Guideline G8
ADVISOR SUITABILITY: Screening, Monitoring and Reporting

This Guideline has been approved by the Board of Directors of the Canadian Life and Health Insurance Association Inc. (CLHIA). Member Companies are expected to adopt this CLHIA Guideline having regard to the company's structure, products and business processes, including distribution channels. Member Companies are urged to incorporate this Guideline into the company's ongoing compliance program.

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1. INTRODUCTION

Advisor suitability is central to the industry's overall goal of treating the customer fairly. Suitability means a lot of things but, at its core, it focuses on a single question: Does the advisor's conduct indicate a willingness and ability to provide customers with sound advice about life and health insurance products and services? Answering this question requires insurers to consider, on an on-going basis, a wide range of factors that can affect the performance of advisors and give rise to potential risks to the consumer.

Insurers maintain compliance systems that are reasonably designed to ensure that each advisor representing the insurer complies with relevant statutory and licensing requirements. This includes initial screening and on-going monitoring of advisors for suitability and reporting advisors who are not suitable. More generally, the practices described in this Guideline are central elements in a comprehensive strategy for managing reputation risk and treating customers fairly.

2. PURPOSE

This Guideline sets out a framework and describes practices to assist companies in establishing and maintaining a system for screening, monitoring and reporting advisors.

3. SCOPE

The practices described in this guideline are applicable to all licensed life and/or accident and sickness advisors regardless of the type of insurance product they are selling or the distribution channel in which they operate. The practices can also be used, as appropriate, in situations involving distribution by incorporated advisors.

In the event of any conflict between the provisions of this Guideline and any applicable law, the law takes precedence over the Guideline to the extent of the conflict.

4. DEFINITIONS

"Advisor" means any person or entity licensed by a Canadian province or territory to sell life insurance or accident and sickness insurance. For greater clarity, 'advisor' in this Guideline refers to "agent" or "representative" and similar terms commonly used in the industry.

"Monitoring" is an on-going process for managing identified risks and identifying additional risk in advisors.

"Screening" is a one-time process for initially assessing the suitability of an advisor and identifying compliance risk related to the advisor.

5. RESPONSIBILITIES OF COMPANIES

Insurers should have comprehensive policies and procedures for screening, monitoring and reporting. Among other things, the policies and procedures should describe the criteria an insurer will use for making decisions about enhancing the level of scrutiny and managing identified risks.

Generally, insurers will take a risk-based approach in determining when and how to implement specific practices. Section 10 of this Guideline describes the continuum of risk that may occur for a number of factors.

Many of the decisions an insurer is required to make about an advisor's suitability entail the balancing of interests. On the one hand, insurers need to effectively investigate concerns about an advisor so that decisions about suitability are fair and based on accurate information. On the other hand, insurers need to protect customers from any potential harm that might result from following the advice of an advisor who is not suitable. In the end, decisions should be guided by the overriding objective of treating the customer fairly.

If an insurer has reasonable grounds to believe that an advisor acting on its behalf is not suitable, the insurer should report this to the applicable provincial or territorial regulator(s).

If an insurer has reasonable grounds to believe that an advisor is not suitable, the insurer should not enter into or maintain a contract with that advisor.

Where an insurer learns of facts that give rise to concerns or questions about the suitability of an advisor, the insurer should carefully assess the risk and take steps to clarify and effectively manage that risk.

6. DELEGATION OF DUTIES

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. For example, an insurer operating in the Managing General Agency (MGA) channel may rely on the MGA to confirm that the agent’s licence is valid when placing business.

In situations where an insurer delegates a screening or monitoring function, the insurer retains responsibility. Accordingly, insurers who delegate screening or monitoring functions should take reasonable steps to ensure that the delegate is capable of carrying out these functions and is, in fact, carrying out the functions.

In Quebec, when the distribution of insurance is performed by a licensed firm, some of the practices described in this Guideline are statutorily prescribed obligations of the firm.

Insurers should not delegate reporting functions.

7. SCREENING

Effective screening practices should provide reasonable grounds to believe the advisor is suitable. This picture should be used to make informed decisions about contracting and, if the insurer decides to enter into a contract with the advisor, subsequent monitoring.

Insurers, or their delegates, should use the CLHIA Advisor Screening Questionnaire when making an initial assessment of the suitability of an advisor.

As noted in Section 5, if screening reveals reasonable grounds to believe an advisor is not suitable, the insurer should not enter into a contract with the advisor.

Screening may reveal issues with an advisor who is otherwise suitable. In these situations, the insurer should use the screening information to make decisions about risk-based monitoring that effectively manages the risk created by these issues.

Exclusive reliance on self-reporting by the advisor will not generally be sufficient for effective screening. To verify the information in the self-reports and obtain additional information that might be relevant to assessing the advisor's suitability, insurers should make inquiries with other insurers with whom the advisor has or has had contracts and/or with references provided by the advisor. Among other things, previous employers and insurers should be asked about the grounds for any employment or contract terminations and compare the information collected with that provided by the advisor. Regulatory databases for licensing and disciplinary decisions should also be checked to confirm the accuracy of self-reported information.

8. MONITORING

Monitoring practices generally provide a more targeted picture of the advisor's business practices and sales activities. The information gathered in monitoring is intended to help the insurer manage potential risks identified in screening and/or find information that indicates a problem may be developing.

Where signs of potential problems are detected, insurers should use this information to make informed decisions about heightening scrutiny and/or initiating investigations of the advisor.

For greater clarity, whereas effective screening practices will generally be consistent from one advisor to the next, monitoring practices are more likely to vary depending on the insurer's assessment of the risk presented by an advisor.

9. REPORTING

The intent of reporting is to advise regulators and other appropriate parties in a timely manner of concerns about an advisor's suitability.

As noted in Section 5, decisions about what to report, to whom and when need to take into consideration the fair treatment of both the advisor and the public. In making decisions about reporting, however, the overriding objective should be to mitigate risk to the public.

Decisions about reporting will reflect three general sets of circumstances.

1. Reporting of concerns at an early stage to industry stakeholders who inquire about the advisor in the process of conducting their own screening.
2. Notifying regulators of concerns where the insurer intends to maintain the contract, generally with heightened monitoring.
3. Notifying regulators of concerns and a decision to terminate the contract.

10. FACTORS RELATED TO SUITABILITY

The following types of information and related considerations should be taken into account by an insurer when assessing the suitability of an advisor.

In some instances, a single incident may be serious enough that it would provide the insurer with reasonable grounds for believing that the advisor is not suitable. In other instances, it may be necessary to detect a "pattern" of actions before deciding there is sufficient evidence to warrant investigation or heightened scrutiny. (A "pattern" means that the incidents are not isolated and there is reason to believe they are evidence of the advisor's regular method of conducting business.)

10.1 Criminal Convictions

Past criminal activity may be evidence of heightened risk. The assessment of risk will vary depending on the type and seriousness of the crime, the number of convictions and how recently the activity occurred.

It should be noted that for offences committed under the *Youth Criminal Justice Act* or similar previous legislation such as the *Young Offenders Act* (repealed in 2003), that are self-reported by the advisor, the risk of subsequent offences may be lower.

10.2 Unresolved Criminal Charges

Potential risk presented by unresolved charges is heightened due to the facts that the charges may be more recent and additional criminal activity may come to light. Accordingly, decisions about the suitability of an advisor who is currently facing criminal charges should generally be delayed until such matters are resolved.

10.3 Disciplinary Actions by Regulators

An advisor who has been fined or had a licence sanctioned or revoked by any regulatory body for contravention of by-laws and rules, or provincial or territorial insurance acts or regulations, should be investigated to determine whether, based on information available to the insurer, the advisor is suitable.

Sanction or revocation of a licence by a regulatory body should generally be regarded as evidence of high risk.

10.4 Unresolved Charges or Investigations by Regulators

As is the case for unresolved criminal charges, the lack of resolution of a regulatory action increases risk. Accordingly, decisions about the suitability of an advisor who is currently charged or under investigation by any regulatory body should generally be delayed until such matters are resolved.

10.5 Financial Health

The financial health, or lack thereof, of an advisor can influence how that advisor manages his or her dealings with customers. Advisors experiencing financial difficulties may be distracted and unable to give customers the attention they require or they may recommend products the customer does not need. In more extreme situations, the advisor may be motivated to misappropriate the customer's funds.

Insurers should take reasonable steps to ensure they are able to accurately assess the advisor's financial health.

An advisor who is an undischarged bankrupt should be treated as a high risk. Insurers should be familiar with all relevant details of the situation before deciding to issue or continue a contract with an advisor who is an undischarged bankrupt.

Where there is evidence that bankruptcy (either discharged or conditionally discharged) led to the advisor engaging in unacceptable sales practices, this should be treated as a high risk. Insurers should be familiar with all relevant details of the previous bankruptcy and its effect on the advisor's sales practices and enhance scrutiny of transactions to protect customers from the risk of unacceptable sales practices.

Advisor debt should be carefully assessed with attention paid to the amount of debt, the reasons for the debt and changes in the debt profile.

10.6 Licensing Requirements

Specific licensing requirements vary from jurisdiction to jurisdiction across Canada and may be updated or increased at any time.

(i) Valid licence
The advisor must hold a valid licence for the products he or she is selling and satisfy all the licensing requirements of the jurisdiction issuing the licence. For advisors holding a non-resident licence, this includes ensuring compliance with any requirements that exceed those of the advisor's home jurisdiction. Related to this, where an advisor shares his or her commission with another person, the advisor should ensure that person is licensed.

(ii) Errors and omissions insurance
Errors and omissions insurance, including fraud coverage, is mandatory for advisors in many provinces. Monitoring should routinely confirm that advisors are complying with regulatory requirements. Even where it is not required, having adequate coverage, including fraud, is a prudent business practice and an important safeguard for customers. An advisor's unwillingness or inability to secure coverage should be treated as a sign of potential risk.

(iii) Continuing education
Continuing education is mandatory for advisors in Alberta, British Columbia, Manitoba, Ontario, Quebec and Saskatchewan. Even where it is not required, a commitment to continuing education is a sign of professionalism and an important safeguard for customers. An advisor's unwillingness to take continuing education courses may be a sign of potential risk.

10.7 Statutory Compliance

Advisors should have written policies and procedures that describe how they comply with a number of statutory requirements beyond insurance regulation. These include privacy, anti-money laundering/anti-terrorist financing, FATCA, telemarketing rules and anti-spam laws. In addition, many insurers have corporate policies that may be more restrictive than current insurance regulation. Some common examples relate to rebating and trafficking insurance (or viatical settlements). If an advisor does not have written policies and procedures in these areas, this may be an indication that the advisor is either unaware of his or her responsibilities or not clear about practices that address them and should be treated as a risk.

10.8 Sales Practices

A number of specific sales practices are evidence that an advisor may not be suitable. These practices are described in Appendix 1.

Insurers should be responsive to any signs that an advisor may be engaging in any of these practices. Investigations and the reassessment of risk should be done in a timely manner to protect customers. Where practices are inadvertent or well-intended, education of the advisor may be sufficient to prevent further risk. Where the investigation turns up evidence of a more serious problem, the insurer should take appropriate action to mitigate the risk as quickly as possible.

10.9 Sales Trends

Trends in sales can provide indirect evidence about the appropriateness of product recommendations and other advice. Patterns that fall outside accepted norms (e.g., unusually low levels of conservation or persistency) or suddenly change (e.g., shifts in products or client profiles) may be evidence of heightened risk. Changes in the type of client an advisor is serving or the types of products recommended may be evidence of heightened risk, especially if there are no signs the advisor has received additional training.

Appendix 1
Unacceptable Sales Practices

1. Fraud

Intentional deception or misrepresentation which an individual knows to be false or does not believe to be true and is made knowing that it may be detrimental to the other party and that it could result in some unauthorized benefit to the advisor, or some other person.

2. Misappropriation of Client Funds

Taking money or other property received from the client and using it for any purpose other than that specified by the client.

3. Forgery

Knowingly making a false document with intent that (a) it will in any way be used or acted upon as genuine, to the prejudice of a person, or (b) some person will be induced, by the belief that it is genuine, to do or to refrain from doing something.

4. Money Laundering/Terrorist Financing

Money laundering is the processing of criminal proceeds to disguise their illegal origin. Terrorist financing is the collection or distribution of funds with the intent or knowledge that the funds will be used by a terrorist or to carry out a terrorist act.

5. Privacy or Confidentiality

Any transmittal of personal information, whether intentional or unintentional, for purposes other than those consented to by the individual described by the information.

6. Conflict of Interest

Intentionally failing to provide to customers disclosure of business relationships with insurers and all conflicts of interest or potential conflicts of interest associated with a transaction or recommendation as set out in the CLHIA Reference Document: Advisor Disclosure.

7. Tied Selling

Making the purchase of one product conditional on the purchase of another product.

8. Premium Rebating

A promise or agreement for the premium to be paid for a policy in a lesser amount than the premium set forth in the policy, or paying (or *offering* to pay) a rebate of the whole or part of the premium stipulated by the policy, or any consideration or thing of value intended to be in the nature of a premium rebate, except to the extent permitted by law.

9. Inducements

Making, or offering to make, any payment of money or gift of value, directly or indirectly, to convince a customer to purchase insurance except to the extent permitted by law.

10. Replacements

(i) Undisclosed and/or Systematic Replacements
Failure to provide full and fair disclosure to the customer and insurer as required by provincial and territorial laws or systematic internal or external replacements that are detrimental to the customer.

(ii) Twisting
Persuading a customer to terminate a policy solely for the purpose of selling another policy without regard to possible disadvantages to the customer. It can also involve using the values, either through loans or through the re-direction of dividends, of one policy to purchase another.

(iii) Churning
Initiating, for personal gain, transactions so that the volume or frequency of trades is excessive in view of the character of the account and the customer's personal objectives.

11. Misrepresentation and Disclosure

(i) Holding Out
Intentional misleading of the customer using any media (e.g., business cards, websites, social media, etc.) in regard to credentials or designations or authority, or the ability to provide advice or service.

(ii) Unfair or Deceptive Statements
Failure to provide full and accurate disclosure so the customer can make an informed decision about the purchase of a product or service.

(iii) Illustrations
Unauthorized changes by an advisor to company-provided illustrations, or manipulation by an advisor of software beyond its defined parameters to create an unreasonable expectation about the benefits or advantages of the policy.

It is expected that all advisors will follow CLHIA Guideline G6 *Illustrations* or G15 *Guaranteed Withdrawal Benefit (GWB) Illustrations* as appropriate on the use of illustrations for life insurance and/or IVICs with guaranteed withdrawal benefit features.

12. Misrepresentation to the Company

Failure of the advisor to provide full, complete and accurate information to the insurer.

13. Improper Paperwork

Any practice that thwarts, intentionally or unintentionally, the evidentiary intent of a signature. This includes but is not limited to the use of presigned forms, signature witnesses made at a time other than when the customer signs the document, and improper initialing of error corrections. Where the transaction is conducted and evidenced electronically, a similar standard applies.

Delays in delivering policies may be a sign of sloppiness and can create a risk for clients as the delay lengthens the period between the time the policy was explained and whey it is available for review.

14. Product-Client Suitability

Failure to consider the customer's needs, ensure fair treatment and make appropriate recommendations. More generally, failure to follow the steps described in CLHIA Reference Document: Needs-Based Sales Practices.

15. Undue Influence

Encouraging a customer to act on a recommendation in a situation where the advisor knows or ought to know that the customer is unable to understand the character, nature, language or effect of the transaction or proposed transaction.

16. Coercion

Compelling a customer, through the use or threat of physical force, to act on a recommendation.

17. Incompetence

Any lack of technical or general knowledge or judgment required to carry out sound business practices and make recommendations based on needs-based sales practices.

18. Fronting

Submission of an application for insurance and receipt of commission by a licensed advisor on behalf of an unlicensed person who solicited the sale. Also, submission of an application by a licensed advisor on behalf of another licensed advisor who does not have a contract with the insurer to whom the application is submitted. More generally, fronting is allowing another person to solicit business and submit it to an insurer under the advisor's name.

19. Trafficking in Insurance and Stranger Owned Life Insurance

Trafficking

(i) Facilitating the sale of a customer's insurance policy to a third party that holds itself out as a purchaser of life insurance policies, except to the extent permitted by law.

Stranger Owned Life Insurance

(ii) Facilitating a customer's application for a stranger owned life insurance ("STOLI") policy. STOLI is generally considered to be an act, practice or plan to initiate a life insurance policy in order to obtain a loan, advance or other payment with the intent of transferring

the right to receive a death benefit to a third party, usually an investor, who, at the time of policy origination, has no insurable interest in the insured. STOLI is generally not considered to be:

a) appropriate recourse financing of needed life insurance; or
b) life insurance purchased by the insured in good faith to meet a personal, business, or charitable need.