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

CAFII is pleased to provide the following input in response to the issues and questions raised in the Initial Public Consultation Paper that are germane 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 their 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.

OVERALL/FRAMEWORK ISSUES

Issue 1: Financial Consumer Protection

Q1. Should BC consider adopting a market conduct code for fair treatment of consumers that would apply to financial institutions? If so, should there be one code for all financial institutions or separate codes for different types of financial institution?

With respect to insurance, CAFII believes that there should be one national, principles-based code for fair treatment of consumers (FTC), developed by the CCIR, which all jurisdictions would adopt. We also note that the Financial Consumer Agency of Canada (FCAC) concluded a consultation on a proposed federal financial consumer code in early 2014, the results of which have not yet been announced.

Q3. Should ombudservices be mandated for addressing consumer complaints against mutual insurers and/or insurance agents and brokers?

In this area, we note that CAFII members have robust processes in place which operate under a "company first" approach to review and resolve/escalate complaints. If consumers are not satisfied, they have recourse to the financial institution's (FI) own Ombudsperson. FIs have well-established policies and procedures to receive, investigate, and respond to consumer complaints with respect to the products they offer. The FI informs consumers of these procedures, which are easy to understand and use. These procedures set out a clear complaint resolution process and identify appropriate contacts within the organization. Information concerning these complaint procedures is available from personnel at any branch, at the FI's website and in printed brochures that explain the process in detail. Our members make every effort to respond to complaints fairly and promptly.

Should a consumer remain dissatisfied with the outcome of the complaint review, they can then escalate their case to the OmbudService for Life & Health Insurance (OLHI).

Q4. Should authorization requirements for financial institutions and licensing requirements for insurance agents and brokers specifically require fair treatment of consumers?

CAFII's view is that fair treatment of consumers is a point-of-sale issue and not a point-of-authorization/licensure issue and it would not be appropriate to include FTC in licensing requirements. In addition, embedding FTC directly in authorization/licensure documents and/or screening processes would be impractical and add unnecessary red tape while not enhancing consumer protection. That said, if a FTC code is introduced, requiring applicants to promise to adhere to it as part of the authorization/licensure process would be a positive step.

In the case of most CAFII members, the selling of creditor insurance products is federally regulated and consumers are well-protected through the financial institutions' compliance with the CBA Code of Conduct for Authorized Insurance Activities. This Code – part of the CBA's suite of Voluntary Commitments and Codes of Conduct – applies to all authorized insurance products promoted in Canada. The CBA's Voluntary Commitments and Codes of Conduct are non-legislated commitments that banks have made to their consumers in a number of areas. The banks' federal consumer regulator, the Financial Consumer Agency of Canada, oversees the banks' compliance with them.

All CAFII members also follow relevant CLHIA Guidelines, including Guideline G7 Creditor's Group Insurance, G9 Direct Marketing, and G5 Travel Insurance.

Q6. Does BC have the correct framework for use of corporate and business names and logos, and the disclosure of identity for financial institutions?

CAFII believes that BC's current legislative framework for use of corporate and business names and logos works well, and ensures that the identities of the financial institutions are clear and transparent to consumers. However, to provide additional flexibility for industry participants, we would encourage BC to consider Quebec's approach where applicants are allowed to have both the company name and the brand name on the license. This approach recognizes that some distribution models have more than one brand operating under a corporate licence.

Issue 2: Market Discipline/Public Disclosure of Key Financial Risk Information

Q1. Should BC financial institutions be required to make additional financial and risk information available publicly, including online? If so, which types of information? What are the benefits and risks or issues associated with more stringent public disclosure requirements?

In addition to BC insurance legislation and regulations, most CAFII members are also subject to the Insurance Business (Banks and Bank Holding Companies) Regulations of the federal Bank Act. For other members, the Insurance Acts and/or related legislation of other provinces apply. The public availability of financial and risk information related to our members is addressed in these statutes. As BC considers disclosure of financial and risk information for FIs incorporated in the province, we would encourage harmonization, to the extent possible, with parallel provisions in other jurisdictions.

Q2. Should FICOM be permitted to publish information it collects from financial institutions online? Are there certain types of information that should not be published or exemptions that should be provided (e.g., to particular types or sizes of institution)?

CAFII believes that the current requirements in the FIA are appropriate and that FICOM's disclosure powers do not need to be extended to online posting.

In this connection, CAFII members want to reserve the right to provide privileged responses to regulator surveys or other information requests, where appropriate. Legislating a self-evaluative privilege protection for insurers in BC would promote open and transparent self-assessments by companies and ultimately contribute to consumer protection improvements that could be achieved through regulators' use of such assessments.

Q3. Should financial institutions in BC be required to provide information to national databases for regulatory purposes, and should FICOM be allowed to do so?

We encourage BC to join and participate in the National Complaint Reporting System (NCRS) for life and health insurance.

With respect to national databases, CAFII would also like to impress upon FICOM and the Insurance Council of BC the compelling need for an integrated national database to facilitate licensing and monitoring of insurance agents across all jurisdictions. A nationally integrated electronic licensing system could become the foundation for a system of mutual recognition for vetting of applications and for ongoing supervision.

Issue 3: Financial Literacy

CAFII believes that financial literacy can be well-supported under existing federal and provincial legislation. However, if there are to be new financial literacy obligations for the life and health insurance sector, we would like to see a nationally co-ordinated approach, one which builds upon the work being led by the FCAC's National Financial Literacy Leader.

CAFII members have been focused on consumer financial literacy for many years by using plain language and clear communication in offering insurance products. Members adhere to the FCAC's *Commissioner's Guidance on Clear Language (CG-3)* and the CLHIA's reference document *A Model Demonstrating Clear Communication Principles and Techniques Using Examples From Insurance Policies*.

Our Association's tag line is "Making Insurance Simple and Accessible for Canadians" and our members focus on achieving that.

CAFII member client service representatives use plain language and clear communication to help consumers understand exactly what they are buying. Their objective is to give consumers the information they need to make an informed and sound decision. They are trained to point out features and limitations of the insurance and answer consumer questions. In addition, information is available on member websites and consumers are given a toll-free phone number to call with any questions they may have.

CAFII members provide marketing materials and certificates, detailing coverages and exclusions in a manner that is easy to understand, and are always working to improve clarity. Consumers can take their time to do a full review of all materials during the "free look" period - typically 30 days - during which time they can cancel and receive a full premium refund.

Issue 4: Technological Change

CAFII believes that the future of the life and health insurance industry will be marked by continued innovation and an increase in consumer demand for electronic commerce.

As such, CAFII members utilize electronic commerce extensively to distribute authorized and other life and health insurance products and we share regulators' objective of ensuring that consumers are protected while purchasing products through their channel of choice.

At the same time, many regulatory requirements were designed for traditional paper-based and personal interaction sales practices and they will need to be revisited to ensure that they do not create inadvertent obstacles for innovation in alternate distribution models.

Q1. Are there any barriers or impediments to using new technology in the current legislative and regulatory framework (e.g., for member engagement, provision of products and services, etc.)? What changes are needed to ensure the regulatory framework continues to enable and accommodate technological change, now and in the future?

CAFII believes that the current legislative and regulatory framework in BC provides the flexibility needed to support technological innovation and improvements in consumers' insurance purchase experiences.

We compliment BC for being a leader in supporting technological innovation, e.g. the inter-related changes made to the Electronic Transactions Act and the Insurance Act to allow for electronic beneficiary designations. One further area in which BC could lead by removing a barrier to innovation would be to allow for online/electronic termination of an insurance contract, where both the insurer and the individual insured agree to that option.

With respect to legislative or regulatory changes, CAFII requests that lead time of 12 to 18 months be provided to facilitate our members' implementation of the changes. These changes inevitably give rise to major information systems projects within member companies and it takes time to ensure that necessary systems changes are made, forms revised, staff trained, and consumers notified of how the changes affect them.

Q2. Are any changes needed to ensure consumers continue to be protected and provided with the information they need to make informed choices?

The existing legislative and regulatory framework in BC, along with the CBA Code of Conduct for Authorized Insurance Activities and CLHIA Guidelines, works well to ensure that consumers are adequately protected and have access to the information they need to make informed decisions in their channel of choice.

The CCIR's final position paper on *Electronic Commerce in Insurance Products*, issued in October 2013, sets out a number of consumer protection expectations that are satisfied by current industry standards. CAFII strongly recommends that any changes be aligned with CCIR's recommendations. Indeed, Quebec's Ministry of Finance, in its current consultation report on the province's *Act Respecting the Distribution of Financial Products and Services*, is proposing to take that approach.

Q3. Are there certain financial products or services that should not be available for purchase directly by consumers online without using a professional broker or financial advisor at a regulated institution?

CAFII does not believe that it is appropriate to limit consumer choice. Our view is that the focus should be on clear, plain language disclosure so that consumers can make informed choices and CAFII members are committed to providing consumers who choose to shop online with access to a licensed representative.

Q4. Are there consumer protection and regulatory issues related to record storage or retention? Should there be limits on what kinds of data can be entrusted to a third party service provider for storage and/or processing?

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 the province's Personal Information Protection Act (PIPA). Part 9 – Care of Personal Information in PIPA sets out requirements for the protection and retention of such information.

With respect to federally-incorporated insurers, 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 are contemplated, we encourage consideration of OSFI's approach, with a view to adapting and incorporating the expectations in place at the federal level.

Issue 5: Out of Province Business

Q3. Are changes to the current legislative framework needed to address the use of technology by out-of-province entities providing financial products and services to British Columbians? Do the current definitions of what constitutes "carrying on business in BC" need to be revisited in light of increased e-commerce/online distribution of financial products?

CAFII's view is that all online insurance communications with residents of BC – regardless of origin location – should be afforded the protections set out in the FIA and the Insurance Act and we believe that the current legislative framework does cover such communications and transactions.

Issue 6: Regulatory Powers and Guidelines

With respect to FICOM's regulatory powers and guidelines, CAFII is not aware of any deficiencies in the existing tools that are set out in Part 7 of the current FIA.

INSURANCE SECTOR

A 2013 independent research study conducted by the Life Insurance Market Research Association (LIMRA) found that life insurance ownership in Canada is at a 30-year low with only 68% of households owning life insurance, down from 79% seven years earlier. Further, a recent independent actuarial report prepared by Towers Watson shows that nationally in 2013, creditor insurance on mortgages provided Canadians with \$85B of new life insurance risk protection, while new term life insurance purchased that year was approximately \$166B. As such, both sources are important components of risk protection for Canadians.

Issue 1: Insurance Retailing and Licensing Exemptions

Q1. Are the current exemptions appropriate? Should any additional exemptions be provided?

CAFII believes that the current exemptions are appropriate and effective.

Q2. Should insurers have more responsibility for exempt sellers? Should they be required to provide more direct oversight?

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.

All CAFII member client service representatives are required to undergo comprehensive and recurring 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 CBA Code of Conduct for Authorized Insurance Activities; the Bank Act, regarding tied selling; federal privacy legislation; and CLHIA Guidelines, including Guideline G7 Creditor's Group Insurance, G9 Direct Marketing, and G5 Travel Insurance.

CAFII member client service representatives – the majority of whom are salaried staff – are also highly supervised both in branch and in client contact centres.

Q3. Should the FIA be amended to give the Insurance Council increased powers to license and regulate incidental sellers of insurance?

From CAFII's perspective, BC's existing system of insurance retailing and licensing exemptions is working well and we are not in favour of providing the Insurance Council with increased powers in this area.

In the absence of a framework provided by a Restricted Insurance Agent licensure regime akin to those that exist in the other Western Canada provinces, it would be very challenging to establish an effective model under which the Insurance Council of BC could carry out such increased powers over incidental sellers.

As a general principle, CAFII believes that the Insurance Council of BC should be "channel neutral." That is, the Council should be designed 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.

Q4. Should certain insurance products only be sold by licensed agents? If so, which ones?

No, CAFII believes that the existing system of insurance retailing and licensing exemptions in BC is working well and we don't see a compelling need for change.

CAFII members adhere to the market conduct and consumer protection provisions of the province's FIA, Insurance Act, and PIPA. In addition, the distribution of creditor insurance products is federally regulated in the case of most CAFII members. In that connection, consumers are well-protected through their compliance with the CBA Code of Conduct for Authorized Insurance Activities; and, in the case of all CAFII members, through their adherence to CLHIA Guidelines, including Guideline G7 Creditor's Group Insurance, G9 Direct Marketing, and G5 Travel Insurance.

Q5. Should the restricted insurance agent model used by some other provinces, and applicable to travel agencies in BC, be looked at with respect to the sale of other types of incidental insurance such as credit insurance and/or product and vehicle warranties? If so, which types?

CAFII believes that BC's current system of insurance retailing and licensing exemptions is working well. However, if the province feels that additional legislation and/or regulations are required, CAFII members would be open to the introduction of an RIA/ISI regime and we would encourage BC to harmonize with the existing regimes in the other western provinces.

Should an RIA/ISI regime be established, care must be taken to ensure that the interests of RIA licence holders are well-served in terms of representation on Council and that the representatives of competing channels are not in a position to make decisions which could negatively impact consumers' access to alternate distribution channels.

Issue 2: Regulation of Insurance Intermediaries

Q1. Should some or all members of the Insurance Council of BC be elected?

CAFII supports a new governance model for the Insurance Council of BC that would see some of its members appointed by industry Associations.

We would also strongly recommend that the residency requirement to serve on the Insurance Council be repealed. Our members distribute creditor's group and travel insurance largely through contact centres situated in various provinces and the current requirement to be a BC resident in order to be eligible to serve means that it is very difficult for a representative from a CAFII member to serve. As a result, there is no voice at Council to represent the views of alternate distribution channels that meet consumer needs.

Issue 3: Protection of Confidential Information

Q2. Would insurer self-assessment privilege provide a net public benefit by enhancing internal compliance systems and confidential disclosure to the regulator? Do the benefits outweigh the costs of limiting evidence available in court proceedings?

Yes, CAFII feels 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 recent *Insurance Act* reviews. In addition, earlier this year, Saskatchewan 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.

Conclusion

Thank you for the opportunity to share CAFII's comments and recommendations in this important legislative review. We look forward to participating in future phases of the review.

Should you require further information from CAFII or wish to meet with our Association at any time as the review progresses, please contact Brendan Wycks, our Executive Director, at brendan.wycks@cafii.com or 647-218-8243.

Sincerely,

Greg Grant, MBA, FLMI, ACS
Board Secretary and Chair, Executive Operations Committee
Canadian Association of Financial Institutions in Insurance

Links To Non-BC Regulatory and Self-Regulatory Documents Cited In This Submission

- CBA Code of Conduct for Authorized Insurance Activities:
http://www.cba.ca/contents/files/misc/vol_20090000_authorizedinsuranceactivities_en.pdf
- CLHIA Guidelines:
https://www.clhia.ca/domino/html/clhia/clhia_lp4w_ind_webstation.nsf/page/E0DABC49378B65DE85257A5B0062D156
- Insurance Business (Banks and Bank Holding Companies) Regulations of federal Bank Act:
<http://laws-lois.justice.gc.ca/eng/regulations/SOR-92-330/page-1.html>
- FCAC's Commissioner's Guidance on Clear Language (CG-3): <http://www.fcac-acfc.gc.ca/eng/forIndustry/publications/commissionerGuidance/Pages/CG3Clear-DC3Princ.aspx>
- CLHIA's A Model Demonstrating Clear Communication Principles and Techniques Using Examples From Insurance Policies:
<https://www.clhia.ca/domino/html/clhia/committees/newsletter.nsf/0/4dbad59fcc18f2aa85257d9e0057152f!OpenDocument&Click=>
- CCIR Electronic Commerce in Insurance Products Position Paper: http://www.ccir-ccra.org/en/init/Elec_Commerce/ECC_position_paper_2013_EN_final.pdf
- Quebec Ministry of Finance Report on An Act Respecting the Distribution of Financial Products and Services: http://www.finances.gouv.qc.ca/documents/Autres/en/AUTEN_loidistriprodservfin.pdf
- Personal Information Protection and Electronic Documents Act: <http://laws-lois.justice.gc.ca/eng/acts/p-8.6/>
- Federal Insurance Companies Act: <http://laws-lois.justice.gc.ca/eng/acts/i-11.8/>
- OSFI Guideline B-10: <http://www.osfi-bsif.gc.ca/eng/fi-if/rg-ro/gdn-ort/gl-lid/pages/b10.aspx>

ABOUT CAFII

The Canadian Association of Financial Institutions in Insurance (CAFII) is a not-for-profit industry Association dedicated to the development of an open and flexible insurance marketplace. CAFII was established in 1997 to create a voice for financial institutions involved in selling insurance through a variety of distribution channels. CAFII 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.

CAFII is currently the only Canadian Association with members involved in all major lines of personal insurance. CAFII's full members are the insurance arms of Canada's major financial institutions – BMO Insurance; CIBC Insurance; Desjardins Financial Security; National Bank Insurance; RBC Insurance; Scotiabank Financial; and TD Insurance – along with major industry players American Express, Assurant Solutions, Canadian Premier Life Insurance Company, and The CUMIS Group Ltd.

In addition, CAFII has 10 Associates that support the role of financial institutions in insurance.

CAFII 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 its members' common ground.

CAFII's diverse membership enables our Association to take a broad view of the regulatory regime governing the insurance marketplace. CAFII works with government and regulators (primarily provincial) 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.