

September 22, 2021

Ms. Louise Gauthier, Co-Chair, CCIR/CISRO Fair Treatment of Customers (FTC) Working Group; and
Mr. Ron Fullan, Co-Chair, CCIR/CISRO Fair Treatment of Customers Working Group
c/o Messrs. Tony Toy and Munir Chagpar, CCIR Policy Managers/Secretariat; and
Ms. Adrienne Warner, CISRO Policy Manager/Secretariat

Dear Ms. Gauthier and Mr. Fullan:

Re: CAFII Comments on CCIR/CISRO Draft Incentive Management Guidance

Dear Ms. Gauthier and Mr. Fullan:

CAFII thanks CCIR and CISRO for the opportunity to review and provide feedback comments on the CCIR/CISRO Fair Treatment of Customers Working Group's Draft *Incentive Management Guidance*.

We also appreciate and support CCIR/CISRO's efforts to augment the jointly developed *Guidance: Conduct of Insurance Business and Fair Treatment of Customers*, with specific Guidance on its implications for the Incentive Management programs utilized by the insurance industry. We are pleased that this work is being done at a national level, with the two national co-ordinating bodies of provincial and territorial regulators working together, which helps to foster a harmonized approach across jurisdictions.

We also thank CCIR and CISRO for recognizing and respecting – as demonstrated by both the *Guidance: Conduct of Insurance Business and Fair Treatment of Customers* and the new Draft *Incentive Management Guidance* -- the importance of balancing the primary objective of fair treatment of customers, on the one hand, with a regulatory framework that does not impede consumer choice in accessing and purchasing insurance products, on the other hand.

Below are our feedback comments on specific sections of the Draft *Incentive Management Guidance*, followed by some concluding observations.

Definitions/Concepts

CAFII draws your attention to an inconsistency between a key definition found in the Draft *Incentive Management Guidance* versus the earlier, foundational *Guidance: Conduct of Insurance Business and Fair Treatment of Customers*.

In the Draft *Incentive Management Guidance*, what were formerly two separate definitions of "Consumer" and "Customer" have now been combined into one single definition of "Customer," which "includes all actual and potential Customers for insurance products and also includes any policyholder (which, as the case may be, includes certificate holder) or prospective policyholder with whom an insurer or Intermediary interacts, . . ."

CAFII views the new, all-encompassing definition of "Customer" as being inaccurate because it includes components that define a "Consumer" who is not yet a "Customer."

For that reason and to avoid vulnerability to misinterpretation, we recommend that CCIR/CISRO revert to the approach found in the *Guidance: Conduct of Insurance Business and Fair Treatment of Customers* and make the appropriate distinction between “Consumer” and “Customer” in the Definitions/Concepts section of the Draft *Incentive Management Guidance*.

CAFI is comfortable with the other definitions and concepts set out in this section.

Preamble

To acknowledge a legislative and regulatory reality in Canada – particularly with respect to federally regulated financial institutions (FRFIs) which offer Authorized Insurance Products/credit protection insurance (CPI) to consumers across the country -- and thereby to be more precise and accurate, CAFI recommends that the following edit be made to the first sentence of the final paragraph in this section:

“In Canada, the conduct of business in insurance is regulated by individual provinces and territories, -- and in the case of federally regulated financial institutions which offer insurance, by the federal government as well -- where each jurisdiction has its own regulatory approach based on its legal framework and culture.”

In that connection, CAFI is of the view that the Financial Consumer Agency of Canada (FCAC) and CCIR/CISRO should recognize each other’s authority, and CCIR/CISRO’s inclusion of the modest edit proposed above would be a step in the right direction toward that end.

CAFI also encourages CCIR to strengthen its efforts to engage and work co-operatively with FCAC, with a view to arranging for the Agency to secure Associate Member status in CCIR and a seat at the Council’s meeting table. We note that the federal Office of the Superintendent of Financial Institutions (OSFI) has been a long-standing Associate Member of CCIR, which fosters information-sharing and co-operation with respect to prudential regulation matters. In contrast, FCAC’s absence from the CCIR table and deliberations means that the same degree of information-sharing and co-operation is not currently occurring with respect to market conduct matters.

Governance: CCIR and CISRO expect Incentive arrangements aligned with fair treatment of Customers to be a core component of the governance and business culture of Insurers and Intermediaries.

CAFI recommends that the word “core” should be deleted from the above-quoted premise statement that opens this section, because in our view that descriptor renders the statement inaccurate.

Using the word “core” as a modifier of “component” implies “absolutely essential” and “key strategic driver,” i.e. that Incentive arrangements drive everything to do with governance and business culture. CAFI strongly believes that such is not the case for any insurance industry player that utilizes Incentives, and we do not foresee Incentives ever achieving such “core” status. Therefore, we recommend the following modest edit:

CCIR and CISRO expect Incentive arrangements to be aligned with fair treatment of Customers to be and a core component of the governance and business culture of Insurers and Intermediaries which use them.

We are also of the view that CCIR/CISRO's stated expectations regarding the obligation of Boards of Directors to oversee business strategy, risk appetite, and culture in relation to the design and implementation of Incentive arrangements, and to oversee internal controls should be modified somewhat. In most organizations operating in the financial and insurance sectors, it is not the mandate nor purview of Boards of Directors to provide oversight of operational issues such as the implementation of Incentive arrangements and internal controls. Good stewardship and balanced risk postures (Board oversight responsibilities) are quite distinct from senior management's responsibility for oversight of operations.

Design and management of Incentive arrangements: CCIR and CISRO expect Insurers and Intermediaries to design and implement Incentive arrangements that include criteria ensuring fair treatment of Customers

CAFII supports the expectations set out in this section, as we concur that if incentive arrangements are properly designed, implemented, monitored, and reported upon, the risk of unfair outcomes for customers is greatly reduced.

However, we do find clause 2.1.4 to be confusing. If the point being made applies to all distribution methods, we recommend removing the reference to "incidental selling or incidental product." The clause should be rewritten to indicate clearly that regardless of distribution method, customers should not be negatively impacted.

In addition, we find use of the word "feedback" to be confusing in clause 2.6. Therefore, we propose the following edit:

"Ensure adequate **feedback remediation measures are taken** when the controls detect inappropriate practices or behaviours with Customers."

Risks of negative outcomes to Customers: CCIR and CISRO expect Insurers and Intermediaries to identify and assess on a regular basis the risks of negative outcomes to Customers that may arise from Incentive arrangements so that they can either introduce appropriate controls or adjust their Incentive arrangements

CAFII is comfortable with the expectations set out in this section, as we concur that industry players should regularly review their incentive practices to ensure that they are meeting objectives, including fair treatment of customers.

Post sales controls: CCIR and CISRO expect Insurers and Intermediaries to establish effective post sales controls to identify unsuitable sales, resulting from Incentive arrangements

CAFII cautions against a blanket and unqualified use of the term "unsuitable sales" throughout this section, as it is not applicable to Authorized Insurance Products/CPI offered by banks and other FRFIs.

In an insurance context in Canada, the concept of "suitability" (and variations on that word) – which implies the provision of "advice" to customers -- is not applicable to Authorized Insurance Products/CPI.

The issue around “suitability” stems from the fact that while the federal *Bank Act* and section 5(1) of the federal *Insurance Business (Banks and Bank Holding Companies) Regulations* (IBBRs) permit banks and other federally regulated financial institutions (FRFIs) to offer advice regarding Authorized Insurance Products/CPI, the offering of that advice is significantly tempered by provincial/territorial regulatory and licensing requirements.

The nature of the advice that banks/FRFIs are permitted to provide around an Authorized Insurance Product/CPI is strictly limited to the Authorized Insurance Product itself and must not include suitability-related measures such as a needs-based financial/insurance assessment, Know Your Client tools, or holistic advice.

In the case of Authorized Insurance Products/CPI, because the consumer is purchasing/enrolling in optional insurance related to a single and specific borrowing need such as a mortgage, line of credit, or credit card – and that scenario falls within the scope of activity permitted to occur through a non-advisory sales channel, i.e. the business must provide consumers with sufficient information, which meets provincial/territorial regulations and industry commitments and guidelines, to enable them to make an informed decision – Authorized Insurance Products/CPI are typically offered by non-licensed individuals in most provinces and territories. Non-licensed individuals are strictly prohibited from offering advice and recommending an insurance product as “suitable.”

With respect to Authorized Insurance Products/CPI, given the prohibition against holistic advice engendered by the combination of the federal *Bank Act* and *IBBRs* with provincial/territorial regulatory and licensing requirements, FRFIs legally can only ascertain a consumer’s “eligibility” for coverage and to make a claim at the time that an Authorized Insurance Product/CPI is being offered as optional insurance. FRFIs therefore prioritize establishing certainty of the consumer’s “eligibility” for coverage and to make a claim under the group CPI master policy.

This situation makes Authorized Insurance Products/CPI a unique product set – a product set to which the concept of product suitability does not apply due to legal constraints; but a product set to which the more limited concept of “eligibility” for coverage and to make a claim does indeed apply as a Fair Treatment of Customers (FTC) consideration.

As a proposed solution to deal with the problematic application of the words “unsuitable sales” in the Draft *Incentive Management Guidance*, CAFII recommends that those words be precisely defined within the Guidance – perhaps through an approach which uses a superscript number and corresponding footnoted definition below -- and that the definition expressly state that “unsuitable sales” does not apply to Authorized Insurance Products/CPI as defined by the federal *Bank Act* and the federal *Insurance Business (Banks and Bank Holding Companies) Regulations*.

CAFII otherwise concurs with and supports the expectations set out in this section, particularly since CAFII members have had comprehensive post-sales controls in place for many years, to ensure that their incentive programs are meeting their objectives, both qualitative and quantitative.

Appendix: Examples of Incentive arrangement features that may increase the risks of negative outcomes to Customers

We note that Bonuses have been classified in the Appendix as a potentially high risk incentive. We caution, however, that regarding Bonuses as such is not always accurate, particularly when they are a component of an overall compensation package that is based on a number of objectives and not just sales or premium volume, e.g. a package that also includes qualitative dimensions such as Fair Treatment of Customers and related customer satisfaction objectives.

Final Observations

CAFII believes that there is no inherent conflict between the offering of incentives to insurance sales and customer service personnel and the best interests of customers. The old adage that insurance is sold, not bought, is true. Life and health insurance protection, in particular, because it is completely optional and not a product(s) that people readily think about and pursue, is not easily sold. Therefore, offering incentives to sales personnel, in a well-designed, executed, and monitored manner, can facilitate insurance coverage being secured by more consumers -- which is ultimately in their best interests and in the best interests of society.

CAFII members have extensive controls in place around their sales practices and related incentive programs, including training, scripts, sales reviews, and a variety of post-sales monitoring and control tools, which together help prevent inappropriate sales practices from occurring.

With respect to training, our members' client service representatives undergo comprehensive and recurring product training, to enable them to provide consumers with accurate and reliable information; as well as ethics and integrity training which underscores the importance of fair treatment of customers. That training provides client service representatives with the knowledge, skills, and tools to do their jobs and serve clients well. It also ensures that they, as sales personnel, and our member companies, as their employers, act in accordance with applicable federal and provincial/territorial insurance legislation and regulations; and industry guidelines.

Conclusion

Thank you again for the opportunity to provide feedback comments on CCIR/CISRO's Draft *Incentive Management Guidance*. 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 Brendan Wycks, CAFII Co-Executive Director, at brendan.wycks@cafii.com or 647-218-8243.

CAFII and its members remain committed to supporting CCIR and CISRO in their critically important independent and joint work; and we look forward to continuing our involvement as a key stakeholder contributor to your efforts.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rob Dobbins', with a long horizontal line extending to the right.

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.