

June 18, 2018

FIA & CUIA Review
Policy & Legislation Division
Ministry of Finance
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Subject: Financial Institutions Act & Credit Union Incorporation Act Review

CAFII is pleased to provide the following input in response to the recommendations set out in the Ministry's Preliminary Recommendations Paper which are relevant to our members' insurance-related activities. Our responses are offered from the perspective of insurers and distributors that:

- offer creditor's group insurance and travel insurance in BC and across Canada;
- offer insurance solutions through alternate, non-traditional distribution channels such as direct mail, contact centres, and the internet; and
- for the most part, are federally incorporated and subject to both federal and provincial regulation.

Objectives of the FIA and CUIA Legislative and Regulatory Framework for Financial Institutions and Intermediaries.

CAFII supports the legislative and regulatory framework's key goal of maintaining stability and confidence in the financial services sector by reducing the risk of failures and providing consumer protection. We also believe that companies operating in a competitive environment can enhance BC's economic vitality and spur innovation; and, in that connection, we applaud the Preliminary Recommendations Paper's recognition that it is important to reduce red tape and unnecessary regulations that hinder economic development.

We support harmonization of regulations and licensing requirements among provincial insurance regulators. This is a critical requirement for the industry, the absence of which leads to inefficiencies. We also support alignment with international regulatory best practices, such as the International Association of Insurance Supervisors' (IAIS) Insurance Core Principles.

Recommendation #1: Establish FICOM as a Crown agency.

CAFII supports the establishment of FICOM as a Crown agency which would be authorized to operate as an independent government agency, accountable to the provincial legislature through the Minister of Finance.

That said, while we generally support a funding model that would give FICOM greater independence, we have some concerns about a self-funded model if that model is based upon the Commission relying largely upon a revenue stream derived from Administrative Monetary Penalties (AMPs) and associated fines/monetary sanctions imposed upon the industry.

We recommend that, should this recommendation be implemented, FICOM be required to adopt the budgeting and financial management best practices used by other self-funded regulatory authorities in Canada which are relevant comparators. In particular, we counsel against a model that is wholly dependent upon AMPs, fines, and/or other monetary sanctions to fund the Crown agency.

Consideration of whether or not to transform FICOM into a self-funded Crown agency should address questions about the adequacy of the Commission's resources under its current financial model; and whether it is making targeted, efficient use of its existing resources. A self-funded regulatory authority, by definition, imposes a significant financial burden upon industry participants and licensees; and it should not be assumed that new independence and an updated mandate for FICOM necessarily mean that its resources must increase. We believe that addressing issues related to the adequacy and the optimization of FICOM's financial resources should be part-and-parcel of the decision-making related to its becoming a self-funded Crown agency.

Recommendation #3: The Commission will appoint the CEO and statutory decision-makers of FICOM.

We support this recommendation, as giving the Commission the power to appoint FICOM's CEO and statutory decision-makers will enhance its independence and reputation in the business community, and support its effectiveness.

Recommendation #5: Provide FICOM with the authority to issue enforceable guidelines/rules. Guidelines/rules will require public consultation and Ministerial approval.

We agree with the general thrust of this recommendation, but must stress that the Ministry's fleshing out of the details which will mandate a thorough and meaningful public consultation process with respect to the issuance of FICOM guidelines and rules will be critical to its successful implementation.

Where a substantive rule change is being contemplated in any jurisdiction, CAFII believes that best practice is to publish the proposed rule for stakeholder/public consultation before adoption, following which the relevant Minister can either consent to or reject the proposed rule. If FICOM is to be granted rule-making authority, it should be required by statute to engage in a meaningful consultation process whenever it uses that authority.

It is also critically important to CAFII members that new rules, regulations, and guidelines, once adopted, be accompanied by sufficient time for implementation. This is particularly true in situations where our members need to make business process or system changes, which require investments of time and effort and the ability to test the changes to ensure that they are not going to adversely affect the consumer's experience or satisfaction.

Recommendation #10: Provide FICOM with clear authority to share information with the existing national insurance reporting database and/or the proposed new national market conduct database.

CAFII supports this recommendation related to FICOM's participation in national databases. Our Association has long been an outspoken advocate for an integrated national database to facilitate licensing and monitoring of insurance agents across all jurisdictions.

Recommendation #17: Do not amend the legislation to require financial institutions to make investments in financial literacy.

We support this recommendation because financial institutions' investments in financial literacy should be voluntary.

However, we also believe that a critical building block in enhancing the fair treatment of consumers is raising their level of financial literacy. Consumer education around financial literacy is a shared, multi-stakeholder responsibility and something in which CAFII members and other industry stakeholders are actively involved. While consumers are ultimately responsible for their purchase decisions, governments and regulators such as FICOM have an important role to play, alongside the industry, in providing education which can help consumers better understand the benefits and limitations of products and thereby improve their financial literacy.

In that connection, we believe that in its communications, FICOM should emphasize, where appropriate, consumers' responsibilities with respect to financial and insurance products, in addition to their rights. CAFII members are committed to playing our part by ensuring that communications are easy to understand and written in plain language wherever possible. Our members will continue to make efforts to ensure consumers' ease of understanding, but we believe it is also important to emphasize that consumers need to read their policies, understand their features, and ask questions if there is anything they are uncertain about.

Recommendation #43 : Provide FICOM with the authority to issue binding rules on records storage, with prior public consultation and Ministerial approval.

CAFII does not believe that any legislative and/or regulatory changes are required in this area, as the current FIA contains provisions requiring insurers to maintain facilities that the Superintendent considers adequate for FICOM to be able to obtain access to records. As well, insurance industry participants are required to comply with BC's *Personal Information Protection Act (PIPA)*. PIPA's *Part 9 – Care of Personal Information* sets out requirements for the protection and retention of such information.

With respect to federally-incorporated insurers and financial institutions, they must also adhere to the *Personal Information Protection and Electronic Documents Act (PIPEDA)* and follow the rules set out in sections 260 to 270 of the *Insurance Companies Act*. Records can be outsourced, but the Superintendent of OSFI can require records processing to be done in Canada if that is seen to be appropriate. OSFI Guideline B-10 sets out expectations for financial institutions related to outsourcing, including outsourcing to providers outside of Canada. Insurers are required to ensure that OSFI can readily access, in Canada, any records necessary to fulfill its mandate.

If legislative changes in this area are contemplated in BC, we encourage consideration of OSFI's approach, with a view to adapting and incorporating, in BC, the expectations in place at the federal level.

Recommendation #44 : Expand the restricted licensing regime currently applied to travel agencies to other incidental insurance sales, similar to the approach used in Alberta, Saskatchewan and Manitoba.

While CAFII believes that BC's current system of insurance retailing and licensing exemptions is working well, our members would be open to and supportive of the introduction of a Restricted Insurance Agent (RIA) regime in the province. We would encourage BC to harmonize with the existing RIA regimes in the other Western Canada provinces, to the maximum degree possible. A thorough consultation process with the industry will help ensure that such a new regime is structured in a way that will produce the results that the recommendation seeks.

If properly and fairly implemented, an RIA regime can be an effective tool for managing the sale of certain insurance products, including creditor's group insurance and travel insurance. We welcome proper oversight of the marketplace; our members place a strong emphasis on the fair treatment of consumers; and they dedicate significant resources to training staff and others acting on their behalf, and on controls and monitoring.

In that connection, we are pleased to highlight here, for your consideration, those features of an RIA licensing regime which our Association views as optimal.

Authorization for Contractors

Third parties contracted by a restricted licensee (such as a third party administrator) – where the licensee is a federally or provincially regulated financial institution – should be considered authorized under the financial institution's RIA licence.

It is critically important to include contractors of RIA licensees as parties authorized under the licence because most financial institutions now outsource certain business activities, functions, and processes to meet the challenges of technology innovation, increased specialization, cost control pressures, and heightened competition. The contractual arrangement between the financial institution and the contractor makes the financial institution liable for the actions of the contractor. Further, federally regulated entities are subject to OSFI's outsourcing Guideline B-10 which sets standards for monitoring and oversight of the contractor, and requires the financial institution to take ultimate responsibility for outsourced activities. Including contractors under the authority granted to financial institutions holding an RIA licence would recognize the application of OSFI's outsourcing guideline and be appropriate with respect to the continued distribution of incidentally-offered insurance products by national financial institutions in BC.

Adopting this optimal RIA regime feature – which is fully in place in Manitoba and largely facilitated in Saskatchewan (third party contractors can apply for their own RIA licence, based on an agency contract with an existing RIA licence holder); but is not yet in place in Alberta, the first province to introduce an RIA regime in 2000 – would also see BC's new RIA regime remain well-aligned with the principles of the province's own legislation –ie. (2(1)(b.1)(ii) of the Insurance Licensing Exemptions Regulation under the Financial Institutions Act -- which provides an exemption from licensing for a service provider under contract to a trust company, credit union, extra-provincial trust corporation, extra-provincial credit union, or bank in connection with incidental insurance.

Council Composition

Insurance Councils in Canada have been designed on the basis of "peer regulation and proportional representation," principles which are intended to remove conflict of interest and ensure that Council representatives have appropriate knowledge and experience of the business they are regulating. Given the unique nature of incidentally-offered insurance products and of alternate distribution channels, successful oversight of these products requires different expertise and relies on the effective management of competitive sensitivities relative to the matters before a Council at any given point in time. Having a Council's membership be comprised of all categories of stakeholders on a proportional basis is an important consideration and an approach that would ensure that the Council represents the interests of all stakeholders and permits a fair and informed approach to the oversight of all regulated entities.

Based on these considerations, we recommend that -- in conjunction with designing and introducing an RIA regime in BC -- the Ministry of Finance initiate an overall review of the Insurance Council of BC's structure and membership to ensure that its composition is structured appropriately, given its new oversight responsibility for incidentally-offered insurance products and to ensure that RIA licensees are represented appropriately in accordance with the principles of administrative law.

To be more specific, CAFII believes that the Insurance Council of BC should be structured and operated in a "channel neutral" manner. That is, the Council should be designed and populated such that the interests of all distribution channels are well-served and the representatives of any particular channel are not in a position to make decisions which could negatively impact consumers' access to competing distribution channels.

This principle should, in our view, be incorporated into a Restricted Insurance Agent licensing regime in BC; and that will likely necessitate the creation, at a minimum, of an RIA Advisory Committee to the Insurance Council. CAFII is working with the Canadian Life and Health Insurance Association (CLHIA) on recommendations to the Insurance Councils of Saskatchewan on such an RIA Advisory Committee, and we would be pleased to provide additional information on our progress on this key initiative to the BC Ministry of Finance and/or the Insurance Council of BC.

Other Optimal Features of an RIA Regime

We would also highlight the following three features as being part-and-parcel of an optimal RIA regime, a regime which strikes the "right balance" between achieving consumer protection through appropriately detailed and rigorous licensing, while not burdening business with overly restrictive requirements or red tape:

- ensuring sufficient clarity as to which insurance products may be offered under each RIA licence category, including insurance products as group accident insurance and travel insurance; and
- implementing an online licensing/registration portal and digital platform, with timely electronic reminders and notifications to RIA licensees; and
- offering a "Head Office exemption," ie. an exemption from licensing for head office employees of the RIA licensee, who perform solely administrative and support services related to the insurance products.

Recommendation #45: Provide FICOM with the authority to issue guidelines requiring insurers to provide more direct oversight of exempt sellers and/or sellers under a restricted licensing regime.

CAFII believes that insurers already shoulder an appropriate level of responsibility for their exempt sellers and that the current system is working well for most such relationships. The more prescriptive approach suggested here is inconsistent with a principles/risk-based approach to regulation, and it is unlikely that it would provide additional consumer protection benefits.

CAFII member insurers and distributors adhere to the market conduct and consumer protection provisions of BC's Financial Institutions Act, Insurance Act, and Personal Information Protection Act. In addition, all CAFII member client service representatives and the employees of third parties acting on behalf of our members are required to undergo comprehensive and recurring product training to ensure that they provide consumers with accurate and reliable information. That training ensures that representatives offering insurance have the knowledge and skills to do their jobs and serve clients well. It also ensures that they act in accordance with the Canadian Bankers Association (CBA) Code of Conduct for Authorized Insurance Activities; the Bank Act; federal and provincial privacy legislation; and CLHIA Guidelines, including G7 Creditor's Group Insurance, G9 Direct Marketing, and G5 Travel Insurance.

CAFII members are also compliant with OSFI Guideline E-13, Regulatory Compliance Management (RCM). Guideline E-13 contains provisions specifically related to oversight controls such as training, monitoring, testing, reporting, etc.

CAFII members pride themselves on having strong monitoring mechanisms in place, along with other processes, to ensure that the highest standards of ethical behaviour, fair treatment of consumers, and compliance with regulations—both the letter of the law as well as its spirit—are met.

Recommendation #47: Place restrictions on the sale of insurance products sold on a post-claims underwriting basis by exempt sellers and/or sellers under a restricted licensing regime.

CAFII strongly disagrees with the false assumptions and misunderstandings which underlie this recommendation; and we are therefore unequivocally opposed to it.

Underwriting refers to determining the risk involved in offering insurance to a potential policyholder, and then determining the premium or “price” required to assume that risk. At the time of offering the insurance at the appropriate premium/price, there is a trade-off between the amount of information gathered, and the simplicity and consumer-friendliness of the underwriting process. Creditor’s group insurance products attempt to simplify the process by asking limited health-related questions at the time of application and avoiding, where possible, the taking of para-medical samples; and by enrolling the customer in a group policy, of which they then become a certificate-holder rather than an individual insured. With some simplified issue creditor’s group insurance products, health-related questions are not asked at all at the time of application, but there is full disclosure at that time with respect to the consumer’s eligibility to be enrolled under the group policy and to make a claim; any limitations or exclusions on the coverage; and claims filing and adjudication procedures.

At the time of a claim, the certificate holder’s responses to the questions asked at the time of application need to be verified by the insurer. Similarly, the certificate holder’s eligibility under a pre-existing condition clause would need to be verified by the insurer at claim time. This is not “post-claims underwriting,” but rather standard insurance industry claims adjudication, which is carried out by all life and health insurers, including underwriters of term life insurance coverage. The objective of claims adjudication in all cases is to assess if the claim is payable under the terms of the contract

The unfounded beliefs and “post-claims underwriting” mis-labeling which underlie this recommendation are also not consistent with the independently verified, consistently high claims payout history of creditor’s group insurance. A recent independent actuarial study conducted by the global consulting firm Towers Watson found that 95% of creditor’s group mortgage life insurance claims were paid.¹ The allegation of post-claims underwriting has been applied to a situation where a customer has misrepresented his or her health at the time of application (ie. responded “no” to a health question when should have responded “yes”), or he/she did not read or understand the disclosures made about their eligibility and obligations. Insurers of creditor’s group products adjudicate claims in accordance with the contract provisions that are set out in the certificate of insurance, which is provided to the customer.

¹ Source: Towers Watson September 2015 Report: Comparison of the Customer Value Proposition of Creditor’s Group Insurance on Mortgages with Individual Insurance (using 2013 data).

Based on the above facts, we are strongly opposed to the restrictions proposed in this recommendation. Furthermore, we would point out that no other jurisdiction in Canada – federal, provincial, or territorial --has imposed restrictions of this type on exempt sellers of insurance and/or RIA licensees.

More specifically, with respect to the three restrictions proposed under Recommendation #47, we address them separately as follows:

“Require education of salespersons so they are better able to advise the consumer about the meaning and importance of health questions and disclosure.”

CAFII members are fully committed to clear and effective disclosure for consumers so that they can be knowledgeable about what they are buying, including the limitations and exclusions under an insurance policy. We are also committed, and dedicate significant resources to, educating our salespersons so that they are able to provide clear, substantive information and disclosures to consumers. While legislation specifically prohibits some of our members from providing advice to customers, we believe that the intent of the suggestion above is “information” as opposed to “advice”; and with that important caveat we are in complete support and agreement with the thrust of this suggestion. We are always supportive of further enhancing the knowledge of our salespeople so that they are better able to inform the consumer about the features of the product they are considering purchasing.

“Require specific point-of-sale disclosures or specific, standardized wording of health questions to ensure consumers are able to understand their obligations.”

We would like to separate this suggestion into two components. Regarding point-of-sales disclosures, we are fully committed to full disclosure to consumers and our sales process includes full disclosure, including the sharing of information about eligibility and obligations; exclusions; restrictions; and limitations of insurance policies. These obligations to which our members adhere are also clearly set out in applicable CLHIA Guidelines and the CBA Code of Conduct. While the purpose of such industry best practices is to have well-informed consumers, if there are additional guidelines and disclosures, or additional requirements, that the Ministry of Finance would recommend, we would be open to a discussion on that.

Regarding, “specific, standardized wording of health questions” we would caution that while all of our members are committed to language that is as clear as possible, standardized language could lead to anti-competitive outcomes, including possible violation of the federal Competition Act, which we would obviously not support.

“Prohibit the denial of claims based on any innocent misrepresentation in respect of credit insurance sold under a licensing exemption (that is, other than by a licensed agent).”

We also would specifically call out that the suggestion to prohibit the denial of claims based on any **innocent misrepresentation** in respect of credit insurance sold under a licensing exemption (that is, other than by a licensed agent) appears at present to be a very undefined, open-ended concept which, until and unless fleshed out with much greater detail, could well create a flawed, “slippery slope” in this sector of life and health insurance. While common law concepts related to fraudulent, negligent and innocent misrepresentation exist, it is not clear how the Ministry of Finance wishes to define “innocent misrepresentation.” Similarly, the introduction of such a new element to the terms and conditions, in the context of creditor’s group insurance, would add undue complexity for consumers to what is intended to be a simple, affordable product, and would also likely have a negative impact on product availability and pricing – both of which would be detriments to consumers.

Concluding Comments on Recommendation #47

By way of general summary regarding Recommendation #47, we would emphasize that it is important for consumers to understand their coverages and obligations, and we are committed to that objective. That objective is the critical requirement, as opposed to eliminating or restricting coverage for consumers who in Canada are already vastly underinsured or uninsured.

With creditor's group insurance, consumers enjoy the convenience of simplified underwriting; and restrictions on this type of coverage would be a loss to consumers. Claims adjudication involves verification of answers provided to health questions; or of eligibility, which is standard for most life and health insurance products, not just those sold by exempt sellers or sellers under a restricted licensing regime.

Under creditor's group insurance, consumers also benefit from pre-existing condition clauses because they are covered for all claim reasons other than pre-existing conditions for the first 6 to 12 months, following which they are covered even for the pre-existing conditions.

At the end of day, it is critical to provide Canadians with a competitive mix of insurance products, including convenient creditor's group insurance, and we encourage a regulatory framework that does not unnecessarily restrict the access of British Columbians to that competitive choice.

Recommendation #48: Require insurers to treat consumer fairly; delegate authority to FICOM to develop a code of conduct for insurers and to develop rules based on the code.

CCIR/CISRO is currently consulting with the industry and public on a *Conduct of Insurance Business: Fair Treatment of Customers Guidance*, a process in which CAFII is actively engaged. In the interests of harmonization and consistency across jurisdictions, we support BC FICOM's adoption of CCIR/CISRO's Guidance on the Fair Treatment of Customers. We are also supportive of the statement issued by FICOM Superintendent of Insurance Frank Chong on May 3, 2018, which included the following statement: "Today's consultation on national guidance announced by Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO) – two national organizations that FICOM is very active in – is a positive step in making sure fair treatment of customers is front and center in all insurance."

Recommendation #51: Provide privilege for the self-assessment programs of financial institutions (insurance companies, credit unions, trust companies).

CAFII believes that the benefits of implementing a compliance self-evaluative privilege outweigh the costs of limiting evidence available in court proceedings.

Legislating a self-evaluative privilege protection for insurers promotes open and transparent self-assessments by companies and ultimately contributes to consumer protection improvements that can be achieved through regulators' use of such assessments.

We would also point out that providing a self-evaluative privilege protection is a position recommended by CCIR that was adopted with minimal modifications by Alberta and Manitoba in their most recent Insurance Act reviews. In addition, Saskatchewan recently legislated a self-evaluative privilege into its Insurance Act re-write that will come into force at the time of the new Act's proclamation.

That said, we strongly recommend that self-evaluative privilege not be limited to insurers, credit unions and trust companies, as currently written, but also include deposit-taking institutions as licensees under an RIA regime.

Recommendation #52: Allow FICOM to withhold information under the Freedom of Information and Protection of Privacy Act (FOIPPA) when it is provided by other regulators in confidence.

We agree that where information is provided by other regulators in confidence, FICOM should have the option of withholding it.

Recommendation #54: Expand the number of Insurance Council members appointed by the LGIC from eleven to thirteen by adding two additional independent agent representatives.

In connection with this recommendation, CAFII recommends that the BC government remove the residency requirement for participation in the Insurance Council of BC, so as to permit expert advice and input from those who conduct business in BC, even if they do not reside in the province.

Recommendation #57: Draw on the CCIR's recommendations to put in place a flexible legal framework that enables insurers to offer their products online while protecting consumers.

We support allowing consumers to have choice in a competitive marketplace. Consumer choice means that they have options to purchase insurance through a licensed broker, or to purchase it directly from an insurance company through whatever channel they prefer, depending on their preference.

Consumers have a wealth of information available to them in today's marketplace, including about the products of CAFII members; and it is the consumer's right to decide what channel, level of advice, or method of purchase they prefer.

We therefore support the overall thrust of this recommendation, while counselling against use of the words "and making consumers aware of the importance of obtaining advice" which is a biased statement, favouring one purchase channel over others. Consumers differ in their level of knowledge, and some products may not require advice and can be purchased more efficaciously via a direct channel and without the involvement of a commissioned agent. It is for the consumer to make that decision, without the competitive marketplace being tilted by favouring one channel or method of purchase over another.

Conclusion

Thank you for the opportunity to share CAFII's comments and recommendations in this important legislative review. We look forward to engaging with the Ministry on next steps in this process. Should you require further information from CAFII or wish to meet with representatives from our Association at any time as the review progresses, please contact Brendan Wycks, CAFII Co-Executive Director, at brendan.wycks@cafii.com or 647-218-8243. In particular, we would be pleased to meet with Ministry officials – in-person or by phone, as may be preferred – to clarify and elaborate upon our views expressed in this submission.

Sincerely,



Peter Thorn
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 is currently the only Canadian Association with members involved in all major lines of personal insurance. Our members are 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, Assurant, Canadian Premier Life Insurance Company, CUMIS Services Incorporated, Manulife (The Manufacturers Life Insurance Company), and The Canada Life Assurance Company.