

April 8, 2025

**Submitted via Email:**

Attention:

Sarah O'Connor  
Senior Policy Manager  
Canadian Insurance Services Regulatory Organizations  
National Regulatory Coordination Branch  
100-25 Sheppard Avenue West  
Toronto, Ontario M2N 6S6  
Email: [ccir-ccra@fsrao.ca](mailto:ccir-ccra@fsrao.ca)

Peter Chung  
Policy Manager  
Canadian Insurance Services Regulatory Organizations  
National Regulatory Coordination Branch  
100-25 Sheppard Avenue West  
Toronto, Ontario M2N 6S6  
Email: [ccir-ccra@fsrao.ca](mailto:ccir-ccra@fsrao.ca)

Dear Sir/Madame:

**RE: CCIR AND CISRO - PROPOSED CONSOLIDATED SEGREGATED FUNDS GUIDANCE**

We write in response to the Canadian Council of Insurance Regulators (“**CCIR**”) and the Canadian Insurance Services Regulatory Organization’s (“**CISRO**”) Proposed Consolidated Segregated Funds Guidance (the “**Proposed Guidance**”).

**OVERVIEW OF POSITION**

We generally support the objectives of the Proposed Guidance, which include creating a comprehensive guidance document for insurers and intermediaries related to the design, distribution, issuance, sale, and servicing of individual variable insurance contracts (“**IVIC**”).

We generally agree that the “principles” included in the Proposed Guidance are consistent with existing CCIR/CISRO guidance and insurance regulations. To the extent that the Proposed Guidance is designed to bridge gaps in the regulation of mutual funds and segregated funds, we also generally agree that the Proposed Guidance includes new expectations that derive from and are consistent with the CISO’s *Mutual Fund Dealer Rules* (the “**MFD Rules**”) and related guidance. As such, we are of the general view that the Proposed Guidance serves to consolidate the general principles that apply IVIC products.

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However, in consideration of these generally accepted principles, there are areas of the Proposed Guidance that appear to be overly prescriptive and unnecessary. In addition, there are some areas of the Proposed Guidance that may serve to create confusion rather than clarity for insurers and intermediaries. As discussed below, we encourage CCIR/CISRO to maintain a principle-based approach to regulation that does not create unnecessarily burdensome expectations for insurers and intermediaries. In order to maintain that approach, we recommend that the CCIR/CISRO remove the expectations discussed below.

## COMMENTS ON PROPOSED GUIDANCE

Please see our below comments on each part of the Proposed Guidance.

### Part 2 – Designing IVICs

We generally agree that the principles articulated in this part of the Proposed Guidance are consistent with CCIR/CISRO's *Guidance: Conduct of Insurance Business and Fair Treatment of Customers* (the "**FTC Guidance**"). In addition, we note that the expense ratio calculation methodology in this chapter corresponds with the Canadian Life & Health Insurance Association's *G2 Guidelines on Individual Variable Insurance Contracts Relating to Segregated Funds* (the "**G2 Guidelines**"). These alignments are helpful.

However, in review of the Proposed Guidance, we do not believe that Ch. 2.5 of Part 2 is necessary or helpful for insurers/intermediaries. This guidance is overly prescriptive and potentially burdensome and does not appear to substantively add to the principles included in this part of the Proposed Guidance.

### Part 5 – Advertising IVICs

In our review, Part 5 of Proposed Guidance draws from and builds on the FTC Guidance and the MFD Rules. We do not take any issue with the general principles articulated in Part 5 which include, for example, the expectations that insurers/intermediaries treat customers fairly with respect to advertising, avoid conflicts of interest, and refrain from making false or misleading advertisements. We note, however, that this part of the Proposed Guidance is more detailed/onerous than the MFD Rules and includes guidance that is largely unnecessary considering the above noted principles. This includes the following provisions that we view as being unnecessary:

1. **Ch 5.2.5 – Information about performance:** This chapter includes prescriptive guidance on use of data on performance of segregated funds. These expectations are overly burdensome and should be deleted. Concerns are adequately addressed by the general prohibition against misleading advertising.
2. **Ch 5.2.7 – Guarantees:** This chapter includes prescriptive guidance on references to guarantees in advertisements. These expectations are overly burdensome and should be deleted. Concerns are adequately addressed by the general prohibition against misleading advertising.
3. **Ch 5.3.3.1 – Ease of Comprehension:** This chapter includes prescriptive guidance on advertising for target customer groups including "information presented, wording, order of information, font size, speed of audio, volume, and other factors that affect comprehension." These expectations are overly burdensome and should be deleted. Concerns are adequately address by the principle of fairness and the general prohibition against misleading advertising.

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4. **Ch 5.6.3 – Avoiding Confusion:** Provides that “where there is a risk of confusion, an advertisement should clearly indicate the insurer is responsible for the promises made under the IVIC, and not any other party [...]”. This expectation should be deleted. Although insurers are responsible for their advertising, this does not preclude the possibility that others may be liable.

## **Part 6 - Understanding Products, Investment Strategies and Customers’ Needs**

Part 6 of the Proposed Guidance includes the CCIR/CISRO’s know your product, know your client, and needs analysis expectations for intermediaries. We understand that this part of the Proposed Guidance is largely derived from the MFD Rules, MFDA Staff Notice MSN-0048, and MFDA Staff Notice MSN-0069. The principles included in this part are generally consistent with the MFD Rules and Staff Notices.

While we understand that the Proposed Guidance has been modified to account for the characteristics of IVIC products, part 6 of the Proposed Guidance also includes the following provisions, which are more onerous than the equivalent MFD Rules, unnecessary, and ambiguous::

1. **Ch 6.1.4 and Ch 6.1.5 – Know Your Investment Strategies – Knowledge and Understanding about Borrowing to Invest:** These provisions are poorly drafted and overly burdensome. We note, for example, that 6.1.4.1 contemplates that, before an intermediary sells an IVIC, the *intermediary* is expected to “know how to identify whether the *intermediary* has sufficient knowledge and expertise to competently provide recommendations and advice on borrowing to invest in an IVIC”. This guidance mixes KYC consideration with competency considerations, which creates confusion for insurers and intermediaries as to their obligations and should be deleted.
2. **Ch 6.1.4 and Ch 6.1.5 – Know Your Investment Strategies – Knowledge and Understanding about Borrowing to Invest:** Whereas Ch 6.1.4.1 purports to set minimum KYC standards, 6.1.5.1 goes on to state that the standards in Ch 6.1.4.1 are “not sufficient”. “Not sufficient” should be deleted as this phrase creates ambiguity as to CCIR/CISRO’s minimum expectations.

## **Part 7 – Recommendations and Advice – Intermediary Expectations**

Generally speaking, the principles that are outlined in this part of the Proposed Guidance are consistent with the suitability determination requirements found in the MFD Rules and MFDA Guidance Note MSN-0069. However, as noted above, in consideration of these well-established and accepted principles, the Proposed Guidance includes several chapters that are unnecessarily prescriptive and burdensome. We draw your attention to the following:

1. **Ch 7.1.1 – General Principles** – This chapter provides that an intermediary should only advise a customer about an IVIC if the “intermediary is competent to do so”. This appears to mix two related but distinct concepts (suitability vs. competency). As noted above, we believe that importing a consideration of advisor competency into the suitability should be avoided.
2. **Ch 7.1.3 – Recommending Leveraging Strategies and Borrowing to Invest – General Principles:**
  - a. Ch. 7.1.3.1 expressly refers back to Ch 6.1.4 and 6.1.5, which, as noted above, include drafting deficiencies. As a result, those deficiencies bleed into 7.1.3.
  - b. More generally, we note that the provisions related to leveraging strategies and borrowing to invest in Ch. 7.1.3 are more detailed and onerous than the MFD Rules and the commentary in Guidance Note MSN-0069 and should be deleted.

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3. **Ch 7.1.6 – Unmet Needs:** This section draws a distinction between IVIC transactions that meet all of a customer’s needs and IVIC transactions that only meet some of a customer’s needs and imposes additional disclosure requirements for the latter category of transactions. This confuses the suitability analysis which does not recognize “partially” suitable investments, which should be avoided. This section should be deleted.
  4. **Ch 7.6 – Completing Customer Instructions:** This section is overly detailed and unnecessary apart from the general principles set out in Ch 7.6.1 and should be deleted.
  5. **Ch 7.7 – Post-Transaction/Reasons Why Disclosure – Intermediary Expectations:** Again, this section is overly detailed and unnecessary apart from the general principles set out in Ch 7.7.1 and should be deleted.

## **Part 11 – Oversight**

We understand that the insurer expectations, and the intermediary expectations included in this part of the Proposed Guidance are drawn from and expand upon the FTC Guidance and the Segregated Fund Working Paper. This includes, for example, the general principle that insurers/intermediaries are responsible for overseeing the activities that have been assigned/delegated to another and must have sufficient policies, procedures, and controls in place to ensure oversight/compliance.

We note, however, that this Ch 11.4 includes specific monitoring expectations and contemplates that intermediaries/insurers are expected to undertake increased monitoring where intermediaries/insurers detect activities that *may* be contrary to the Proposed Guidance. These provisions are not found in prior guidance or the MFD Rules:

1. **Ch 11.4.1 – Patterns which may suggest a need for increased monitoring:** This Chapter (and referenced Ch. 11.2.1.2 and 11.3.1.1) impose obligations on insurers to undertake “increased monitoring” if non-compliance is suspected. These provisions are impractical and overly prescriptive in light of the overarching oversight expectations and should be deleted.
2. **Ch 11.4.2 – Specific monitoring expectations:** This Chapter imposes specific monitoring obligations on insurers to undertake “increased monitoring” if non-compliance is suspected. These provisions suffer from drafting deficiencies, are impractical and should be deleted in light of overarching oversight expectations. I.

We appreciate CCIR/CISRO’s efforts to create a consistent regulatory approach as between IVIC and mutuals funds that reflects the general similarities between these product types but recognizes the unique characteristics of IVIC-related investment product.

Respectfully submitted,

***Investment Industry Association of Canada***