

10 December, 2018

Ms. Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, tour de la Bourse Montréal (Québec) H4Z 1G3
E-mail: consultation-en-cours@lautorite.qc.ca

Re: Regulation respecting Alternative Distribution Methods

Dear Ms. Beaudoin:

On behalf of the Canadian Association of Financial Institutions in Insurance (CAFII), I'm writing with respect to your 10 October, 2018 invitation to industry stakeholders to provide input into the draft Regulation respecting Alternative Distribution Methods issued by the Autorité des marchés financiers (AMF).

CAFII members believe fundamentally in consumer choice in the purchase of insurance protection; and in making multiple options available to consumers in the marketplace. In that connection, we believe that the Regulation is a well-considered and important contribution to supporting and fostering consumer choice. Providing the opportunity for companies to offer insurance through alternate distribution methods will lead to more consumer choice, more competition, and will promote innovation in the marketplace. For those reasons, we applaud the intent of the Regulation and believe it will contribute to a strengthening of the Quebec insurance industry and consumer satisfaction.

We are therefore pleased to offer the following specific points of feedback on the draft Regulation.

- In the 17 October, 2018 webinar on the Regulation, there were several references made to how the ability to offer insurance through alternative platforms such as the Internet would not eliminate the requirement to provide a needs analysis where required. We wish to confirm that this is restricted to the offering of insurance where a firm is involved, and not when the insurance is offered through a distributor. As a point of clarification, CAFII members offer optional creditor protection insurance to protect a debt obligation (e.g. a mortgage or home equity line of credit). However, a needs analysis involves advice; and we would like to emphasize the fact that CAFII members are strictly prohibited from offering advice in conjunction with "Authorized Insurance Products" (the various forms of creditor protection insurance) under the federal Bank Act and the related Insurance Business (Banks and Bank Holding Companies) Regulations.
- We also noted that at the webinar, reference was made to Article 68 of the Insurers Act, which gives the AMF the power to tell firms they must cease offering products, in situations where the AMF deems such a cease and desist order to be appropriate. Since this is a very broad and impactful power, we request additional information on what company behaviours would elicit such a response from the AMF; what objective decision criteria and processes will be put in place related to the application of this power; and what appeals process will be available to a company that finds itself subject to such an order to cease offering products. Also, we understand that

based on Section 465 of the Act, there will be a notification period that provides a firm with the opportunity to correct non-compliance before a cease and desist order takes effect.

- Article 2 of the Regulation states that *“A firm that offers products and services without the intermediary of a natural person must do so through a platform, namely, a digital space used to interact directly with clients who satisfy the requirements under this chapter.”* Some platforms are not transactional in nature; these platforms may not include the capability of fulfilling or completing an actual sale, but have other features such as permitting the initial quoting process to occur online. We believe that the definition of “platform” is intended to apply to websites or platforms that are transactional in nature. We believe that if non-transactional websites or platforms were to be included in scope, it would not provide additional consumer benefit, and would increase complexity unnecessarily.
- We would encourage the AMF to consider including language that ensures that future technologies are not excluded from the Regulation. The language of the Regulation leans toward internet and other “written-oriented” platforms, but emerging audio and virtual reality technologies, combined with artificial intelligence capabilities, are making it increasingly possible to envision sales without a person typing information into a platform. As the AMF is committed to enabling innovation in the marketplace, it would be beneficial to use more technology-inclusive language that could capture and permit technologies as they develop, which would remove the need to revisit and revise the Regulation in future. For example, the expression “digital device” would be more inclusive.
- With respect to Article 4 of the Regulation, we would ask that providing the required information to the AMF “without delay” could produce challenges, and we would request that this language be replaced with “within 60 days of the enforcement of the Regulation, or within 60 days of a change to any of these items.” Regarding Articles 4 and 5 in the Regulation, we note that some of the references appear to target P&C insurance or make reference to activities, such as producing financial plans that our members do not engage in (*Article 5: “The firm must disclose annually to the Authority through its maintenance of registration application, the number of financial plans prepared, claims settled and insurance policies issued, and the amount of premiums written solely via its platform”*). It would be helpful to spell out that only the applicable information relevant to the activities actually conducted by the firm needs to be reported on, for example by adding “where applicable” in those instances where a reporting activity may not be relevant to certain firms. CAFII members offer insurance products such as life, disability, critical illness, job loss, and travel insurance, and are not permitted to offer advice in the sale of Authorized Insurance Products. Many CAFII members do not operate as firms as defined by the applicable laws covering Insurance sales in Quebec.

We would also seek clarity on whether “claims settled” applies to the activities of life and health insurance companies, as we were under the impression this was directed to P&C insurance companies.

- With reference to Articles 4, 5, 21, and 22 in the Regulation, many CAFII members are required to provide detailed reporting information to the CCIR through the AMF-administered Annual Statement on Market Conduct (ASMC). As much of the reporting information required in the Regulation is already delivered by insurers (supported by their distributors) through CCIR’s ASMC, we believe that the reporting requirements set out in these Articles can and should be fulfilled

through the ASMC. We therefore encourage the AMF to achieve these reporting requirements through the already-in-place ASMC, of which the AMF is the technology and data analysis administrator on behalf of CCIR, thereby avoiding duplication of effort and inefficiencies.

In addition, those requirements in these Articles of the Regulation which are not already captured in the existing ASMC would be better captured by adding those reporting requirements into future iterations of the ASMC, thereby avoiding two sets of reporting and the inefficiencies that would create for both the AMF and the companies engaged in the reporting.

- Regarding Articles 22(1) and 22(2) in the Regulation, CAFII members consider this information to be proprietary and sensitive. It is not clear to us what additional benefit will be gained beyond the provision of financial information already provided to the AMF through CCIR's ASMC. Furthermore, the information requested in these sections appears to refer to all policies issued, premiums collected, and claims paid through a distributor, which we feel is outside the scope of a Regulation on Alternative Distribution Methods.
- Article 8 lists information that must be visible on the platform at all times. The list is sufficiently long that it risks creating a cumbersome, clunky, and potentially frustrating online user experience for consumers. We recommend that the AMF require that the information be "easily accessible at all times," and allow firms to determine how best to fulfil that requirement. To insist on information being visible "at all times" means that it would need to appear on every page or screen image, which would be onerous for website applications, and very disruptive to mobile applications on smartphones which have small screens and limited space to display information. In general, we appreciate and support the intent of the AMF with respect to most of these requirements, but would strongly recommend that instead of prescribing the means of fulfilling a requirement, firms be given the opportunity to use their marketplace knowledge to determine how best to fulfil the principle the AMF is advancing.
- Regarding Article 9(1), we are not clear on the intent of this Article and ask that it be clarified. In the case of CAFII members, the majority of insurance products offered are associated with consumers' debt obligations such as mortgages, loans, and credit card balances. As such, the type of clientele the products are intended for is borrowers. We ask that the AMF clarify the type of information it is seeking to have displayed on the platform arising from this Article, and in particular that this is only applicable to firms and not to distributors.
- Turning to the issue of clients always having access to a representative, it is our understanding that Bill 141 provides for this obligation in Clause 71.1: *"However, it must take the necessary steps to ensure that representatives of its own interact, in sufficient time, with clients who express the need to interact with a representative..."* We recognize that this language is in legislation that has been adopted by the National Assembly, but we would request consideration be given to the Regulation including interpretive language that makes the meaning and intent of that clause clearer. Specifically, "of its own" (*"qui sont les siens"*) could mean employees, or it could mean third party, outsourced staff who support the activities of the firm. We believe that if a firm is responsible for representatives and their activities and is engaged in their training, then the broader interpretation should meet the requirements of the clause in question. The flexibility offered by a broader interpretation of "of its own" more realistically reflects the reality of how the modern insurance industry deploys human resources. Therefore, we would encourage the

Regulation's inclusion of a clarification that third-party, outsourced staff who support the activities of a firm can be interpreted to meet the "of its own" requirement.

- Further with respect to the issue of clients always having access to a representative, there is a related requirement that a representative must interact "in sufficient time" (*"en temps utile"*) with a client. If a platform is available 24/7, access to a physical representative via the phone or another mechanism may only happen on the next business day. A statement in the Regulation that 24/7 access to a representative is not expected would be a helpful clarification.
- We would also seek confirmation that depending on the nature of the product being sold, the representative may not have to be a licensed representative. CAFII members sell creditor insurance products which are Authorized Insurance Products under the federal Bank Act and the Insurance Business (Banks and Bank Holding Companies) Regulations, for which offering advice is prohibited. So when a consumer is offered creditor insurance when he or she is taking on a new debt obligation such as a home mortgage, the CAFII member's representative would not be able to provide advice in connection with the optional insurance coverage for their debt obligation. Likewise, CAFII member client service representatives supporting online insurance sales would not be licensed, nor able to offer advice.
- Article 9.2 in the Regulation states that the platform must present to the client "the fact that the client must or may, as the case may be, subscribe for or enroll in a contract through the intervention of a representative or solely through the platform." It is our understanding from the 17 October AMF webinar that the intent of this clause is to inform the client upfront about the business model of the firm he or she is interacting with through the platform, for example to clarify whether the firm offers the opportunity to fulfil the transaction entirely online or, alternatively, whether a representative is required at some point in the transaction. We believe that the intent of this wording in Article 9(2) could be stated in clearer and simpler terms, for example "whether or not the transaction can be completed without a representative."
- We believe that much of the information disclosure required in Article 10 in the Regulation is duplicative of information that would be contained elsewhere on the platform. Article 10 also produces a more onerous requirement than exists in the phone channel. As well, some of this information may be better transmitted to the client via email or other means, as opposed to being placed on the platform. We believe that since a product summary and a "specimen of the policy" must be available on the website, all of the information disclosure requirements in Article 10 would be met through those documents. Since the requirements related to the product summary and the specimen of the policy are spelled out elsewhere in the Regulation, we feel that Article 10 is itself largely duplicative and unnecessary.

If the AMF decides to keep Article 10, a potential issue with sub-clauses 10(2) and 10(3) is that this may be quite a bit of content (depending on the product) to produce on a platform, with the potential to overwhelm the customer. If the article is maintained, we would suggest that the usual industry approach of providing a general statement about terms/conditions which may limit or exclude coverage with the disclosure of significant exclusions/limitations would be sufficient.

We also request clarification as to whether Article 10(8) is requesting that taxes be included in the price or separated out.

- We ask for clarification on what is meant by a “specimen” in Articles 11 and 33 of the Regulation. Creditor protection insurance, which is group insurance, has a Master Policy document that covers all of the members of the group, who then receive an individual Certificate of Insurance. The Master Policy document would not contain the right information for individual clients, and would contain company proprietary information that companies would not want to place on a public platform. We believe that a Certificate of Insurance is the right document to fulfil the requirement of access to a “specimen” for the products offered by CAFII members, and we would request confirmation that the AMF is in agreement with this interpretation.

We also recommend that the phrase “make available on its platform at all times” be changed to “make accessible on its platform at all times” in order to make it clear that this information does not need to appear on every page or screen of a website or mobile application.

- Article 15 seems to set out an obligation of results. We would recommend that the wording be modified to replace "The firm must ensure that its platform can..." by “The firm must take reasonable measures to ensure that its platform can....”
- Regarding Article 18 in the Regulation, we interpret it to mean that the information from completed applications must be stored by the firm for future retrieval. If a customer begins an application but does not complete it, that information will be lost and the client will have to re-enter it. We would appreciate receiving the AMF’s confirmation of CAFII’s view that incomplete applications should not be kept in the client record, and a client record for a new client should not be created until the client completes the purchase of a product.
- While we feel that most of the requirements in Articles 14 to 18 are within CAFII members’ existing capabilities, we will need to ensure that all of the requirements can be fulfilled and we will need sufficient time to test these requirements to ensure that they are functioning properly. For that reason, we request that the AMF provide a transition period of one year beyond the 13 June, 2019 in-force date of the Regulation, for the full implementation of the Regulation.
- We would like some clarification regarding what is meant by *"procedure relating to the design, use and maintenance of its platform"* in Article 17.
- With respect to Article 18, we would like understand if there is a specific retention period requirement. We would note that an insurer already has obligations under Quebec law to retain all customer information, regardless of how it is received, for a period of time.
- It is our interpretation of Regulation Article 19(2) that additional insurance coverages beyond the one initially selected can be presented to the client, so long as none of these are pre-selected. We would appreciate receiving the AMF’s confirmation of that view. In the English version of the Regulation in Article 19(1), we would propose changing “present advertising when a client completes a proposal” to “present advertising when a client completes an application.” There is no concern with this clause in the French version of the Regulation.
- Article 21 states that *"The insurer must notify the Authority without delay of any change in the information provided"*, but it is not clear what is meant by "without delay." We would request that this be changed to providing the information within 60 days. Where there are business

reasons to remove a distributor, such as a contract breach, or issues around compensation expectations, we may be unable to disclose this information due to confidentiality agreements. We would propose in those situations to be able to advise the AMF that a distributor was removed because they were “in a situation of non-compliance practices.”

- With respect to Article 22(4), if a third party has a contract with a distributor, the insurer may not have access to information about the compensation paid to the third party. The insurer would have obligations placed on the distributor including on its management of third-party service providers, but specifics around compensation may not be available to the insurer.
- Article 25 states that the insurer must be able to provide all of the information and documents presented to the client at the time of the offer, but it is not clear if this would include the questions and responses from the application, or if this refers only to the product summary and fact sheet.
- We would seek clarification on what is meant by a “durable medium” in Article 29(5). We support the approach taken to the product summary (Article 30), where the AMF provides guidance on expectations but the actual wording is developed by companies who have the ability to use a summary approach, rather than listing the limitations / exclusions etc. For example, with respect to sub-clauses 30(6), 30(7), and 30(8), it is our understanding that a firm could use a high-level statement about there being limitations and exclusions and direct the customer to where they could find this information in more detail. We believe that such an approach is necessary if we are to fulfil on the AMF’s intention of keeping the product summary simple and concise.
- As we have noted elsewhere, target audience typically is borrowers for creditor products sold by CAFII members and as such we are not sure that this section of the Regulation pertains to our members’ activities. We are also unclear on what is intended to be covered under Article 30(8). Any clauses that affects the insured’s coverage should be covered by Article 30(7) on exclusions/limitations.
- When an insurance product is sold through a distributor, Article 33 should be a requirement for the distributor as opposed to the insurer. We would propose to modify the language of Article 33 to read “the insurer or distributor, depending on who the consumer purchases the product from, must make....”
- Articles 34 and 35 of the Regulation contain wording around training that concerned us. The regulation should make clear that training is only expected to be provided to individuals who interact with customers. There may be cases where the transaction is entirely online and the client chooses not to interact with a representative.
- In a similar vein, Article 35 in the Regulation seems to be about distributor representatives communicating directly with clients, which might not occur in many scenarios where alternative distribution methods are used. Separate legislative and regulatory requirements as well as CLHIA Guidelines, already cover the issue of distributor training requirements; and it is not clear why this has been included in this Regulation or how it fits within a Regulation focusing on alternative distribution methods.

- We recommend that Article 36 -- and particularly Article 36(1) -- be reworded to make it easier to understand and implement. For example, in which context would the time period be more than 180 days?
- We would seek to avoid any interpretation that an insurer is prohibited from setting different compensation for similar products between different distributors, for example paying distributor A 25% and distributor B 30% because the latter has a bigger customer base. Article 36(3) also states that no insurer may “set different commission rates applicable to a distributor for products with similar insurance coverage,” but as was noted in the 17 October 2018 AMF webinar, there are some products that are theoretically similar (term life and credit protection life insurance on a mortgage, for example), but which have very different target audiences. Based on industry consultation in the auto sector, we understand that the concern is that a distributor “may offer a product based solely on the potential remuneration they would receive and thus favour the product with the highest remuneration.” Therefore, we recommend modifying the wording of this Article, as follows: “set different commission rates applicable to a distributor for products with similar insurance coverage and similar target customers.” We would also seek confirmation that Article 36(1) does not apply to insurance under revolving accounts, for which there is no term and for which the insurance is renewable monthly.

At a more general level, we are not clear why a Regulation on Alternative Distribution Methods includes reference to compensation practices. There are other examples of requirements within the Regulation that appear to be outside of its natural scope and focus, and we would recommend that the AMF consider whether such clauses fit appropriately within this Regulation. More general, principles-based language requiring adherence to fair treatment of customers guidelines, as set out by the AMF and the CCIR/CISRO would, we believe, more effectively achieve the objectives of the AMF and avoid introducing language and concepts that are outside the scope of this particular Regulation.

- Regarding Schedule 1 on rescission of a contract (which is more commonly referred to as cancellation of a contract in English, as such we would suggest changing the word "rescission" to "cancellation" for clearer language), we ask that the AMF provide confirmation that our view is correct that these rights do not apply in certain circumstances, for example a client cannot purchase travel medical insurance; have it in force during their trip; then, after they return, (assuming it is less than 10 days after they took out the insurance) cancel the insurance and get a refund of the premium.

Schedule 1 also states that “To rescind the contract, you must give the insurer notice, within the applicable time, by registered mail or any other means that allows you to obtain an acknowledgement of receipt.” We recommend removing the reference to registered mail and simply stating “by any appropriate means” so as to avoid prescribing the means to achieve an objective, as opposed to focusing on the outcome and leaving the mechanism to achieve it to the firms operating in the marketplace.

We also would like to receive confirmation of our understanding that while the final version of Schedule 2 form will be unalterable, Schedules 1, 3, 4, and 5 are templates that can be modified by individual firms. We are concerned that if that is not the case, the AMF is prescribing details that may not properly reflect the full rights of a consumer and which will constrain a firm's ability to communicate information in language that they feel is most effective. For example, Schedule 1 says "The Act allows you to rescind an insurance contract, **without penalty**, within 10 days of the date on which it is signed. However, the insurer may grant you a longer period." While correct, we believe it would be more beneficial to actually state the period over which the consumer can cancel an insurance contract without penalty, which for many of our members is longer than 10 days. Our members have considerable experience with presenting information and forms to consumers, and just as the AMF has required with the product summary, we feel it would be more effective to indicate what are the principles the AMF is advancing and what are the expectations the AMF is requiring, and leave the specific language to individual firms operating in the marketplace.

- Regarding Schedule 2, we note that some of the pictograms utilized are automobile or traffic-related. Therefore, it would be problematic and potentially confusing to consumers to use such pictograms in life and health insurance-related documents.

In that connection, we would welcome the opportunity for some life and health insurance industry representatives, including from CAFII member companies, to meet with the AMF to review the content and format of the Schedule and offer feedback. In particular, we do have experts in the presentation of forms to clients who might be able to offer suggestions on how to make it a more consumer-friendly document. While we applaud your decision to hold a series of consumer focus groups on the forms, we believe that Schedule 2 is of critical importance and getting it optimally worded and formatted could benefit from additional input from a task-specific regulator/industry working group.

- We would recommend a one-year period for the full enforcement of the Regulation to ensure that our members have the time to ensure that the changes required are fully implemented and tested, and to make the customer experience from these changes as optimal as possible.

In conclusion, thank you again for the opportunity to provide input and feedback on the Regulation Respecting Alternative Distribution Methods. CAFII members appreciate the open and transparent communication relationship our Association has always enjoyed with the AMF, and the demonstrated willingness of your staff executives to engage in dialogue and consultations with the industry. We appreciate the opportunity to offer our considered views on this important and ground-breaking Regulation, and we look forward to continuing to engage in dialogue with you on this and other regulatory matters.

Should you require further information from CAFII or wish to meet with representatives from our Association at any time, please contact Keith Martin, CAFII Co-Executive Director, at keith.martin@cafii.com or 647-460-7725.

Sincerely,

A handwritten signature in black ink, appearing to read 'M Boyle', with a stylized flourish at the end.

Martin Boyle
Board Secretary and Chair, Executive Operations Committee

About CAFII

CAFII is a not-for-profit industry Association dedicated to the development of an open and flexible insurance marketplace. Our Association was established in 1997 to create a voice for financial institutions involved in selling insurance through a variety of distribution channels. Our members provide insurance through client contact centres, agents and brokers, travel agents, direct mail, branches of financial institutions, and the internet.

CAFII believes consumers are best served when they have meaningful choice in the purchase of insurance products and services. Our members offer travel, life, health, property and casualty, and creditor's group insurance across Canada. In particular, creditor's group insurance and travel insurance are the product lines of primary focus for CAFII as our members' common ground.

CAFII's diverse membership enables our Association to take a broad view of the regulatory regime governing the insurance marketplace. We work with government and regulators (primarily provincial/territorial) to develop a legislative and regulatory framework for the insurance sector that helps ensure Canadian consumers get the insurance products that suit their needs. Our aim is to ensure appropriate standards are in place for the distribution and marketing of all insurance products and services.

CAFII's members include the insurance arms of Canada's major financial institutions – BMO Insurance; CIBC Insurance; Desjardins Financial Security; RBC Insurance; ScotiaLife Financial; and TD Insurance – along with major industry players American Express Bank Canada; Assurant; Canada Life Assurance; Canadian Premier Life Insurance Company; CUMIS Services Incorporated; and Manulife (The Manufacturers Life Insurance Company).