

## COMPETITION LAW POLICY FOR CAFII'S BY-LAW NO. 2007 - 1

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ADD DEFINITION OF "COMPETITION ACT" TO SECTION 1.01:

**"Competition Act"** means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

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ADD SECTION TO BODY OF BY-LAW:

### SECTION TWELVE

#### COMPETITION LAW POLICY

##### 12.01 Competition Law Policy Statement

It is the Corporation's policy that it, and all of its members, fully comply with the Competition Act in respect of any activity undertaken for or on behalf of the Corporation. Responsibility for such compliance rests with the board and with each member.

##### 12.02 Guidelines for Competition Act Compliance

At each meeting of the members of the Corporation, each member shall be furnished with a document setting out the Corporation's guidelines for Competition Act compliance (the "**Guidelines**"). Each attending member shall acknowledge receipt of the Guidelines in writing and agree to adhere to the Guidelines in respect of any activity undertaken for or on behalf of the Corporation.

##### 12.03 Consequences for Failure to Comply with Policy and Guidelines

Failure by a member to comply with this policy or the Guidelines is grounds for removal of that member from the register of the Corporation in accordance with section 9.06.

##### 12.04 Annual Review of Guidelines

The Guidelines shall be reviewed annually by the Corporation in consultation with its legal counsel and shall be amended from time to time, as necessary or considered desirable by the board.

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## CANADIAN ASSOCIATION OF FINANCIAL INSTITUTIONS IN INSURANCE

### GUIDELINES FOR *COMPETITION ACT* COMPLIANCE

Trade association meetings present a risk of interactions among competitors that in and of themselves may contravene, or may lead to a contravention of, Canada's competition laws. Depending on the circumstances, an inference may be drawn by the Competition Bureau of an improper agreement among competitors resulting from such interactions. In addition to rules of general application to all industries, there are also specific provisions in the *Competition Act* (the "Act") dealing with agreements or arrangements between federal financial institutions.<sup>1</sup>

Consequently, the Canadian Association of Financial Institutions in Insurance ("CAFII"), and its members, should be cognizant of the importance of compliance with the Act and committed to such compliance. In fulfilling the mandate of CAFII, and working towards the achievement of its objectives, members of CAFII are expected to adhere to the guidelines that follow and CAFII's competition law policy to promote and respect the spirit and the letter of the law.

#### 1. **Prohibited Activities**<sup>2</sup>

##### (a) **Anti-competitive Agreements or Understandings**

Neither CAFII nor any committee or activity of CAFII shall be used for the purpose of bringing about or attempting to bring about any agreement, written or oral, formal or informal, express or implied, among competitors regarding:

- (i) the amount or kind of prices, premiums, service charges, interest rates, or other terms or conditions of any products or services to be offered for sale by insurance companies;
- (ii) the amount or kinds of products or services to be offered to customers or classes of customers;
- (iii) the customers or classes of customers to whom any insurance company product or service may be sold or withheld; or
- (iv) the territories in which an insurance company product or service may be sold.

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<sup>1</sup> For the purposes of the relevant provisions of the Act, "federal financial institution" means a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act*, a company to which the *Trust and Loan Companies Act* applies or a company or society to which the *Insurance Companies Act* applies.

<sup>2</sup> The activities captured by these guidelines include any activities undertaken for or on behalf of CAFII, including but not limited to, CAFII meetings, formal or informal CAFII-sponsored events, and advocacy and lobbying initiatives.

**(b) Sharing Information Posing Anti-competitive Risk**

No CAFII activity, including any activity undertaken by a CAFII committee or group, shall involve discussion, exchange, collection or dissemination among competitors, for any purpose or in any fashion, information on those matters identified in subparagraphs (i) to (iv) in paragraph (a) above.

Where projects involve the collection of individual firm statistical data, such collection shall involve only aggregate data from past transactions and shall include effective steps to protect against disclosure of individual product-pricing or interest-payment information.

**(c) Exchange of Cost Information – Anti-competitive Purposes**

No CAFII activity shall include any discussion of costs or any exchange of cost information for the purpose or with the probable effect of:

- (i) increasing, maintaining, or stabilizing prices, premiums, service charges, interest rates, or other terms or conditions of insurance company products or services;
- (ii) reducing competition with respect to the range or quality of products or services offered by insurance companies; or
- (iii) promoting agreement among insurance companies with respect to their selection of products or services for purchase, their choice of suppliers, or the prices they will pay for such products or services, including commissions for the services of commissioned agents.

**(d) Published Papers**

Papers published by or on behalf of CAFII or presented in connection with CAFII programs should not discuss or refer to the amount or kind of prices, premiums, service charges, interest rates, or other financial terms or conditions of insurance products or services offered for sale by insurance companies. Additionally, reference to costs in such papers should not be accompanied by any suggestion, express or implied, that prices, premiums, interest rates, service charges or other terms or conditions of insurance company products or services should be raised, adjusted, or maintained in order to reflect such costs. To ensure compliance, authors of conference papers shall be informed of CAFII's Guidelines for Competition Act Compliance and CAFII's competition law policy and the need to comply with these rules in the preparation and presentation of their papers.

**(e) No Attempt at Product Standardization**

Neither CAFII nor any CAFII committee or group shall make any effort to bring about the standardization of any insurance product or service for the purpose or with the effect of preventing the development or sale of any product or service not conforming to a specified standard.

(f) **Independent Dealings with Suppliers**

No CAFII activity or communication shall include any agreement, or any discussion which might be construed as an agreement, to collectively refrain from purchasing any products or services from any supplier.

(g) **No Exclusion from CAFII Activities**

No person shall be arbitrarily or unreasonably excluded from participation in any CAFII committee or activity where such exclusion may impair such person's ability, or the ability of his or her employer, to compete effectively in the insurance industry or as a supplier to the insurance industry.

2. **Permissible Activities**

The Act expressly permits certain activities among competitors and, as a result, within trade associations. These permitted activities include:

- the exchange of statistics;
- the defining of service or product standards;
- the exchange of credit information;
- the definition of industry terminology;
- co-operation in research and development; and
- agreements on environmental protection measures.

However, the usefulness of these exemptions is **very limited**. These activities become illegal if the result is that competition is unduly decreased, or if entry into an industry or expansion of a business within that industry is unduly restricted. For example, although "the exchange of statistics" is permitted, that does not mean that any and all forms and kinds of statistics and numbers, such as price lists or market-share data, may be exchanged among trade association members. Likewise, the defining of service or product standards may become criminal conduct if there is an agreement that CAFII members will restrict the range of services or products they offer to certain specified customers, or they agree to standards in terms of quality, range or quantity of products or services they offer with the aim of eliminating low price competitors.

3. **Efforts to Influence Governmental Action**

In general, one has a right to meet and to make joint presentations with respect to governmental activities of common interest. However, this right should not be used jointly by competitors for an anti-competitive purpose such as, for example, the lobbying for a legislative or regulatory change having the objective of impeding entry of new competitors, increasing insurance premiums, or restricting insurance services to certain classes of customers or geographic regions. Caution should be exercised where a particular lobbying initiative pertains to subject-matter that has competitive overtones or may be perceived as a concerted effort to lessen or prevent competition. In such cases, legal advice should be sought before proceeding with the initiative.