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Regulatory Update – CAFII Executive Operations Committee, February 14, 2022

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Federal/National

Financial Consumer Agency of Canada (FCAC)

FCAC Publishes Final Version Of Guideline on Complaint-Handling Procedures For Banks

On January 27/22, the FCAC published on its website the final version of its Guideline on Complaint-Handling Procedures for Banks and Authorized Foreign Banks, which comes into force on June 30/22.

The final Guideline can be found here: <https://www.canada.ca/en/financial-consumer-agency/services/industry/commissioner-guidance/complaint-handling-procedures-banks.html>.

Public Interest Advocacy Centre (PIAC)

PIAC Asks For Stronger Language In Guideline On Banks' Internal Complaint Handling Procedures

In December 2021, PIAC published on its website its submission on the FCAC's consultation on a *Proposed Guideline on Complaint-Handling Procedures for Banks and Authorized Foreign Banks*.

PIAC's introductory commentary about its submission reads as follows:

The proposed Guideline sets out FCAC's expectations with respect to banks and authorized foreign banks' implementation of, and compliance with, the new complaint-handling provisions in the Bank Act and the Financial Consumer Protection Framework Regulations (FCPF), which will come into force June 30, 2022.

Notably, the amended Bank Act and FCPF will require banks to: deal with each complaint within 56 days following the day it is received; refrain from using misleading terms with respect to complaint-handling procedures, including any term that suggests that the procedures, officers or employees are independent of the bank (e.g., "ombudsman"); and create records of all complaints and retain them for 7 years.

In our comments, PIAC supported the FCAC's inclusion of expectations regarding systemic issues and redress and reimbursement policies not found in CG-12, the existing guidance for Federally Regulated Financial Institutions (FRFIs) including banks. However, PIAC recommended the FCAC use stronger language to describe these new expectations and include more explicit references to the above noted FCPF consumer protections. We also recommended that the FCAC take additional steps to improve record-keeping expectations to better facilitate independent, third-party adjudication and include in the Guideline the expectation that banks only record, report, or publish a complaint as having been resolved to the satisfaction of the complainant when the complainant confirms this to be true in writing.

PIAC's submission to FCAC can be found here: <https://www.piac.ca/wp-content/uploads/2021/12/PIAC-Comments-FCAC-Bank-Internal-Complaints-Guideline-FINAL.pdf>.

PIAC Comments In Favour Of A Single External Complaints Body For Banking Services

In the Fall of 2021, PIAC published on its website its submission in response to the Department of Finance Canada's *Consultation on Strengthening Canada's External Complaint Handling System in Banking*.

PIAC's introductory commentary about its submission reads as follows:

The Consultation was released following two reports by the Financial Consumer Agency of Canada (FCAC): "Bank Complaint Handling Procedures" and "The Operations of External Complaints Bodies" which identified a number of deficiencies in the complaint handling policies, procedures and operations of banks and external complaint bodies (ECBs), organizations that review complaints that are not satisfactorily resolved by a banks internal complaints handling system. Unfortunately, the Consultation did not seek feedback on banks' internal complaints handling processes, an issue we raise in our comments: "[E]ven the best ECBs cannot be effective tools for consumers if consumer complaints are mishandled or suppressed, intentionally or inadvertently, at the level of the banks' internal complaint handling processes or consumers agree to inadequate compensation from their bank out of lack of awareness that an ECB option is available."

Despite the Consultation's narrow scope, we generally support the government's efforts to improve the ECB system in banking. In our submission, we ask that the government move away from the current multiple ECB system and towards designating a single ECB to oversee all banking services complaints. In our view, the government will be better able to regulate the ECB system if it designates a single ECB, makes ECB decisions binding on relevant banks, and creates more rigorous accessibility and transparency requirements, including a requirement that the ECB publish all of its decisions.

PIAC's submission to the Department of Finance Canada can be found here: <https://www.piac.ca/wp-content/uploads/2021/12/PIAC-2021-10-14-Submission-Consultation-ECB-FINAL.pdf>.

Office of the Superintendent of Financial Institutions (OSFI)

OSFI Publishes Revised Guidelines On Reinsurance Practices

On February 11/22, OSFI issued a media release announcing its release of revised guidelines on reinsurance practices.

The OSFI media release reads as follows:

Today, the Office of the Superintendent of Financial Institutions (OSFI) concluded its review of reinsurance practices by issuing final revised versions of Guideline B-3, Sound Reinsurance Practices and Procedures, and Guideline B-2, Property and Casualty Large Insurance Exposures and Investment Concentration.

These revised guidelines reflect changes in industry practices over the past 10 years and come into effect on January 1, 2025.

The revised Guideline B-3 sets out OSFI's expectations for federally regulated insurers (FRIs) to better identify and manage risks arising from the use of reinsurance, particularly counterparty risk.

The revised Guideline B-2 will require property and casualty FRIs to be able to cover the maximum loss related to a single insurance exposure on any policy it issues, assuming the default of its largest unregistered reinsurer on that exposure.

Federally regulated insurers' existing insurance business should continue to comply with the Guideline B-3 and Guideline B-2 currently in force until January 1, 2025. This nearly three-year transition period permits FRIs time to effectively adjust their business practices to comply with the new guidelines before they come into force.

OSFI will hold industry information sessions in the coming months to provide additional clarity regarding OSFI's expectations and supervisory approach.

Canadian Foundation For The Advancement Of Investor Rights (FAIR Canada)

FAIR Canada's Feedback Submission Lauds AMF's Draft Regulation Respecting Complaint Processing

On December 20/21, FAIR Canada published on its website its submission to the AMF on the regulator's *Draft Regulation Respecting Complaint Processing and Dispute Resolution*.

FAIR Canada's largely laudatory feedback to the AMF reads, in part, as follows:

Overall, we support the Draft Regulation because it addresses documented deficiencies in the internal complaint handling system of banks¹ and other financial institutions. Particularly encouraging are the concrete measures designed to assist consumers, improve timelines, analyze complaints data, and address systemic issues. . . .

5. Subsection 26(2), which prohibits the use of the term "ombudsman" or "any other qualifier... that suggests that such persons are not acting on behalf" of the firm.

This is an important prohibition that should help reduce wide-spread consumer confusion and avoid misleading consumers into believing that other avenues to resolving their complaint are now closed – which is clearly not the case.

Recommendations to help improve the complaint handling framework in Quebec: . . .

3. Section 11 requires that the firm provide complaint drafting assistance, but only if the consumer expresses a need for it.

Requiring assistance to be provided is a key step forward in promoting effective complaint handling. This is because most consumers have little experience interacting with the system. This contrasts with financial institutions, which build up institutional knowledge and expertise over time, and have far greater resources at their disposal. We consider this assistance a critical tool in leveling the playing field between the firm and the consumer.

We suspect many consumers will not be aware, however, that they have the right to ask for assistance. As such, the onus should not be placed on the consumer to ask for assistance, but on the firm to proactively advise them of the availability of such assistance.

We also note that section 11 and subsection 5(2) need to work together and be scrutinized, since helping the consumer draft their complaint could create potential conflicts between the staff providing assistance and the firm that employs them.

Canadian Association of Direct Relationship Insurers (CADRI)

CADRI Uses Video As Part Of Advocacy Submission To Insurance Council Of Manitoba

On February 10/22, CADRI made a written submission to the Insurance Council of Manitoba which asks the regulator to remove current restrictions on Manitoba Level 1 Agents working remotely from the office.

In a section of CADRI's letter to ICM titled "Supervising insurance agents today," the Association uses an embedded video to help make its case. That section of CADRI's submission reads, in part, as follows:

What better way to walk the Council through our members' approach to supervision than a video that demonstrates that supervisors are well placed to oversee the work of their teams, even if they are working in different geographic locations. Please view our video, "Supervising agents in a virtual offices": <https://www.youtube.com/watch?v=tZJd5PfDCzU>.

CADRI's written submission can be found here:

<https://www.cadri.com/resources/Documents/Submissions/2022/1.%20CADRI%20Response%20MB%20General%20Insurance%20Rules%20FINAL.pdf>.

Canadian Life and Health Insurance Association

CLHIA Announces Industry Initiative To Use Advanced AI To Reduce Benefits Fraud

On February 14/22, CLHIA issued a media release announcing the launch of an industry initiative to pool claims data and use advanced artificial intelligence tools to enhance the detection and investigation of benefits fraud.

The media release indicates the following:

Every insurer in Canada has their own internal analytics to detect fraud within their book of business. This new initiative, led by the CLHIA and its technology provider Shift Technology will deploy advanced AI to analyze industry-wide anonymized claim data. By identifying patterns across millions of records, the program is enhancing the effectiveness of benefits fraud investigations across the industry.

We expect that the initiative will expand in scope over the coming years to include even more industry data.

"Fraudsters are taking increasingly sophisticated steps to avoid detection," said Stephen Frank, CLHIA's President and CEO. "This technology will give insurers the edge they need to identify patterns and connect the dots across a huge pool of claims data over time, leading to more investigations and prosecutions."

"The capability for individual insurers to identify potential fraud has already proven incredibly beneficial," explained Jeremy Jawish, CEO and co-founder of Shift Technology. "Through the work Shift Technology is doing with the CLHIA, we are expanding that benefit across all member organizations, and providing a valuable fraud fighting solution to the industry at large."

Insurers paid out nearly \$27 billion in supplementary health claims in 2020. Employers and insurers lose what is estimated to be millions of dollars each year to fraudulent group health benefits claims. The costs of fraud are felt by insurers, employers and employees and put the sustainability of group benefits plans at risk.

CLHIA Issues Statement On CCIR And CISRO Announcement On Deferred Sales Charges

On February 10/22, CLHIA issued the following public statement:

Canada's life and health insurers support the broad efforts of the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO) to better align the regulatory environments for segregated funds and mutual funds.

This includes today's announcement by the CCIR and CISRO that the industry should begin a transition towards the cessation of new DSCs for segregated fund sales by June 1, 2023.

Our industry looks forward to continuing to work collaboratively with the CCIR and CISRO on this important initiative.

OmbudService For Life and Health Insurance (OLHI)

OLHI Announces Partnership With Quebec Cancer Foundation

On November 25/21, OLHI posted an advisory on its website announcing a new partnership with the Quebec Cancer Foundation (QCF). The OLHI announcement states the following:

This strategic alliance will make it possible to enhance the daily well-being and financial security of people with cancer and their loved ones.

For over 40 years, the Quebec Cancer Foundation has been adapting its approach and finding new and innovative ways of providing services designed to best meet the needs of people with cancer and their loved ones. The QCF is extremely proud of this recent partnership with OLHI, a collaboration that will allow the Foundation to transform the landscape of healthcare in terms of support services once again. OLHI is a non-profit organization that offers an alternative dispute resolution public service for life and health insurance consumers in Canada. This free and bilingual service will enable the Quebec Cancer Foundation's beneficiaries and their loved ones to get access to help and information on dispute resolution in consumer insurance matters.

“People facing cancer must not only contend with medical challenges, as financial issues are generally also a major impediment,” notes Mr. Marco Décelles, General Director of the Quebec Cancer Foundation. “I truly believe that this partnership with OLHI will significantly impact everyone who attempts to exercise their rights with regard to critical illness insurance. Through this collaboration, we will be able to better support the physical, mental and financial well-being of an even greater number of cancer patients, survivors and loved ones.”

For Stéphanie Robillard, OLHI’s Acting Senior Deputy Ombudsman and conciliator, this partnership with the Quebec Cancer Foundation was a natural. “During the course of Financial Literacy Month, OLHI chose to partner with the Quebec Cancer Foundation because it’s the only organization that helps and supports people diagnosed with cancer, regardless of type of disease, age or origin, and this throughout Quebec: in other words, it provides accessible, inclusive and effective assistance to all Quebecers. Both of our organizations are part of a movement focused on the overall health and financial security of people facing cancer.”

Advocis

Former CAFII EOC Member Sara Gelgor Joins Advocis Board As A Public Director

In the Fall of 2021, Sara Gelgor – a former CAFII EOC member for many years while she was a senior compliance staff executive at Scotiabank Financial – joined the Board of Advocis as a Public Director.

Advocis’ website features substantive biographical profiles about each of its Board members, and states the following about Ms. Gelgor:

Sara is an experienced board director and financial services executive. Sara has served as a board member of for-profit and not-for-profit organizations, including Toronto Hydro and the University of Toronto Governing Council Business Board, and has been named to the Diversity 50 by the Canadian Board Diversity Council. She successfully completed the Rotman Directors Education Program and holds the ICD.D designation. Sara is a member of Governance Professionals Canada and is a faculty member of the GPC.D program, having collaborated in the design and launch of the designation program.

Sara has held senior leadership roles in the financial services sector and is currently the Chief Compliance Officer at Concentra Bank. She previously oversaw regulatory compliance risk for wealth management and retail banking at HSBC Bank and has been Chief Compliance Officer for a Canadian insurer. Sara has helped shape public policy through material contributions as a committee member at the Canadian Life and Health Insurance Association, the Canadian Association of Financial Institutions in Insurance, and the Canadian Bankers Association.

Sara is no stranger to Advocis. From 2003 to 2008 she held the staff position of Vice President of Regulatory Affairs and earned a strong reputation for her critical thinking and her ability to build strategic relationships, successfully leading a number of key initiatives, including Advocis’ intervention in a landmark Supreme Court of Canada constitutional law challenge.

Sara obtained her undergraduate degree at the University of Toronto and attended Queen's University for Law School. She is a lawyer, and also holds a Master's degree in International Law from Cambridge University, and an MBA from the Rotman School of Management at the University of Toronto. She completed the Osgoode Hall Law School Certificate in Legal & Regulatory Risk Management for Financial Institutions, and has been a faculty member of the certificate program since 2013. She is a frequent speaker at conferences, including the Northwind Financial Services Invitational Forum, and is a past lecturer at the Rotman School of Management and Queen's Law School.

Sara shares her home with her spouse and their two children, as well their Leonberger, Golden Retriever, and Bengal Leopard cat. Her passions include travel and skiing, and she is a long-standing member of the Toronto International Film Festival and a volunteer at Toronto's Out of the Cold Program.

Provincial/Territorial British Columbia

BC Court Of Appeal

BC Court Of Appeal Declines To Interfere With 2018 Manulife Settlement

On January 28/22, Investment Executive reported that the appeal court in British Columbia had rejected a bid to re-open a proposed class action against Manulife that was settled back in 2018.

The article reads as follows:

A panel of judges from the Court of Appeal for B.C. unanimously rejected an application for leave to appeal a class action case that was certified in order to approve a \$4.25 million settlement.

The case, which originally started in 2013, "concerns alleged misconduct in the marketing of life and disability insurance to mortgagors by [Manulife] and its affiliates," the court noted in Leonard v. The Manufacturers Life Insurance Company.

The plaintiffs took issue with the manner by which subsidiaries of Manulife marketed, in Canada, creditor protection insurance products underwritten by Manulife for mortgagors.

Several parallel cases were subsequently filed in various provinces. The case was twice denied certification as a class action before a settlement was finally reached that resulted in a court certifying the case in order to approve the settlement. That decision, by Supreme Court of B.C. Justice Geoffrey Gomery, was released in 2020.

Several plaintiffs subsequently sought leave to appeal the certification order, and the appointment of the representative plaintiff, arguing that she "acted against the interests of the class by agreeing to the proposed settlement."

Among other things, they argued that the settlement is "woefully inadequate"; that there's a realistic prospect that a better outcome could be achieved; and that allowing the settlement sends the message

that “deep-pocketed defendants can buy their way out of widespread unlawful conduct ... if they can find a representative plaintiff willing to settle on such unreasonable terms.”

However, the appeal court rejected their arguments.

It said that the lower court is entitled to substantial deference in appointing a representative plaintiff and approving a settlement, and it concluded that there was no clear error in those decisions.

“In the absence of identifiable legal or factual error, the applicants are not entitled simply to repeat the same arguments they made below in this court in the hope of achieving a different result on appeal,” the court said in its decision.

The court also found that the circumstances of the case aren’t unusual enough to warrant granting leave to appeal.

“The judge conducted a careful, thorough and cogent analysis of the terms and conditions of the proposed settlement. On the record before him, he was entitled to conclude that the settlement was fair, reasonable and in the best interests of the class and should be approved,” the appeal court said.

The appeal court also concluded that granting leave would be contrary to the interests of justice.

“In my view, it would seriously compromise the ability of representative plaintiffs and defendants to negotiate and settle class actions, subject to court oversight ... if leave to appeal orders for certification and settlement approval were to be granted in circumstances such as these,” it said.

BC Financial Services Authority (BCFSA)

BCFSA Consolidates Vancouver Offices, Implements COVID-19 Guidelines

On January 10/22, BCFSA issued a news release announcing that it had permanently closed its office at 555 West Hastings Street, Vancouver and consolidated all of its operations at 600-750 West Pender Street, Vancouver.

The former 555 West Hastings Street office location is where CAFII delegations met with staff executives from BCFSA’s predecessor organization, BC FICOM, in the Fall of 2017 and the Fall of 2019.

BCFSA also announced that in accordance with current public health information surrounding the ongoing COVID-19 pandemic, it is only accepting scheduled appointment visits at its West Pender Street office. Vaccination status will also be checked for admittance to BCFSA’s office.

BCFSA Calls for Public Comment As Credit Union Seeks To Exit Provincial Regulation

On February 1/22, BCFSA issued a news release announcing that it was seeking comment from the public on an application from First West Credit Union ("First West") for consent to apply to be federally regulated under the *Bank Act*.

Under the *Credit Union Incorporation Act*, a British Columbia credit union requires the consent of the Superintendent of Financial Institutions ("Superintendent") and the Credit Union Deposit Insurance Corporation of British Columbia ("CUDIC") in order to apply to the federal Minister of Finance for an instrument of continuation allowing the credit union to continue operations as if it had been incorporated under the laws of the federal jurisdiction.

First West is headquartered in Langley, B.C. and uses the following trade names for its divisions: Envision Financial, Island Savings, Enderby & District Financial, and Valley First. First West applied to the Superintendent and CUDIC for consent to continue operations under federal jurisdiction following a supportive membership vote held in late 2021.

Under the change of jurisdiction, First West would cease to be regulated in B.C. and would thereafter be governed and regulated under federal laws as a federal credit union. The process requires consent and approval at the provincial and federal levels respectively. Because this change may have impacts for First West members and for the public and other businesses, BCFSA is soliciting comments through its website, social media, and online postings as part of its consent process. Comments must reach BCFSA by March 2, 2022.

Manitoba

Insurance Council of Manitoba (ICM)

Lee Roth Leaves Insurance Council Of Manitoba Staff For Industry Role

The Insurance Council of Manitoba's website indicates that Lee Roth, Director of Compliance for the past several years under recently departed Executive Director Barbara Palace, has left the Council's employ.

Mr. Roth's LinkedIn profile indicates that he joined Wawanesa Insurance Company as a Senior Compliance Specialist in January 2022.

At approximately the same time, in December 2021, the Insurance Council of Manitoba (ICM) posted a brief half-page announcement on its website advising that Stacey Aubrey, previously Director of Licensing, had been appointed its new Executive Director, succeeding Barbara Palace.

Ms. Palace left ICM in December to become CEO of the United Way of Chatham-Kent in Ontario.

International

UK Financial Conduct Authority (FCA)

FCA Flames Firm's Finfluencer Efforts

On February 11/22, Investment Executive reported that amid growing concerns about the role of social media in driving financial decisions, the U.K.'s Financial Conduct Authority (FCA) had taken action against a financial firm over its involvement with a "finfluencer."

The Investment Executive article reads as follows:

The FCA issued a supervisory notice against investment firm Freetrade Ltd., ordering that it remove all paid influencer ads and posts across all social media platforms, including Instagram, TikTok, Facebook and YouTube.

In a notice, the FCA said it concluded that the firm breached conduct rules "by failing to consider the extent to which vulnerable customers might access a financial promotion [...] to be made by a social media influencer, in order to promote its services of commission-free investments."

The regulator indicated it was concerned about promotions involving an "influencer" with over 64,000 followers on TikTok that included information about how she is paying off £38,000 in debt, and did pay off £14,000 in 18 weeks.

"This influencer also has widespread media interest reporting on her story of 'clearing her debt.'" it said. "The [FCA] therefore considers that her profile is one which vulnerable or indebted consumers could be particularly attracted to."

The regulator said the influencer's financial promo video, "viewed in the context of her profile, may lead viewers to believe that if they invest with the firm they will clear their debt, encouraging them to invest."

However, the regulator said it "considers this to be misleading as there are no guarantees of positive returns on any investment, which may further exacerbate the financial position of those already in debt."

The FCA also said that, though the video included a risk warning, it concluded "the risk disclosure to be insufficient, the promotion misleading and the influencer's financial promotion to therefore be in breach of [conduct rules]."

The FCA also reported that it discovered "a TikTok video which was posted to an Instagram story on the influencer's profile, that promotes the benefits of using the firm to engage in investment business but does not include the required risk disclosure."

In that instance the regulator said, "FreeTrade did not have appropriate oversight of the influencer's financial promotion, which would have allowed the firm to identify and request the removal of the TikTok video."