

September 9, 2022

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Dear Ms. Peters:

CAFII thanks BCFSa for the opportunity to provide feedback on the Authority's draft *Insurer Code of Market Conduct and Supplemental Guideline*.

CAFII supports the important fair treatment of customers outcomes which BCFSa is seeking to achieve with this initiative.

We have divided our Association's feedback into two sections: *High Level/Strategic Feedback*; followed by *Specific Content Feedback and Input Comments*.

**High Level/Strategic Feedback**

CAFII members, which are mainly the insurance arms of Schedule I Canadian banks and their insurer/underwriter partners, operate across the country in the life and health insurance sector; and, as such, they are provincially/territorially regulated. However, as federally regulated financial institutions (FRFIs), banks, some credit unions, and many insurers are also subject to federal regulation, including by the Financial Consumer Agency of Canada (FCAC) and the Office of the Superintendent of Financial Institutions (OSFI).

Due to the fact that our Association's members are subject to both federal and provincial/territorial regulation (some 17 regulatory authorities in total, across the country), CAFII constantly requests of regulators that they harmonize their expectations of regulated entities to the maximum extent possible.

Given the paramount importance of regulatory harmonization to our Association, we are disappointed that BCFSa is contemplating issuing its own unique Insurer Code for the province of British Columbia when there already exists a nationally harmonized, well-established, widely accepted and complied with, and effective Guidance/Code that comprehensively covers the same territory, i.e. the CCIR/CISRO *Guidance: Conduct of Insurance Business and Fair Treatment of Customers*. Through its membership and leadership participation in CCIR, BC FICOM, BCFSa's predecessor, was a party to the development and issuance of the CCIR/CISRO Guidance in 2018, and BC FICOM/BCFSa has been involved in related, nationally co-ordinated implementation and regulatory compliance monitoring of it since that time.

CAFII views BCFSAs' draft *Insurer Code of Market Conduct and Supplemental Guideline* to be an example of the above-noted concerns that significantly impact upon our Members' resource allocation decisions and their ability to optimize their fair treatment of customers focus.

Too often in our view, regulators in different provinces introduce regulatory requirements which have the exact same intent as existing requirements in another province or federally – or in this case, as existing Guidance already harmonized at a national co-ordinating body level – but yet which differ slightly in the details of how those expectations are defined, or are to be implemented and/or reported on by regulated entities.

In such cases, our Members and other regulated entities are compelled to allocate significant resources to deciphering and adjusting to the nuanced differences from jurisdiction to jurisdiction. This time-consuming and costly exception management process diverts resources away from the essential fair treatment of customers aspects of regulators' expectations.

CAFII believes that the shared objective of fair treatment of customers is undermined when regulatory authorities create market conduct expectations for industry that differ in subtle and nuanced ways from one to another, rather than harmonizing around one uniform set of expectations.

In that same connection, while we understand that Section 94.1 of BC's *Financial Institutions Amendment Act, 2019* establishes a requirement for insurers to adopt and comply with a Code of Market Conduct ("the Code") established by BCFSAs, we do not believe that legislative provision precludes BCFSAs from simply stipulating that "the Code" in BC is the CCIR/CISRO *Guidance: Conduct of Insurance Business and Fair Treatment of Customers*, just as many other provincial/territorial jurisdictions across the country have done.

CAFII acknowledges that BCFSAs' draft *Insurer Code of Market Conduct and Supplemental Guideline* includes three "Additional Principles" – on Incentives management and remuneration structure; Online sales of insurance products; and Policy decisions and renewals – which are either not covered in or only partially covered in the CCIR/CISRO *Guidance: Conduct of Insurance Business and Fair Treatment of Customers*. We also appreciate that BCFSAs view these three new Principles as necessary supplements to the existing CCIR/CISRO *Guidance*; and therefore, regards their inclusion as further justification for the Authority's issuance of its own unique Insurer Code for the province of British Columbia.

CAFII has a contrary point of view on this matter. Our Association would much prefer to see BCFSAs – if it firmly believes that these Additional Principles are desirable new elements that are missing from the existing CCIR/CISRO *Guidance* – work with the joint CCIR/CISRO Fair Treatment of Customers Working Group to have those new Principles incorporated into a revised/updated version of the *Guidance: Conduct of Insurance Business and Fair Treatment of Customers*.

In concluding these High Level/Strategic feedback comments, CAFII encourages BCFSAs to reconsider its initial decision to proceed down the path of issuing its own unique Insurer Code of Market Conduct for the province of British Columbia, and instead to give serious consideration to the following alternative approach:

- adopt the CCIR/CISRO *Guidance: Conduct of Insurance Business and Fair Treatment of Customers* as “the Code” in BC and stipulate that it is such; and
- play a leadership role in support of national harmonization, by working with the other jurisdictions at the CCIR/CISRO joint national co-ordinating body table to get the new Principles incorporated into a revised/updated version of the nationally harmonized *Guidance: Conduct of Insurance Business and Fair Treatment of Customers*.

### **Specific Content Feedback and Input Comments**

In the event that BCFSa is not prepared to adopt the CCIR/CISRO *Guidance: Conduct of Insurance Business and Fair Treatment of Customers* as “the Code,” CAFII offers the following specific content feedback and input comments on the draft *Insurer Code of Market Conduct and Supplemental Guideline*.

CAFII strongly recommends that BCFSa embed the “Alignment Between The Code And CCIR’s FTC Guidance” table found on page 4 of the Authority’s related Discussion Paper as a prominent and integral component of the *Insurer Code of Market Conduct and Supplemental Guideline* document itself.

CAFII recognizes that the draft Code is intended to be principles-based, and that the Supplemental Guideline is intended to provide clarifying detail around the expectations set out in the draft Code. We also acknowledge that regulated entities and industry Associations sometimes request additional detail around the expectations articulated in such a Code, while at the same time emphasizing the importance of regulators not being overly prescriptive. There is a delicate balance to be found in this and no magic formula for doing so, so we appreciate BCFSa’s obvious efforts to find the ‘right balance’ between those two somewhat conflicting objectives.

That said, CAFII does believe that there are sections of the draft *Insurer Code of Market Conduct and Supplemental Guideline* that are worded in ways that tip the balance in favour of prescriptive regulation. There are also sections that are unnecessarily long and detailed, and which take on a tenor of conduct ‘check lists.’ Such a check lists approach can, in our view, give rise to the unintended consequence of encouraging regulated entities to focus on being able to tick all the boxes on prescriptive lists, rather than on what we believe should be the higher, ultimate objective of fair treatment of customers, i.e. embedding a business culture of FTC into every aspect of an organization’s business activity.

Some examples of Supplemental Guideline sections that we view as at risk of being regarded as performative ‘checklists’ are Product Design (2.1); Product Promotion (2.2); Arrangements with Intermediaries (2.8); Claims Handling (3.4); and Complaint Handling (3.5).

In that connection, CAFII encourages BCFSa to use the verbs “could” or “may” rather than “should”; to label certain sections of the Supplemental Guideline as providing “an example of BCFSa expectations” as opposed to appearing to set out ‘Rules’; and to generally make it clear that the Supplementary Guideline is being offered to assist industry participants in interpreting the Code. In that same vein, we caution against use of the phrase “including but not limited to” which gives rise to an industry perception of ‘open-ended and undefined expectations.’

The Supplemental Guideline, in many places, attempts to define what is 'fair,' which is a prescriptive orientation that leads to check lists, whereas its objective, in our view, should be to create expectations that will lead to regulated entities not being 'unfair' to consumers, which is a principles-based orientation that moves the industry collectively towards a vision of always being 'fair.' The principles-based orientation of establishing expectations around what is 'unfair' is geared more towards fostering a vision and a business culture of FTC outcomes, rather than towards defining or providing a check list of what constitutes 'fairness' behaviour.

We also believe that *Section 1: Business Culture* of the Supplemental Guideline creates some confusion around the proper roles of senior management versus the board of directors. To aid in minimizing such confusion, we recommend use of the term 'responsibility' rather than 'accountability' to clarify what senior management and the Board are each responsible for (both are accountable for more than what they are responsible for).

As well, it is unclear in Section 1 who the term 'insurer' is referring to — is it staff, or the company more generally? For example, who is the 'insurer' that is responsible for ensuring that "the board of directors and senior management are aware of the importance of FTC"? Would it not be that the board and senior management are responsible for ensuring that other parts of the organization are aware of this, i.e. this section is awkwardly worded, such that the meaning it conveys is actually the reverse of what is true in practice and what is intended.

CAFII also believes that the reference in sub-section 1.2 to the board monitoring changes in the business culture should actually apply to senior management, not the board. Boards are responsible for setting the organization's strategic direction, and for receiving and assessing the results of performance and other monitoring activities to guide them in their deliberations. It is actually senior management and their staff that perform the monitoring activity that then feeds into the board.

In *Section 1.5: Communication with BCFSa*, CAFII believes that the expectation "Promptly advise BCFSa if the insurer is likely to experience an operational incident that could jeopardize the interests or rights of customers and the insurer's reputation" is vague and problematic. How is an organization to assess a future event and report on it when it has not yet occurred? We believe this might be better stated in the past tense as "... an insurer has experienced an operational risk ..."

Further with respect to section 1.5, CAFII regards this section as an example of FTC expectations in a Code of Market Conduct being used as a catch-all wedge to shoehorn-in new regulatory expectations from an altogether different, non-FTC area. We have separately provided our views to BCFSa around operational incidents reporting requirements. Operational incidents reporting requires a framework, one that includes definitions of 'operational incident', 'jeopardize', etc. We believe that to introduce operational incidents reporting requirements under the auspices of an FTC-focused Code of Insurer Conduct, without further clarity on expectations and intended outcomes, is inappropriate. We view the same as being true of the statement in *Section 2.9: Protection of Personal Information* that "This includes informing BCFSa and any persons affected, including customers, in the event of a material information security incident," which also underscores the need for a comprehensive Operational Incidents Reporting Framework.

With respect to *Section 3.1: Advice*, CAFII points out that credit protection insurance (CPI) and travel insurance are Authorized Insurance Products under the federal Bank Act and the Insurance Business (Banks and Bank Holding Companies) Regulations; and, as such, they are regulated at both the federal and provincial levels. Authorized Insurance Products can be offered by banks' non-licensed representatives as part of a bank's consumer lending processes, within strict parameters. However, because these bank representatives do not hold an insurance licence, they cannot conduct a comprehensive needs analysis on a consumer who may be interested in an offered Authorized Insurance Product, nor can they offer advice or recommendations or engage in any activities that are restricted to insurance licensees. Therefore, in our view, Section 3.1 of the draft BCFSa Code does not apply to the Authorized Insurance Products which CAFII Members and some other industry players offer to British Columbians. We therefore recommend that BCFSa modify the language in this section to qualify references to advice "as applicable."

With respect to Section 3.2, we recommend replacing "free look period" with "review period" because several other provincial and federal insurance regulators have indicated to our Association that they regard "review period" as the more accurate and consumer-friendly term. CAFII therefore removed "free look period" from its lexicon several years ago.

With respect to *Section 3.5: Complaint Handling*, while all CAFII Members have robust, FTC-oriented complaint handling procedures in place and are very used to carrying out rigorous, multi-step processes, we believe that this section risks mandating, in all cases, a complex process that is not required to treat customers fairly. We view this as an example of prescriptive 'over-engineering,' rather than a more principles-oriented statement of the expectation of fair treatment of customers, and leaving the detailed operational implementation to organizations that deal with customer complaints regularly as a core part of their businesses.

In the Definitions section at the conclusion of the Supplemental Guideline, we recommend that, for harmonization purposes, BCFSa instead use the definition of Complaint that has been well established, widely accepted, and used effectively across the country, for some years now, in CCIR's Annual Statement on Market Conduct (ASMC), as opposed to introducing a new and different definition that is unique to BC.

### **Conclusion**

As a key industry stakeholder Association, CAFII very much appreciates the opportunity to review and provide feedback on BCFSa's draft *Insurer Code of Market Conduct and Supplemental Guideline*. Fair treatment of customers is a critically important, foundational, culture-based principle for CAFII Members, and we thank the Authority, in advance, for giving our Association's carefully-considered feedback your thorough and unhurried consideration.

Should you require further information from CAFII or wish to meet with representatives from our Association on this or any other matter at any time, please contact Keith Martin, CAFII Co-Executive Director, at [keith.martin@cafii.com](mailto:keith.martin@cafii.com) or 647.460.7725.

Sincerely,



Rob Dobbins  
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 credit protection, travel, life, health, and property and casualty insurance across Canada. In particular, credit protection 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 which helps ensure that Canadian consumers have access to insurance products that suit their needs. Our aim is to ensure that 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 Insurance; National Bank Insurance; RBC Insurance; ScotiaLife Financial; and TD Insurance – along with major industry players Assurant; Canada Life Assurance; Canadian Premier Life Insurance Company; Canadian Tire Bank; CUMIS Services Incorporated; Manulife (The Manufacturers Life Insurance Company); Sun Life; and Valeyo.