

**Regulatory Update – CAFII Executive Operations Committee, October 20, 2015**

Prepared By Brendan Wycks, CAFII Executive Director

**Introduction**

**Federal/National**

- **CCIR:**
  - Travel Insurance Working Group Interested In CAFII-Sponsored Survey (**page 2**)
  - CCIR To Consult On Proposal To Require Submission Of Annual Statement (**page 2**)

**Provincial**

- **British Columbia:**
  - Insurance Council Calls For Limits On Credit Insurance’s Licensing Exemption (**page 2**)
  - Advocis And IFBC Call For Abolition Of Insurance Licensing Exemptions (**page 3**)
  - CAFII Meetings With Ministry Of Finance Set For November 10/15 (**page 4**)
  - Ministry Of Finance Deciding Whether To Publish FIA Consultation Submissions (**page 4**)
  - Ministry Of Finance Outlines Timetable For Completing FIA Review Process (**page 4**)
  - Insurers No Longer Permitted To Be LLQP Course Providers In BC (**page 5**)
- **Alberta:**
  - Insurance Council Reviewing Products Suitable For Sale Under RIA Licence (**page 5**)
- **Saskatchewan:**
  - Industry Consultation On Bill 177 Draft Regulations Deferred To 2016 (**page 6**)
- **Ontario:**
  - Release Date For Expert Panel’s Preliminary Position Paper Is Imminent (**page 6**)
  - FSCO On-Site Examinations Of Life Agents Focusing On Product Suitability (**page 6**)
  - FSCO Strengthening Monitoring Of Life Agents’ E&O Insurance Requirement (**page 7**)
  - New Ontario Regulations Prohibit Online Insurance Promotion By Credit Unions (**page 7**)
- **Quebec**
  - AMF To Remain Focused On Compliance With Sound Commercial Practices Guideline (**page 8**)
  - More Than 330 Submissions Made To Consultation On Distribution Act (**page 8**)
  - CLHIA Asks Quebec To Move DWR And Internet Sales To Insurance Act (**page 8**)
  - Advisor Association Asks Minister To Delay Proposed Distribution Act Changes (**page 9**)
  - AMF Looking To Government To Take Position On Internet Offerings In Future Bill (**page 9**)
  - AMF To Accelerate Overhaul Of Two-Page Distribution Guide (**page 9**)
- **Nova Scotia**
  - Nova Scotia-Resident Applicants Must Now Provide Own Criminal Record Check (**page 9**)

## **Federal/National**

### **Canadian Council of Insurance Regulators (CCIR)**

#### Travel Insurance Working Group Interested In CAFII-Sponsored Survey

In an industry issues dialogue with CAFII Board and EOC members on October 6/15, Patrick Dery, Chair of CCIR, indicated that CCIR's Travel Insurance Working Group (TIWG) would like to have access to the results of the Pollara survey, recently commissioned by CAFII, on Canadian consumers' satisfaction with travel health insurance.

He noted that the TIWG would be especially interested in a breakdown of the results between consumers who purchased coverage through a licensed representative versus those who did so without a representative.

Patrick stated that market conduct issues are what caused CCIR to make a review of travel health insurance a 2015-16 priority; and he confirmed that the timing for the TIWG's release of an Issues Paper had been pushed back to some point in the late first quarter or early second quarter of 2016.

#### CCIR To Consult On Proposal To Require Submission Of Annual Statement

In an industry issues dialogue with CAFII Board and EOC members on October 6/15, Patrick Dery, Chair of CCIR, advised that CAFII and other industry stakeholders would be hearing from CCIR soon about a consultation on a proposal that insurers will be required to complete and submit an Annual Statement to the Council.

This initiative has emerged from CCIR's recent work on a national market conduct Supervisory College framework, and to have all jurisdictions sign a related memorandum of understanding. At its most recent meeting on October 1-2/15, CCIR adopted a harmonized market conduct supervision framework, which is risk- and results-based and will govern how the provinces and territories will work together.

The impetus behind the proposed Annual Statement to be filed with CCIR is a desire to be able to demonstrate that Canada's insurance regulators have a proactive market conduct supervisory framework in place, in order to satisfy the IMF when it next comes to Canada for a Financial Sector Assessment Program review and is looking for evidence of that.

## **Provincial**

### **British Columbia**

#### Insurance Council Calls For Limits On Credit Insurance's Licensing Exemption

In its submission in response to the Initial Public Consultation Paper for the 10-year review of the province's Financial Institutions Act (FIA), the Insurance Council of BC calls for substantial limits to be imposed on creditor insurance's existing licensing exemption under the Insurance Licensing Exemptions Regulation.

The Council lays out three possible options for addressing its concerns with the current licensing exemption:

- limit the licensing exemption so that it only applies to amounts of insurance coverage under \$50,000 (a similar limitation is already in place for the licensing exemption for the sale of funeral services insurance). For amounts over \$50K, there would be no exemption and a life insurance licence would be required;
- if no maximum dollar amount is imposed upon the licensing exemption for credit insurance, additional conditions should be imposed upon the exemption such as
  - mandatory successful completion of an education program similar to that required to hold a life insurance agent licence (a similar provision is in place for the travel insurance exemption);
  - mandatory disclosure to a client that (i)he/she should seek a second opinion from a licensed life insurance agent; (ii) the exempt person is neither licensed nor qualified to sell life insurance; and/or (iii) the client is not required to purchase from the financial institution as a condition of obtaining a loan or mortgage; and
- if the licensing exemption for credit insurance remains as is (and similarly for any other exempt insurance product), there should be a prohibition on insurance that is sold on a post-claims underwriting basis. If financial institutions are permitted to sell credit insurance without the benefit of licensed insurance agents, they should be required to undertake the appropriate underwriting processes upfront, not just when, or if, a client makes a claim.

The Insurance Council puts forward three issues as alarm bell justifications for its change proposals:

- no specific education or training is required of salespersons operating under the existing licensing exemption;
- credit insurance is not sold within the context of the consumer's overall insurance needs; and
- consumers with complaints arising from the sale of credit insurance under the existing licensing exemption have nowhere to go, except the courts, as there is no oversight of this activity.

#### Advocis And IFBC Call For Abolition Of Insurance Licensing Exemptions

The submissions from Advocis and the Independent Financial Brokers of Canada (IFB) to BC's review of the FIA are remarkably harmonized in asserting that

- unlicensed sales of insurance products are not consistent with the province's consumer protection framework;
- all incidental insurance products that are related to the life and health of the insured should require the involvement of a fully licensed agent, such as travel medical insurance or creditor life insurance;
- the licensing exemption currently accorded to creditor insurance and other types of incidental sales of insurance should be abolished;
- the optimal and best way to protect consumers is to require the individual licensing of incidental insurance salespersons;

- at a minimum, incidental sellers in BC should have to obtain a restricted license, similar to what is required in Alberta, Saskatchewan and Manitoba, and what BC itself requires for travel insurance; and
- the FIA should be amended to give the Insurance Council of BC increased powers to license and regulate incidental sellers of insurance.

#### CAFII Meetings With Ministry Of Finance Set For November 10/15

CAFII has been able to confirm meetings with BC Ministry of Finance officials – related to the 10-year review of the FIA – for the morning of Tuesday, November 10/15 in Vancouver. These discussions will consist of

- a high level/political meeting for half an hour involving MLA Dan Ashton, Parliamentary Secretary for Finance; Elizabeth Cole, Executive Director, Executive Director, Strategic Projects in the BC Ministry of Finance’s Policy & Legislation Division and leader of the province’s 10-year review of the Financial Institutions Act and Credit Union Incorporation Act; and other Ministry staff colleagues; and
- an ensuing meeting for one hour to 90 minutes with Elizabeth Cole and Ministry staff colleagues to discuss recommendations made in submissions from other stakeholders such as the Insurance Council of BC, Advocis, and the Independent Financial Brokers of Canada.

#### BC Ministry Of Finance Deciding Whether To Publish FIA Consultation Submissions

On October 16/15, Elizabeth Cole, Executive Director, Executive Director, Strategic Projects in the BC Ministry of Finance’s Policy & Legislation Division, advised Brendan Wycks that the Ministry was still deciding whether or not to publish online all submissions received in response to the Initial Public Consultation Paper.

Generally, the BC government tends not to take the approach of full publication of submissions, which is why a public report outlining a high level of summary of the submissions was promised as a next step in the Initial Public Consultation Paper. However, the Ministry has received several requests for access to all submissions received, so is reconsidering its position.

In any event, neither a summary report nor full publication of all submissions will be available prior to the stakeholder meetings that the Ministry is holding during the week of November 9-13/15.

Elizabeth advised that the Ministry received approximately 40 submissions in total, with the majority dealing with the insurance sector; a smaller but still significant number dealing with credit unions; and just a few focusing on trusts.

#### Ministry Of Finance Outlines Timetable For Completing FIA Review Process

On October 16/15, Elizabeth Cole advised Brendan Wycks that, based on past experience, completion of the FIA review process will take at least two years – from the time of its launch in June 2015 – plus at least an additional six to eight months for the development and finalization of Regulations, and a further allowance for a transition period if there are substantive changes.

When the FIA was last reviewed over a decade ago, the process took two years to complete even though no substantive changes resulted at that time.

Next steps in the current review process include

- a public report on stakeholder input received in response to the Initial Public Consultation Paper, in early 2016;
- a policy paper later in 2016 which lays out proposals for change, for which there will be a generous consultation period for industry stakeholders to provide detailed feedback; and
- if changes are adopted, amendments to the Act and development and finalization of Regulations, in late 2016 and early 2017.

In addition, the legislature's calendar will need to be factored into the timetable with respect to approval of legislative and regulatory changes. With a provincial election scheduled to occur in BC on May 9, 2017, the timetable for completion of the FIA review process will likely be further protracted.

#### Insurers No Longer Permitted To Be LLQP Course Providers In BC

On October 1/15, Gerry Matier, Executive Director of the Insurance Council of BC, advised Brendan Wycks that the Council had recently determined that it would not authorize any insurance company to serve as a Life License Qualification Program (LLQP) course provider under the new, nationally harmonized LLQP that launches on January 1/16.

#### **Alberta**

#### Insurance Council Reviewing Products Suitable For Sale Under An RIA Licence

On October 19/15, Joanne Abram, CEO of the Alberta Insurance Council, provided Brendan Wycks with the following update on a Council initiative that she highlighted while participating on a regulators' panel at CLHIA's 2015 Consumer Complaints Fall Seminar:

*In 2015, the Council has undertaken a review of the products offered for sale in Alberta by the holders of a Restricted Insurance Agent Certificate of Authority. This review was prompted by the Council finding*

- *instances of "scope creep," eg. product warranty insurance morphing into gap insurance;*
- *illegitimate transference/delegation of responsibility to TPAs. In Alberta, an RIA licence allows for the employees of the licence holder to sell insurance products on the licence holder's behalf; but it does not allow TPA employees to sell insurance on behalf of the licence holder; and*
- *lack of a complaints resolution process on the part of some agencies/brokerages that hold an RIA licence.*

*To date, the review has involved obtaining from insurers copies of policies and reviewing them to ensure that the products fit within the scope of what the Life Insurance Council and the General Insurance Council had authorized to be sold under a Restricted Certificate. We do have some concerns that these products may have expanded beyond what was originally authorized in both the general insurance environment and in the creditor group environment.*

*I anticipate that the review will be completed by the end of December. At that time, we will have a better idea of whether we will be recommending any changes to the list of authorized products.*

*When the review is complete, any recommendations for changes will be sent along to CAFII and to the CLHIA to provide comments and feedback before they are brought forward to the Councils.*

## **Saskatchewan**

### Industry Consultation On Bill 177 Draft Regulations Deferred To 2016

On October 19/15, Jan Seibel, Legal Counsel with Saskatchewan's Financial and Consumer Affairs Authority, advised Brendan Wycks that the industry consultation period on the draft Regulations to implement Bill 177 (Insurance Act) will definitely be deferred into early 2016, as drafting work is still ongoing and its completion is not yet in sight.

## **Ontario**

### Release Date For Expert Panel's Preliminary Position Paper Is Imminent

On October 19/15, David McLean, Senior Policy Advisor with the Ontario Ministry of Finance and Secretary to the Expert Panel reviewing FSCO's mandate, advised Brendan Wycks that while a release date for the Panel's Preliminary Position Paper had not yet been set, that date will likely be very soon.

In September, David indicated that following completion of sectoral roundtable meetings with stakeholder groups in July, the Expert Panel's next step was to release a Preliminary Position Paper sometime this Fall.

### FSCO On-Site Examinations Of Life Agents Focusing On Product Suitability

While participating on the regulators' panel at CLHIA's 2015 Consumer Complaints Fall Seminar, Izabel Scovino, Interim Director, Market Regulation Branch, indicated that "issues around product suitability" are the top consumer protection issue for her FSCO team at this time.

She indicated that FSCO wants to complete 200 on-site examinations with life agents related to product suitability by March 31/16; and it has completed 60 thus far. These examinations will also confirm that agents have valid E&O insurance in place and have completed required continuing education (CE) credits. This project is taking up a lot of staff time, Izabel advised.

In a related area of product suitability concern, but outside of insurance, she noted that FSCO is worried about syndicated mortgages that are being sold as certain to generate an 8% risk-free return, even in today's exceedingly low interest rate environment.

### FSCO Strengthening Monitoring Of Life Agents' E&O Insurance Requirement

In an October 16/15 meeting with CAFII representatives, Shonna Neil, Director of the Licensing Branch in FSCO's Market Conduct & Licensing Division, and Allan Amos, Manager, Licensing Compliance Unit, provided an update on the Commission's recent and planned initiatives to strengthen monitoring of life insurance agent compliance with the requirement to maintain errors & omissions insurance coverage. Not having such coverage in place is an offence under the Insurance Act.

In addition to agent compliance with this requirement, insurers have an obligation to screen their sponsored agents for e&o coverage and to report to FSCO on any non-compliant agents. FSCO recently added a new report for insurers to Licensing Link, to assist them in complying with their obligation to monitor their sponsored agents' e&o coverage.

FSCO intends to introduce the following changes to strengthen its monitoring and enforcement of life insurance agent e&o insurance coverage:

- beginning in mid-November 2015, in the case of an agent who has not provided evidence of current e&o coverage and it is more than 30 days past FSCO's deadline for doing so, a notice will appear on that individual's profile on the province's public registry for agents which says "FSCO does not have current E&O insurance information for this agent." Both this negative comment and its possible subsequent removal from the registry will be auto-generated, such that immediately after the required e&o coverage information is added to the system, the comment will disappear.
- in early 2016, a new field will be added to the online application forms for new and renewing life agent applicants. That field will ask for the names of the insurers that the agent has a contract with. CAFII offered the feedback that the optimal wording for such a question, with respect to renewing agents, would be "Which insurers have you sold for in the past two years?"; and
- beginning in 2016, FSCO will move to an entirely e-mail based license renewal notice system, with a paper-based renewal option being eliminated. This will require all agents to maintain a current e-mail address in FSCO's database.

### New Ontario Regulations Prohibit Online Insurance Promotion By Credit Unions

In amendments filed on September 18/15, the Ontario government added new provisions to Regulation 237/09 under the *Credit Unions and Caisses Populaires Act* that specifically forbid credit unions and caisses populaires incorporated in Ontario from directly or indirectly promoting non-authorized types of insurance (such as auto, home and individual life insurance) on their web sites. This prohibition includes linking to any insurer, agent, or broker that deals in unauthorized types of insurance coverage.

In Ontario, credit unions and caisses populaires are not allowed to sell or promote insurance in their branches unless it is related to their core business. Acceptable, related types of coverage include products such as creditor, mortgage, travel, and group life insurance.

"The change will ensure greater consistency between the promotion of insurance products permitted online and the promotion permitted in branches," reads a notice now posted on FSCO's web site. "The changes will also align Ontario's provisions with those in effect under the federal regime for banks."

FSCO says it will begin enforcing the new rules on January 1/16 and warns the province's credit unions and caisses populaires that they may need to alter their online practices, web sites, and promotional materials in order to comply with the new rules.

## **Quebec**

### AMF To Remain Focused On Compliance With Sound Commercial Practices Guideline

In an industry issues dialogue with CAFII on October 6/15, Nathalie Sirois, the AMF's Senior Director, Supervision of Insurers and Control of Right to Practise, advised that as an outcome of the regulator's recent review of insurer compliance with its Sound Commercial Practices Guideline, the AMF will be forming an internal task force with a view to completing some follow-up work and a more comprehensive analysis by June 30/16. The AMF will then come back to the industry to consult on the findings and recommendations made in that more comprehensive report.

Nathalie noted that the AMF has become aware of some situations where insurers have relied heavily on their TPAs but have not properly overseen and controlled them. As well, they have encountered instances where the Distribution Guide was not properly provided to consumers.

She stressed that the AMF is intent on sending a message to insurers that operate in the DWR channel that they must control this line of business just as much as they do their operations involving certified representatives.

### More Than 330 Submissions Made To Consultation On Distribution Act

The Quebec Ministry of Finance has received more than 330 submissions in response to its consultation report on the province's *Act respecting the distribution of financial products and services*. Some groups in the province, including managing general agent Mica Capital and claims adjuster ClaimsPro, asked each of their individual representatives to make a submission which contributed to the exceptionally high total. That total does not include those submissions filed on a confidential basis.

The Ministry has posted all submissions that were not filed on a confidential basis to its web site at <http://www.finances.gouv.qc.ca/fr/page.asp?sectn=2&contn=580>.

### CLHIA Asks Quebec To Move DWR And Internet Sales To Insurance Act

In its submission to the Quebec Ministry of Finance's consultation on the *Report on the Application of the Act respecting the distribution of financial products and services (ARDFPS)*, CLHIA asks that distribution without a representative (DWR) be moved to the province's *Act Respecting Insurance (ARI)* from the Distribution Act where it currently resides. The CLHIA would also like internet sales to be regulated under the Insurance Act.

"With respect to distribution without a representative, we believe that it should be governed by the ARI or the Act that will replace it, as is the case in several other Canadian provinces, rather than by the ARDFPS. Any changes to the regulation of this type of distribution will be easier to bring about by amending the ARI than the ARDFPS. This way, distribution without a representative and online distribution will both fall under the same Act, supported by the AMF's guidelines," the CLHIA submission states.



### Advisor Association Asks Minister To Delay Proposed Distribution Act Changes

In its submission on Quebec's *Act respecting the distribution of financial products and services*, the Conseil des professionnels en services financiers (CDPSF) asks the Minister of Finance to delay making proposed changes that would facilitate online insurance offerings without the involvement of a representative. The Conseil argues that a licensed representative should be involved in every insurance transaction.

"The CDPSF firmly believes that there would be significant social costs if the government were to eliminate, even partially, the advisory role of the financial services industry," says CDPSF CEO Mario Grégoire. The CDPSF recognizes that the internet is an essential part of doing business, but the group says that this tool makes insurance consumers more vulnerable. In the CDPSF's view, the role the advisor plays is not just a benefit to the consumer; it acts as a safeguard.

### AMF Looking To Government To Take Position On Internet Offerings In Future Bill

In an industry issues dialogue with CAFII on October 6/15, AMF staff executives Eric Stevenson and Louise Gauthier advised that the AMF is looking for the Quebec government to take a position on internet insurance offerings in a future Bill, likely one which amends and modernizes the Insurance Act.

While the AMF feels that the government is favourable towards the Orientations set out in the regulator's April 2015 "Internet Insurance Offerings in Quebec" report, they are not certain where the government will ultimately land on the proposals made therein or when it will act to introduce legislative change.

The government may decide to move forward with a flexible framework, but the AMF would prefer to have definitive and clear regulation in this area.

### AMF To Accelerate Overhaul Of Two-Page Distribution Guide

In an industry issues dialogue with CAFII on October 6/15, Louise Gauthier, the AMF's Senior Director, Distribution Policies and Compensation advised that now that the regulator's work on the national LLQP modernization effort is nearly complete and the province's review of the Distribution Act is well underway, the AMF will try to advance the two-page Distribution Guide overhaul initiative rapidly, such that it is completed before the review of the Distribution Act is itself finished.

## **Nova Scotia**

### Nova Scotia-Resident Applicants Must Now Provide Own Criminal Record Check

On September 29/15, the Nova Scotia Superintendent of Insurance's office announced that, effective immediately, a criminal record check report must accompany all individual insurance license applications for applicants who are residents of Nova Scotia. The Superintendent's office will no longer search a criminal record and obtain a report for the applicant. The notice highlights four avenues for obtaining a criminal record check.