

Regulatory Update – CAFII Board of Directors, November 22, 2016

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Table of Contents

Federal/National

- **Canadian Council of Insurance Regulators (CCIR):**
 - CCIR Outlines Implementation Plans For Annual Statement On Market Conduct **(page 2)**
 - Timing Of CCIR Travel Health Insurance Position Paper Pushed Back To Spring 2017 **(page 3)**
- **Department of Finance Canada:**
 - Amendments Strengthen Exclusive Federal Jurisdiction Over Bank Products **(page 3)**
- **Canadian Association of Direct Response Insurers (CADRI):**
 - CADRI Articulates Concerns About CCIR Annual Statement On Market Conduct **(page 4)**

Provincial

- **British Columbia:**
 - Coast Capital Trying To Become Second National Credit Union **(page 4)**
- **Saskatchewan:**
 - CAFII Provides Feedback On Implementation Timing For New Act And Regulations **(page 5)**
- **Ontario:**
 - Ontario Moves Ahead With New Financial Services Regulatory Authority (FSRA) **(page 6)**
 - FSCO Finds Life Agents Failing To Meet Regulatory Obligations **(page 7)**
 - FSCO May Recommend Legislation To Require Agents' Adoption Of Best Practices **(page 7)**
- **Quebec:**
 - Minister Confirms Imminent Release Of Financial Sector Reform Omnibus Bill **(page 8)**
 - Deputy Minister Sees Online Insurance Sales Being Regulated Under Insurance Act **(page 8)**

International: United States

- **LIMRA and LOMA:**
 - Rino D'Onofrio Elected Chair Of LL Global Board **(page 9)**
 - Americans Want To Pay Flat Fee When Buying Life Insurance **(page 9)**

Federal/National

Canadian Council of Insurance Regulators

CCIR Outlines Implementation Plans For Annual Statement On Market Conduct

In a liaison meeting with CAFII representatives on October 24/16, CCIR Policy Managers M. Boyle and S. Jacobs provided the following updates with respect to the finalization and implementation of the Council's Annual Statement on Market Conduct:

- the Annual Statement (Life & Health) and the Annual Statement (P&C) were approved at the CCIR Fall Meeting on October 6/16, with only minor tweaks required related to ensuring that the questions asked related to complaints are identical to the data requirements in the current National Complaint Reporting System.
- the initial implementation version of the Annual Statement (Life & Health) should be finalized and distributed to the industry, for information, by the end of 2016.
- the AMF will be developing, for CCIR, an online secure system for insurers to submit their Annual Statement response data. That portal should be ready for insurers to review and begin using at some point in February or March 2017.
- the deadline for insurers to make their first Annual Statement submission – based on their 2016 fiscal year-end – will be May 1, 2016.
- CCIR will not be taking a phased-in implementation approach with the Annual Statement, i.e. it will not be rolled out in discreet phases with certain sections of data being required at a later date than other sections. Rather, the entire Annual Statement will have a May 1/16 response deadline under a “best attempts” approach. “Best attempts” will mean that if an insurer is not capable of responding to one or more sections of the Annual Statement by the May 1/16 deadline, for whatever reason, it will need to explain why it is incapable of doing so at this time and state an action plan for rectifying the situation by a year hence, the next time it is required to submit.
- CCIR is currently finalizing a Communications Plan for rolling out the Annual Statement. As part of the roll out, CLHIA and the IBC – the two Associations involved in industry working groups which assisted CCIR to refine the respective versions of the Annual Statement – will be providing training for their members with respect to compliance.
- the attestation in the Annual Statement has been reworked to remove any reference to adherence to all applicable laws and regulations. As well, in both the preamble to the Annual Statement and in the attestation, wording has been added to specify that the information being requested is “commercially sensitive.” This is intended to provide some protection against Freedom of Information requests.
- the initial implementation version of the Annual Statement only asks for some very high level data related to travel health insurance (THI). If additional THI data were to be requested in a subsequent version of the Annual Statement or any new element was to be added, the industry would be given significant advance notice of the change.
- Newfoundland, the Yukon, and Northwest Territories have not yet signed CCIR's Memorandum of Understanding related to its Co-operative Framework for Market Conduct Supervision. Non-signatory jurisdictions will not be permitted to participate in the Council's Co-operative Framework-related activities, including the Annual Statement.
- CCIR has recommended to all of its member jurisdictions that they have legislated self-evaluative privilege in place in connection with the Co-operative Framework and the related Annual Statement.

CCIR's Fall 2016 Communique newsletter, issued November 8/16, states that "the Annual Statements will be used by the CCIR to collect data on insurers from across the country regarding their treatment of customers, corporate culture, and practices in the market."

Timing Of CCIR Travel Health Insurance Position Paper Pushed Back To Spring 2017

CCIR's Fall 2016 Communique newsletter, issued November 8/16, indicates that "CCIR members continue to view travel insurance as a key issue to address. Over the Fall, the Working Group will be reviewing the submissions received on the Issues Paper, which will help inform the direction of a Position Paper which CCIR would like to issue by Spring 2017."

In a liaison meeting with CAFII representatives on October 24/16, CCIR Policy Managers M. Boyle and S. Jacobs provided a clarification on the statement made by H. James, Chair of CCIR's Travel Insurance Working Group (TIWG), at THiA's AGM on September 27/16, that the Council may decide not to issue a Position Paper on Travel Health Insurance (THI).

Messrs. Boyle and Jacobs indicated that, in their view, it is probable that a Position Paper will be produced and released; and that Mr. James' comment was just acknowledging that due process will need to occur and it will be up to the membership of the full Council to decide if a THI Position Paper is necessary.

They also reported that CCIR received 13 submissions in response to the TIWG's Issues Paper on THI Products, from both industry Associations and individual companies. The TIWG will decide whether or not it would like to meet with those stakeholders, for follow-up discussion, based on what it reads in their submissions.

CCIR is requesting permission from each stakeholder to post its submission on the CCIR website. In an e-mail exchange with B. Wycks on November 8/16, S. Jacobs requested and received permission to post CAFII's submission.

Department of Finance Canada

Amendments Strengthen Exclusive Federal Jurisdiction Over Bank Products

On October 25/16, *Bill C-29, Budget Implementation Act, 2016, No. 2* received first reading in the House of Commons. The Bill proposes amendments to the federal *Bank Act* to create a new *Part XII.2, Dealings with Customers and Public*, which will streamline and consolidate existing consumer protection provisions, introduce some new consumer protection measures, and strengthen the argument in favour of exclusive federal jurisdiction over products and services offered by banks.

The amendments indicate that the legislative purpose of the consumer protection provisions is to provide a "comprehensive and exclusive regime in relation to an institution's dealings with its customers and the public in relation to banking products and services" in order to provide "uniform protection on a national level," thereby allowing financial institutions to carry on business "consistently and effectively on a national level" and to "ensure uniform supervision of institutions and enforcement" of consumer protection provisions. The new *Part XII.2* is explicitly stated to be, unless otherwise specified, paramount to any provincial law or regulation that relates to consumers or to business practices with respect to consumers.

The amendments specify that *Part XII.2* is based on the following regulatory principles:

- basic banking services should be accessible.
- disclosure should enable customers and the public to make informed financial decisions.
- customers and the public should be treated fairly.
- complaints processes should be impartial, transparent and responsive.

- banks should act responsibly, considering their customers.

It is expected that the amendments will be proclaimed into force once related regulations have been drafted and finalized; and that a transitional period will be provided to give banks time to adapt their systems and processes to comply with the new requirements.

Canadian Association Of Direct Response Insurers (CADRI)

CADRI Articulates Concerns About CCIR Annual Statement On Market Conduct

In its August 25/16 submission on CCIR's draft Annual Statement on Market Conduct (P&C), CADRI articulated concerns about administrative burden and protecting the confidentiality of proprietary company information that must be shared in responding to this new annual filing requirement.

CADRI's two-page submission states "we are concerned about the administrative burden that July 12, 2016 Draft Annual Statement on Market Conduct collection of data will place on our members, and whether the data requested will enable the CCIR to meet its goals. As it stands today, the CCIR's approach is very different from the way the industry collects and uses data. Providing the information as presented will require generation of data in formats not usually used by members, and may mean that some of the data the CCIR is requesting will not be available in the first and, possibly, the second year of collection.

In this context, we would like to propose that CCIR reconsider its current approach requiring each licensed entity within a group to complete an Annual Statement. This would see our members undertake a significant administrative effort to provide multiple statements. An effort which offers no apparent benefit to either the regulators or customers, particularly when the regulators' stated intent is to identify trends within the industry – a task that requires aggregate data. The typical customer relationship is with a group, not a licensed or legal entity. For example, the AMF research on cyber security accepted a single survey submission for a group as long as all the legal entities were named. Given the amount of data currently being requested, and the work it will take to separate it, we strongly suggest that CCIR reconsider this requirement.

CADRI continues to be interested in learning about the CCIR's protocols for proprietary information. Access to Information legislation exists across the country. While the spirit of those laws is consistent, the exact language and implementation of each regime is not. From time to time, an insurer may provide sensitive data to regulators in the course of an audit. The information is shared in situ, discussed, but retained by the insurer. The design of the current Statement anticipates the collection of some new and competitive information. CADRI is interested in assurances about how that information will be used and by whom, as well as the protocols CCIR would have in place to ensure that data is handled in such a way as to retain the confidentiality of its source.

British Columbia

Coast Capital Trying To Become Second National Credit Union

BC-based Coast Capital Savings Credit Union (CU) has put the wheels in motion to expand coast-to-coast and become Canada's second national CU.

Before that can happen, though, Coast Capital, which is Canada's third largest CU with about 532,000 members and more than \$17 billion in assets under administration, needs the approval of at least two-thirds of its members in a six-week special resolution vote which concludes November 28/16.

And membership approval of the special resolution doesn't guarantee that Coast Capital will become a federal CU. It will also need approval from the Office of the Superintendent of Financial Institutions (OSFI) and the federal government, as well as BC FICOM. The earliest it expects to begin operating nationally, if all necessary approvals are secured, would be 2018.

CUs in Canada were only allowed to do business in their home province until 2012, when the federal government amended its Bank Act regulations to allow CUs to apply for a federal charter and to be regulated by OSFI. Under the new rules, the first federal CU was created in July when Caraquet, New Brunswick-based UNI Financial Co-operation received approval from its members and received a federal charter.

The results of Coast Capital's special resolution vote will be announced at a Special General Meeting on December 14/16.

Saskatchewan

CAFII Provides Feedback On Implementation Timing For New Act And Regulations

In a November 17/16 e-mail to Jan Seibel, Legal Counsel with Saskatchewan's Financial Consumer Affairs Authority (FCAA) and lead on its Insurance Act and Regulations file, B. Wycks conveyed the following feedback from CAFII, as requested by the Executive Operations Committee:

While our Association is working hard and striving to provide well-considered feedback to the FCAA on the main Insurance Regulations Consultation and the separate mini-consultation on licensing requirements for TPAs by the December 2, 2016 deadline for both, we want to provide the following preliminary feedback related to timing and implementation plans.

CAFII has serious concerns that

- the less than two months of response time provided for this consultation does not provide sufficient time and will not allow stakeholders – particularly those that are industry Associations, which need to work through a member-based review and consensus-building process -- to prepare and submit thorough and informed feedback by December 2/16. The thorough and comprehensive consultation on the Regulations that was originally promised would, in our view, have provided a minimum of three months for stakeholder responses. In addition, the unusual circumstance of having an embargo placed upon sharing the consultation document has limited the number of people within CAFII member organizations who can review it and thereby constrained our ability to prepare the best possible response; and*
- it is our strong view that the plan to have the new Saskatchewan Insurance Act and its Regulations proclaimed into force in April 2017 is not realistic or achievable because it does not allow sufficient lead time for insurers and distributors to adapt to mandated changes, especially those which will have systems implications. When provinces are finalizing new legislation and regulations, CAFII always requests that lead time of at least 12 to 18 months be provided to facilitate our members' implementation of changes. These changes inevitably become major projects within member organizations and it takes time to ensure that necessary systems changes are made, forms revised, staff trained, and consumers notified of how the changes will affect them.*

We ask that you take this preliminary feedback under advisement and share it with your FCAA colleagues including Superintendent of Insurance Roger Sobotkiewicz and Deputy Superintendent of Insurance Ian McIntosh.

Ms. Seibel's reply thanked CAFII for providing this feedback, and indicated that she would share it with the Superintendent and Deputy Superintendent of Insurance and respond again thereafter.

Ontario

Ontario Moves Ahead With New Financial Services Regulatory Authority (FSRA)

On November 14, in his Fall Economic Update, Minister of Finance Charles Sousa announced that the province intends to establish a new Financial Services Regulatory Authority (FSRA) – replacing the existing Financial Services Commission of Ontario (FSCO) and Deposit Insurance Corporation of Ontario (DICO) – with a view to reducing regulatory burden on Ontario businesses while at the same time protecting consumers and investors. The legislation establishing the FSRA, known as the *Financial Services Regulatory Authority of Ontario Act, 2016* (FSRA Act) was introduced immediately thereafter and received first reading in the legislature on November 16 (as Schedule 8 of the budget implementation act, Bill 70.)

While the necessary Regulations to the FSRA Act have not yet been released, all indications are that the restructuring of Ontario's financial regulators will proceed in accordance with the Final Report of the Expert Panel that was commissioned to examine the mandates of FSCO, DICO, and the Financial Services Tribunal (FST). The FSRA is to be structured as a flexible, independent, financially self-sufficient, expertise-driven body equipped to respond to rapid technological and market change.

The FSRA Act establishes the structure of the FSRA. The agency will have a board of directors of between three and 11 members, led by a Chair chosen by the Minister. The Minister will also have approval power over by-laws. FSRA directors will be subject to the same conflict of interest, fiduciary duty and indemnification rules that apply to business corporation board members under the Business Corporations Act. The FSRA board will appoint a CEO and other officers, who cannot be board members themselves. The FSRA's revenues will be used exclusively for its own activities, thus fostering its independence, rather than being deposited into Ontario's Consolidated Revenue Fund. Those revenues will be raised, in part, through assessments paid by participants in the various regulated sectors, with provisions for licence revocation and other remedies in the event of non-payment.

Much of the detail of the FSRA's structure and mandate has been left to the Regulations. With respect to those Regulations, financial sector counsel at Stikeman Elliott predict the following:

- the FSRA will be the centerpiece of the regulatory regime, replacing FSCO while also taking on DICO's mandate as prudential regulator of credit unions and caisses populaires. The FSRA will be divided into distinct Market Conduct, Prudential Oversight and Pensions divisions, each with its own Superintendent and subject-matter expertise. The Expert Panel referred to this as a "triple peaks" model, in which the institutional separation of key functions serves to prevent the Agency's resources from being monopolized by one function to the detriment of the others;
- while the FST will share some administrative support services with the FSRA, the FST's independence will otherwise be carefully safeguarded under the new structure. Enforcement will be stepped up, with provision being made for Administrative Monetary Penalties and specific whistleblower protections. There will also be increased co-operation with other regulators and better communication with the public. DICO will continue to administer and oversee Ontario's deposit insurance scheme; and

- the forthcoming regulations may provide additional clarity about some issues on which the Panel did not take a strong position, notably whether and how the FSRA's auto insurance rate review and approval function will be insulated from political pressures. As for the possible extension of the FSRA's authority to payday lenders, loan brokers, consumer credit reporting agencies, credit counsellors and warranty providers – another issue on which the Panel opted not to take a position – it appears that the Government has decided against the idea, given that the FSRA Act defines “regulated sector” in exactly the same way as FSCO's existing legislation does.

Signalling that such a radical reform will be implemented cautiously, the Ministry of Finance has announced that, over the coming months, it will focus on getting the legislation finalized and passed, issuing the necessary Regulations, appointing FSRA's first board of directors, and drafting a detailed implementation plan.

FSCO Finds Life Agents Failing To Meet Regulatory Obligations

Life insurance agents are falling short of their regulatory obligations in certain areas, and FSCO is therefore imposing more and steeper fines on those who aren't following the rules, said FSCO representatives who spoke at the Independent Financial Brokers of Canada's (IFB) Fall Summit on November 1/16.

FSCO's 2015-16 examinations of life agents revealed several gaps in compliance, especially as they relate to disclosure, said Izabel Scovino, director of FSCO's market conduct regulation branch.

“With respect to compliance with the rules, the two areas that are still a concern for us relate to conflicts of interest and failure to disclose in writing the names of the insurers that the agent represents,” she said.

FSCO found that 21% of the 214 agents examined last year were not complying with the regulatory requirement to disclose to clients in writing any conflicts of interest or potential conflicts of interest associated with a transaction or recommendation.

As well, 24% of agents were failing to disclose in writing the names of the insurance companies that they represent, as they're required to do under the Insurance Act.

While the primary focus of FSCO's examinations in 2015-16 was on assessing compliance, it will be focusing more heavily on enforcement in the year ahead.

Enforcement activity is already up significantly in 2016. In the first half of the year, FSCO imposed 68 administrative monetary penalties (AMPs) compared to 67 in all of 2015. The monetary amount of AMPs levied in the first half of 2016 totaled more than \$450,000 versus \$150,000 in all of 2015.

FSCO May Recommend Legislation To Require Agents' Adoption Of Best Practices

FSCO's 2015-16 life insurance agent examinations found that there is much room for improvement in life insurance agents' adoption of certain industry best practices, as follows:

- 19% of agents are not consistently documenting their discussions with clients; and
- 29% of agents are not consistently conducting and documenting a needs analysis with clients.

Although FSCO does not have the authority to impose sanctions with respect to best practices, Izabel Scovino, director of the regulator's market conduct regulation branch, said that if FSCO continues to find insufficient implementation of these practices, it may recommend legislative action.

"We are looking to see better uptake on best practices. Our view is that if gaps continue to exist, that's where we come in, in our role in communication with the Ministry of Finance and making recommendations about turning those best practices into law," she said.

With respect to federally legislated requirements, FSCO's agent reviews also found that 20% of agents do not have policies and procedures in place to be in compliance with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and 17% do not have policies and procedures in place required under the Personal Information Protection and Electronic Documents Act (PIPEDA).

Quebec

Minister Confirms Imminent Release Of Financial Sector Reform Omnibus Bill

In remarks delivered as the luncheon guest speaker at the AMF's 2016 Rendez-Vous event on November 14/16 in Montréal, Quebec Minister of Finance Carlos Leitao announced that an omnibus Bill aimed at modernizing many areas of the province's financial services sector will be tabled by December 9/16 at the latest. Friday, December 9 is the last date on which the National Assembly sits before it recesses for the Holiday Season.

With respect to planned changes to the Insurance Act, one of several pieces of legislation to be updated in the omnibus Bill, the Minister said he intends to introduce amendments to modernize the oversight of product sales via the internet. "Businesses innovate and evolve; and we must facilitate that," he said.

Deputy Minister Sees Online Insurance Sales Being Regulated Under Insurance Act

In a recent interview with *FlashFinance.ca*, a sister publication of *The Insurance and Investment Journal*, Richard Boivin, Quebec's Assistant Deputy Minister of Finance, named the eight pieces of financial sector legislation that will be modernized via the Ministry's upcoming omnibus Bill and also commented on online insurance sales.

The eight pieces of legislation – not all of which will be the subject of comprehensive changes, given that they will be updated via an omnibus Bill – are:

- *The Act respecting insurance*
- *The Act respecting trust companies and savings companies*
- *The Act respecting financial services cooperatives*
- *The Securities Act;*
- *The Act respecting the distribution of financial products and services*
- *The Derivatives Act;*
- *The Act respecting real estate brokerage*
- *The Act respecting the Autorité des marchés financiers*

Boivin's remarks indicate that the government wants to make changes so that online insurance sales are regulated under the province's Insurance Act.

"We want to set standards for the future," he said, noting that at the moment online insurance sales are permissible in Quebec because there is no prohibition against them. "We want to regulate it better, either by rules or by principles."

With respect to insurers, Boivin said it is a simple matter. "We want consumers to always have access to a licensed representative throughout the application process should they wish to have it."

From the advisor's perspective, Boivin questioned the feasibility of consumers doing business over the internet given the market conduct rules to which brokers are subject.

"I am expressing a personal opinion here, but I wonder: is it possible to perform a needs analysis over the internet in accordance with the rules of professional conduct? This is questionable." Boivin said this is particularly true when the code of ethics administered by the Chambre de l'assurance de dommages requires that information be collected by the broker personally.

International: United States

LIMRA and LOMA

Rino D'Onofrio Elected Chair Of LL Global Board

LL Global -- the Windsor, Connecticut-based parent organization of global insurance organizations LIMRA and LOMA -- announced on November 7/16 that CAFII's Immediate-Past Chair Rino D'Onofrio, President and CEO of RBC Life Insurance Company, had been elected Chair of its Board of Directors. Rino served as LL Global's Vice-Chair in 2016.

Americans Want To Pay Flat Fee When Buying Life Insurance

A recently released LIMRA research study indicates that most Americans say they would prefer to pay a flat fee instead of a commission to their insurance advisors. They aren't prepared to pay very much, though.

When LIMRA asked Americans about their payment preferences when buying life insurance, six in 10 said they would rather pay a flat fee. About one quarter had no preference about how their advisors are compensated, and just 14% would rather the financial professional be paid through a commission.

How much are they be prepared for insurance advice? LIMRA says Americans are willing to pay a median one-time fee of \$75, and notes seven in 10 are only prepared to spend \$100 or less.

"Prior LIMRA research shows that one of the top reasons people don't buy the life insurance they say they need is because they don't know what to buy or how much they need. The fact that the majority of Americans are unwilling to pay a realistic amount to get professional advice is troubling," said Jennifer Douglas, research director, LIMRA Developmental and Strategic Research.

LIMRA's study also found that eight in 10 Americans want to know in advance how an advisor is compensated, and this is true of both those who already work with an advisor and those who don't. However, 84% of respondents who have an advisor believe he or she provides excellent value.