Report on 14 September 2018 CAFII Meeting with Financial Consumer Agency of Canada (FCAC) Deputy Commissioner Brigitte Goulard

Background

On 12 June, 2018 CAFII reserved a table for an Economic Club of Canada luncheon address by FCAC Commissioner Lucie Tedesco on "Strengthening Financial Consumer Protection: What has to be the driving force."

After the meeting, CAFII Co-Executive Directors Brendan Wycks and Keith Martin spoke to Lucie Tedesco and FCAC Deputy Commissioner Brigitte Goulard about comments made by Ms. Tedesco about FCAC plans to undertake follow-up "deep dive" investigations with the Big 6 banks on subjects of interest to the FCAC, including two areas for potential mis-selling which had been identified in the FCAC's report on domestic banks' sales practices: creditor insurance, and mobile mortgage specialists. Ms. Tedesco and Ms. Goulard quickly indicated that they would be interested in meeting with the CAFII Board of Directors in-person to discuss these deep dive reviews.

Subsequently, the FCAC indicated that the timing was not right for the plans for deep dives to be a key presentation item at its September 2018 meeting with CAFII, as that initiative was not yet sufficiently advanced to warrant particular focus and discussion. However, FCAC Deputy Commissioner Brigitte Goulard indicated that the Agency would still like to have an in-person meeting with CAFII to discuss areas of mutual interest. Upon further discussion, for scheduling reasons Ms. Goulard offered to come on her own and present on some of the major issues that FCAC is involved in that are of potential interest to CAFII members, and a meeting was set up from 12.30pm to 2.30pm on 14 September, 2018.

Attendees at the 14 September, 2018 FCAC and CAFII Meeting

Present In-Person

From FCAC:
Brigitte Goulard, Deputy Commissioner

From CAFII:
Nicole Benson, Canadian Premier Life (Board Chair)
Chris Lobbezoo, RBC Insurance
Chris Knight, TD Insurance
Sandra Rondzik, CIBC Insurance
Zack Fuerstenberg, Scotia Life Financial (representing CAFII Director Bob Grant)
Louie Georgakis, Canada Life (representing CAFII Director David Fear)
Gillian Noble, BMO Insurance (representing CAFII Director Peter McCarthy)

Pete Thorn, TD Insurance (EOC Chair)
Moira Gill, TD Insurance
Scott Kirby, TD Insurance
Sue Manson, CIBC Insurance
Dominique Julien, CIBC Insurance
Brad Kuiper, Scotia Life Financial
Charles MacLean, RBC Insurance
Martin Boyle, BMO Insurance
John Lewsen, BMO Insurance

Rob Dobbins, Assurant Canada
Brendan Wycks, Co-Executive Director, CAFII
Keith Martin, Co-Executive Director, CAFII
Natalie Hill, Administrative Co-ordinator, CAFII

Present By Teleconference and Webinar Link
Anuraj Bains, CIBC Insurance
Darren MacLennan, CIBC Insurance
Louise Nash, CIBC Insurance
Wally Thompson, Manulife Insurance
Charles Blaquiere, Canadian Premier Life
Diane Quigley, CUMIS Services Inc.

Meeting Summary
Nicole Benson, CAFII Board Chair, welcomed Brigitte Goulard and thanked her for attending today's meeting. CAFII representatives participating introduced themselves and Ms. Benson asked CAFII Co-Executive Director Keith Martin to start off the meeting with an update on CAFII's strategic priorities.

Highlighting from a Powerpoint presentation, Mr. Martin noted that CAFII's traditional focus on regulator and policy-maker relationship-building, communications, and advocacy would remain the top priority of the Association, but would be supplemented and reinforced by other activities.

The Association has committed to meeting with regulators and policy-makers in their own locales at least once every 18 months, and we have executed on this through a June and October 2017 Western Canada tour, a May 2018 Atlantic Canada tour, as well as in-person meetings with Quebec and Ontario regulator and policy-maker authorities.

CAFII has also committed to commissioning an ongoing stream of evidence-based, third party professional research that will allow us to share information and insights gained through independent research findings. We will also share these research findings publicly -- including on our website and with the media -- an approach we have already taken with our recently-published consumer research results on travel medical insurance.

Mr. Martin also outlined CAFII's recent efforts to engage with media (mostly trade press) and showed examples of recent articles published about CAFII initiatives.

Mr. Martin reviewed CAFII's new consumer-focused website, including the section developed to share relevant, easy-to-read information about CAFII members' products, and he highlighted several examples of the website's visually pleasing and easy-to-navigate nature.

Mr. Martin stressed that CAFII and its members support the importance of the fair treatment of consumers, and are committed to consumer financial literacy. He highlighted several of CAFII's recent FTC-related assertions and commitments made in formal regulatory consultation submissions.

Ms. Benson then turned the floor over to FCAC Deputy Commissioner Brigitte Goulard, who used a pre-circulated Powerpoint presentation as a guide for highlighting key messages for the CAFII audience.

Ms. Goulard advised that the FCAC's recent report on its review of the Big 6 domestic banks' sales practices – the purpose of which was to look at "what are the drivers of sales practices?" -- did not find a "smoking gun" or evidence of any systemic mis-selling, but it did find much evidence of a strong sales culture in the banks which could lead to improper sales practices.

She stated that the FCAC's report was evidence-based and included a review of 4,500 customer complaints, 26 hours of sales calls, interviews with 660 bank staff, 135,000 pages of bank documentation, and 30 visits to branches. She said that some bank employees felt enormous pressure to sell and were very stressed by these expectations, and said some of them were nearly reduced to tears in their interviews with FCAC personnel, reflecting the pressure they were under.

Ms. Goulard indicated that creditor insurance was identified as one of the banks' "higher risk" products, practices, and channels, along with cross-selling, third party sellers, and mobile mortgage specialists. She elaborated that these four products, practices, and channels had been identified as being particularly "risky" for potential mis-selling and unfair treatment of consumers and some of them will be further investigated by the Agency. However, unlike the UK's Financial Conduct Authority (FCA), the U.K. equivalent to the FCAC, the FCAC does not have the authority to levy fines as punishment for mis-selling; the FCAC is limited to investigating and reporting on such practices. She also noted that the FCAC does not oversee travel insurance sales as part of its oversight responsibilities for domestic banks.

Ms. Goulard said that she felt that creditor insurance products could be of benefit to consumers, and that she was hoping to help our members by pointing out some of the risks and vulnerabilities that exist due to some of the banks' related sales practices.

Noting that creditor insurance products are "sold, not bought," Ms. Goulard said that the issue was about the suitability of the products for specific customers—i.e. of selling the appropriate products to the right customers, and of ensuring that there is explicit consent every time a sale is made. "I'm here to tell you that you've got a lot of work to do especially re training of your sales staff," Ms. Goulard said. Consumers need to know what they are buying, and they should not be pressured into purchasing a product. She said that CAFII members and other sellers of creditor insurance need to know the consumer's needs, goals, and financial situation, and sales must be made on the basis of clear information. "The lack of those questions being asked leads to the potential for those products not being sold to the right people," she said.

Ms. Goulard noted that as part of the recent FCAC review, she had listened to many hours of recorded calls of bank contact centre staff's sales efforts; and that while the scripts themselves were generally quite good, the sales people often did not seem to fully understand the products they were selling and did not know what to do when the customer asked a question that the script did not cover. "Things that we heard on the recorded calls indicate that staff didn't understand the product and didn't have the consumers' best interests at heart. The scripts have to go a bit further and the education has to be deeper, so that the staff can answer correctly/appropriately when a consumer's questions force them to go 'off script.'"

She stated that some of the telephone sales calls she listened to included pitches to customers who seemed to have limited English or French language skills and who may not have understood clearly what the bank employee was telling them.

Referring to what she had heard in several instances on the recorded calls, Ms. Goulard strongly criticized the use of the 30-day “free look period” as a sales lever/inducement to get reluctant customers to try out creditor insurance coverage for a month because they could always cancel within the first 30 days if they changed their minds about the coverage, no questions asked. She asserted that insurance coverage cannot be reviewed or “trialed” in the same manner as certain consumer goods (e.g. a mattress) and it should not be sold on that basis, stressing that this was not an appropriate sales technique.

Mr. Martin noted that the 30-day free look period was typically regarded as a consumer-friendly feature, as it allowed the customer ample time to consider what they had purchased, review the documentation, do further research on the product, and, at the end of the free look period, cancel the coverage if they changed their mind about it.

Ms. Goulard also spoke in some detail about selling creditor insurance on a credit card (balance protection insurance) to consumers who have a history of always paying off their balance in full every month. “What is the value of that?,” she asked. She further stated that students, people with low incomes, unemployed people etc. might not be suitable for this type of creditor insurance. CAFII members need to understand their customers better and filter the products being offered, so that only appropriate products are being offered to the customer in question, she emphasized.

Ms. Goulard also noted that CAFII had stated in a recent regulatory submission to FSCO that a needs assessment was not necessary for some creditor insurance products because the “need” was already established/occasioned by the consumer’s taking on a new debt obligation, such as a mortgage, and the offering of creditor insurance coverage was associated with and incidental to that new debt obligation. Mr. Wycks detailed CAFII’s reasoning for that assertion. Moira Gill also made insightful comments to explain the challenges of a full needs analysis on a creditor insurance product, including the fact that federally regulated financial institutions offering Authorized Insurance Products are not permitted to offer advice in connection with those products.

Transitioning to more broadly focused, overarching information which she wanted to highlight, Ms. Goulard indicated that in the FCAC’s assessment, the tone at the top of the Big 6 banks was undeniably customer-centric, but that the sales culture among middle management did not reflect what top management wanted to achieve—i.e. the message was getting diluted as it moved its way down the ranks. “The further down we went into the organization, the more a conflict started to emerge and become evident re having to meet sales objectives versus consumers’ best interests,” she stated.

Ms. Goulard said that creditor insurance products are vulnerable to criticism and at risk of negative media attention; she said she was trying to share information with CAFII members to help them avoid a potentially difficult and negative situation.

In her occasional liaison and information-sharing meetings with provincial insurance regulators, Ms. Goulard continued, some of them often express concern to her about creditor insurance products, particularly the regulators from Ontario, British Columbia, and Alberta.

Ms. Goulard said that if three or four disgruntled employees could inspire weeks of CBC News coverage on bank sales practices, then imagine what damage could be caused if someone surreptitiously recorded a contact centre employee using inappropriate sales techniques to sell a creditor insurance product, and then leaked the recording to a regulator or the media. With the ease of recording phone conversations, that was a risk that we should be very concerned about, she said.

She added that after the FCAC's report on domestic banks' sales practices came out in May 2018, the FCAC received numerous media calls asking for its executives to do interviews specifically on creditor insurance products. Commissioner Lucie Tedesco, Ms. Goulard, and other FCAC officials declined those media requests and did not discuss creditor insurance any further at that time. "As an Agency, we need to do a more in-depth study on creditor insurance to be able to talk to the media with authority about it," she said.

Ms. Goulard said that controls to mitigate the risks associated with creditor insurance being mis-sold are under-developed among the Big 6 banks. She recommended some mitigating actions which she said CAFII members could take to reduce creditor insurance's vulnerability to and risk of major negative media coverage: modifying the compensation structure, investing in enhanced training, reviewing our practices around clawbacks of commissions/bonuses for cancelled sales, and examining non-financial compensation. "Clawbacks are a good practice, in our view; they just need to be well-structured and managed," she said.

Sandra Rondzik asked if instead of clawbacks for cancelled sales, should agents just not be compensated for a certain period of time after a sale, until it was clear that the sale had not been cancelled. Ms. Goulard replied that taking that alternate approach could be a very worthwhile initiative.

Ms. Goulard asserted that non-financial compensation is very important and has a big impact upon staff behaviour vis a vis consumers. Some employees felt that if they were not making adequate sales, they would be passed over for recognition or promotions.

Ms. Goulard also said that the branch manager was critically important to a culture of appropriate sales practices, but that branch managers were typically stretched very thin and under their own tremendous pressures due to their multiple responsibilities; so it's hard for them to monitor compliance.

She also opined that the volume/percentage of contact centre telephone calls in this area being monitored by the banks is relatively small.

Ms. Goulard said that "know your customer" was a process that the wealth management side of the financial services business had to go through perhaps 25 years ago; and that this was now becoming a top priority for the banks' sales teams.

"There is value to creditor insurance products for certain customers" she said, adding that she felt a certain affinity for CAFII members' businesses because she once worked on creditor insurance products herself at Canada Trust, and that she was once a CAFII EOC member; but that there was a strong, duty-bound onus on CAFII members to better identify and target the right products for the right customers.

On the issue of inappropriate selling of creditor insurance products, Mr. Wycks said that on the rare, isolated occasions when provincial insurance regulators have raised concerns about the potential mis-selling of creditor insurance, they typically were not concerned about the banks and credit unions, but rather about other entities that offer this type of product such as payday lenders and car dealerships. Ms. Goulard said that she was concerned with some practices of payday lenders, but that the FCAC's concerns in this area included actions by CAFII members.

Mr. Lobbezoo said that single premium insurance products sometimes raise concerns around whether consumers understand the product, and he asked whether there were broader concerns with creditor insurance products; and Ms. Goulard said yes, there were.

Ms. Goulard said that governance of the Big 6 domestic banks was also an issue identified in the FCAC's Report, although progress has been made by the banks in recent years in this area. She said that often the board and senior management of banks do not understand what is really happening in the business. Governance frameworks do not manage sales practices risk effectively, she asserted.

Ms. Goulard stated that the Big 6 banks do a very good job of resolving first level consumer complaints within a reasonable period of time. However, she asserted, the banks should also be tracking complaints at the branch level, in addition to escalated/second level complaints.

She noted that complaints should be reviewed and reported on with the intention of understanding their root cause, but the banks are currently allocating only very limited resources for that purpose. She said that Human Resources should be better integrated into the business, noting that at Wells Fargo, HR had been firing employees for years for improper practices, but this had not been reported to the board and senior management—and if it had been, the illegal practices at Wells Fargo might have been caught and stopped much earlier.

Ms. Goulard indicated that going forward, the FCAC will be expecting federally regulated financial institutions to do a better job of reporting complaints to them, including analyses of their root causes.

In response to a question from Mr. Wycks, Ms. Goulard noted that the UK's FCA has an effective assessment tool called ***Five Conduct Questions*** that it asks banks to respond to each year, and she felt that this was an excellent and worthwhile instrument for Canada's banks to explore. She noted that in the FCAC's view, among Canada's banks, "controls have not kept pace with the shift to a significantly greater focus on sales and advice."

Ms. Goulard noted that Wells Fargo's new internal legal counsel told her at a recent conference that that American bank no longer sets sales targets of any kind. She felt that such an aggressive about-face move might be going overboard—but that managing the risks of mis-selling is necessary to avoid having to make such a strong overboard-type response.

Mr. Wycks noted the FCAC National Financial Literacy leader Jane Rooney had been the guest speaker at CAFII's Annual Members' Luncheon in February 2015, and he appreciated the balanced approach she emphasized between the rights of consumers, on the one hand, and their responsibility to research and understand the products they are purchasing, on the other hand.

Ms. Goulard said that the FCAC continues to stress that important duality; and it has recently developed some videos -- using an avatar/character called Floyd – on consumers' rights and responsibilities which now appear on the Agency's website.

Mr. Wycks also asked about reports of banks' mis-selling in Australia and whether developments coming out of Australia's *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* might have an impact on how the FCAC views Canadian banks. Ms. Goulard replied that she had not been following developments in Australia closely and therefore could not comment.

FCAC's Next Steps and "Deep Dives

Ms. Goulard advised that the FCAC's Phase 2 of its review of domestic banks' sales practices would involve both

- a review of small and medium-sized banks' sales practices; and
- a mystery shopping exercise with the Big 6 banks and small and medium-sized banks to further the FCAC's knowledge of their sales practices. This mystery shopping will be the FCAC's first use of this investigative technique in 10 years, and it has already talked to several national financial services regulators in other countries to find out how they conducted recent mystery shopping initiatives.

When the FCAC's upcoming mystery shopping initiative is complete, a results report will be made public.

Keith Martin asked when the FCAC's planned "deep dives" at individual financial institutions would be happening. Ms. Goulard replied that the deep dives would occur after the completion of Phase 2 and likely happen sometime in 2019.

Enhancements To The FCAC

Ms. Goulard advised that the FCAC's new Supervision Framework, which was developed through extensive consultation with industry, will launch on October 1/18.

In addition, the FCAC will be significantly expanding its staff resources. In 2014, the FCAC had 89 staff; it currently has 125 staff; and it expects to grow to 180 staff by 2021. Most of the 55 staff to be added over the next three years will work in the Agency's Supervision/Compliance area.

Reference Documents

FCAC Report: "Retail banking sales culture may raise risks for consumers"
https://www.canada.ca/en/financial-consumer-agency/news/2018/03/retail-banking-sales-culture-may-raise-risks-for-consumers.html

UK Financial Conduct Authority's 5 Conduct Questions Program
Overview of the FCA 5 Conduct Questions Programme:
https://www.fca.org.uk/firms/5-conduct-questions-programme

FCA April 2018 Industry Feedback for Wholesale Banking Supervision
https://www.fca.org.uk/publication/market-studies/5-conduct-questions-industry-feedback-2017.pdf

Independent Directors of the Board of Wells Fargo & Company Sales Practices Investigation Report
https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/presentations/2017/board-report.pdf

Lucie Tedesco 12 June 2018 Speech to the Economic Club of Canada on "Strengthening financial consumer protection – what has to be the driving force"
https://www.canada.ca/en/financial-consumer-agency/news/2018/06/strengthening-financial-consumer-protection--what-has-to-be-the-driving-force.html