Investor Economics there are upwards of 400 agencies in Canada and roughly 100 bonafide MGAs. It is likely that

many of the smaller agencies, and possibly some of the larger ones as well, would need to substantially alter their business models or even merge with other agencies if they were required to monitor representatives.

Similarly, a requirement that an insurer monitor the overall business of a representative could fundamentally affect consumer choice and access to life insurance. As the channel has evolved, independent agents operating through MGAs offer the consumer one-stop access to the products of several insurers. It is difficult to see how this access could continue if one insurer was responsible for monitoring all the representative's business.

The implementation of either of these requirements would likely only be possible through regulation. Thus, while there may be advantages to placing oversight of a representative with a single person, these should be carefully assessed and weighed against the possible disadvantages that go with one option or another.

12. Given their proximity and close relationship to representatives, should MGAs be responsible for reporting questionable acts by representatives:
    a. to insurers with whom they have an agreement?
    b. to insurance regulators?

    In their agency agreements with MGAs, insurers typically require the MGA to report to the insurer questionable agent activity related to their products as soon as the MGA becomes aware of such activity. The intent of this contractual requirement is to enable insurers to undertake investigations in a timely manner.

    As noted in response to Question 9, the general approach in life insurance is for the insurer to take responsibility for investigating the conduct of its representatives and, where it concludes an agent is unsuitable, reporting this to the regulators. In this approach, the MGA may assist the insurer in the investigation but may not be aware of all the relevant circumstances discovered during the course of the investigation. A requirement that the MGA report "questionable acts" directly to the regulator may result in the regulator receiving reports before a thorough investigation has been completed. As well, if the MGA is reporting in addition to the insurer, this would duplicate reporting and could lead to confusion. Accordingly, if it is decided that changes to the existing reporting protocols are required, regulation should be considered as a means of ensuring consistency and minimizing the risk of confusion.

13. How is misconduct reporting handled when the representative is dually licensed? Should misconduct in one sector be reported in the other sectors where the representative is licensed?

    Insurers report the misconduct of dually licensed representatives to insurance regulators. Where the insurer has an affiliated dealer, the insurer will typically report the misconduct to its dealer and, in turn, the dealer will, if appropriate under relevant securities regulation, report to the securities regulator. The separate and distinct regulatory regimes for insurance and securities reflect the specialized nature and technical complexity of these products and services. The existing regulatory requirements ensure that the appropriate regulators get information they need about advisor misconduct.

Managing Conflicts of Interest

14. To what extent can or does an MGA influence the decisions of its representatives to place insurance with one insurer over another? How is this controlled?

    A single MGA will typically enter into contracts with a few insurers who operate in the channel. While this fact may appear to place obvious constraints on the decisions of agents attached to an MGA, it should be noted that most agents may enter into contracts to represent additional insurers.

    Beyond functions that an insurer delegates to an MGA, the details of the relationship between an MGA and its representatives are a matter of contract between these two parties. If any of the mechanisms in these relationships might potentially influence a representative's recommendations, the representative is required to disclose these to the consumer. As well, representatives also have direct contractual relations with insurers. A condition of these contracts is that the agent adhere to the insurer's code of conduct and comply with all relevant regulations and industry standards, including the requirement to use needs-based sales practices.

15. Given that MGAs receive commission from insurers for volume of business generated through the representative, what kind of disclosure to consumers (regarding this specific commission) is provided today by the representative? By the insurer?

    Pursuant to the CLHIA 2005 Reference Document *Advisor Disclosure*, agents are expected to disclose to the consumer, among other things, the insurers the agent represents and the fact that the agent is paid by commission. This disclosure has been endorsed by the CCIR Industry Practices Review Committee as addressing the regulators' principles for managing conflicts of interest.

Apart from the information about compensation provided in point-of-sale disclosure documents for Individual Variable Insurance Contracts, insurers do not generally provide consumer disclosure in this area.

16. What are the expectations of insurers when supervision of sales practices is delegated to MGAs? Is oversight limited to completeness (form) as opposed to the nature of the advice (substance)?

    If an insurer delegates some or all of its supervision practices to an MGA, it is expected that the MGA would carry out these practices so as to have an effect that is comparable to that of the insurer carrying out the supervision on its own. As noted in the response to Question 8, insurers have recently agreed to adopt a standardized survey as part of a comprehensive program for assessing the capability of MGAs to carry out delegated functions. The survey provides a clear and consistent indication of expectations in this area and a means of establishing that these expectations are met by MGAs.

    It should be noted that the question appears to assume a dichotomy that is misleading. There are a range of options between "form" (completeness) and "substance" (appropriateness of the advice). As noted in the introduction and again in response to Question 9, oversight in the life insurance industry, while it focuses on the suitability of the agent, includes examining patterns in the sales practices and advice of representatives.

Sales Transactions and Complaint Handling

17. What problems have arisen to date regarding transaction errors involving MGAs and how have they been resolved? How do consumers know who to go to in these situations?

    CLHIA is not aware of any systemic problems related to the performance of MGAs handling transactions. If mistakes are made from time to time and these are not caught and rectified before they come to the attention of the consumer, it is expected that the consumer would, in the first instance, contact either the insurer or the agent as both parties are clearly identified and known to the consumer.

18. Who would be accountable for errors in consumer transactions processed through MGAs? Are representatives and/or insurers assuming responsibility for the mistakes of an MGA when a consumer is adversely affected?

The insurer retains responsibility for damage to the client caused in the execution of delegated functions. For other errors, most jurisdictions require the agent and the MGA to have errors and omissions insurance to indemnify the consumer.

19. Is there an obligation in the agreement between the MGA and the representative for the representative to report to the MGA any complaints received and their status?

    As noted in the CLHIA Standardized MGA Compliance Review Survey, insurers expect MGAs to require representatives to report client complaints (see Question 31) or have in place a documented complaint handling policy that achieves the same effect (see Question 32).

20. Is there a need for all complaints against representatives or MGAs to have access to the OLHI process and, if so, how might this be accomplished?

    Life insurance companies are required to be members of a third-party dispute resolution mechanism, e.g., the OmbudService for Life and Health Insurance (OLHI). But this requirement does not extend to agents and MGAs. OLHI's mandate applies to complaints against independent agents only where they are acting as an agent of a specific insurance company and that company takes responsibility. Beyond that, complaints about agents are redirected to the appropriate regulator. Regulators have jurisdiction when it comes to agent complaints.

    The question of whether MGAs should be brought within the scope of OLHI can only be answered once the roles and responsibilities of all parties are clearly established. If it turns out that MGAs have functions that uniquely expose them to the risk of consumer complaints, bringing them under OLHI would be one possible means of addressing this. If it is decided that OLHI's jurisdiction should be extended to MGAs, this would require a regulatory solution.

Privacy

21. If a consumer is unaware of the existence of an MGA between him/her and the insurer, how is consent being given to MGAs to collect personal information? Are insurers or representatives obtaining consent to disclose to MGAs a consumer's personal data?

    Generally, provisions in insurance applications related to privacy include permission to allow third-party distribution partners to handle information as needed.

The industry is committed to protecting the personal information of life and health insurance consumers. To this end, CLHIA and its member companies have a lengthy and active history in the protection of personal information. For example, back in 1980 the CLHIA adopted "Right to Privacy" Guidelines, the first privacy code to be adopted by any industry group in Canada. More recently, CLHIA worked closely with Quebec's Information Access Commission to implement *An Act respecting the protection of personal information in the private sector*. Most recently, CLHIA has been an active participant in the development of the federal *Personal Information Protection and Electronic Documents Act* ("PIPEDA"), including the Canadian Standards Association Model Code which forms part of PIPEDA, as well as the *Personal Information Protection Act* in Alberta and in British Columbia. CLHIA has also participated in the development of legislation in various provinces to protect personal health information.

22. Do MGAs retain personal information and, if so, for what purpose? On whose behalf is this information retained?

As part of the back office services MGAs provide to their representatives, it is not uncommon for them to provide storage for applications and other documents in the representative's client file. Such services are provided on behalf of the agent.

23. Other than through privacy laws, how are MGAs being held accountable for the privacy of this information today?

Contractual requirements in the agency agreement between the insurer and the MGA and codes of conduct reinforce and, in some cases, expand on statutory requirements.

Oversight of MGAs

24. Do you think that the existing licensing regime and the level of required E&O insurance is adequate for the functions of an MGA in today's marketplace?

As was noted in Part 1, the MGA channel has developed within the existing regulatory framework for life insurance. The fact that MGAs are involved in the transmittal of insurance applications and the fact that they receive a share of the commissions paid by insurers both bring them under the existing licensing regime. Since the purpose of the Issues Paper is to develop a better understanding of the channel, any conclusions about the licensing regime should await a complete and accurate assessment of how current practices align with regulatory objectives.

Requirements for E&O insurance vary across Canada. For example, only British Columbia, Ontario and Quebec require licensed agencies or corporations to have entity E&O coverage. Given these differences, in March 2008 CLHIA issued a notice jointly with Advocis, CAILBA and IFB advising MGAs of the risks they face and the need to have adequate E&O coverage. The notice specifically stated that, in some cases, provincially mandated insurance may not be adequate.

25. Is the lack of specific rules on the duties and responsibilities of an MGA generating inconsistencies in how MGAs operate and the level of service they provide?

    There is no question that the "lack of specific rules" has made it possible for a number of different business models to develop within the MGA channel. But rather than characterize the situation as a lack of rules, it is more appropriate to point to the principles-based nature of insurance regulation and its inherent flexibility. It is arguably a strength of this approach that it can support diversity and allow the industry to find ways to promote efficiencies while providing a desired level of consumer protection. While different MGAs perform different functions, it is not clear that they provide varying levels of service for a given function.

26. Other than terminating an ongoing agreement, how do insurers deal with MGA misconduct today? Do insurers report MGA misconduct to regulators?

    The main enforcement mechanism in the relationship between insurers and MGAs is contractual remedies, including termination. In certain circumstances of misconduct, the insurer will report a life licensed principal or the MGA firm itself to regulators as being unsuitable.

Association canadienne des compagnies d'assurances de personnes inc.

Canadian Life and Health Insurance Association Inc.

Frank Swedlove
Président

Le 6 avril 2011

Madame Danielle Boulet
Présidente du Conseil canadien des responsables
de la réglementation d'assurance
Secrétariat du CCRRA
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Madame,

C'est avec plaisir que je vous transmets notre mémoire en réponse au document de discussion, intitulé *Modèle de distribution des produits d'assurance vie fondé sur les agences générales*, publié par le CCRRA en février 2011.

Comme le précise le document de discussion, les agences générales jouent aujourd'hui un rôle prépondérant dans la distribution des produits d'assurances vie et maladie au Canada. C'est pourquoi l'industrie considère l'initiative du CCRRA comme une bonne occasion d'établir une meilleure compréhension du modèle et de son fonctionnement.

Le document de discussion a pour objet de stimuler le débat et d'amorcer un processus de consultation. J'espère que nos observations d'ordre général ainsi que nos réponses aux questions précises qui ont été posées seront utiles à cet égard.

Nous nous réjouissons à la perspective de poursuivre les discussions et serons ravis d'examiner plus en détail avec vous l'une ou l'autre des questions traitées dans le document de discussion ou dans notre mémoire.

Je vous prie d'agréer, Madame, mes sincères salutations.

Original signé par Frank Swedlove

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Association canadienne
des compagnies d'assurances
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Canadian Life
and Health Insurance
Association Inc.

Modèle de distribution des produits d'assurance vie fondé sur les agences générales

Réponse de
l'Association canadienne des compagnies d'assurances de personnes inc.
au
document de discussion du CCRRA publié en février 2011

Avril 2011

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Modèle de distribution des produits d'assurance vie fondé sur les agences générales

Au sujet de l'ACCAP

Fondée en 1894, l'ACCAP est une association à adhésion libre représentant les intérêts communs des sociétés d'assurances vie et maladie qu'elle compte comme membres. Ces sociétés détiennent 99 p. 100 des assurances vie et maladie en vigueur au Canada et contribuent à la sécurité financière de millions de Canadiens grâce à la vaste gamme de produits qu'elles offrent.

L'industrie protège plus de 26 millions de Canadiens, et plus de 40 millions de titulaires de polices à l'étranger, grâce à des produits tels que les assurances vie, maladie et invalidité, ainsi qu'à des instruments d'épargne et de revenu viager, notamment les fonds distincts et les rentes.

En 2009, les assureurs de personnes canadiens ont versé 58,6 milliards de dollars en prestations et en capitaux-décès.

Aperçu

Le document de discussion du CCRRA, intitulé *Modèle de distribution des produits d'assurance vie fondé sur les agences générales*, vise à favoriser une compréhension commune du modèle des agences générales (AG) et à encourager la discussion sur un certain nombre de questions. L'émergence et l'évolution de ce modèle au cours des quarante dernières années se sont inscrites dans une tendance vers la diversification des modèles de distribution au sein de l'industrie de l'assurance vie. Cette diversification a permis aux assureurs de tirer parti des différentes forces disponibles et de maximiser leur efficience tout en continuant à répondre aux besoins des clients. Mais elle a aussi conduit à un environnement dont on peut dire qu'il est plus complexe et difficile à comprendre. De ce point de vue, l'ACCAP estime que la publication du document de discussion constitue une démarche utile.

L'un des principaux thèmes du document est qu'il y a un manque de normalisation au sein du canal, et que ce dernier est mal compris. Autre thème clé : vu que la surveillance dont les agences font l'objet est partagée, le plus souvent, personne n'a de vue d'ensemble des opérations qu'effectuent un représentant exerçant dans ce canal. Si ces deux appréciations sont en général reconnues comme étant conformes à la réalité, les conséquences de cet état de choses sont moins claires.

La partie I du présent document formule des observations préliminaires qui sont suivies d'un exposé de haut niveau sur les thèmes de la normalisation des responsabilités et de la répartition de la surveillance. Cette partie vise à placer dans leur contexte nos réponses aux questions formulées dans le

document de discussion. Enfin, comme le CCRRA souhaite faire de son document le point de départ d'un processus de discussion, la partie I de notre réponse recommande une approche pour l'examen de toute la gamme des répercussions liées à chacun des thèmes traités. La partie II renferme nos réponses aux questions précises soulevées dans le document.

I

Définition d'AG

Dans le document de discussion, l'AG est définie comme « une personne physique ou morale ou une société en nom collectif, titulaire d'au moins un contrat de courtage direct avec une compagnie d'assurance vie ». La portée de cette définition est problématique car elle semble englober tous les agents d'assurance vie, y compris les agents de carrière.

Dans un sens, comme l'objectif du document de discussion est de favoriser la compréhension de ce modèle de distribution, il est un peu tôt pour proposer une définition précise et formelle. Dans le cadre de l'élaboration de nos réponses aux questions posées dans le document, nous partirons du principe qu'une AG : 1) est une personne morale ou une société en nom collectif, 2) compte au moins un dirigeant détenant un permis d'agent vie, et 3) a des liens contractuels à la fois avec un assureur et un représentant afin de permettre à ces deux parties de se livrer à des opérations d'assurance.

Modèle fondé sur les agences de carrière

L'une des conséquences évidentes de la diversification au chapitre de la distribution est qu'elle a fait baisser la part de marché ou le pourcentage des affaires placées par l'entremise des agences de carrière. Il ne faudrait cependant pas conclure, comme semble le faire le document de discussion, que ce modèle « tend clairement à disparaître ».

Nous ne disposons pas de statistiques historiques détaillées, mais les données récentes semblent indiquer que ce modèle de distribution demeure fort. Selon les données rassemblées par *Investors Economics*, la part de marché des primes souscrites annualisées pour le canal des agences, constante depuis 2007, s'établit à un peu moins de 30 p. 100 du marché. En outre, les chiffres publiés par la LIMRA relativement à la progression des primes annualisées en 2010 attestent d'une hausse de 20 p. 100 pour le canal des agences de carrière comparativement à une croissance globale de 16 p. 100.

Normalisation

Dans le rapport que nous avons soumis au CCRRA en juin 2010, nous avons souligné « la grande variabilité qui existe pour ce qui est des fonctions que

délèguent effectivement les différents assureurs. Certaines sociétés impartissent la plupart, sinon toutes les fonctions, tandis que d'autres n'en délèguent aucune ou que quelques-unes ».

Notre rapport décrivait ensuite de façon assez détaillée les diverses fonctions (soutien administratif, soutien relatif à la souscription et au marketing, et soutien relatif à la conformité) pouvant être confiées aux AG. Plutôt que de reproduire ici cette description, ajoutons simplement que cette variabilité a permis aux assureurs d'adapter leurs relations avec les AG en fonction des forces complémentaires de chacune, et dans le but de maximiser leur efficience. Elle a en outre aidé de nouveaux joueurs à introduire sur le marché des perspectives et des approches nouvelles.

Comme les services que fournissent les AG aux assureurs ainsi qu'à leurs propres représentants et agents varient, il peut être difficile de comprendre qui est responsable de quoi. Les discussions auxquelles on assiste depuis quelques années, tant au sein de l'industrie qu'avec les autorités de réglementation, ont fait ressortir que le modèle n'est pas bien compris. En revanche, l'ACCAP tient à souligner qu'il n'y a guère eu d'incidents, et encore moins de problèmes systémiques liés à la diversité des modèles de gestion que l'on retrouve dans le canal de distribution des AG.

La question de la normalisation comporte un autre aspect, qui n'est pas abordé dans le document de discussion; il s'agit du langage utilisé pour décrire les rôles et les responsabilités. Le modèle des AG repose essentiellement sur une relation tripartite entre l'assureur, l'AG, et l'agent ou le représentant, relation qui le plus souvent est définie en vertu de trois contrats bilatéraux, passés entre l'assureur et l'AG, l'assureur et l'agent, et l'AG et l'agent. Un manque de précision et de cohésion quant au langage utilisé pour décrire les fonctions et la façon dont elles sont imparties peut entraîner davantage de confusion que la variabilité dont fait état le document de discussion.

Surveillance

En général, dans le canal traditionnel des agents de carrière, un agent travaille exclusivement ou presque pour un assureur. Ce dernier a donc une vue d'ensemble des opérations d'assurance de l'agent. Avec l'arrivée de nouveaux modèles de distribution, les agents se sont « détachés », c'est-à-dire qu'ils sont devenus indépendants. S'ils ont ainsi pu conclure des contrats avec de multiples assureurs et offrir une plus large gamme de produits à leurs clients, cela a aussi entraîné le partage de la surveillance entre lesdits assureurs, chacun étant responsable d'une partie distincte des opérations de l'agent.

Il faut souligner que le fait que la surveillance soit partagée ne réduit aucunement la responsabilité qu'assume, en définitive, un assureur pour ce qui est des agents qui le représentent. Cette responsabilité est prescrite par

la loi en Ontario et décrite en détail dans la Ligne directrice LD8 de l'ACCAP, *Sélection des agents et déclaration des irrégularités.*

Par ailleurs, pour évaluer précisément les effets possibles de ce partage, il faut comprendre la nature de la surveillance et les aspects qu'elle vise. En assurance vie, la surveillance s'intéresse essentiellement à l'aptitude à exercer de l'agent, c'est-à-dire à sa capacité à s'acquitter de ses obligations envers le client. Dans cette optique, la question fondamentale qui se pose est de savoir si l'agent est apte à remplir son devoir de diligence envers le client. Cette notion d'aptitude à exercer tranche avec celle du caractère approprié du produit. Si la surveillance était axée sur le caractère approprié du produit, la question première serait de savoir si l'agent a adéquatement conseillé le consommateur compte tenu des besoins de ce dernier.

Le choix entre ces deux approches n'est ni arbitraire ni exclusif. Le raisonnement suivi est fonction de la nature de l'activité faisant l'objet de la surveillance. Dans bien des cas, en assurance vie, il n'existe pas de réponse universelle à la question de savoir ce qui constitue un produit approprié par rapport aux besoins du client. Si la surveillance portait principalement sur le caractère approprié du produit, le fait qu'il n'y a pas de « bonne » recommandation absolue signifie que le processus de surveillance devrait retracer tout le processus de recommandation. Afin d'éviter une telle démarche, coûteuse et laborieuse, la surveillance se concentre sur la formation et la compétence de l'agent.

Cela dit, dans la pratique, la surveillance en assurance vie ne se résume pas à choisir une approche à l'exclusion de l'autre. Pour évaluer l'aptitude à exercer de l'agent, l'on examine également des facteurs touchant le caractère adéquat du produit recommandé par rapport aux besoins du client.

La ligne directrice LD8 de l'ACCAP décrit les facteurs dont les assureurs tiennent compte lors de la sélection initiale de l'agent (c'est-à-dire avant de conclure un contrat avec lui) ainsi que dans le cadre du contrôle continu. Pour bon nombre de ces facteurs, que la surveillance soit exercée par une ou par plusieurs personnes n'a pas d'effet sur la capacité à recueillir des renseignements et à déterminer si l'agent est apte ou non à exercer. À titre d'exemple, il n'est pas nécessaire d'examiner toutes les activités d'un agent pour constater qu'il ne détient pas d'assurance erreurs et omissions ou qu'il a commis une fraude. Pour d'autres facteurs, par contre, une surveillance partagée pose davantage un défi. L'abus d'influence ou la multiplication des opérations (« churning ») peuvent être plus difficiles à repérer lorsque les affaires sont placées auprès de différents assureurs. En outre, dans le cadre d'un contrôle de la conformité axé sur le risque, un écart par rapport aux activités habituelles est un « signal d'alerte » qui amène souvent les assureurs à pousser plus loin l'inspection; or, plus les affaires sont disséminées et la surveillance répartie, plus de tels écarts sont difficiles à repérer.

Il est possible qu'une surveillance partagée complique quelque peu le suivi de certains des facteurs servant à évaluer l'aptitude à exercer des agents. Toutefois, il est difficile de quantifier l'effet que cela peut avoir sur l'efficacité de la surveillance prise globalement. À l'heure actuelle, rien n'indique que les problèmes sont plus nombreux lorsque plusieurs personnes exercent une surveillance.

Consultations futures

Outre les questions précises sur plusieurs aspects généraux, le document de consultation du CCRRA demande, plus globalement, si les préoccupations formulées sont réellement importantes et si tous les enjeux majeurs ont été identifiés.

Bien que certains des risques dont traite le document de discussion soient plus théoriques que réels, ils ne méritent pas moins d'être examinés. L'ACCAP estime que le document constitue un point de départ raisonnable pour une discussion approfondie, apte à aboutir à une meilleure compréhension du rôle des AG dans la distribution de produits d'assurance.

Comme nous l'avons dit plus tôt, il n'existe pas de langage standard pour décrire les fonctions que remplissent les différents intervenants dans le canal des AG. L'absence de description claire et cohérente peut créer de la confusion quant aux responsabilités incombant aux différentes parties, et faire qu'il soit difficile d'évaluer dans quelle mesure l'on applique des approches communes ou normalisées dans ce canal. C'est pourquoi l'ACCAP préconise que les consultations préliminaires visent avant tout à favoriser une compréhension systématique des différentes fonctions et des modèles de gestion les plus répandus dans ce canal de distribution.

En vertu d'une réglementation fondée sur des principes, les responsables de la réglementation fixent les résultats souhaités et accordent à l'industrie la souplesse nécessaire pour trouver des moyens efficaces de les atteindre. Comme on l'a dit, cette souplesse a permis la coexistence d'un certain nombre de modèles de distribution dans l'industrie de l'assurance vie, et un degré élevé de variabilité notamment au sein du canal des AG. Une fois que les différents modèles présents dans le canal auront été clairement définis, il faudrait évaluer dans quelle mesure chacun d'eux s'aligne sur les principes réglementaires en matière de protection des consommateurs. Ce n'est qu'à l'issue de ce processus que l'on pourra prendre des décisions éclairées concernant les différents modèles et déterminer si des modifications d'ordre réglementaire sont nécessaires.

En marge des principaux thèmes abordés dans le document de consultation, à savoir la normalisation et le partage de la surveillance, l'on fait remarquer qu'au départ la réglementation applicable aux assurances ne tenait pas compte du modèle des AG et que ladite réglementation n'a pas été revue en ce sens. Évidemment, dans le contexte d'une approche réglementaire fondée

sur des principes, cela n'est pas problématique, ni même étonnant. Néanmoins, à certains égards, une intervention d'ordre réglementaire pourrait être requise à l'appui des efforts que déploie l'industrie pour se conformer à l'esprit des principes. Les consultations devraient porter sur les lacunes et proposer des moyens pour les combler. L'assurance erreurs et omissions pourrait être un exemple, tout comme l'absence d'un mécanisme indépendant de règlement des différends pour les consommateurs.

L'ACCAP accueille le document de discussion, qui constitue une occasion de réfléchir à la façon dont le modèle des AG a évolué au cours des quarante dernières années. Pour cette raison, l'Association s'engage à collaborer avec les autorités de réglementation et les autres intéressés en vue d'une meilleure compréhension du modèle, afin que celui-ci continue de répondre aux besoins des assureurs et des représentants indépendants, et ce, d'une manière qui contribue à assurer la protection des consommateurs.

II

Définition

1. Y a-t-il d'autres aspects des AGA qui les différencient des AG?

> Les principaux éléments qui différencient l'Agence générale associée (AGA) de l'AG sont que l'AGA a un lien contractuel avec une AG et un représentant, ce qui en fait un intermédiaire entre les deux.

2. Quelles fonctions des AG ne s'appliquent pas aux AGA? Les activités des AGA sont-elles plus proches de celles des représentants que de celles des AG?

> Étant donné que les fonctions des AG et des AGA varient, il est difficile de comparer les deux sur ce plan. Il est probablement plus utile de considérer l'AGA comme un sous-traitant qui exécute en tout ou en partie les fonctions d'une AG. Bref, l'AGA se rapproche davantage de l'AG, bien qu'elle opère à plus petite échelle qu'elle, que de l'agent ou du représentant.

Impartition de fonctions aux AG

3. Quels sont les facteurs pris en compte par un assureur pour décider s'il va ou non impartir une activité à une AG?

> Dans le contrat d'agence passé avec l'AG, l'assureur délègue certaines fonctions à l'AG.
>
> L'assureur voudra évidemment exécuter lui-même certaines fonctions, et il fondera principalement sa décision d'impartir des fonctions à une

AG donnée sur la capacité de celle-ci à exécuter lesdites fonctions. Pour ce faire, les assureurs examinent généralement les ressources financières et en personnel de l'AG, de même que les politiques et procédures écrites pertinentes de cette dernière.

4. Comment les assureurs s'assurent-ils que les AG ont l'expertise nécessaire pour exécuter les fonctions déléguées (par exemple, formation sur les produits, conception de produits, etc.)?

La diligence requise de l'assureur au moment de passer un contrat avec une AG consiste à demander à celle-ci de remplir un sondage et de fournir des documents à l'appui, y compris ses politiques et procédures écrites concernant les fonctions imparties. Le *Sondage normalisé de l'ACCAP pour l'examen de la conformité des agences générales* comporte une liste de vérification des politiques, procédures et autres documents couramment demandés. Les assureurs utiliseront aussi divers autres moyens, y compris des visites sur les lieux, pour vérifier l'information qui leur est fournie. Une fois qu'un contrat est établi, les assureurs effectuent d'habitude un examen continu des AG, au moyen notamment de sondages, de visites sur les lieux et de divers indicateurs, y compris les affaires placées, les commissions versées, ainsi que la qualité et la conservation des affaires.

5. Y a-t-il des fonctions qui ne devraient pas être imparties aux AG (par exemple, des fonctions centrales comme la souscription et le traitement des demandes d'indemnité)? La délégation à une AG d'une fonction telle que la conception de produits influerait-elle sur le rôle de fabricant de l'assureur?

En réalité, les assureurs vie ne délèguent aux AG aucune fonction de prise de décision en matière de souscription et de traitement des règlements. En ce qui concerne la conception de produits, il est rare que les AG aient un rôle à jouer et, lorsque c'est le cas, ce rôle se limite généralement à fournir des conseils. De toute façon, l'intervention d'une AG ne diminue en rien la responsabilité de l'assureur en tant que fabricant du produit.

6. Les assureurs considèrent-ils importantes les fonctions imparties à une AG ou à une AGA, dans le cadre de leur processus de gestion du risque?

Les AG ont vu le jour lorsque l'on s'est détourné des réseaux d'agences de carrière. Comme il est indiqué dans le document de discussion, bon nombre des premières AG ont été établies par d'anciens directeurs de succursales d'assureurs afin d'offrir un soutien administratif à d'anciens agents de carrière devenus indépendants. Aujourd'hui, la plupart des assureurs qui acceptent des affaires de représentants par l'intermédiaire d'AG acceptent également des affaires directement d'agents indépendants exécutant eux-mêmes leurs tâches administratives. Dans la mesure où l'AG ne fournit que du

soutien administratif aux représentants, il ne s'agit pas d'impartition et ces fonctions ne sont pas jugées importantes pour l'assureur.

Au fil des années qui ont suivi la naissance de ce canal de distribution, certains assureurs ont décidé de déléguer à des AG diverses fonctions de contrôle de la conformité. La question de savoir si ces fonctions sont importantes et, si oui, dans quelle mesure, repose sur les modalités du contrat d'agence passé entre l'assureur et l'AG. En règle générale, compte tenu des facteurs servant à l'évaluation de l'importance des ententes d'impartition énoncés dans la Ligne directrice B-10 du BSIF, *Impartition d'activités, de fonctions, et de méthodes commerciales,* il est peu probable que les fonctions en cause soient jugées importantes.

Cela dit, soulignons que lorsqu'un assureur impartit des fonctions de contrôle de la conformité à un tiers, comme une AG, il demeure responsable de veiller à ce que l'entité soit en mesure d'exécuter les fonctions imparties et qu'elle s'acquitte bel et bien de ces fonctions.

7. Comment les assureurs devraient-ils être tenus responsables des activités imparties aux AG? La mise en place de garde-fous appropriés et la tenue d'évaluations régulières pour déterminer si l'AG répond adéquatement aux exigences de chaque fonction déléguée suffisent-elles? Les assureurs devraient-ils aussi assumer la responsabilité des erreurs commises par l'AG?

La ligne directrice LD8 de l'ACCAP, *Sélection des agents et déclaration des irrégularités*, traite de la délégation de fonctions et précise que : « Les sociétés liées par contrat avec une agence fournissant des services pour assister les agents dans la distribution de produits d'assurance peuvent déléguer, en tout ou en partie à celle-ci, des fonctions reliées à la sélection et au contrôle des agents. » Elle précise en outre que : « Même lorsqu'une société délègue les fonctions de sélection ou de contrôle, elle demeure responsable. » Le même principe s'appliquerait à des fonctions autres que celles couvertes par la LD8 qui sont imparties à une AG.

8. Que peut-on faire pour renforcer la surveillance de la conformité des fonctions imparties aux AG? La standardisation de lignes directrices touchant la surveillance de la conformité aiderait-elle les petits assureurs?

Une approche normalisée en matière de surveillance de la conformité peut être plus efficace (car elle élimine le dédoublement des tâches en plus d'accroître la clarté et la cohérence). C'est pourquoi l'ACCAP a élaboré le *Sondage normalisé pour l'examen de la conformité des agences générales*, afin d'aider les assureurs à surveiller les fonctions couvertes par la LD8 qui sont imparties aux AG. Le sondage a été élaboré en 2010 en consultation avec les sociétés membres de l'ACCAP

recourant aux AG pour la distribution, la CAILBA et des AG, et il a été communiqué aux assureurs en février 2011.

Supervision des représentants

9. Quelles activités précises les assureurs accomplissent-ils aujourd'hui pour superviser les représentants et signaler les inconduites?

Tout comme c'est le cas des autres professions exigeant l'obtention d'un permis d'exercice, l'approche adoptée par l'industrie de l'assurance vie vise à évaluer l'aptitude à exercer de l'agent. La LD8 de l'ACCAP décrit les pratiques de sélection (toute première évaluation faite avant de passer un contrat autorisant l'agent à représenter l'assureur) et de contrôle (évaluation continue). Outre les pratiques décrites dans la LD8, les assureurs surveillent les opérations des agents ayant trait à leurs produits, comme les remplacements de contrats, les polices non placées, la qualité des affaires et les écarts par rapport aux activités habituelles (volume d'affaires, montant des primes, âge des clients, etc.).

En outre, les assureurs utilisent un certain nombre de moyens pour évaluer la satisfaction des consommateurs à l'égard des agents ou du processus de vente. Les groupes de consultation, les sondages, la vérification des dossiers des clients et l'examen des plaintes en sont des exemples.

Lorsqu'un assureur reçoit une plainte ou qu'il prend connaissance d'un problème potentiel, il mène une enquête. Si l'enquête révèle que l'agent a commis une inconduite qu'il convient de signaler, l'assureur en informera les organismes de réglementation des assurances. L'ACCAP a mis au point, à l'intention des assureurs, un formulaire pour la déclaration des irrégularités assorti à sa LD8. Ce formulaire peut être utilisé dans les provinces et territoires qui n'ont pas de formulaire précis.

10. Dans la structure actuelle des AG, la détection et le signalement des « représentants inaptes à exercer » sont-ils devenus plus difficiles du fait qu'un représentant peut, en même temps, faire affaire avec plusieurs AG et plusieurs assureurs? Veuillez donner des détails S.V.P.

Nombre des facteurs énoncés dans la LD8 comme preuve de l'inaptitude à exercer peuvent être surveillés efficacement que ce soit par une ou par plusieurs personnes. Toutefois, comme nous l'avons montré dans la partie I du présent document, le partage de la surveillance peut rendre plus difficile la détection de certains facteurs. En revanche, un processus de surveillance comptant plusieurs intervenants peut, dans certains cas, accroître les chances de repérer une inconduite.

11. Faut-il que l'une ou l'autre des parties soit en mesure de surveiller les pratiques commerciales générales d'un représentant? Dans la négative, pourquoi pas? Dans l'affirmative, quelle partie (l'AG ou l'assureur) est la mieux placée pour exercer cette surveillance?

Comme nous venons de le dire, le partage de la surveillance peut rendre plus difficile la détection de certains types d'inconduites. Rien ne prouve, cependant, que cet effet théorique rende réellement la surveillance moins efficace.

Exiger d'une AG qu'elle surveille toutes les activités de son représentant pourrait avoir de lourdes conséquences tant pour l'AG que pour le représentant. Un sondage mené en 2010 par les Courtiers Indépendants en Sécurité Financière indique que la plupart des représentants ont des contrats avec plusieurs AG, et que les principaux facteurs dont il est tenu compte lors du choix d'un représentant sont l'accès aux sociétés d'assurances et le niveau du service. Si la concentration de la surveillance limite la capacité du représentant à placer des affaires par l'entremise de plusieurs AG, l'accès et le service – si prisés – que pourra offrir le représentant s'en trouveront eux aussi réduits. Du point de vue des AG, nombre d'entre elles ne disposent peut-être pas des ressources voulues pour s'acquitter de la surveillance. Comme l'indiquait notre rapport de juin 2010, *Investor Economics* estime à plus de 400 le nombre des agences au Canada, dont une centaine sont de « véritables » AG. Il est probable que bon nombre des petites agences – voire certaines des grandes –, si elles étaient tenues de surveiller les représentants, seraient forcées de revoir en profondeur leur modèle de gestion ou même de fusionner entre elles.

De la même manière, exiger de l'assureur qu'il surveille les pratiques commerciales générales des représentants pourrait avoir un profond impact sur les décisions des consommateurs et l'accès à l'assurance vie. Le canal de distribution fondé sur les agences a évolué de telle sorte que des agents indépendants offrent aujourd'hui aux consommateurs, par l'entremise d'AG, un accès centralisé aux produits de multiples assureurs. On voit mal comment ce large accès pourrait être maintenu si un assureur donné était responsable de la surveillance de l'ensemble des pratiques du représentant.

La mise en œuvre de l'une ou l'autre de ces approches ne serait sans doute possible que par voie réglementaire. Par conséquent, bien que le fait de confier la surveillance d'un représentant à une seule partie puisse présenter des avantages, ces derniers doivent être soigneusement évalués par rapport aux inconvénients potentiels de chacune des approches.

12. Compte tenu de leur proximité et de leurs liens étroits avec les représentants, les AG devraient-elles être responsables du signalement des actes contestables commis par des représentants :

a. aux assureurs avec lesquels ils ont une entente?

b. aux organismes de réglementation des assurances?

Dans le cadre des contrats d'agence passés avec les AG, les assureurs exigent d'habitude de ces dernières qu'elles leur fassent part, dès qu'elles s'en aperçoivent, des activités contestables relatives à leurs produits. L'objectif de cette exigence contractuelle est de permettre aux assureurs d'enquêter dans les meilleurs délais.

Comme il est précisé dans la réponse à la question 9, l'approche générale suivie en assurance vie veut que l'assureur se charge d'enquêter sur la conduite de ses représentants et, s'il conclut qu'un agent est inapte à exercer, de faire rapport aux organismes de réglementation. Selon cette façon de faire, l'AG peut assister l'assureur dans l'enquête sans toutefois être au courant de toutes les circonstances exposées durant l'enquête. Si les AG étaient tenues de signaler directement aux organismes de réglementation les « actes contestables », cela pourrait donner lieu à des situations où des rapports sont envoyés avant que l'enquête soit terminée. En outre, si, en plus des assureurs, les AG signalaient les actes contestables, cela se traduirait par des rapports en double et pourrait prêter à confusion. Par conséquent, s'il est jugé que des changements aux protocoles actuels en matière de signalement s'imposent, l'on devrait envisager de procéder par voie réglementaire afin d'assurer la cohérence et de réduire au minimum le risque de confusion.

13. Comment est traité le signalement d'une inconduite lorsque le représentant est titulaire de deux permis? Une inconduite dans un secteur devrait-elle être signalée dans les autres secteurs pour lesquels le représentant possède un permis?

Les assureurs signalent les inconduites des représentants détenant deux permis aux organismes de réglementation des assurances. Habituellement, si l'assureur est affilié à un courtier, l'assureur signalera l'inconduite au courtier qui, si cela est conforme à la réglementation applicable aux valeurs mobilières, la signalera à son tour à l'organisme de réglementation des valeurs mobilières. Les régimes de réglementation distincts qui encadrent les assurances et les valeurs mobilières attestent du caractère spécialisé et de la complexité des produits et services en cause. Les exigences réglementaires actuellement en place font en sorte que les autorités de réglementation concernées reçoivent l'information dont elles ont besoin en cas d'inconduite d'un représentant.

Gestion des conflits d'intérêts

14. Dans quelle mesure une AG peut-elle influencer ou influence-t-elle les décisions de ses représentants de faire souscrire une police auprès d'un assureur plutôt qu'un autre? Comment cela est-il contrôlé?

> Habituellement, une AG passe des contrats avec un petit nombre d'assureurs qui ont recours à ce canal de distribution. S'il peut paraître évident que c'est là une situation propre à contraindre les décisions des agents associés à l'AG, il faut savoir que la plupart des agents peuvent conclure des contrats de représentation avec d'autres assureurs.
>
> Sauf en ce qui a trait aux fonctions que confie l'assureur à l'AG, les détails de la relation entre l'AG et ses représentants font l'objet du contrat passé entre les deux parties. Si quelque aspect que ce soit de la relation est susceptible d'influer sur les recommandations du représentant, celui-ci est tenu d'en informer le consommateur. Le représentant entretient en outre un lien contractuel direct avec l'assureur. L'une des conditions de ce contrat est que le représentant adhère au code de déontologie de l'assureur et se conforme aux normes de l'industrie et aux règlements pertinents, y compris l'obligation de placer des produits appropriés par rapport aux besoins des clients.

15. Étant donné que les AG touchent des commissions des assureurs en fonction du chiffre d'affaires généré par les représentants, quelle sorte de divulgation aux consommateurs (concernant cette commission en particulier) est effectuée aujourd'hui par les représentants? Par l'assureur?

> Conformément au document de référence publié en 2005 par l'ACCAP et intitulé *Communication de renseignements concernant les conseillers,* l'agent doit notamment préciser au consommateur quels assureurs il représente et le fait qu'il touche des commissions. Ces exigences de divulgation ont reçu l'aval du Comité de révision des pratiques de l'industrie du CCRRA, qui a reconnu qu'elles respectent les principes entérinés par les autorités de réglementation en matière de gestion des conflits d'intérêts.
>
> Hormis les renseignements sur la rémunération contenus dans la documentation remise lors de la souscription de contrats individuels à capital variable, les assureurs ne fournissent généralement pas de données de cet ordre aux consommateurs.

16. Quelles sont les attentes des assureurs lorsque la supervision des pratiques de vente est déléguée aux AG? Le contrôle exercé consiste-t-il seulement à s'assurer que tous les éléments nécessaires à la présentation

d’une proposition sont présents (la forme) ou s’étend-il à la nature du conseil prodigué (la teneur)?

L'assureur qui délègue certaines ou l'ensemble de ses fonctions de supervision à une AG attend de cette dernière qu'elle s'acquitte desdites fonctions de manière à atteindre des résultats comparables à ceux qu'obtiendrait l'assureur s'il s'en acquittait lui-même. Comme nous l'avons indiqué dans notre réponse à la question 8, les assureurs ont récemment convenu d'adopter un sondage normalisé dans le cadre d'un programme exhaustif d'évaluation de l'aptitude des AG à s'acquitter des fonctions qui leur sont imparties. Le sondage indique de façon claire et cohérente les attentes en la matière et la façon de déterminer si les AG les satisfont.

Cela dit, la question 16 semble présupposer une dualité qui est trompeuse. Il existe une gamme d'options entre « forme » (information complète) et « teneur » (pertinence du conseil fourni). Comme nous l'indiquons dans notre introduction et dans la réponse à la question 9, la surveillance en assurance vie porte surtout sur l'aptitude à exercer de l'agent, mais tient également compte des activités habituelles des représentants en matière de vente et de conseils.

Opérations de vente et traitement des plaintes

17. Quels problèmes ont surgi à ce jour à l’égard d’erreurs commises dans des transactions impliquant des AG et comment ont-ils été réglés? Comment les consommateurs savent-ils à qui s’adresser dans ces cas?

L'ACCAP n'a pris connaissance d'aucun problème systémique concernant le traitement des transactions par les AG. Advenant qu'une erreur ne soit pas repérée et rectifiée avant que le consommateur ne s'en aperçoive, l'on suppose que le consommateur contacterait d'abord soit l'assureur soit l'agent, l'un et l'autre étant clairement identifiés et connus du consommateur.

18. Qui serait responsable des erreurs commises dans des transactions impliquant des consommateurs et traitées par l’entremise d’AG? Les représentants et les assureurs assument-ils la responsabilité des erreurs commises par une AG quand elles ont une incidence négative sur un consommateur?

L'assureur demeure responsable du préjudice subi par un client résultant de l'exécution d'une fonction impartie. Pour ce qui est des autres erreurs, la plupart des provinces et territoires exigent que l'agent et l'AG détiennent une assurance de la responsabilité civile professionnelle en vue de l'indemnisation des consommateurs.

19. Existe-t-il, dans l'entente conclue entre l'AG et le représentant, une obligation pour ce dernier de déclarer à l'AG toutes les plaintes déposées contre lui et l'état de celles-ci?

Comme l'indique le *Sondage normalisé de l'ACCAP pour l'examen de la conformité des agences générales*, les assureurs s'attendent à ce que les AG exigent de leurs représentants qu'ils leur signalent les plaintes des clients (question 31) ou à ce que les AG soient dotées d'une politique documentée en matière de traitement des plaintes permettant d'atteindre le même résultat (question 32).

20. Est-il nécessaire que toutes les plaintes reçues contre les représentants ou les AG puissent être soumises à l'Ombudsman des assurances de personnes, et dans l'affirmative, comment cela peut-il être accompli?

Les sociétés d'assurance vie sont tenues d'adhérer à un organisme tiers de règlement des différends, par exemple l'Ombudsman des assurances de personnes (OAP). Toutefois, cette obligation ne s'étend ni aux agents ni aux AG. Le mandat de l'OAP couvre les plaintes à l'endroit des agents indépendants uniquement lorsque l'agent agit au nom d'une société d'assurances donnée et que celle-ci en assume la responsabilité. Dans les autres cas, les plaintes concernant des agents sont redirigées vers les organismes de réglementation pertinents. Ces derniers ont compétence en matière de plaintes contre les agents.

Pour déterminer s'il conviendrait d'étendre l'autorité de l'OAP aux AG, il faudrait d'abord définir clairement les rôles et les responsabilités de chacune des parties en cause. Si, de par leurs fonctions, les AG s'exposent à un risque unique de plainte de la part des consommateurs, étendre l'autorité de l'OAP serait une solution possible, dont la mise en œuvre nécessiterait toutefois une approche d'ordre réglementaire.

Protection de la vie privée

21. Si un consommateur ignore l'existence d'une AG entre lui et l'assureur, comment le consentement à recueillir des renseignements personnels est-il donné à l'AG? Les assureurs ou les représentants obtiennent-ils le consentement à divulguer aux AG les données personnelles d'un consommateur?

En général, les dispositions des propositions d'assurance touchant la protection des renseignements personnels comprennent une demande de consentement concernant l'accès de tiers (partenaires de distribution) aux renseignements sur le client.

L'industrie s'est engagée à assurer le respect de la vie privée des consommateurs d'assurances de personnes. L'ACCAP et ses sociétés

membres s'attachent depuis longtemps à protéger les renseignements personnels. Ainsi, dès 1980 l'Association a adopté des lignes directrices sur le droit à la vie privée; il s'agissait du premier code de protection des renseignements personnels à être adopté par un groupe sectoriel au Canada. Plus récemment, elle a collaboré étroitement avec la Commission d'accès à l'information du Québec à la mise en œuvre dans la province de la *Loi sur la protection des renseignements personnels dans le secteur privé*. L'Association a en outre participé activement à la mise au point de la *Loi* (fédérale) *sur la protection des renseignements personnels et les documents électroniques* (LPRPDÉ), y compris le *Code type sur la protection des renseignements personnels* de l'Association canadienne de normalisation, qui est intégré à la LPRPDÉ, ainsi que des lois sur la protection des renseignements personnels de l'Alberta et de la Colombie-Britannique. Enfin, l'ACCAP a collaboré avec les territoires ayant adopté des lois visant la protection des renseignements médicaux personnels.

22. Les AG conservent-elles des renseignements personnels et, si tel est le cas, à quelles fins? Au nom de qui ces renseignements sont-ils conservés?

Dans le contexte des services administratifs que les AG fournissent à leurs représentants, il n'est pas rare qu'elles leur allouent un espace où conserver les propositions et autres documents faisant partie des dossiers des clients. Ces renseignements sont conservés au nom des agents.

23. En plus des lois sur la protection de la vie privée, comment tient-on les AG responsables de la protection des renseignements personnels aujourd'hui?

Les dispositions du contrat passé entre l'assureur et l'AG ainsi que les codes de déontologie appuient et, dans certains cas, élargissent les exigences des lois.

Surveillance des AG

24. Pensez-vous que le régime de délivrance de permis existant et que le niveau d'assurance de responsabilité exigé sont suffisants, compte tenu des fonctions exécutées par une AG dans le marché actuel?

Comme il est mentionné dans la partie I du présent document, le modèle des AG a évolué à l'intérieur du cadre réglementaire applicable à l'assurance vie. Du fait que, d'une part, elles jouent un rôle dans la remise des propositions d'assurance et que, d'autre part, elles touchent une partie des commissions versées par les assureurs, les AG sont assujetties au régime de délivrance de permis. Étant donné que le document de discussion a pour but de favoriser une meilleure compréhension du modèle, l'on devrait attendre, pour tirer des

conclusions touchant le régime de délivrance de permis, d'avoir évalué en profondeur et de façon précise dans quelle mesure les pratiques actuelles s'alignent sur les objectifs réglementaires.

Les exigences concernant l'assurance de la responsabilité civile professionnelle varient à l'échelle du Canada. Par exemple, seuls le Québec, l'Ontario et la Colombie-Britannique exigent des agences et des personnes morales détenant un permis qu'elles souscrivent une telle assurance. C'est en raison de ces variations que l'ACCAP a publié, en mars 2008, conjointement avec Advocis, la CAILBA et les CISF, un avis informant les AG des risques auxquels elles s'exposent et de l'importance de détenir une assurance erreurs et omissions. Cet avis précise que, dans certains cas, une assurance requise dans une province peut ne pas être adéquate.

25. L'absence de règles précises sur les fonctions et responsabilités d'une AG crée-t-elle un manque d'uniformité quant au fonctionnement des AG et quant au niveau des services qu'elles offrent?

Il ne fait aucun doute que l'« absence de règles précises » a permis l'émergence de divers modèles opérationnels au sein du canal des AG. Mais plutôt que de considérer la situation du point de vue de l'absence de règles, il conviendrait de souligner la nature de la réglementation applicable aux assurances, laquelle se fonde sur des principes, et sa souplesse inhérente. On peut arguer que l'une des forces de cette approche est qu'elle tolère une certaine diversité, permettant à l'industrie de trouver des moyens de réaliser des économies tout en assurant le niveau voulu de protection des consommateurs. S'il est vrai que les AG ne s'acquittent pas toutes de fonctions identiques, il n'est pas sûr que le niveau de service offert relativement à une fonction donnée varie d'une AG à l'autre.

26. Outre la résiliation d'une entente en vigueur, comment les assureurs traitent-ils l'inconduite d'une AG aujourd'hui? Les assureurs signalent-ils l'inconduite d'une AG aux organismes de réglementation?

Les principaux recours permettant de faire exécuter la relation entre l'assureur et l'AG sont d'ordre contractuel et comprennent la résiliation. Dans certains cas d'inconduite, l'assureur signalera aux autorités un dirigeant détenteur d'un permis d'agent vie ou l'AG elle-même comme étant inapte.

Carol Shevlin

From: Yves Gosselin [yves.gosselin@yahoo.ca]
Sent: April 07, 2011 5:27 PM
To: CCIR-CCRRA
Cc: 'Michel Kirouac'
Subject: Réponses aux questionnaire du CRA - MGA du Québec
Attachments: Réponse au questionnaire du CRA - MGA du Québec.doc

Bonjour,

Vous trouverez ci-joint la réponse au questionnaire soumis par le Comité de réglementation des agences afin d'alimenter la réflexion autour du document "Modèle de distribution des produits d'assurance vie fondé sur les agences générales" déposé en février dernier.

Ce questionnaire est la synthèse des réponses élaborées par un comité de travail formé de 16 agences générales distribuant des produits d'assurance vie au Québec.

La réponse au questionnaire du Comité de réglementation des agences sera suivie d'une deuxième intervention du groupe de travail qui compte produire dans les prochaines semaines un mémoire explorant avec plus de profondeur certains enjeux soulevés dans le document produit par le CRA.

Espérant le tout à votre satisfaction, nous demeurons à votre disposition si vous avez besoin de plus amples informations.

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Merci de penser à l'environnement avant d'imprimer ce courriel

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http://www.eset.com

1. **Y a-t-il d'autres aspects des AGA qui les différencient des AG?**

   Non, la description faite dans le document nous paraît conforme à la réalité.

2. **Quelles fonctions des AG ne s'appliquent pas aux AGA? Les activités des AGA sont-elles plus proches de celles des représentants que de celles des AG?**

   La plupart des fonctions imparties aux AG sont applicables aux AGA mais à échelle réduite. Généralement, les AGA se concentrent davantage sur les activités reliées à la vente et leur implication au niveau des activités de nature administrative sont limitées. Très souvent, les dirigeants des AGA sont eux-mêmes des représentants.

   Il demeure cependant que même si certaines activités sont déléguées par l'AG à l'AGA, ultimement, l'AG demeure responsable devant l'assureur des activités déléguées à l'AGA.

3. **Quels sont les facteurs pris en compte par un assureur pour décider s'il va ou non impartir une activité à une AG?**

   Il ne semble pas y avoir de modèle uniforme pour encadrer le processus décisionnel d'impartition d'une activité par un assureur à une AG. Certains contrats commerciaux liant l'assureur et l'AG déterminent globalement les activités qui relèvent de l'AG mais par la suite, le processus est plutôt du cas par cas.

   Souvent, le volume de ventes permettra de spécifier certaines fonctions qui seront alors prise en charge par l'AG mais aucune règle précise ne semble baliser le processus. Il existe une distinction importante à ce niveau entre certains AG comme par exemple les Comptes nationaux. En effet, ces agents généraux ou ces comptes

nationaux ont décidé de prendre plus de responsabilités et ceci est en lien avec le fait qu'ils ont généralement des représentants « rattachés » au Québec. Leur modèle d'encadrement qui ressemble davantage au modèle « agence de carrière » exige souvent une supervision différente des AG qui ne transigent que par des représentants autonomes ou des cabinets.

4. **Comment les assureurs s'assurent-ils que les AG ont l'expertise nécessaire pour exécuter les fonctions déléguées (par exemple, formation sur les produits, conception de produits, etc.)?**

Depuis quelque temps, certains assureurs exigent aux AG de compléter des questionnaires sur les pratiques de conformité. Ces questionnaires sont parfois accompagnés de visites sur place de personnes déléguées par l'assureur. Le questionnaire découlant de la ligne directrice LD8 de l'Association canadienne des compagnies d'assurances de personnes est très complet et devrait servir de base pour tous les assureurs.

5. **Y a-t-il des fonctions qui ne devraient pas être imparties aux AG (par exemple, des fonctions centrales comme la souscription et le traitement des demandes d'indemnité)? La délégation à une AG d'une fonction telle que la conception de produits influerait-elle sur le rôle de fabricant de l'assureur?**

Les fonctions fondamentales, telle la souscription et le traitement des demandes d'indemnités ne sont pas actuellement imparties aux AG.

Il semble évident que les fonctions de tarification, réclamation, gestion des primes, devraient être toujours sous la responsabilité de l'assureur.

Dans certains cas, les fonctions de développement de produits sont faites en étroite collaboration avec une AG qui veut spécialiser son offre commerciale dans une niche précise.

Est-ce que la délégation complète d'une telle fonction aurait une influence sur le rôle de fabricant de l'assureur?

Il est difficile de répondre en pratique à cette question puisque la réponse appartient davantage à l'assureur qu'au distributeur. Il est cependant important de noter que même si le AG devait participer à la conception d'un produit, la responsabilité de son « pricing », de ses garanties, des risques associés, de la réassurance etc., devrait toujours être la responsabilité ultime de l'assureur.

6. **Les assureurs considèrent-ils importantes les fonctions imparties à une AG ou une AGA, dans le cadre de leur processus de gestion du risque?**

Oui, les assureurs prennent de plus en plus conscience que l'impartition de fonctions à une AG doit comporter des balises qui vont venir resserrer la gestion du risque.

Nous croyons qu'il est important que le partage des fonctions avec les assureurs soit un processus transparent et cohérent afin de mieux protéger les consommateurs.

7. **Comment les assureurs devraient-ils être tenus responsables des activités imparties aux AG? La mise en place de garde-fous appropriés et la tenue d'évaluations régulières pour déterminer si l'AG répond adéquatement aux exigences de chaque fonction déléguée suffisent-elles? Les assureurs**

devraient-ils aussi assumer la responsabilité des erreurs commises par l'AG?

De façon générale, le processus d'impartition des assureurs se fait sur la base d'activités plutôt que de responsabilités. Nous croyons que la mise en place de mécanismes appropriés pour baliser ces activités et une évaluation régulière des processus en découlant devraient permettre de mieux gérer leurs responsabilités à l'égard des distributeurs.

8. **Que peut-on faire pour renforcer la surveillance de la conformité des fonctions imparties aux AG? La standardisation de lignes directrices touchant la surveillance de la conformité aiderait-elle les petits assureurs?**

   Oui, nous croyons que la standardisation de lignes directrices touchant la surveillance de la conformité devrait améliorer le processus d'encadrement, quelque soit la taille de l'assureur ou de l'AG.

9. **Quelles activités précises les assureurs accomplissent-ils aujourd'hui pour superviser les représentants et signaler les inconduites?**

   Actuellement, plusieurs assureurs ont mis en places des activités pour superviser la conduite des représentants notamment la gestion des plaintes de clients, des plaintes des autres représentants, des plaintes inter-compagnies, la consultation des rôles d'audience et des décisions du syndic de la Chambre de la sécurité financière, de l'AMF, etc.

Ces processus devraient à notre avis être normalisés et systématisés afin d'optimiser la protection des consommateurs à l'égard de représentant qui commettent des inconduites professionnelles.

10. **Dans la structure actuelle des AG, la détection et le signalement des « représentants inaptes à exercer » sont-ils devenus plus difficiles du fait qu'un représentant peut, en même temps, faire affaire avec plusieurs AG et plusieurs assureurs? Veuillez donner des détails S.V.P.**

    Nous sommes conscients que le fait qu'un représentant puisse placer ses affaires par l'intermédiaire de plusieurs distributeurs (AG) a un effet réducteur sur la supervision et par conséquent rend plus difficile la détection des « représentants inaptes à exercer ». Une mauvaise pratique avec cinq (5) AG différentes est inévitablement plus difficile à reconnaitre que cinq (5) mauvaises pratiques avec la même AG.

11. **Faut-il que l'une ou l'autre des parties soit en mesure de surveiller les pratiques commerciales générales d'un représentant? Dans la négative, pourquoi pas? Dans l'affirmative, quelle partie (l'AG ou l'assureur) est la mieux placée pour exercer cette surveillance?**

    Nous croyons que les AG ont un rôle à jouer dans la surveillance des pratiques commerciales générales d'un représentant.

    Nous croyons qu'il n'existe pas de partie mieux placée (l'AG ou l'assureur) pour exercer cette surveillance et que c'est plutôt un exercice de partenariat étroit qui servira le mieux l'intérêt des consommateurs.

12. **Compte tenu de leur proximité et de leurs liens étroits avec les représentants, les AG devraient-elles être responsables du**

signalement des actes contestables commis par des représentants :

a. aux assureurs avec lesquels ils ont une entente?

Oui.

b. aux organismes de réglementation des assurances?

Oui.

13. Comment est traité le signalement d'une inconduite lorsque le représentant est titulaire de deux permis? Une inconduite dans un secteur devrait-elle être signalée dans les autres secteurs pour lesquels le représentant possède un permis?

Actuellement les inconduites « professionnelles » sont référées aux autorités règlementaires et aux assureurs et les écarts « généraux » de conduites rapportés aux assureurs et ce, en conformité avec la plupart des ententes de distribution.

Au Québec, le modèle centralisé de l'Autorité des marchés financiers permet d'assurer un transfert des informations, quelque soit le secteur d'activité du représentant : assurance, valeurs mobilières, épargnes collectives, etc. ce qui assure une meilleur protection des consommateurs. Nous sommes donc en parfait accord qu'un manquement dans une discipline devrait être signalé dans toutes les disciplines du représentant auprès des autorités même si les conséquences pourraient varier selon les règles de chaque secteur.

14. Dans quelle mesure une AG peut-elle influencer ou influence-t-elle les décisions de ses représentants de faire souscrire une police auprès d'un assureur plutôt qu'un autre? Comment cela est-il contrôlé?

Cette influence est très variable selon les AG et les représentants.

Certaines AG ont un modèle d'affaires privilégiant un nombre restreint d'assureurs avec qui elles ont des liens très étroits. D'autres ont un modèle d'affaire maximisant l'offre de courtage. Dans tous les cas, c'est le représentant qui prend la décision finale sur le choix de l'assureur pour son client, et outre le rôle de conseil de l'AG, l'influence de l'AG est minime sur le choix du produit ou de l'assureur.

15. **Étant donné que les AG touchent des commissions des assureurs en fonction du chiffre d'affaires généré par les représentants, quelle sorte de divulgation aux consommateurs (concernant cette commission en particulier) est effectuée aujourd'hui par les représentants? Par l'assureur?**

Actuellement, il n'y a aucun mécanisme qui prévoit la divulgation des commissions touchées par les AG en fonction du chiffre d'affaires généré par les représentants. Tel qu'expliqué à la question 14, si l'impact du AG est minime sur le choix de l'assureur, nous croyons que cette divulgation est sans intérêt et sans répercussion pour le consommateur.

16. **Quelles sont les attentes des assureurs lorsque la supervision des pratiques de vente est déléguée aux AG? Le contrôle exercé consiste-t-il seulement à s'assurer que tous les éléments nécessaires à la présentation d'une proposition sont présents (la forme) ou s'étend-il à la nature du conseil prodigué (la teneur)?**

Comme la première partie de cette question réfère aux attentes des assureurs, nous croyons qu'il serait plus avisé de leur poser directement la question.

Selon notre perception et notre expérience, la majorité des assureurs

s'attendent à ce que les AG exercent un contrôle sur l'assemblage de tous les éléments nécessaires à la présentation d'une proposition (la forme) plutôt que sur la pertinence du produit (la teneur).

17. **Quels problèmes ont surgi à ce jour à l'égard d'erreurs commises dans des transactions impliquant des AG et comment ont-ils été réglés? Comment les consommateurs savent-ils à qui s'adresser dans ces cas?**

    Lorsque des erreurs sont commises dans les transactions, le représentant, l'AG et l'assureur travaillent ensemble à trouver une solution satisfaisante pour toutes les partie et ce, dans une perspective de service de qualité pour le consommateur.

    Si le consommateur est insatisfait du règlement qui lui est offert, l'encadrement règlementaire au Québec prévoit des mécanismes indépendants pour arbitrer son différend.

18. **Qui serait responsable des erreurs commises dans des transactions impliquant des consommateurs et traitées par l'entremise d'AG? Les représentants et les assureurs assument-ils la responsabilité des erreurs commises par une AG quand elles ont une incidence négative sur un consommateur?**

    Généralement, les erreurs commises dans des transactions impliquant des consommateurs et traitées par l'entremise d'AG sont réglées dans un esprit de collaboration entre le représentant, l'AG et l'assureur impliqué dans le dossier.

19. **Existe-t-il, dans l'entente conclue entre l'AG et le représentant, une obligation pour ce dernier de déclarer à l'AG toutes les plaintes déposées contre lui et l'état de celles-ci?**

En général, les ententes entre les AG et leurs représentants prévoient cette situation.

20. Est-il nécessaire que toutes les plaintes reçues contre les représentants ou les AG puissent être soumises à l'Ombudsman des assurances de personnes, et dans l'affirmative, comment cela peut-il être accompli?

Ce mécanisme est déjà en place et notre expérience nous démontre qu'il est bien utilisé et promu par les intervenants. Nous ne voyons pas la nécessité de le modifier.

21. Si un consommateur ignore l'existence d'une AG entre lui et l'assureur, comment le consentement à recueillir des renseignements personnels est-il donné à l'AG? Les assureurs ou les représentants obtiennent-ils le consentement à divulguer aux AG les données personnelles d'un consommateur?

L'AG ne recueille pas les informations personnelles d'un consommateur. Cependant, ces données sont fondamentales pour évaluer le risque qui sera soumis à l'assureur. Comme le rôle de l'AG est, entre autres choses, d'aider le représentant à fournir le dossier le plus complet possible à l'assureur, l'AG doit entreposer de façon confidentielle ces informations et ce, pour le temps de traiter le dossier.

Certaines AG prévoient la signature d'un formulaire pour obtenir l'autorisation formelle du consommateur de détenir ces informations alors que certaines propositions avisent le consommateur que ces informations peuvent transiter par un AG. Mais de façon générale, il n'y a pas de règles uniformes pour traiter de cette question. L'absence de clarté ou de divulgation à cet égard nous apparait comme une lacune qui pourrait résulter à des questionnements ou des plaintes de la part des

consommateurs.

22. Les AG conservent-elles des renseignements personnels et, si tel est le cas, à quelles fins? Au nom de qui ces renseignements sont-ils conservés?

Les renseignements sont conservés pour procéder à la complétion du dossier qui sera envoyé à l'assureur afin d'évaluer le risque. Cette information est conservée au bénéfice de l'assureur et du représentant afin de permettre de traiter le plus rapidement et le plus efficacement possible le dossier. Les politiques de rétention des documents varient beaucoup.

La coexistence des statuts « rattachés » et « autonome » pose des problèmes à cet égard : le cabinet qui est une AG doit conserver les dossiers clients de ses représentants « rattachés » alors que le cabinet qui est une AG et qui fait affaire avec des « autonomes » ne devrait conserver ces documents que pour le traitement des dossiers. Dans les deux cas, il est possible que le client n'ait jamais consenti « formellement » à la détention de ses informations personnelles.

23. En plus des lois sur la protection de la vie privée, comment tient-on les AG responsables de la protection des renseignements personnels aujourd'hui?

Une AG doit respecter les lois de protection de la vie privée puisque le traitement confidentiel de ces informations est au cœur de son modèle d'affaire. D'ailleurs la plupart des AG font signer à leurs employés des ententes de confidentialité. Tout manquement à la confidentialité lors du traitement de ces renseignements pourrait nuire considérablement à l'entreprise.

24. Pensez-vous que le régime de délivrance de permis existant et que le niveau d'assurance responsabilité exigé sont suffisants, compte tenu des fonctions exécutés par une AG dans le marché actuel?

Le régime de délivrance des permis existant varie considérablement en fonction de la réglementation des juridictions provinciales et aucun de ces régimes ne reconnaît de façon spécifique la nature exacte des activités des AG. En conséquence, aucun permis spécifique n'est relié au statut d'AG, ce qui ne nous permet pas d'être reconnus officiellement dans la structure de la distribution des services financiers, contrairement et par exemple aux cabinets en fonds communs de placements.

De plus, une clarification du rôle des AG permettrait certainement d'évaluer avec beaucoup plus de précision le risque couvert par une assurance responsabilité et par conséquent d'assurer une couverture convenable.

25. L'absence de règles précise sur les fonctions et responsabilités d'une AG crée-t-elle un manque d'uniformité quant au fonctionnement des AG et quant au niveau des services qu'elles offrent?

Le modèle d'affaire des AG peut varier selon la mission commerciale de l'entreprise. Ces variations viennent élargir l'offre de service dans le marché permettant aux conseillers de faire affaire avec des entreprises qui offrent les services les mieux adaptés à leur pratique professionnelle.

Le manque d'uniformité ne doit donc pas être perçu comme un

élément négatif mais plutôt comme une valeur ajoutée à une offre dans un marché. Il est important de déterminer clairement les responsabilités de base d'une AG et de laisser le modèle commercial répondre à une demande diversifiée dans le marché.

26. Outre la résiliation d'une entente en vigueur, comment les assureurs traitent-ils l'inconduite d'une AG aujourd'hui? Les assureurs signalent-ils l'inconduite d'une AG aux organismes de réglementation?

Les assureurs traitent généralement l'inconduite d'une AG avec une approche de cas par cas.

Est-ce qu'ils signalent l'inconduite d'une AG aux organismes de réglementation? Malheureusement, nous n'avons pas d'information nous permettant de répondre à cette question.

Liste des AG qui ont répondu à ce questionnaire

Agences d'assurance Copoloff

Cabinet d'assurance Banque Nationale

Centre national de courtage d'assurance

Conseils PPI

Financière Hub

Financière S Entiel

Force financière Excel

Groupe CGL

Groupe CMA

Groupe Cloutier

Groupe financier BBA

Groupe Financier Botica

Groupe financier Horizons

Lafond services financiers

Services d'assurances Peak

Stratégie financière Impact

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April 8, 2011

CCIR Secretariat
5160 Yonge Street, Box 85
17th Floor
Toronto ON M2N 6L9

Submitted by email: ccir-ccrra@fsco.gov.on.ca

Dear Sirs/Madam:

Subject: Issues Paper Managing General Agencies Life Insurance Distribution Model

Independent Financial Brokers (IFB) is pleased to submit our comments to the above-noted paper.

We trust that you will find them useful and assist in furthering the understanding of the nature of the distribution of life insurance as it exists today.

We would be pleased to discuss any of the contents of our submission with you in further detail at any time.

Yours truly,

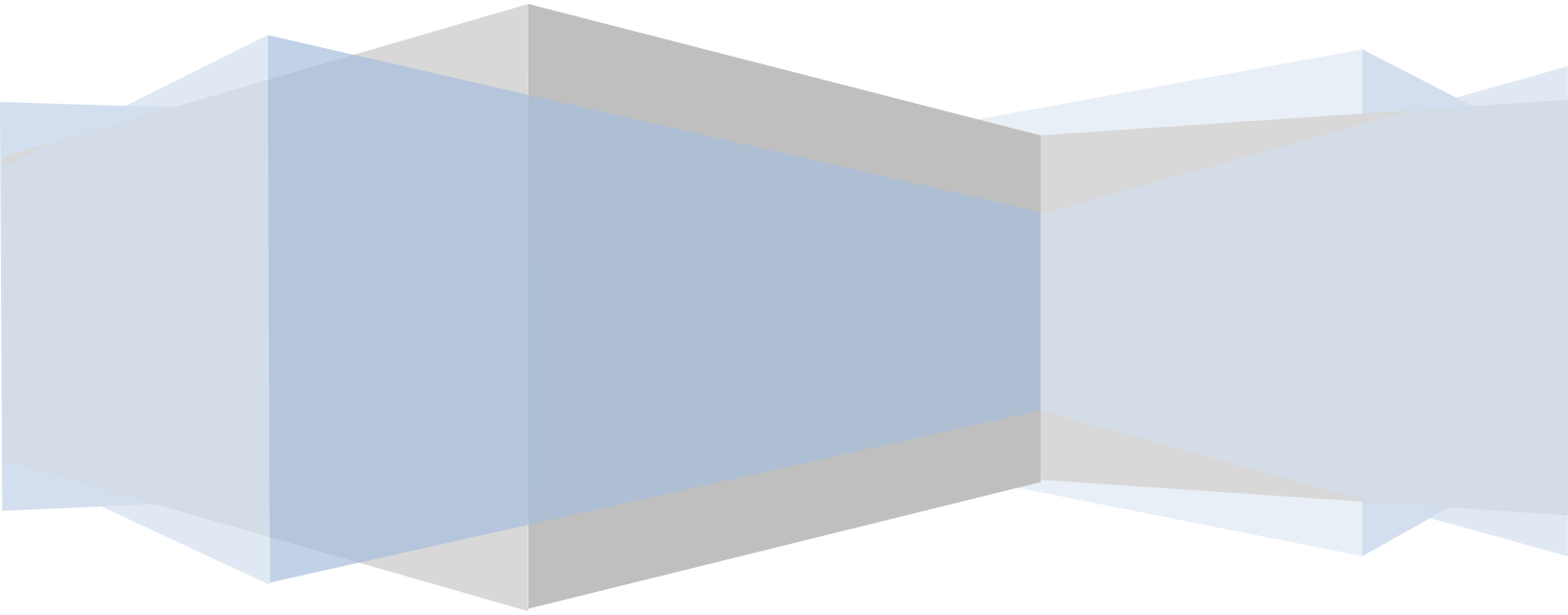


John Whaley
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Independent Financial Brokers of Canada (IFB)

IFB Comments on Issues Paper - Managing General Agencies: Life Insurance Distribution Model

Prepared for the Canadian Council of Insurance Regulators (CCIR), April 2011



IFB Comments on the CCIR Issues Paper

Managing General Agencies: Life Insurance Distribution Model

Introduction

Independent Financial Brokers of Canada (IFB) welcomes the opportunity to assist the Canadian Council of Insurance Regulators (CCIR) in furthering the understanding of the current distribution of life insurance products to Canadian consumers. We appreciate the ongoing dialogue insurance regulators engage in with industry stakeholders and their commitment to principles based regulation. We believe that this interchange of knowledge and discussion lends itself to establishing smart regulation, rather than leading to over-regulation of the marketplace.

Independent Financial Brokers of Canada

IFB is a professional trade association whose members are located across Canada and are licensed to provide financial advice and products to clients. Many of our members are licensed or hold the professional designations necessary to provide complementary financial services, in addition to life insurance. For example, many would also be securities/mutual fund registrants, financial planners, mortgage brokers or P&C brokers. However, for the purposes of responding to this Issues Paper, our remarks will focus on the distribution of individual life insurance.

It is important to note that IFB membership is restricted to brokers who operate as independent contractors. That is, they are self employed, often sole proprietors or owner operators of their business. They have chosen this business model because they believe strongly that their ability to access products from a variety of insurers means they can provide their clients with the most suitable product to meet that client's needs.

IFB traces its roots to over 25 years ago when a handful of former career agents joined together to advocate for more product choice for their clients. Today, the independent channel is well-established and the largest deliverer of insurance.

Life Insurance

Life insurance is an essential product in the financial toolbox. It is unique from most other financial products in that it is generally a long term purchase intended to provide financial security in the event of death, disability or long-term illness. While it may contain an investment element, it is not bought and sold like other financial investment products.

Providing clients with life insurance advice and products is a major part of what our members do. These products have become increasingly complex and the choices available to clients often require the attention of a professional, knowledgeable, caring broker who spends the time to research the various

alternatives available so that the product chosen reflects the needs of that individual, his/her family or business.

Life insurance sales take place in a competitive environment where consumers are free to choose services and/or products from an independent representative, an employee of an insurance company or over the internet. We believe that the range of choices available to the public enhances consumer protection.

Variability of arrangements as an Issue

A central issue raised in the paper is the wide variance in the level and types of services MGAs provide to brokers and insurers. MGAs do vary greatly in their size and organizational complexity. Some function as sister companies to a mutual fund or securities dealer and have in-house compliance personnel. Others will be stand-alone insurance only entities, which exist solely to provide administrative convenience for the insurers and brokers who do business with them. The fact that differences such as these exist is a reflection of the needs of the marketplace and perhaps even the local community they are situated in. The arrangements they share in common, though, are the contractual relationships, which set out the expectations of each party - these parties being the MGA and insurer, insurer and broker, and broker and MGA.

We are not aware that because there is not a standard MGA contract, that this has led to problems for consumers. However, if regulators wish to address some of this variability they may consider harmonizing certain requirements, already in place in some provinces, such as requiring a separate licensing category for MGAs/AGAs, and setting some minimum practice standards, including the requirement for E&O insurance.

Supervision as an Issue

Supervision, and the responsibility of each of the parties (i.e. the insurer, MGA and broker) with regard to market oversight of the sale of insurance, is another issue of concern raised in this paper. Historically, agents were supervised by a single company through branch offices. In today's market, an independent broker can have arrangements with many insurers and place business with one or more MGAs. In our view, this is appropriate and should not be construed as leading to a lower level of supervision or reducing consumer protection.

Regulators have established entry criteria (e.g., completion of the LLQP, good character, minimum education, etc.) and ongoing licensing requirements to filter unsuitable representatives. Many provinces have initial and ongoing sponsorship requirements in order for a broker to be licensed. In addition, regulators have the power to suspend or terminate a license. In a competitive marketplace, brokers can choose the insurance companies and MGAs that they wish to place business with. Similarly, insurance companies and MGAs can choose not to contract with a particular broker.

However, to address some of the supervisory issues and assist with due diligence, regulators may wish to establish a centralized registry where consumers, insurers, agencies and others could easily access information when enforcement action has been taken against an agency, broker/agent and insurer in any provincial/territorial jurisdiction.

IFB Survey

In order to accurately reflect the business arrangements that exist between independent brokers, MGAs or AGAs, insurance companies and ultimately consumers, IFB prepared an on-line survey, using Survey Monkey. The survey results reflected below are based on information gathered between March 3 and March 31, 2011, although the survey remains open and continues to attract respondents.

You may recall we did a similar survey in preparation for our previous submission to the CCIR in 2009. That survey attracted 400 respondents which was a significant number. In contrast, the 2011 survey has attracted over 800 respondents. This demonstrates to us that the questions being asked by regulators about the distribution model, and in particular the role of MGAs, is of major interest to brokers and agencies alike!

The survey asked participants to identify themselves as primarily an independent life insurance broker or a principle of an AGA or MGA. Approximately 700 independent brokers responded and 100 representatives of agencies. Their survey answers were sorted by these two categories.

Summary of Broker Data

- Most respondents (400)live in Ontario; 200 reside in the West and the remainder reside in Quebec and the Maritime provinces
- Most brokers are licensed in multiple jurisdictions
- 80% have been licensed for more than 10 years
- Most have contracts with at least 3 insurers
- Most place business through a MGA. Many also have contracts which allow them to place business directly with an insurance company. A much smaller number have AGA contracts.
- Most use 1 MGA, although a significant number said they deal with more than 5
- Most said the primary reason for doing business with a particular MGA is the level of service provided. The second most important reason is the insurers the MGA has contracts with.

Summary of Agency Data

- The majority have their head office located in Ontario (55), 19 are in the Western Provinces, 4 in Quebec and the remainder in the Maritime provinces
- Most are licensed in a variety of provinces
- 66% were not affiliated with a mutual fund dealer, 33% were
- 30% have less than 10 brokers under contract; 24% have between 10-99 brokers; 26% have between 100-500 brokers and 10% have more than 1,000 brokers
- 90% carry separate corporate E&O insurance

Questions to Stakeholders

IFB will address many of the 26 questions posed in the Issues Paper. However, since some are quite specific to insurers and their relationships with MGAs, we will leave those to be commented on by stakeholders who have a more direct knowledge of these arrangements.

1. Are there other aspects of AGAs that differentiate them from MGAs?
2. Which functions of MGAs do not apply to AGAs? Are the activities of AGAs closer to representatives rather than MGAs?
   We have grouped our responses to questions 1 and 2 below.

The arrangements between an insurer and individual MGA/AGAs vary significantly so we cannot provide a definitive answer to these questions. However, it would generally be true that a MGA provides a more comprehensive suite of services than an AGA, as described below. In addition, AGAs tend to be smaller and often contract with an insurer through a MGA. This would be the case, for example, where pooling the business allows them access to an insurer that the AGA does not have a direct contract with.

To better understand how brokers access the various services they need and where they are most likely to obtain those services, we asked them to describe the services they are most likely to obtain from their MGA, AGA, insurance company or provide for themselves.

Brokers said they were most likely to obtain these services from a MGA. The most common services they get from their MGA(s) are: Bonusing, CE and product training, back office support, policy tracking, electronic processing, product consultation and compliance support.

A much lower number indicated they get these services directly from the insurance company. Those that do said the most common are: product training, product consultation, conferences, CE and training.

A very small number (less than 30) indicated they get some of these services from their AGA. Those who do said their AGA provides: product training, product consultation, CE, bonusing and compliance advice.

When we asked brokers what services they are most likely to acquire for themselves, they said: provision of office space, business branding, succession planning and CE.

Functions Outsourced to MGAs

3. What are the factors considered by an insurer before deciding whether or not to outsource an activity to an MGA?
This question is better addressed by other stakeholders.

4. How do insurers satisfy themselves that MGAs have the expertise to carry on the delegated functions (e.g. product training, product development, etc.)?
We would expect that insurers would provide guidance and undertake periodic audits of the MGA to ensure that it is fulfilling its delegated functions. These would be common business practices to control risks, not unique to this arrangement.

   In addition, insurers themselves conduct training sessions for brokers and staff of MGAs/AGAs on new and existing products, regulations and procedures. For the insurer, this helps ensure that MGA staff has the knowledge to assist brokers with questions related to their products.

5. Are there functions that should not be outsourced to an MGA (e.g. core functions such as underwriting and claims handling*)?* Would delegating to MGAs a function such as product development affect the insurer's role as manufacturer?
We are not aware of any insurers which have outsourced functions such as underwriting and claims handling. In our opinion, this is – and should remain - the responsibility of the insurance company.

6. Do insurers view functions outsourced to an MGA/AGA as material to their risk management process?
   This question is better addressed by other stakeholders.

7. How should insurers be held accountable for the activities outsourced to MGAs? Is having appropriate safeguards and conducting regular assessment of whether the MGA is achieving the right standards for each delegated function sufficient? Or would insurers also take responsibility for the mistakes of the MGA?
   Insurers and MGAs are better able to comment on this question. However, we would expect that insurers would undertake specific and regular activities to examine MGA practices to reduce the insurer's exposure to business and reputational risk.

8. What can be done to enhance compliance monitoring of functions outsourced to MGAs? Would standardized compliance monitoring guidelines assist smaller insurers?
   We are aware that CAILBA is developing a 'compliance toolbox' to assist its members and that the CLHIA in conjunction with CAILBA developed a MGA compliance questionnaire to assist in the development of more standardized processes.

   It is more appropriate for those organizations to expand upon these initiatives in their responses to this Issues Paper.

Supervision of Representatives

9. What specific activities do insurers carry on today in supervising representatives and reporting misconduct?
   There are guidelines (e.g. CLHIA G8) for insurers to follow and which are broadly accepted within the industry. All brokers have contracts with insurers and the insurer has a statutory obligation to supervise its representatives and report misconduct to regulators.

   Our survey showed that both MGAs and insurers require brokers to provide proof of compliance. The most common compliance requirements were: proof of license renewal and errors and omissions insurance coverage. Other frequently cited requirements were proof of: conflict of interest disclosure, privacy compliance, anti-money laundering processes and client needs assessment.

10. Under today's MGA structure, has detection and reporting of "unsuitable representatives" become more difficult as a representative is, at any given moment, dealing with various MGAs and insurers? Please elaborate.
    We do not think that the MGA structure contributes to reduced detection or reporting of "unsuitable representatives". The underlying assumption seems to be that the level of detection and reporting was superior under the former career agency structure. The nature of this business is that it is trust-based and reliant on all parties to conduct themselves in an ethical and professional manner. Branch managers of career agencies cannot be in every prospective client's home or sit in on every client meeting anymore than staff of MGAs or insurers can. Indeed, an argument could be made that with more 'eyes' on the independent broker there is less opportunity for unsuitable representatives to go undetected.

In addition, regulators have requirements intended to bolster the suitability of those entering the profession, have set minimum licensing standards, and ongoing requirements to ensure life agents and brokers maintain a defined level of professionalism.

Restricting a broker to a single MGA or insurer would negatively affect consumer choice and the industry. The advantage of today's marketplace for consumers is that an independent broker can search the market for the best price and product, from a variety of insurers, to meet that client's needs. One has only to look to the creation of the MFDA, and the dramatic impact it has had on reducing the number of independent mutual fund dealers, for proof of the consequences of mandating compliance oversight with a single dealer. In addition, while some MGAs may support the simplicity, convenience and increased revenues of having their brokers restricted to placing all their business with their agency, a reduction in accessing independent advice for consumers would be a certain outcome.

11. Is it necessary that some party be in a position to monitor the overall business practices of a representative? If no, why not? If yes, which party, MGA or insurer, is in the best position to do that monitoring?
Under the present system, both the insurer and MGA have a role in monitoring the activities of the broker, at least insofar as it relates to business written through that insurer or agency. As a consequence, this means that more than one party has a role in monitoring the appropriateness of the transaction, which is better for the client. However, the use of the word 'overall' in this question suggests that independent brokers should be accountable to and supervised by a single party, which we would not support. Brokers are accountable for each piece of business they write. This accountability extends to the client, MGA, insurance company and, ultimately, their regulator.

    Also, as previously noted, all individual life insurance is not sold through independent brokers. A significant portion is sold through career agents and direct writers which may on the surface appear to operate in a more controlled environment but, in the end, still rely on the individual advisor's commitment to trust and honesty.

    Associations (like IFB), insurance companies and regulators each have established market conduct and professional standards. In addition, representatives of insurers operate under individual contract which can be terminated if the representative is found to be unsuitable.

12. Given their proximity and close relationship to representatives, should MGAs be responsible for reporting questionable acts by representatives:
a. to insurers with whom they have an agreement?
b. to insurance regulators?

    'Questionable' acts, upon further examination, may not be found to be unsuitable acts or contravene any regulations. Therefore, we would expect a significant degree of caution to be exercised before a broker is reported to the insurer or regulator, as it could result in a reputational loss for the broker if wrongly accused. We have heard of situations where a MGA has treated a broker unfairly, resulting in a loss of reputation and, consequently, business for the broker. However, insurers and MGAs have contracts which would detail the MGAs responsibilities in reporting a broker. In our survey, approximately 70% of agency principals said reporting of unsuitable brokers was a contractual obligation. We would expect then that the

insurer, as the party responsible for the suitability of its representatives, would conduct a proper investigation, and if warranted report any unsuitable representatives or misconduct to the regulator.

We asked agency principals to rate the importance of the activities their MGAs provide in the sale of insurance. In order of frequency they rated the following activities as most important: administrative co-ordination between the broker and insurer; compliance support for the insurer (i.e. broker is properly licensed, has E&O, CE, and privacy and AML procedures in place); co-ordination of commissions and bonuses; reporting unsuitable agents or misconduct and supervising the broker's sales practices. This likely reflects the differences in the types of contracts various sized insurers have with various sized MGAs, i.e. that the larger MGAs may have more functions identified in their contracts than a smaller one.

We also asked agency principals if they were satisfied with their current ability to monitor the activities of their brokers. 75% said they were very satisfied or satisfied; only 5% said they were somewhat dissatisfied and no one reported being very dissatisfied; the remainder had no opinion.

We think it would be helpful if regulators provided information on complaints against MGAs and insurers so that it is available to brokers and the public. For example, while there is a complaint reporting database for insurers, it is not publicly available. We suggest that making this information available, in a format similar to that which identifies brokers who have been subject to discipline, would be a useful consumer protection tool.

13. How is misconduct reporting handled when the representative is dually licensed? Should misconduct in one sector be reported in the other sectors where the representative is licensed? Our members who are dual licensed are generally licensed for mutual funds and life insurance. MFDA Policy 6, Section 4, specifies the complaint handling procedures for the representative to report to the Dealer and requires reporting complaints or regulatory action arising from any regulator. It requires that "Approved Person reporting includes reportable events related to securities related business, Member business *and all other business conducted by the Approved Person* (emphasis added)." We objected to the extent of this reporting because complaints may be without merit and relate to a broker's business which is not under the mandate of the MFDA, its Member dealers, or securities regulators.

    Having said this, evidence of misconduct is a different matter. Information on representatives who have been disciplined or sanctioned by securities regulators and/or insurance regulators is in the public domain, as it should be.

    We note that Canadian securities regulators and SROs have recently implemented a centralized link for investors and others wishing to search the enforcement history of securities licensed advisors. Insurance regulators may wish to examine establishing a similar, centralized database for the convenience of consumers, MGAs and insurers, as an aid in conducting their due diligence.

Managing Conflicts of Interest

14. To what extent can or does an MGA influence the decisions of its representatives to place insurance with one insurer over another? How is this controlled?
    We asked brokers in our survey if their MGA influences which insurer they do business with. An over whelming 78% of respondents said no. Only 6% said they did.

    We asked those who felt MGAs exert some influence to explain in greater detail. The majority of their comments revealed it is the experience and knowledge that many MGAs offer, in helping them find the right policy for their client, which contributes to placing insurance with a particular insurer. Below is a sample of their explanations:
    - *The MGA provides insight into which insurer might be more inclined to underwrite a client whose application has been denied.*
    - *I am new and always looking for the best fit for my client. The MGA helps by giving me a few companies to research.*
    - *I appreciate their assistance with underwriting, making me aware of special product features or price, resolving placement issues and obtaining information on in-force policies.*
    - *If the client has a medical condition, the MGA can suggest companies whose underwriters may be friendlier to accepting an applicant with this condition.*
    - *MGA staff has experience and knowledge of product differences, claims reputation and price differences of various insurers. It is access to this broad experience that is the primary reason for using an MGA.*

15. Given that MGAs receive a commission from insurers for volume of business generated through the representative, what kind of disclosure to consumers (regarding this specific commission) is provided today by the representative? By the insurer?
    Industry associations worked with the CCIR Industry Practices Review Committee in 2005 to develop a conflict of interest disclosure document. IFB has a template on its website for brokers to download and customize. The disclosure document is completed by the broker, explained to the client, signed by both the client and advisor and evidence of such is submitted to the insurer with the application. One of the elements of disclosure contained in that form is that, where the broker places business through a MGA, there may be commission or other form of compensation (e.g. override) paid. This supplements the requirement in Ontario, under Regulation 347 of the *Insurance Act,* that requires agents/brokers to provide written disclosure of any actual or potential conflicts of interest to the consumer.

    The IPRC, in its review of potential conflicts of interest in the sale of life insurance, endorsed the view that the basis for any sale is product suitability and this rests with the broker:
    "It can be argued that where a broker or agent can demonstrate that an insurance product sold is suitable and price-competitive, than any conflict of interest resulting from compensation, ownership or financial links is adequately managed. The IPRC believes that potential conflicts of interest that may arise through these incentives and financial arrangements can be managed in a way that is practical, economically sensible, and reflective of best practices."

16. What are the expectations of insurers when supervision of sales practices is delegated to MGAs? Is oversight limited to completeness (form) as opposed to the nature of the advice (substance)?
    Most of the brokers and agency principals who responded to our survey indicated that the service provided by the MGA is most often related to the completeness of the application. Far

fewer said the MGA reviews the suitability of the broker's advice, although as stated previously, the MGA will often require the broker to provide proof of certain compliance processes.

Under the current system, the broker is responsible for establishing the needs of the client and the suitability of the product. Our members strongly believe that this is appropriate and their role in assisting their clients.

Role of MGAs in Sales Transactions and Handling of Consumer Complaints

17. What problems have arisen to date regarding transaction errors involving MGAs and how have they been resolved? How do consumers know who to go to in these situations?
    The broker is the primary point of contact for their clients. If a mistake was discovered that affected the client, the broker would advocate for the client with the MGA or insurer to ensure the mistake is corrected.

    The requirement for a MGA to have separate corporate E&O insurance is appropriate in our view as administrative errors can occur. Standardizing this requirement in all jurisdictions would assist consumers and reduce business risks for MGAs.

    The application or policy document would clearly identify the broker and the insurer for the consumer, if the consumer wished to take further action.

18. Who would be accountable for errors in consumer transactions processed through MGAs? Are representatives and/or insurers assuming responsibility for the mistakes of an MGA when a consumer is adversely affected?
    Brokers and many MGAs have errors and omissions insurance to protect and compensate the client in the event of a mistake. Ultimately, the insurance company is responsible to its policyholders and would endeavour to reach a suitable resolution.

    We would encourage regulators to adopt a standard requirement for all MGAs to maintain E&O coverage as an appropriate consumer protection tool.

19. Is there an obligation in the agreement between the MGA and the representative for the representative to report to the MGA any complaints received and their status?
    We asked brokers if their contracts with MGAs are requiring more oversight. Proof of regulatory compliance was cited as the most common. A small number indicated that they are required to report client complaints directly to the MGA. This is consistent with their experience that the services provided by most MGAs are related to administrative functions and processing – not one that includes direct involvement with the client.

20. Is there a need for all complaints against representatives or MGAs to have access to the OLHI process and, if so, how might this be accomplished?
    It is our understanding that the OLHI provides a resource for consumers. Life insurance companies also have designated complaints officers and the company has a contractual relationship with the MGA and broker which could be terminated. Ultimately, the provincial/territorial insurance regulator can take action on complaints against a broker or licensed agency by undertaking an investigation and license termination, if required.

Privacy

21. If a consumer is unaware of the existence of an MGA between him/her and the insurer, how is consent being given to MGAs to collect personal information? Are insurers or representatives obtaining consent to disclose to MGAs a consumer's personal data?
    The MGAs in our survey reported having very little direct contact with consumers so it is unlikely they are actively collecting personal information. However, as part of their back office support for brokers, applications are flowed through the MGA en route to the insurer. In this case, the information would generally be covered by the consent given to the broker and the third party permission on the insurance application.

22. Do MGAs retain personal information and, if so, for what purpose? On whose behalf is this information retained?
    Access to a client's personal information may arise in the event the MGA retains copies of an application or stores information on behalf of the broker. Some MGAs have a process in place to return application information to the broker once it becomes a policy.

    Some MGAs have specifically included the ability to audit their brokers' files on a periodic basis in their contract renewals. We have received complaints from brokers that requiring them to make their files available to MGAs is unacceptable as it invades their clients' privacy. Further clarification on this would be helpful.

23. Other than through privacy laws, how are MGAs being held accountable for the privacy of this information today?
    Privacy laws set a reasonable and consistent standard to protect the use of personal information. Other stakeholders may have further comment on this.

MGA Compliance

24. Do you think that the existing licensing regime and the level of required E&O insurance is adequate for the functions of an MGA in today's marketplace?
    Since the licensing requirement and requirement for corporate E&O are not consistent across jurisdictions, we would support a comprehensive approach. This will help ensure consumers are equally protected regardless of where the insurance transaction physically takes place.

25. Is the lack of specific rules on the duties and responsibilities of an MGA generating inconsistencies in how MGAs operate and the level of service they provide?
    We do not see this as a cause for concern, but rather a reflection of the flexibility that exists in the marketplace. As has been pointed out, MGAs vary greatly in size and the services they offer. This is reflected in their contractual arrangements with the insurer and the brokers they deal with. Some insurers may be more flexible in their requirements than others, just as brokers may wish to access more or fewer services from the MGA than it has to offer or use the services of several MGAs.

26. Other than terminating an ongoing agreement, how do insurers deal with MGA misconduct today? Do insurers report MGA misconduct to regulators?
    We would expect insurers to report improper behaviour or the regulatory breaches of an MGA or a broker to regulators as part of their ongoing commitment to ensuring those who represent them are suitable and consistent with CLHIA Guideline G8.

INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

Jackie Pries
Chair, IIAC Insurance Committee

April 8, 2011

CCIR Secretariat
5160 Yonge Street, Box 85
17th Floor
Toronto, Ontario
M2N 6L9

Re: Issues Paper – Managing General Agencies – Life Insurance Distribution Model

I am writing on behalf of the members of Insurance Committee of the Investment Industry Association of Canada. We would like to acknowledge that we have reviewed the recently published "Issues Paper", as noted above, and we felt it important to make you aware of our organization. More specifically, we are an association comprised of over fifteen sizeable wealth management corporate entities that either employ and/or contract dually licensed advisors, that which distribute life insurance products.

Amongst our association, our life insurance distribution models may vary slightly albeit all firms are members of the Investment Industry Association of Canada (IIAC). We wanted you to be aware of our existence as well as to request more clarity surrounding the "Issues Paper", and in particular Section 3 as it pertains to the definition of a Managing General Agency.

We look forward to your response and for your engagement as a stakeholder in the development of this framework.

If you should have any questions and/or concerns, please do not hesitate to contact our committee.

INDUSTRIELLE ALLIANCE
ASSURANCE ET SERVICES FINANCIERS INC.

Québec, le 8 avril 2011

« Sous toutes réserves »

SECRÉTARIAT DU CCRRA
5160, rue Yonge, C.P. 85
17ième Étage
Toronto (Ontario) M2N 6L9

Objet : Comité de règlementation des agences
Modèle de distribution des produits d'assurance vie fondé sur les agences générales

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Madame,
Monsieur,

C'est avec plaisir que nous vous transmettons avec la présente, le rapport de l'Industrielle Alliance, Assurance et services financiers inc. relatif au document de discussion «Modèle de distribution des produits d'assurance vie fondé sur les agences générales» de février 2011.

Nous espérons le tout conforme et vous prions d'agréer, madame, monsieur, l'expression de nos salutations distinguées.

Industrielle Alliance, Assurance et services financiers inc.

Par :

Bruno Michaud
Vice-président principal,
Administration et ventes

/fh

p.j.

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Cabinet de services financiers

VOTRE PARTENAIRE DE CONFIANCE

MODÈLE DE DISTRIBUTION DES PRODUITS D'ASSURANCE VIE FONDÉ SUR LES AGENCES GÉNÉRALES

Rapport présenté au

Comité de réglementation des agences

Par

L'Industrielle Alliance, Assurance et services financiers inc.

Avril 2011

L'INDUSTRIELLE ALLIANCE

Fondée en 1892, l'Industrielle Alliance, Assurance et services financiers inc. (« l'Industrielle Alliance ») est une société d'assurance de personnes à charte québécoise qui exerce des activités dans toutes les provinces et territoires au Canada.

Elle offre une gamme variée de produits qui comprend notamment des produits d'assurance vie et maladie, régimes d'épargne et de retraite, des fonds mutuels, des fonds distincts et des valeurs mobilières, qui s'adressent tant aux particuliers qu'aux groupes.

Elle compte parmi les quatre sociétés d'assurance les plus importantes au Canada et, avec sa capitalisation boursière de 3.5 milliards de dollars, l'Industrielle Alliance se situe parmi les plus importantes sociétés cotées à la Bourse de Toronto.

L'Industrielle Alliance doit sa croissance entre autre à des réseaux de distribution variée. Les produits d'assurance, d'épargne (à l'exception de ceux liés aux fonds mutuels) et de retraite sont ainsi offerts par l'entremise de deux réseaux de distribution, soit le réseau carrière qui compte plus de 1750 représentants rattachés à l'Industrielle Alliance et qui œuvrent principalement au Québec et le réseau Agents Généraux et Comptes Nationaux qui regroupe plus de 12 000 courtiers spécialisés.

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C'est avec plaisir que l'Industrielle Alliance participe à cette consultation du Comité de réglementation des agences (« Comité »).

Pour faciliter l'analyse du rapport au Comité, l'Industrielle Alliance a choisi de répondre par le biais d'un tableau dressé à partir des 26 questions posées dans le document de discussion du Comité daté de février 2011.

QUESTIONS		**RÉPONSES**
1. Y a-t-il d'autres aspects des AGA qui les différencient des AG?		Pour l'Industrielle Alliance, les AGA sont des agents généraux « associés » qui découlent d'un AG et qui s'adressent à des représentants particuliers. l'Industrielle Alliance ne fait pas affaires directement avec des AGA.
2. Quelles fonctions des AG ne s'appliquent pas aux AGA? Les activités des AGA sont-elles plus proches de celles des représentants que de celles des AG?		Nous n'avons aucun commentaire à formuler sur cette question.
3. Quels sont les facteurs pris en compte par un assureur pour décider s'il va ou non impartir une activité à un AG?		L'Industrielle Alliance choisit de faire affaires avec un AG plutôt qu'un autre en fonction de critères de crédibilité, d'historique et de réputation de l'AG, mais aussi dans une certaine mesure, en fonction des dirigeants de l'AG.
4. Comment les assureurs s'assurent-ils que les AG ont l'expertise nécessaire pour exécuter les fonctions déléguées (par exemple, formation sur les produits, conception de produits, etc.)?		Une fois que le choix de l'Industrielle Alliance est arrêté pour un AG en particulier, les activités qui feront l'objet du contrat, seront sensiblement les mêmes pour tous les AG. L'Industrielle Alliance considère que la majorité des activités en sont d'administration liées aux transactions faites par les représentants. Malgré ce qui précède, l'Industrielle Alliance autorise aussi l'agent général à : • Solliciter les clients • Obtenir des propositions et des demandes pour différents contrats et services

		financiers.
4. (suite)		• Recruter les représentants et soumettre leur candidature à la Compagnie • Assurer la formation des représentants. (À noter qu'habituellement c'est l'Industrielle Alliance qui la donne et ce, à la demande de l'AG) • Superviser les représentants selon les instructions et règlements établis de temps à autre par l'Industrielle Alliance • S'assurer que les représentants sous la responsabilité de l'AG, observent les lois applicables.
5. Y a-t-il des fonctions qui ne devraient pas être imparties aux AG (par exemple des fonctions centrales comme la souscription et le traitement des demandes d'indemnité)? La délégation à une AG d'une fonction telle que la conception de produits influerait-elle sur le rôle de fabricant de l'assureur?		L'Industrielle Alliance est d'avis que les fonctions de souscription, de traitement des demandes d'indemnité, de conception des produits et l'acceptation finale des candidatures de représentants soumises à l'Industrielle Alliance ne devraient pas être déléguées aux AG. À titre d'exemple, le traitement des demandes d'indemnité risquerait de donner naissance à des conflits d'intérêts pour l'AG alors que la conception des produits par les AG entrainerait des problèmes de viabilité des produits, des risques de mauvaise rédaction et une banalisation de certains produits qui requièrent, de par leur nature, des considérations plus techniques. L'Industrielle Alliance est d'avis que les AG n'ont pas et ne devraient pas avoir les mêmes responsabilités, par exemple, que celles qui sont prises en charge par les Tiers partie administrateurs (« TPA ») en assurance collective.
6. Les assureurs considèrent-ils importantes les fonctions imparties à une AG ou une AGA, dans le cadre de leur processus de gestion du risque?		L'Industrielle Alliance est d'avis que les tâches effectuées par ses AG sont plutôt de nature administrative et qu'elles ne possèdent pas les caractéristiques nécessaires pour se qualifier « d'importantes » dans le cadre du processus de gestion du risque de l'Industrielle Alliance.

7. Comment les assureurs devraient-ils être tenus responsables des activités imparties aux AG ? La mise en place de garde-fous appropriés et la tenue d'évaluations régulières pour déterminer si l'AG répond adéquatement aux exigences de chaque fonction déléguée suffisent-elles? Les assureurs devraient-ils aussi assumer la responsabilité des erreurs commises par l'AG?		L'Industrielle Alliance considère que les assureurs devraient être responsables des erreurs des AG dans la mesure des termes du mandat ou de la délégation qui fait l'objet de leur contrat. La mise en place de garde-fous, tel que le projet de questionnaire de l'ACCAP « Sondage normalisé de l'ACCAP par l'examen de la conformité des agences générales » nous semble adéquat et suffisant pour surveiller les activités des AG.
8. Que peut-on faire pour renforcer la surveillance de la conformité des fonctions imparties aux AG? La standardisation de lignes directrices touchant la surveillance de la conformité aiderait-elle les petits assureurs?		Encore une fois, l'Industrielle Alliance croit que le projet de questionnaire ci-haut mentionné serait suffisant. La standardisation, par le biais de lignes directrices élaborées par les assureurs et leurs associations, devrait permettre une surveillance nivelée et suffisante pour les assureurs de toute dimension sans qu'il soit nécessaire d'avoir recours à des lignes directrices de nature réglementaire de la part des organismes de réglementation.
9. Quelles activités précises les assureurs accomplissent-ils aujourd'hui pour superviser les représentants et signaler les inconduites?		À l'Industrielle Alliance nous nous fions tout d'abord sur le rapport d'enquête complété au moment de l'embauche du représentant pour évaluer le degré de risque que représente le candidat. Le traitement des plaintes et la formation par l'Industrielle Alliance lui permet de superviser, dans une certaine mesure, les activités des représentants. Le signalement d'une inconduite se fait dès que l'Industrielle Alliance constate une anomalie, auquel cas, le contrat avec le représentant se voit alors terminé et ladite terminaison dénoncée aux organismes de réglementation.

10. Dans la structure actuelle des AG, la détection et le signalement des « représentants inaptes à exercer » sont-ils devenus plus difficiles du fait qu'un représentant peut, en même temps, faire affaire avec plusieurs AG et plusieurs assureurs? Veuillez donner des détails S.V.P.		Le signalement des représentants dans la structure actuelle des AG n'est pas devenu plus difficile par contre, il serait souhaitable que le signalement se fasse de la même façon que dans le secteur des valeurs mobilières où, lorsqu'un représentant est terminé pour cause, tout le monde peut le savoir à partir d'un registre central et en connaitre la cause.
11. Faut-il que l'une ou l'autre des parties soit en mesure de surveiller les pratiques commerciales générales d'un représentant? Dans la négative, pourquoi pas? Dans l'affirmative, quelle partie (l'AG ou l'assureur) est la mieux placée pour exercer cette surveillance?		Il serait souhaitable qu'une des parties soit en mesure de surveiller les pratiques commerciales du représentant. L'Industrielle Alliance croit que cette responsabilité devrait incomber à l'AG car c'est lui qui est le plus près du représentant et qui est généralement au fait de l'ensemble des activités de ce dernier.
12. Compte tenu de leur proximité et de leurs liens étroits avec les représentants, les AG devraient-elle être responsables du signalement des actes contestables commis par des représentants : **a. aux assureurs avec lesquels ils ont une entente?** **b. aux organismes de règlementation des assurances?**		L'Industrielle Alliance croit que les AG devraient être responsables du signalement des actes contestables commis par les représentants et ce, autant auprès des assureurs qu'auprès des organismes de réglementation.
13. Comment est traité le signalement d'une inconduite lorsque le représentant est titulaire de deux permis? Une inconduite dans un secteur devrait-elle être signalée dans les autres secteurs pour lesquels le représentant possède un permis?		Actuellement, une inconduite dans un secteur financier n'affecte pas les permis de l'autre secteur. L'Industrielle Alliance croit que les deux secteurs, assurance et valeurs mobilières, devraient être avisés dans les cas où la nature de l'inconduite rend le représentant « inapte à exercer » au sens de la ligne directrice LD-8 de l'ACCAP « Sélection des agents et déclaration des irrégularités ».

14. Dans quelle mesure une AG peut-elle influencer ou influence-t-elle les décisions de ses représentants de faire souscrire une police auprès d'un assureur plutôt qu'un autre? Comment cela est-il contrôlé?		L'Industrielle Alliance croit que l'influence de l'AG se fait selon les forces et les faiblesses du produit d'un assureur par rapport à un autre pour répondre aux besoins spécifiques d'un client. L'Industrielle Alliance est d'avis que l'assureur ne peut pas contrôler l'influence de l'AG.
15. Étant donné que les AG touchent des commissions des assureurs en fonction du chiffre d'affaires généré par les représentants, quelle sorte de divulgation aux consommateurs (concernant cette commission en particulier) est effectuée aujourd'hui par les représentants? Par l'assureur?		Ni le représentant ni l'assureur ne divulgue au consommateur les commissions touchées par les AG.
16. Quelles sont les attentes des assureurs lorsque la supervision des pratiques de vente est déléguée aux AG? Le contrôle exercé consiste-t-il seulement à s'assurer que tous les éléments nécessaires à la présentation d'une proposition sont présents (la forme) ou s'étend-il à la nature du conseil prodigué (la teneur)?		Le contrôle exercé consiste à s'assurer que les exigences de pratique telles l'analyse de besoin, les illustrations, le formulaire «Bien connaître son client» sont complétés adéquatement et que le produit recommandé est conforme aux documents fournis au client. Il n'y a pas de contrôle exercé au niveau de la nature du conseil prodigué au consommateur.
17. Quels problèmes ont surgi à ce jour à l'égard d'erreurs commises dans des transactions impliquant des AG et comment ont-ils été réglés? Comment les consommateurs savent-ils à qui s'adresser dans ces cas?		Les clients de l'Industrielle Alliance savent à qui s'adresser en cas de problèmes. Un dépliant préparé à leur attention leur est remis pour les informer du processus de règlement des différends de l'Industrielle Alliance. Les clients sont tout d'abord invités à communiquer leurs commentaires, suggestions ou insatisfactions à leur représentant ou à l'agence qui figure sur leurs relevés. En seconde étape, il leur est proposé de s'adresser au « Service à la clientèle» de l'Industrielle Alliance lequel reçoit les plaintes sans faire de distinction entre celles qui concernent les AG et les représentants.

17. (suite)		La troisième étape est la demande de révision au responsable du règlement des différends; puis en dernier recours, il leur est suggéré de formuler une demande de révision à l'Ombudsman des assurances de personnes. La réalisation qu'une erreur a été commise par un représentant entraine la responsabilité de l'AG qui doit s'en occuper.
18. Qui serait responsable des erreurs commises dans des transactions impliquant des consommateurs et traitées par l'entremise d'AG? Les représentants et les assureurs assument-ils la responsabilité des erreurs commises par une AG quand elles ont une incidence négative sur un consommateur?		Tout dépend de qui a fait une erreur. Le représentant de l'AG assume la responsabilité des erreurs qu'il commet et il en est de même pour l'AG à l'égard des erreurs qu'elle commet. Le simple fait que l'AG ait tout simplement traité la transaction n'implique pas automatiquement sa responsabilité. L'AG se trouve toutefois concerné financièrement lorsque dans le cas d'une erreur commise par un représentant, le contrat d'assurance est annulé entrainant la récupération des commissions de vente du représentant : l'AG se voit alors perdre également la part de commission qui lui avait été attribuée. L'AG est également responsable de rembourser à l'Industrielle Alliance la part du représentant, s'il n'est pas possible de la récupérer du représentant lui-même. Enfin, l'Industrielle Alliance exige des représentants et des AG qu'ils détiennent tous une assurance responsabilité.
19. Existe-t-il, dans l'entente conclue entre l'AG et le représentant, une obligation pour ce dernier de déclarer à l'AG toutes les plaintes déposées contre lui et l'état de celles-ci?		L'Industrielle Alliance ignore les obligations des représentants envers les AG car elle ne connait pas le contenu des contrats intervenus entre ces derniers.

20. Est-il nécessaire que toutes les plaintes reçues contre les représentants ou les AG puissent être soumises à l'Ombudsman des assurances de personnes, et dans l'affirmative, comment cela peut-il être accompli?		Nous croyons que l'Ombudsman des assurances de personnes ne devrait être accessible qu'au deuxième niveau du traitement des plaintes.
21. Si un consommateur ignore l'existence d'une AG entre lui et l'assureur, comment le consentement à recueillir des renseignements personnels est-il donné à l'AG? Les assureurs ou les représentants obtiennent-ils le consentement à divulguer aux AG les données personnelles d'un consommateur?		Tout d'abord, les clients de l'Industrielle Alliance sont informés de l'existence d'un AG entre lui et l'assureur puisque les noms du représentant et de l'AG sont indiqués sur tous les documents qui leur sont transmis. Les contrats d'AG stipulent que l'AG est mandaté par l'assureur pour solliciter des clients et obtenir des propositions et des demandes pour les différents contrats et services financiers que l'assureur offre. Que ce soit l'AG ou le représentant à titre de mandataire, de partie à un contrat de service ou d'entreprise qui a qualité pour connaitre les renseignements, la loi autorise l'accessibilité aux renseignements du consommateur dès qu'ils sont nécessaires à l'exercice des fonctions ou l'exécution de son mandat ou contrat. Nos contrats prévoient que l'AG doit s'assurer que les représentants sous sa responsabilité observent les lois applicables dans l'exercice de leurs fonctions, ce qui inclut les lois sur la protection de la vie privée fédérales et provinciales.
22. Les AG conservent-elles des renseignements personnels et, si tel est le cas, à quelles fins? Au nom de qui ces renseignements sont-ils conservés?		Normalement les AG ne conservent pas de renseignements personnels, ce sont les représentants eux-mêmes qui les conservent dans leurs dossiers.
23. En plus des lois sur la protection de la vie privée, comment tient-on les AG responsables de la protection des renseignements personnels aujourd'hui?		Tel que mentionné précédemment, le contrat de l'AG stipule qu'il a une responsabilité de s'assurer que les représentants avec qui il a un lien d'affaires observent les lois applicables. Cela vise également toutes les dispositions qui prévoient des obligations de protection des renseignements personnels telles que celles que l'on retrouve dans la *Loi sur la distribution des produits et services financiers et ses règlements.*

24. Pensez-vous que le régime de délivrance de permis existant et que le niveau d'assurance de responsabilité exigé sont suffisants, compte tenu des fonctions exécutées par une AG dans le marché actuel?		Ailleurs au Canada il n'existe pas d'exigences de permis alors qu'au Québec, les cabinets doivent obtenir un permis. Il serait souhaitable que les AG soient traités, à cet égard, comme les cabinets, avec la même obligation d'obtenir un permis comparable à celui des cabinets au Québec.
25. L'absence des règles précises sur les fonctions et responsabilités d'une AG crée-t-elle un manque d'uniformité quant au fonctionnement des AG et quant au niveau des services qu'elles offrent?		Nous ne croyons pas qu'il soit nécessaire d'avoir une uniformité dans le fonctionnement des AG et les niveaux de services offerts.
26. Outre la résiliation d'une entente en vigueur, comment les assureurs traitent-ils l'inconduite d'une AG aujourd'hui? Les assureurs signalent-ils l'inconduite d'une AG aux organismes de règlementation?		L'inconduite d'un AG est traitée de la même façon que celle du représentant, par la résiliation de son contrat et s'il y a lieu, le signalement de l'inconduite aux organismes de réglementation. Tout comme le prévoit le contrat d'AG de l'Industrielle Alliance, les assureurs pourraient également suspendre le contrat de l'AG pour tout motif raisonnable, prohibant l'AG pendant la période de suspension de solliciter les clients, recevoir des propositions, ni effectuer des transactions pour le compte des clients de l'assureur.

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Investors Group

ONE CANADA CENTRE, 447 PORTAGE AVENUE, WINNIPEG, MANITOBA R3C 3B6

April 8, 2011

CCIR Secretariat
5160 Yonge Street
Toronto, Ontario
M2N 6L9

Dear Sir/Madam:

RE: Issues Paper- Managing General Agencies Life Insurance Distribution Model

We are responding to the Issues Paper on Managing General Agencies Life Insurance Distribution Model Proposal published for comment by the Agencies Regulation Committee of the Canadian Council of Insurance Regulators (CCIR) in February, 2011.

IGM Financial Inc. (IGM) is a diversified financial services company and is one of Canada's largest managers and distributors of mutual funds and other managed asset products. Its subsidiaries include dealers that provide financial planning services to the public, which use a range of insurance products among the vehicles they recommend to clients to further their goals. As part of this structure, certain IGM subsidiaries, such as I.G. Insurance Services Inc., act as distributors of insurance products. As a result, the Issues Paper addresses a number of topics that are of major interest to us.

We support the regulatory objectives behind the Issues Paper, namely clarifying the current role of Managing General Agencies (MGAs) and Associated General Agencies (AGAs) in insurance distribution. We do, however, have comments on specific elements in the Issues Paper that we believe are important to this discussion.

The Issues Paper focuses on MGAs and AGAs but there are other entities in the insurance distribution channel that should be taken into account, since the regulatory considerations are quite different. In particular, national accounts (National Accounts), such as I.G. Insurance Services Inc. are very important participants in insurance distribution, but which are only mentioned in passing in the Issues Paper. National Accounts are entities that have distribution arrangements with one or more insurance manufacturers. They may also be registered as distributors, at least in those jurisdictions in Canada that require licencing to perform this function. In turn, these National Accounts have insurance representatives associated with them who only sell

the products authorized by the National Account. They also supervise all of the insurance related activities carried on by the representatives associated with them.

As is the case with I.G. Insurance Services Inc., National Accounts are often part of a larger financial planning organization, with insurance products forming a key part of the product offering, in conjunction with securities such as mutual funds. As such, these entities have integrated systems in place to address product suitability, anti money laundering and anti terrorist financing rules, privacy principles and other legislative requirements on an enterprise wide basis. In particular, these National Accounts have extensive and comprehensive compliance oversight processes in place to supervise the activities of representatives regardless of the specific product being recommended to clients. In this National Account model, insurance manufacturers often delegate the oversight function to the distributor, where the National Account has both the resources and expertise to carry out this function. This is a very effective oversight model since the National Account has access to the client's entire portfolio from a financial planning perspective and is able to apply uniform and consistent standards and expectations on a comprehensive basis, regardless of the specific product involved.

In this context, National Accounts such as I.G. Insurance Services Inc. have a number of key attributes:

- their representatives do not contract directly and individually with the insurance company and instead all contracts are with the National Account

- National Accounts are licensed and as such, are subject loss of registration if they fail to carry out their obligations in a satisfactory manner

- representatives only have relationships with the National Account, with the distributor seeing all of the business a representative conducts, resulting in an effective and comprehensive oversight structure

- National Accounts do not receive in force override and all in force servicing is handled directly by a contact centre between client and insurer and can be facilitated by the individual representative

- National Accounts, because representatives only act on behalf of them, provide significant training and support

- commission payout is higher in other channels than in the National Account model, which means that they may lose representatives to other firms, which is inconsistent with the larger consumer protection goals of any regulatory regime

In light of the above, we would highlight two points that we believe are important to keep in mind in this regard:

- Any rules that are adopted should take into account the fact that clients may not appreciate that products they see as similar, such as segregated funds and mutual funds, are governed by different regulatory regimes. To the extent possible, those regimes should have consistent goals, although not necessarily the identical requirements, to help ensure that choice of products presented to clients are driven by the client's best interests

- While the requirements that the CCIR is contemplating must take a consistent approach between National Accounts and other distribution channels, we believe that any such rules must nonetheless recognize that National Accounts should be dealt with separately and distinctly. This is important because, as we have noted, the regulatory goals that may be addressed by such an initiative are already in place in the National Account model. As a result, any requirements adopted by the CCIR in respect of National Accounts should not be duplicative of the existing rules that already apply

We appreciate having this opportunity to share our views regarding the Issues Paper and would be pleased to discuss any of these comments with you at your convenience. Please do not hesitate to contact David Cheop at david.cheop@investorsgroup.com or by telephone at (2014)956-8444 in this regard.

Yours truly,

I.G. INSURANCE SERVICES INC.



John Wiltshire
President

Manulife Financial

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Via post and email to ccir-ccrra@fsco.gov.on.ca

April 7, 2011

Danielle Boulet
Chair
Canadian Council of Insurance Regulators
5160 Yonge Street, P.O. Box 85
Toronto ON M2N 6L9

Dear Ms. Boulet:

Re: *Managing General Agencies Life Insurance Distribution Model*

This response is submitted on behalf of Manulife Financial ("Manulife") to provide our thoughts on the Issues Paper reviewing Managing General Agencies ("MGAs") in the life insurance distribution model.

Manulife works with over 40 000 insurance agents to provide millions of Canadians with individual and group insurance products designed to protect the health and financial well being of Canadians and their families.

We have worked with the CLHIA and support the response that the Association has submitted on behalf of the industry. However, we thought that it would be useful to provide additional comments as set out in the attached.

We believe that current regulatory structures are effective in balancing consumer interests. The current system promotes fair outcomes for consumers while ensuring that the insurance market is competitive and innovative. This allows the industry to respond to consumer demand and efficiently deliver products and services that meet the needs of Canadians.

The Manufacturers Life Insurance Company
Manulife Financial and the block design are registered service marks and trademarks of The Manufacturers Life Insurance Company and are used by it and its affiliates including Manulife Financial Corporation.

It is always useful to examine whether there are ways to improve the current regulatory framework. This is especially true where business models and structures evolve over time. We agree that there may be a lack of consistency in how stakeholders understand various business structures and the roles and responsibilities of the insurer and the agent therein.

We look forward to continuing to work with provincial insurance regulators and industry participants to examine ways to improve the regulatory framework.

Yours truly,



Chris Donnelly

Encl.

Supervision of Insurance Agents

In the traditional model for delivering life insurance products, insurance companies engaged agents who acted in a manner similar to an employee of the insurer. These 'tied' agents primarily sold products of the insurance company with whom they were contracted, were given specific sales territories and took sales management direction from the insurance company. Where the insurance company and agent had this employment-like relationship, the insurer would have a complete view of all the agent's insurance transactions. In such 'tied' relationships, the company would be responsible to consumers for many of the agent's activities.

Over time, more agents were 'untied' and became independent businesses and ceased operating like employees of the insurer. These independent agents may be individuals or corporations and they more frequently have contracts with multiple insurance companies, offering their clients a broader selection and competing products of multiple insurance companies.

One development arising out of the decrease in "tied" agent relationships and increase of independent agent relationships was the emergence of MGAs contracting with the insurance companies. MGAs act as an intermediary between insurers and agents and provide services to both parties. We believe that all MGAs are corporately licenced insurance agents.

However, not all corporate insurance agencies are MGAs. Manulife believes that from a regulatory perspective it could be useful to view MGAs as corporate insurance agencies, directly contracted by an insurer to provide, among other things, services related to the obligation of the insurer to supervise those agents affiliated with the MGA.

All insurance agents, whether they are tied agents, independent agents or MGAs, are licenced under provincial Insurance Acts. All insurance agents have obligations imposed upon them directly by regulation and are subject to oversight by insurance regulators and insurance councils where applicable.

In addition to oversight by insurance regulators, insurance companies also have certain responsibility to oversee the conduct of agents.

Insurers are often held responsible to the consumer for the conduct of agents while the agent is acting for the insurer in the solicitation of applications for its products, making representations about the products or providing ongoing service related to the products.[1] Insurers will also often be considered to be responsible for agent misconduct in the sale and servicing of the products of the insurer.

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[1] See Norwood on Life Insurance Law 3rd ed. P. 50

Insurers also have a statutory duty in Ontario to "establish and maintain a system that is reasonably designed to ensure that each agent complies with the Act, the regulations and the agent's licence."[2] In accordance with the regulations, Manulife has implemented a risk-based program designed to manage compliance risks that arise in the distribution of our products, including agent conduct.

Where Manulife contracts with a MGA, the services provided by the MGA are integrated into and form an important part of the compliance model. These services may include compliance training as well as ongoing monitoring of an agent's suitability to act as an insurance agent and represent Manulife's products to consumers. In deciding whether to contract with a MGA, Manulife carefully considers the capacity of the MGA to perform these services. Manulife can then make an informed decision regarding the extent to which the MGA can be engaged to perform compliance related services.

Where Manulife believes the agency has insufficient resources or capacity to perform the required compliance-related services, Manulife will not enter into a MGA contract. Manulife may engage these agencies but would supervise their activities in a manner that is similar to our oversight of other independent agents.

Manulife believes that the insurer remains responsible to consumers for monitoring the conduct and suitability of its agents in relation to their sale and servicing activities related to the insurer's products whether or not an MGA is involved. The difference is that, where an MGA is involved, Manulife has contracted with that MGA to perform certain tasks that form part of our compliance management process.

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[2] O. Reg. 347/04, s. 12 (1)

CCIR Secretariat
5160 Yonge Street, Box 85
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Toronto, Ontario
M2N 6L9

April 5, 2011

Dear Agencies Regulation Committee Members:

Re: Financial Advisors and Managing General Agencies

R.G. Packman and Associates Ltd. would like to provide its comments to the Agencies Regulation Committee of the Canadian Council of Insurance Regulators (CCIR) and to the Canadian Insurance Services Regulatory Organizations (CISRO) on the Managing General Agencies (MGA's) Life Insurance Distribution Model Issues Paper of February 2011.

R.G. Packman & Associates Ltd. is a MGA with a network of more than 1,000 independent insurance agents, agencies and brokerages across Canada.

We provide brokers with sales support and service. We are proud to be a MGA for many major carriers and offer one of the broadest ranges of insurance and financial services products in Canada.

We represent more than 20 leading Canadian insurance and financial services companies. We offer brokers all the products and services they need to be successful in today's highly competitive marketplace.

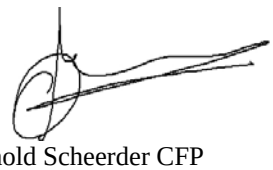
The comments provided here are based on how we as a MGA deal with the topics identified and are not necessarily in all instances indicative of how all MGA's in general deal with these topics.

As a general comment we would like to state that the current system of licensing as it exists, which requires us to have a corporate life license in each and every province we do business in, provides a level of regulation as we have to adhere to the existing licensing rules and regulations for those provinces.

We would also like to emphasize the definition used in the issues paper in section 3 -3.2 which describes the MGA as a conduit between the broker and the insurance company and as such we do not deal with clients nor are we involved in the sales process between the broker and the client. The only time we deal with a client of a broker is in the case where we assist the insurer in resolving a complaint or where we assist a client in resolving a service issue.

Our comments are provided in numeric sequence following the same sequence as in the issues paper.

Respectfully submitted,



Arnold Scheerder CFP
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Section: 3 –3.1 definitions;

All brokers doing business with us are independent contracted brokers and the contract does not create an employer / employee relationship as such the term “representative” should not be used as the paper deals with the MGA distribution model and not the Insurer distribution model. The broker is not a representative of the MGA and is not considered to represent the MGA in common law jurisdictions. Furthermore the definition from the Quebec Act is confusing as it defines a representative as a natural person who offers individual insurance products in insurance of persons to the public, to a firm, to an independent representative, or to an independent partnership.

Section: 3 – 3.1 definition of AGA;

AGA’s have in general the same functions as a MGA although on a smaller scale. In some instances the AGA is allowed to deal with the insurer on a direct basis otherwise the business would flow through the MGA. Given that the contracting is fairly similar the AGA activity is not necessarily closer to the broker than the MGA activity although given it is on a smaller scale the relationships between the principals of an AGA and the brokers may be closer.

Section: 3 – 3.7 Extent of the MGA model;

As MGA and AGA contracts are issued by the insurance companies the data with respect to the number of MGA’s and AGA’s should be obtainable from this source. Given that MGA’s and AGA’s have contracts with a variety of companies it may not be easy to classify them in the categories as noted in your report as Large, Regional and Small.

Section: 3 Concerns Regarding the MGA Distribution Model;

Question 3. We believe that the insurer should be contacted to determine what factors they consider to determine what activity to outsource to the MGA. Given that there are several categories (Large, Regional and Small) under which MGA’s operate we think that this will impact the capacity to accept outsourced activities from the insurer.

Question 4. Insurers conduct on-site compliance reviews as well as use compliance questionnaires to satisfy themselves that the MGA meets the requirements as determined by the insurer.

Question 5. We definitely believe that the core functions of an insurer such as product development, claim handling and underwriting should not be delegated as it would create a conflict at the MGA level particularly for a MGA contracted with multiple insurers.

Question 6. We believe that any function outsourced to a MGA/AGA is material to their risk management process as the insurer would have to satisfy themselves that the MGA/AGA has the capabilities to carry out the function (s) so delegated. As stated in section 4 of the issues paper responsibilities of insurance companies are established by virtue of law governing insurance as well as the agency relationship between an insurer and an insurance representative.

Question 7. Here we refer again back to section 4 of this paper in which you clearly state that regardless of the fact that an insurer may delegate certain functions to another party (MGA/AGA), an insurer is ultimately responsible for its product by virtue of the insurance contract between the insurer and the policyholder. It is in the Insurer’s interest to ensure that any delegated function is carried out to their standards and thus to ensure that appropriate safeguards are in place and conduct regular assessments assuring themselves that these standards are being met by the MGA/AGA.

Question 8. It would be welcomed if insurers used standardized compliance monitoring guidelines as this would greatly assist the MGA/AGA in developing policies and procedures to ensure all required functions and obligations outsourced to them are carried out properly.

Question 9. This question can be best answered by the insurers.

Question 10. Even though representatives may be dealing with more than one MGA we have not seen any evidence that this would make it more difficult to detect unsuitable activities as the representative cannot deal with the same insurer through more than one MGA. As such, all business with a particular insurer would be handled by the same MGA.

Question 11. We do not believe that this is a necessity as currently both the insurer and the MGA deal with the Advisor's business. If there were any concerns either party can deal with this. Both insurer and MGA contracting have adequate means to deal with any concerns that may come up.

Question 12. Questionable acts should be reported by which ever party discovers these acts and not be the responsibility of just one party. Under the current set up the insurer already has this obligation and we, as a MGA, would certainly advise the insurer if such a situation would present itself.

Question 13. Misconduct reporting is handled through the sector in which the misconduct took place. Given that the regulator ultimately determines what action to take if the representative is found to be guilty of misconduct we believe that it is at the regulator level that cross sector reporting should take place.

Question 14. We are of the opinion that the representative decides what product from which company fits the needs of the customer. The representative will do his/her analysis of the available product and may even present several solutions to a customer from different companies. Ultimately, it is a decision between the customer and the representative.

Question 15. There is no specific disclosure with respect to overrides received by the MGA to the consumer by either the representatives or the insurer. Given that the MGA performs functions for the insurer and the representative and rarely, if ever, interacts with the consumer we do not see any meaningful benefit for disclosure to the consumer.

Question 16. Expectations of the insurer with respect to supervision of sales practices have to mirror the role of the MGA in the distribution network. Although our oversight is more encompassing than completeness of paperwork it cannot include the nature of the advice as we are not privy to the discussion between the advisor and the consumer.

Question 17. Any transaction errors involving MGA's are resolved with the insurer and /or advisor and the MGA. If it was discovered by the consumer they would advise the representative or the Insurer who in turn would take this up with the MGA for resolution. We have had no errors remain unresolved to date.

Question 18. As stated above any MGA error is resolved with cooperation between all parties involved and no consumer is left adversely affected.

Question 19. Our broker agreement clearly stipulates the requirement to immediately advise the MGA of any complaint made. We, as a MGA, are actively involved in the complaint resolution process with all parties involved.

Question 20. OLHI is already available to anyone who wishes to use their services so there is no need for making access available. Consumer awareness may be addressed by the Insurer as they are the members.

Question 21. The MGA does not collect the personal information however in our processing we do obtain personal information. Consent is being obtained on the applications of the Insurer as it specifically refers to mandatories/ servicing partners etc.

Question 22. MGA’s retain personal information for servicing purposes as mandated. This information is maintained in a strictly confidential and compliant manner.

Question 23. Outside of the Privacy laws there are contractual obligations to protect and safeguard this information, furthermore this is fundamental to the business as any violation would severely impact the integrity and create a tremendous reputational risk.

Question 24. There is no specific licensing for MGA’s in any of the jurisdictions. Most jurisdictions have corporate licensing however this does not address the role of the MGA. We believe that E. & O. insurance should definitely be a requirement and go beyond that of a representative or incorporated representative(s).

Question 25. MGA’s rules and responsibilities are subject to the requirements of the Insurer (s) with whom they are contracted, the various provincial regulators depending on the number of provinces they operate in and the national regulators such as Fintrac. Because of all these different parties there are inconsistencies in how a MGA operates however we do not believe that this creates a negative impact, it does however create different business practices.

Question 26. Insurers probably deal with this on an individual basis; Insurers would be in a better position to address this. Given that MGA’s are licensed if any misconduct would fall in a reportable category we would expect this to be reported to the regulator.

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March 31, 2011

CAILBA Executive Summary Re: Issues Paper MGA Distribution Model

CCIR/Agencies Regulation Committee:

CAILBA's participation in CCIR's initiative of reviewing the Managing General Agencies Distribution Model was the primary catalyst that heightened CAILBA's awareness of and need for increased compliance, diligence and standardization within our distribution channel; CAILBA is not sure if that was a primary hope of the Committee, but it certainly has been a positive result.

Following is a brief summary of where CAILBA is now and what our position is on the specific items as raised by the Issues Paper;

- CAILBA supports a representative's ability to contract with multiple MGAs as it does not compromise the consumers' best interest or stakeholders' ability to handle complaints or detect 'unsuitable representative activity' and it allows for greater consumer product choice
- Insurers should remain accountable for outsourced activities and must ensure that outsourced activities are being adequately performed; this via audits and by actively assisting MGAs in the development of appropriate systems
- CAILBA would welcome further dialogue and standardization regarding what activities may or may not be outsourced to MGAs
- CAILBA believes MGAs have a role in complaint handling and detection of 'unsuitable representative activity' and would welcome further dialogue in defining the extent and degree of a MGA's involvement
- CAILBA sees the potential merits and benefits of a MGA registration/license category and would welcome further dialogue in determining its nature and extent, particularly in regards to standardization nationally
- CAILBA recognizes the extent of E&O protection for MGAs is different than those of representatives and would welcome further dialogue in this determination
- CAILBA believes 'product suitability and advice' are responsibilities of the representative and insurer

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In terms of what have we done, where we are now and where we are going;

- CAILBA is unique, insomuch as although we are an association of MGAs, insurers are also members (non-voting); this provides CAILBA with a direct and immediate conduit to insurers, many issues of mutual concern have been addressed through this relationship
- CAILBA recently concluded an Insurer/MGA Contract review, this was a major undertaking over several years, resulting in numerous changes to contracts that better represented the interests of both parties; this activity continues
- CAILBA provided its members with a representative Debt Monitoring System, which was invaluable in not only the collection of representative debt, but also in identifying 'unsuitable representative activity'; this system has been replaced with revisions to the insurers' representative transfer rules, an item which CAILBA has negotiated and continues to pursue
- CAILBA participated in CLHIA's development of the recently introduced "Standardized Audit Survey", the development of this tool was accelerated by CAILBA's repeated petitions for audit standardization among the insurers
- CAILBA's development of a "Compliance Toolbox" for its members is its most significant initiative to date, this compliance system will provide our members with the implantation, policies, procedures and tools a financial services firm needs to manage their compliance, regulatory and business risks; the "Compliance Toolbox" extends to provide ongoing professional compliance advice to our members, maintenance of the program and ultimately, accreditation of a firm's compliance regime.

The above is not meant to be a comprehensive list of our positions or accomplishments, but are those that are more specific to CCIR's MGA Distribution Model initiative, my opening remarks credit CCIR as being the catalyst that caused our organization to identify and respond to the needs of our members in the area of compliance; interestingly, other industry stakeholders are responding in kind, as evidenced by CLHIA's standardized audit, insurers' movement on contractual issues and CAILBA's increased relationships with regulators and other industry associations; so, in closing, from CAILBA's perspective we thank CCIR for raising all stakeholders awareness and the process CCIR employed.

CAILBA looks forward to our continued participation and our increasing role in the MGA Distribution Channel.

Yours truly,

Casey Brandreth
CAILBA Regulatory Affairs Chair

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March 31, 2011

Issues Paper - Managing General Agencies Life Insurance Distribution Model

Extract of Questions to Stakeholders

1. **Are there other aspects of AGAs that differentiate them from MGAs?**

2. **Which functions of MGAs do not apply to AGAs? Are the activities of AGAs closer to representatives rather than MGAs?**

   Most MGA functions do apply to AGAs with less scale and less formal administrative function.

   Yes, AGA activities are closer to representative activities than MGA activities. (As an example, most AGA principals are active representatives.)

3. **What are the factors considered by an insurer before deciding whether or not to outsource an activity to an MGA?**

   There does not appear to be any apparent criteria or consistency among insurers as to what is outsourced to the MGA, however some insurer/MGA contracts will state outsourced activities/responsibilities.

   CAILBA believes defining what activities can be outsourced would be welcomed.

4. **How do insurers satisfy themselves that MGAs have the expertise to carry on the delegated functions (e.g. product training, product development, etc?)**

   Most recently some insurers are conducting on-site Compliance Meetings or the completion of a Compliance Questionnaire as a requirement.

5. **Are there functions that should not be outsourced to an MGA (e.g. core functions such as underwriting and claims handling)? Would delegating to MGAs a function such as product development affect the insurer's role as manufacturer?**

   Core functions like claims handling, underwriting and product development to date have not been outsourced to the MGA.

   Should core functions, as above, be outsourced it would have an effect on the insurer's role as a manufacturer, to what extent is difficult to say.

6. **Do insurers view functions outsourced to an MGA/AGA as material to their risk management process?**

   Yes, from our perspective insurers view outsourcing of functions as one way to reduce their risk management process. The downloading of these responsibilities is of great concern to CAILBA.

7. **How should insurers be held accountable for the activities outsourced to MGAs? Is having appropriate safeguards and conducting regular assessment of whether the MGA is achieving the right standards for each delegated function sufficient? Or would insurers also take responsibility for the mistakes of the MGA?**

   Delegation on the part of the insurer is the delegation of 'tasks' and not delegation of ultimate responsibility. Appropriate safeguards and regular assessment should be acceptable in most instances and allow insurers to take some or greater responsibility for MGA mistakes.

8. **What can be done to enhance compliance monitoring of functions outsourced to MGAs? Would standardize compliance monitoring guidelines assist smaller insurers?**

   Yes, standardized compliance monitoring guidelines would enhance monitoring by all insurers and MGA's, big and small.

9. **What specific activities do insurers carry on today in supervising representatives and reporting misconduct?**

   This question would be better answered by the insurer and varies from insurer to insurer.

10. **Under today's MGA structure, has detection and reporting of "unsuitable representatives" become more difficult as a representative is, at any given moment, dealing with various MGAs and insurers? Please elaborate.**

    There is no evidence that detection and reporting of "unsuitable representatives" that have multiple MGAs is more or less difficult than "single MGA representatives" or even "captive representatives". The multiple MGA model does not appear to compromise the detection of unsuitable representative activity.

11. **Is it necessary that some party be in a position to monitor the overall business practices of a representative? If no, why not? If yes, which party, MGA or insurer, is in the best position to do that monitoring?**

    CAILBA does not believe it is necessary for one party to monitor the overall business practices of a representative. As to date, to our knowledge, there has been no increase in 'unsuitable representative activity'. No change in a regulator, insurer or consumers' ability to respond to unsuitable representative activity and no indication that the emergence of the MGA channel as the prevalent distribution model has had any impact on the number or degree of unsuitable representative activity. The current regime whereby the insurer is accountable appears to be quite adequate.

12. **Given their proximity and close relationship to representatives, should MGAs be responsible for reporting questionable acts by representatives:**

    a. **To insurers with whom they have an agreement?**

       Yes

b. To insurance regulators?

Yes.

13. How is misconduct reporting handled when the representative is dually licensed? Should misconduct in one sector be reported in the other sectors where the representative is licensed?

Currently, "security misconduct" is reported to a regulator, "life misconduct" reporting is required by MGA contract to the insurer, no current requirement of MGA to report to a regulator, however, best practices should cause most MGAS to do so.

CAILBA believes misconduct of dually licensed representatives, should be reported to both "Life and Security" Regulators.

14. To what extent can or does an MGA influence the decisions of its representatives to place insurance with one insurer over another? How is this controlled?

This varies by MGA and by representative, some representatives are very reliant on MGA advice, support and recommendations, others work very independently. The representative is the ultimate decision maker in this regard.

15. Given that MGAs receive commission from insurers for volume of business generated through the representative, what kind of disclosure to consumers (regarding this specific commission) is provided today by the representative? By the insurer?

There is no disclosure of this specific commission provided to the consumer by either the representative or the insurer.

16. What are the expectations of insurers when supervision of sales practices is delegated to MGAs? Is oversight limited to completeness (form) as opposed to the nature of the advice (substance)?

This question deals with the expectations of insurers and is better answered by the insurer.
Insurer expectations vary by insurer and contract. CAILBA believes that that oversight should be limited to completeness (form) and to the exclusion from advice (substance).

17. What problems have arisen to date regarding transaction errors involving MGAs and how have they been resolved? How do consumers know who to go to in these situations?

When transaction errors occur most are resolved between the representative, the insurer and the MGA. Consumers would in most circumstances, first report errors to their representatives and then to the insurer, this would be obvious to the consumer; beyond this they may report to a provincial life regulator; the presence or absence of a MGA has no bearing on a consumers ability to report errors.

18. Who would be accountable for errors in consumer transactions processed through MGAs? Are representatives and/or insurers assuming responsibility for the mistakes of an MGA when a consumer is adversely affected?

MGA consumer transaction errors are generally easily addressed with cooperation among the MGA, insurer and representative; the accountability for the error would be determined by the type of error. CAILBA's experience has been all parties to the transaction have shared in the resolution and accountability of errors.

19. Is there an obligation in the agreement between the MGA and the representative for the representative to report to the MGA any complaints received and their status?

Some Representative Agreements do require representatives to report complaints to the MGA, others do not. CAILBA believes all Representative Agreements should contain this obligation.

20. Is there a need for all complaints against representatives or MGAs to have access to the OLHI process and, if so, how might this be accomplished?

The access to the OLHI is already in place. We believe the insurer must advise the consumer of this, do not see any need for change.

21. If a consumer is unaware of the existence of an MGA between him/her and the insurer, how is consent being given to MGAs to collect personal information? Are insurers or representatives obtaining consent to disclose to MGAs a consumer's personal data?

The MGA does not collect the personal information however, as personal information is fundamental to the life insurance industry process, the MGA does store this information. Client permission is obtained via insurance application documents and representative's disclosure forms.

22. Do MGAs retain personal information and, if so, for what purpose? On whose behalf is this information retained?

Records are retained for ongoing business and service activity needs.

23. Other than through privacy laws, how are MGAs being held accountable for the privacy of this information today?

An MGA must adhere to the privacy laws. Privacy is fundamental to the MGA business model and any violation would jeopardize both the integrity and viability of the business going forward. To violate the privacy laws could cause the insurer to cancel the MGA contract.

24. Do you think that the existing licensing regime and the level of required E&O insurance is adequate for the functions of an MGA in today's marketplace?

No, the existing licensing regime varies widely by jurisdiction and none acknowledge the specific nature of MGAs.

CAILBA believes levels of E&O insurance for MGAs should go beyond that of individual or corporate representatives and be monitored.

25. Is the lack of specific rules on the duties and responsibilities of an MGA generating inconsistencies in how MGAs operate and the level of service they provide?

Quite possibly, the MGA business model has a number of variations. It should be noted that these variations do not imply that there are inconsistencies in the application of business practice management as a negative. They are just differences in the business model often determined by the scope of the MGA – a single address local MGA, a regional MGA or a national MGA.

26. Other than terminating an ongoing agreement, how do insurers deal with MGA misconduct today? Do insurers report MGA misconduct to regulators?

Insurers will likely address MGA misconduct on a situational basis. We are not aware of the reporting activities or requirements with regards to the reporting of MGA misconduct.