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Regulatory Update – CAFII Executive Operations Committee, October 18, 2019

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Federal/National

Travel and Health Insurance Association (THiA)

THiA Organizes an Update on Travel Insurance Imbedded in Credit Cards in Quebec

THiA is organizing an update for its members on travel insurance embedded in credit cards in Quebec, a topic that has generated some confusion around whether such coverage requires a factsheet and summary. The invitation states: "THiA's Regulatory Affairs Committee invites you to join a discussion about travel insurance products embedded in credit cards in Quebec and recent related regulatory developments. The discussion will be led by Rick Da Costa Chair of THiA's Regulatory Affairs Committee and Jill McCutcheon, THiA's Legal counsel." The session will take place on Oct 24, 2019 from 10am-11.30am, by webinar. CAFII's Travel Medical Insurance Working Group Chair Afzal Baig of Toronto Dominion Insurance will try to attend, and his summary of the meeting will be shared with EOC members at the next EOC teleconference meeting on 29 October, 2019.

KPMG

KPMG Program Released for Annual Insurance Conference

KPMG has released its preliminary program for its annual insurance conference, to be held on 28 November, 2019 at the Metro Toronto Convention Centre. Topics will include regulatory and technology change, open data exchange, Insurtech, women leaders in insurance, and will include comments by Neville Henderson, Assistant Superintendent, Insurance Supervision Sector, OSFI.

Insurance Business Canada Awards Gala

Brendan Wycks, CAFII Co-Executive Director, is Among the Prestigious Group of Insurance Executives Selected as Jurists

The Insurance Business Canada Awards finalists have been announced, along with the jurists who will decide on the winners. Among the panel of jurists is CAFII's Co-Executive Director Brendan Wycks, who will join a prestigious group of insurance industry leaders as a jurist. The awards recognize excellence in the Canadian insurance industry, culminating in a ceremony at a gala event on 28 November, 2019 in Toronto.

Provincial/Territorial

Alberta

Alberta Insurance Bureau

Anthonet Marmieri Has Left the Alberta Insurance Council

CAFII has learned that Anthonet Marmieri has left the Alberta Insurance Council. No replacement is listed on the AIC site, with the following listed as the Executive Team: Joanne Abram, Chief Executive Officer, Edmonton; Carolyn Janz, Chief Financial Officer, Edmonton; Sylvia Boyetchko, Director of Licensing, Edmonton; Heath Young, Director of Information Technology & Business Services, Calgary; Zabeda Yaqoob, Director of Legal & Regulatory Affairs, Calgary; and Sharan Dhalla, Director of Compliance, Calgary.

Ontario

Financial Services Regulatory Authority of Ontario (FSRA)

FSRA Announces New Stakeholder Advisory Committees

On 27 September, 2019 FSRA announced that it was launching applications for membership in six Stakeholder Advisory Groups (SACs), which will act as consultative bodies to the FSRA Board of Directors on FSRA's priorities, budget, and other matters the Board deems appropriate. FSRA's release states that

They will play an important role in fulfilling our commitment to an open, transparent and collaborative approach that involves stakeholders and ensures broad input and perspectives as we work to deliver our mandate under the Financial Services Regulatory Authority of Ontario Act, 2016.

The SACs will build on the work of the Industry Advisory Group (IAGs) that supported FSRA's 2019 launch. They will also replace similar consultative groups that existed at FSRA's predecessor FSCO. CAFII was represented on that consultative group and has been invited to participate in the Life and Health Insurance SAC.

FSRA Releases its Second Newsletter

FSRA has released its October, 2019 newsletter. In it, FSRA CEO Mark White states that “It has been four months since the Financial Services Regulatory Authority’s official launch and, while there have been challenges, we are pleased with our progress.” Glen Padassery, Executive Vice President, Policy and Chief Consumer Officer, notes that “We will be establishing a Consumer Advisory Panel (CAP) to guide FSRA’s Consumer Office in the development of its strategies and the execution of its work across all of the regulated sectors. The CAP’s input will help to inform FSRA’s approach to understanding different public interest perspectives and its related activities, including consumer-based research, policy support and consumer outreach.” The deadline for applicants to join the CAP is 14 November, 2019.

The Newsletter states that FSRA will attempt to provide greater clarity around guidance it provides to industry, noting that

FSRA will propose four distinct types of guidance to support requirements set out in legislation, regulations and rules and to inform stakeholders about FSRA’s approach to supervision and regulation:

- 1. Interpretation: Sets out FSRA’s view of requirements under law (i.e. legislation, regulations and rules) so that stakeholders are aware of when non-compliance may lead to enforcement or other supervisory action.*
- 2. Information: Indicates FSRA views on topics affecting regulated sectors, such as desirable or undesirable practices or public interest concerns, without creating or interpreting the obligations of regulated persons.*
- 3. Approach: Describes FSRA’s internal principles, processes and practices for performing regulatory duties, taking supervisory action or exercising FSRA’s discretion or other regulatory powers.*
- 4. Decision: Sets out FSRA’s rationale for a specific regulatory decision of precedential value for other parties not involved in the specific matter.*

Quebec

Authorité des marchés financiers

AMF Organizes Conference on Regulatory Developments and Practices

The Autorité des marchés financiers, in collaboration with the Chambre de la sécurité financière, is organizing a series of five conferences in different cities in Quebec on regulatory developments and practices. The three hour conferences are intended to explain the inspection methods used by the AMF, to present tools to conform with Quebec regulations, and to provide updates on recent regulatory developments. Further information can be found at

<http://app.dialoginsight.com/T/OFSYS/SM2/53/2/S/F/4186/17019/vWKLphJc/742480.html>

Program Released for Annual AMF Rendez-Vous

The Autorité des marchés financiers has released its program for its annual rendez-vous, to be held in Montreal on 25 November, 2019. CAFII and many of its members will be in attendance. The conference opens with a speech by Louis Morisset, President and CEO of the AMF, and will include remarks by J. Mark Weber, Eyton Director of the Conrad School of Entrepreneurship & Business, University of Waterloo, who will speak on the issue of confidence. The keynote address will be made by Quebec Minister of Finance Eric Girard. There will also be workshops on open banking, on dealing with natural catastrophes, on artificial intelligence, and on consumer protection.

Nova Scotia

Superintendent of Insurance, Nova Scotia

Nova Scotia Appoints New Superintendent of Insurance: William Ngu Retires

In a September 2019 liaison phone call with CAFII's Brendan Wycks, Tony Toy, Canadian Council of Insurance Regulators (CCIR) Policy Manager, advised that William Ngu had retired as Nova Scotia's Superintendent of Insurance in Spring 2019; and the province had subsequently appointed Paula Boyd as his successor. Mr. Ngu served as Superintendent of Insurance since 2015 and CAFII enjoyed several productive interactions with him over the past four years.

Ms. Boyd now adds the role of Superintendent of Insurance to her previously held Superintendent of Pensions responsibilities; and she is also Nova Scotia's CCIR representative.

Jennifer Calder continues to serve as Nova Scotia's Deputy Superintendent of Insurance and as the province's representative on the Canadian Insurance Services Regulatory Organisations (CISRO).

Newfoundland and Labrador

Superintendent of Insurance, Newfoundland and Labrador

Craig Whalen Retires As Deputy Superintendent of Insurance: Renee Dyer Is Newfoundland and Labrador's New Superintendent Of Insurance

In a September 2019 liaison phone call with CAFII's Brendan Wycks, Tony Toy, Canadian Council of Insurance Regulators (CCIR) Policy Manager, advised that Craig Whalen had just retired in September after a long tenure as Newfoundland and Labrador's Deputy Superintendent of Insurance and many mutually beneficial interactions with CAFII over the years.

In July 2018, Renee Dyer was appointed Director of Newfoundland and Labrador's Financial Services Regulation Division – in which capacity she serves as Superintendent of Insurance, Real Estate, Mortgage Brokers, Securities, and Pre-Paid Funerals. She is responsible for administration and enforcement of the Insurance Act, Securities Act, and the Real Estate Trading Act.

Before joining the Government of Newfoundland and Labrador, Ms. Dyer held progressively more responsible roles in a number of industries over the past 25 years. She worked at CIBC Corporate Office in Toronto as a Wealth Management Strategist; at CUMIS Insurance as a Senior Management Consultant; at Johnson Insurance as Vice President - Consulting and Plan Benefits; and at FIT For Work as Vice President - Operations.

Ms. Dyer earned Bachelor of Commerce and Master of Business Administration degrees from Memorial University in St. John's; and subsequently achieved the Certified Management Consultant (CMC) designation.

International Developments, Research, and Thought Leadership

Financial Conduct Authority

UK Regulator, the Financial Conduct Authority, Says that UK Banks May Fail to Meet the Timetable for Loan Insurance Claims

Reuters reports on 16 October, 2019 that the UK regulator, the Financial Conduct Authority, says that Britain's banks may not be able to deal with their remaining complaints about mis-sold loan insurance until next summer. Banks had hoped to draw a line under a decade-long scandal by the end of this year.

Loan insurance, or payment protection insurance (PPI), is Britain's costliest retail financial scandal. Banks have paid out more than 43 billion pounds (\$54.64 billion US) in compensation so far. "We are aware that the volume of PPI checking enquiries and complaints sent to firms increased significantly during August 2019 in the run-up to the complaints deadline on 29 August," the FCA said in a statement.

Banks have said they received hundreds of thousands more complaints than they expected in August. "As a result, firms will not be able to meet their normal complaint handling times," the FCA said. A number of firms have said that customers may not get a final response to their claim until summer 2020, the watchdog said.

"We are challenging firms to deal with these complaints as quickly as is reasonable, given the very large volumes," the FCA said. Claims will be entitled to interest on the amount due, typically 8%, which will include the length of time it took to respond.

Australian Securities and Investments Commission

ASIC Vows to Use New Powers to Protect Consumers

The Guardian reports that the Australian Securities and Investments Commission (ASIC), which regulates insurers, will use new powers to better protect customers. In a move welcomed by consumer advocates, ASIC said that rather than relying on ordinary Australians to make a rational choice based on the often voluminous disclosure documents that accompany financial products, it would now use new powers to make sure finance companies did the right thing.

In particular, ASIC claims that disclosure is not sufficient to protect consumers, and that "more often than not disclosure can be ineffective and can even backfire."

ASIC said its new approach drew on commissioner Kenneth Hayne's [final report](#) following his inquiry last year into the banks. More than 50 of Hayne's recommendations related to making firms behave better, rather than providing consumers with more information. "From ASIC's perspective, the limits of disclosure are not new, but we're now in a world where the Royal Commission report proved more than a tilt away from disclosure," she said.

Following six years of scandals in the finance sector, and continual criticism of it as a do-nothing regulator, the government has given ASIC significant new powers and it has pledged to adopt a more aggressive approach to enforcement.

The regulator's new weapons include the power to ban products, the product intervention power, which it has already used four times in the past three months, and a design and distribution obligation that comes into effect in April 2021.

This will require financial services companies to create products that are useful to a particular set of consumers and market it to them appropriately, rather than selling useless products to people as some have done with services such as junk insurance. Chester said the new law encapsulated "just common good business sense".

“I really think that’s got the potential to be a game changer for not only consumers but also the firms and their boards,” she said. “Going forward they’ll now need to meet these obligations to say that the products you’re offering to your consumers, to your market, are fit for purpose.”

“I think business is already on notice from us. It’s clear that when we see and substantiate significant consumer detriment we can and will act.”

A consumer advocate said consumers were forced to buy products such as insurance or a home mortgage but it was “impossible for any normal rational person who has a life to choose”. “Nobody reads terms and conditions,” she said. “Even when you try simplified disclosure, because you’re dealing with fundamentally complex products, people don’t make good choices.”

“What we need is better products and better conduct.” He called on the government to resist industry’s lobbying for light-touch regulation following the Hayne Royal Commission. “This report makes it clear that we need strong legislation that goes to the heart of the conduct revealed before the Royal Commission,” he said. “Letting the industry get away with pushing responsibility onto consumers through more disclosure won’t cut it.”

Australian and New Zealand Institute of Insurance and Finance (ANZIIF)

Australian and New Zealand Institute of Insurance and Finance Launches Working Group on “Raising the Standards”

The Australian and New Zealand Institute of Insurance and Finance (ANZIIF) and a working group of life insurers are establishing a framework to help lift professional standards across the life insurance industry.

The Life Insurers Professional Standards Working Group includes AIA, AMP Life, BT Life, ClearView, MLC Life, TAL and Zurich. They hold 95% of the gross written premium (GWP) in the life industry in Australia and New Zealand. The Australasian Life Underwriting and Claims Association is also involved.

The framework will determine the different “job families” and competencies needed to fulfil job roles at every level of experience. It will also help insurance CEOs to understand what investment is required to build professional skills within the company. ANZIIF has been working with insurers on the framework over the last two years.

To aid in the establishment of better standards, ANZIIF is planning a demographic survey to understand what level of background and skills industry employees possess, followed by another to develop a knowledge-based assessment within the framework.

AIA CEO Damien Mu told insuranceNEWS.com.au the framework will involve taking a closer look at the capabilities they needed across claims, underwriting, product and distribution, which “require a high level of engagement with customers.”

“The framework will present a great opportunity for our people to continue expanding their professional capabilities and we will continue to assist them in meeting and maintaining professional standards, so we’re able to deliver the best outcomes for our customers,” he said.

According to ANZIIF, the program will improve the professionalism of the life insurance industry, build community confidence in life insurance and create a better experience for customers. It will also improve strategies to attract and retain career employees.

It says the Hayne Royal Commission exposed a need to “place emphasis and investment into building the professional skills of people in life insurance.”

Opinion Piece by Ermanno Pascutto, Founder and Executive Director of FAIR Canada (Foundation for Advancement of Investor Rights)

The Slow Death of Canada’s Banking Ombudsman

Ermanno Pascutto writes that for several years, the federal government has failed Canadian retail consumers and small business in providing access to justice in banking, including for seniors, who have comprised 38% of ombudsman banking complaints.

He notes that the Ombudsman to Banking Services and Investments (OBSI) “was created more than two decades ago by Canada’s largest banks as a national, independent and not-for-profit organization to resolve consumer disputes, in order to get ahead of the federal government before it went ahead with enacting a statutory ombudsman. OBSI was created initially for the resolution of banking complaints and its mandate was expanded to include investments.”

Mr. Pascutto says that OBSI, the only independent referee and dispute resolution service for consumer and small business complaints with banks, has slowly been abandoned by most of the big Canadian banks. “Consumers are forced to hope that they will be dealt with fairly and impartially by a for-profit dispute resolution service provider paid for by the banks. The Montreal Canadiens would never be happy about the Toronto Maple Leafs choosing and paying the ref for any game, but this is effectively what the banks are doing to consumers, except that banking consumers are worse off than hockey players. They are amateurs with no home game, always playing in the bank’s arena, against the bank’s staff, and in front of the bank’s referee.”

He goes on to say:

Since OBSI's inception, something went wrong and the largest Canadian banks abandoned OBSI, replacing it with their own for-profit dispute resolution service, hired and paid for by each bank. OBSI's relevance has been dying at the hands of most of the same big banks that first established OBSI two decades ago. The federal government sees this happening, and hasn't done anything about it. To the credit of the securities regulators, the Canadian Securities Administrators, led by the Ontario Securities Commission, refused to permit the same thing to happen in investments: the regulator prevented banks, insurance companies and other dealers from abandoning OBSI for dispute resolution in investments.

It certainly was not that OBSI was awarding too much compensation to consumers that caused the big bank mass exodus. The banks have never paid \$1 million in aggregate for an entire calendar year, which is less than a "rounding error" or one month's compensation of a big bank CEO. So the only logical inference to be drawn is that OBSI was a little too independent for the big banks' liking. Some of its "too independent" behaviour may have included such OBSI practices as investigating problems discovered in complaint accounts that the customer didn't themselves identify. Financial services industry members did not like this practice, but OBSI has said it is consistent with the practices of other financial services ombudsmen around the world.

An external bank ombudsman's role is to investigate unresolved consumer complaints independently and recommend appropriate settlements. Banking complaints from retail consumers and small business (everyday Canadians) that require dispute resolution include excessive fees for prepayment of mortgages, fraud and missing and stolen funds. Investment-side complaints include high-risk investments that the consumer didn't understand, unexpected fees, predatory practices, unsuitable investments that consumers can't sell in times of crisis, fraud and problems with joint accounts and powers of attorney.

Seniors are particularly vulnerable, because of challenges such as physical or cognitive impairments, insufficient time horizon to replenish capital losses or death of partners who traditionally managed the finances. More than 38% of OBSI banking complainants are over age 65, and many are low income. They often need extra assistance and focused attention, which is more likely to be available from an independent non-profit ombudsman than a dispute resolution service provider that is focused on its bottom line.

Canadians, including the especially vulnerable seniors who need extra support and protection, need a statutory ombudsman that is independent from the banks. They need a statutory ombudsman to recommend solutions in cases that are big enough to warrant concern, but too small to be dealt with through the courts or too expensive to be dealt with through the courts for the average Canadian.

Increasingly irrelevant in banking, OBSI should recognize its inevitable and slow death at the hands of the big banks, announce that it will cease to act for any bank at a chosen date in the near future and inform Canadians that the big banks have killed the only independent ombudsman for consumer banking complaints.

The federal government should explain to Canadians why it has failed to create a statutory banking ombudsman with binding authority to protect bank customers and instead has allowed the banks to set up OBSI and then failed to protect OBSI when the banks turned against it. The federal government should inform the public whether any explanation exists besides the unwillingness of any Minister of Finance, in the last decade, to stand up to the banks.

Canada's banking system is among the best in the world and Canadians have a high degree of confidence in the sector. What drives that confidence is consumers' trust in government policies to protect our banks, ensuring the stability of the sector, and ensuring fair treatment of consumers. The current ombudsman problem is bad for consumers and bad for consumer confidence in banks.

It's time for the federal government to publicly commit on a timely basis to a statutory banking ombudsman, not just to protect Canadians – especially seniors and other vulnerable Canadians – but to safeguard public confidence in one of our most important industries and to ensure that the confidence is justified.

Appendix A

CAFII Alerts 13 June 2019—18 October 2019

Date of Email Alert	Topic of CAFII Alert
25 June 2019	Federal Minister of Finance Appoints Judith Robertson, Current FSRA Board Member, As Commissioner Of The Financial Consumer Agency of Canada (FCAC)
22 July 2019	CCIR Communique, Summer 2019
24 July 2019	Submitting "Request For Approval To Keep Records Outside Saskatchewan" To Financial and Consumer Affairs Authority (FCAA)
24 July 2019	Feds criticize Ontario government's plan to eliminate out-of-country health insurance coverage
2 August 2019	July 29/19 Interview With Libby Znaimer, Zoomer Radio On Elimination of OHIP Out-of-Country Medical Coverage
6 August 2019	Australian Securities and Investments Commission (ASIC) Publishes Critical Report on Credit Protection Insurance
8 August 2019	FW: Letter from Lynn Guerriero, OHIP Division, MOH
9 August 2019	Ontario postpones end of emergency OHIP coverage abroad to accommodate dialysis patients; and Dr. Charles S. Shaver: Enforce Canada Health Act equally for out-of-province medical expenses
14 August 2019	OmbudService for Life & Health Insurance (OLHI) Appoints New CEO
14 August 2019	Health Insurance For Travellers: Ontario Government Backpedals
20 August 2019	Member Bulletin (English et en Francais) On AMF Regulatory Issue Updates As At August 15/19
26 August 2019	Canadian Woman Faces Bankruptcy Due To US Hospitalization Fees
28 August 2019	Humania Assurance Inc. Releases "Strategies To Sell Mortgage Insurance Better Than The Banks: A 101 Guide For Today's Insurance Advisors"
6 September 2019	McCarthy Tétrault Hires Lucie Tedesco, Former FCAC Commissioner
11 September 2019	AMF E-Bulletin On Regulation Respecting Alternative Distribution Methods (RADM); and Notice Regarding Information Collection and Insurance Advice
11 September 2019	Blair Morrison Appointed New CEO of FICOM/BCFSA
3 October 2019	FSRA CEO Mark White Expounds/Elaborates On What "Principles-Based Regulation" Means For Financial Services Regulatory Authority of Ontario
4 October 2019	Marjolaine Cantin Appointed Senior Deputy Ombudsman at OLHI
4 October 2019	Commonwealth Bank of Australia Insurance Arm Faces 87 Criminal Charges
11 October 2019	Alberta Superintendent of Insurance Announces Industry/Consumer-Favourable Regulatory Amendments, Including To Fair Practices Regulation By Removing Restrictions Against Electronic Insurance Transactions
15 October 2019	Ontario's New Financial Regulator Wants To Encourage Innovation By Allowing New Product Or Distribution Ideas On A Trial Basis