Regulatory Update – CAFII Executive Operations Committee, March 16, 2017
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Federal/National

Financial Consumer Agency of Canada (FCAC)

FCAC To Review Business Practices Of Federally Regulated Financial Institutions
On March 15/17, the Financial Consumer Agency of Canada (FCAC) announced that as part of its ongoing effort to enforce federal financial consumer protection obligations, its next review of business practices of federally regulated financial institutions (FRFIs) will begin in April.

FCAC Commissioner Lucie Tedesco expressed concern about recent media reports which raised allegations related to financial institutions selling additional products and services to consumers without properly obtaining their prior express consent, an issue which the FCAC review will focus on. The following statement was issued by Commissioner Tedesco:

"FCAC is responsible for enforcing federal financial consumer protection obligations. The law requires that, in order to provide consumers with new or expanded products or increase their credit limits, financial institutions obtain their customers' prior consent and disclose key information about the costs and charges of the products they are purchasing.

"Financial institutions' compliance with these rules is non-discretionary and the message must be disseminated from the boards of directors on down to customer-facing staff. These issues have been discussed in my recent meetings with the CEOs and boards of Canada's leading banks. In addition, in a recent address to their compliance professionals and in an industry-wide letter, I expressed my expectation that banks and other financial institutions be proactive in scrutinizing the effectiveness of their policies, procedures and practices to ensure that consumers are protected.

"Through the industry review we are announcing today, we will examine financial institutions' business practices in relation to express consent and disclosure, including the identification of any factors that may be contributing to non-compliance. We will investigate and enforce any incidence of non-compliance."

The FCAC also recently published, as a Compliance Bulletin, the letter it sent to FRFIs in early February 2017 reinforcing the Agency's expectation that they comply with legislated consumer-protection provisions. That Compliance Bulletin is reproduced below.

B-5 Consent for new products or services

The purpose of this bulletin is to reinforce the FCAC's expectations that institutions obtain consumers' express consent for a new financial product or service, including credit cards, in accordance with regulatory requirements.

Institutions must ensure any communication (verbal, written or electronic) with consumers that forms part of the interaction for seeking express consent is clear, simple and not misleading.
Institutions must clearly explain they are requesting consent for a financial product or service in any communication with consumers, beginning with the initial contact and continuing throughout the process of obtaining express consent.

Communications with consumers must be clear and must not mislead consumers to believe they are consenting to a promotion or reward (e.g. promotional blanket, t-shirt or reward points), rather than a financial product or service. Failure to meet this requirement is contrary to regulations and may lead to FCAC enforcement action.

FCAC's requirements and expectations apply equally if the activities are outsourced. Institutions retain ultimate accountability for outsourced activities. If the promotion activity is outsourced, institutions must apply the necessary controls to ensure that any communication seeking consumers' consent is clear, simple and not misleading, and that express consent is obtained.

Accordingly, FCAC expects institutions to undertake the following actions:

- *ensure communication does not result in misleading consumers during the process of obtaining their express consent for a financial product or service;*
- *apply enhanced rigor in the processes and controls (e.g. proactive monitoring, training, scripting) related to obtaining consumers' express consent for a financial product or service;*
- *ensure the act of obtaining express consent for a financial product is compliant with regulatory requirements even if it is outsourced; and*
- *review all disclosure to ensure it is consistent with the requirements of the Cost of Borrowing Regulations and the Commissioner's Guidance CG-3: Clear language and presentation principles and guidelines for the industry.*

The FCAC will maintain its supervisory scrutiny of disclosures and practices for obtaining consumer consent to ensure they are clear, simple and not misleading. Moving forward, FCAC supervision will place greater emphasis on the full sales process, including any verbal communication that forms part of obtaining consumers' consent.

Canadian Council of Insurance Regulators (CCIR)

<u>CAFII Provides Feedback On CCIR's Draft Travel Insurance Recommendations</u>
On March 10/17, CAFII responded to a request from CCIR's Travel Insurance Working Group (TIWG) for follow-up written feedback – to augment verbal feedback provided in a February 22/17 stakeholder meeting -- on draft Recommendations it intends to include in its upcoming Travel Health Insurance Products Position Paper. The draft Recommendations had been shared with the industry on an embargoed basis; therefore, a copy of the CAFII submission has been provided only to those members of the Association who have signed CCIR's Confidentiality Agreement.

In addition to providing feedback on eight specific draft Recommendations, CAFII's submission made the following comments on overall tone and positioning:

We recommend that

- *greater specificity be added to the Recommendations wherever possible, to avoid vagueness, especially in terms of "measures of success" for each. Further specificity, clarity and/or guidance around each Recommendation are needed so that industry players won't interpret them differently and then go off in many different directions in acting on them;*

- *clarity, not standardization, should be the linchpin for improving consumers' understanding of THI and their ability to make an informed purchase decision. After all, in a worst case scenario, the industry could standardize at a high level of product complexity. The objective should be clarity and not imposing a regimented standardization that could unduly compromise consumer choice. Industry players and regulators alike should want to avoid creating conditions where consumers become frustrated by a lack of choice and the unavailability of what they're looking for in the marketplace, and therefore decide to travel outside of Canada without securing THI coverage; and*

- *greater balance should be infused into the Position Paper by*

  -emphasizing, where appropriate, consumers' responsibilities with respect to THI, in addition to their rights. We believe that the Financial Consumer Agency of Canada has found the right balance in its recent pronouncements, which place equal emphasis on consumers' rights and responsibilities. (FCAC content on consumer rights and responsibilities with respect to insurance can be found here: https://www.canada.ca/en/financial-consumer-agency/services/financial-toolkit/insurance/insurance-3/10.html); and

  -acknowledging – as appropriate throughout the Paper; and not just via a single passing reference – where the industry has already achieved high standards or made substantial progress in addressing the particular THI concerns (leading to Recommendations) which the CCIR has articulated.

<u>CCIR To Offer Additional Instructional Session On Completion Of Annual Statement</u>
At the conclusion of CCIR's March 1/17 webinar for CAFII members on the Annual Statement on Market Conduct – Life and Health, presenters L. Balfour and M. Boyle advised that CCIR would be offering an additional information session on how to complete/enter data for certain questions in the Annual Statement On Market Conduct at a later date.

On March 16/17, Martin Boyle advised B. Wycks that the details for this additional instructional session had not yet been finalized, but he will communicate the date, time, and registration details to CAFII as soon as they become available.

M. Boyle also provided the following response to one of CAFII's questions about the Annual Statement, in case it had inadvertently not been addressed during the March 1 webinar: *disputes between insurers and beneficiaries for life insurance products need to be reported on the Annual Statement. The CCIR intends to capture information on the insurers' contractual disputes. In the case of life insurance products, it is often only the beneficiary who is able to make a "claim" or initiate a case regarding contractual obligations.*

Canadian Life and Health Insurance Association (CLHIA)

<u>Several Insurance Regulators To Speak At 2017 CLHIA Conference In May</u>
At CLHIA's 2017 Compliance and Consumer Complaints Conference, which takes place in London, Ontario from Wednesday, May 3 to Friday, May 5, the following insurance regulators will be presenting:

- Brian Mills, Vice-Chair of CCIR and Interim CEO of FSCO, will provide an *Update From CCIR* on May 3 from 10:00 to 10:30 a.m.;
- Harry James, Senior Advisor, BC FICOM; Anatol Monid, Executive Director, Licensing and Market Conduct Division, FSCO; and Nathalie Sirois, Senior Director, AMF will participate in a panel on *Regulatory Perspectives From Across Canada* on May 3 from 11 a.m. to 12 Noon;
- Julien Reid, Senior Director, Financial Institutions Oversight and Deposit Insurance, AMF, will provide an update on *International Developments* on May 3 from 3:45 to 4:15 p.m.; and
- Barbara Palace Churchill, Executive Director of the Insurance Council of Manitoba; Joanne Abram, CEO of the Alberta Insurance Council; and Gerry Matier, Executive Director of the Insurance Council of BC will participate in a *Provincial Insurance Councils Panel* on May 5 from 9:30 to 10:30 a.m.

Canadian Bankers Association (CBA)

Neil Parmenter To Succeed Terry Campbell As CEO Of CBA
On February 28/17, the Canadian Bankers Association (CBA) announced the appointment of Neil Parmenter as president and CEO, effective May 1/17. Parmenter will succeed Terry Campbell, who announced his retirement in September 2016 and has been in the role for six years.

Parmenter is currently Senior Vice-President, Corporate and Public Affairs (Global) and Chief Communications Officer at TD Bank. He leads TD's corporate communications for Canada and the United States as well as the its Canadian government relations practice, and counsels the CEO, CFO, senior executive team and Board on government relations, communications, and public affairs issues.

Parmenter holds a BA in political science from Western University, a certificate in public relations from Humber College, a Canadian Securities designation and completed an executive program in strategic marketing management from Stanford University. He serves as a director of the Toronto Financial Services Alliance and the Institute for Public Relations.

Alberta

Definition of Critical Illness Insurance To Undergo Further Review
On March 8/17, A. Maramieri, Chief Operating Officer of the Alberta Insurance Council, sent the following update to B. Wycks:

Apologies for the delay in responding (to an email sent February 15/17 inquiring as to why the Life Insurance Council-approved definition of critical illness insurance to be offered as credit-related insurance under a Restricted Certificate of Authority had not yet been posted on the AIC website).

Thank you for your inquiry. There has been further feedback provided to the Life Insurance Council in regard to the definitions. Therefore, it's on the agenda again for the next meeting on April 12. As a result, we are not yet able to post the definition on the website.

We will be advising you soon after the April 12 meeting of any further details and/or posting to the website.

Earlier, in a February 27/17 liaison meeting between B. Wycks and K. Martin of CAFII and E. Hiemstra and B. Kuiper of CLHIA, Ms. Hiemstra advised that CLHIA had identified some issues/potential problems which could crop up down the road with the definition of "creditors' critical illness insurance" which Alberta's LIC had approved on December 12/16 for inclusion within the overall definition of credit-related insurance permitted to be offered under a Restricted Certificate of Authority; and that CLHIA would be communicating those concerns to the AIC management.

In light of the communication received from A. Maramieri, B. Wycks has sent a follow-up request to E. Hiemstra for a synopsis of the issues/potential problems with the LIC-approved definition of creditors' critical illness insurance which CLHIA had identified. It's expected that E. Hiemstra will share that information when she returns from vacation on March 20/17.

Alberta Treasury Board And Finance Links To CCIR Annual Statement
On February 15/17, Alberta Treasury Board and Finance posted on its website links to the following CCIR documents:

- Introduction to the Annual Statement on Market Conduct;
- Annual Statement on Market Conduct – Life and Health Insurance; and

- Annual Statement on Market Conduct – Property and Casualty Insurance.

The posting notes that the Annual Statement is to be filed by May 1/17 with Quebec's AMF, via an online Portal which is currently completing, in accordance with an agreement between Alberta and the AMF.

Saskatchewan

<u>CAFII Responds To FCAA Request For Feedback On Definition Of TPA</u>
On March 13/17, CAFII responded, within the six days timeframe provided, to a request from Saskatchewan's Financial Consumer Affairs Authority (FCAA) for feedback on a proposed definition of Third Party Administrator. A copy of the submission has been provided to all CAFII members who indicated acceptance of the embargo which the FCAA placed upon the deliberations related to its draft Insurance Regulations. The following is a synopsis of CAFII's submission:

CAFII appreciates your invitation to comment on the following definition of Third Party Administrator, which the FCAA is proposing to include in the Regulations which will support the province's new Insurance Act: "third party administrator" means a business that carries out activities to administer a contract of insurance on behalf of an insurer, but does not include purely clerical activities.

While it is difficult to provide feedback on the proposed definition without knowing the full context of how it will be positioned within the Regulations and the details of the TPA licensing regime with which it will be connected, our Association proposes a modest enhancement to the definition which will help ensure that it is not open to misinterpretation, as follows:

> *"third party administrator" means an entity that carries out administrative activities related to a contract of insurance on behalf of an insurer, not including purely clerical activities.*

We support this slightly tweaked version of the FCAA's proposed definition because it

- *is written in clear, plain language that won't be subject to misinterpretation;*
- *circumscribes and limits the scope of what constitutes a TPA, for purposes of the planned TPA licensing regime, to those entities that are engaged by an insurer to carry out contract administration activities; and*
- *exempts purely clerical administrative services.*

Because the Association's support for the modestly tweaked TPA definition above is conditional upon how it is positioned within the Regulations and the details of the intended licensing regime of which it will be the cornerstone, CAFII's submission also reiterated several key points which had been made in its December 9/16 submission in response to the FCAA's sub-consultation on TPAs.

In the submission's conclusion, CAFII thanked the FCAA for its decision, recently communicated to Co-Executive Director Brendan Wycks, that the timelines for having the new Saskatchewan Insurance Act and its Regulations proclaimed into force would be deferred by one year, to the Spring of 2018.

But in that connection, the submission also noted that *it was CAFII's strong view that the original implementation target date of April 2017 was not realistic or achievable because 12 to 18 months of lead time is necessary -- whenever such new legislation and/or Regulations are introduced – to enable insurers and distributors to adapt to the mandated changes, especially those which will have systems implications.*

These changes inevitably become major projects within CAFII member organizations and it takes time to ensure that necessary systems changes are made, forms revised, staff trained, and consumers notified of how the changes will affect them.

At this juncture, we would like to stress that risk management and investment decision protocols within CAFII member organizations dictate that IT work stemming from regulatory changes cannot be initiated until the new legislation and/or Regulations come into force. Therefore, we urge the FCAA to expedite the process of finalizing the new Regulations; securing any required Government approvals; determining the date on which the new Insurance Act and related Regulations will be proclaimed into force; and communicating that date to the industry at the earliest possible moment in time.

Ontario

<u>Federal MPs Express Support For Bank Act Prohibitions At Ontario Brokers' Event</u>
A report published on the Insurance Brokers Association of Ontario (IBAO) website indicates that representatives of all three federal political parties, speaking on a panel at a March 8/17 event of the Ottawa Insurance Brokers Association (a chapter of the IBAO), expressed support for maintaining the current Bank Act prohibition against banks selling non-Authorized Insurance Products from their branches.

The IBAO report states that Liberal MP Kyle J. Peterson connected his role in government with the role of insurance brokers, having worked with insurers and brokers on the legal defense side in his previous profession. "Banks selling insurance and lenders selling insurance is a concern," he said, noting that current legislation ensures a level playing field for all industry participants. "I'll do my best to maintain that in my role as a politician."

Peterson also had a message for brokers about advocacy: "Government can't form policy without feedback from industry. You must be active at all levels; this is fundamental to the way government functions." He continued: "it means more when the message is coming from a constituency member in my community than an Association."

Conservative MP Ron Liepert praised the insurance industry for its work following the Fort McMurray fires in Alberta: "politicians are the first to hear things when there's a problem. I have never seen a response like that from any industry. I take my hat off to you."

Liepert also drew a connection between brokers and their role in the community: "I play golf with my broker. It's nice when you know who you're dealing with," he said, and acknowledged that insurance is designed to provide a service when you need something resolved, and seeking resolution with someone you know is the preferred experience. "When people have a problem, they like to know they're dealing with someone who understands their situation."

On the topic of the Bank Act, Liepert called it one of the most important pieces of legislation in our country. "It's important in trying times," he said in reference to the 2008 economic crisis, "but it also strikes the right balance in our financial sector. We don't want to stop business, but we do want to put people on an even playing field."

Liepert issued the following call to action to brokers: "take an aggressive role to make sure your MP has heard your perspective. The modernization of technology will bring more challenges, and we are here to listen."

NDP MP Erin Weir had this to say about the Bank Act: “the NDP has been consistent in supporting a prohibition against insurance being sold in branches at banks,” explaining the party’s belief that insurance business should be kept at arm’s length. “We don’t want to reduce choice for consumers,” stating the fear that banks would monopolize the market if current rules were to change.

The conclusion of the IBAO report on the Ottawa Brokers’ political panel summarizes the Association’s position on the Bank Act as follows:

The Bank Act is the law that governs Canada’s major financial institutions. It’s of importance given that wealth management operations like banks and credit unions are allowed to own and operate insurance businesses, a power granted in the 90s when financial services legislation was reformed. However they’re prohibited from selling insurance at the time of granting credit, or within credit-granting branches (it must take place at a separate location).

There’s a risk for policyholders when insurance carriers are owned by wealth management operations. Brokers advise clients on available products, offer coverage choice and shop the market for best-suited products, while banks and credit unions sell single products, and consumers approach them in times of vulnerability (i.e. when they’re applying for credit). It’s unfair to deal insurance at the same time as credit’s being applied for – the current prohibition protects consumers from cross-selling tactics that might lead individuals to accept/purchase a product that isn’t appropriate for their needs. Protection should remain as it currently stands in the Bank Act, guarding consumers against coercion and undue influence.

International

International Association of Insurance Supervisors (IAIS)

<u>IAIS Launches Major Consultation On ICPs and ComFrame</u>
On March 6/17, the International Association of Insurance Supervisors (IAIS) launched a major consultation package covering proposed revisions to a number of IAIS Insurance Core Principles (ICPs) and ComFrame-related material, in addition to an Application Paper on Group Corporate Governance.

ICPs apply to the supervision of all insurers within a jurisdiction. ComFrame, the Common Framework for the Supervision of Internationally Active Insurance Groups, builds upon the ICPs with standards and guidance specific to the supervision of Internationally Active Insurance Groups.

“This package is the product of substantial feedback from insurance supervisors and stakeholders from throughout the world,” said Victoria Saporta, Chair of the IAIS Executive Committee, adding that “it represents a major milestone in finalizing the qualitative components of ComFrame in line with its scheduled delivery in late 2019, and in upgrading the ICPs.”

With respect to the review of ICPs within the new consultation package, only “The Introduction to ICPs and ComFrame” and “The ICP Assessment Methodology” are covered. Public comments are due by June 1/17.

<u>Fintech Trends Prompt IAIS Assessment Of Supervisory Practices And Skills</u>
In a report released March 14/17, the International Association of Insurance Supervisors (IAIS) highlights the potential impact of innovative financial technologies (“fintech”) on insurance sector competitiveness, consumer choice, interconnectedness, business model viability and regulatory oversight. The report, titled “Fintech Developments in the Insurance Industry”, also examines the challenges and opportunities insurance supervisors face in this rapidly changing insurance environment.

“Fintech innovations have the potential to change fundamentally the way the insurance sector serves policyholders”, said Victoria Saporta, Chair of the IAIS Executive Committee, adding that “because of both the scope and pace of change, insurance supervisors must be alert to new developments and make necessary adjustments in their supervisory practices and skills”.

The IAIS analysed the potential impact of finTech based on three scenarios:

- incumbents successfully maintaining the customer relationship;
- the fragmentation of the insurance value chain with incumbents no longer in control; and
- big technology firms squeezing out traditional insurers.

Among the report’s findings, fintech may disrupt the insurance sector by reducing insurance market competitiveness over the long term; cause traditional insurers to exit the market; result in more individualized insurance products which could affect (price) comparability and consumer choice; increase insurance sector interconnectedness due to the use of a limited number of technology platforms; and lead to changes in insurer business models if profit margins come under pressure.

In addition, fintech may increase the focus on improving the customer experience and affect the treatment of customers, possibly creating issues of affordability of insurance products or even increased financial exclusion. It may also create issues concerning the use, ownership and protection of data.

The report points to several challenges for insurance supervisors, including:

- balancing the risks and benefits of innovations and creating an environment that fosters innovation through approaches such as regulatory sandboxes or innovation hubs;
- evaluating and, if needed, adjusting the prudential regulation framework;
- considering the adequacy of current reporting requirements in monitoring trends and the potential build-up of risk connected to new technologies; and
- understanding how innovations work and are applied to ensure adequate assessment of new product and business models.

Research, Thought Leadership, and Innovation

<u>LIMRA Identifies Five Key Drivers Influencing Life Insurance Industry In 2017</u>
A new research study by the Life Insurance Marketing Research Association (LIMRA), released in early February, highlights five key drivers that will shape the life insurance industry in 2017: regulation, the changing consumer, technology, innovation, and talent management.

<u>CSA Invites Fintech Businesses Into Regulatory Sandbox</u>
On February 23/17, the Canadian Securities Administrators (CSA) launched a “regulatory sandbox” initiative aimed at both supporting fintech businesses and protecting investors.

The CSA said its regulatory sandbox welcomes businesses that are “truly innovative from a Canadian market perspective.” Business models will be assessed on a case-by-case basis and businesses that register or receive relief may be allowed to test their products and services across the Canadian market.

Louis Morisset, CSA Chair and President and CEO of the AMF in Quebec, said the goal of the initiative is “to facilitate the ability of those businesses to use innovative products, services and applications all across Canada, while ensuring appropriate investor protection.”

OSC, UK Regulator Sign Co-operation Agreement On Fintech Businesses

On February 23/17, the Ontario Securities Commission (OSC) and the United Kingdom's Financial Conduct Authority (FCA) signed an agreement under which fintech businesses in both jurisdictions will be able to seek support from their financial regulators as they look to operate in the other's market.

The Co-operation Agreement allows the FCA and the OSC to refer to one another "innovate businesses" seeking to enter the other's market. The regulators may also provide support to businesses to "help reduce regulatory uncertainty and time to market."

The Agreement follows the creation of the FCA's Innovation Hub in 2014 and LaunchPad by the OSC in October 2016. These initiatives are designed to help businesses with innovative ideas navigate the regulatory framework, support them through authorization and facilitate their engagement with their respective regulator.

Once referred by the regulator, and ahead of applying for authorization to operate in the new market, the business will have access to dedicated staff that will help them to understand the regulatory framework in the market they wish to join, and how it applies to them.

In November 2016, the OSC and the Australian Securities and Investments Commission signed a similar agreement for fintech companies in Australia and Ontario.

Manulife Eliminates Blood, Urine, Nicotine Tests For All Eligible Applicants

On February 7/17, Manulife announced that it had become the first Canadian insurer to eliminate blood, urine and nicotine testing for eligible applicants seeking up to $1 million in life insurance coverage.

The insurer introduced this program for term life products in May of 2016. The program has now been extended to all Manulife individual life insurance offerings, including whole life and universal life.

Predictive analytics and monitoring application data can help eliminate opportunities for fraud and they also improve decision making overall, said Cindy Forbes, Manulife's Chief Analytics Officer. "The insights from the data we collect through our underwriting process and public sources enables us to determine the cases that we believe require testing, while simplifying the application process for more than half of applicants."

Artificial Intelligence Platform For Travel Insurance Wins Innovation Challenge

On February 8/17, AIG Canada announced that Trip Swell Inc.'s Jauntin', a mobile artificial intelligence platform which allows for on-demand, usage-based travel insurance coverage, had won the company's Innovation Challenge.

On its website, Trip Swell says "Jauntin' continuously collects and analyzes incoming data to better predict future risk; and makes it easier for policyholders to obtain travel insurance, enhance their existing policies, or submit claims in real-time. The platform enables insurers to learn when policyholders leave and return, where they go, their travel habits and more.

The AIG Canada Innovation Challenge, positioned as a crowdsourcing opportunity, attracted submissions from 87 Canadian tech start-ups.