



CAFII Special Project | Credit Card Balance Protection Insurance

Response to Shortlisted Firm Specific Questions

February 28, 2019

- 1 | **Stikeman provided detail on how it would ensure adherence to Competition Law, especially with the engagement of external consultants, but we would like more detail on lead lawyer Stuart Carruthers' knowledge of the insurance industry and the regulatory environment. In particular, we would find it valuable if Mr. Carruthers' could elaborate on his relationships with key regulatory bodies like FSCO/FSRA, AMF, and FOCOM (among others); the FCAC; his view of the similarities and differences between these regulators; and his views on how the regulatory environment is changing.**

As you know, Stuart is a pre-eminent transactional, commercial, governance and regulatory advisor to insurance and reinsurance companies and brokers in Canada. He is consistently the most highly recognized insurance and reinsurance counsel in Canada and is the only Canadian insurance corporate/regulatory counsel recognized in the highest categories in leading international directors such as *Chambers Canada*, *Who's Who Legal* and Legal Media Group's *Expert Guides*. He was described by *Who's Who Legal: Canada* as their "most highly recommended practitioner" for 2017 as well as a "household name in the insurance and reinsurance space" and the only Canadian they recognized this year as one of the small number of insurance/reinsurance "Global Thought Leaders". His clients have described him in those types of directories as a "key figure in the area" and a "skillful practitioner in a wide variety of insurance matters". **Simply put, Stuart's and the firm's expertise is unparalleled in Canada and no other firm is consistently ranked higher than Stikeman Elliott and no other practitioner is ranked as highly as Stuart.**

All that said, our approach in this important project with CAFII would be to focus on the **forward-looking** trends in the fair treatment of customers, as reflected in the expectations and guidance of key international and Canadian regulators, including the IAIS, CCIR members and the FCAC. We see this project as more of a visionary, future-looking exercise, rather than being reflective of the past. It presents a once-in-a-generation opportunity to proactively shape regulation and opportunities by focusing on **"where the puck is going"**, not what happened **"last season"**.

In addition, we see this project as very different from a compliance investigation-type exercise that might require a very aggressive, "bull-in-the-china-shop" approach, and rather one in which a nuanced, diplomatic and collaborative approach with regulators will yield the best result. CAFII's members have sophisticated, long-standing relationships with key regulators and will be dealing with those same regulators for many years to come. CAFII will best be served in this matter by counsel with a broad "toolkit" and the ability to shift gears as needed in the process and with different regulators.

Stuart and numerous others in the firm have long-standing and excellent relationships with key regulators, including as follows and with some observations:

- **FSCO/FSRA** – FSCO/FSRA is, as you know, in transition, still consumed with Ontario auto and likely to be for some time. Historically, as an administrative practice they have taken a very light approach and not regulated creditor insurance enrolment activity. In the Licensing and Market Conduct Division, we have historically worked most closely with Anatol Monid and his team, and before his retirement, Grant Swanson. We also know the new CEO, Mark White, well from OSFI and other contexts, and have worked closely over the years with the new General Counsel, Jordan Solway, on many matters.
- **BC FICOM** – Historically, the BC FICOM has, as you know, been more aggressive in FTC matters (including, in relation to creditor insurance via the 2015 notice and the 2019 follow-up survey, notwithstanding the group creditor enrolment licensing exemption for financial institutions and their service providers). Over the years, Stuart has worked principally with Harry James on various regulatory matters, and more recently with Acting Superintendent Frank Chong.
- **AMF** – As we've discussed, in general terms the AMF has historically been more aggressive and is increasingly so (notwithstanding the historical licensing exemption for creditor insurance under the distribution guide regime). As we've mentioned, candidly, our approach on many AMF matters is to significantly involve and leverage, from the outset, our Montréal office colleagues and deep local relationships. We believe our ability to operate seamlessly in French and English, and under both common law and Quebec civil law systems, presents our clients with significant advantages compared to other firms without deep Quebec roots and relationships. The President and CEO of the AMF, Louis Morisset, is a former partner, and Stuart has also dealt with Eric Stevenson over the years, as well as Patrick Déry and Natalie Sirois on insurance-related matters.
- **FCAC** – The FCAC is, as you know, a different type of regulator – a specialist bank conduct regulator, responsible to the Department of Finance, and one which is increasingly empowered and assertive, and which is likely to increasingly set the pace for other Canadian regulators. We have excellent current and historical relationships with a number of FCAC staff.

2 | The Selection Committee wishes to engage external consultants to lead the research as well as other strategic business components. The external consultants would also provide project management support; business modeling insights; and strategic options and recommendations on possible industry and proprietary reforms. We would write the RFP for the external consultants and ask the law firm to review it and offer its input. We would want the law firm to manage this process to ensure adherence to Competition Law requirements. We also would expect the law firm to provide expert knowledge and insights to the consultants as a subject management expert. Please comment on your capability to fulfil on these expectations.

As described in our materials and last week, we would envision effectively managing the business consultants and being of significant assistance in that RFP process. We would be hands-on and bring deep financial services regulatory insights and experience to the process. From a competition law perspective, we routinely manage economic experts and other types of advisors (e.g., GR / PR advisers) in a manner that maintains legal privilege wherever possible. We are also familiar with benchmarking initiatives and how best to manage competition law considerations arising from the sharing of confidential information by implementing appropriate protocols and safeguards.

3 | Stikeman's proposal spoke to your firm's expertise in project management, but there was no schedule for the project or the process to implement the project. We would ask Stikeman to comment on the following:

- Provide us with your proposed process for managing this approach;
- Provide us with proposed timelines for delivering on this approach.

Our proposed process for managing this approach and timelines are provided below.

- 4 | **We would expect that Stikeman would be a legal insurance expert that would provide input and insight into the external consultants' research and strategic efforts – please comment on your capability to fulfil this expectation.**

As described above, we have a pre-eminent insurance and financial services regulatory practice and would bring that expertise and experience to the forefront to direct and contribute to the external consultants' research and strategic efforts.

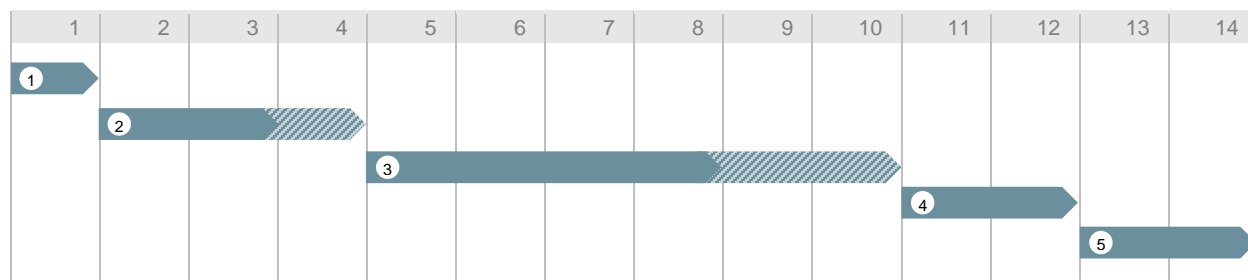
- 5 | **We would ask Stikeman to modify its quote to include time to provide subject matter expertise to the external consultants, to participate in the determination of strategic options and strategic implementations including their implementation, with a particular focus on how these would be structured to be consistent with the *Bank Act* and provincial regulatory regimes, and to include effort for Stikeman to participate in internal meetings of our members with their leadership teams on the recommendations proposed out of this Special Project.**

For the larger scope of work, including greater input to and involvement with the business consultant and meetings with CAFII members' leadership teams, we would estimate our fees to be in the range of **C\$100,000 to C\$125,000** (excluding taxes and disbursements), and subject to the assumptions noted in the RFP response dated February 14, 2019. The ultimate place in the range would depend significantly on how many meetings we attend directly with CAFII members as part of Phase 5 described below.

As discussed, we had originally envisioned a narrower scope of work (particularly in relation to the consulting firm) and thus provided a lower quote, but we now better appreciate that the CAFII desire/expectation is for much more meaningful involvement in the process and in interacting directly with CAFII members.

Proposed Timeline

Weeks at a glance:



Phase	Timeline	Key Stikeman Elliott Team Members
1 Post Engagement Initial Confirmatory Meetings and Structuring With CAFII Focuses particularly on mechanics of consultant selection and engagement.	1 week to schedule and hold	<ul style="list-style-type: none"> - Stuart Carruthers - Michael Kilby - Michael Laskey
2 RFP Process for Consultant CAFII leads, while Stikeman Elliott contributes subject matter expertise, general legal expertise and project management. We review RFP, assist in reviewing responses and selecting preferred bidder. We also draft and negotiate and lead process on engagement agreement, including to maximize privilege.	2 to 3 weeks	<ul style="list-style-type: none"> - Stuart Carruthers - Michael Kilby - Michael Laskey - Articling Student to help manage process
3 Research and Fact Finding, Alongside Consultant Includes: <ul style="list-style-type: none"> - Canadian and international research - Development of benchmarking questions and process for collecting information from members and establishing appropriate protocols for information sharing with consultant 	4 to 6 weeks Subphases: <ul style="list-style-type: none"> - 3 weeks - Overall basic research - mainly from public sources/ materials, Canadian and international. Stikeman Elliott provides subject matter legal expertise, and consultant will provide business expertise, plus development of benchmarking questions and completion of benchmarking survey 	<ul style="list-style-type: none"> - Stuart Carruthers - Chris Lofft - Michael Kilby - Michael Laskey - Articling Student

Phase	Timeline	Key Stikeman Elliott Team Members
	<ul style="list-style-type: none"> - 1 week - 2 or 3 similar meetings with CAFII staff and member representatives - 2 weeks - Draft/review/analyze findings with consultants and CAFII 	
4 Preparation of Report / Recommendations / Next Steps	2 weeks <ul style="list-style-type: none"> - Assessing all information gathered - Considering potential best practices or industry codes or guidelines - Assisting, along with the consultant, in preparing a report for CAFII members and possible circulation to relevant regulatory bodies 	<ul style="list-style-type: none"> - Stuart Carruthers - Michael Kilby - Michael Laskey - Articling student to help manage the process
5 Individual Meetings with CAFII Members and Their Senior Leadership Teams	2 weeks	<ul style="list-style-type: none"> - Stuart Carruthers

Project Implementation & Process

We understand that CAFII requires integrated legal support through the entire life cycle of the project. This will include:

- **Weekly Meetings** – This weekly touch point among all stakeholders will provide a live discussion of issues, address concerns and ensure alignment.
- **Extranet** – We would propose using a collaborative extranet site which is accessible by both Stikeman Elliott CAFII and the consultant. The site can house status updates, agreements, correspondence, checklists and other important documents to facilitate communication between the teams, act as a knowledge repository and ensure that all stakeholders have access to all relevant information in real time.
- **Reporting** – We will work with you and the business consultant to develop customized planning documents and reporting tools, as required, to assist in the project management of activities currently envisioned for project.
- **Competition Compliance** – Use of appropriate protocols throughout, applying “competition law lens”.