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The Canadian Association of Financial Institutions in Insurance | L'association canadienne des institutions financières en assurance

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Regulatory Update – CAFII Executive Operations Committee, January 19, 2021
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Federal/National
Office of the Superintendent of Financial Institutions (OSFI)

OSFI Launches Climate Risk Consultation
Amid growing concern about the effects of global warming among both investors and policymakers, OSFI is examining whether capital requirements need to give these risks greater weight. The prudential regulator of federally regulated financial institutions (FRFIs) launched a consultation on January 11/21 on climate-related risks to the safety and soundness of FRFIs and pension plans.

OSFI published a discussion paper that seeks feedback on how banks, insurers and pensions are measuring climate risks and factoring them into their operations, balance sheets and risk management efforts. The regulator is also considering how it can encourage the industry to ensure that it is capable of absorbing these risks.

"This input will guide the development of regulatory and supervisory approaches that meet OSFI's mandate of protecting depositors, policyholders and private pension plan beneficiaries while allowing institutions to compete and take risks," OSFI said in a release announcing the consultation.

Jeremy Rudin Retiring From OSFI Superintendent Role In Mid-2021
Jeremy Rudin, Superintendent of the Office of the Superintendent of Financial Institutions (OSFI), is stepping down at the end of June 2021.

Rudin will remain in the role throughout the six months remainder of his term, and then will retire from public service, OSFI announced.

"It has been a privilege to serve as the Superintendent of Financial Institutions and I look forward to completing my seven-year term," Rudin said in a statement.

Prior to joining OSFI, Rudin was assistant deputy minister of the financial sector policy branch at the Department of Finance. Along with other roles at Finance, he also worked for the Bank of Canada and taught economics at the University of British Columbia and Queen's University.

Canadian Council of Insurance Regulators (CCIR)

CCIR Releases First Public Report Derived From Annual Statement On Market Conduct Data
In early December 2020, CCIR published its first public report based on data from its Annual Statement on Market Conduct (ASMC) -- which must be completed by both life and health insurers and property and casualty insurers -- outlining its findings from 2019.

The report, *2019 Annual Statement on Market Conduct – Public Report*, states that while insurers value fair treatment of customers (FTC) principles, there are opportunities for some insurers to better demonstrate how they have incorporated FTC principles into their businesses.

When asked if they had a standalone, documented policy that specifically addresses FTC, 57 per cent of life and health companies indicated they did, while 53 per cent of p&c companies said the same.
The report says it was noted during examinations that some insurers had not fully implemented FTC principles into their business operations. CCIR member regulators also noted during examinations that some insurers have inadequate supervision of their external sales forces regarding conflicts of interest or incentives.

For the life and health sector, a disproportionate number of complaints, 40 per cent, originated in Quebec, with accident and sickness insurance-related complaints making up 57 per cent of the total.
The English and French versions of the report can be found here: https://www.ccir-ccrra.org/Documents/View/3617; https://www.ccir-ccrra.org/Documents/View/3618; and the English and French versions of a related CCIR news release can be found here: https://www.ccir-ccrra.org/Documents/View/3613; https://www.ccir-ccrra.org/Documents/View/3615.

Provincial/Territorial

British Columbia
British Columbia Financial Services Authority (BCFSA)

BCFSA Appoints Vice-President, Sector Liaison
On November 27/20, BCFSA announced that Peta Wales had been appointed its new Vice-President, Sector Liaison, reporting to CEO Blair Morrison.
Ms. Wales joins BCFSA after several working in the credit union system where her most recent role was Senior Vice-President, Operations with First West Credit Union. In that role, she was accountable for executing the operational strategies enabling staff and member experience. Her mandate included creating efficiency and harmonization across the business processes supporting branch, contact centre and mortgage broker channels.

Prior to First West Credit Union, Ms. Wales held a variety of leadership positions with HSBC Bank Canada and TD Bank. She is Lean Greenbelt Certified, and holds a Diploma in Business Management from BCIT as well as a bachelor's degree from the University of British Columbia.

As BCFSA moves to become a modern, efficient and effective regulator, the Vice-President, Sector Liaison will seek to engage with regulated entities and individuals to better understand their views, challenges and opportunities, and to share BCFSA's priorities going forward, the regulator stated in its Advisory on Ms. Wales' appointment.

Manitoba
Insurance Council of Manitoba (ICM)

Insurance Council Issues Notice On When To File A Licence Amendment
On January 14/21, the Insurance Council of Manitoba issued an educational notice titled "When to File an Amendment to a Licence with the Insurance Council of Manitoba (ICM)" to all licence holders.
The notice covers the following:

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- When is an Amendment Required?
- Is it permissible for a Licence Holder to work at another agency/firm that is affiliated with the agency/firm name(s) on their licence?
- How does a Licence Holder File an Amendment?

The ICM notice can be found here: https://www.icm.mb.ca/files/Bulletin/WEB_NOTICE_-_When_to_Amend_a_Licence.pdf

Ontario
Financial Services Regulatory Authority of Ontario (FSRA)

FSRA Formally Adopts CCIR/CISRO's Insurance Guidance As Its Own
On December 22/20, FSRA released guidance to provide standards for the fair treatment of customers in the insurance sector, by formally harmonizing its expectations for industry practices around the fair treatment of customers with CCIR/CISRO's "Guidance: Conduct of Insurance Business and Fair Treatment of Customers" which was released in September 2018.

The guidance will promote principles that support fair customer treatment throughout the lifecycle of insurance contracts and reduce burden on licensees while setting service delivery expectations for insurers, agents and customers, FSRA said.

"Helping insurers and agents treat customers fairly using a common approach in Ontario both promotes high standards of business conduct in the sector and protects the interest of insurance customers," FSRA said in the release.

The regulator recently completed a consultation on the proposed guidance, with industry and consumer stakeholders expressing general support in following CCIR and CISRO's guidance on fair treatment. FSRA's new guidance came into effect on January 1, 2021.

FSRA Appoints New Board Member
On January 13/21, FSRA announced that Dexter John had been appointed to its Board of Directors for a three-year term. Mr. John has 25 years' experience in governance and risk management from prior positions at Stikeman Elliott LLP and Donahue LLP, as well as the Investment Dealers Association of Canada, the Ontario Securities Commission and the Toronto Stock Exchange, the FSRA release said.

Mr. John is currently President and CEO with Gryphon Advisors Inc., which offers consulting services in corporate governance, investor voting behaviour analytics, executive compensation, and cannabis business management. He's also a member of the Committee on the Future of Corporate Governance in Canada, which will revise and update corporate governance policy in the country.

Mr. John's experience "will help FSRA support innovation in the sectors that it regulates while being principles-based, transparent and accountable," said FSRA Board Chair Bryan Davies.

FSRA Seeks Feedback On Proposed New Rule On Unfair Or Deceptive Acts Or Practices (UDAP)
FSRA is focusing on unfair or deceptive acts or practices (UDAP) rules for insurance industry brokers, insurers, intermediaries, adjusters and other providers of goods and services in the insurance sector in Ontario. The regulator says its proposed new UDAP rule is aimed at making the supervision of insurance more transparent, dynamic and flexible.

"We have heard clearly that the current regulation defining an unfair or deceptive act or practice under the Insurance Act is outdated, too prescriptive and a barrier to innovation," said FSRA's executive vice president, auto insurance products, Tim Bzowey. "FSRA will use its rule-making authority in this area to better protect consumers and deliver more effective and efficient regulation by taking a principles-based approach."

According to the guidance accompanying the draft rule, unfair or deceptive acts or practices are already discussed in sections of the Insurance Act. FSRA has drafted the new rules to replace the existing UDAP regulation because it says the current regulation is not aligned with FSRA's principles-based approach.

"Insurance stakeholders have requested a review of the current regulation to allow for more flexibility and have stated that the regulation is too prescriptive and a barrier to innovation. The draft rule also focuses on the need for stronger consumer protections by clearly defining outcomes that are unfair or otherwise harmful to consumers. The proposed rule is intended to improve the identification, deterrence and sanctioning of misconduct to better protect the public interest," FSRA said.

In addition to publishing the text of the new proposed regulation, which covers unfair or deceptive practices, discrimination, unfair claims practices, incentives and prohibited conduct in auto insurance quotations, applications or renewals, FSRA has also published a summary of stakeholder feedback it has received thus far, alternatives to the proposed rules that FSRA considered, and a list of targeted questions about regulatory gaps, transition issues and redundancies – which can be found here: https://www.fsrao.ca/engagement-and-consultations/fsras-first-proposed-insurance-rule-released-public-consultation-unfair-or-deceptive-acts-or-practices-udap-rule.

Interested stakeholders can comment on the proposed new UDAP rule until March 18/21.

FSRA Proposes To Allow Insurers To Offer Rebates And Incentives To Ontarians
As part of its proposed new UDAP Rule, FSRA is proposing to relax the rules prohibiting unfair or deceptive acts, thereby allowing insurers to offer rebates and incentives to consumers under certain circumstances.

However, FSRA's proposed new UDAP Rule, if implemented, would let insurers offer rebates and incentives to consumers only under certain conditions. For example, under the new rule, insurers would not be allowed to offer rebates if they would lead to a client to "buy a product which would not, considering the options generally available in the marketplace, be recommended as a suitable insurance product by a reasonable person licensed to sell such an insurance product."

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Currently, as it stands, there is pretty much a blanket prohibition on incentives. "Any payment, allowance or gift which is offered as an inducement to any prospective client" is currently considered an unfair or deceptive practice under Ontario insurance law.
"If you talk to insurance companies and look at the restrictions that you have under the current Unfair or Deceptive Acts or Practices (UDAP) Rule, it is very difficult for them to innovate in certain areas," said Colin Simpson, CEO of the Insurance Brokers Association of Ontario, in an interview with Investment Executive.

FSRA Seeks To Raise Standards For Mortgage Brokers
In an effort to raise conduct standards among mortgage brokers, FSRA announced in early December 2020 that it was developing guidance for mortgage brokers on how to comply with a proposed national code of conduct for the sector. The regulator published its proposed approach to incorporating a code of conduct that's being jointly developed by the industry and the Mortgage Broker Regulators' Council of Canada (MBRCC).

"The code promotes high standards of business conduct to protect consumers of mortgage brokering services," FSRA said.

The MBRCC's consultation closed on December 23/20.

Québec
Autorité des marchés financiers (AMF)

AMF Superintendent Leaves To Become Quebec Superior Court Judge
The AMF lost Frédéric Pérodeau, its Superintendent, Client Services and Distribution Oversight, on December 15/20 when he was appointed a judge of the Quebec Superior Court for the district of Montreal by the Honorable David Lametti, Canada's Minister of Justice and Attorney General.

The AMF said that it will quickly put in place a search process to identify Mr. Pérodeau's successor and fill the vacant Superintendent position.

In the insurance industry, Mr. Pérodeau will be remembered for driving the amendments to Bill 141, including the *Regulation respecting Alternative Distribution Methods*, which governs the sale of insurance over the internet.

Prince Edward Island
CLHIA Applauds PEI's Update To Its Insurance Act
On December 11/20, CLHIA issued a Media Release applauding PEI's recent passage of legislation to update the Insurance Act of Prince Edward Island.

The CLHIA release states that, among other things, the new legislation includes clarifications to the definition of premiums for life insurance. PEI becomes the fifth province in the last year to make such amendments, joining Nova Scotia, New Brunswick, Alberta and Ontario.

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“We are pleased that Prince Edward Island and other provinces have taken these steps to provide certainty to consumers in this area” CLHIA President and Chief Executive Officer Stephen Frank said. “We will continue to encourage the remaining provinces to make similar amendments” Frank continued.

International Developments

New NAIC Rule Would Allow Rebating To US Insurance Consumers

The Executive Committee of the National Association of Insurance Commissioners (NAIC) adopted language on December 10/20 designed to allow for "rebates" to be offered to consumers.

The committee unanimously adopted an amendment to the NAIC Unfair Trade Practices Act which will permit insurers or producers to "offer or give non-cash gifts, items, or services, including meals to or charitable donations on behalf of a customer, in connection with the marketing, sale, purchase, or retention of contracts of insurance."

The amendment leaves open the possibility of a cap on gift amounts to be determined by the state commissioner. Amendment drafters suggested that "the lesser of 5% of the current or projected policyholder premium or $250 would be an appropriate limit."

The NAIC’s Innovation and Technology Task Force has worked on the anti-rebating issue since 2018. During that time, several states, from New Hampshire to Arizona, either proposed or adopted new legislation, rules, or bulletins addressing their states’ anti-rebating prohibition.

"This has been a very, very long time coming," said Jon Godfread, North Dakota insurance commissioner and chairman of the task force. "It's important and will serve to allow the right balance of bringing the needed and desired innovation and technology as it relates to the value of products and services to our consumers while affording appropriate consumer protection."

Thousands Of UK Financial Firms Face Failure: Financial Conduct Authority

Thousands of financial firms in the UK are at risk of failing due to fallout from the COVID-19 outbreak, according to new data from the UK’s Financial Conduct Authority (FCA).
The FCA published the results of its coronavirus financial resilience survey, which it launched between June and August 2020.

“Our role isn’t to prevent firms failing. But where they do, we work to ensure this happens in an orderly way,” said Sheldon Mills, executive director of consumers and competition at the FCA, in a release. “By getting early visibility of potential financial distress in firms we can intervene faster so that risks are managed and consumers are adequately protected.”

The survey found that approximately 4,000 of the 23,000 firms surveyed are at elevated risk of failure. While the firms at risk are primarily small and medium-sized, the FCA said about 30% of them have the potential to cause wider harm to the economy if they did fail.

Australia's Treasurer "Declares War" On Regulator ASIC In Bid To Reduce Its Powers
Australia's Treasurer Josh Frydenberg has "declared war" on the country's corporate regulator, saying the Australian Securities and Investments Commission (ASIC) needs to be overhauled so that it conforms to the will of parliament.

ASIC was caught in a pincer movement in mid-November 2020, with a parliamentary committee chaired by a Liberal senator mulling ways to break up or reduce the powers of the regulator while Frydenberg used a speech to declare it must not "supplement, circumvent or frustrate" the law.

While regulators need to make enforcement decisions independent of government, they "do not carry out their mandates in a vacuum," Frydenberg said. "They must pursue their mandates in a manner that is consistent with the will of the parliament," he said. "There need to be mechanisms to hold them to account."

ASIC is under extreme pressure over $190,000 in payments benefiting its chairman and deputy chairman that the auditor-general says fell outside remuneration rules.

There has been a long-running dispute between ASIC and Frydenberg over responsible lending rules and a backlash by the financial sector against tougher regulation proposed by the banking royal commission.

ASIC Launches Consultation On Short Supply Of Affordable Financial Advice
Australia's financial services regulator is examining the root causes of an apparent shortage of financial advice, and possible solutions to the perceived advice gap.

The Australian Securities and Investments Commission (ASIC) launched a consultation in mid-November 2020 that aims to explore the barriers to its investment industry's supply of "good-quality affordable personal advice" and to recommend measures to enhance access to advice.

In a consultation paper, ASIC reported that its research found that "while many consumers see value in financial advice, they do not tend to seek advice." It said consumers often don't seek advice because it's seen as expensive and suited to only wealthy investors.

In particular, the regulator said it's seeking to promote access to quality "limited advice" for investors who don't need comprehensive advice. "Market-based research has shown that the cost of financial advice is a significant driver for consumers to prefer limited advice over a traditional comprehensive advice service," it said.

ASIC is also calling for industry feedback on the industry's experience in providing digital advice and so-called strategic advice (planning advice with product recommendations). "Good-quality affordable personal advice may help consumers make better financial decisions, especially during times of heightened vulnerability," said ASIC commissioner Danielle Press.

The deadline for submissions to the consultation was January 18/21. ASIC also said that it will hold industry roundtables in the first quarter of 2021 to discuss the results of its consultation.