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Regulatory Update – CAFII Executive Operations Committee, October 26, 2020

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Federal/National

Financial Consumer Agency of Canada (FCAC)

FCAC Appoints New Deputy Commissioner Of Research, Policy And Education

By Financial Consumer Agency of Canada, September 4, 2020

On September 4/20, FCAC Commissioner Judith Robertson announced the appointment of Dr. Supriya Syal as Deputy Commissioner of Research, Policy and Education, effective September 28/20.

The FCAC's media release on this hiring indicates that Dr. Syal's appointment supports FCAC's vision to be a leader and innovator in financial consumer protection. Her background in social and behavioural science research will enhance FCAC's leading-edge research function, and she will play a pivotal role in advancing the Agency's consumer education mandate, including the renewal and implementation of the National Financial Literacy Strategy. Dr. Syal will also strengthen the Agency's capacity to contribute innovative policy solutions to help Canadians improve their financial wellness.

Dr. Syal is an expert in research and evidence-based policy innovation. She is the former Chief Science Advisor to the Treasury Board Secretariat Talent Cloud, and the former Chief Behavioural Scientist of the Privy Council Office Innovation Hub. Prior to joining the public sector, Dr. Syal was VP, Research and Innovation at BEworks Inc. She is the founder and former President of Dulcimer Labs, a purpose-driven company that creates social impact through evidence-based decision making. Dr. Syal holds a PhD in psychology from Cornell University, as well as a master's degree in neuroscience and a bachelor's degree in biochemistry.

FCAC To Develop Four Guidelines Related to Financial Consumer Protection Framework (FCPF)

In a follow-up email to CAFII Co-Executive Directors Brendan Wycks and Keith Martin sent shortly after the Financial Consumer Agency of Canada (FCAC)'s CAFII 2020 Annual Members Luncheon Webinar presentation for CAFII Member and Associate representatives on October 21/20, Brad Schnarr, the FCAC's Manager, Regulatory Guidance and Co-ordination, Supervision and Enforcement Branch, shared the following information about the Agency's plans for developing four Financial Consumer Protection Framework (FCPF)-related guidelines:

FCAC has committed to developing four guidelines in relation to FCPF provisions. The guidelines relate to the provisions in the FCPF where banks are required to develop policies/procedures:

- 1. General Adherence to the Consumer Provisions (195.1 (3)(a) of the Bank Act once in force)*
- 2. Appropriate Products (627.06 of the Bank Act once in force)*
- 3. Complaints Handling (627.43 (1)(a) of the Bank Act once in force)*
- 4. Whistleblowing (979.3 of the Bank Act once in force)*

For each of these four guidelines, FCAC intends initially to have a targeted consultation with the Industry Working Group put in place to assist in the implementation of the FCPF. The targeted consultation will either be on an early draft version of the guideline, or on a discussion paper on the topic of the provision.

The feedback and results of the targeted consultation with the Industry Working Group will help to inform the development a draft guideline, on which a public consultation (which includes all industry, stakeholders, the public) will then take place.

FCAC expects that a draft Complaints Handling Guideline and an Appropriate Products discussion paper will be the first two of the four Guideline topics to go out to the FCPF Industry Working Group for targeted consultation.

FCAC Shares Composition Of FCPF Industry Working Group

In a follow-up email to CAFII Co-Executive Directors Brendan Wycks and Keith Martin sent shortly after the Financial Consumer Agency of Canada (FCAC)'s CAFII 2020 Annual Members Luncheon Webinar presentation for CAFII Member and Associate representatives on October 21/20, Brad Schnarr, the FCAC's Manager, Regulatory Guidance and Co-ordination, Supervision and Enforcement Branch, shared the following information about the composition of the Agency's Industry Working Group Put In Place To Assist Implementation Of Financial Consumer Protection Framework (FCPF):

With respect to the FCPF Industry Working Group, I am happy to advise that in addition to FCAC chairing the Group, it consists of 12 members plus the Canadian Bankers Association (CBA) as an observer. The 12 members represent larger and smaller federally regulated financial institutions, different business models and business lines, and they are geographically diverse.

Canadian Association of Financial Institutions in Insurance (CAFII)

Highlights Of September 29 CAFII Webinar With Manitoba, Alberta Superintendent Officials

CAFII held its third of three Summer 2020 webinars with regulators on September 29/20 with Scott Moore, Manitoba's Superintendent of Insurance, and David Sorensen, Alberta's Deputy Superintendent of Insurance, as the panelists.¹

There was excellent attendance at the webinar from insurance regulators and policy-makers from across Canada, including the Financial Services Regulatory Authority of Ontario, or FSRA; the Financial and Consumer Services Commission of New Brunswick, or FCNB; the Alberta Insurance Council; Alberta Treasury Board and Finance, or ATBF; British Columbia Financial Services Authority, or BCFSa; the Office of the Superintendent of Insurance, Government of Nova Scotia; the Insurance Council of BC; Office of the Superintendent of Insurance, Manitoba; the British Columbia Ministry of Finance; and the Insurance Councils of Saskatchewan.

Scott Moore said that the biggest COVID-19 surprise to him was this:

¹ Jan Seibel, the Director of the Insurance and Real Estate Division at the Financial and Consumer Affairs Authority of Saskatchewan, or the FCAA, had accepted to join the panel but had to bow out at the last minute because the evening before the webinar, the Government of Saskatchewan indicated that it intended to drop the anticipated provincial election writ the next day, and during elections government employees of Saskatchewan, as is the case in most Canadian provinces, are precluded from making any public pronouncements.

generally how quickly, given the circumstances, we were able to adapt. ... We are part of an integrated regulator. We are a smaller branch within the Manitoba Financial Services Agency ... our smaller branch, we were able to be up and running very, very quickly.

David Sorensen echoed that view, noting that *in terms of a surprise for us here in Alberta, we were prepared for a bit of an onslaught, and a little bit concerned going into working from home and the challenges that that brings, we were prepared to hear from more and more Albertans about things that were going wrong for them in terms of the insurance and their needs around COVID, and we were pleasantly surprised that that didn't materialize, so that's kudos to the insurance industry, travel insurance industry in particular, health insurance industry also, in terms of marshaling resources and developing the messaging, reassigning staff at the same while working from their own homes and such, so I want to say a thank you to those insurers and their staff for making our job a little bit easier....*

Mr. Sorensen added, however, that there had recently been an uptick in complaints around travel insurance, so he was keeping a close eye on that. He noted that the quick transition to a home-office environment was initially a challenge. Mr. Moore said that it was less challenging for him and his staff to adapt, because of his team's small size.

Mr. Sorensen noted that regulators across the country were in touch weekly or more often through the CCIR, and they were able to learn from each others' experiences through that forum. He added that an advantage in the circumstances that he felt was unique to Alberta was that in 2019 the province removed most of the remaining barriers to conducting insurance transactions electronically, which became very helpful after the pandemic was declared.

Scott Moore said that there were not elevated levels of complaints or concerns around fair treatment of customers during the pandemic, something he felt very pleased about.

Mr. Sorensen added that *for the most part, insurers have been very responsive. And my thanks again to the industry. I wanted to touch on a few things that we noticed—and these by no means are things we would call "oh my God the sky is falling" things—but I thought I would share them in terms of some things that we're noticing cropping up a little more.... a couple of insurers, significant insurers, had a noticeable, significant drop in sales and service levels....*

Mr. Sorensen added that it was extremely important for regulators and the industry to have good working relationships. In most cases, the industry, not regulators, found solutions to some of the unique problems that COVID created in insurance. Scott Moore agreed with those comments and added that *the industry certainly has to work with regulators, to ensure that the regulations are keeping up —are helping and not hindering – (this is) what I would describe as an unprecedented opportunity to drive change in the industry.*

Mr. Moore added that he felt that going forward the pandemic might introduce a greater role for usage-based insurance (UBI). He added that he wanted to also commend the industry for the many things they did in response to the pandemic, including around flexible payment options, deferrals, and claim handling.

Mr. Moore said that the industry was also very active in helping Canadians abroad return back home. He added that he did not have any criticisms to share of the industry's response to the pandemic.

On the issue of what the industry could do better, Mr. Sorensen felt that more effective communication with struggling consumers around insurance capacity and price was critical.

Both Mr. Moore and Mr. Sorensen agreed that the industry was put in a difficult position due to airlines not refunding consumers for cancelled trips, and instead offering vouchers. They both empathized with the challenge for the insurance industry when a consumer made a trip cancellation travel insurance claim for a cancelled flight for which they had also received a voucher from an airline or other travel services provider.

Provincial/Territorial

British Columbia Insurance Council of BC

Insurance Council Strategy Session Focuses On Online Distribution of Insurance

The Insurance Council of BC is reporting that it held a virtual strategy session on the regulatory implications of the online distribution of insurance on September 23/20, immediately following its virtual 2020 Annual General Meeting of voting and non-voting members held that same day.

During the AGM, Lesley Maddison, the Council's 2019-20 Chair, delivered an annual report on the Council's activities and progress against its strategic plan. This was followed by a report on operations and a financial overview by CEO Janet Sinclair.

Insurance Council Re-organizes Staff Structure To Enhance Proactive Regulation

In its 2019-20 Annual Report, the Insurance Council of BC indicates that during the past year, it has continued its organizational transition to more proactive regulation in keeping with "Strategic Initiative 4: Long-term Talent Management Strategy: Hire and maintain a strong staff" in its strategic plan.

The Council has done that by re-aligning its organizational structure. The former Regulatory Services, Investigations, and Legal departments (three units) were restructured into a Practice and Quality Assurance Department and a Professional Conduct Department (two units), and the expertise on staff in policy development, education, and investigation of financial crime has been broadened.

In recognition of significant increases being experienced in licensing-related requests, an additional position was created in that area to provide increased support to corporations and meet volume demands. The Council also continued to build its organizational capacity in areas such as anti-money laundering, strata insurance, fintech/insurtech, and regulatory practices through training and other educational opportunities, focusing on the skills and practices needed to advance the Council's strategic initiatives.

Insurance Council Provides Update On Council-Relevant Changes To The BC Financial Institutions Act

In a September/October 2020 update posted on its website, the Insurance Council provides the following news about implementation of several Council-relevant aspects of the new BC Financial Institutions Act:

The Financial Institutions Act is the provincial legislation that governs the regulatory framework for credit unions, insurance companies and intermediaries, and trust companies in BC. Amendments to the Act were enacted in November 2019 and are being introduced in stages through regulations.

Earlier in the year, we reported on a number of changes to the Act relating to the Insurance Council and its licensees that were brought into force in January.

An additional set of regulations was brought into effect as of June 22, 2020.

What's Changing?

This latest set of changes addresses:

Licensee Remuneration – The Act now authorizes the Insurance Council to make rules regarding the remuneration of licensees.

Delegation to Committees - The Insurance Council will have the ability to delegate to a hearing committee the authority to make enforcement decisions.

Standardized Council Compensation – Insurance Council members may be remunerated in accordance with the general directives of the Treasury Board, instead of an amount established by the Lieutenant Governor in Council.

What's Next

Additional regulations to implement the Financial Institutions Act changes are anticipated over the coming months and we will continue to provide updates as more information becomes available.

New Insurance Council Program Aims To Identify Licensee Practice Issues Before They Occur

The Insurance Council announced in July 2020 that as a part of its new strategic plan, it will be developing regulatory programs that will proactively enhance public protection and licensee support.

Therefore, in September 2020, Council introduced a new Practice Audit Program.

This program will work directly with licensees to identify and address potential issues before complaints are received, providing feedback and practice guidance to licensees so that they can ensure they are meeting their requirements under the Insurance Council's Rules and Code of Conduct.

As a part of its regulatory mandate, the Council carries out inspections and investigations when there are concerns that a licensee may have failed to meet his or her professional requirements. However, at this point, a breach or client harm may have already occurred, leading to discipline. While these programs serve an important function, these are reactive measures. By working together with licensees to prevent non-compliances before they occur, through support and education, the Insurance Council is aiming to enhance overall public protection and increase licensee awareness of their professional requirements.

Under the new program, practice audits will be initiated by the Insurance Council through audit requests communicated in advance to licensees. Licensees subject to a practice audit will be selected based on areas of risk identified annually, as well as on a random basis, or on a licensee's own request.

The audit process will involve an audit questionnaire form being sent to the licensee. They will have 21 days to complete and return the questionnaire for review by the Insurance Council's Practice and Quality Assurance Team. Areas that the audit will look at include errors and omissions insurance, authority to represent, proper recording of insurance transactions and related financial affairs, client confidentiality practices, and compliance with practice advisories.

After the questionnaire is reviewed, if no issues are found, a confirmation letter will be sent and the practice audit is closed. If an issue is identified, the licensee will be contacted by phone to discuss further and may receive a practice reminder letter at which time the audit will be closed. In cases where a serious conduct or competence issue is identified, the matter will be reviewed further.

By working together with licensees to prevent non-compliance through support and education, the Insurance Council is aiming to avoid potential harm to the public and regulatory breaches that end up resulting in discipline for the licensee. This approach is intended to improve public protection while helping licensees be successful in meeting their regulatory requirements.

Ontario

Financial Services Regulatory Authority of Ontario (FSRA)

FSRA To Assess Life and Health Insurers For Fair Treatment Of Consumers

On September 15/20, FSRA announced that it will be reviewing the life and health insurance sector to find out if consumers are being treated fairly. FSRA will focus this review on insurers' adoption of principles to treat clients fairly, and on how managing general agencies (MGAs) contracted by insurers uphold fair treatment standards.

"To ensure consumers' needs and interests are put first and to set clear conduct expectations of the industry, FSRA will review insurer policies, processes and practices in these two important areas," the release said.

An accompanying report said all FSRA-licensed life insurance companies may be subject to a supervisory or thematic review.

While FSRA doesn't regulate MGAs, the regulator said it will review the relationship between insurers and MGAs to understand how they, along with agents, interact with clients during sales.

"One of our goals will be to determine whether the public interest is being well served," the report said.

Québec Autorité des marchés financiers (AMF)

AMF Strengthens Bill 141-Rooted Compliance Guidance

In an effort to enhance industry compliance, the Autorité des marchés financiers (AMF) has published a new edition of its *Governance and Compliance Guide for registrants under the Act respecting the distribution of financial products and services*.

The new document is an updated version of its guidance for firms and representatives who are subject to Quebec's Bill 141 distribution legislation, which includes financial planners and insurance industry representatives.

Frédéric Pérodeau, the AMF's superintendent, client services and distribution oversight, said the guide aims to help reduce compliance burdens "by providing guidance on applicable regulatory requirements, predictability, and clarification concerning our expectations."

The guidance aims to explain the regulatory framework in plain language, clarify the AMF's expectations, and set out good governance and compliance practices.

The updated guidance incorporates financial sector reforms that were adopted under Bill 141, including new rules for offering products and services online.

New Brunswick Financial and Consumer Services Commission of New Brunswick (FCNB)

Advocis Calls For Individual Licensing And Advice To Consumers Under New Brunswick RIA Regime

In its January 31/20 submission to FCNB in response to *its Incidental Selling of Insurance (ISI) Consultation Paper*, Advocis (the Financial Advisors Association of Canada) recommends that under the new Restricted Insurance Agent (RIA) licensing regime which New Brunswick plans to introduce, individual sales representatives should be required to hold a restricted or limited licence and pass certain limited educational courses specific to the relevant type of insurance in order to demonstrate proficiency.

Advocis also asserts that consumers should receive a "thorough personal and financial situation analysis" and "unbiased advice" from ISI sales representatives.

The Executive Summary of the Advocis' submission to the FCNB reads as follows:

Advocis appreciates the opportunity to provide comments to the FCNB's consultation on incidental selling of insurance (ISI). We believe that it is essential that consumers are adequately protected and that a level playing field exists for all who distribute life and health insurance products irrespective of where consumers purchase them.

The current provincial regulatory regimes across Canada result in a significantly uneven playing field between, on the one hand, insurance agents and agencies distributing individual life, health, accident and sickness or income replacement insurance products, and on the other hand, distributors of other forms of insurance, particularly creditor group insurance protection.

Advocis recommends the following:

- In order to engage in the sale of ISI products, individual sales representatives should be required to hold a restricted or limited licence and pass certain limited educational courses specific to the relevant type of insurance to demonstrate proficiency.*
- Individual licensees should participate in continuing education.*
- Individual licensees should carry errors and omissions insurance as a means of further protecting consumers. Individual licensees should be subject to consumer disclosure requirements, including insurance regulatory principles for managing conflicts of interest.*
- Individual licensees should be subject to certain product suitability requirements.*
- Individual sales representatives holding a restricted licence should be supervised by a fully (LLQP) licensed individual.*

In addition:

- Consumers have little in the way of meaningful disclosure regarding ISI products.*
- Proper disclosure and plain language are critical to assisting consumers in making an informed decision regarding their insurance coverage if they have a pre-existing condition.*
- Conflicts of interest are appropriately managed by adhering to the principles of priority of the client's interest, meaningful disclosure, and product suitability.*
- Sellers of ISI products should be trained to a level that they could adequately explain the application process, the claims process and various other important aspects of the policy.*
- Consumers have a right to expect that they will be receiving accurate information and unbiased advice that is in the consumer's best interest, and that validating the product recommendation is suitable must rest with the seller, implying a thorough personal and financial situation analysis that is not currently the norm in the ISI sales process.*

The full Advocis submission can be found here: https://www.advocis.ca/regulatory-affairs/RA-submissions/2020/200131_FCNB_Incidental_Selling_of_Insurance_Restricted_Insurance_Licensing.pdf?hstc=101018078.48d3383d3ab8e5d4d8ae3b084d586dbb.1603802727411.1603802727411.1603802727411.1&hssc=101018078.3.1603802727412&hsfp=1259133173

Newfoundland and Labrador

Newfoundland and Labrador Superintendent of Insurance

Newfoundland and Labrador Resumes LLQP Exam Sittings Via College of the North Atlantic

In a Bulletin posted to its website in October 2020, the Office of Newfoundland and Labrador's Superintendent of Insurance issued the following update on its administration of Life License Qualification Program (LLQP) examinations:

The Office of the Superintendent of Insurance is pleased to announce that the Life License Qualification Program (LLQP) in classroom examinations will resume immediately with the assistance of the College of the North Atlantic.

To be eligible to write the LLQP Modular Exams, registrants will have to contact one of the designated College of the North Atlantic Campuses to register. For further information regarding the LLQP Modular Exams and the designated Campuses, please go to <https://www.gov.nl.ca/dgsnl/files/insurance-pdf-memo-llqp-2020.pdf>.

The full announcement can be found here: <https://www.gov.nl.ca/dgsnl/files/Issue-No.-31-October-2020-LLQP-Update.pdf>

International Developments

UK Financial Conduct Authority Seeks Sandbox Solutions To COVID-19 Threats

In early October, the UK's Financial Conduct Authority (FCA) announced that it was looking to fintechs to help solve COVID-19 challenges that financial markets are facing.

The FCA opened two new regulatory sandbox initiatives for innovative firms seeking to tackle issues caused by the pandemic, such as preventing scams, supporting vulnerable consumers, and improving access to capital for small companies.

These initiatives include the seventh cohort of its existing regulatory sandbox project, and a new pilot program with the City of London to support product development.

UK Financial Conduct Authority Forces Auto Insurance Overhaul

On September 22/20, the UK's Financial Conduct Authority (FCA) announced that it plans to overhaul the way insurers price home and car coverage in a bid to save consumers 3.7 billion pounds (\$4.7 billion) over 10 years.

The FCA said it's concerned these markets are "not working well for consumers." The proposed rule changes would ensure that when people renew their policies, they pay no more than new customers buying coverage for the first time. It would also be easier for clients to stop automatic renewal of their policies.

Commonwealth Bank Of Australia Facing Class Action Over Insurance Advice

On August 21/20, Commonwealth Bank of Australia (CBA) disclosed that a class action lawsuit has been filed against it over advice given on life insurance policies issued and recommended by three former subsidiaries.

The lawsuit was filed by Shine Lawyers against financial advisors Commonwealth Financial Planning Ltd (CFPL) and Financial Wisdom Ltd, and The Colonial Mutual Life Assurance Society, a life insurer sold by CBA to AIA Group this year.

The lawsuit relates to advice given by CFPL and Financial Wisdom on policies issued by Colonial Mutual.

In January 2020, the same law firm brought another class action lawsuit against CBA's pension arm for not acting in customers' interest by encouraging them to pick policies provided by CommInsure.

CBA stopped providing licensee services through Financial Wisdom and CFPL this year as part of the bank's move away from wealth management.

Australia's biggest bank did not say when the alleged wrongdoing took place and a Shine spokeswoman declined to comment other than to confirm that a lawsuit had been filed.